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**367**



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

January 8, 1990

The Honorable Tim Kelly  
President of the Senate  
Alaska State Legislature  
P.O. Box V  
Juneau, AK 99811

Dear Mr. President:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that makes several changes in the area of forfeiture of property due to violation of state drug laws. These changes are needed in order to have a greater impact on drug dealing by taking the profit out of that activity. A section-by-section description of the bill follows.

Section 1 of the bill replaces existing provisions in art. 2 of AS 17.30 with new drug forfeiture provisions as follows:

Proposed AS 17.30.103 expands the type of property that is subject to forfeiture. In particular, it permits forfeiture of money, securities, and other property that is "traceable" to illegal drug activity or that was used to buy drugs. This provision thus allows for forfeiture of drug proceeds or capital to a greater extent than is permitted under current Alaska law; however, it does not go as far as current federal law in that it does not permit forfeiture of homes and other real property that has been merely used as a place to store or sell drugs. This new section also provides for forfeiture of guns and other weapons, regardless of whether they are visible (as required by current law) or hidden away.

Proposed AS 17.30.105 clarifies existing law on seizure of property without court orders, to permit seizure if it is otherwise constitutionally permissible. Current law allows seizure only if incidental to a lawful arrest. However, in many cases there might be no arrest but the property is in plain view, which is a constitutionally proper reason for seizing it. This new section also authorizes a court order of seizure if a grand jury has reviewed the evidence and found that the property is subject to forfeiture. It makes

little sense to require evidence that has already been presented in a grand jury proceeding, in order to obtain a criminal indictment, to be presented once again in order to obtain a court seizure order.

Proposed AS 17.30.107 is nearly identical to current AS 17.30.126, which creates special seizure, forfeiture and disposal provisions for drugs. As part of the new art. 2 in AS 17.30, this new section specifically applies to imitation controlled substances as well.

Proposed AS 17.30.109 combines the provisions for release and sale of seized property found in current AS 17.30.118 and 17.30.120, and adds additional equitable authority for the issuance of restraining orders and injunctions, or other action designed to preserve the availability and value of seized property.

Proposed AS 17.30.111 contains many of the notice provisions contained in current AS 17.30.116(a). The new section makes it clear that notice must be given to known claimants after property is seized, and to unknown claimants (by publication) only after a forfeiture proceeding is actually initiated.

Proposed AS 17.30.113 sets out the procedure to be followed by persons claiming an interest in property subject to forfeiture, and is essentially the same as current AS 17.30.116(b).

Proposed AS 17.30.115 sets out the procedures for forfeiture proceedings and retains the provisions that are in current AS 17.30.112 and 17.30.116(c). In addition, this section also provides that the state can prove a prima facie case for forfeiture, which switches the burden of proof to the claimants of the property, by showing that a grand jury indictment has been issued charging that the property is subject to forfeiture, or that a conviction has been obtained for violation of state drug laws. As explained above, and as recognized in current AS 17.30.112(a), it makes little sense to repeatedly present the same evidence of the offense. The primary issue in most forfeiture proceedings is not whether the property was used in drug dealing, but rather whether the claimant reasonably should have known of the offense and whether the interest in the property was acquired in good faith, issues in which the burden has always been placed on the person claiming the property.

Proposed AS 17.30.117 is a wholly new provision that authorizes forfeiture through expeditious and less expensive administrative proceedings. This type of administrative forfeiture has been recommended by national organizations such as the Council on State Governments and

the American Legislative Exchange Council, and is limited to property worth \$100,000 or less. Under this new section, the commissioner of administration would appoint hearing officers to hold hearings to determine whether the property is to be forfeited or returned to an innocent owner.

Proposed AS 17.30.119 is a new provision that specifies what can be part of a forfeiture order. The order must take the remission provisions of proposed AS 17.30.121 into account, and the expenses of forfeiture or remission must be included as part of a defendant's criminal sentence or as an assessment of costs. Because assets are often moved, sold, or diminished in value before they can be forfeited, this new section also provides for the forfeiture of substituted assets. This section also continues the policy expressed in current AS 17.30.124(b) that drug dealers will not be permitted to protect their own property by using cars or other property borrowed or rented from innocent third parties.

In addition, proposed AS 17.30.119(b) creates exemptions to forfeiture so that persons are not left without the necessities of life. Except for liquor licenses or limited entry permits that are traced to the profits of drug dealing, this provision leaves drug traffickers with the same amount of property as someone who has filed for bankruptcy.

One additional provision in proposed AS 17.30.119(f) gives the state a lien creditor preference over persons who claim an unperfected security interest in property, limited to the costs of the forfeiture, investigation, and prosecution. This provision is in response to the Alaska Supreme Court's opinion in Fehir v. State, 755 P.2d 1107 (Alaska 1988), which allows persons with unperfected security interests to file a claim for forfeited property. Drug traffickers are often adept at hiding assets or otherwise thwarting forfeitures by transferring assets to family, friends, or business associates. Therefore it is appropriate to give the state priority over these unknown (i.e. unrecorded) claimants to the property, at least to the extent that the state is able to recoup its expenses.

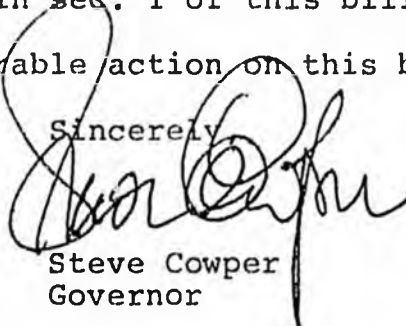
Proposed AS 17.30.121 provides for the remission of property to innocent claimants. Except as to aircraft, vehicles, and vessels, current statutes do not specify what is required for a claimant to obtain return of the property. Therefore, this new section adopts the requirements approved in the Alaska Supreme Court opinions in Fehir v. State, and State v. Rice, 626 P.2d 104 (Alaska 1984).

Finally, AS 17.30.123 provides for disposal of property by the Department of Administration. The new section is patterned after current AS 17.30.122, but includes an important new provision that allows municipalities to share in the forfeiture of assets. Under this section, up to a total of 50 percent of the forfeited assets can be shared with municipal law enforcement agencies that make significant contributions to the investigation leading to the forfeiture.

Sections 2 and 3 of the bill make needed definition changes, and sec. 4 repeals an unnecessary statute in AS 11.73 and existing provisions in AS 17.30 that are replaced by new provisions in sec. 1 of this bill.

I urge your prompt and favorable action on this bill.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Cowper", is written over the word "Sincerely,".

Steve Cowper  
Governor

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y. STATE CAPITOL  
JUNEAU, ALASKA 99811  
907-465-3800


LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 24, 1990

SUBJECT: Comparison between SSSB 19 and SB 367

TO: Senator Arliss Sturgulewski  
ATTN: Melissa A. Fouse

FROM: Jack Chenoweth  
Legislative Counsel 

This memorandum highlights the principal similarities and differences between Sponsor Substitute for Senate Bill 19, your measure proposing additions and amendments to the laws applicable to seizure and forfeiture, and Senate Bill 367, the governor's bill on substantially the same subject.

This memo keys to the bill order set out in SSSB 19 and cross-references from that measure to the related provisions of the administration's bill.

SCOPE OF SUBJECT MATTER COVERED IN MEASURES:

SSSB 19 brings together seizure and forfeiture provisions applicable to property used in violation of the criminal laws of the state governing

- alcoholic beverages (AS 04);
- controlled substances (AS 11.71 and 17.30); and
- imitation controlled substances (AS 11.73).

If enacted, the legislation would replace seizure and forfeiture provisions separately applicable to these chapters with a single set of procedures applicable to the taking of property used in violation of state law applicable to alcoholic beverages, controlled substances, and imitation controlled substances. The procedures defined in the sponsor substitute are made part of Title 12, the Code of Criminal Procedure. (While forfeiture is a civil process, its actual use relates so closely to criminal conduct that it seemed to me best to place the material in the part of the statutes--

AS 12.35, relating to search and seizure--to which the subject matter of the legislation most logically relates.) \*/ Additionally, SSSB 19 is, in my view, a more "process"-sensitive approach in that it is organized in a manner that more nearly approximates the chronology that the owner or claimant of seized property, or that party's legal counsel, would likely encounter in dealing with questions of seizure and forfeiture of property.

SB 367, the administration measure, omits reference to alcoholic beverages, limiting the changes proposed to state laws applicable to controlled substances and imitation controlled substances. Consequently, the administration seeks to achieve its objective through a revision of current seizure and forfeiture laws in existing AS 17.30.100 and the sections that follow.

