

SB

139

MEMORANDUM

STATE OF ALASKA

Department of Military & Veterans Affairs


TO: The Honorable Ron Larson
Alaska State House

DATE: April 27, 1993

FILE NO:

THRU:

TELEPHONE NO: 428-6003

SUBJECT: HB 188
An Act Relating
to Forfeiture
of Property
FROM: Hugh L. Cox III
Commissioner
DMVA

This memo is to let you know of my strong support of HB 188 which is an act relating to forfeiture of real property by those using it to facilitate illicit drug dealing. This bill was introduced by the Governor and is vitally needed to curb the extensive drug trafficking taking place in this state.

Our Alaska National Guard Drug Eradication and Interdiction Unit, is extensively involved in raids which confiscate millions of dollars worth of property used to manufacture, transport, and sell illegal drugs in Alaska. Passage of this legislation would deal a strong blow against the illicit drug dealers by confiscating their substantial property holdings and would have a deterrent effect on those tempted to deal in illicit drugs. If the State of Alaska is going to deter this felony crime which is poisoning an increasing part of our society we need to put more teeth into the law. I ask for your help in obtaining passage of this vital bill.

01505

MILITARY & VETERANS AFFAIRS SUPPORT



U. S. Department of Justice
Drug Enforcement Administration

222 West 7th Avenue, #15
Anchorage, Alaska 99513

April 27, 1993

Honorable Charles E. Cole
Attorney General
Department of Law
State of Alaska
Box K
Juneau, Alaska 99811

RE: State of Alaska proposed legislation on forfeiture of property
as drug related assets. HB 188.

Dear Attorney General Cole,

The State of Alaska is presently lacking a tough legislation that effectively deals with drug trafficking. I am not talking about any particular criminal statute, but a lack of a tough state forfeiture law. Drug dealers are making millions of dollars in this illicit trade. Without a forfeiture law that can effectively take these ill gained proceeds of their enterprise, a prison sentence in a criminal case is not an adequate deterrent. Many drug traffickers continue to operate from behind the bars managing their organizations and assets that remain untouched and waiting for them when released from prison. Jailtime simply becomes a "cost of doing business" and the drug business has become very profitable. A tough forfeiture statute hits the drug dealers where it hurts them most. Seizure of their "toys", bank accounts, lavish homes, leaves them without any means to readily resume their activities.

Up to present Drug Enforcement Administration has been "adopting" for federal forfeiture, those state and local cases within the State of Alaska where forfeiture of drug assets was warranted. Recently some true obstacles have come into play that may impede the State's ability to continue such practice. I am referring to a recent Supreme Court decision in Johnson vs. City of Fairbanks. In this case the Alaska Supreme Court has ruled that if assets of a drug dealer are seized pursuant to a state search warrant, they can not be adopted for seizure by DEA without the release from the state court jurisdiction.

U.S. DEPT. OF JUSTICE
DRUG ENFORCEMENT ADMIN.

01544

While federal forfeiture is necessary to "round out" federal drug prosecution, I believe that the State of Alaska needs its own tough legislation on forfeiture of drug related assets to complement its own laws.

Sincerely,



Zoran Yankovich
Acting Resident Agent in Charge
Drug Enforcement Administration



U.S. Department of Justice

Federal Bureau of Investigation

In Reply, Please Refer to
File No.

Post Office Box 100560
Anchorage, Alaska 99510
April 27, 1993

Mr. Charles E. Cole
Office of the Attorney General
State of Alaska
Department of Law
P.O. Box 110300 - State Capitol
Juneau, Alaska 99811-0300

Dear Mr. Cole,

I have been advised that the Alaska Legislature is currently considering a bill which would provide Alaskan law enforcement officers with the ability to pursue the forfeiture of property used by drug traffickers, as well as the profits derived from drug trafficking.

