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**411**

STATE OF ALASKA  
THE LEGISLATURE  
LEGISLATIVE AFFAIRS AGENCY

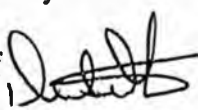
POUCH 7 STATE CAPITOL  
JUNEAU, ALASKA 99811  
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MEMORANDUM

April 16, 1990

**SUBJECT:** SCS CSHB 411(Judiciary), 1990 Revisor's Bill

**TO:** Senator Jan Faiks  
Chair, Senate Judiciary Committee

**FROM:** David R. Dierdorff   
Revisor of Statutes

This memorandum discusses the enclosed committee substitute for the 1990 Revisor's Bill (HB 411), prepared after the subcommittee meeting on April 12. The following sections in SCS CSHB 411(Jud) were not in the bill as passed by the House: 13, 21, and 25.

To assist in understanding the bill, I have summarized the contents by grouping sections that have similar effects.

Sections that delete or repeal obsolete provisions: Sections 5, 10, 14, 15, 26, 27, 29 - 32, and 34 - 38 delete or repeal provisions that have become obsolete either through the passage of time or other legislative action.

Sections that update obsolete or archaic provisions, or improve the style of the statutes: Sections 1, 3, 8, 9, 12, 16 - 18, 20, 21, 25, and 33 substitute new provisions for provisions that are obsolete, archaic, or otherwise outdated, including improvements in the style of language for purposes of clarity.

Sections that eliminate conflicts with other laws: Sections 4, and 22 - 24 harmonize laws dealing with the same subject. Section 2 conforms the text of a law to its judicial interpretation.

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Sections that correct errors or oversights: Sections 6, 7, 11, 13, and 18 correct errors or oversights in drafting.

### SECTIONAL ANALYSIS

Section 1. This amendment, relating to the proper form for citation of provisions in the Alaska Statutes, reflects the fact that the form actually used for citation of the single digit titles of AS has been, for example, AS 01, AS 02, etc. Until the mid-1970's, the Legislative Drafting Manual gave drafters a choice between AS 1 or AS 01, etc., but for the past fifteen years the double digit form has been the legislative standard. Now that the world of data processing has enveloped us, it is important that we make the use of the double digit citation form official.

Sec. 2. The proposed amendment to AS 12.55.165 incorporates references to provisions enacted after 1982 within the internal reference. In Edwin v. State, 762 P.2d 499 (1988), the Alaska Court of Appeals held that sentences under AS 12.55.125(e)(3), and, by extension, (d)(3), are subject to referral to a three-judge panel under AS 12.55.165. The court read the sentencing statutes as a whole and concluded that the failure to incorporate references to the added provisions was a legislative oversight. The court invoked the doctrine that statutes should be construed "to avoid absurd results." 762 P.2d at 502. See also the November, 1989 Report to the Legislature Examining Court Decisions, page 42.

Sec. 3. This amendment is proposed to ensure that recipients of a Winn Brindle memorial scholarship loan may attend an accredited "school" (as permitted under AS 14.43.300(b)(5)) and are not required to attend a "college" or "university." The amendment should have been made in 1986 when the Winn Brindle memorial scholarship loan program was enacted. The amendment has been reviewed and approved by the Postsecondary Education Commission.

Sec. 4. AS 16.05.900(24) defines "resident" as a person who has maintained a permanent place of abode in the state for 12 consecutive months. Thus, the use of "has been a resident for one year or more" in AS 16.05.400(b) is redundant. The problem dates back to the 1983 amendment, which substituted "one year" for "30 consecutive years."

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Sec. 5. The material to be deleted relates only to the initial terms of appointees.

Sec. 6. As enacted, a portion of this provision applied to children "between" the ages of four and six. Taken literally, that means it applies only to five-year olds. The legislature obviously intended that children aged four through six be included, and the proposed amendment would make that clear.

Sec. 7. The amendment would correct an erroneous reference in the original enactment.

Sec. 8. The 1978 revision of the criminal code introduced the crime of unsworn falsification. AS 28.35.130, which predates statehood, should have been amended at that time. A conviction for perjury could not be sustained under the circumstances described in AS 28.35.130, but a violator could be prosecuted for unsworn falsification. Thus the proposed substitution of terms.

Sec. 9. As enacted, "cancel" was defined as a noun. The amendment changes the definition to that of a verb, which is consistent with the usage of the term.

Sec. 10. The material to be deleted relates only to the initial terms of appointees.

Sec. 11. The language proposed for deletion adds nothing to the provision and, in any event, is confusing because it is incomplete.

Sec. 12. The amendment to the internal reference picks up two sections of AS 39.20 that need to have these definitions apply to them.

Sec. 13. Section 13 clarifies AS 41.21.302(c), as amended by a House floor amendment during the consideration of HCS CSSB 42(Fin), which became ch. 14, SLA 1990. Without this clarification, the Department of Natural Resources will not have clear direction as to the deadlines for preparation of state marine park management plans. The proposed language is based upon what I believe the legislature intended in approving HCS CSSB 42(Fin) am H. Section 39 of the bill gives this

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section an effective date that is the same as that of ch. 14, SLA 1990.

Sec. 14. The material to be deleted relates only to the initial terms of appointees.

Sec. 15. There is no substantive need to retain the reference to "January 1, 1971" in this provision.

Sec. 16. The proposed amendment eliminates language that is redundant to AS 42.05.121(b) and rewrites other language to conform to modern drafting style.

Sec. 17. The amendment is proposed to clarify some archaic language.

Sec. 18. The amendment updates the reference to municipalities.

Sec. 19. The amendment, proposed by the APUC, would add language ("to the public for compensation") to AS 42.05.720(4)(F) that appears in each of paragraphs (4)(A) - (E). It is apparent that the omission of the language from (4)(F) was an oversight. The amendment would eliminate a source of confusion and misunderstanding.

Sec. 20. The amendment updates the reference to municipalities.

Secs. 21 and 25. These bill sections, requested by Assistant Attorney General Jeff Bush, substitute the term "subpoena" for "summons" in one of the general provisions for administration of the state's tax laws and one provision dealing with the estate tax. The term "summons" is not used in civil procedure or administrative practice, except in connection with a "summons and complaint."

Secs. 22 - 24. These three sections, together with the repeal of AS 43.05.120 proposed in sec. 38, represent an effort to resolve some inconsistencies and redundancies in four provisions of AS 43.05 relating to criminal penalties. AS 43.05.290, enacted in 1980, was intended to serve as the basic penalty provision for all of the tax laws. When that was enacted, however, three provisions dating from 1945 that contain criminal penalties, AS 43.05.110, 43.05.120, and 43.05.130, were not amended.

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In sec. 22, a new section is proposed reenacting the substantive prohibitions of AS 43.05.120, which would be repealed. The new section is located immediately after the two AS sections that it relates to. A violation of AS 43.05.075(1) would be a class A misdemeanor under AS 43.05.290(c), while a violation of AS 43.05.075(2) would be a class A misdemeanor under AS 43.05.290(f). A violation of either with respect to a material matter and with the requisite intent would be a felony under AS 43.05.290(e).

Section 23 amends AS 43.05.110 to delete the language establishing a violation as a misdemeanor (which would be interpreted as a class A misdemeanor under AS 11.81.250(c)). A violation of AS 43.05.110 would be punishable as a class A misdemeanor under AS 43.05.290(c).

Section 24 amends AS 43.05.130, which currently provides a penalty of up to \$1,000, but no jail term, for any violation of AS 43.05.010 - 43.05.130, or a regulation adopted under those provisions. This is obviously inconsistent with existing AS 43.05.110 and 43.05.120, and conflicts with AS 43.05.290 as well. The amendment proposes to resolve this by limiting its application to violations that do not amount to violations under AS 43.05.290.

The Departments of Law and Revenue have reviewed and approved these proposals.

Secs. 26 and 27. Following the 1981 repeal of AS 43.55.012(a), the references to adjustment of the gas production tax under AS 43.55.012 that appear in AS 43.55.016(c) and 43.55.020(e) became meaningless. These two bill sections delete the obsolete references.

Sec. 28. The material proposed for deletion is redundant to general provisions in AS 43.15.010.

Secs. 29 - 32. The material to be deleted relates only to the initial terms of appointees.

Sec. 33. The amendment updates an obsolete reference to federal poverty guidelines.

Secs. 34 - 37. The material to be deleted relates only to the initial terms

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of appointees.

**Sec. 38.** This section proposes the following obsolete or otherwise unnecessary provisions for repeal:

AS 23.15.520(3) defines "registration fee," a term that does not appear in any provision to which the definition applies.

AS 23.35.150(2) and (4) define "commissioner" and "department" respectively, terms that are defined for all of AS 23 in AS 23.46.010.

AS 39.50.200(b)(47) refers to the Alaska Resources Corporation, which was repealed July 1, 1989.

AS 42.40.920(a) relates to the Alaska Transportation Commission and was rendered obsolete by the 1982 repeal, by initiative, of all provisions relating to the ATC.

AS 43.05.010(17) relates to powers of the commissioner of revenue in connection with assets of the former Alaska Resources Corporation. The amendment of sec. 17, ch. 161, SLA 1984 by sec. 1, ch. 17, SLA 1989 makes AS 43.05.010(17) unnecessary, as the codified law gives the commissioner and the department adequate authority to wind down the affairs of ARC.