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\*/ Initially, the drafting strategy for what eventually became Senate Bill 19 involved consolidating in one place seizure and forfeiture provisions applicable to property involving any criminal violation so that one set of procedures and standards would govern throughout state law. Following discussion with the administration representatives, you asked me to omit from the draft of SB 19 the provisions governing each of the following, as to each of which explicit seizure and forfeiture provisions may be found in the respective titles and chapters elsewhere in the body of state law:

-- property used in violation of guide licensing laws;

-- property used to violate criminal laws relating to illegal use of animals;

-- property used to violate state gaming laws; and

-- property used in violation of state fish and game statutes and regulations.

Each of these topics continues to be covered by its own separate statutory foreclosure provisions.

Committees considering the legislation should determine the scope of the subject matter to be addressed in this legislation: if limited to controlled substances/imitation controlled substances, placement of the subject material in AS 17.30 is proper; if broadened to include other subjects, use of AS 12.35 seems a better choice.

\*

SSSB 19 is, in some respects, a more traditional approach. Under it, seizure and foreclosure responsibilities devolve on one executive branch agency--the Department of Public Safety--and, in contested foreclosures, the judicial branch has the exclusive role.

SB 367 introduces some additional players--while public safety has a role in the seizure and custody, the commissioner of administration figures prominently in the administrative and property disposition process--and, indeed, the Department of Administration has a larger role in contested summary administrative hearings.

Committees considering the legislation should also determine whether and to what extent the role of executive agencies in the consideration and disposition of forfeiture actions should be enlarged.

DRAFTING NOTES:

SSSB 19's bill section 1 establishes the procedures applicable to seizure and forfeiture, while the remainder of the bill (sections 2 - 8) define the applicability of those procedures in relationship to the specific statutes in which forfeiture of property is currently authorized under the various separate titles, and makes other necessary changes.

The principal operative provision of SB 367, also its bill section 1, inserts into AS 17.30 a sequence of new sections in place of materials proposed to be repealed. The remaining few sections of the bill make technical conforming amendments.

Both bills incorporate necessary repealers.

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APPLICABILITY:

An "Applicability" section appears only in SSSB 19; there is no directly comparable provision in the administration bill. Proposed AS 12.35.200 [Applicability] of SSSB 19 identifies in general or collective terms property subject to forfeiture under the alcoholic beverage control laws (AS 04) and property covered by the controlled substance (AS 17.30) and imitation controlled substances laws (AS 11.73).

SEIZURE:

Proposed AS 12.35.210 [Seizure] of SSSB 19 authorizes, in the alternative,

-- actual seizure of "property subject to forfeiture" under a warrant or court order;

-- constructive seizure of that property under a warrant or court order; or

-- actual or constructive seizure of that property without a warrant

-- if made incident to a valid arrest;

-- if subject to prior judgment in a criminal proceeding; or

-- under a showing of probable cause.

In its AS 17.30.105(a) [page 2, line 11 and following], SB 367, the administration measure, likewise authorizes seizure either under court order or without court order and sets out relevant standards to guide those property seizures. As the transmittal letter accompanying SB 367 notes, the administration measure incorporates seizure authority "if otherwise constitutionally permissible," in order to take advantage of the constitutionally-authorized exceptions to the warrant requirement, and authorizes seizure on the basis of a grand jury finding that the property is subject to forfeiture. These additional circumstances are not explicitly incorporated into the legislation you have introduced.

Proposed AS 12.35.210 in SSSB 19 also briefly describes how a constructive seizure of the property may be made. The administration measure makes no provision for a constructive seizure.

CUSTODY OF SEIZED PROPERTY:

In SSSB 19, proposed AS 12.35.220 [Custody] directs the commissioner of public safety (or, by definition, the commissioner's designee) to take custody of seized property, and sets out the alternatives available to that officer in the performance of that duty.

Custody is briefly addressed in AS 17.30.105(b) of the administration measure. The task is assigned to the commissioner of public safety or a municipal law enforcement agent whom the commissioner authorizes.

DURATION OF CUSTODY OF SEIZED PROPERTY:

In SSSB 19, proposed AS 12.35.230 [Duration] sets limits on the duration of the holding of seized property. As a general rule, as to property used or intended for use in a crime that is movable, the period of holding is limited to the earlier of the securing of an order of forfeiture from a court or 48 hours. The holding rule is subject to exceptions that permit longer retention of certain illicitly-held alcoholic beverages and controlled substances, nor does the holding limitation apply to property whose forfeiture is pursued in conjunction with a criminal prosecution.

In the administration measure, SB 367, a 48 hour holding period is likewise set (see AS 17.30.105(a)(2)(C)) for property of this type.

RESPONSIBILITY TO INVENTORY AND VALUE SEIZED PROPERTY:

As to the seized property, SSSB 19's proposed AS 12.35.240 [Inventory and valuation] outlines minimal inventory and valuation procedures that the commissioner must follow after obtaining custody of the seized property. Inventory and valuation must occur within 10 days. The commissioner is to inform the attorney general who, after determining whether or not a successful forfeiture proceeding may be maintained, may order return of the seized property (excepting only illicit controlled substances).

Substantially the same process is to be followed in the inventory and valuation provisions of the administration's measure, SB 367. The same time limit applies. See AS 17.-30.105(b) and (c).

In SSSB 19, the forfeiture procedure itself commences with proposed AS 12.35.250 [Proceedings] and 12.35.260 [Notice].

**FORFEITURE ALTERNATIVES:**

Three alternative forfeiture methods are identified. Foreclosure may occur

- in conjunction with a criminal proceeding, under a jeopardy forfeiture motion;
- through the summary administrative proceeding process outlined in the bill; and
- by commencement of an in rem civil proceeding under the process outlined in the bill.

An exception from these requirements is made for property seized under a court order explicitly forfeiting the property to the state.

The comparable provision in SB 367 is AS 17.30.115(a). The administration's alternatives include "filing a motion to forfeit in a . . . civil proceeding," an alternative not set out in SSSB 19.

**NOTICE:**

In SSSB 19, forfeiture is predicated upon the reasonable efforts of the commissioner of public safety, once having valued the property seized, to determine the identity of the owner of the seized property and any other persons who may hold an interest in the property. Within the 20 day period following the property's seizure, the commissioner of public safety is to give actual and publication notice to the parties indicated in the manner prescribed.

In SB 367, the comparable provision is AS 17.30.111. The administration extends the notice window to 30 days after seizure, and establishes a minimum value of the property for which the notice of seizure and forfeiture must be given at \$500. As with SSSB 19, actual notice that is in compliance with applicable rules of civil procedure is authorized. However, a different requirement for publication notice attaches. In SSSB 19, the manner of publication notice depends on the method of forfeiture selected.

ADMINISTRATIVE FORFEITURE:

Both measures authorize administrative or summary forfeiture. This is, as Governor Cowper's transmittal letter declares, a concept new to current Alaska law. The procedures applicable are outlined in a fair measure of detail, especially in SSSB 19. The scope of permissible use of administrative forfeiture and the procedures applicable differ between the two bills.

In SSSB 19, proposed AS 12.35.270 [Administrative forfeiture] establishes a summary administrative forfeiture process applicable to

-- seized property of a value of not more than \$100,000; or

-- seized property that is a conveyance.

Under your bill, there is no obligation to use the administrative or summary process. The decision as to use rests with the commissioner of public safety (who has at least nominal custody of the seized item(s)). If the commissioner elects to use the summary administrative process, the commissioner must give the publication notice in the manner required by AS 12.35.270(b). Thereafter, a person having an interest must submit a claim and a bond, cash, or certified check. If the claim and the bond or deposit are not found satisfactory, the commissioner may allow limited additional time for the claimant to make the claim satisfactory. If found satisfactory, the commissioner must promptly commence a civil proceeding in rem, looking to the courts to order final disposition of the seized property. If found not satisfactory within the time allowed, the commissioner may, at the conclusion of the administrative proceeding, order the property forfeited. Thus, administrative proceedings are available for what the administration has described as "uncontested" foreclosure proceedings only, that is, when no claim against the property is forthcoming. "Contested" claims would be referred to the judiciary.

The administration's approach, set out in AS 17.30.117 of SB 367, differs. Use of summary administrative forfeiture is limited to property of less than \$100,000 value; there is no separate exception for conveyances. The alternative remains discretionary, but under the administration's approach, the discretion (and the process) become the responsibility of

the commissioner of administration. SB 367 does not incorporate a bond requirement, and authorizes the commissioner (through a hearing officer) to make final disposition of the seized property in all cases, contested or uncontested.