Please allow me this opportunity to state how beneficial similar legislation has been on the Federal level. The ability of the government to forfeit property connected with drug trafficking is a very effective law enforcement tool because it directly affects the purposes and motivation of drug traffickers. The forfeiture of assets of drug traffickers help eliminate the ability of these offenders to command the resources they need to continue their illegal enterprises. Federal forfeiture legislation contains safeguards to protect the interests of innocent owners and secured creditors. I understand the proposed Alaska legislation contains the same provisions.

My staff and I support your efforts to have legislation passed which authorized forfeiture of real property in specific criminal cases.

Please feel free to contact me if I or my staff can be of any further assistance in this matter.

Sincerely yours,

Burdena G. Pasenelli
Special Agent in Charge

01504

** TOTAL PAGE.002 **

FBI SUPPORT

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR


DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

P.O. BOX 110300 - STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: ~~XXXXXX~~ (907) 465-2075

April 29, 1993

TO: Honorable Robin Taylor
Senate Majority Leader

FROM: 
Charles E. Cole
Attorney General

SUBJECT: SB 139 Real Property Asset Forfeiture

Among the items in the Governor's crime package not yet acted upon by the legislature are the bills providing for forfeiture of interests in real property where the owner participates in illegal drug activities on the property or knowingly condones such activities on it, SB 139 and HB 188. HB 188 is stalled in House Finance, where Representative Kay Brown has managed to delay Committee action on the bill by interminably questioning one provision after another. Representative Eileen MacLean has also voiced objection to the bill. And questions exist whether Representatives Foster, Grussendorf, and Hoffman will vote to move it out of Committee. Yet if the bill were to get to the House floor I am confident that it would pass. Perhaps, therefore, the best approach is to seek passage first in the Senate.

This legislation is badly needed to fight the growing drug problem in Alaska. Annexed is an excerpt from the 1992 Annual Report of the Department of Public Safety, showing a dramatic increase in drug arrests and seizures in 1992 over 1991. Unless strong measures are taken by the legislature, drug activities in Alaska are expected to increase. We therefore ask your support for action on this legislation.

Law enforcement agencies strongly support this bill. Annexed are letters supporting it from the Federal Bureau of Investigation, the Drug Enforcement Administration, and General Cox, Alaska Department of Military and Veterans Affairs.

If you have any questions about this bill or if I in any way can be of any assistance in the passage of this bill by the Senate, I am available at your beckon.

CEC:pml

att.

93131

WALTER J. FICKEL
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 26, 1993

139

*The Honorable Rick Halford
President of the Senate
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182*

Dear Mr. President:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill amending the state's asset forfeiture laws to make them more effective. Many of these changes are found in the Model Asset Seizure and Forfeiture Act (1991), prepared by the American Prosecutor's Research Institute. This bill

- permits forfeiture of real property, including buildings;*
- permits tracing of drug money to allow forfeiture of any property purchased with that money;*
- permits forfeiture of all dangerous instruments used by a drug dealer, while existing law requires forfeiture only of firearms;*
- permits the sharing of forfeited assets between municipal police departments and the state;*
- requires the costs of the forfeiture proceedings to be paid by the drug dealer;*

SPONSOR STATEMENT

The Honorable Rick Halford
February 26, 1993
Page 2

-- allows the court to forfeit other assets of the drug dealer if the property to be forfeited is commingled with other property, has been removed from the jurisdiction, or has been destroyed by the drug dealer;

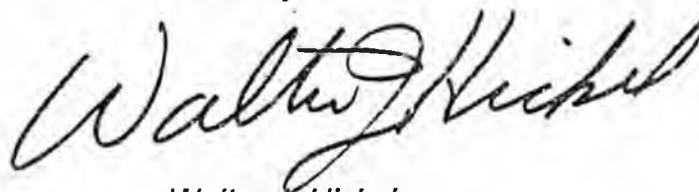
-- gives the state a perfected priority lien on the forfeited property, and thus avoids the pitfalls of Fehir v. State, 739 P.2d 785 (Alaska App. 1987), which permits unsecured creditors to claim forfeited property; and

-- resolves some of the procedural ambiguities in existing forfeiture law noted in Badoino v. State, 785 P.2d 39 (Alaska App. 1990).

