

LEG. FINANCE - BILLS 1981 - 1982 1704

SB 686 - SB 688 1704

COMMITTEE REPORT
SENATE

FURTHER:

Date: _____

Mr. President:

The Committee on _____ has had _____

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for _____ same title
 new title
- and recommends _____
- AND attaches a "Letter of Intent" New Fiscal Note
w/o F.N. (4/26)
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. CS for Senate Bill 686 (Judiciary)
 Title Act relating to return of evidence in a criminal proceeding
 Requested by Senate Finance Committee Date 4/26/82

II. FISCAL DETAIL

Agency Affected Department of Public Safety
 Program Category Affected Administration of Justice
 BRU, Program, Or Subprogram(s) Affected Alaska State Troopers
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES		0				
200 TRAVEL		0				
300 CONTRACTUAL		0				
400 COMMODITIES		0				
500 EQUIPMENT		0				
600 LAND & STRUCTURES		0				
700 GRANTS, CLAIMS, ETC.		0				
TOTAL		0				

FUNDING (Thousands of Dollars)

GENERAL FUND		0				
FEDERAL FUNDS		0				
OTHER (Specify Source)		0				

POSITIONS

0

FULL TIME		0				
PART TIME		0				
TEMPORARY		0				

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

IV. DATE April 26, 1982

PREPARED BY 

AGENCY Don Bennett, Chairman

Original: Legislative Finance

PHONE Senate Finance Committee

cc: Budget and Management

Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/81)

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. CS Senate Bill 686 (Judiciary,
Title "An Act... property recovered or seized..."
Requested by Senate Judiciary Date 4/6/82

II. FISCAL DETAIL
Agency Affected Department of Public Safety
Program Category Affected Administration of Justice
BRU, Program, Or Subprogram(s) Affected Alaska State Troopers
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL		157.5	171.7	187.2	204.0	222.4
400 COMMODITIES		59.9	65.3	71.2	77.6	84.6
500 EQUIPMENT		35.0				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		252.4	237.0	258.4	281.6	307.0

FUNDING (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND		252.4	237.0	258.4	281.6	307.0
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

- 300 - Film processing at \$15.00/per roll. Use estimated at 35 rolls each for 300 officers.
 - 400 - Film purchase at \$5.70/per roll. Use estimated at 35 rolls each for 300 officers.
 - 500 - One hundred 35mm single reflex cameras at \$350 each will be needed for Troopers not already equipped.
- 9% inflation included for FY 84-87

IV. DATE April 7, 1982 PREPARED BY Marcia Lynn McKenzie
AGENCY Department of Public Safety
Original: Legislative Finance PHONE 465-4349
cc: Budget and Management
Prime Sponsor (First Legislator Named)
33-001 (Rev. 12/81)

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. SB-686
 Title "Act relating to return and seizure of property"
 Requested by _____ Date _____

II. FISCAL DETAIL

Agency Affected Department of Public Safety
 Program Category Affected NRMEC
 BRU, Program, Or Subprogram(s) Affected Fish & Wildlife Protection
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL		52.5	57.2	62.3	67.9	74.0
400 COMMODITIES		20.0	21.8	23.8	25.9	28.2
500 EQUIPMENT		35.0				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		107.5	79.0	86.1	93.8	102.2

FUNDING (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND		107.5	79.0	86.1	93.8	102.2
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

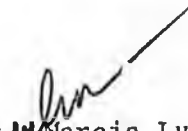
	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

Costs related to this bill would be allocated to the following:

- 300 - Film processing: 35 rolls each at \$15.00 for 100 officers
- 400 - Film purchasing: 35 rolls each at \$5.70 for 100 officers
- 500 - Camera equipment: 100 single reflex cameras with lenses suitable for identification photos, estimated at \$350 each.

2% inflation added for FY 84-87.

IV. DATE March 3, 1982 PREPARED BY  Marcia Lynn McKenzie
 AGENCY Department of Public Safety
 Original: Legislative Finance PHONE 465-4349
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)
 33-001 (Rev. 12/81)

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. Senate Bill No. 686
Title "An Act relating to...property...seized...as evidence...."
Requested by _____ Date _____

II. FISCAL DETAIL
Agency Affected Department of Public Safety
Program Category Affected Administration of Justice
BRU, Program, Or Subprogram(s) Affected Alaska State Troopers
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES		86.5	94.3	102.8	112.1	122.1
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES		217.3	236.9	258.2	281.5	306.8
500 EQUIPMENT		35.0				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		338.8	331.2	361.0	393.6	428.9

FUNDING (Thousands of Dollars)

GENERAL FUND		338.8	331.2	361.0	393.6	428.9
FEDERAL FUNDS						
OTHER (Specify Source)						
Total		338.8	331.2	361.0	393.6	428.9

POSITIONS

FULL TIME		3	3	3	3	3
PART TIME						
TEMPORARY						
Total		3	3	3	3	3

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

The Division's review of the potential impact of this Bill indicates that three Clerk IV's will be required to man evidence rooms in Anchorage, Fairbanks and Juneau for more hours than are presently required. Additionally, a sufficient number of cameras (100) will be needed to equip troopers not already equipped with 35mm rigs. Film is estimated at \$20.70 per roll for purchase and processing and it is estimated that each of 300 officers will use 35 rolls per year.

IV. DATE February 17, 1982 PREPARED BY *Francis C. Allan*
AGENCY Department of Public Safety
Original: Legislative Finance PHONE 269-5691
cc: Budget and Management
Prime Sponsor (First Legislator Named)
33-001 (Rev. 12/81)



Official Business

Alaska State Legislature

Senate

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

SECTIONAL ANALYSIS OF SB 686

Legislative Intent - The Committee Substitute is intended to address a major problem faced by victims of property crime, namely the delay in the return of property until after appellate review. For private citizens this is a nuisance, for businesses it can be a major loss in revenue. CSSB 686 seeks to alleviate this "double victimization" by allowing certain property to be photographed and the photographs entered as evidence rather than the actual property. The bill is drafted in a manner which will allow prosecutors to retain property that is not amenable to photographic treatment under this act, such as seized weapons that have subsequently been used in the commission of an offense.

*Sec. 1 - Adds new subsections to 12.35.025 Seizure of Property. Provides that seized property is to be inventoried by peace officer and that copies of the inventory, the warrant and supporting affidavit shall be provided to the person from whom the property was seized or posted at the location where the property was seized.

*Sec. 2 - Adds new section to Title 12 entitled Disposition of Recovered or Seized Property.

12.36.020 - Provides that property may be returned to owners if the property is not required for a court proceeding or subject to forfeiture. Further provides that photographs may be admitted as evidence in place of property under 12.80.050.

12.36.030 - Provides that unclaimed property used as evidence is disposed of by sale after one year. If the property is money it is deposited with the court.

12.36.040 - Provides that property coming into the possession of a law enforcement agency where the owner is unknown shall be held for two years, then disposed of as provided in 12.36.030.

12.36.090 - Definitions Section

*Sec. 3 - 12.80.050 - Allows photographs of property to be admissible as evidence if accompanied by a description of the property, the owner's name, the location of the crime, the investigating officer's name, the date the photograph was taken and the name and signature of the photographer.

*Sec. 4 - Repealer Section

*Sec. 5 - Notification of court rule change.

Sec. 12.30.070. Contempt. Nothing in this chapter shall prevent a court from exercising its power to punish for contempt. (§ 1 ch 20 SLA 1966)

Stated in *White v. State*, Sup. Ct. Op. No. 946 (File No. 1907), 514 P.2d 814 (1973).

Sec. 12.30.080. Definitions. In AS 12.30.010 — 12.30.070

- (1) "judicial officer" means a person authorized to release a person pending trial, sentencing, or pending appeal;
- (2) "offense" means any criminal offense. (§ 1 ch 20 SLA 1966)

Chapter 35. Search and Seizure.

Section

10. Issuance of search warrant
 20. Grounds for issuance
 25. Seizure of property
 30. [Repealed]
 40. Authority of officer executing warrant
 50. Disposition of property taken
 60. Malicious procurement of search warrant

Section

70. Search of defendant in presence of judge or magistrate
 80. Judge, magistrate or officer to hold property allegedly stolen or embezzled
 90. Delivery of property to owner
 100. Property not delivered to owner
 110. Disposal of unclaimed property
 120. Definition of search warrant

Sec. 12.35.010. Issuance of search warrant. A judicial officer may issue a search warrant upon a showing of probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the thing to be seized. (§ 4.01 ch 34 SLA 1962; am § 13 ch 69 SLA 1970)

Cross references. — See Cr. R. 37(a). For constitutional provisions as to searches and seizures, see Alaska Const., art. I, § 14.

Legislative history report. — For report on ch. 69, SLA 1970 (HB 564), see 1970 House Journal Supplement No. 2, p. 7 (February 10, 1970).

- For discussion of when an affidavit contains sufficient facts to establish probable cause for the issuance of a search warrant, see *Keller v. State*, Sup. Ct. Op. No. 1221 (File No. 2330), 543 P.2d 1211 (1975).

Am. Jur. 2d and ALR references. — 68 Am. Jur. 2d, Searches and Seizures, § 16.

Supporting affidavit, disputing matters stated in, 5 ALR2d 394.

Propriety and legality of issuing only one search warrant to search more than one place or premises occupied by same person, 31 ALR2d 864.

Sufficiency of description of automobile or other conveyance to be searched, 47 ALR2d 1444.

Sufficiency of description of person to be searched, 49 ALR2d 1209.

Interest in, or connection with, premises searched as affecting standing to attack legality of search, 78 ALR2d 246.

Propriety or lawfulness of seizure, not incident to arrest, of papers, documents, letters, books, and records not described in warrant, 79 ALR2d 1065.

Lawfulness of nonconsensual search and seizure without warrant, prior to arrest, 89 ALR2d 715.

Sufficiency of showing as to time of occurrence of facts relied upon, 100 ALR2d 525.

Propriety of considering hearsay or other incompetent evidence in establishing probable cause for issuance of search warrant, 10 ALR3d 359.