AS 43.05.120, AS 43.20.340(3), AS 43.23.095(2) and (3), AS 43.31.420(2), AS 43.55.900(5) AS 43.56.210(3), AS 43.75.140(2), and AS 43.80.100(3) all contain definitions of "commissioner" or "department," terms that are defined for all of AS 43 in AS 43.99.950.

AS 44.47.310(5) contains a definition of "department" that is redundant.

AS 47.07.020(b)(10) and 47.07.035(17) relate to medical assistance for certain children and pregnant women that were optional services under state law, but are now mandated services under recent amendments to federal law; the state will provide the services under AS 47.07.020(a) and other provisions of AS 47.07.

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Sec. 39. Gives sec. 13 a June 14, 1990, effective date so that the amendment will take effect when ch. 14, SLA 1990 takes effect.

Sec. 40. The rest of the Act is given an immediate effective date by this section.

DRD:lmb  
900010.LMB

Original sponsor(s): Rules/Legislative Council

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 411 (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 making corrective amendments to the Alaska  
7 Statutes as recommended by the revisor of statutes;  
8 and providing for an effective date."

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

10 \* Section 1. AS 01.05.011 is amended to read:

11 Sec. 01.05.011. DESIGNATION AND CITATION. The bulk formal  
12 revision of Alaska law adopted and enacted into law by AS 01.05.006  
13 and as amended and supplemented is known as the "Alaska Statutes" and  
14 may be cited "AS" followed by the number of the title, chapter, and  
15 section, separated by periods. For example, [EXAMPLE:] this title may  
16 be cited "AS 01 [AS 1]"; this chapter may be cited "AS 01.05"; this  
17 section may be cited "AS 01.05.011." Except as otherwise indicated by  
18 the context, citations in accordance with this section include amend-  
19 ments and reenactments of the provision cited.

20 \* Sec. 2. AS 12.55.165 is amended to read:

21 Sec. 12.55.165. EXTRAORDINARY CIRCUMSTANCES. If the defendant  
22 is subject to sentencing under AS 12.55.125(c), (d), (e), or (i)  
23 [AS 12.55.125(c), (d)(1), (d)(2), (e)(1), (e)(2), OR (i)] and the  
24 court finds by clear and convincing evidence that manifest injustice  
25 would result from failure to consider relevant aggravating or mitigat-  
26 ing factors not specifically included in AS 12.55.155 or from imposi-  
27 tion of the presumptive term, whether or not adjusted for aggravating  
28 or mitigating factors, the court shall enter findings and conclusions  
29 and cause a record of the proceedings to be transmitted to a three-

1 judge panel for sentencing under AS 12.55.175.

2 \* Sec. 3. AS 14.43.300(d) is amended to read:

3 (d) The recipient must at all times continue to be enrolled as a  
4 full-time student in good standing at an accredited postsecondary  
5 institution that is appropriate to the memorial scholarship received  
6 [COLLEGE OR UNIVERSITY].

7 \* Sec. 4. AS 16.05.400(b) is amended to read:

8 (b) A sport fishing, hunting, or trapping license is not re-  
9 quired of a resident who is 60 years of age or more [AND HAS BEEN A  
10 RESIDENT FOR ONE YEAR OR MORE]. The commissioner shall issue a perma-  
11 nent identification card without charge to persons who qualify by age  
12 and residence and who complete the forms required by the commissioner  
13 for implementation of this subsection. A person who is issued a perma-  
14 nent identification card under this subsection shall have it in pos-  
15 session ~~while~~ sport fishing, hunting, or trapping.

16 \* Sec. 5. AS 23.15.230 is amended to read:

17 **Sec. 23.15.230. APPOINTMENT OF COMMITTEE.** The governor's con-  
18 mittee consists of not more than 12 members appointed by the governor  
19 for staggered terms [A TERM] not exceeding three years. The committee  
20 shall be composed of state leaders of industry, business, agriculture,  
21 labor, veterans, women, religious, educational, civic, fraternal,  
22 welfare, scientific, military, medical, and other professions, or as  
23 many of these and like categories as may be feasibly represented.  
24 [THE INITIAL MEMBERS SHALL BE APPOINTED FOR TERMS OF ONE, TWO, AND  
25 THREE YEARS AS DESIGNATED BY THE GOVERNOR.] A member may be reap-  
26 pointed and a vacancy shall be filled by the governor.

27 \* Sec. 6. AS 28.05.095(a) is amended to read:

28 (a) Except as provided in (b) of this section, a driver may not  
29 transport a child under the age of seven in a motor vehicle unless the

1 driver has provided and properly secured each child as described in  
2 this subsection. If the child is less than four years of age, the  
3 child shall be properly secured in a child safety device meeting the  
4 standards of the United States Department of Transportation for a  
5 child safety device for infants. If the child is [BETWEEN] four  
6 through [AND] six years of age, the child shall be properly secured in  
7 a child safety device approved for a child of that age and size by the  
8 United States Department of Transportation or in a seatbelt, whichever  
9 is appropriate for the particular child.

10 \* Sec. 7. AS 28.33.010(d) is amended to read:

11 (d) A policy of insurance, surety bond, or other form of se-  
12 curity may not be cancelled on less than 30 days' written notice to  
13 the department. This requirement must be clearly stated in the policy  
14 or **endorsement for an** insurance policy submitted as proof of financial  
15 **responsibility under (b)(1) of this section** [AS 42.30.225(a)(1)]. The  
16 **30-day notice period** is measured from the date on which the department  
17 receives notice.

18 \* Sec. 9. AS 28.35.130 is amended to read:

19 Sec. 28.35.130. FALSE REPORT OR DESTRUCTION OF EVIDENCE. An  
20 officer or person who knowingly makes or subscribes a false report  
21 concerning an investigation of a vehicle or damage or injury caused by  
22 a vehicle, as provided in this chapter, is guilty of unsworn falsi-  
23 fication [PERJURY]. A person who destroys, obliterates, conceals or  
24 removes, or who aids, abets, or assists in the destruction, oblit-  
25 eration, concealment, or removal from a vehicle, of evidence showing  
26 or tending to show that the vehicle collided with a person or prop-  
27 erty, is punishable by a fine of not more than \$500, or by imprison-  
28 ment for not more than six months, or by both.

29 \* Sec. 9. AS 28.40.100(a)(1) is amended to read:

1 (1) "cancel" means to annul or terminate, [THE ANNULMENT OR  
2 TERMINATION] by formal action of the department, [OF] a certification,  
3 registration, license, permit or privilege issued or allowed under  
4 this title or regulations adopted under this title, because of an  
5 error or defect in the document issued or the application for issuance  
6 or because the person holding the document is no longer entitled to  
7 it;

8 \* Sec. 10. AS 31.05.007(a) is amended to read:

9 (a) The term of office of each member is six years. [THE GOVER-  
10 NOR SHALL DESIGNATE WHO AMONG THE INITIAL APPOINTEES SHALL SERVE  
11 RESPECTIVELY FOR TERMS OF TWO YEARS, FOUR YEARS AND SIX YEARS.] A  
12 commissioner, upon the expiration of a term, shall continue to hold  
13 office until a successor is appointed and qualified.

14 + Sec. 11. AS 36.30.015(e) is amended to read:

15 (e) The boards of directors of the Alaska Railroad Corporation  
16 and the Alaska State Housing Authority shall adopt procedures to  
17 govern the procurement of supplies, services, professional services,  
18 and construction [BY THE CORPORATION]. The procedures must be sub-  
19 stantially equivalent to the procedures prescribed in this chapter and  
20 in regulations adopted under this chapter.

21 \* Sec. 12. AS 39.20.190 is amended to read:

22 Sec. 39.20.190. DEFINITIONS. In AS 39.20.110 - 39.20.190  
23 [AS 39.20.110 - 39.20.170]

24 (1) "employee" or "state employee" means a person employed  
25 by a state agency;

26 (2) "official" or "state official" means the appointive  
27 head of a state agency;

28 (3) "official travel" means travel inside or outside the  
29 state on official business of the state, for which payment or

1 reimbursement is expected or authorized;

2 (4) "per diem allowance" means a daily flat rate of payment  
3 instead of actual expenses;

4 (5) "state agency," "agency," or "department" means depart-  
5 ment, office, institution, board, commission, bureau, division, or  
6 other administrative unit forming the state government;

7 (6) "subsistence" means lodging, meals, and other necessary  
8 expenses incidental to the personal sustenance or comfort of the  
9 traveler;

10 (7) "traveler" means the official or employee engaged in  
11 official travel for the state.

12 \* Sec. 13. AS 41.21.302(c), as amended by sec. 1, ch. 14, SLA 1990, is  
13 amended to read:

14 (c) The Department of Natural Resources shall develop a manage-  
15 ment plan for each marine park unit of the Alaska state park system to  
16 determine the specific purposes and uses for the unit [WITHIN FIVE  
17 YEARS]. The commissioner shall give written notice and consult with  
18 the Department of Fish and Game, proximately located municipalities of  
19 the state, proximately located private landowners, the United States  
20 Forest Service, organizations concerned with conservation, recreation,  
21 and tourism, and other interested parties during the preparation of a  
22 management plan for a marine park unit of the Alaska state park sys-  
23 tem. A management plan required under this subsection shall be com-  
24 pleted by June 14, 1995, for each marine park unit established before  
25 June 14, 1990, and within five years of the establishment of the unit  
26 for units established after June 13, 1990.