This bill is one of four that I am introducing this session to create tough new laws to combat drugs and violent crime. If enacted, these bills will give the state the tools it needs to prosecute serious criminals fairly and effectively.

I urge your favorable action on this bill.

Sincerely,

A handwritten signature in cursive script, reading "Walter J. Hickel".

Walter J. Hickel
Governor

Figure 8: Drug and Asset Seizures.

Drug Type	FY 1991		FY 1992	
	July 1, 1990 - June 30, 1991		July 1, 1991 - June 30, 1992	
Cocaine	42.56 lbs.		77.62 lbs.	
Marijuana	132.47 lbs.		1010.88 lbs.	
Marijuana Plants	6,444		9,512	
Heroin	117.35 grams		12781.0 grams	
Hashish	3.0 grams		97878.5 grams	
Amphetamines	917.25 grams		93.6 grams	
Mushrooms	104 grams		22.8 grams	
Dilaudid	67 dosage units		1106 dosage units	
LSD	483 dosage units		1540 dosage units	
Other	12 dosage units		90 dosage units	

Type of Asset		
Cash	\$530,144	\$489,388
Vehicles	\$192,225	\$204,075
Property	\$429,948	\$1,893,349
TOTAL ASSETS	\$1,152,317	\$2,586,812

Figure 9: Arrests by Type of Drug.

Drug Type	FY 1991		FY 1992	
	July 1, 1990 - June 30, 1991		July 1, 1991 - June 30, 1992	
Cocaine	125	56%	220	29%
Marijuana	50	23%	441	58%
Other	26	12%	53	7%
Multi-Drug	20	9%	45	6%
Total	221	100%	759	100%

FISCAL NOTE

No. 4

STATE OF ALASKA
1993 LEGISLATIVE SESSION

Bill Version: SB 139

(S) Publish Date: 2-26-93

Revision Date: February 16, 1993

Title: "An Act relating to forfeiture of certain property..."

Sponsor: Rules Committee/Rep. of Governor

Requestor: Governor's Office/OMB

Department Affected: Department of Law

BRU: Prosecution

Component: All

COMPONENT SERIAL NO. 0085 through 0090

EXPENDITURES/REVENUES:

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE FUND SOURCE:						
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FUNDING:

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

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

Estimate of current year (FY93) impact: -0-

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

Richard I. Peques

Prepared by: Richard I. Peques, Director

Division: Administrative Services Division

Phone: 465-3672

Date: February 16, 1993

Approved by Commissioner: Charles E. Cole, Attorney General

Agency: Department of Law

Date: February 16, 1993

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FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. _____

ANALYSIS (Continued):

This bill amends the state drug asset forfeiture laws (AS 17.30) in order to resolve procedural ambiguities in the existing law, as noted in Badoino v. State. Because of those ambiguities the state has had to rely on federal prosecutors for most drug forfeiture actions in Alaska, thus reducing the proceeds that would otherwise flow to the state as the result of the seizure and sale of assets used in narcotics trafficking.

This bill would also permit the forfeiture of real property, including buildings; permit the tracing of drug money to allow forfeiture of any property purchased with that money; permit the forfeiture of all dangerous instruments used by a drug dealer, while existing law requires forfeiture only of firearms; permit the sharing of forfeited assets between municipal police departments and the state; require the state's costs for forfeiture proceedings to be paid by the drug dealer; allow the court to forfeit other assets of the drug dealer if the property to be forfeited is commingled with other property, has been removed from the court's jurisdiction or has been destroyed by the drug dealer; and give the state a perfected priority lien on the forfeited property ahead of unsecured creditors.

All of these changes are designed to improve the state's forfeiture and disposal of drug trafficking assets, and they are expected to have a positive fiscal impact for the state.

FISCAL NOTE

No. 3

STATE OF ALASKA
1993 LEGISLATIVE SESSION.