#### IN REM FORFEITURE:

In rem is the usual or normal process applicable to the forfeiture of seized property. Don't be put off by the term. "In rem" is Latin shorthand for "[a civil action against] the thing," meaning an action against, in the context of a forfeiture action, the object(s) whose ownership is to be determined.

In SSSB 19, the in rem forfeiture proceeding is set out in proposed AS 12.35.280 [In rem forfeiture]. The process essentially involves court examination of the state's claim to forfeiture of the subject property, with the property itself as the focal point of the inquiry.

The section outlines applicable notice provisions, to be followed if there are no comparable applicable provisions adopted in the state's rules of civil procedure. A principal purpose of the notice is to give a person claiming an interest in the property opportunity to file an answer and claim with the court. Unless disposed of in another manner, or summarily in the absence of any answer and claim, the court is to consider and determine any claim and answer. Subsection (g) of AS 12.35.280 specifically provides that an in rem proceeding may be held in abeyance while criminal proceedings are undertaken against a property claimant.

In SB 367, the in rem process is not described in the same order within one section. For example, the notice provision (comparable to SSSB's AS 12.35.280(b)) relies on the general notice provision of AS 17.30.111(b) and applicable civil rule, and the claim provision (comparable to SSSB 19's AS 12.35.280(d) - (f)) is set out in proposed AS 17.30.113. On the other hand, as will be noted later in this memo, SB 367 provides more detail with respect to other aspects of forfeiture proceedings, especially as regards standard and burden of proof and the scope of a claimant's ability to participate in the foreclosure proceedings.

#### LIMITATION OF CRIMINAL PROCEEDING AS A DEFENSE:

Each bill incorporates as a "defense" a roughly similar provision that, while acknowledging the interrelationship be-

tween the in rem proceeding and an associated criminal prosecution, is intended to affirm that the proceedings are separate, and that the criminal proceeding or prosecution, or its outcome, is not dispositive in the in rem proceeding. (A "defense" is evidentiary matter interposed by the defendant that must be met and disproved by the prosecution beyond a reasonable doubt.) In SSSB 19, that provision is AS 12.35.290 [Limitation of defense]. In SB 367, the provision is AS 17.30.115(e). The language differs--indeed, the administration's language covers all proceedings while SSSB 19's applies, by its terms, only in in rem proceedings. But, since, under SSSB 19, in rem proceedings are used in all contested proceedings, the difference may be one more of form than of substance.

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When forfeiture proceedings are completed, the court enters a forfeiture order.

STATUS OF PROPERTY ORDERED FORFEITED:

The administration has advised you, and in his transmittal letter Governor Cowper noted to the legislature, that it would be well to have a provision that

. . . gives the state a lien creditor preference over persons who claim an unperfected security interest in property . . . . [Such a provision would be] in response to the Alaska Supreme Court's opinion in Fehir v. State, 755 P.2d 1107 (Alaska 1988), which allows persons with unperfected security interests to file a claim for forfeited property. Drug traffickers are often adept at hiding assets or otherwise thwarting forfeitures by transferring assets . . . . Therefore, it is appropriate to give the state priority over these unknown (i.e. unrecorded) claimants to the property, at least to the extent that the state is able to recoup its expenses.

The language used differs--indeed, the provision of your bill is a little tighter than that proposed by the governor--but SSSB 19's AS 12.35.300 and SB 367's AS 17.30.119(f) are intended to address this concern.

REMISSION OR RELIEF:

Recent incidents involving criminal activities aboard vessels without knowledge of the vessel owners prompts inclusion of a remission provision in both bills.

In SSSB 19, proposed AS 12.35.310 [Remission] is concerned with the property rights and interests of "innocent" owners of seized property and of "innocent" third parties having a valid security or similar interest in seized property subject to forfeiture. The section outlines how those parties may exercise their rights and secure return of the property. Property of an innocent owner may not be forfeited if the owner, in an administrative or an in rem proceeding, meets the burden of proof prescribed in subsection (a) (preponderance of the evidence), while property in which an innocent third party has an interest may not be forfeited in one of those proceedings if the party having the interest meets the burden of proof prescribed in subsection (b) (preponderance of the evidence). The approach taken is one of interposing a prohibition against forfeiture in those situations.

The comparable provision in the administration's measure appears as AS 17.30.121. The administration's approach is one of authorizing remission if the claimant meets the standards established, and requiring the claimant to file an answer in a foreclosure proceeding. (SSSB 19 does not explicitly indicate how the owner or claimant is to indicate an interest in the property; filing of a claim or answer is presumed, not stated.) The administration's measure also makes provision for remission claims based on partial value and remission claims involving multiple claimants; these are not addressed in SSSB 19.

SALE OF SEIZED PROPERTY:

In SSSB 19, as an alternative to availing oneself of the remission claim process, if a party has a claim on seized property, the party may petition the court for the property's sale. The procedures for sale of the property in response to petition are set out in AS 12.35.320 [Sale of seized item]. The court may allow that sale if the court makes the findings specifically required by subsection (b). If sale is allowed and occurs, the proceeds of the property's sale are substituted for the property itself as the object of the forfeiture action.

On the subject of sale, the administration's measure provides more detail. AS 17.30.109(b) and (c) authorize sale and substitution of the sale proceeds in further foreclosure proceedings. In the administration's measure, the state (as well as any claimant) may seek sale, and both parties may seek a release of the property. The requirements that must be met and the standards that the court must apply in considering a petition for sale or release are more explicit; all five requirements and standards must be met, including the submission of a bond.

DISPOSITION FOLLOWING FORFEITURE:

In SSSB 19, proposed AS 12.35.330 [Disposal upon forfeiture] outlines the manner of disposition of seized property. Forfeited alcoholic beverages are to be transferred to a state peace officer and destroyed. SSSB 19 makes provision for the summary forfeiture of certain plants grown in violation of AS 11.71 and AS 17.30. See AS 17.30.115(b), added by bill section 6. The holding and disposition by a local government of controlled substances that are seized would not be authorized.

Except for the handling of alcoholic beverages and controlled substances, under AS 12.35.330, other forfeited property is to be returned to the custody of the commissioner of public safety, who may thereafter order the property to be used in law enforcement activities, transferred, or sold, with the proceeds of the sale (subject to legislative appropriation) made available to cover expenses of the applicable seizure and forfeiture proceedings, or deposited into the state general fund. A key addition is the proposed "transfer to a political subdivision" formula, page 10, lines 10 - 22.

In SB 367, the disposal provisions are set out in AS 17.30.107 and 17.30.123. The provisions are not dissimilar. The administration bill requires seizure, summary forfeiture, and disposal of controlled substances and imitation controlled substances by the state. All other forfeited property is transferable to the commissioner of administration for use or sale across a comparable range of options.

\* \* \*

SB 367 incorporates additional provisions or adds detail as to some aspects of the seizure and forfeiture process, not

included in SSSB 19. Among the chief provisions set out in SB 367 that are not directly replicated in SSSB 19:

-- an equitable relief provision, AS 17.30.109(a), authorizing a court (or a hearing officer in an administrative proceeding) to provide for issuance of restraining orders and injunctions, principally to protect property that may be subject to foreclosure;

-- explicit provisions, set out in AS 17.30.115(b), describing the burden of proof that the state must bear in trying to secure a forfeiture order, and establishing the means by which a prima facie case may be made (shifting the burden of proof to any claimants) based on a criminal conviction or grand jury indictment;

-- more specific direction, given by AS 17.30.119(a), that mandates forfeiture (subject to remission) and specifies what must be contained within a forfeiture order;

-- authority, under AS 17.30.119(b), to claim exemptions from the forfeiture order under the state's Exemptions Act;

-- a duty, imposed by AS 17.30.119(c), on a person "who causes property to be subject to forfeiture" to pay certain expenses related to the property;

-- a provision, AS 17.30.119(d), spelling out what must be incorporated into the forfeiture order; and

-- authority, given by AS 17.30.105(d), for a person claiming an exemption under AS 17.30.119(b) to petition for court for use of the exempted property while forfeiture procedures are pending.

Some or all of these might be considered for inclusion in SSSB 19.

\* \* \*

The subject remaining to be discussed involves the respective approaches taken to identify property subject to seizure and forfeiture.

In SSSB 19, bill section 5, an amendment of AS 17.30.110, identifies controlled substance-related property that may be forfeited. In SB 367, that list appears in proposed AS 17.30.103. The list in SB 367 is more encompassing; it also authorizes, as Governor Cowper's transmittal letter notes, forfeiture of property "traceable" to illegal activity. Briefly:

-- In SSSB 19, the controlled substances are forfeitable. In SB 367, AS 17.30.107 makes controlled substances summarily forfeitable.