27 \* Sec. 14. AS 42.05.030(a) is amended to read:

28 (a) The term of office of each member is six years. [THE GOVER-  
29 NOR SHALL DESIGNATE WHO AMONG THE INITIAL APPOINTEES SHALL SERVE,

1 RESPECTIVELY, FOR TERMS OF TWO YEARS, FOUR YEARS AND SIX YEARS.] A  
2 commissioner, upon the expiration of a term, shall continue to hold  
3 office until a successor is appointed and qualified.

4 \* Sec. 15. AS 42.05.221(a) is amended to read:

5 (a) A public utility may not operate and receive compensation  
6 for providing a commodity or service [AFTER JANUARY 1, 1971] without  
7 first having obtained from the commission under this chapter a certifi-  
8 cate declaring that public convenience and necessity require or will  
9 require the service. Where a public utility provides more than one  
10 type of utility service, a separate certificate of convenience and  
11 necessity is required for each type. A certificate must describe the  
12 nature and extent of the authority granted in it, including, as appro-  
13 priate for the services involved, a description of the authorized area  
14 and scope of operations of the public utility.

15 \* Sec. 16. AS 42.05.221(e) is amended to read:

16 (e) If the [THE] commission employs [MAY EMPLOY] professional  
17 consultants to assist it in administering [THE PROVISIONS OF] this  
18 section, it [AND] may apportion the expenses relating to their employ-  
19 ment [THIS ADMINISTRATION] among the competing utilities [INVOLVED].

20 \* Sec. 17. AS 42.05.351 is amended to read:

21 Sec. 42.05.351. TESTING OF APPLIANCES. The commission shall  
22 provide for the examination and testing of appliances used for the  
23 measuring of a service of a public utility and may purchase equipment,  
24 apparatus, and standards required for this purpose. The commissioner  
25 of commerce and economic development may assign the examination and  
26 testing function to the section of weights and measures. Upon the  
27 payment of a reasonable fee established by the commission, a consumer  
28 may have an [THE] appliance that [, WHICH] is used by the consumer [,]  
29 tested. The commission shall establish by regulation allowable

1 tolerances with respect to the functioning or operation of the appli-  
2 ance. If the measuring appliance does not perform within these toler-  
3 ances, the utility concerned shall pay the costs of the test by reim-  
4 bursing the person requesting the test for the fee paid by that per-  
5 son. This reimbursement shall be made no later than at the time of the  
6 next regular billing following the test.

7 \* Sec. 18. AS 42.05.641 is amended to read:

8 Sec. 42.05.641. REGULATION BY MUNICIPALITY. The commission's  
9 jurisdiction and authority extend to public utilities operating within  
10 a municipality (CITY OR BOROUGH), whether home rule or otherwise. In  
11 the event of a conflict between a certificate, order, decision, or  
12 regulation of the commission and a charter, permit, franchise, ordi-  
13 nance, rule, or regulation of such a local governmental entity, the  
14 certificate, order, decision, or regulation of the commission shall  
15 prevail.

16 \* Sec. 19. AS 42.05.720(4) is amended to read:

17 (4) "public utility" or "utility" includes every corpora-  
18 tion whether public, cooperative, or otherwise, company, individual,  
19 or association of individuals, their lessees, trustees, or receivers  
20 appointed by a court, that owns, operates, manages, or controls any  
21 plant, pipeline, or system for

22 (A) furnishing, by generation, transmission, or dis-  
23 tribution, electrical service to the public for compensation;

24 (B) furnishing telecommunication service to the  
25 public for compensation;

26 (C) furnishing water, steam, or sewer service to the  
27 public for compensation;

28 (D) furnishing by transmission or distribution of  
29 natural or manufactured gas to the [ALASKA] public for

1           compensation;

2                   (E) furnishing for distribution or by distribution  
3 petroleum or petroleum products to the [ALASKA] public for com-  
4 pensation when the consumer has no alternative in the choice of  
5 supplier of a comparable product and service at an equal or  
6 lesser price;

7                   (F) furnishing collection and disposal service of  
8 garbage, refuse, trash, or other waste material to the public for  
9 compensation;

10 \* Sec. 20. AS 42.06.230(b) is amended to read:

11           (b) The commission's jurisdiction and authority extend to an oil  
12 or gas pipeline facility operating in a municipality [CITY OR BOR-  
13 OUGH], whether home rule or otherwise. If a conflict between a cer-  
14 tificate, order, decision, or regulation of the commission and a char-  
15 ter, permit, franchise, ordinance, rule, or regulation of such a local  
16 governmental entity occurs, the certificate, order, decision, or regu-  
17 lation of ~~the~~ the commission prevails.

18 = Sec. 21. AS 43.05.040 is amended to read:

19           Sec. 43.05.040. INSPECTION OF RECORDS OR PREMISES AND ISSUANCE  
20 OF SUBPOENAS [SUMMONS]. (a) The department may examine the books,  
21 papers, records, or memoranda of any person to ascertain the correct-  
22 ness of a return filed or to determine whether a tax or a payment for  
23 oil or gas royalty or net profits shares under a contract, agreement,  
24 or lease under AS 38.05 is due, or in an investigation or inspection  
25 in connection with tax matters or matters relating to oil and gas  
26 royalty or net profits under contracts, agreements, or leases under  
27 AS 38.05. The records and the premises where a business is conducted  
28 shall be open at all reasonable times for official inspection, and the  
29 department may subpoena [SUMMON] any person to appear and produce

1 books, records, papers, or memoranda bearing upon tax matters or  
2 matters relating to oil and gas royalty or net profits under con-  
3 tracts, agreements, or leases under AS 33.05, and to give testimony or  
4 answer interrogatories under oath respecting tax matters or matters  
5 related to oil and gas royalty or net profits under contracts, agree-  
6 ments, or leases under AS 33.05, and the department may administer  
7 oaths to persons who are so subpoenaed [SUMMONED].

8 (b) A subpoena [SUMMONS] may be served by the commissioner of  
9 public safety or a peace officer designated by the commissioner of  
10 public safety or by a person designated by the Department of Revenue.  
11 If a person who is subpoenaed [SUMMONED] neglects or refuses to obey  
12 the subpoena [SUMMONS] issued as provided in this section, the depart-  
13 ment may report the fact to the superior court and the court may  
14 compel obedience to the subpoena [SUMMONS] to the same extent as  
15 witnesses may be compelled to obey the subpoenas of the court.

16 \* Sec. 22. AS 43.05 is amended by adding a new section to read:

17 **Sec. 43.05.075. CONCEALING OR FALSIFYING EVIDENCE.** A person may  
18 not knowingly, in connection with a compromise or offer of a compro-  
19 mise under AS 43.05.070 or in connection with a closing agreement or  
20 offer to enter a closing agreement under AS 43.05.060,

21 (1) conceal from an officer or employee of the state prop-  
22 erty belonging to the estate of the taxpayer or other person liable  
23 for the tax; or

24 (2) receive, destroy, mutilate, or falsify a book, docu-  
25 ment, or record or make a false statement under oath relating to the  
26 estate or the financial condition of the taxpayer or other person  
27 liable for the tax.

28 \* Sec. 23. AS 43.05.110 is amended to read:

29 **Sec. 43.05.110. PROPERTY IN POSSESSION OF DECEASED EMPLOYEE.**

1 The personal representative of a deceased employee of the department  
2 who has possession or control of a tax list, record, return, paper,  
3 document, or book or money collected shall deliver it to the depart-  
4 ment. (A PERSONAL REPRESENTATIVE WHO REFUSES OR WILFULLY FAILS TO DO  
5 SO IS GUILTY OF A MISDEMEANOR.)

6 \* Sec. 24. AS 43.05.130 is amended to read:

7 Sec. 43.05.130. PENALTY [MISDEMEANOR]. A person who, by conduct  
8 not described in AS 43.05.290, violates a provision of AS 43.05.010 -  
9 43.05.130 or a regulation adopted under those provisions [IT] is  
10 subject to a civil penalty of not more than \$1,000 for each violation  
11 [GUILTY OF A MISDEMEANOR, AND UPON CONVICTION IS PUNISHABLE BY A FINE  
12 OF NOT MORE THAN \$1,000 FOR EACH OFFENSE].

13 \* Sec. 25. AS 43.31.051(b) is amended to read:

14 (b) If a person subpoenaed [SUMMONED] to appear under this  
15 chapter to testify, or to produce books, papers, or other data, re-  
16 fuses to ~~do~~ so, the superior court in the judicial district in which  
17 the person resides has jurisdiction by appropriate process to compel  
18 the attendance, testimony, or production of books, papers, or other  
19 data.

20 \* Sec. 26. AS 43.55.016(c) is amended to read:

21 (c) The cents-per-Mcf amount equals \$.064 per 1,000 [THOUSAND]  
22 cubic feet of taxable gas produced from the lease or property [AS  
23 ADJUSTED BY AS 43.55.012].

