

SB

30

<TARGET><BILL>SB 30</BILL><SUBJECT>SB
30</SUBJECT><COMM>SFIN27</COMM></TARGET>

SENATE FINANCE COMMITTEE REPORT

DATE: 4/7/11

FURTHER:

DATE TURNED
IN TO OFFICE: 4/27/12

Finance Committee considered SENATE BILL NO. 30

SB 30-RETURN OF SEIZED PROPERTY

"An Act providing for the release of certain property in the custody of a law enforcement agency to the owner under certain conditions."

and recommends:

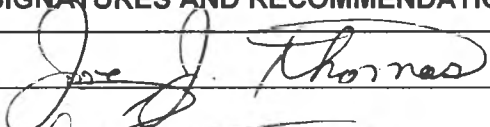

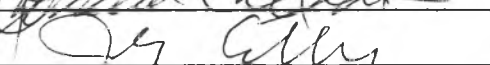
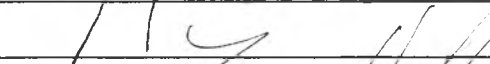


- be replaced with CS _____ (_____) Same Title New Title
- adopt previous CS SB 30 (20 JUD) Same Title New Title
- attached amendment(s)
- adopt _____ Letter of Intent
- further referral to _____ Committee

Dept Abbr.	
ADM	LEG
CED	LAW
COR	LWF
CRT	MVA
EED	DNR
DEC	DPS
DFG	REV
GOV	DOT
DHS	UA

NEW FISCAL NOTE(S)				
Dept.	Fiscal	Indet.	Zero	FN #
DPS			X	
LAW		X		

PREVIOUS FISCAL NOTE(S)				
Dept.	Fiscal	Indet.	Zero	FN #

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	Do PASS	Do NOT PASS	NO REC	AMEND
	Thomas	<input checked="" type="checkbox"/>			
	Egan	<input checked="" type="checkbox"/>			
	O'Shea	<input checked="" type="checkbox"/>			
	Ellis	<input checked="" type="checkbox"/>			
CO-CHAIR: 	Hoffman	<input checked="" type="checkbox"/>			
CO-CHAIR: 	Stedman	<input checked="" type="checkbox"/>			

FISCAL NOTE

STATE OF ALASKA
2012 LEGISLATIVE SESSION

Bill Version SB030
Fiscal Note Number _____
() Publish Date _____

Identifier (file name) SB030CS(2d JUD)-DPS-DET-12-28-11 Dept. Affected Public Safety
Title "An Act providing for the release of certain property." Appropriation Alaska State Troopers
Allocation AST Detachments
Sponsor Senator Dyson
Requester (S) FIN OMB Component Number 2325

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	FY13 Appropriation Requested	Included in Governor's FY13 Request	Out-Year Cost Estimates				
			FY14	FY15	FY16	FY17	FY18
OPERATING EXPENDITURES	FY13	FY13	FY14	FY15	FY16	FY17	FY18
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants, Benefits							
Miscellaneous							
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE		(Thousands of Dollars)					
1002	Federal Receipts						
1003	GF Match						
1004	GF						
1005	GF/Prgm (DGF)						
1037	GF/MH (UGF)						
1178	temp code (UGF)						
TOTAL		0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS							
Full-time							
Part-time							
Temporary							

CHANGE IN REVENUES							
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Estimated SUPPLEMENTAL (FY12) operating costs _____ (separate supplemental appropriation required)
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY13) costs _____ (separate capital appropriation required)
(discuss reasons and fund source(s) in analysis section)

Why this fiscal note differs from previous version (if initial version, please note as such)

Updated on new fiscal note form.

Prepared by Kelly Howell
Division Office of the Commissioner
Approved by Joe Masters, Commissioner
Department of Public Safety

Phone (907) 269-5591
Date/Time 12/28/11 8:01 AM
Date 12/15/2011

FISCAL NOTE

STATE OF ALASKA
2012 LEGISLATIVE SESSION

BILL NO. SB030

Analysis

This bill amends AS 12.36 by adding a new section regarding the return of property in the custody of a law enforcement agency. This legislation specifies that the owner of property in the custody of a law enforcement agency may request that the agency return the property. Further, that within 10 days of the request and following reasonable notice to all involved parties, a request for a court hearing shall be made.

Currently it is the standard practice of the department to return seized personal property as soon as possible. This legislation will not have a significant impact on the workload of the department.