-- In SSSB 19, "property," including raw materials incorporated into controlled substances, used in conjunction with illicit activity involving the controlled substance if that illicit activity is a felony is forfeitable. In SB 367, while there is a reference to forfeiture of raw materials, there is no directly parallel provision, but the general reference to "property" set out in proposed AS 17.30.103(b) might be read to embrace the same items.

-- SSSB 19 authorizes forfeiture of containers for drugs; SB 367 has no directly parallel provision, but, again, the general provision applicable to "property" in AS 17.30.103(b) would appear to apply.

-- Both bills make provision for forfeiture of conveyances or vehicles used in felony offenses.

-- Both incorporate reference to forfeiture of books, records, equipment, and data.

-- Both make provision for forfeiture of money, securities, and negotiable instruments.

-- Both bills authorize forfeiture of firearms (SSSB 19 retains a concealed weapon requirement; SB 367 eliminates that contingency); only SB 367 explicitly authorizes forfeiture of explosives and weapons.

-- SSSB 19 specifically identifies as forfeitable any real property that is involved in the commission of a felony offense; SB 367 does not enumerate this, and the governor's transmittal letter specifically notes its omission.

\* \* \*

Senator Arliss Sturgulewski  
Page 14  
January 24, 1990

In SSSB 19, six bill sections apply the seizure and forfeiture procedures to specific types of property to which state law currently specifically authorizes a seizure and forfeiture provision:

Bill sections 2 and 3 treat with alcoholic beverages and related property, a subject not covered in SB 367.

Bill sections 4 - 7 identify forfeitable property used in violation of laws applicable to controlled substances and imitation controlled substances, for which there are related provisions in SB 367.

JC:gc  
G13/063

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

1 IN THE SENATE

2

SENATE BILL NO. 367

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 forfeiture as a result of violating state drug laws."

7

8

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

9

\* Section 1. AS 17.30 is amended by adding new sections to read:

AS 17.30.110(1)  
AS 17.30.110

10

Sec. 17.30.103. PROPERTY SUBJECT TO FORFEITURE. (a) In addition

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to a controlled substance or imitation controlled substance that

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is manufactured, delivered, possessed, concealed, stored, acquired, or

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transported in violation of AS 11.71 or AS 11.73, the following property

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is also subject to forfeiture to the state if used, or intended

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to be used, to manufacture, deliver, possess, conceal, store, acquire,

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or transport a controlled substance or imitation controlled substance

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in violation of AS 11.71 or AS 11.73:

AS 17.30.110(7)  
AS 17.30.110(6)

18

(1) firearms, explosives, or weapons of any type;

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(2) money, securities, negotiable instruments, or anything

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of value, whether tangible or intangible, secured or unsecured, excluding

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real property;

AS 17.30.110(2)

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(3) raw materials, chemicals, pharmaceuticals, or anything,

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including plants or other living organisms, from which controlled

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substances might be derived;

AS 17.30.110(5)

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(4) books, records, tapes, formulas, research papers, and

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equipment of any type, including data processing or other electronic

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equipment; and

AS 17.30.110(4)

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(5) aircraft, vehicles, vessels, and conveyances of any

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type, if the crime committed, solicited, or attempted is a felony

1 offense.

AS 17.30.110(6) 2  
21 U.S.C. 931(6) 3  
and (7) 4

(b) In addition to the provisions of (a) of this section, property is subject to forfeiture to the state if used, or intended to be used, in a direct or indirect exchange for a controlled substance or imitation controlled substance in violation of AS 11.71 or AS 11.73, or if traceable to or derived from such an exchange. In this subsection, "property" means money, securities, negotiable instruments, or anything of value, whether tangible or intangible, secured or unsecured, including any right, title, or interest in real property and any improvements or appurtenances.

AS 17.30.114(a) 12

11 Sec. 17.30.105. SEIZURE AND CUSTODY OF PROPERTY. (a) Property subject to forfeiture may be seized by a peace officer

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

14 (A) of probable cause that the property is subject to  
15 forfeiture; or  
16

AK Rules of 17  
Criminal Procedure 18  
Rule 6(c) 19

(B) that a grand jury has returned an indictment charging that the evidence, if unexplained or uncontradicted, would warrant a court's conclusion that the property specifically identified in the indictment is subject to forfeiture under AS 17.30.103; or  
20  
21

AS 17.30.114(a) (1) 22

(2) without a court order if

23 (A) constitutionally permissible or otherwise authorized by law;  
24

AS 17.30.114(a) (2) 25

(B) the property has been the subject of a judgment in favor of the state in a forfeiture proceeding; or  
26

AS 17.30.114(a) (3) 27

(C) there is probable cause to believe that the property is subject to forfeiture and is easily movable; property seized under this subparagraph may not be held for more than 48  
28  
29

AS 17.30.114(b)

AS 17.30.114(c)

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AS 17.30.12C

1 hours without a court order, which may be obtained as described  
2 in (a)(1) of this section.

3 (b) Subject to the order of the court, or to an order by a  
4 hearing officer in an administrative forfeiture proceeding under  
5 AS 17.30.117, property seized under this section must be held in the  
6 custody of the commissioner of public safety or a municipal law en-  
7 forcement agency authorized by the commissioner of public safety to  
8 retain custody. Within 10 days after a seizure under this section,  
9 the law enforcement agency with custody of the property shall estimate  
10 the value and make an inventory of the property. The inventory and  
11 estimate must be sent to the attorney general.

12 (c) If the attorney general determines that a forfeiture pro-  
13 ceeding cannot be suscained or as a matter of discretion will not be  
14 instituted, a written report of that decision must be sent to the  
15 agency with custody of the property and, except as provided in AS 17.-  
16 30.107, the property must be returned to the owner.

17 (d) A person claiming an exemption under AS 17.30.119(b) may  
18 petition the court, or the hearing officer if an administrative for-  
19 feiture proceeding has been initiated, for use of exempted property  
20 while forfeiture proceedings are pending.

21 Sec. 17.30.107. SEIZURE, FORFEITURE, AND DISPOSAL OF CONTROLLED  
22 SUBSTANCES AND IMITATION CONTROLLED SUBSTANCES. Notwithstanding any  
23 other provisions of this chapter, a controlled substance or imitation  
24 controlled substance subject to forfeiture under AS 17.30.103, or  
25 plants grown in the wild from which controlled substances or imitation  
26 controlled substances might be derived, must be seized and summarily  
27 forfeited to the state. The commissioner of public safety, or a  
28 municipal law enforcement agency authorized under AS 17.30.105(b) to  
29 retain custody of seized property, shall dispose of controlled

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1 substances or imitation controlled substances in accordance with  
2 procedures prescribed by the commissioner of public safety.

3 Sec. 17.30.109. PRESERVATION, RELEASE, OR DISPOSAL OF PROPERTY  
4 BEFORE ORDER OF FORFEITURE. (a) A court, whether or not a forfeiture  
5 proceeding has been initiated, or a hearing officer in an administra-  
6 tive proceeding under AS 17.30.117, 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 that might be subject to forfeiture under  
10 AS 17.30.103 or AS 17.30.119(d). A temporary order to preserve the  
11 availability or value of property subject to forfeiture may be entered  
12 upon ex parte application of the state, if there is reason to believe  
13 that notice would jeopardize the availability of the property for  
14 forfeiture.

AS 17.30.118  
AS 17.30.120

15 (b) The state may at any time before an order of forfeiture is  
16 issued, request the sale or release of property seized under AS 17.-  
17 30.105 or encumbered under (a) of this section. A claimant may also  
18 request sale or release before an order of forfeiture is issued if

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19 (1) the claimant has filed a timely answer under AS 17.30.-  
20 113 or, before the initiation of a forfeiture proceeding, has sent a  
21 notice of claim to the attorney general setting out the nature of the  
22 claimant's interest in the property, the date it was acquired, the  
23 consideration paid, and the circumstances under which it was acquired;

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

AS 17.30.118(b)

26 (3) the claimant gives adequate assurance that the property  
27 or its proceeds will remain subject to the court's or the hearing  
28 officer's jurisdiction;

AS 17.30.113(b) (1)

(4) the sale or release is in the best interests of the

1 state and will provide for protection of the value of the property;  
2 and

AS 17.30.113(b) (2)

3 (5) the claimant provides a bond or other equivalent secu-  
4 rity equal to twice the estimated value of any released property.

AS 17.30.120

5 (c) Proceeds from any sale of property, plus interest earned on  
6 the proceeds to the date of termination of the proceedings, become the  
7 subject of the forfeiture action.