24 \* Sec. 27. AS 43.55.020(e) is amended to read:

25 (e) Gas produced in excess of that needed for safety purposes,  
26 except gas used in the operation of a lease or property in drilling,  
27 for or producing oil or gas, or for repressuring, is considered, for  
28 the purpose of AS 43.55.011 - 43.55.150 and in the amount used, as gas  
29 produced from a lease or property. Gas flared beyond the amount

1 authorized for safety by the Alaska Oil and Gas Conservation Commis-  
2 sion under AS 31.05 is considered as gas produced, except that it is  
3 subject to a penalty equal to the tax computed under AS 43.55.016 [AS  
4 ADJUSTED BY AS 43.55.012] per 1,000 [THOUSAND] cubic feet of gas for  
5 the month in which the gas was flared.

6 \* Sec. 28. AS 43.55.090 is amended to read:

7       Sec. 43.55.090. REFUNDS. In case of overpayment, duplicate  
8 payment or payment made in error, the department may refund the amount  
9 of the overpayment under AS 43.15.010 [ISSUE A CERTIFICATE STATING THE  
10 FACTS AND THE AMOUNT OF THE REFUND TO WHICH THE TAXPAYER IS ENTITLED.  
11 UPON PRESENTATION OF THE CERTIFICATE TO THE DEPARTMENT OF ADMINISTRA-  
12 TION, THE DEPARTMENT OF ADMINISTRATION SHALL ISSUE A WARRANT FOR THE  
13 REFUND. THE REFUND SHALL BE PAID OUT OF THE UNAPPROPRIATED GROSS  
14 PRODUCTION TAX IN THE TREASURY].

15 \* Sec. 29. AS 44.19.104(a) is amended to read:

16       (a) **Members** serve for overlapping four-year terms. [THE FIRST  
17 MEMBERS **APPOINTED** SERVE FOR ONE, TWO, THREE AND FOUR-YEAR TERMS AS  
18 DETERMINED BY THE GOVERNOR.] The chairman serves for a term set by  
19 the commission, not to exceed four years.

20 \* Sec. 30. AS 44.19.155(b) is amended to read:

21       (b) Each public member appointed by the governor under (a)(1) of  
22 this section serves a term of two years and until a successor is  
23 appointed and qualified [, EXCEPT THAT THE TERM OF OFFICE OF A PUBLIC  
24 MEMBER FIRST APPOINTED UNDER (a)(1)(A), (a)(1)(C), (a)(1)(E) AND  
25 (a)(1)(G) OF THIS SECTION SHALL BE ONE YEAR]. A public member may be  
26 reappointed.

27 \* Sec. 31. AS 44.21.258(b) is amended to read:

28       (b) The members of the commission shall serve staggered terms of  
29 five years [, WITH THE INITIAL TERMS DETERMINED BY LOT].

1 \* Sec. 32. AS 44.27.043 is amended to read:

2       Sec. 44.27.043. TERMS OF OFFICE. The term of office of each  
3 member is three years [; HOWEVER, OF THE MEMBERS FIRST APPOINTED,  
4 THREE ARE TO BE APPOINTED FOR TERMS OF ONE YEAR, FOUR FOR TERMS OF TWO  
5 YEARS, AND FOUR FOR TERMS OF THREE YEARS]. All vacancies are to be  
6 filled for the balance of the unexpired term in the same manner as  
7 original appointments.

8 \* Sec. 33. AS 44.33.310(3) is amended to read:

9       (3) "economic disaster" means that the annual income to  
10 workers in the designated area dropped below the average annual income  
11 for the base period for workers in the designated area and the drop in  
12 income is of such magnitude that the average family income of all  
13 residents of the designated area as determined by the department is  
14 below the poverty guidelines issued by the federal Department of  
15 Health and Human Services [FEDERAL SOCIAL SECURITY ADMINISTRATION  
16 POVERTY GUIDELINE], adjusted by the department to reflect subsistence  
17 economic patterns and appropriate cost-of-living differentials; the  
18 availability of alternate employment shall be considered in determin-  
19 ing whether an economic disaster has occurred under this paragraph.

20 \* Sec. 34. AS 44.46.030(c) is amended to read:

21       (c) [OF THE MEMBERS OF THE BOARD FIRST APPOINTED BY THE GOVER-  
22 NOR, THREE SHALL BE APPOINTED FOR A TERM OF ONE YEAR; THREE FOR A TERM  
23 OF TWO YEARS; AND TWO FOR A TERM OF THREE YEARS. THE INITIAL TERMS  
24 BEGIN ON JULY 1, 1971. THEREAFTER, ALL APPOINTMENTS SHALL BE MADE FOR  
25 TERMS OF THREE YEARS BEGINNING ON JULY 1 OF THE YEAR IN WHICH THE  
26 APPOINTMENT IS MADE.] Members of the board serve at the pleasure of  
27 the governor for staggered terms of three years. In the case of a  
28 vacancy other than one arising by expiration of term, an appointment  
29 to fill the vacancy shall be made for the remainder of the unexpired

1 term.

2 \* Sec. 35. AS 44.85.030 is amended to read:

3 Sec. 44.85.030. MEMBERSHIP AND VACANCIES. The bond bank author-  
4 ity consists of the following five directors: the commissioner of  
5 revenue, the commissioner of community and regional affairs, who shall  
6 each be a director ex officio with voting privileges, and three direc-  
7 tors appointed by the governor. The appointment of each director other  
8 than the commissioner of revenue and the commissioner of community and  
9 regional affairs is subject to confirmation by the legislature. The  
10 three directors appointed by the governor serve at the governor's  
11 pleasure for four-year terms. They must be residents of the state and  
12 qualified voters at the time of appointment and shall comply with the  
13 requirements of AS 39.50 (conflict of interest). [THE DIRECTORS FIRST  
14 APPOINTED SHALL HAVE TERMS OF TWO, THREE AND FOUR YEARS RESPECTIVELY.]  
15 Each director shall hold office for the term of appointment and until  
16 a successor has been appointed and qualified. A director is eligible  
17 for reappointment. A vacancy in a directorship occurring other than  
18 by expiration of term shall be filled in the same manner as the origi-  
19 nal appointment but for the unexpired term only. Each director before  
20 entering upon the duties of office shall take and subscribe to an oath  
21 to perform the duties faithfully, impartially, and justly to the best  
22 of the director's ability. A record of the oath shall be filed in the  
23 office of the governor.

24 \* Sec. 36. AS 44.38.030(c) is amended to read:

25 (c) Members of the authority described in (a)(2) and (a)(3) of  
26 this section serve two-year terms. [HOWEVER, THE INITIAL APPOINTMENT  
27 OF ONE MEMBER DESCRIBED IN (a)(3) OF THIS SECTION SHALL BE FOR A  
28 ONE-YEAR TERM.]

29 \* Sec. 37. AS 47.30.050(a) is amended to read:

1 (a) Council members serve staggered terms of [MEMBERS' TERMS  
2 ARE] three years. [OF THE INITIAL APPOINTZES, ONE-THIRD SHALL BE  
3 APPOINTED FOR ONE-YEAR TERMS, ONE-THIRD FOR TWO-YEAR TERMS, AND ONE-  
4 THIRD FOR THREE-YEAR TERMS.]

5 \* Sec. 38. AS 23.15.520(3); AS 23.35.150(2), 23.35.150(4); AS 39.50.-  
6 200(b)(47); AS 42.40.920(a); AS 43.05.010(17), 43.05.120; AS 43.20.340(3);  
7 AS 43.23.095(2), 43.23.095(3); AS 43.31.420(2); AS 43.55.900(5); AS 43.56.-  
8 210(3); AS 43.75.140(2); AS 43.30.100(3); AS 44.47.310(5); AS 47.07.-  
9 020(b)(10), and 47.07.035(17) are repealed.

10 \* Sec. 39. Section 13 of this Act takes effect June 14, 1990.

11 \* Sec. 40. Except for sec. 13 of this Act, this Act takes effect imme-  
12 diately under AS 01.10.070(c).

STATE OF ALASKA  
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL  
JUNEAU ALASKA 99811  
907 465-3800

MEMORANDUM

March 20, 1990

**SUBJECT:** Enclosed amendment for CSHB 411(Jud) (6-1772Ea)

**TO:** Senator Jan Faiks  
Chair, Senate Judiciary Committee

**FROM:** David R. Dierdorff *DRD*  
Revisor of Statutes

Enclosed for your consideration is an amendment to CSHB 411(Jud), the 1990 revisor's bill. I don't believe I will have any further amendments to the bill. I look forward to meeting with your committee to discuss the bill and the proposed Senate amendments.

Sectional Analysis of Amendment

Sec. 13. New bill sec. 13 proposes to clarify AS 41.21.302(c), as amended by a House floor amendment during the consideration of HCS CSSB 42(Fin), which became ch. 14, SLA 1990. Without this clarification, the Department of Natural Resources will not have clear direction as to the deadlines for preparation of state marine park management plans. The proposed language is mine and is based upon what I believe the legislature intended in approving HCS CSSB 42(Fin) am H.