FISCAL NOTE

STATE OF ALASKA cost # codes
 2012 LEGISLATIVE SESSION

Bill Version SB 30
 Fiscal Note Number _____
 Publish Date _____

Identifier (file name) SB030CS(2d JUD) LAW-CRIM-12-13-11 Dept. Affected Law
 Title An Act providing for the release of property in the custody Appropriation Criminal
of a law enforcement agency to the owner. Allocation Criminal Justice Litigation
 Sponsor SENATORS DYSON
 Requester (S) FINANCE OMB Component Number 2202

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	FY13 Appropriation Requested	Included in Governor's FY13 Request	Out-Year Cost Estimates				
			FY14	FY15	FY16	FY17	FY18
OPERATING EXPENDITURES							
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants, Benefits							
Miscellaneous							
TOTAL OPERATING	***	***	***	***	***	***	***

FUND SOURCE		(Thousands of Dollars)						
1002	Federal Receipts							
1003	GF Match							
1004	GF							
1005	GF/Prgm (DGF)							
1037	GF/MH (UGF)							
1178	temp code (UGF)							
TOTAL		***	***	***	***	***	***	***

POSITIONS								
Full-time								
Part-time								
Temporary								

CHANGE IN REVENUES							

Estimated SUPPLEMENTAL (FY12) operating costs _____ (separate supplemental appropriation required)
 (discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY13) costs _____ (separate capital appropriation required)
 (discuss reasons and fund source(s) in analysis section)

Why this fiscal note differs from previous version (if initial version, please note as such)

Updated for new fiscal year form.

Prepared by Eileen Donahue, Division Operations Manager
 Division Administrative Services
 Approved by John J. Burns, Attorney General
Department of Law

Phone 465-5427
 Date/Time 12/13/11 4:45PM
 Date 12/13/2011

FISCAL NOTE

STATE OF ALASKA
2012 LEGISLATIVE SESSION

BILL NO. SB 30

Analysis

SB 30 would adopt a procedure for the owner of property to request the Office of Victims' Rights to investigate whether property in the custody of law enforcement should be returned to them. The Victims' Advocate may, after an investigation, request that a hearing about the property be held. This note is indeterminate because the department may be required to represent law enforcement agencies at the hearings proposed in the bill. At this time we are not sure how many of these proceedings will occur. The issues raised may be complex, particularly if defense counsel opposes the return.



SENATOR FRED DYSON

SPONSOR STATEMENT

CS SB 30 (2d JUD)

An Act providing for the release of certain property in the custody of a law enforcement agency to a crime victim under certain conditions and relating to requests for that release by the Office of Victims' Rights

CS SB 30 (2d JUD) introduces within the Alaska Code of Criminal Procedure a process for victims of property crime to petition the court for relief in recovering their property held as evidence.

Too often victims of theft and robbery are victimized a second time by bureaucracy. This is particularly true in cases of property crimes where demonstrable loss occurs to the victim's person or business as a result of property being held for a protracted period of time by a law enforcement agency, usually at the direction of prosecution, defense counsel and/or other interested parties.

The law as currently written, provides discretionary authority to the prosecution for release of property, but does not clearly provide a right of hearing for a property owner to directly petition the court in those circumstances when crime victims, prosecution and defense cannot come to agreement on return of property to the crime victim.

Victims of property theft often face the added burden of replacing stolen property. Small business owners who suffer property loss may face bankruptcy if the loss results in the inability to consummate a sale, continue their business operations, or the stolen property is uninsured or underinsured.

Property recovered by a law enforcement agency may be held as evidence for a protracted period of time. Property owners deserve protections in the law to ensure their property is held as evidence only as long as necessary for the prosecution and defense to physically retain the item, without jeopardizing the case.

CS SB 30 (2d JUD) will provide property owners in the Alaska Code of Criminal Procedure, a clearly identifiable process to petition the court through the Office of Victims' Rights for the recovery of their property in those circumstances where they are otherwise not able to reach agreement with interested parties on the return of property.