AS 17.30.116(a)

8 Sec. 17.30.111. NOTICE OF SEIZURE AND OF FORFEITURE PROCEEDINGS.

9 (a) Within 30 days after a seizure under AS 17.30.105, the commis-  
10 sioner of public safety shall notify persons known to have an interest  
11 in an item with an estimated value of \$500 or more, or whose interest  
12 in such property is ascertainable from official registration numbers,  
13 licenses, or other state, federal, or municipal identification numbers  
14 affixed to the property. Notice may be given in any manner authorized  
15 for service of process under the rules of civil procedure.

AS 17.30.116(b)

16 (b) Within 30 days after a forfeiture proceeding has been initi-  
17 ated under AS 17.30.115,

18 (1) persons required to be notified under (a) of this  
19 section must be served with a copy of the motion, complaint, or other  
20 pleading in any manner authorized for service of process under the  
21 rules of civil procedure; and

22 (2) the commissioner of public safety shall begin to pub-  
23 lish notice of the action to forfeit property in the manner provided  
24 for service by publication in the rules of civil procedure.

AS 17.30.116(a)

25 (c) The notice requirements of this section do not apply to  
26 property that consists of controlled substances or imitation con-  
27 trolled substances.

28 Sec. 17.30.113. PROCEDURE FOR CLAIMANTS. Upon notice under  
29 AS 17.30.111, a person claiming an interest in property that is the

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AS 17.30.116 (b)

AS 17.30.112(a)

AS 17.30.112(a)

AS 17.30.112(a)

AK Rules of  
Criminal Procedure  
Rule 6(c)

1 subject of a forfeiture proceeding, including a defendant in a crimi-  
2 nal proceeding who has been served with a motion to forfeit, shall  
3 file an answer within the time permitted for answering civil com-  
4 plaints under the rules of civil procedure. The answer must, under  
5 penalty of perjury, set out the reasons why the property is not sub-  
6 ject to forfeiture or why the claimant is entitled to remission under  
7 AS 17.30.121. The answer must state the nature of the claimant's  
8 right, title, or interest in the property, the time and circumstances  
9 of the claimant's acquisition, the consideration paid, and any addi-  
10 tional facts supporting the claim. If an answer is not timely filed,  
11 the property is forfeited to the state without further proceedings.

12 Sec. 17.30.115. PROCEEDINGS RESULTING IN FORFEITURE; BURDEN OF  
13 PROOF; DEFENSES EXEMPTED. (a) A forfeiture proceeding may be initi-  
14 ated by the state by

15 (1) filing a motion to forfeit in a criminal or civil pro-  
16 ceeding relating to the conduct that makes the property subject to  
17 forfeiture;

18 (2) filing a complaint in a separate in rem proceeding; or  
19 (3) filing a notice with the commissioner of administration  
20 of the state's intent to seek forfeiture of property administratively  
21 as provided in AS 17.30.117.

22 (b) In a forfeiture proceeding the state must prove by a prepon-  
23 derance of the evidence that the property is subject to forfeiture  
24 under AS 17.30.103. It is prima facie evidence sufficient to support  
25 an order of forfeiture, that a defendant has been convicted of conduct  
26 making the property subject to forfeiture, or that a grand jury has  
27 returned an indictment charging that the evidence, if unexplained or  
28 uncontradicted, would warrant a court to conclude that the property  
29 specifically identified in the indictment is subject to forfeiture

1 under AS 17.30.103.

AS 17.30.116(c)

2 (c) Questions of fact or law in a forfeiture proceeding must be  
3 determined by the court or by the administrative hearing officer,  
4 sitting without a jury. A claimant may testify, present evidence and  
5 witnesses, and cross-examine witnesses presented by other parties. In  
6 addition to other testimony and evidence presented, the court or the  
7 hearing officer shall consider the relevant portions of the record of  
8 any related criminal action.

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AS 17.30.116(c)

9 (d) Except as to preliminary proceedings under AS 17.30.105(d)  
10 to permit use of exempted property, at the request of the state a  
11 forfeiture proceeding, including discovery, must be held in abeyance  
12 until the conclusion of a pending criminal action relating to the  
13 conduct making the property subject to forfeiture.

AS 17.30.112(b)

14 (e) It is not a defense to a forfeiture proceeding that a crimi-  
15 nal violation has not been prosecuted, or has resulted in a conviction  
16 of a different offense or an acquittal.

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17 Sec. 17.30.117. ADMINISTRATIVE FORFEITURE PROCEDURES. (a) If a  
18 notice is filed under AS 17.30.115(a)(3), and if the value of the  
19 property sought to be forfeited does not exceed \$100,000, the commis-  
20 sioner of administration may order forfeiture of the property adminis-  
21 tratively. The administrative process is governed by AS 17.30.100 -  
22 17.30.130, and not by the Administrative Procedure Act (AS 44.62). If  
23 the proposed administrative forfeiture is contested, the commissioner  
24 of administration shall appoint a hearing officer to hold a hearing  
25 and make a recommendation regarding forfeiture of the property.

26 (b) In an administrative forfeiture hearing, the hearing officer  
27 may order discovery as provided in the rules of civil procedure, order  
28 equitable relief as provided in AS 17.30.109, and may issue subpoenas  
29 and subpoenas duces tecum at the request of a party. Orders and

Alaska Rules of  
Appellate Procedure  
Rules 601 -- 611

Model Asset  
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1       subpoenas issued by a hearing officer are enforceable in the superior  
2       court.  
3       (c) Judicial review of an administrative forfeiture is available  
4       under applicable rules of court for appeals from administrative  
5       agencies.  
6       Sec. 17.30.119. ORDER OF FORFEITURE; EXEMPTIONS. (a) If the  
7       state establishes in a forfeiture proceeding, that property is subject  
8       to forfeiture under AS 17.30.103, the property must be ordered for-  
9       feited to the state, subject to remission to an innocent claimant  
10       under AS 17.30.121 and subject to exemptions under (b) of this sec-  
11       tion. An order of forfeiture must provide clear title to the state.  
12       An order of forfeiture subject to remission must clear, in favor of  
13       the claimant, all liens, encumbrances, or other clouds on the title  
14       resulting from the forfeiture proceeding.  
15       (b) With the exception of liquor licenses granted under AS 04  
16       and limited entry permits granted under AS 16.43, a person whose  
17       property is subject to forfeiture under AS 17.30.103 may claim ex-  
18       emptions to the extent permitted under AS 09.38.010 - 09.38.030 of the  
19       Alaska Exemptions Act. A person claiming such an exemption has the  
20       burden of proving, by a preponderance of the evidence, that the person  
21       is entitled to the exemption.  
22       (c) A person who causes property to be subject to forfeiture  
23       shall pay the reasonable cost of maintenance, storage, disposal, or  
24       other expenses of the forfeiture or remission, either as part of a  
25       sentence, a condition of probation or suspended imposition of sen-  
26       tence, or as a mandatory assessment of costs in a forfeiture proceed-  
27       ing.  
28       (d) The order of forfeiture must include any other assets, up to  
29       the value of any property found to be subject to forfeiture which has

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" "

" "

" "

" "

AS 17.30.124(b)

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Fehir v. State,  
755 P.2d 1107,  
1110, n.13  
(Alaska 1983)

Fehir v. State  
supra;

State v. Rice,  
626 P.2d 104  
(Alaska 1984)

1           been

2                           (1) commingled with other property and cannot be separated

3           without difficulty;

4                           (2) transferred to, sold to, or deposited with a third

5           party;

6                           (3) placed beyond the jurisdiction of the court or cannot

7           be located;

8                           (4) substantially diminished in value by any act or omis-

9           sion of the person who caused the property to be subject to forfei-

10          ture; or

11                          (5) remitted to an innocent claimant under AS 17.30.121.

12                          (e) An order of forfeiture issued under this section may be made

13          regardless of the location of any property that might be subject to

14          forfeiture or that has been ordered forfeited.

15                          (f) A perfected priority lien over property that has been or-

16          dered forfeited is created in favor of the state up to an amount that

17          is the sum of the expenses of investigation, prosecution, and forfei-

18          ture arising out of the conduct making the property subject to forfei-

19          ture. In calculating the amount of the lien, expenses of all state,

20          federal, or local agencies are to be included. The lien has priority

21          over all unsecured and all unperfected secured debts associated with

22          the property.