Secs. 21 and 25. These new bill sections, requested by Assistant Attorney General Jeff Bush, substitute the term "subpoena" for "summons" in one of the general provisions for administration of the state's tax laws and one provision dealing with the estate tax. The term "summons" is not used in

Senator Jan Faiks  
Page 2  
March 20, 1990

civil procedure or administrative practice, except in connection with a "summons and complaint."

The remaining amendments, to page 8, lines 5 and 23 - 27, make technical changes requested by Assistant Attorney General Laurie Otto.

If your committee adopts proposed bill sec. 13, I will further amend the bill to provide a June 14, 1990 effective date for that section.

DRD:lmb  
900008.lmb

Enclosure

cc: Art Peterson

A M E N D M E N T

OFFERED IN THE SENATE JUDICIARY COMMITTEE

TO: CSHB 411 (Judiciary)

Page 5, after line 11:

Insert a new bill section to read:

"\* Sec. 13. AS 41.21.302(c), as amended by sec. 1, ch. 14, SLA 1990, is amended to read:

(c) The Department of Natural Resources shall develop a management plan for each marine park unit of the Alaska state park system to determine the specific purposes and uses for the unit [WITHIN FIVE YEARS]. The commissioner shall give written notice and consult with the Department of Fish and Game, proximately located municipalities of the state, proximately located private landowners, the United States Forest Service, organizations concerned with conservation, recreation, and tourism, and other interested parties during the preparation of a management plan for a marine park unit of the Alaska state park system. A management plan required under this subsection shall be completed by June 14, 1995, for each marine park unit established before June 14, 1990, and within five years of the establishment of the unit for units established after June 13, 1990."

Renumber the following bill sections accordingly.

Page 8, after line 2:

Insert a new bill section to read:

"\* Sec. 21. AS 43.05.040 is amended to read:

Sec. 43.05.040. INSPECTION OF RECORDS OR PREMISES AND ISSUANCE OF SUBPOENAS [SUMMONS]. (a) The department may examine the books, papers, records, or memoranda of any person to ascertain the correctness of a return filed or to determine whether a tax or a payment for oil or gas royalty or net profits shares under a contract, agreement, or lease under AS 38.05 is due, or in an investigation or inspection in connection with tax matters or matters relating to oil and gas royalty or net profits under contracts, agreements, or leases under AS 38.05. The records and the premises where a business is conducted shall be open at all reasonable times for official inspection, and the department may subpoena [SUMMON] any person to appear and produce books, records, papers, or memoranda bearing upon tax matters or matters relating to oil and gas royalty or net profits under contracts, agreements, or leases under AS 38.05, and to give testimony or answer interrogatories under oath respecting tax matters or matters related to oil and gas royalty or net profits under contracts, agreements, or leases under AS 38.05, and the department may administer oaths to persons who are so subpoenaed [SUMMONED].

(b) A subpoena [SUMMONS] may be served by the commissioner of public safety or a peace officer designated by the commissioner of public safety or by a person designated by the Department of Revenue. If a person who is subpoenaed [SUMMONED] neglects or refuses to obey the subpocna [SUMMONS] issued as provided in this section, the department may report the fact to the superior court and the court may

compel obedience to the subpoena [SUMMONS] to the same extent as witnesses may be compelled to obey the subpoenas of the court."

Renumber the following bill sections accordingly.

Page 8, line 5:

Delete "wilfully"

Insert "knowingly"

Page 8, lines 23 - 27:

Delete all material, and insert:

"Sec. 43.05.130. PENALTY [MISDEMEANOR]. A person who, by conduct not described in AS 43.05.290, violates a provision of AS 43.05.010 - 43.05.130 or a regulation adopted under those provisions [IT] is subject to a civil penalty of not more than \$1,000 for each violation [GUILTY OF A MISDEMEANOR, AND UPON CONVICTION IS PUNISHABLE BY A FINE OF NOT MORE THAN \$1,000 FOR EACH OFFENSE]."

Page 8, after line 27:

Insert a new bill section to read:

"\* Sec. 25. AS 43.31.051(b) is amended to read:

(b) If a person subpoenaed [SUMMONED] to appear under this chapter to testify, or to produce books, papers, or other data, refuses to do so, the superior court in the judicial district in which the person resides has jurisdiction by appropriate process to compel the attendance, testimony, or production of books, papers, or other

data."

Renumber the following bill sections accordingly.

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y STATE CAPITOL  
JUNEAU ALASKA 99811  
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 16, 1990

**SUBJECT:** CSHB 411(Judiciary), 1990 Revisor's Bill

**TO:** Representative Peter Goll  
Representative Max Gruenberg  
Co-Chairs, House Judiciary Committee

**FROM:** David R. Dierdorff *DRD*  
Revisor of Statutes

This memorandum discusses the enclosed committee substitute for the 1990 Revisor's Bill (HB 411), prepared after the subcommittee meeting on February 9. The following sections in CSHB 411(Jud) were not in the bill as introduced: 1, 18, and 20 - 25. In addition, several provisions have been added to the repealer (sec. 35). The Department of Law has reviewed all provisions in CSHB 411(Jud).

To assist in understanding the draft, I have summarized the contents by grouping sections that have similar effects.

Sections that delete or repeal obsolete provisions: Sections 5, 10, 13, 14, 23, 24, 26 - 29, and 31 - 35 delete or repeal provisions that have become obsolete either through the passage of time or other legislative action.

Sections that update obsolete or archaic provisions, or improve the style of the statutes: Sections 1, 3, 8, 9, 12, 15 - 17, 19, and 30 substitute new provisions for provisions that are obsolete, archaic, or otherwise outdated, including improvements in the style of language for purposes of clarity.

Sections that eliminate conflicts with other laws: Sections 4, and 20 - 22 harmonize laws dealing with the same subject. Section 2 conforms the text of a law to its judicial interpretation.

Sections that correct errors or oversights: Sections 6, 7, 11, and 18 correct errors or oversights in drafting.

### SECTIONAL ANALYSIS

Section 1. This amendment, relating to the proper form for citation of provisions in the Alaska Statutes, reflects the fact that the form actually used for citation of the single digit titles of AS has been, for example, AS 01, AS 02, etc. Until the mid-1970's, the Legislative Drafting Manual gave drafters a choice between AS 1 or AS 01, etc., but for the past fifteen years the double digit form has been the legislative standard. Now that the world of data processing has enveloped us, it is important that we make the use of the double digit citation form official.

Sec. 2. The proposed amendment to AS 12.55.165 incorporates references to provisions enacted after 1982 within the internal reference. In Edwin v. State, 762 P.2d 499 (1988), the Alaska Court of Appeals held that sentences under AS 12.55.125(e)(3), and, by extension, (d)(3), are subject to referral to a three-judge panel under AS 12.55.165. The court read the sentencing statutes as a whole and concluded that the failure to incorporate references to the added provisions was a legislative oversight. The court invoked the doctrine that statutes should be construed "to avoid absurd results." 762 P.2d at 502. See also the November, 1989 Report to the Legislature Examining Court Decisions, page 42.

Sec. 3. This amendment is proposed to ensure that recipients of a Winn Brindle memorial scholarship loan may attend an accredited "school" (as permitted under AS 14.43.300(b)(5)) and are not required to attend a "college" or "university." The amendment should have been made in 1986 when the Winn Brindle memorial scholarship loan program was enacted. The amendment has been reviewed and approved by the Postsecondary Education Commission.

Sec. 4. AS 16.05.900(24) defines "resident" as a person who has maintained a permanent place of abode in the state for 12 consecutive months. Thus, the use of "has been a resident for one year or more" in AS 16.05.400(b) is redundant. The problem dates back to the 1983 amendment, which substituted "one year" for "30 consecutive years."

Sec. 5. The material to be deleted relates only to the initial terms of appointees.

Sec. 6. As enacted, a portion of this provision applied to children "between" the ages of four and six. Taken literally, that means it applies only to five-year olds. The legislature obviously intended that children aged four through six be included, and the proposed amendment would make that clear.

Sec. 7. The amendment would correct an erroneous reference in the original enactment.

Sec. 8. The 1978 revision of the criminal code introduced the crime of unsworn falsification. AS 28.35.130, which predates statehood, should have been amended at that time. A conviction for perjury could not be sustained under the circumstances described in AS 28.35.130, but a violator could be prosecuted for unsworn falsification. Thus the proposed substitution of terms.

Sec. 9. As enacted, "cancel" was defined as a noun. The amendment changes the definition to that of a verb, which is consistent with the usage of the term.

Sec. 10. The material to be deleted relates only to the initial terms of appointees.

Sec. 11. The language proposed for deletion adds nothing to the provision and, in any event, is confusing because it is incomplete.

Sec. 12. The amendment to the internal reference picks up two sections of AS 39.20 that need to have these definitions apply to them.

Sec. 13. The material to be deleted relates only to the initial terms of appointees.

Sec. 14. There is no substantive need to retain the reference to "January 1, 1971" in this provision.

Representative Peter Goll

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February 16, 1990

Sec. 15. The proposed amendment eliminates language that is redundant to AS 42.05.121(b) and rewrites other language to conform to modern drafting style.

Sec. 16. The amendment is proposed to clarify some archaic language.

Sec. 17. The amendment updates the reference to municipalities.