Sufficiency of description, in search warrant, of apartment or room to be searched in multiple-occupancy structure, 11 ALR3d 1330.

Modern status of rule as to validity of nonconsensual search and seizure made

without warrant after lawful arrest as affected by lapse of time between, or difference in places of, arrest and search, 19 ALR3d 727.

Propriety of execution of search warrant at night time, 26 ALR3d 531.

Sec. 12.35.020. Grounds for issuance. A search warrant may be issued if the judicial officer reasonably believes any of the following:

- (1) that the property was stolen or embezzled;
- (2) that the property was used as a means of committing a crime;
- (3) that the property is in the possession of a person who intends to use it as the means of committing a crime, or in possession of another to whom he may have delivered it for the purpose of concealing it or preventing its being discovered;
- (4) that the property constitutes evidence of a particular crime or tends to show that a certain person has committed a particular crime;
- (5) that either reasonable legislative or administrative standards for conducting a routine or area inspection with regard to air pollution are satisfied with respect to the particular place, dwelling, structure, premises, or vehicle, or there is reason to believe that a condition of nonconformity exists with respect to the particular place, dwelling, structure, premises, or vehicle. (§ 4.02 ch 34 SLA 1962; am §§ 1, 2 ch 198 SLA 1968; am § 4 ch 86 SLA 1969; am § 14 ch 69 SLA 1970)

Cross reference. — See Cr. R. 37(a).
 Legislative history report. — For report on ch. 69, SLA 1970 (HB 564), see 1970 House Journal Supplement No. 2, p.

7 (February 10, 1970).
 C.J.S. reference. — 79 C.J.S. Searches and Seizures §§ 63-84, 91-97, 112-117.

Sec. 12.35.025. Seizure of property. Property described in AS 12.35.020 may be taken on a warrant from:

- (1) a house or other place in which it is concealed or may be found;
- (2) the possession of the person by whom it was stolen, embezzled, or used in the commission of a crime;
- (3) a person who is in possession of the property;
- (4) the possession of a person to whom the property has been delivered for the purpose of concealing it or preventing its being discovered, or from a house or other place occupied by him or under his control. (§ 15 ch 69 SLA 1970)

Legislative history report. — For report on ch. 69, SLA 1970 (HB 564), see 1970 House Journal Supplement No. 2, p. 7 (February 10, 1970).
 ALR references. — Authority to

consent for another to search or seizure, 31 ALR2d 1078.
 Validity of consent to search given by one in custody of officers, 9 ALR3d 858.

Sec. 12.35.030. Showing of probable cause.

Repealed by § 16 ch 69 SLA 1970.

Editor's note. — The repealed section report on ch. 69, SLA 1970 (HB 564), see derived from § 4.03, ch. 34, SLA 1962. 1970 House Journal Supplement No. 2, p. Legislative history report. — For 7 (February 10, 1970).

Sec. 12.35.040. Authority of officer executing warrant. In the execution or service of a search warrant, the officer has the same power and authority in all respects to break open any door or window, to use the necessary and proper means to overcome forcible resistance made to him, or to call any other person to his aid as he has in the execution or service of a warrant of arrest. (§ 4.04 ch 34 SLA 1962)

Cross reference. — For discussion of knock and announce requirement, see note to AS 12.25.100.

AS 12.25.100, in conjunction with this section, establishes the procedure for forcing entry in executing both a search warrant and an arrest warrant. Davis v. State, Sup. Ct. Op. No. 1070 (File No. 1973), 525 P.2d 541 (1974). AS 12.25.100 and this section operate jointly to establish the procedure required for the lawful execution of a search warrant. Lockwood v. State, Sup. Ct. Op. No. 1809 (File No. 3356), 591 P.2d 969 (1979).

~~Sec. 12.35.050. Disposition of property taken. When the property is delivered to the judge or magistrate, he shall, if it was stolen or embezzled, dispose of it as provided in AS 12.35.090 and AS 12.35.100. If it was taken on a warrant issued on the grounds stated in AS 12.35.020(2) and (3), he shall retain it in his possession, subject to the order of the court to which he is required to return the proceedings before him, or any other court in which the crime in respect to which the property was taken is triable. (§ 4.05 ch 34 SLA 1962)~~

~~Sec. 12.35.060. Malicious procurement of search warrant. A person who maliciously and without probable cause causes a search warrant to be issued and executed is guilty of a misdemeanor. (§ 4.06 ch 34 SLA 1962)~~

WHERE IS THIS REPEALED

OK

Sec. 12.35.070. Search of defendant in presence of judge or magistrate. When a person charged with a crime is believed by the judge or magistrate before whom he is brought to have on his person a dangerous weapon, or anything which may be used as evidence of the commission of the crime, the judge or magistrate may direct the accused to be searched in his presence, and the weapon or other thing be retained subject to his order or the order of the court in which the defendant may be tried. (§ 4.07 ch 34 SLA 1962)

~~Sec. 12.35.080 Judge, magistrate or officer to hold property allegedly stolen or embezzled. When property alleged to have been stolen or embezzled comes into the custody of a judge, magistrate or peace officer, he shall hold it subject to the order of the judge or~~

magistrate who examines the charge against the person accused of stealing or embezzling the property. (§ 4.08 ch 34 SLA 1962; am § 11 ch 8 SLA 1971)

Cross reference. — See Cr. R. 37(b). report on ch. 8, SLA 1971 (HB 15), see 1971
Legislative history report. — For House Journal, p. 52.

~~Sec. 12.35.090. Delivery of property to owner. On satisfactory proof of ownership of the property, the judge or magistrate who examines the charge against the person accused of stealing or embezzling it shall order it to be delivered to the owner or his duly authorized agent, on his paying the reasonable and necessary expenses incurred in its preservation, to be certified by the judge or magistrate. The order entitles the owner to demand and receive the possession of the property but does not affect the rights of third persons. (§ 4.09 ch 34 SLA 1962; am § 12 ch 8 SLA 1971)~~

~~Legislative history report. — For report on ch. 8, SLA 1971 (HB 15), see 1971 House Journal, p. 52.~~

~~Sec. 12.35.100. Property not delivered to owner. If the property stolen or embezzled has not been delivered to the owner, the court before which the trial is had for the theft or embezzlement of the property may order its delivery to the owner or his agent under the conditions of AS 12.35.090. (§ 4.10 ch 34 SLA 1962)~~

~~Sec. 12.35.110. Disposal of unclaimed property. If property stolen or embezzled is not claimed by the owner within 60 days after the conviction of the person for stealing or embezzling it, the judge, magistrate or other officer having it in custody shall, if it is money, deposit it in court, or if it is other property, sell it in the same manner as a sale upon an execution. After paying the expenses of the sale and preservation of the property as certified by the court, the proceeds shall be disposed of in the same manner as money collected upon judgments in favor of the state. (§ 4.11 ch 34 SLA 1962; am § 13 ch 8 SLA 1971)~~

~~Cross reference. — See Cr. R. 37(b). report on ch. 8, SLA 1971 (HB 15), see 1971
Legislative history report. — For House Journal, p. 52.~~

Sec. 12.35.120. Definition of search warrant. A search warrant is an order in writing, signed by a judge or magistrate, directed to a peace officer, commanding him to search for personal property and bring it before the judge or magistrate. (§ 4.01 ch 34 SLA 1962; am § 14 ch 8 SLA 1971)

ARTICLE IX. DOCUMENTARY EVIDENCE

Rule 901. Requirement of Authentication or Identification.

The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims, except as provided in paragraphs (a) and (b) below:

(a) Whenever the prosecution in a criminal trial offers (1) real evidence which is of such a nature as not to be readily identifiable, or as to be susceptible to adulteration, contamination, modification, tampering, or other changes in form attributable to accident, carelessness, error or fraud, or (2) testimony describing real evidence of the type set forth in (1) if the information on which the description is based was acquired while the evidence was in the custody or control of the prosecution, the prosecution must first demonstrate as a matter of reasonable certainty that the evidence is at the time of trial or was at the time it was observed properly identified and free of the possible taints identified by this paragraph.

(b) In any case in which real evidence of the kind described in paragraph (a) of this rule is offered, the court may require additional proof before deciding whether to admit or exclude evidence under Rule 403. (Added by Supreme Court Order 364 effective August 1, 1979)



Official Business

Alaska State Legislature

Senate

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

MINUTES OF THE SENATE JUDICIARY COMMITTEE

OF

APRIL 7, 1982

Butrovich Committee Room, State Capitol Juneau, Alaska

Legislation Before Committee:

- SB 686 - "An Act relating to the return of property received or seized by law enforcement agencies or acquired as evidence in a criminal proceeding."
- SB 863 - "An Act providing for the award of costs and attorney fees incurred by defendants acquitted of offenses and by individuals who prevail in certain state administrative proceedings; changing Rules 79 and 82, Rules of Civil Procedure; and providing for an effective date."
- HB 194 - "An Act relating to prisoner employment and correctional industries; and providing for an effective date."

The meeting of the Senate Judiciary Committee was called to order by Chairman Rodey at 1:35 P.M. Committee members present were: Senators Rodey, Ray, Parr, and Anderson. Senator Bennett was absent.

002 - Call to order.

005 - Chairman Rodey brought SB 686 before the committee.

179 - Senator Ray moved that on Page 2, Line 22, delete [six months] and insert 30 days. There was no objection.

202 - Senator Parr moved to pass SB 686 with individual recommendations. There was no objection.

228 - Chairman Rodey brought SB 863 before the committee.

245 - Ron Lorenson, Department of Law, testified that the committee substitute was superior to the original bill and that the fiscal impact would be considerably smaller.

771 - Gary Jenkins, National Federation of Independent Business' testified in favor of this bill, but asked the committee to adopt language which would allow individuals that file against the state in tax cases be covered for attorney fees.

820 - Chairman Rodey directed Mr. Bruce to work with Mr. Asper to prepare language to include all state agencies within the bill, including the University of Alaska. Staff was directed to delete [offense or] on Line 24, Page 1, and to draft language to meet Mr. Jenkins concerns.

845 - SB 863 returned to file.

SIDE TWO

284 - Chairman Rodey brought HB 194 before the committee.