23                          Sec. 17.30.121. REMISSION OF PROPERTY SUBJECT TO FORFEITURE.

24                          (a) A claimant who has filed an answer under AS 17.30.113 may obtain

25          remission of property that is subject to forfeiture upon proof by a

26          preponderance of the evidence that the claimant

27                           (1) has a valid right, title, or interest in the property,

28          acquired in good faith, which takes priority over a lien in favor of

29          the state under AS 17.30.119(f);

AS 17.30.110(4) 1

(2) did not knowingly participate in or facilitate the  
conduct that resulted in the property being subject to forfeiture; and

State v. Rice,  
620 P.2d at  
114 and n.39

(3) at no time knew, or had reasonable cause to believe,  
that the property was or might be subject to forfeiture or that a  
person using the property with the claimant's permission or ac-  
quiescence, except persons using common carriers, had a criminal  
record or reputation for offenses involving controlled substances or  
imitation controlled substances.

AS 17.30.124(a) (2) 11

(b) If the claimant to property subject to remission under (a)  
of this section is entitled to less than the total value of the prop-  
erty, the claimant may choose to receive either the proportional value  
of the partial interest or, upon payment of the difference in value,  
the entire property, if there are no other claimants. In cases of  
multiple claimants, the return of the property is to be based on the  
value and priority of each claimant's respective interest.

AS 17.30.122 17

Sec. 17.30.123. STATE DISPOSAL OF FORFEITED PROPERTY. (1)  
Property forfeited under AS 17.30.100 - 17.30.130, other than con-  
trolled substances or imitation controlled substances, must be trans-  
ferred to the commissioner of administration for disposition in accor-  
dance with applicable law. Controlled substances and imitation con-  
trolled substances must be disposed of as provided in AS 17.30.107.  
The commissioner of administration may

AS 17.30.122(1) 23

(1) destroy property harmful to the public;

AS 17.30.122(2) 24

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

AS 17.30.122(3) 27

(3) transfer the property to another agency of the state or  
a political subdivision of the state for use in the furtherance of the

AS 17.30.122(5)

AS 17.30.122(6)

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Forfeiture Bill

AS 17.30.122(4)

1 administration of justice;  
2 (4) transfer the property to the United States Department  
3 of Justice for disposition;  
4 (5) transfer ownership of an aircraft to the Alaska Wing,  
5 Civil Air Patrol;  
6 (6) upon the recommendation of the commissioner of public  
7 safety, transfer property or the proceeds of its sale, up to a total  
8 of 50 percent of the net value of forfeited property, to one or more  
9 political subdivisions of the state for significant contributions to  
10 the investigation of the conduct making the property subject to for-  
11 feiture; and  
12 (7) otherwise dispose of the property in accordance with  
13 the law.  
14 (b) The commissioner of administration shall separately account  
15 for the proceeds from the sale of forfeited property under (a) of this  
16 section which the commissioner deposits in the general fund. The  
17 annual estimated balance in the account may be used by the legislature  
18 to make appropriations to the department for the purposes described in  
19 (a)(2) of this section.  
20 \* Sec. 2. AS 17.30.900(a) is amended to read:  
21 Sec. 17.30.900. DEFINITIONS. (a) Unless the context clearly  
22 requires otherwise, the definitions set out in AS 11.71.900 and  
23 AS 11.73.099(3) apply to this chapter.  
24 \* Sec. 3. AS 17.30.900 is amended by adding a new subsection to read:  
25 (c) In this chapter, "violation of AS 11.71 or AS 11.73" in-  
26 cludes an attempt or solicitation under AS 11.31 to violate AS 11.71  
27 or AS 11.73.  
28 \* Sec. 4. AS 11.73.060, AS 17.30.110, 17.30.111, 17.30.114, 17.30.116,  
29 17.30.118, 17.30.120, 17.30.122, 17.30.124, and 17.30.126 are repealed.

- (8) lidocaine;
- (9) procaine;
- (10) tetracaine;
- (11) dyclonine;
- (12) acetaminophen;
- (13) salicylamide;
- (14) doxylamine;
- (15) diphenhydramine;
- (16) pheniramine;
- (17) chlorpheniramine; or
- (18) pyriline.

(b) A person who violates this section commits a class C felony. (§ 1 ch 41 SLA 1983)

**Sec. 11.73.030. Delivery of an imitation controlled substance to a minor.** (a) Except as provided in AS 11.73.050, a person 19 years of age or older may not deliver an imitation controlled substance to a person under 19 years of age, who is at least three years younger than the person delivering the substance.

(b) A person who violates this section commits a class B felony. (§ 1 ch 41 SLA 1983)

**Sec. 11.73.040. Advertisement to promote the delivery of an imitation controlled substance.** (a) Except as provided in AS 11.73.050, a person may not knowingly place in a newspaper, magazine, handbill, or other publication, or post or distribute in a public place, an advertisement or solicitation knowing that the purpose of the advertisement or solicitation is to promote the delivery of an imitation controlled substance in the state.

(b) A person who violates this section commits a class C felony. (§ 1 ch 41 SLA 1983)

**Sec. 11.73.050. Imitation controlled substance as placebo.** No civil or criminal liability may be imposed under this chapter on a person who manufactures, delivers, possesses or advertises or solicits to promote delivery of an imitation controlled substance solely for use as a placebo prescribed by a registered practitioner, as defined in AS 11.71.900(19), in the course of professional practice or research. (§ 1 ch 41 SLA 1983)

**Sec. 11.73.060. Forfeitures.** (a) Property used during or in aid of a violation of this chapter may be forfeited to the state to the extent permitted under and in accordance with the provisions of AS 17.30.110 — 17.30.126.

(b) For purposes of this section the terms "controlled substance" and "this chapter", as used in AS 17.30.110 — 17.30.126, shall be

construed as "imitation controlled substance" and "AS 11.73" respectively. (§ 1 ch 41 SLA 1983)

**Sec. 11.73.099. Definitions.** In this chapter

(1) "controlled substance" means a substance as defined in AS 11.71.900(4);

(2) "deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of an imitation controlled substance, whether or not there is an agency relationship;

(3) "imitation controlled substance" means a substance containing ephedrine, ephedrine sulfate, pseudoephedrine, pseudoephedrine hydrochloride, phenylpropanolamine, caffeine, theophylline, lidocaine, procaine, tetracaine, dyclonine, acetaminophen, salicylamide, doxylamine, diphenhydramine, pheniramine, chlorpheniramine, or pryrilamine, or their salts, that is not a controlled substance, and that by dosage unit appearance (including color, shape, size, and markings) or by representations would lead a reasonable person to believe that the substance is a controlled substance; the term "representations", as used in this paragraph, includes

(A) statements made by an owner or by anyone else in control of the substance concerning the nature of the substance, or its use or effect;

(B) statements made to the recipient that the substance may be resold for inordinate profit;

(C) whether the substance is packaged in a manner normally used for controlled substances;

(D) evasive tactics or actions used by the owner or person in control of the substance to avoid detection by law enforcement authorities;

(E) the storage, packaging, presentation, display of or reference to a controlled substance with, near, or in connection with the activity involving the imitation controlled substance.

(4) "manufacture" means the production, preparation, compounding, processing, encapsulating, packaging or repackaging, labeling or relabeling, of an imitation controlled substance. (§ 1 ch 41 SLA 1983)

**Cross references.** — For definition of terms used in this title, see AS 11.81.900.

**NOTES TO DECISIONS**

This section, as interpreted, was not unconstitutional<sup>ly</sup> vague. — See *Morrow v. State*, 704 P.2d 226 (Alaska Ct. App. 1985).

(3) cooperating with the Drug Enforcement Administration of the United States Department of Justice by establishing a centralized unit to accept, catalog, file, and collect statistics, including records of persons who have violated the provisions of this chapter or AS 11.71 in the state and making the information available for federal, state, and local law enforcement purposes.

(b) The commissioner of public safety may not furnish the name or identity of a patient or research subject whose identity could not be obtained under AS 17.30.155. (§ 4 ch 45 SLA 1982)

**Sec. 17.30.110. Items subject to forfeiture.** The following may be forfeited to the state:

(1) a controlled substance which has been manufactured, distributed, dispensed, acquired, or possessed in violation of this chapter or AS 11.71;

(2) raw materials, products, and equipment which are used or intended for use in manufacturing, distributing, compounding, processing, delivering, importing, or exporting a controlled substance which is a felony under this chapter or AS 11.71;

(3) property which is used or intended for use as a container for property described in (1) or (2) of this section;

(4) a conveyance, including but not limited to aircraft, vehicles or vessels, which has been used or is intended for use in transporting or in any manner in facilitating the transportation, sale, receipt, possession, or concealment of property described in (1) or (2) of this section in violation of a felony offense under this chapter or AS 11.71; however,

(A) a conveyance may not be forfeited under this paragraph if the owner of the conveyance establishes, by a preponderance of the evidence, at a hearing before the court as the trier of fact, that use of the conveyance in violation of this chapter or AS 11.71 was committed by another person and that the owner was neither a consenting party nor privy to the violation;

(B) a forfeiture of a conveyance encumbered by a valid security interest at the time of seizure is subject to the interest of the secured party if the secured party establishes, by a preponderance of the evidence, at a hearing before the court as the trier of fact, that use of the conveyance in violation of this chapter or AS 11.71 was committed by another person and that the secured party was neither a consenting party nor privy to the violation;

(5) books, records, and research products and materials, including formulas, microfilm, tapes, and data, which are used in violation of this chapter or AS 11.71;

(6) money, securities, negotiable instruments, or other things of value used in financial transactions derived from activity prohibited by this chapter or AS 11.71; and

(7) a firearm which is visible, carried during, or used in furtherance of a violation of this chapter or AS 11.71. (§ 4 ch 45 SLA 1982)

Revisor's notes. — AS 17.30.110(b) —  
 (g) were renumbered as AS 17.30.112 —  
 17.30.126 in 1983.