Sec. 18. The amendment, proposed by the APUC, would add language ("to the public for compensation") to AS 42.05.720(4)(F) that appears in each of paragraphs (4)(A) - (E). It is apparent that the omission of the language from (4)(F) was an oversight. The amendment would eliminate a source of confusion and misunderstanding.

Sec. 19. The amendment updates the reference to municipalities.

Secs. 20 - 22. These three sections, together with the repeal of AS 43.05.120 proposed in sec. 35, represent an effort to resolve some inconsistencies and redundancies in four provisions of AS 43.05 relating to criminal penalties. AS 43.05.290, enacted in 1980, was intended to serve as the basic penalty provision for all of the tax laws. When that was enacted, however, three provisions dating from 1945 that contain criminal penalties, AS 43.05.110, 43.05.120, and 43.05.130, were not amended.

In sec. 20, a new section is proposed reenacting the substantive prohibitions of AS 43.05.120, which would be repealed. The new section is located immediately after the two AS sections that it relates to. A violation of AS 43.05.075(1) would be a class A misdemeanor under AS 43.05.290(c), while a violation of AS 43.05.075(2) would be a class A misdemeanor under AS 43.05.290(f). A violation of either with respect to a material matter and with the requisite intent would be a felony under AS 43.05.290(e).

Section 21 amends AS 43.05.110 to delete the language establishing a violation as a misdemeanor (which would be interpreted as a class A misdemeanor under AS 11.81.250(c)). A violation of AS 43.05.110 would be punishable as a class A misdemeanor under AS 43.05.290(c).

Representative Peter Goll  
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Section 22 amends AS 43.05.130, which currently provides a penalty of up to \$1,000, but no jail term, for any violation of AS 43.05.010 - 43.05.130, or a regulation adopted under those provisions. This is obviously inconsistent with existing AS 43.05.110 and 43.05.120, and conflicts with AS 43.05.290 as well. The amendment proposes to resolve this by limiting its application to violations that do not amount to violations under AS 43.05.290.

The Departments of Law and Revenue have reviewed these proposals.

Secs. 23 and 24. Following the 1981 repeal of AS 43.55.012(a), the references to adjustment of the gas production tax under AS 43.55.012 that appear in AS 43.55.016(c) and 43.55.020(e) became meaningless. These two bill sections delete the obsolete references.

Sec. 25. The material proposed for deletion is redundant to general provisions in AS 43.15.010.

Secs. 26 - 29. The material to be deleted relates only to the initial terms of appointees.

Sec. 30. The amendment updates an obsolete reference to federal poverty guidelines.

Secs. 31 - 34. The material to be deleted relates only to the initial terms of appointees.

Sec. 35. This section proposes the following obsolete or otherwise unnecessary provisions for repeal:

AS 23.15.520(3) defines "registration fee," a term that does not appear in any provision to which the definition applies.

AS 23.35.150(2) and (4) define "commissioner" and "department" respectively, terms that are defined for all of AS 23 in AS 23.46.010.

Representative Peter Goll  
Page 6  
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AS 39.50.200(b)(47) refers to the Alaska Resources Corporation, which was repealed July 1, 1989.

AS 42.40.920(a) relates to the Alaska Transportation Commission and was rendered obsolete by the 1982 repeal, by initiative, of all provisions relating to the ATC.

AS 43.05.010(17) relates to powers of the commissioner of revenue in connection with assets of the former Alaska Resources Corporation. The amendment of sec. 17, ch. 161, SLA 1984 by sec. 1, ch. 17, SLA 1989 makes AS 43.05.010(17) unnecessary, as the codified law gives the commissioner and the department adequate authority to wind down the affairs of ARC.

AS 43.05.120, AS 43.20.340(3), AS 43.23.095(2) and (3), AS 43.31.420(2), AS 43.55.900(5) AS 43.56.210(3), AS 43.75.140(2), and AS 43.80.100(3) all contain definitions of "commissioner" or "department," terms that are defined for all of AS 43 in AS 43.99.950.

AS 44.47.310(5) contains a definition of "department" that is redundant.

AS 47.07.020(b)(10) and 47.07.035(17) relate to medical assistance for certain children and pregnant women that were optional services under state law, but are now mandated services under recent amendments to federal law; the state will provide the services under AS 47.07.020(a) and other provisions of AS 47.07.

Sec. 36. The Act is given an immediate effective date by this section.

DRD:lmb  
90007.LMB

CC: Art Peterson

Original sponsor(s): Rules/Legislative Council

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE  
2 CS FOR HOUSE BILL NO. 411 (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 making corrective amendments to the Alaska  
7 Statutes as recommended by the revisor of statutes;  
8 and providing for an effective date."

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

10 *OK* \* Section 1. AS 01.05.011 is amended to read:

11 Sec. 01.05.011. DESIGNATION AND CITATION. The bulk formal  
12 revision of Alaska law adopted and enacted into law by AS 01.05.006  
13 and as amended and supplemented is known as the "Alaska Statutes" and  
14 may be cited "AS" followed by the number of the title, chapter, and  
15 section, separated by periods. For example, [EXAMPLE:] this title may  
16 be cited "AS 01 [AS 1]"; this chapter may be cited "AS 01.05"; this  
17 section may be cited "AS 01.05.011." Except as otherwise indicated by  
18 the context, citations in accordance with this section include amend-  
19 ments and reenactments of the provision cited.

20 *OK* \* Sec. 2. AS 12.55.165 is amended to read:

21 Sec. 12.55.165. EXTRAORDINARY CIRCUMSTANCES. If the defendant  
22 is subject to sentencing under AS 12.55.125(c), (d), (e), or (i)  
23 [AS 12.55.125(c), (d)(1), (d)(2), (e)(1), (e)(2), OR (i)] and the  
24 court finds by clear and convincing evidence that manifest injustice  
25 would result from failure to consider relevant aggravating or mitigat-  
26 ing factors not specifically included in AS 12.55.155 or from imposi-  
27 tion of the presumptive term, whether or not adjusted for aggravating  
28 or mitigating factors, the court shall enter findings and conclusions  
29 and cause a record of the proceedings to be transmitted to a three-

*Decision 22 on  
what needs 23  
referred to 24  
panel*

1 judge panel for sentencing under AS 12.55.175.

2 *OK* \* Sec. 3. AS 14.43.300(d) is amended to read:

3 (d) The recipient must at all times continue to be enrolled as a  
4 full-time student in good standing at an accredited postsecondary  
5 institution that is appropriate to the memorial scholarship received  
6 [COLLEGE OR UNIVERSITY].

7 *OK* \* Sec. 4. AS 16.05.400(b) is amended to read:

8 (b) A sport fishing, hunting, or trapping license is not re-  
9 quired of a resident who is 60 years of age or more [AND HAS BEEN A  
10 RESIDENT FOR ONE YEAR OR MORE]. The commissioner shall issue a perma-  
11 nent identification card without charge to persons who qualify by age  
12 and residence and who complete the forms required by the commissioner  
13 for implementation of this subsection. A person who is issued a perma-  
14 nent identification card under this subsection shall have it in pos-  
15 session while sport fishing, hunting, or trapping.

16 *OK* \* Sec. 5. AS 23.15.230 is amended to read:

17 Sec. 23.15.230. APPOINTMENT OF COMMITTEE. The governor's com-  
18 mittee consists of not more than 12 members appointed by the governor  
19 for staggered terms [A TERM] not exceeding three years. The committee  
20 shall be composed of state leaders of industry, business, agriculture,  
21 labor, veterans, women, religious, educational, civic, fraternal,  
22 welfare, scientific, military, medical, and other professions, or as  
23 many of these and like categories as may be feasibly represented.  
24 [THE INITIAL MEMBERS SHALL BE APPOINTED FOR TERMS OF ONE, TWO, AND  
25 THREE YEARS AS DESIGNATED BY THE GOVERNOR.] A member may be reap-  
26 pointed and a vacancy shall be filled by the governor.

27 *OK* \* Sec. 6. AS 28.05.095(a) is amended to read:

28 (a) Except as provided in (b) of this section, a driver may not  
29 transport a child under the age of seven in a motor vehicle unless the

1 driver has provided and properly secured each child as described in  
2 this subsection. If the child is less than four years of age, the  
3 child shall be properly secured in a child safety device meeting the  
4 standards of the United States Department of Transportation for a  
5 child safety device for infants. If the child is [BETWEEN] four  
6 through [AND] six years of age, the child shall be properly secured in  
7 a child safety device approved for a child of that age and size by the  
8 United States Department of Transportation or in a seatbelt, whichever  
9 is appropriate for the particular child.

10 \* Sec. 7. AS 28.33.010(d) is amended to read:

11 (d) A policy of insurance, surety bond, or other form of se-  
12 curity may not be cancelled on less than 30 days' written notice to  
13 the department. This requirement must be clearly stated in the policy  
14 or endorsement for an insurance policy submitted as proof of financial  
15 responsibility under (b)(1) of this section [AS 42.30 25(a)(1)]. The  
16 30-day notice period is measured from the date on which the department  
17 receives notice.