295 - Mr. Stark, Department of Law, testified in favor of HB 194.

635 - Mr. Charles Campbell and Mr. Roman, Department of HESS, Division of Corrections, testified in favor of this bill.

684 - HB 194 returned to file.

756 - Adjourned 3:05 P.M.



Official Business

Alaska State Legislature

Senate

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

MINUTES OF THE SENATE JUDICIARY COMMITTEE

OF

APRIL 5, 1982

Butrovich Committee Room, State Capitol Juneau, Alaska

Legislation Before Committee:

- SB 327 - "An Act relating to parole of offenders; continuing the existence of the Board of Parole; and providing for an effective date."
- HB 377 - "An Act relating to factors in aggravation for purposes of imposing presumptive terms of imprisonment for felonies."
- SB 686 - "An Act relating to the return of property recovered or seized by law enforcement agencies or acquired as evidence in a criminal proceeding."
- SB 864 - "An Act continuing the existence of the Alaska Code Revision Commission and amending the statutes relating to its responsibilities."

The meeting of the Senate Judiciary Committee was called to order by Chairman Rodey at 1:40 P.M. Committee members present were: Senators Rodey, Ray, Parr, and Anderson. Senator Bennett was absent.

002 - Call to order.

005 - Chairman Rodey brought SB 327 before the committee.

027 - Senator Anderson moved to delete [S100] and insert S150 on Page 3, Line 1. Senator Ray objected.

076 - Senator Anderson's amendment was adopted with Senator's Rodey, Parr, and Anderson a yes vote. Senator Ray voted no.

124 - Senator Parr moved to pass SB 327 with individual recommendations. There was no objection.

184 - Chairman Rodey brought SB 864 before the committee.

220 - Mr. Bruce goes over language.

417 - Senator Parr moved that beginning on Page 2, Line 24 the following language be added: Each draft of legislation submitted by the commission shall be accompanied by a sectional analysis; the commission shall prepare the sectional analysis using language that is understandable to a layman. There was no objection.

531 - Senator Ray moved to strike Sec. 4 of the committee substitute beginning on Page 2, Line 21: [(2) establish one or more subcommittees to assist it in the performance of its duties; the commission may appoint any person to serve on a subcommittee established under this paragraph.] There was no objection.

547 - Senator Ray moves to pass SB 864 with individual recommendations. There was no objection.

558 - Chairman Rodey brought HB 377 before the committee.

560 - Mr. Bruce explains the committee substitute.

640 - Senator Anderson moved to adopt the committee substitute for HB 377. Senator Ray objected on the basis that the committee substitute is not germane to the original bill.

659 - Senator Anderson moved to pass HB 377 pending the chair's decision on germaneness.

675 - Chairman Rodey brought SB 686 before the committee.

677 - Pat Corheady, Department of Law, testified, giving the changes in the bill.

107 - Don Magnuson, representing the Alaska Retailers Association, testified in favor of photographing evidence.

180 - SB 686 returned to file.

183 - Adjourned at 3:15 P.M.

Original sponsors: Rodey, Bradley,
Dankworth, et al

Offered: 4/8/82
Referred: Finance

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 CS FOR SENATE BILL NO. 686 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the return of property recovered or
7 seized by law enforcement agencies or acquired as
8 evidence in a criminal proceeding; and changing
9 Rule 901, Alaska Rules of Evidence."

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

11 * Section 1. AS 12.35.025 is amended by adding new subsections to read:

12 (b) When property is seized under this chapter, the peace officer
13 taking the property shall give to the person from whom or from whose
14 premises the property was taken a copy of the warrant, a copy of the
15 supporting affidavit, and a receipt for the property taken, or shall
16 leave the copies and the receipt at the place from which the property
17 was taken.

18 (c) The return of the warrant to the court shall be made promptly
19 and shall be accompanied by a written inventory of the property taken.
20 The inventory shall be made in the presence of the applicant for the
21 warrant and the person from whose possession or premises the property
22 was taken, if they are present, or in the presence of at least one other
23 person as witness.

24 (d) The inventory required by (c) of this section shall be signed
25 by the peace officer under penalty of perjury under AS 09.63.020. The
26 judge or magistrate shall, upon request, deliver a copy of the inventory
27 to the person from whom or from whose premises the property was taken
28 and to the applicant for the warrant.

29 * Sec. 2. AS 12 is amended by adding a new chapter to read:

1 CHAPTER 36. DISPOSITION OF RECOVERED OR SEIZED PROPERTY.

2 Sec. 12.36.010. PROPERTY DISPOSITION. When property not belonging
3 to a law enforcement agency comes into the custody of the agency, the
4 property shall be disposed of in accordance with this chapter.

5 Sec. 12.36.020. RETURN OF PROPERTY. (a) A law enforcement agency
6 may return property in its custody to the owner or the agent of the
7 owner if

8 (1) the property is not in custody in connection with a
9 children's court proceeding, a criminal proceeding, or an official
10 investigation of a crime; and

11 (2) the property in custody is not subject to forfeiture
12 under the laws of the state.

13 (b) In a criminal proceeding or a children's court proceeding
14 involving the wrongful taking or damaging of property where photographs
15 of the property are used as evidence in place of the property, the
16 prosecuting attorney may release the property to the owner upon presenta-
17 tion of satisfactory proof of ownership.

18 (c) If wrongfully taken or damaged property is not photographed
19 and authenticated under AS 12.80.050 and the property is used as evi-
20 dence in a criminal proceeding or a children's court proceeding, the law
21 enforcement agency in possession of the property shall return it to the
22 owner upon presentation of satisfactory proof of ownership within 60
23 days after the final disposition of the case.

24 Sec. 12.36.030. DISPOSAL OF UNCLAIMED PROPERTY USED AS EVIDENCE.

25 (a) If property that is used as evidence in a criminal proceeding or a
26 children's court proceeding, including wrongfully taken or damaged
27 property, is not claimed by the owner within one year after the final
28 disposition of the case, the law enforcement agency having custody of
29 the property shall dispose of it under (b) of this section.

1 (b) If the property to be disposed of is money, the law enforce-
2 ment agency shall deposit it in the court or, if it is property other
3 than money, sell it in the same manner as a sale upon execution. After
4 paying the expenses of the sale and the preservation of the property,
5 the law enforcement agency shall dispose of the proceeds of the sale in
6 the same manner as money collected upon a judgment in favor of the
7 state.

8 Sec. 12.36.040. DISPOSAL OF PROPERTY WHEN OWNER UNKNOWN. When the
9 owner of property is unknown and the property comes into the possession
10 of a law enforcement agency as suspected evidence of a crime but is not
11 used in a criminal proceeding or a children's court proceeding, or when
12 the property comes into the possession of a law enforcement agency by
13 other means, the property shall be held for two years. If the property
14 is not claimed within two years of the date it comes within the posses-
15 sion of a law enforcement agency, the property shall be disposed of as
16 provided in AS 12.36.030(b).

17 Sec. 12.36.090. DEFINITION. In this chapter,

18 (1) "final disposition of a case" means the time when all
19 appeals have been exhausted or the time when all appeals that could have
20 been taken has expired;

21 (2) "law enforcement agency" means a public agency that
22 performs as one of its principal functions an activity relating to crime
23 prevention, control, or reduction or relating to the enforcement of the
24 criminal law; "law enforcement agency" does not include a court;

25 (3) "peace officer" means a public servant vested by law with
26 a duty to maintain public order or to make arrests, whether the duty
27 extends to all offenses or is limited to a specific class of offenses or
28 offenders.

29 * Sec. 3. AS 12.80 is amended by adding a new section to read:

1 Sec. 12.80.050. PHOTOGRAPHIC EVIDENCE OF PROPERTY WRONGFULLY TAKEN
2 OR DAMAGED. (a) In a criminal proceeding or a children's court proceed-
3 ing involving the wrongful taking or damaging of property, photographs
4 of the property are competent evidence of the property and are admissible
5 in the proceeding to the same extent as if the property had been intro-
6 duced as evidence.

7 (b) Photographs of property that are to be introduced as evidence
8 under this section shall be accompanied by a written description of the
9 property, the name of the owner of the property, the location where the
10 alleged crime occurred, the name of the investigating peace officer, the
11 date the photograph was taken, and the name and signature of the photo-
12 grapher. The written description shall be signed by the investigating
13 peace officer under penalty of perjury under AS 09.63.020.

14 * Sec. 4. AS 12.35.050 and 12.35.080 - 12.35.110 are repealed.

15 * Sec. 5. AS 12.80.050 added in sec. 3 of this Act has the effect of
16 amending Rule 901, Alaska Rules of Evidence, by specifying requirements for
17 the authentication of photographic evidence of property unlawfully taken or
18 damaged.

Introduced: 1/27/82
Referred: Judiciary

BY RODEY, BRADLEY, DANKWORTH,
KELLY, KERTTULA AND RAY

1 IN THE SENATE

2 SENATE BILL NO. 686

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the return of property recovered or
7 seized by law enforcement agencies or acquired as
8 evidence in a criminal proceeding."

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

10 * Section 1. AS 12 is amended by adding a new chapter to read:

11 CHAPTER 38. RETURN OF RECOVERED OR SEIZED PROPERTY.

12 Sec. 12.38.010. PROPERTY IN CUSTODY OF PEACE OFFICER. When prop-
13 erty not belonging to a law enforcement agency or to its peace officers
14 comes into the custody of the agency or its peace officers, the property
15 shall be disposed of in accordance with the provisions of this chapter.

16 Sec. 12.38.020. RELEASE OF PROPERTY WITH NO EVIDENTIARY VALUE.

17 (a) Except when prohibited by this chapter, a peace officer shall
18 immediately release property in his custody to the owner or agent of the
19 owner without delivering it for recording in the property book in accor-
20 dance with AS 12.38.060, if

21 (1) the peace officer reasonably believes that the property
22 will have no evidentiary value in a criminal proceeding;

23 (2) the owner is known;

24 (3) the owner or agent of the owner presents proper personal
25 identification and reasonable proof of ownership;

26 (4) the peace officer reasonably determines that ownership of
27 the property is undisputed by

28 (A) informing the person claiming ownership or his agent
29 that release of the property is without prejudice to the state, to

1 the person from whom custody was taken, or to any other person who
2 may have a claim to the property, including the person, if any,
3 accused of theft of the property;

4 (B) asking the person claiming ownership of the property
5 or his agent whether he knows of any other persons claiming owner-
6 ship of the property; and

7 (C) checking the criminal justice information system for
8 ownership information if it is possible that the property is re-
9 corded in the system;

10 (5) the owner or the agent of the owner signs a property
11 release form in accordance with AS 12.38.040.