Contact: Chuck Kopp, Staff to Senator Dyson (907)465-6580

CSSB 30 (2d JUD) Witness List

Victor Kester, Director, Office of Victims Rights – (907)272-2620

Les Syren, Attorney, Syren Law Offices, Anchorage – (907)903-1022

Eric Derleth, Trial Attorney, Soldotna – (907)262-9164

Dennis DeWitt, Alaska State Home Builders Association – (907)586-2565

ALASKA STATE SENATE



SENATOR FRED DYSON

SECTION ANALYSIS – CS SB30 (2d JUD)

Section 1

1. Provides that a crime victim who is the owner of property in the custody of a law enforcement agency may request the agency for the return of their property through the Office of Victims' Rights (OVR).
2. OVR will file the request with the agency after conducting an investigation into the request to make an initial determination if the crime victim is entitled to return of the property being claimed under the requirements of proposed 12.36.070(c): the crime victim provides satisfactory proof of ownership, and the party that objects to the return of the property fails to prove that the property must be retained by the agency for evidentiary purposes.
3. Once OVR makes such a determination, they will request on behalf of the crime victim that the agency return the property.
4. Within 10 days after receipt of request and following reasonable notice to prosecution, defense and other interested parties, the agency will request a hearing before the court to determine if the property shall be released to the crime victim.
5. The court of jurisdiction is identified in cases involving a pending criminal case and in situations where no criminal case is pending.
6. Establishes the burden of proof to be a *preponderance of the evidence*, for both the crime victim showing ownership and the objecting party proving the property must be retained by the agency.
7. Establishes that if the court orders the return of the property to the crime victim, the court may impose reasonable conditions on the return to maintain the evidentiary integrity of the property.
8. Identifies the term *crime victim* as having the meaning given to *victim* in AS 12.55.185, the Code of Criminal Procedure.

Section 2

1. Establishes within Title 24, Chapter 65 *Office of Victims' Rights* the authority of OVR to request a law enforcement agency for return of property on behalf of a crime victim claiming property after conducting an investigation as proscribed in AS 12.36.070(c).
2. Provides that the victims' advocate may use any of the powers granted to the advocate under Title 24, Chapter 65.

During Session (January - May): Alaska State Capitol • Juneau, Alaska 99801 • (800) 342-2199 • (907) 465-2199 • (907) 465-4587 (fax)

During Interim (June-December): 10928 Eagle River Road, Suite 238 • Eagle River, Alaska 99577 • (907) 694-6683 • (907) 694-1015 (fax)

senator.fred.dyson@legis.state.ak.us • www.akrepublicans.org

ALASKA STATE SENATE



SENATOR FRED DYSON

CS SB30(2d JUD) - EXPLANATION OF CHANGES

The substantive changes to SB 30 since introduction on 01/19/11 are as follows:

1. The use of the term *owner* was changed to *crime victim* out of a concern that bill language would allow for defendants to misuse the *return of property hearing* process, and detract from the intention of the bill, to promote victims' rights by returning property to crime victims.
2. The introduction of the Office of Victims' Rights to the return of property process was done to alleviate a concern that bill language may inadvertently open the door to a significant number of requests for return of property hearings from crime victims, and that a required intermediary step be considered to vet the requests to make a pre-determination concerning eligibility of crime victims to have their property returned to them.
3. Original bill language permitted property owners to directly request from a law enforcement agency the return of their property. For reasons mentioned in #2, the current version provides that the Office of Victims' Rights files a request with the law enforcement agency on behalf of the crime victim for return of property.
4. Original bill language required the law enforcement agency to prove that the agency or another interested party is authorized to retain possession of the property. Judiciary committee members and the Office of Public Defender recommended that *the party that objects to the return of the property* should be the entity with the burden of proof that the property should be retained and not returned to the crime victim.
5. Dept of Law requested the following changes in cooperation with the bill sponsor –
 - a. Clarification of court jurisdiction when the property in question is part of a criminal case, and when it is not part of a criminal case.
 - b. An evidentiary standard of proof be established to guide the Court with decisions of whether the burden of proof is met by the parties. The standard is *a preponderance of the evidence*.
 - c. The party who objects to the return of property to a crime victim shall state the reason on the record.
 - d. Clarifies the *reasonable conditions* the court may impose on the return of property to crime victims to maintain the evidentiary integrity of the property.
6. The term *crime victim* is defined as the meaning given to *victim* in AS 12.55.185, Alaska Code of Criminal Procedure.
7. Consistent with the changes identified in #2, the current version of SB 30 establishes within Title 24, Chapter 65 – Office of Victims' Rights, the authority of OVR to request a law enforcement agency for return of property on behalf of a crime victim.