18 *OK* \* Sec. 8. AS 28.35.130 is amended to read:

19 Sec. 28.35.130. FALSE REPORT OR DESTRUCTION OF EVIDENCE. An  
20 officer or person who knowingly makes or subscribes a false report  
21 concerning an investigation of a vehicle or damage or injury caused by  
22 a vehicle, as provided in this chapter, is guilty of unsworn falsi-  
23 fication [PERJURY]. A person who destroys, obliterates, conceals or  
24 removes, or who aids, abets, or assists in the destruction, oblit-  
25 eration, concealment, or removal from a vehicle, of evidence showing  
26 or tending to show that the vehicle collided with a person or prop-  
27 erty, is punishable by a fine of not more than \$500, or by imprison-  
28 ment for not more than six months, or by both.

29 *OK* \* Sec. 9. AS 28.40.100(a)(1) is amended to read:

1 (1) "cancel" means to annul or terminate, [THE ANNULMENT OR  
2 TERMINATION] by formal action of the department, [OF] a certification,  
3 registration, license, permit or privilege issued or allowed under  
4 this title or regulations adopted under this title, because of an  
5 error or defect in the document issued or the application for issuance  
6 or because the person holding the document is no longer entitled to  
7 it;

8 \* Sec. 10. AS 31.05.007(a) is amended to read:

9 (a) The term of office of each member is six years. [THE GOVER-  
10 NOR SHALL DESIGNATE WHO AMONG THE INITIAL APPOINTEES SHALL SERVE  
11 RESPECTIVELY FOR TERMS OF TWO YEARS, FOUR YEARS AND SIX YEARS.] A  
12 commissioner, upon the expiration of a term, shall continue to hold  
13 office until a successor is appointed and qualified.

14 \* Sec. 11. AS 36.30.015(e) is amended to read:

15 (e) The boards of directors of the Alaska Railroad Corporation  
16 and the Alaska State Housing Authority shall adopt procedures to  
17 govern the procurement of supplies, services, professional services,  
18 and construction [BY THE CORPORATION]. The procedures must be sub-  
19 stantially equivalent to the procedures prescribed in this chapter and  
20 in regulations adopted under this chapter.

21 \* Sec. 12. AS 39.20.190 is amended to read:

22 Sec. 39.20.190. DEFINITIONS. In AS 39.20.110 - 39.20.190  
23 [AS 39.20.110 - 39.20.170]

24 (1) "employee" or "state employee" means a person employed  
25 by a state agency;

26 (2) "official" or "state official" means the appointive  
27 head of a state agency;

28 (3) "official travel" means travel inside or outside the  
29 state on official business of the state, for which payment or

1 reimbursement is expected or authorized;

2 (4) "per diem allowance" means a daily flat rate of payment  
3 instead of actual expenses;

4 (5) "state agency," "agency," or "department" means depart-  
5 ment, office, institution, board, commission, bureau, division, or  
6 other administrative unit forming the state government;

7 (6) "subsistence" means lodging, meals, and other necessary  
8 expenses incidental to the personal sustenance or comfort of the  
9 traveler;

10 (7) "traveler" means the official or employee engaged in  
11 official travel for the state.

12 *ok* \* Sec. 13. AS 42.05.030(a) is amended to read:

13 (a) The term of office of each member is six years. [THE GOVER-  
14 NOR SHALL DESIGNATE WHO AMONG THE INITIAL APPOINTEES SHALL SERVE,  
15 RESPECTIVELY, FOR TERMS OF TWO YEARS, FOUR YEARS AND SIX YEARS.] A  
16 commissioner, upon the expiration of a term, shall continue to hold  
17 office until a successor is appointed and qualified.

18 *ok* \* Sec. 14. AS 42.05.221(a) is amended to read:

19 (a) A public utility may not operate and receive compensation  
20 for providing a commodity or service [AFTER JANUARY 1, 1971] without  
21 first having obtained from the commission under this chapter a certif-  
22 icate declaring that public convenience and necessity require or will  
23 require the service. Where a public utility provides more than one  
24 type of utility service, a separate certificate of convenience and  
25 necessity is required for each type. A certificate must describe the  
26 nature and extent of the authority granted in it, including, as appro-  
27 priate for the services involved, a description of the authorized area  
28 *ASAC* and scope of operations of the public utility.

29 *ok* \* Sec. 15. AS 42.05.221(e) is amended to read:

1 (e) If the [THE] commission employs [MAY EMPLOY] professional  
2 consultants to assist it in administering [THE PROVISIONS OF] this  
3 section, it [AND] may apportion the expenses relating to their employ-  
4 <sup>ment</sup> [THIS ADMINISTRATION] among the competing utilities [INVOLVED].

5 <sup>OK</sup> \* Sec. 16. AS 42.05.351 is amended to read:

6 Sec. 42.05.351. TESTING OF APPLIANCES. The commission shall  
7 provide for the examination and testing of appliances used for the  
8 measuring of a service of a public utility and may purchase equipment,  
9 apparatus, and standards required for this purpose. The commissioner  
10 of commerce and economic development may assign the examination and  
11 testing function to the section of weights and measures. Upon the  
12 payment of a reasonable fee established by the commission, a consumer  
13 may have an [THE] appliance that [, WHICH] is used by the consumer [,]  
14 tested. The commission shall establish by regulation allowable toler-  
15 ances with respect to the functioning or operation of the appliance.  
16 If the measuring appliance does not perform within these tolerances,  
17 the utility concerned shall pay the costs of the test by reimbursing  
18 the person requesting the test for the fee paid by that person. This  
19 reimbursement shall be made no later than at the time of the next  
20 regular billing following the test.

21 <sup>OK</sup> \* Sec. 17. AS 42.05.641 is amended to read:

22 Sec. 42.05.641. REGULATION BY MUNICIPALITY. The commission's  
23 jurisdiction and authority extend to public utilities operating within  
24 a municipality [CITY OR BOROUGH], whether home rule or otherwise. In  
25 the event of a conflict between a certificate, order, decision, or  
26 regulation of the commission and a charter, permit, franchise, ordi-  
27 nance, rule, or regulation of such a local governmental entity, the  
28 certificate, order, decision, or regulation of the commission shall  
29 prevail.

1 ✓ \* Sec. 18. AS 42.05.720(4) is amended to read:

2 (4) "public utility" or "utility" includes every corpora-  
3 tion whether public, cooperative, or otherwise, company, individual,  
4 or association of individuals, their lessees, trustees, or receivers  
5 appointed by a court, that owns, operates, manages, or controls any  
6 plant, pipeline, or system for

7 (A) furnishing, by generation, transmission, or dis-  
8 tribution, electrical service to the public for compensation;

9 (B) furnishing telecommunications service to the  
10 public for compensation;

11 (C) furnishing water, steam, or sewer service to the  
12 public for compensation;

13 (D) furnishing by transmission or distribution of  
14 natural or manufactured gas to the [ALASKA] public for compensa-  
15 tion;

16 (E) furnishing for distribution or by distribution  
17 petroleum or petroleum products to the [ALASKA] public for com-  
18 pensation when the consumer has no alternative in the choice of  
19 supplier of a comparable product and service at an equal or  
20 lesser price;

21 (F) furnishing collection and disposal service of  
22 garbage, refuse, trash, or other waste material to the public for  
23 compensation;

24 ✓ \* Sec. 19. AS 42.06.230(b) is amended to read:

25 (b) The commission's jurisdiction and authority extend to an oil  
26 or gas pipeline facility operating in a municipality [CITY OR BOR-  
27 OUGH], whether home rule or otherwise. If a conflict between a cer-  
28 tificate, order, decision, or regulation of the commission and a char-  
29 ter, permit, franchise, ordinance, rule, or regulation of such a local

1 governmental entity occurs, the certificate, order, decision, or regu-  
2 lation of the commission prevails.

3 \* Sec. 20. AS 43.05 is amended by adding a new section to read:

4 Sec. 43.05.075. CONCEALING OR FALSIFYING EVIDENCE. A person may  
5 not wilfully, in connection with a compromise or offer of a compromise  
6 under AS 43.05.070 or in connection with a closing agreement or offer  
7 to enter a closing agreement under AS 43.05.060,

8 (1) conceal from an officer or employee of the state prop-  
9 erty belonging to the estate of the taxpayer or other person liable  
10 for the tax; or

11 (2) receive, destroy, mutilate, or falsify a book, docu-  
12 ment, or record or make a false statement under oath relating to the  
13 estate or the financial condition of the taxpayer or other person  
14 liable for the tax.

15 \* Sec. 21. AS 43.05.110 is amended to read:

16 Sec. 43.05.110. PROPERTY IN POSSESSION OF DECEASED EMPLOYEE.  
17 The personal representative of a deceased employee of the department  
18 who has possession or control of a tax list, record, return, paper,  
19 document, or book or money collected shall deliver it to the depart-  
20 ment. [A PERSONAL REPRESENTATIVE WHO REFUSES OR WILFULLY FAILS TO DO  
21 SO IS GUILTY OF A MISDEMEANOR.]

22 \* Sec. 22. AS 43.05.130 is amended to read:

23 Sec. 43.05.130. PENALTY [MISDEMEANOR]. A person who, by conduct  
24 not described in AS 43.05.290, violates a provision of AS 43.05.010 -  
25 43.05.130 or a regulation adopted under those provisions [It] is  
26 guilty of a misdemeanor, and upon conviction is punishable by a fine  
27 of not more than \$1,000 for each offense.