12 (b) If a peace officer is unable to immediately release property
13 under (a) of this section because the owner is not known, the peace
14 officer shall attempt to locate the owner at the earliest possible time
15 and shall inform the owner of the recovery of the property and the
16 release procedures. If the peace officer is unable to release the
17 property by the end of his work shift, he shall deliver the property to
18 the person who has the duty of recording it in a property book under
19 AS 12.38.060.

20 Sec. 12.38.030. RELEASE OF PROPERTY THAT HAS EVIDENTIARY VALUE.

21 (a) Except when prohibited by AS 12.38.050, a peace officer shall
22 release property in his custody to the owner or agent of the owner, even
23 if the property has potential evidentiary value in a criminal prosecu-
24 tion, without first recording the property in a property book in accor-
25 dance with AS 12.38.060, if

26 (1) the requirements of AS 12.38.020(2) - (5) are satisfied;

27 (2) in the case of property having potential evidentiary
28 value in a felony prosecution, photographs are taken at the scene of the
29 crime or at the peace officer's headquarters; the photographs must depict

1 (A) the property owner, his agent, or the victim of the
2 offense;

3 (B) the property to be released;

4 (C) the report number written on card stock propped up
5 or held by a person in the photograph; and

6 (D) unique or distinguishing characteristics that may be
7 beneficial in identifying the property;

8 (3) in the case of property having potential evidentiary
9 value in a misdemeanor prosecution, the peace officer makes taking of
10 photographs as set out in (2) of this subsection a prerequisite to
11 release of the property;

12 (4) the owner or agent of the owner agrees, as evidenced by
13 his signature on the property release form under AS 12.38.040, that he
14 will not alter or dispose of the released property until notified that
15 the case is officially closed or adjudicated, with the following excep-
16 tions:

17 (A) perishable items, including consumable items with
18 broken seals, need not be retained;

19 (B) if the property to be released has evidentiary value
20 in a prosecution for theft of the first or second degree, is part
21 of a merchant's inventory, and there are several items being
22 returned, the merchant must retain only one representative item
23 until the case is officially closed or adjudicated and the other
24 items may be returned to inventory for sale;

25 (C) if the property to be released has evidentiary value
26 in a prosecution for theft of the third or fourth degree, is part
27 of a merchant's inventory, and the merchant intends to prosecute,
28 the peace officer may allow the merchant to return a released item
29 to inventory for sale if the merchant or his agent, in the presence

1 of the peace officer, takes a color photograph depicting the suspect
2 (if he is on the merchant's premises and does not refuse to be
3 photographed), the stolen property, and a large sheet of white
4 paper containing a complete description of the stolen items and the
5 date of the incident;

6 (5) before release of the property the peace officer marks
7 items to be retained by the owner with an identifying number in an
8 inconspicuous place.

9 (b) If a peace officer is unable to release property with potential
10 evidentiary value in accordance with this section, he shall deliver it
11 to the person responsible for recording it in a property book as set out
12 in AS 12.38.060.

13 Sec. 12.38.040. PROPERTY RELEASE FORM. (a) Property in the
14 custody of a peace officer or law enforcement agency may not be released
15 to the owner or agent of the owner unless the owner or agent executes a
16 property release form containing the following:

- 17 (1) the name of the owner;
- 18 (2) a description of the released property, including serial
19 number, manufacturer, model, and distinguishing characteristics;
- 20 (3) a declaration that the property is owned by the person
21 whose name is listed as the owner;
- 22 (4) the date;
- 23 (5) the signature of the releasing officer;
- 24 (6) the name of the person authorizing release;
- 25 (7) a notation of whether the property was released at the
26 scene of the crime or in the station;
- 27 (8) a statement that
- 28 (A) the property has no evidentiary value in a criminal
29 proceeding and that the owner is not required to retain the item

1 for use as evidence; or

2 (B) the owner has been advised that he must produce the
3 released property if required by the court as evidence in a criminal
4 proceeding in connection with its original loss, and that he should
5 not dispose of the released property or alter the physical charac-
6 teristics until after criminal prosecution involving the loss of
7 the property is completed since doing so could seriously impair the
8 prosecution;

9 (9) property release form number.

10 (b) When an officer executes the property release form, he shall
11 strike the statements set out in accordance with (a)(8) of this section
12 according to whether or not the property released must be retained by
13 the owner for its evidentiary value.

14 Sec. 12.38.050. PROPERTY THAT MUST BE RECORDED IN PROPERTY BOOK.
15 A peace officer may not release the following property but shall deliver
16 it to the person responsible for recording it in a property book under
17 AS 12.38.060:

18 (1) items taken as the result of a search warrant;

19 (2) money;

20 (3) items that cannot be examined at the scene of the crime
21 but must be processed by a crime laboratory;

22 (4) items used as weapons in the commission of a crime;

23 (5) items that, although not normally considered weapons,
24 tend to show the aggravated nature of a crime;

25 (6) unlawful property.

26 Sec. 12.38.060. PROPERTY CONTROL DUTIES OF LAW ENFORCEMENT AGENCY.

27 (a) Each law enforcement agency shall maintain a property book in which
28 shall be entered a description of each article of property delivered by
29 a peace officer for recording. The law enforcement agency shall attach

1 a number to each article corresponding to the entry in the property book
2 and shall record all available information pertaining to the ownership
3 of each article. The law enforcement agency may engrave or embed an
4 identification number on an article from which a serial number has been
5 removed.

6 (b) Each law enforcement agency shall follow the procedure set
7 out in AS 12.38.020 and 12.38.030 in releasing property described in
8 those sections to the rightful owner, including making reasonable efforts
9 to locate as early as possible the owner of property that may be immedi-
10 ately released.

11 (c) Each law enforcement agency shall arrange a hearing under
12 AS 12.39.030 before a judge or magistrate in the judicial district where
13 the property is located to adjudicate disputed ownership of property in
14 its custody that it is authorized to release. The law enforcement
15 agency shall provide the judge or magistrate with the names of all
16 claimants, including the person from whose custody the property was
17 taken and the person, if any, accused of theft of the property.

18 (d) The law enforcement agency shall attempt to locate the owner
19 of property listed in AS 12.38.050(1) - (5) and shall release the
20 property to the owner upon

21 (1) receipt of authorization from the prosecuting attorney
22 when the criminal investigation involving the property is closed or the
23 criminal prosecution is concluded or dismissed; or

24 (2) order of a judge or magistrate in the judicial district
25 where the property is located.

26 (e) The law enforcement agency shall destroy, sell, or otherwise
27 dispose of property used in the commission of a crime for which the
28 owner of the property is convicted and unlawful property according to
29 the order of a judge or magistrate in the judicial district where the

1 property is located.

2 (f) Except as provided in AS 12.38.070, the law enforcement agency
3 shall dispose of unclaimed property that is authorized to be released
4 and that remains unclaimed one year after the date it is authorized to
5 be released. Disposal shall be in accordance with the procedures set
6 out in AS 34.49 (Unclaimed Property).

7 (g) Property released or disposed of under this section is released
8 or disposed of without prejudice to the state or to a person accused of
9 theft of the property or to the person from whom the property was taken
10 or to any other person who may have a claim to the property.

11 Sec. 12.38.070. DISPOSITION OF MONEY NOT USED AS EVIDENCE. (a)
12 If money received by a law enforcement agency as part of a criminal
13 investigation does not become evidence in a criminal prosecution and
14 does not belong to the agency, the money shall be returned to the owner,
15 if known, at the close of the investigation.

16 (b) Money described in (a) of this section that remains unclaimed
17 one year after the investigation is closed may be deposited with the
18 state Department of Revenue or with the treasurer of the political
19 subdivision of the state served by the law enforcement agency. Upon the
20 expiration of two years after the deposit, the department or the
21 treasurer shall cause a notice to be published once a week for two
22 successive weeks in a newspaper of general circulation published in the
23 political subdivision served by the law enforcement agency, except that
24 in the case of money deposited with the state, the department shall
25 cause the publication to be made in the borough or boroughs appropriate
26 to effect the return.

27 (c) The notice required by (b) of this section shall state the
28 amount of money, the circumstances of its delivery to or recovery by the
29 law enforcement agency, and that it is proposed that the money will

1 become the property of the state or political subdivision of the state,
2 as the case may be, on a designated date not less than 45 days or more
3 than 60 days after the first publication of the notice.

4 (d) Unless a person files a verified complaint seeking to recover
5 all or part of the money in a court of competent jurisdiction within the
6 judicial district in which the notice is published, and serves a copy of
7 the complaint and the summons issued on the complaint upon the Department
8 of Revenue or the treasurer before the date designated in the notice, on
9 that date the money becomes the property of the state or political
10 subdivision of the state.

11 Sec. 12.38.080. DEFINITIONS. In this chapter

12 (1) "law enforcement agency" means a public agency that
13 performs as one of its principal functions activities pertaining to law
14 enforcement as defined in AS 12.62.070(5);

15 (2) "peace officer" means a public servant vested by law with
16 a duty to maintain public order or to make arrests, whether the duty
17 extends to all offenses or is limited to a specific class of offenses or
18 offenders;

19 (3) "unlawful property" means a dangerous or deadly weapon,
20 narcotic or poison drug, explosive, or property of any kind or character
21 that the law makes unlawful to possess.