#### NOTES TO DECISIONS

Former forfeiture statute construed. 1265 (1977), decided under former AS  
 — See *One Cocktail Glass v. State*, Sup. 17.12.130.  
 Ct. Op. No. 1437 (File No. 2729), 565 P.2d

Collateral references. — Forfeiture of personal property used in illegal manufac-  
 ture, processing, or sale of controlled sub- stances under § 511 of Comprehensive  
 Drug Abuse Prevention and Control Act of  
 1970 (21 USCS § 881), 59 ALR Fed. 765.

**Sec. 17.30.112. Proceedings resulting in forfeiture.** (a) Property listed in AS 17.30.110 may be forfeited to the state either upon conviction of the defendant of a violation of this chapter or AS 11.71, or upon judgment of a court in a separate civil proceeding in rem. The court may order a forfeiture in the in rem proceeding if it finds that an item specified in AS 17.30.110 was used during or in aid of a violation of this chapter or AS 11.71.

(b) It is not a defense in an in rem proceeding brought under this section that a criminal proceeding has resulted in a conviction or conviction of a lesser offense for a violation of this chapter or AS 11.71. (§ 4 ch 45 SLA 1982)

Revisor's notes. — Formerly AS  
 17.30.110(b) and (c). Renumbered in 1983.

**Sec. 17.30.114. Seizure and custody of property.** (a) Property listed in AS 17.30.110 may be seized by a peace officer upon an order issued by a court having jurisdiction over the property upon a showing of probable cause that the property may be forfeited under AS 17.30.110. Seizure without a court order may be made if

(1) the seizure is incident to a valid arrest or a search under a valid search warrant;

(2) the property subject to seizure has been the subject of an earlier judgment in favor of the state in a criminal proceeding or civil proceeding in rem under this chapter or AS 11.71; or

(3) there is probable cause that the property was used, is being used, or is intended for use, in violation of this chapter or AS 11.71 and the property is easily movable; property seized under this paragraph may not be held for more than 48 hours without a court order obtained to continue its detention

(b) Property taken or detained under (a) of this section shall be held in the custody of either the commissioner of public safety or a munic-

ipal law enforcement agency authorized by the commissioner of public safety to retain custody of property listed in AS 17.30.110 subject only to the orders and decrees of the court having jurisdiction over any forfeiture proceedings. If property is seized under this chapter, the commissioner of public safety or an authorized municipal law enforcement agency may

- (1) place the property under seal;
- (2) remove the property to a place designated by the court; or
- (3) take custody of the property and remove it to an appropriate location for disposition in accordance with law.

(c) Within 10 days after a seizure under AS 17.30.110 — 17.30.126, the commissioner of public safety shall make an inventory of any property seized, including controlled substances, and shall appraise the value of any items seized other than controlled substances. (§ 4 ch 45 SLA 1982)

Revisor's notes. — Formerly AS 17.30.110(d) — (f). Renumbered in 1983.

**Sec. 17.30.116. Procedure for forfeiture action.** (a) Within 20 days after a seizure under AS 17.30.110 — 17.30.126, the commissioner of public safety shall, by certified mail, notify any person known to have an interest in an item with an appraised value of \$500 or more, or who is ascertainable from official registration numbers, licenses, or other state, federal or municipal numbers on the item, of the pending forfeiture action. Additionally, the commissioner of public safety shall publish notice of forfeiture action of an item valued at \$500 or more in a newspaper of general circulation in the judicial district in which the seizure was made, or if no newspaper is published in that judicial district, in a newspaper published in the state and distributed in that judicial district. The notice shall be published once each week during four consecutive calendar weeks. The requirements of this subsection do not apply to the forfeiture of controlled substances which have been manufactured, distributed, dispensed, or possessed in violation of this chapter or AS 11.71, regardless of their value.

(b) Upon service or publication of notice of commencement of a forfeiture action under this section, a person claiming interest in the property shall file within 30 days after the service or publication, a notice of claim setting out the nature of the interest, the date it was acquired, the consideration paid, and an answer to the state's allegations. If a claim and answer is not filed within the time specified, the property described in the state's allegation must be ordered forfeited to the state without further proceedings or showings.

(c) Questions of fact or law raised by a notice of forfeiture action and answer of a claimant in an action commenced under this section must be determined by the court sitting without a jury. This proceeding may be held in abeyance until conclusion of any pending criminal charges

against the claimant under this chapter or AS 11.71. (§ 4 ch 45 SLA 1982)

**Revisor's notes.** — Formerly AS 17.30.110(g) — (i). Renumbered in 1983. **failure to furnish notification required under this chapter. see AS 11.71.050(a)(4).**  
**Cross references.** — For penalty for

**Sec. 17.30.118. Petition for release of seized items.** (a) A claimant under AS 17.30.116(b) may at any time petition for release of a seized item as follows:

- (1) to a court in which a warrant for seizure has been issued;
- (2) to a court in which a criminal or civil action alleging forfeiture of the item has been filed; or
- (3) before an action is filed, or if no seizure warrant was issued, to a court in the judicial district in which the violation took place.

(b) An item may not be released by the court under (a) of this section unless the claimant gives adequate assurance that the item will remain subject to the court's jurisdiction and

- (1) the court finds that the release is in the best interests of the state; or
- (2) the claimant provides a bond or other valid and equivalent security equal to twice the assessed value of the item. (§ 4 ch 45 SLA 1982)

**Revisor's notes.** — Formerly AS 17.30.110(j) and (k). Renumbered in 1983.

**Sec. 17.30.120. Petition for sale of seized item.** A claimant may petition the court for sale of an item before final disposition of court proceedings. The court shall grant a petition for sale upon a finding that the sale is in the best interests of the state and the preservation and maintenance of the item seized. Proceeds from the sale plus interest to the date of final disposition of the court proceedings become the subject of the forfeiture action. (§ 4 ch 45 SLA 1982)

**Revisor's notes.** — Formerly AS 17.30.110(l). Renumbered in 1983.

**Sec. 17.30.122. State disposal of forfeited property.** Property forfeited under AS 17.30.110 — 17.30.126 other than controlled substances shall be disposed of by the commissioner of administration in accordance with applicable law. The commissioner of administration may

- (1) destroy property harmful to the public;
- (2) sell the property and use the proceeds for payment of all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, custody, and court costs;

(3) take custody of the property and authorize its use in the enforcement of this chapter or AS 11.71, or transfer it to another agency of the state or a political subdivision of the state for a use in furtherance of the administration of justice;

(4) take custody of the property and remove it for disposition in accordance with law;

(5) forward it to the Drug Enforcement Administration of the United States Department of Justice for disposition; or

(6) transfer ownership of an aircraft to the Alaska Wing, Civil Air Patrol. (§ 4 ch 45 SLA 1982; am § 2 ch 18 SLA 1983)

Revisor's notes. — Formerly AS 17.30.110(m). Renumbered in 1983.

Effect of amendments. — The 1983 amendment added paragraph (6).

**Sec. 17.30.124. Remittance to claimant.** (a) Upon a showing that a claimant is entitled to remittance under AS 17.30.110 — 17.30.126, the court shall order that

(1) if the claimant is entitled to the item, it shall be delivered to the claimant immediately;

(2) if the claimant is entitled to remittance of some value less than the total value of the item, the claimant is entitled, at the claimant's choice, to receive either the value of the claimant's interest or, upon receipt of payment of the difference in value by the claimant, the entire item.

(b) An offender who used an item subject to remission in violation of this chapter or AS 11.71 shall be assessed a fine which may not be less than the cost of any lien payment or remittance made by the state plus the reasonable costs of the seizure. (§ 4 ch 45 SLA 1982)

Revisor's notes. — Formerly AS 17.30.110(n) and (o). Renumbered in 1983.

