

HB

30

HOUSE COMMITTEE REPORT

(7)

Date Referred: January 21, 1991

FURTHER REFERRALS:

Finance

Date of Committee Action: 3-8-91

The JUDICIARY Committee considered:

HB 30

HOUSE BILL NO. 30

SENTENCING; REHABILITATION; PAROLE

"An Act relating to sentencing practices and procedures and to the serving of sentences; expanding the circumstances in which a sentence may require participation in an appropriate rehabilitation or treatment program; redefining eligibility for discretionary parole; adding a related mitigating factor in the determination of presumptive sentences; authorizing the Department of Corrections to establish alternative sentencing and related programs for prisoners; and providing for an effective date."

RECOMMENDATIONS:

be replaced with

CS HB 30 (Jud)

[] the same title

[X] a new title

[] have attached amendments(s)

[X] do pass

[] do not pass

[] no recommendations

[] individual recommendations

[] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

[] fiscal impact _____

[] fiscal note(s) _____

1 [X] zero fiscal note Leg. Affairs

[] zero fiscal note(s) _____

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

Signature	Check appropriate column:	Do Not	No Rec	Amend
		Pass		
<i>Dave Douley</i>				
<i>Mark Shunberg</i>				
	<i>Mark Ranley</i>		X	
	<i>Terry Martin</i>	X		
	<i>Mike Miller</i>		X	
<i>Kevin Pad Parnell</i>				
<i>J. Ellis</i>				

Dave Douley
Chairman's Signature

DIVISION OF LEGAL SERVICES

**LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

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Court Plaza, Room 500
Mail Stop 3101

MEMORANDUM

March 8, 1991

SUBJECT: Germaneness (CSHB 30(JUD))

TO: Representative Dave Donley

FROM: Tamara Brandt Cook *TBC*
Director
Division of Legal Services

Here is a draft CS to HB 30 that you requested. The original bill dealt with sentencing practices, but the CS now deals with an entirely new subject, the Exxon settlement. Since a CS is actually an amendment to a bill proposed by committee, this CS appears to violate the germaneness requirement. Rule 35 of the Uniform Rules of the Alaska State Legislature provides in relevant part:

No motion or proposition on a subject shall be admitted under color of amendment if the subject matter is different from that under consideration.

...

This is supplemented by Mason's Manual of Legislative Procedure which provides in Sec. 402:

Sec. 402. Amendments Must Be Germane

1. Every amendment proposed must be germane to the subject of the proposition or to the section or paragraph to be amended, and an amendment is not in order which is not germane to the question to be amended. This is, basically, a phrase of the rule that each proposition have but one subject and that members have the right to vote separately on each question.
2. To determine whether an amendment is germane, the question to be answered is whether the question is relevant, appropriate, and in a natural and logical sequence to the subject matter of the original proposal.

3. To be germane, the amendment is required only to relate to the same subject. It may entirely change the effect of the motion or measure and still be germane to the subject.
4. An entirely new proposal may be substituted by amendment so long as it is germane to the main purpose of the original proposal.
5. An amendment to an amendment must be germane to the subject of the amendment as well as to the main question.
6. No independent new question can be introduced under cover of an amendment. But an amendment may be in conflict with the spirit of the original motion, and still be germane and, therefore, in order.
7. The admissibility of an amendment should be judged from the provisions of the text, rather than from the purpose which circumstances may suggest.
8. Whether a proposed amendment is consistent with the measure, motion or question proposed to be amended, is a question to be decided by the body and not by the presiding officer.

The question of whether an amendment is germane is a parliamentary procedure question which must be raised by a member of the body or the point is waived. As stated in Rule 402(8) of Mason's Manual, if the question is raised it is a question to be decided by the body.

However, the question of germaneness is not just a matter of interpretation by the body, for there is a constitutional aspect. It has been held by the Court of Appeals in Alaska and by courts in other jurisdictions that an amendment to a bill that entirely changes its subject triggers the three reading requirement. That is to say, any reading given the bill prior to adoption of the amendment no longer counts. (Smith v. Mitchell, 72 SE 755 (West Virginia 1911); Van Brunt v. State, 653 P.2d 343 (Alaska 1982); Casey v. Southern Baptist Hospital, 526 S.2d 1332 (Louisiana 1988)).

TBC:pl
91-138.plm

FISCAL NOTE

**STATE OF ALASKA
1991 LEGISLATIVE SESSION**

BILL NO. CSHB 30(JUD)

Revision Date: _____ Department Affected: Legislative Affairs Agency
 Title: Settlement Negotiations on the BRU: _____
Exxon Valdez oil spill claims Component: _____
 Sponsor: House Judiciary Committee
 Requestor: House Judiciary Committee COMPONENT SERIAL NO.

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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

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

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

POSITIONS:

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

Estimate of current year impact: -0-

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: House Judiciary Committee Phone: 465-4990
 Division: Alaska State Legislature Date: March 8, 1991
 Approved by Commissioner: Chairman Dave Donley *Dave Donley*
 Agency: House Judiciary Committee Date: 3/8/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).