22 * Sec. 2. AS 12 is amended by adding a new chapter to read:

23 CHAPTER 39. DISPOSITION OF EVIDENCE.

24 Sec. 12.39.010. PROPERTY IN CUSTODY OF COURT OR OFFICER OF COURT.
25 When property comes into the custody of the court or an officer of the
26 court for use as evidence in a criminal prosecution, whether or not
27 actually introduced into evidence, the court or an officer of the court
28 shall dispose of the property in accordance with the provisions of this
29 chapter.

1 Sec. 12.39.020. DISPOSITION OF EXHIBIT WHEN OWNERSHIP NOT DISPUTED.

2 (a) If the ownership of property acquired as an exhibit in a criminal
3 proceeding is undisputed and the owner can be reasonably ascertained,
4 the court or the officer of the court who has custody of the property
5 shall notify the owner of the location of the property and the procedure
6 for obtaining possession of the property. Notice must be given at the
7 time the conviction or at the time the judgment or other termination of
8 the proceedings becomes final. After the expiration of three months
9 from the time notice is given, the court or an officer of the court may,
10 on application of the owner or agent of the owner, order the property
11 delivered to the owner or agent. If a criminal proceeding results in an
12 order granting probation, the property may be delivered after final
13 determination of an appeal of the order or after the time for appeal has
14 elapsed but no sooner than after the expiration of three months.

15 (b) If the owner of an exhibit other than a documentary exhibit is
16 unknown or fails to apply for the return of the exhibit, the procedure
17 for its disposition is as follows:

18 (1) After the expiration of one year from the time the convic-
19 tion becomes final or, if the criminal proceeding has not resulted in a
20 conviction, at any time after the judgment becomes final or the proceed-
21 ing is dismissed, the court shall make an order specifying what exhibits
22 may be released from the custody of the court without prejudice to the
23 state. Upon receipt of the order, the clerk of the court shall dispose
24 of the exhibits by following the procedures set out in AS 34.49 (Un-
25 claimed Property).

26 (2) If the exhibit consists of money, the clerk or other
27 officer of the court having custody of the money shall dispose of it
28 following the procedure set out in AS 12.38.070(b) - (d).

29 (c) If the owner of a documentary exhibit is unknown or fails to

1 apply for the return of the exhibit, after the expiration of one year
2 from the time the conviction becomes final or, if the criminal proceed-
3 ing has not resulted in a conviction, at any time after the judgment
4 becomes final or the proceeding is dismissed, the court shall make an
5 order requiring the exhibit to be destroyed. However, an order autho-
6 rizing the destruction of a documentary exhibit may not be made if the
7 destruction of the exhibit would prejudice the state.

8 (d) Notwithstanding (a) - (c) of this section, the court may, on
9 application of the owner of an exhibit or the agent of the owner, order
10 an exhibit delivered to the applicant before the final determination of
11 the criminal proceeding upon stipulation of the parties to the proceed-
12 ing if

- 13 (1) prejudice will not be suffered by either party;
14 (2) it is not otherwise unlawful to release the exhibit;
15 (3) a full and complete photographic record is made of the
16 exhibit released.

17 (e) The court shall order the destruction, sale, or other appropri-
18 ate disposition of an exhibit that was used as an instrumentality in the
19 commission of a crime for which the accused is convicted or that is
20 considered unlawful property as defined in AS 12.38.080. An order may
21 not be issued under this subsection unless the court has determined that
22 prejudice will not be suffered by the state or the accused.

23 Sec. 12.39.030. DISPOSITION OF EXHIBIT WHEN OWNERSHIP IS DISPUTED.

24 (a) The court shall give notice by registered mail to all persons
25 claiming ownership of an exhibit in the custody of the court or an
26 officer of the court, the person from whom custody of the property was
27 taken, and the person accused of theft of the item. The notice must
28 contain the date, time, and place of the hearing to be conducted to
29 determine the ownership of the exhibit.

1 (b) At the hearing the court or an officer of the court shall
2 receive evidence of ownership of the property concerned and order dis-
3 position of the property.

4 (c) Delivery of property made under AS 12.38 or AS 12.39.020 may
5 be reviewed under the procedures set out in this section upon application
6 of a person claiming ownership of property delivered to another.

7 (d) The court shall adjudicate under the procedures set out in
8 this section any property dispute referred under AS 12.38.060(c).

9 (e) Delivery of property under this section is without prejudice
10 to the state.

11 Sec. 12.39.040. EVIDENCE RESULTING FROM SEARCH AND SEIZURE.
12 Nothing in this chapter affects the right of a person aggrieved by an
13 unlawful search and seizure to seek redress under the provisions of Rule
14 37, Rules of Criminal Procedure.

15 * Sec. 3. AS 12.35.050 is repealed and reenacted to read:

16 Sec. 12.35.050. DISPOSITION OF PROPERTY TAKEN. Property seized
17 under a search warrant shall be disposed of in accordance with AS 12.38
18 and AS 12.39.

19 * Sec. 4. AS 12.35.070 is amended to read:

20 Sec. 12.35.070. SEARCH OF DEFENDANT IN PRESENCE OF JUDGE OR
21 MAGISTRATE. When a person charged with a crime is believed by the judge
22 or magistrate before whom he is brought to have on his person a dangerous
23 weapon, or anything which may be used as evidence of the commission of
24 the crime, the judge or magistrate may direct the accused to be searched
25 in his presence, and the weapon or other thing be retained subject to
26 the provisions of AS 12.38 and AS 12.39 [HIS ORDER OR THE ORDER OF THE
27 COURT IN WHICH THE DEFENDANT MAY BE TRIED].

28 * Sec. 5. AS 12.35.080 - 12.35.110 are repealed.
29

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE (amended 4/12/82)

I. REQUEST

Bill/Resolution No. SB 687 Page 1 of 2
 Title An Act relating to the Issuance of Search Warrants
 Requested by _____ Date _____

II. FISCAL DETAIL

Agency Affected Alaska Court System
 Program Category Affected Administration of Justice
 BRU, Program, Or Subprogram(s) Affected Trial Courts
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT		72.5				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		72.5	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND		72.5	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

SB 687 permits the issuance of a search warrant upon the sworn oral testimony of a person communicated by telephone. The judicial officer is required to record the proceedings by using a voice recording device. This bill will necessitate the installation of a cassette recorder with voice coupler and a speaker phone in each judge and magistrate chamber, as well as in most judicial officers' homes, since requests for a search warrant can occur any time of day or night. The cost of these setups will be \$390 each, and it is estimated that 185 of them will be needed statewide as a direct result of this legislation. This will generate an initial cost of \$72,500 for equipment (reduced from an original estimate of \$78,000 for 200 setups). There are no major ongoing costs associated with this part of the bill.

IV. DATE 4/12/82 PREPARED BY Richard P. Barrier
 AGENCY Alaska Court System
 Original: Legislative Finance PHONE 264-0545
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)
 33-001 (Rev. 12/81)

SB 687 also requires the transcription of each recorded search warrant proceeding. The Court System is not equipped to produce this number of transcripts statewide, and to achieve the required level of transcription would cost a tremendous but unknown sum of money. The Court System opposes the automatic transcription requirement, since any warrants that are challenged can always be transcribed upon request. If this bill passes with this provision still in, it will be necessary for the Court System to provide an accurate estimate of the fiscal impact of the transcript production.

Original sponsors: Rodey, Bradley,
Dankworth, et al

Offered: 4/15/82
Referred: Finance

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 HOUSE CS FOR SENATE BILL NO. 687 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the issuance of search warrants;
7 and changing Rule 37, Rules of Criminal Procedure."

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

9 * Section 1. AS 12.35.010 is amended by adding a new subsection to read:

10 (b) A judicial officer may issue a search warrant upon the sworn
11 oral testimony of a person communicated by telephone or other appropri-
12 ate means in accordance with AS 12.35.015.

13 * Sec. 2. AS 12.35 is amended by adding a new section to read:

14 Sec. 12.35.015. ISSUANCE OF SEARCH WARRANT UPON SWORN ORAL TESTI-
15 MONY COMMUNICATED BY TELEPHONE OR OTHER APPROPRIATE MEANS. (a) A
16 judicial officer may issue a search warrant upon the sworn oral testi-
17 mony of a person communicated by telephone or other appropriate means if
18 the judicial officer finds that there is probable cause to believe that

19 (1) the presentation of the applicant's affidavit or testi-
20 mony personally before the judicial officer would result in delay in
21 obtaining a search warrant and in executing the search; and

22 (2) the delay might result in loss or destruction of the
23 evidence subject to seizure.

24 (b) A judicial officer shall place under oath each person whose
25 testimony forms a basis of the application and each person applying for
26 the search warrant. The judicial officer shall record the proceeding by
27 using a voice recording device.

28 (c) The applicant for the search warrant shall prepare a document
29 to be known as a duplicate original warrant and shall read it verbatim

1 to the judicial officer. The judicial officer shall enter, verbatim, on
2 an original search warrant what is read to him. The judicial officer
3 may direct that the duplicate original search warrant be modified.

4 (d) If a search warrant is issued under this section, the judicial
5 officer shall orally authorize the applicant to sign the judicial offi-
6 cer's name on the duplicate original search warrant. The judicial
7 officer shall immediately sign the original search warrant and enter on
8 the face of the original search warrant the exact time when the search
9 warrant was ordered to be issued.

10 (e) The person who executes a search warrant issued under this
11 section shall enter the exact time of execution on the face of the
12 duplicate original search warrant.

13 (f) Absent a finding of bad faith, evidence obtained under a
14 warrant issued under this section is not subject to a motion to suppress
15 on the ground that the circumstances did not support its issuance under
16 (a) of this section.

17 * Sec. 3. AS 12.35.120 is amended to read:

18 Sec. 12.35.120. DEFINITION OF SEARCH WARRANT. A search warrant is
19 an order in writing, signed by a judge or magistrate or signed at the
20 direction of a judicial officer in accordance with AS 12.35.015, directed
21 to a peace officer, commanding him to search for personal property and
22 bring it before the judge or magistrate.

23 * Sec. 4. AS 12.35.015, added by sec. 2 of this Act, has the effect of
24 changing Rule 37, Rules of Criminal Procedure, by allowing search warrants to
25 be issued upon sworn oral testimony communicated by telephone or other appro-
26 priate means.