~~**Sec. 17.30.126. Forfeiture of controlled substances.** (a) A controlled substance manufactured, possessed, transferred, sold, or offered for sale in violation of this chapter or AS 11.71 is contraband and must be seized and summarily forfeited to the state. The commissioner of public safety or the commissioner's designee, including a municipal law enforcement agency authorized under AS 17.30.114(b) of this section to retain custody of controlled substances, is responsible for the disposal of controlled substances which have been forfeited. The controlled substances shall be disposed of in accordance with procedures and requirements prescribed by the commissioner.~~

~~(b) Plants from which controlled substances may be derived and which have been planted or cultivated in violation of this chapter or AS 11.71, or which are grown in the wild, may be seized and summarily forfeited to the state. (§ 4 ch 45 SLA 1982)~~

**Sec. 17.30.116. Procedure for forfeiture action.****NOTES TO DECISIONS**

Cited in *Resek v. State*, 706 P.2d 288  
(Alaska 1985).

**Sec. 17.30.126. Forfeiture of controlled substances.** (a) A controlled substance manufactured, possessed, transferred, sold, or offered for sale in violation of this chapter or AS 11.71 is contraband and must be seized and summarily forfeited to the state. The commissioner of public safety or the commissioner's designee, including a municipal law enforcement agency authorized under AS 17.30.114(b) to retain custody of controlled substances, is responsible for the disposal of controlled substances which have been forfeited. The controlled substances shall be disposed of in accordance with procedures and requirements prescribed by the commissioner.

(b) Plants from which controlled substances may be derived and which have been planted or cultivated in violation of this chapter or AS 11.71, or which are grown in the wild, may be seized and summarily forfeited to the state. (§ 4 ch 45 SLA 1982)

**Editor's notes.** — This section is set out to incorporate editorial changes made by the Revisor of Statutes.

*Sec. 17.30.130. Judicial review. [Repealed, § 22 ch 146 SLA 1986.]*

**Article 4. General Provisions.**

<b>Section</b>	<b>Section</b>
150. Reliance on Drug Enforcement Administration	900. Definitions
155. Confidentiality of certain information	

**Sec. 17.30.150. Reliance on Drug Enforcement Administration.** Results, information, and evidence received from the Drug Enforcement Administration of the United States Department of Justice relating to the enforcement functions of this chapter, including results of inspections conducted by it, may be relied on and acted on by the Department of Public Safety in the exercise of its enforcement functions under this chapter. (§ 4 ch 45 SLA 1982; am § 20 ch 146 SLA 1986)

**Effect of amendments.** — The 1986 amendment substituted "enforcement" for "regulatory" in two places and substituted "Department of Public Safety" for "board."

## FISCAL NOTE

**REQUEST:**

Revision Date: \_\_\_\_\_  
 Title: An act relating to forfeiture as a result of violating state drug laws  
 Sponsor: Rules Committee  
 Requestor: Governor

Agency Affected: Administration  
 BRU: Central and Statewide Services

Components: Administrative Services

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

OPERATING	FY91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL	.6	.6	.6	.6	.6	.6
CONTRACTUAL	22.5	23.7	24.9	26.2	27.5	28.9
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>23.1</b>	<b>24.3</b>	<b>25.5</b>	<b>26.8</b>	<b>28.1</b>	<b>29.5</b>

CAPITAL						
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REVENUE						
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**FUNDING: (Thousands of Dollars)**

GENERAL FUND	23.1	24.3	25.5	26.8	28.1	29.5
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	-	-	-	-	-
<b>TOTAL</b>	<b>23.1</b>	<b>24.3</b>	<b>25.5</b>	<b>26.8</b>	<b>28.1</b>	<b>29.5</b>

**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)**

See Attached

Prepared by: Robert L. Stewart  
 Division: Administrative Services

Phone: 465-4418  
 Date: 12-21-89

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

Date: 12-22-89

**Distribution (by preparer) :**

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

## CONTINUATION OF FISCAL NOTE ANALYSIS

It is anticipated that each year, beginning in FY 91, six (6) cases will be referred to the Commissioner of Administration which will require adjudication. This fiscal note is prepared on the assumption that contractual hearing officers will be required.

For purposes of estimate, three cases will be in Anchorage, one will be in Juneau and two will be in Fairbanks. Rates for attorneys acting as hearing officers will average \$125 per hour. Holding the hearing and preparing a decision will average 30 hours equalling \$3,750 per case. Travel may be involved in the Fairbanks cases estimated at \$300 per case. It is additionally estimated that costs will escalate at 5% per year.

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: An Act relating to forfeiture  
as a result of violating state drug laws.  
Sponsor: Rules Committee  
Requestor: Governor

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	77.9	81.0	84.2	87.6	91.1	94.7
TRAVEL	10.4	10.8	11.2	11.7	12.2	12.7
CONTRACTUAL	104.0	108.2	112.5	117.0	121.5	126.0
SUPPLIES	2.1	2.2	2.3	2.4	2.5	2.6
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	194.4	202.2	210.2	218.7	227.3	236.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	194.4	202.2	210.2	218.7	227.3	236.0
FEDERAL FUNDS						
OTHER						
TOTAL	194.4	202.2	210.2	218.7	227.3	236.0

POSITIONS:

FULL-TIME	1	1	1	1	1	1
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

See Attached

Prepared by: James & Fox  
Grant McFee, Public Advocate  
Division: Office of Public Advocacy  
Approved by Commissioner: Frank S. Baxter  
Agency: Department of Administration

Phone: 274-1684  
Date: 12/22/89  
Date: 12-22-89

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

Page 1 of 1

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_ Agency Affected: Administration  
 Title: An Act relating to forfeiture as  
a result of violating state drug laws BRU: Public Defender Agency  
 Sponsor: Rules Committee Components: Third Judicial District  
 Requestor: Governor

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	77.8	80.9	84.1	87.5	90.9	94.4
TRAVEL	5.2	5.4	5.6	5.8	6.0	6.2
CONTRACTUAL	10.4	10.8	11.2	11.6	12.0	12.4
SUPPLIES	2.1	2.2	2.3	2.4	2.5	2.6
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	95.5	99.3	103.2	107.3	111.4	115.6
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	95.5	99.3	103.2	107.3	111.4	115.6
FEDERAL FUNDS						
OTHER						
TOTAL	95.5	99.3	103.2	107.3	111.4	115.6

POSITIONS:

FULL-TIME	1	1	1	1	1	1
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

See Attached

Prepared by: John B. Salemi, Acting Public Defender Phone: 275-7541  
 Division: Public Defender Date: 12/22/89  
 Approved by Commissioner: Frank S. Baxter Date: 12-22-89  
 Agency: Department of Administration

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. \_\_\_\_\_

Without an AS 09 exemption for attorney fees incurred in the defense of related drug prosecutions, the proposed drug forfeiture statutes would increase the Public Defender caseload. Criminal defendants in drug cases whose assets are seized will be unable to hire private counsel. Although somewhat speculative, it is anticipated the Public Defender Agency would require one Attorney IV position for Anchorage to absorb these new cases. It should be noted that the defense of drug prosecutions often involve complex and protracted litigation, including much pre-trial motion work and lengthy trials.

Budget Analysis

100	-	Attorney IV--Anchorage	77.8
200	-	Travel	5.2
300	-	Contractual (Experts, etc.)	10.4
400	-	Supplies	2.1
		Total	<u>95.5</u>

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_ Agency Affected: Administration  
 Title: Forfeiture as a rest of BRU: General Services & Supply  
violation.  
 Sponsor: Rules Committee Components: Property management  
 Requestor: Governor

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
REVENUE	*	*	*	*	*	*

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 of this bill on the sales/disposal function of property management will be negligible. 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.

\*To date, we have not received revenue from the sale of forfeited property. We do not know if the bill would change this.

Prepared by: Robert J. Link *Robert J. Link* Phone: 465-2250  
 Division: General Services & Supply Date: 12/21/89

Approved by Commissioner: Frank S. Baxter *Frank S. Baxter* Date: 12-22-89  
 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: Public Safety  
 Title: An Act relating to forfeitures  
for violations of state drug laws BRU: Alaska State Troopers  
 Sponsor: Rules Committee Component: \_\_\_\_\_  
 Requestor: Governor

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: Gavle A. Horetski, Deputy Commissioner Phone: 465-4322  
 Division: Office of the Commissioner Date: 12/15/89

Approved by Commissioner: A. U. H. English Date: 12/15/89  
 Agency: Department of Public Safety