Bill Version: SB 139

(S) Publish Date: 2-26-93

Revision Date: _____ Dept. Affected: Public Safety
 Title: "An Act relating to forfeiture
of certain property." BRU: Alaska State Troopers
 Component: Criminal Investigation Bureau
 Sponsor: Rules
 Requestor: Governor COMPONENT SERIAL NO. 830

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

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
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 FUND SOURCE:	-0-	-0-	-0-	-0-	-0-	-0-

FINDING: (Thousands of Dollars)


1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
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 (FY 93) impact: \$ _____

ANALYSIS: (Attach a separate page if necessary.) This zero fiscal note is based on the assumption that the Department of Admin. will make forfeiture reports available to the Dept. of Public Safety Commissioner to determine recommendations for the transfer of up to 90% of the net value of forfeited property to one or more agencies or political subdivisions of the State as set out in Sec. 17.30.122(4).

Prepared By: C.E. Swackhammer Phone: 465-4322
 Division: Office of the Commissioner Date: 2/12/93
 Approved by Commissioner:  Date: 2/12/93
 Agency: Richard I. Burton, Dept. of Public Safety

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BILL NO: SB 139

DATE: March 24, 1993

TITLE: "An Act relating to forfeiture of certain property. . ."


CONTACT: C.E. Swackhammer
Deputy Commissioner
465-4322

SB 139 will provide law enforcement with a more effective means of utilizing asset forfeiture as a tool to combatting drugs and violent crimes by taking weapons away from criminals and illegally gained assets from drug dealers.

This bill will:

- permit forfeiture of real property including buildings;
- permit tracing of drug money to allow forfeiture of any property purchase with that money;
- permit forfeiture of all dangerous instruments used by a drug dealer;
- permit the sharing of forfeited assets between municipal police departments and the state;
- require the cost of all forfeiture proceedings to be paid by the drug dealer;
- allow the court to forfeit other assets of the drug dealer if the property to be forfeited is co-mingled with other property, or has been removed from the jurisdiction;
- give the state a perfected priority lien on the forfeited property and to avoid the pitfalls of unsecured creditors claiming forfeited property;
- resolve current procedural ambiguities in existing forfeiture law;

This legislation will provide Alaskan law enforcement agencies with the same mechanism presently utilized by the Federal government to seize from drug dealers assets used in the commission of crimes relating to controlled substances.



Richard L. Burton
Commissioner

FISCAL NOTE

No. 2

STATE OF ALASKA
1993 LEGISLATIVE SESSION

Bill Version: SB 139

(S) Publish Date: 2-26-93

Revision Date: _____

Department Affected: Administration

Title: An Act relating to forfeiture of certain property . . .

BRU: Public Defender Agency

Component: Public Defender Agency

Sponsor: Rules Committee

Requestor: Governor

COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES:

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
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 FUND SOURCE:	0	0	0	0	0	0
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FUNDING:

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	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 (FY93) impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: John Salemi, Public Defender

Phone: 279-7541

Division: Public Defender Agency

Date: _____

Approved by Commissioner: Nancy Bear Useja

Agency: Administration

Date: 2/10/93

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FISCAL NOTE

No. 1

STATE OF ALASKA
1993 LEGISLATIVE SESSION

Bill Version: SB 139

(S) Publish Date: 2-26-93

Revision Date: _____
 Title: 'An Act relating to forfeiture of certain property:
and providing. . .'
 Sponsor: Governor
 Requestor: Rules Committee

Department Affected: Administration
 BRU: Office of Public Advocacy
 Component: Office of Public Advocacy

COMPONENT SERIAL NO. 43

EXPENDITURES/REVENUES:

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
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 FUND SOURCE:	0	0	0	0	0	0
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FUNDING:

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	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 (FY93) impact: None

ANALYSIS: (Attach a separate page if necessary.)

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

Phone: 274-1684
 Date: _____

Approved by Commissioner: Nancy Bear Usera
 Agency: Administration

Date: 2/10/93

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