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SENATOR FRED DYSON

CS SB 30 (2d JUD) NOTES

1. Alaska Statutes - Title 12 *Code of Criminal Procedure*, Chapter 36 *Disposition of Recovered or Seized Property*, Sec. 20 *Return of Property*, provides the legal process for return of property.
2. 12.36.020(a) identifies those circumstances when a law enforcement agency may **not** return property to an owner.
3. 12.36.020(b) provides for the return of property to owners at the discretion of the prosecuting attorney where photographs are used as evidence in place of the property, stating the prosecuting attorney may release the property to the owner upon presentation of satisfactory proof of ownership.
4. 12.36.020(c) states that wrongfully taken or damaged property that is *not* properly photographed and authenticated under 12.45.086 *Photographic evidence of property wrongfully taken or damaged*, and used as evidence in a criminal or children's court proceeding, is to be returned to the owner within 60 days after the final disposition of the case.
5. 12.36.020(c) is problematic for two reasons. First, it is the crime victim who suffers unjustly if the property was not properly photographed and authenticated; and second, final disposition of the case may be protracted for a long period of time. The return of property to its rightful owner may be hindered by concerns of prosecution, defense, and/or other interested parties.
6. 12.45.086 *Photographic evidence of property wrongfully taken or damaged*, defines the process for admissibility of photographs as evidence in criminal and children's court proceedings. This section states that properly submitted photographs are to be regarded to the same extent as if the property itself was introduced as evidence. This sounds good, but in practice falls short of its intent. 12.45.086(c) seems to recognize this problem by singling out only the theft of commercial fishing gear as being property that shall be returned to the owner as soon as possible. Nearly all thefts of property from businesses should be returned to the rightful owners ASAP.
7. CS SB 30 (2d JUD) seeks to restore victims to a pre-offense condition by providing directly to the crime victim the right of a court hearing to recover possession of the crime victim's property, and requiring that the party who objects to the return of the property prove to the court that their interest in the property overrides the crime victim's interest in having it returned.
8. CS SB 30 (2d JUD) provides that property owners who are *crime victims* must make a request for hearing through the Office of Victims' Rights (OVR) whose purpose is to vet the requests to determine if certain conditions are met in the law to allow for an owner claiming property to request a hearing.
9. 12.36.090 *Definitions* of "law enforcement agency" includes the Office of District Attorney, Department of Law, as this is a public agency having one of its principal functions being the enforcement of the criminal law.



**ALASKA STATE
HOMEBUILDERS ASSOCIATION**

February 22, 2011

Senator Fred Dyson
Alaska State Capitol
Juneau, Alaska 99801-1182

Re: SB 30 in support

Senator

We write you in support of SB-30 (An Act providing for the release of property in the custody of a law enforcement agency to the owner under certain conditions)

We agree to the supporting of SB-30 as representatives of the ASHBA (Alaska State Home Building Association), with a membership of 700 plus professionals operating and working in the construction industry. The organization views this form of legislation as beneficial to those individuals, or companies that are violated through theft, or the court systems as a means to acquire their property, and be able to utilize while the situation is resolved through the legal process.

This legislation will benefit all parties living in the state of Alaska, and will surely be well received through its passing.

If you are in need of any members being available to telephonically testify, or require any additional assistance please do not hesitate to ask.

Thank you for sponsoring SB-30

Dave Owens
President ASHBA

Alan Wilson
Co-Chair ASHBA
Legislative Committee

Paul Michelsohn Jr.
Co-Chair ASHBA
Legislative Committee



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The Voice of Small Business®

ALASKA

March 1, 2011

Senator Fred Dyson
Alaska State Senator
State Capitol Building
Juneau, Alaska 99801-1182

RE Senate Bill 30

Dear Senator Dyson,

On behalf of the National Federation of Independent Business/Alaska, I wish to express our support for Senate Bill 30. The National Federation of Independent Business is the largest small-business advocacy group in Alaska.

SB 30 would provide a mechanism for businesses that have had property stolen to gain assistance in recovering the items that are often critical to the continuation of a person's business.

While often there is not a problem retrieving property from authorities that are prosecuting a case, there are times when small businesses find that they are not considered as important as other issues. SB 30 provides the person assistance from the office of victims' rights to help recover stolen property being held by a law enforcement agency.

While the problem of retrieving stolen property is not always a problem, small businesses have found themselves fighting the government who has bottomless resources. The legal cost and loss of business are a very heavy burden to small businesses.

We believe that CSSB 30 is a reasonable solution to a potentially devastating problem for small businesses.

Sincerely yours,

Dennis L. DeWitt
Alaska State Director