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. Senate Bill No. 687
 Title "An Act relating to the issuance of search warrants..."
 Requested by _____ Date _____

II. FISCAL DETAIL

Agency Affected Department of Public Safety
 Program Category Affected Administration of Justice/Public Protection
 BRU, Program, Or Subprogram(s) Affected Alaska State Troopers
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						
	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
FULL TIME						
PART TIME						
TEMPORARY						
	-0-	-0-	-0-	-0-	-0-	-0-

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

No fiscal impact.

IV. DATE February 2, 1982 PREPARED BY Francis C. Allan
 AGENCY Department of Public Safety
 Original: Legislative Finance PHONE 269-5691
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)
 33-001 (Rev. 12/81)

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
 Bill/Resolution No. HCSSB 687 (Jud)
 Title An Act Relating to Issuance of Search Warrants, etc.
 Requested by _____ Date _____

II. FISCAL DETAIL
 Agency Affected Dept. of Public Safety
 Program Category Affected NPMEC
 BRU, Program, Or Subprogram(s) Affected Fish & Wildlife Protection
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	0	0	0	0	0	0

FUNDING (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						
TOTAL	0	0	0	0	0	0

POSITIONS

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
FULL TIME						
PART TIME						
TEMPORARY						
TOTAL	0	0	0	0	0	0

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

IV. DATE 4/19/82 PREPARED BY Colorel Robert J. Stickle
 AGENCY Dept. of Public Safety
 Original: Legislative Finance PHONE 269-5532
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)
 33-001 (Rev. 12/81)

RAC

Mho

Introduced: 1/27/82
Referred: Judiciary

1 IN THE SENATE

BY RODEY, BRADLEY, DANKWORTH,
KELLY, KERTTULA AND FAY

2 SENATE BILL NO. 687

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the issuance of search warrants;
7 and changing Rule 37, Rules of Criminal Procedure."

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

9 * Section 1. AS 12.35.010 is amended by adding a new subsection to read:

10 (b) A judicial officer may issue a search warrant upon the sworn
11 oral testimony of a person communicated by telephone or other appropri-
12 ate means in accordance with AS 12.35.015.

13 * Sec. 2. AS 12.35 is amended by adding a new section to read:

14 Sec. 12.35.015. ISSUANCE OF SEARCH WARRANT UPON SWORN ORAL TESTI-
15 MONY COMMUNICATED BY TELEPHONE OR OTHER APPROPRIATE MEANS. (a) A
16 judicial officer may issue a search warrant upon the sworn oral testi-
17 mony of a person communicated by telephone or other appropriate means if
18 the judicial officer finds that there is probable cause to believe that

19 (1) the presentation of the applicant's affidavit or testi-
20 mony personally before the judicial officer would result in delay in
21 obtaining a search warrant and in executing the search; and

22 (2) the delay might result in loss or destruction of the
23 evidence subject to seizure.

24 (b) A judicial officer shall place under oath each person whose
25 testimony forms a basis of the application and each person applying for
26 the search warrant. The judicial officer shall record the proceeding by
27 using a voice recording device. The judicial officer shall, without
28 unnecessary delay, have the recording transcribed, shall certify the
29 accuracy of the transcription, and shall file the original recording and

1 the transcription with the court.

2 (c) The applicant for the search warrant shall prepare a document
3 to be known as a duplicate original warrant and shall read it verbatim
4 to the judicial officer. The judicial officer shall enter verbatim, on
5 an original search warrant what is read to him. The judicial officer
6 may direct that the duplicate original search warrant be modified.

7 (d) If a search warrant is issued under this section, the judicial
8 officer shall orally authorize the applicant to sign the judicial offi-
9 cer's name on the duplicate original search warrant. The judicial
10 officer shall immediately sign the original search warrant and enter on
11 the face of the original search warrant the exact time when the search
12 warrant was ordered to be issued.

13 (e) The person who executes a search warrant issued under this
14 section shall enter the exact time of execution on the face of the
15 duplicate original search warrant.

16 (f) Absent a finding of bad faith, evidence obtained under a
17 warrant issued under this section is not subject to a motion to suppress
18 on the ground that the circumstances did not support its issuance under
19 (a) of this section.

20 * Sec. 3. AS 12.35.120 is amended to read:

21 Sec. 12.35.120. DEFINITION OF SEARCH WARRANT. A search warrant is
22 an order in writing, signed by a judge or magistrate or signed at the
23 direction of a judicial officer in accordance with AS 12.35.015, directed
24 to a peace officer, commanding him to search for personal property and
25 bring it before the judge or magistrate.

26 * Sec. 4. AS 12.35.015, added by sec. 2 of this Act, has the effect of
27 changing Rule 37, Rules of Criminal Procedure, by allowing search warrants to
28 be issued upon sworn oral testimony communicated by telephone or other
29 appropriate means.

COMMITTEE REPORT
SENATE

2/4/82

FURTHER: None

Date: _____

Mr. President:

The Committee on FINANCE has had SB 688

making a special appropriation to the Dept. of Public Safety for a computerized fingerprint system

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for _____ same title
 new title
- and recommends _____
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

Funding Information
General Fund \$4,282,900
Other Funds -0-
\$4,282,900

Introduced: 1/27/82
Referred: Judiciary and Finance

BY RODEY, BRADLEY, DANKWORTH,
KELLY AND RAY

1 IN THE SENATE

2 SENATE BILL NO. 688

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act making a special appropriation to the Depart-
7 ment of Public Safety for a computerized fingerprint
8 system; and providing for an effective date."

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

10 * Section 1. The sum of \$4,282,900 is appropriated from the general fund
11 to the Department of Public Safety for a computerized fingerprint identifi-
12 cation system.

13 * Sec. 2. The appropriation made by this Act is for a capital project and
14 is subject to AS 37.25.020.

15 * Sec. 3. This Act takes effect immediately in accordance with AS 01.10.-
16 070(c).

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ALASKA STATE LEGISLATURE

TWELFTH Legislature SECOND... Session

SENATE BILL..... NO. 68.8..

By ..RODEY, ..BRADLEY, ..DANKWORTH,
KELLY, ~~NEWMAN~~ RAY

"An Act making a special appropriation to the Department of Public Safety for a computerized fingerprint system; and providing for an effective date."

Introduced in the Senate ... 1/27/82, 19.82

HISTORY IN THE SENATE

1982

1 27
2 /

Read first time and referred to Committee on

Judiciary and Finance
Reported back with *Just 3 do* recommendation that *Pass Fin.*

Read second time and

Read third time and

PASS Effective Date
Yeas Yeas
Nays Nays
Absent Absent
Excused Excused

Reconsideration

PASS Effective Date
Yeas Yeas
Nays Nays
Absent Absent
Excused Excused

Reported correctly engrossed
Signed by President
Sent to House

SECRETARY OF THE SENATE

HISTORY IN THE HOUSE

19

Read first time and referred to Committee on

Reported back with recommendation that

Read second time and

Read third time and

PASS Effective Date
Yeas Yeas
Nays Nays
Absent Absent
Excused Excused

Reconsideration

PASS Effective Date
Yeas Yeas
Nays Nays
Absent Absent
Excused Excused

Reported correctly engrossed
Signed by Speaker
Returned to Senate

CHIEF CLERK OF THE HOUSE

HISTORY IN THE SENATE

19

Received from House

To enrolling

Reported correctly enrolled

Sent to Governor

..... by Governor

Filed with Lt. Governor

Chapter No.

Funding Information

General Fund \$4,282,900
Other Funds ..0-
\$4,282,900

Introduced: 1/27/82
Referred: Judiciary and Finance

1 IN THE SENATE

BY RODEY, BRADLEY, DANKWORTH,
KELLY AND RAY

2 SENATE BILL NO. 688

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act making a special appropriation to the Depart-
7 ment of Public Safety for a computerized fingerprint
8 system; and providing for an effective date."

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

10 * Section 1. The sum of \$4,282,900 is appropriated from the general fund
11 to the Department of Public Safety for a computerized fingerprint identifi-
12 cation system.

13 * Sec. 2. The appropriation made by this Act is for a capital project and
14 is subject to AS 37.25.020.

15 * Sec. 3. This Act takes effect immediately in accordance with AS 01.10.-
16 070(c).

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THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. Senate Bill 688

Title Special Appropriations for a computerized fingerprint system.

Requested by _____ Date _____

II. FISCAL DETAIL

Agency Affected Department of Public Safety

Program Category Affected Administration of Justice

BRU, Program, Or Subprogram(s) Affected Laboratory Services

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES			105.3	115.8	127.4	140.1
200 TRAVEL		20.6	21.2	2.2	2.4	2.7
300 CONTRACTUAL		38.2	480.4	103.5	103.9	104.3
400 COMMODITIES		5.3	4.5	9.3	10.2	11.2
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		64.1	611.4	230.8	243.9	258.3

FUNDING (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND		64.1	611.4	230.8	243.9	258.3
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
FULL TIME			2	2	2	2
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

The proposed legislation would create the Automated Fingerprint Identification Network which would utilize a Rockwell 250 S Printak Central System in AST Headquarters with a Read/Edit Sub-system in the Anchorage Police Department.

In acquiring this tested, proved and highly reliable system, law enforcement agencies can automatically search their already existing extensive fingerprint files to locate matches and print out identities of respondents. Search time would be reduced and match rate increased by at least 15%.

The initial cost provided by this bill would provide all cost of the equipment and its installation through the end of FY'83. The FY'83 - FY'87 cost noted above is the expected operating cost for these years including the cost of two non-commissioned positions.

IV. DATE March 08, 1982

PREPARED BY Francis C. Allan

AGENCY Department of Public Safety

PHONE 269-5691

Original: Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/81)

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. SB 688
 Title Spec. Approp. for a computerized fingerprint system
 Requested by _____ Date _____

II. FISCAL DETAIL

Agency Affected Department of Public Safety
 Program Category Affected Administration of Justice
 BRU, Program, Or Subprogram(s) Affected Laboratory Services
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES			105.3	115.8	127.4	140.1
200 TRAVEL		20.6	21.2	2.2	2.4	2.7
300 CONTRACTUAL		38.2	480.4	103.5	103.9	104.3
400 COMMODITIES		5.3	4.5	9.3	10.2	11.2
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		64.1	611.4	230.8	243.9	258.3

FUNDING (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND		64.1	611.4	230.8	243.9	258.3
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
FULL TIME			2	2	2	2
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

The proposed legislation would create the Automated Fingerprint Identification Network which would utilize a Rockwell 250 S Printak Central System in AST Headquarters with a Read/Edit Sub-system in the Anchorage Police Department.