28 \* Sec. 23. AS 43.55.016(c) is amended to read:

29 (c) The cents-per-Mcf amount equals \$.064 per 1,000 [THOUSAND]

1 cubic feet of taxable gas produced from the lease or property [AS  
2 ADJUSTED BY AS 43.55.012].

3 \* Sec. 24. AS 43.55.020(e) is amended to read:

4 (e) Gas produced in excess of that needed for safety purposes,  
5 except gas used in the operation of a lease or property in drilling  
6 for or producing oil or gas, or for repressuring, is considered, for  
7 the purpose of AS 43.55.011 - 43.55.150 and in the amount used, as gas  
8 produced from a lease or property. Gas flared beyond the amount  
9 authorized for safety by the Alaska Oil and Gas Conservation Commis-  
10 sion under AS 31.05 is considered as gas produced, except that it is  
11 subject to a penalty equal to the tax computed under AS 43.55.016 [AS  
12 ADJUSTED BY AS 43.55.012] per 1,000 [THOUSAND] cubic feet of gas for  
13 the month in which the gas was flared.

14 \* Sec. 25. AS 43.55.090 is amended to read:

15 Sec. 43.55.090. REFUNDS. In case of overpayment, duplicate  
16 payment or payment made in error, the department may refund the amount  
17 of the overpayment under AS 43.15.010 [ISSUE A CERTIFICATE STATING THE  
18 FACTS AND THE AMOUNT OF THE REFUND TO WHICH THE TAXPAYER IS ENTITLED.  
19 UPON PRESENTATION OF THE CERTIFICATE TO THE DEPARTMENT OF ADMINISTRATION,  
20 THE DEPARTMENT OF ADMINISTRATION SHALL ISSUE A WARRANT FOR THE  
21 REFUND. THE REFUND SHALL BE PAID OUT OF THE UNAPPROPRIATED GROSS  
22 PRODUCTION TAX IN THE TREASURY].

23 \* Sec. 26. AS 44.19.104(a) is amended to read:

24 (a) Members serve for overlapping four-year terms. [THE FIRST  
25 MEMBERS APPOINTED SERVE FOR ONE, TWO, THREE AND FOUR-YEAR TERMS AS  
26 DETERMINED BY THE GOVERNOR.] The chairman serves for a term set by  
27 the commission, not to exceed four years.

28 \* Sec. 27. AS 44.19.155(b) is amended to read:

29 (b) Each public member appointed by the governor under (a)(1) of

1 this section serves a term of two years and until a successor is  
2 appointed and qualified [, EXCEPT THAT THE TERM OF OFFICE OF A PUBLIC  
3 MEMBER FIRST APPOINTED UNDER (a)(1)(A), (a)(1)(C), (a)(1)(E) AND  
4 (a)(1)(G) OF THIS SECTION SHALL BE ONE YEAR]. A public member may be  
5 reappointed.

6 \* Sec. 28. AS 44.21.258(b) is amended to read:

7 (b) The members of the commission shall serve staggered terms of  
8 five years [, WITH THE INITIAL TERMS DETERMINED BY LOT].

9 \* Sec. 29. AS 44.27.043 is amended to read:

10 Sec. 44.27.043. TERMS OF OFFICE. The term of office of each  
11 member is three years [; HOWEVER, OF THE MEMBERS FIRST APPOINTED,  
12 THREE ARE TO BE APPOINTED FOR TERMS OF ONE YEAR, FOUR FOR TERMS OF TWO  
13 YEARS, AND FOUR FOR TERMS OF THREE YEARS]. All vacancies are to be  
14 filled for the balance of the unexpired term in the same manner as  
15 original appointments.

16 \* Sec. 30. AS 44.33.310(3) is amended to read:

17 (3) "economic disaster" means that the annual income to  
18 workers in the designated area dropped below the average annual income  
19 for the base period for workers in the designated area and the drop in  
20 income is of such magnitude that the average family income of all  
21 residents of the designated area as determined by the department is  
22 below the poverty guidelines issued by the federal Department of  
23 Health and Human Services [FEDERAL SOCIAL SECURITY ADMINISTRATION  
24 POVERTY GUIDELINE], adjusted by the department to reflect subsistence  
25 economic patterns and appropriate cost-of-living differentials; the  
26 availability of alternate employment shall be considered in determin-  
27 ing whether an economic disaster has occurred under this paragraph.

28 \* Sec. 31. AS 44.46.030(c) is amended to read:

29 (c) [OF THE MEMBERS OF THE BOARD FIRST APPOINTED BY THE

1 GOVERNOR, THREE SHALL BE APPOINTED FOR A TERM OF ONE YEAR; THREE FOR A  
2 TERM OF TWO YEARS; AND TWO FOR A TERM OF THREE YEARS. THE INITIAL  
3 TERMS BEGIN ON JULY 1, 1971. THEREAFTER, ALL APPOINTMENTS SHALL BE  
4 MADE FOR TERMS OF THREE YEARS BEGINNING ON JULY 1 OF THE YEAR IN WHICH  
5 THE APPOINTMENT IS MADE.] Members of the board serve at the pleasure  
6 of the governor for staggered terms of three years. In the case of a  
7 vacancy other than one arising by expiration of term, an appointment  
8 to fill the vacancy shall be made for the remainder of the unexpired  
9 term.

10 \* Sec. 32. AS 44.85.030 is amended to read:

11 Sec. 44.85.030. MEMBERSHIP AND VACANCIES. The bond bank author-  
12 ity consists of the following five directors: the commissioner of  
13 revenue, the commissioner of community and regional affairs, who shall  
14 each be a director ex officio with voting privileges, and three direc-  
15 tors appointed by the governor. The appointment of each director other  
16 than the commissioner of revenue and the commissioner of community and  
17 regional affairs is subject to confirmation by the legislature. The  
18 three directors appointed by the governor serve at the governor's  
19 pleasure for four-year terms. They must be residents of the state and  
20 qualified voters at the time of appointment and shall comply with the  
21 requirements of AS 39.50 (conflict of interest). [THE DIRECTORS FIRST  
22 APPOINTED SHALL HAVE TERMS OF TWO, THREE AND FOUR YEARS RESPECTIVELY.]  
23 Each director shall hold office for the term of appointment and until  
24 a successor has been appointed and qualified. A director is eligible  
25 for reappointment. A vacancy in a directorship occurring other than  
26 by expiration of term shall be filled in the same manner as the origi-  
27 nal appointment but for the unexpired term only. Each director before  
28 entering upon the duties of office shall take and subscribe to an oath  
29 to perform the duties faithfully, impartially, and justly to the best

1 of the director's ability. A record of the oath shall be filed in the  
2 office of the governor.

3 \* Sec. 33. AS 44.88.030(c) is amended to read:

4 (c) Members of the authority described in (a)(2) and (a)(3) of  
5 this section serve two-year terms. [HOWEVER, THE INITIAL APPOINTMENT  
6 OF ONE MEMBER DESCRIBED IN (a)(3) OF THIS SECTION SHALL BE FOR A  
7 ONE-YEAR TERM.]

8 \* Sec. 34. AS 47.80.050(a) is amended to read:

9 (a) Council members serve staggered terms of [MEMBERS' TERMS  
10 ARE] three years. [OF THE INITIAL APPOINTEES, ONE-THIRD SHALL BE  
11 APPOINTED FOR ONE-YEAR TERMS, ONE-THIRD FOR TWO-YEAR TERMS, AND ONE-  
12 THIRD FOR THREE-YEAR TERMS.]

13 \* Sec. 35. AS 23.15.520(3); AS 23.35.150(2), 23.35.150(4); AS 39.50.-  
14 200(b)(47); AS 42.40.920(a); AS 43.05.010(17), 43.05.120; AS 43.20.340(3);  
15 AS 43.23.095(2), 43.23.095(3); AS 43.31.420(2); AS 43.55.900(5); AS 43.56.-  
16 210(3); AS 43.75.140(2); AS 43.80.100(3); AS 44.47.310(5); AS 47.07.-  
17 020(b)(10), and 47.07.035(17) are repealed.

18 \* Sec. 36. This Act takes effect immediately under AS 01.10.070(c).

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_ Affected Agency: Legislative Affairs Agency  
 Title: "An Act making corrective  
amendments to the Alaska Statutes..." BRU: Legislative Council  
 Sponsor: Rules Comm. by Leg Council Components Legal Services  
 Requestor: House Judiciary

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

OPERATING	FY91	FY92	FY93	FY94	FY95	FY96
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants, Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	0	0	0	0	0	0

<b>CAPITAL</b>	0	0	0	0	0	0
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<b>REVENUE</b>	0	0	0	0	0	0
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FUNDING: (THOUSANDS OF DOLLARS)

General Fund	0	0	0	0	0	0
Federal Fund	0	0	0	0	0	0
Other	0	0	0	0	0	0
<b>TOTAL</b>	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)

NO FISCAL IMPACT

Prepared By: Pamela Stoops, Director Phone: 465-3850  
 Division: Administrative Services Date: 1/15/90

Approved By: Warren Endicott, Executive Director  
 Agency: Legislative Affairs Agency Date: 1/15/90

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