In acquiring this tested, proved and highly reliable system, law enforcement agencies can automatically search their already existing extensive fingerprint files to locate matches and print out identities of respondents. Search time will be reduced and match rate increased by at least 15%.

The initial cost of \$3,042,200 as provided by this bill would provide all cost of the equipment and its installation through the end of FY 83 (see attached schedule "Capital Project Cost Estimate"). The FY 83 - FY 87 cost noted above is the expected operating cost for these years including the cost for two positions.

IV. DATE February 2, 1982 PREPARED BY *Marcia Lynn McKenzie*
 AGENCY Department of Public Safety
 Original: Legislative Finance PHONE 465-4349
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)
 33-001 (Rev. 12/81)

AUTOMATED FINGERPRINT IDENTIFICATION NETWORK
CAPITAL PROJECT COST ESTIMATE

250S Central System - unit cost including air shipment	\$1,700.0
250S Subsystem (A.P.D.) - unit cost including air shipment	696.0
Installation cost	200.0
Site preparation	177.4
Spare parts inventory	207.3
Fingerprint file conversion	<u>61.5</u>
CAPITAL PROJECT TOTAL	<u>\$3,042.2</u>

AUTOMATED FINGERPRINT IDENTIFICATION NETWORK
OPERATING COST ESTIMATE

<u>CODE</u>	<u>DESCRIPTION</u>	<u>FY 83</u>	<u>FY 84</u>
100	Personal Services		
111	Reg. Comp. (2x19AGGU)		74.9
121	Overtime (180 hrs. X 26.19)		5.2
121	Shift Differential (19AX3.75)		1.4
	Sub-total		<u>81.5</u>
VAR.	Benefits (17.67%)		14.4
184	FICA (6.65%)		5.4
185	Group Medical (1800X2)		4.0
	100 TOTALS		<u>105.3</u>
200	Travel and Moving		
211	In-State Travel	2.4	
212	In-State Per Diem	3.2	
223	Out-of-State Travel	5.6	6.8
224	Out-of-State Per Diem	5.3	14.4
291	Transportation	2.5	
292	Technician Per Diem	<u>2.2</u>	
	200 TOTALS	<u>20.6</u>	<u>21.2</u>
300	Contractual Services		
311	Phone	.7	5.1
314	Postage		.4
326	Subscription & Info.		.2
349	Main. Contract & File Conver.	22.3	424.7
*389	Training	3.6	50.0
394	Conference Registration	.3	
397	Freight	<u>11.3</u>	
	300 TOTALS	<u>38.2</u>	<u>480.4</u>
400	Supplies and Materials		
425	Janitorial Supplies	.9	.9
481	Stationary & Supplies	4.4	
483	Computer Commodities		3.6
	400 TOTALS	<u>5.3</u>	<u>4.5</u>
	PROJECT TOTALS	<u>64.1</u>	<u>611.4</u>

*Contractor training of state employee to maintain the system.

COMMITTEE REPORT
SENATE

1/27/82

FURTHER: Finance

Date: 4/6/82

Mr. President:

The Committee on STATE AFFAIRS has had SB 689

appropriations and general obligation bonds for capital projects

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for SB 689 (SA) same title
- new title
- and recommends do pass
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

Tommy Peterson
Brad Bradley
Collette
[Signature]

[Signature]

CHAIRMAN

Original sponsors: Storgulewski, Ferguson,
Fischer and Stinson

Offered: 4/7/82
Referred: Finance

1 IN THE SENATE BY THE STATE AFFAIRS COMMITTEE
2 OF THE SENATE BILL NO. 689 (State Affairs)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 TWELFTH LEGISLATURE - SECOND SESSION
5 A BILL

6 For an Act entitled: "An Act relating to appropriations and general obliga-
7 tion bonds for capital projects; and providing for an
8 effective date."

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

10 * Section 1. AS 37.10 is amended by adding a new section to read:

11 Sec. 37.10.067. OPERATING COST FUND. (a) An operating cost fund
12 for capital projects is established in the Department of Revenue. The
13 operating cost fund shall be managed in accordance with this section.

14 (b) The operating cost fund consists of

15 (1) all money appropriated to it by the legislature in accor-
16 dance with AS 37.25.022; and

17 (2) interest earned by investment of the fund balance.

18 (c) The commissioner of revenue shall invest and manage the money
19 in the operating cost fund that the commissioner determines to be above
20 an amount sufficient to meet current cash expenditure needs. An invest-
21 ment by the commissioner of revenue under this subsection shall be made
22 in accordance with AS 37.10.075(b).

23 (d) The commissioner of revenue shall establish in the operating
24 cost fund an account for each capital project for which an appropriation
25 is made. The account consists of the unexpended amount of the appropria-
26 tion for the capital project and income credited to the capital project
27 under (e) of this section.

28 (e) Income earned from investment of money in the operating cost
29 fund shall be allocated by the commissioner of revenue to the account

1 for each capital project for which an appropriation for the cost of
2 operating the project has been made by the legislature. An allocation
3 under this subsection shall be made to the account for each capital
4 project specifically designated by the legislature by law in proportion
5 to the account balance for that capital project as a percentage of the
6 total amount in the operating cost fund.

7 (f) During each fiscal year, the commissioner of revenue shall
8 withdraw and pay to the department that has responsibility for the
9 operation of a capital project an amount equal to the operating cost of
10 the capital project and the commissioner of revenue shall reduce the
11 account balance of the capital project by the amount paid but the amount
12 withdrawn may not exceed the amount projected in the schedule of operat-
13 ing costs for a project for that year. The amount paid by the commis-
14 sioner of revenue under this subsection shall be used by the department
15 that has responsibility for the operation of the capital project for
16 operating costs of the capital project. A withdrawal under this subsec-
17 tion may not exceed the account balance of the capital project.

18 (g) The commissioner of revenue may prescribe regulations applic-
19 able to withdrawal and payment of money from the operating cost fund to
20 other departments for the operating cost of a capital project.

21 (h) An appropriation to the operating cost fund is an appropria-
22 tion for capital projects and is valid for the life of the project as
23 provided in AS 37.25.020.

24 * Sec. 2. AS 37.15 is amended by adding a new section to read:

25 Sec. 37.15.013. OPERATING COSTS OF PROJECTS FOR WHICH GENERAL
26 OBLIGATION BONDS MAY BE AUTHORIZED. (a) The division of budget and
27 management, Office of the Governor, shall prepare a schedule of the
28 expected cost of operating the proposed capital project for which genera
29 obligation bonds may be authorized for its useful life. The schedule of

1 the expected cost of operating the proposed capital project shall serve
2 as the basis for calculating the net present value of the operating cost
3 of the project.

4 (b) In determining the net present value of the operating cost for
5 a proposed capital project, the division of budget and management,
6 Office of the Governor, shall discount the total of all estimated future
7 costs of operating the proposed capital project to the construction
8 completion date of the project. The discount factor to be applied is
9 the estimated compound annual rate of return of the operating cost fund
10 under AS 37.10.067 for the useful life of the capital project, or for
11 the first 30 years of the useful life of the capital project, whichever
12 is less.

13 (c) The provisions of this section do not apply to a proposed
14 capital project in which the net present value of cost of operating the
15 proposed capital project is less than \$100,000.

16 (d) In this section, "cost of operating" and "operating cost" mean
17 the normal, anticipated costs of maintenance and operation of a capital
18 project. The terms

19 (1) include expenses for routine maintenance, minor repairs,
20 utilities, local charges, fees and payments in place of taxes;

21 (2) exclude costs that will be offset by fees imposed on
22 persons who use the project, and for contributions from federal, muni-
23 cipal, and private sources.

24 * Sec. 3. AS 37.25 is amended by adding a new section to read:

25 Sec. 37.25.022. OPERATING COSTS OF CAPITAL PROJECTS. (a) An
26 appropriation for a capital project other than a project financed by
27 general obligation bond proceeds that will be owned and operated by the
28 state shall include an appropriation for the cost of operating the
29 capital project. The appropriation for the cost of operating the capital

1 project may not be less than

2 (1) the net present value of the estimated cost of operating
3 the capital project for its expected useful life, if the expected useful
4 life of the capital project is 30 years or less; or

5 (2) the net present value of the estimated cost of operating
6 the capital project for 30 years, if the expected useful life of the
7 capital project exceeds 30 years.

8 (b) The division of budget and management, Office of the Governor,
9 shall prepare a schedule of the expected cost of operating the proposed
10 capital project for its useful life. The schedule of the expected cost
11 of operating the proposed capital project shall serve as the basis for
12 calculating the net present value of the operating cost of the proposed
13 capital project.

14 (c) In determining the net present value of the operating cost for
15 a proposed capital project, the division of budget and management,
16 Office of the Governor, shall discount the total of all estimated future
17 costs of operating the proposed capital project to the date on which the
18 appropriation for the cost of operating the project will be paid to the
19 operating cost fund (AS 37.10.067) in the Department of Revenue. The
20 discount factor to be applied is the estimated compound annual rate of
21 return of the operating cost fund for the useful life of the proposed
22 capital project, or for the first 30 years of the useful life of the
23 proposed capital project, whichever is less.

24 (d) The provisions of (a) of this section do not apply to a pro-
25 posed capital project in which the net present value of cost of operat-
26 ing the proposed capital project is less than \$100,000.

27 (e) In this section, "cost of operating" and "operating cost" mean
28 the normal, anticipated costs of maintenance and operation of a proposed
29 capital project. The terms

1 (1) include expenses for routine maintenance, minor repairs,
2 utilities, local charges, fees and payments in place of taxes;

3 (2) exclude costs that will be offset by fees imposed on
4 persons who use the project, and for contributions from federal, muni-
5 cipal, and private sources.

6 * Sec. 4. AS 15.58.020(7) is amended to read:

7 (7) for each bond question,

8 (A) a statement of the scope of each project as it
9 appears in the Bond Authorization Act; and

10 (B) a statement of the net present value of the operat-
11 ing cost for the project;

12 * Sec. 5. This Act takes effect July 1, 1983.
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Introduced: 1/27/82
Referred: State Affairs and
Finance

BY STURGULEWSKI, FERGUSON,
FISCHER AND STIMSON

1 IN THE SENATE

2 SENATE BILL NO. 689

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to appropriations and general obliga-
7 tion bonds for capital projects; and providing for an
8 effective date."

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

10 * Section 1. AS 37.10 is amended by adding a new section to read:

11 Sec. 37.10.067. OPERATING COST FUND. (a) An operating cost fund
12 for capital projects is established in the Department of Revenue. The
13 operating cost fund shall be managed in accordance with this section.

14 (b) The operating cost fund consists of

15 (1) all money appropriated to it by the legislature in accor-
16 dance with AS 37.25.022; and

17 (2) interest earned by investment of the fund balance.

18 (c) The commissioner of revenue shall invest and manage the money
19 in the operating cost fund that the commissioner determines to be above
20 an amount sufficient to meet current cash expenditure needs. An invest-
21 ment by the commissioner of revenue under this subsection shall be made
22 in accordance with AS 37.10.070(b).

23 (d) The commissioner of revenue shall establish in the operating
24 cost fund an account for each capital project for which an appropriation
25 is made. The account consists of the unexpended amount of the appropria-
26 tion for the capital project and income credited to the capital project
27 under (c) of this section.

28 (e) Income earned from investment of money in the operating cost
29 fund shall be allocated by the commissioner of revenue to the account

1 for each capital project for which an appropriation for the cost of
2 operating the project has been made by the legislature. An allocation
3 under this subsection shall be made to the account for each capital
4 project specifically designated by the legislature by law in proportion
5 to the account balance for that capital project as a percentage of the
6 total amount in the operating cost fund.

7 (f) During each fiscal year, the commissioner of revenue shall
8 withdraw and pay to the department that has responsibility for the
9 operation of a capital project an amount equal to the operating cost of
10 the capital project and the commissioner of revenue shall reduce the
11 account balance of the capital project by the amount paid. The amount
12 paid by the commissioner of revenue under this subsection shall be used
13 by the department that has responsibility for the operation of the
14 capital project for operating costs of the capital project. A withdrawal
15 under this subsection may not exceed the account balance of the capital
16 project.

17 (g) The commissioner of revenue may prescribe regulations applic-
18 able to withdrawal and payment of money from the operating cost fund to
19 other departments for the operating cost of a capital project.

20 * Sec. 2. AS 37.15 is amended by adding a new section to read:

21 Sec. 37.15.013. OPERATING COSTS OF PROJECTS FOR WHICH GENERAL
22 OBLIGATION BONDS MAY BE AUTHORIZED. (a) The commissioner of each
23 department responsible for the operation of a proposed capital project
24 for which general obligation bonds may be authorized shall prepare a
25 schedule of the expected cost of operating the proposed capital project
26 for its useful life. The schedule of the expected cost of operating the
27 proposed capital project shall serve as the basis for calculating the
28 net present value of the operating cost of the project.

29 (b) In determining the net present value of the operating cost for

1 a proposed capital project, the commissioner of each department respon-
2 sible for the operation of the proposed capital project shall discount
3 the total of all estimated future costs of operating the project to the
4 construction completion date of the project. The discount factor to be
5 applied is the estimated compound annual rate of return of the operating
6 cost fund under AS 37.10.067 for the useful life of the capital project,
7 or for the first 30 years of the useful life of the capital project,
8 whichever is less.

9 (c) The provisions of this section do not apply to a proposed
10 capital project in which the net present value of cost of operating the
11 proposed capital project is less than \$100,000.

12 (d) In this section, "cost of operating" and "operating cost" mean
13 the normal, anticipated costs of maintenance and operation of a capital
14 project. The terms

15 (1) include expenses for routine maintenance, minor repairs,
16 utilities, local charges, fees and payments in place of taxes;

17 (2) exclude costs that will be offset by fees imposed on
18 persons who use the project, and for contributions from federal, muni-
19 cipal, and private sources.

20 * Sec. 3. AS 37.25 is amended by adding a new section to read:

21 Sec. 37.25.022. OPERATING COSTS OF CAPITAL PROJECTS. (a) An
22 appropriation for a capital project other than a project financed by
23 general obligation bond proceeds that will be owned and operated by the
24 state shall include an appropriation for the cost of operating the
25 capital project. The appropriation for the cost of operating the capital
26 project may not be less than

27 (1) the net present value of the estimated cost of operating
28 the capital project for its expected useful life, if the expected useful
29 life of the capital project is 30 years or less; or

1 (2) the net present value of the estimated cost of operating
2 the capital project for 30 years, if the expected useful life of the
3 capital project exceeds 30 years.

4 (b) The commissioner of each department responsible for the opera-
5 tion of a proposed capital project shall prepare a schedule of the
6 expected cost of operating the proposed capital project for its useful
7 life. The schedule of the expected cost of operating the proposed
8 capital project shall serve as the basis for calculating the net present
9 value of the operating cost of the proposed capital project.

10 (c) In determining the net present value of the operating cost for
11 a proposed capital project, the commissioner of each department respon-
12 sible for the operation of the proposed capital project shall discount
13 the total of all estimated future costs of operating the project to the
14 date on which the appropriation for the cost of operating the project
15 will be paid to the operating cost fund (AS 37.10.067) in the Department
16 of Revenue. The discount factor to be applied is the estimated compound
17 annual rate of return of the operating cost fund for the useful life of
18 the proposed capital project, or for the first 30 year, of the useful
19 life of the proposed capital project, whichever is less.

20 (d) The provisions of (a) of this section do not apply to a pro-
21 posed capital project in which the net present value of cost of operat-
22 ing the proposed capital project is less than \$10,000.

23 (e) In this section, "cost of operating" and "operating cost" mean
24 the normal, anticipated costs of maintenance and operation of a proposed
25 capital project. The terms

26 (1) include expenses for routine maintenance, minor repairs,
27 utilities, local charges, fees and payments in place of taxes;

28 (2) exclude costs that will be offset by fees imposed on
29 persons who use the project, and for contributions from federal, muni-

1 cial, and private sources.

2 * Sec. 4. AS 15.58.020(7) is amended to read:

3 (7) for each bond question,

4 (A) a statement of the scope of each project as it
5 appears in the Bond Authorization Act; and

6 (B) a statement of the net present value of the operat-
7 ing cost for the project;

8 * Sec. 5. This Act takes effect January 1, 1983.

ALASKA STATE LEGISLATURE

TWELFTH Legislature SECOND Session

SENATE ...BILL..... NO. ...689..

By .. STURGULENSKI, FERGUSON,..
FISCHER AND STINSON

"An Act relating to appropriations and general obligation bonds for capital projects; and providing for an effective date."

Introduced in the Senate 1/27/ 82
....., 19.....

HISTORY IN THE SENATE

19	82	Read first time and referred to Committee on										
1	27	St. Affairs and Finance										
4	7	Reported back with <i>2A-Replace</i> recommendation that <i>W/C 5 (same title)</i> <i>4 do pass - TO Sin</i>										
		Read second time and										
		Read third time and										
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		Reported correctly engrossed										
		Signed by President										
		Sent to House										

SECRETARY OF THE SENATE

HISTORY IN THE HOUSE

19		Read first time and referred to Committee on										
		Reported back with recommendation that										
		Read second time and										
		Read third time and										
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		Reported correctly engrossed										
		Signed by Speaker										
		Returned to Senate										

CHIEF CLERK OF THE HOUSE

HISTORY IN THE SENATE

19		Received from House
		To enrolling
		Reported correctly enrolled
		Sent to Governor
	 by Governor
		Filed with Lt. Governor
		Chapter No.

THE LEGISLATURE OF THE STATE OF ALASKA SB 589
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. SB 689 (1/27/82)
Title Operating Cost Fund for Capital Projects
Requested by Senate State Affairs Committee Date 3/1/82

II. FISCAL DETAIL

Agency Affected Department of Revenue
Program Category Affected Revenue Collection and Management
BRU, Program, Or Subprogram(s) Affected Treasury Management
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES		46.3	92.6	101.9	112.1	123.3
200 TRAVEL		3.0	6.0	6.6	7.3	8.0
300 CONTRACTUAL		65.5	130.0	143.0	157.3	173.0
400 COMMODITIES		1.5	3.0	3.3	3.6	4.0
500 EQUIPMENT		6.0				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		122.3	231.6	254.8	280.3	308.3

FUNDING (Thousands of Dollars)

GENERAL FUND		122.3	231.6	254.8	280.3	308.3
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME		2	2	2	2	2
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

Establishes an Operating Cost Fund for capital projects in Department of Revenue. Fund consists of monies appropriated to it and interest earned on fund balance.

Administrative costs to invest and manage fund balances and account for disbursement to appropriate department. Personal Services for Investment Officer II (R22,X) to invest and manage assets; Accounting Tech. II (R14,G) for associated accounting and reporting. Contractual Services (FY 84 base): Comm. \$5.0; Print & Adv. \$5.0; Safekeeping and related accounting/reporting \$100.0; Audit \$15.0; Misc. \$5.0. Equipment is for new positions. Effective 1/1/83.

Anselm C. Staack

IV. DATE March 1, 1982

PREPARED BY Anselm C. Staack, Treasury Comptroller
AGENCY Department of Revenue, Treasury Division

Original: Legislative Finance PHONE 465-2350

cc: Budget and Management
Prime Sponsor (First Legislator Named)
33-001 (Rev. 12/81)

BILL ANALYSIS - SB 689 (1/27/82)

1. Establishes an Operating Cost Fund (OCF) for capital projects in Department of Revenue.
2. Fund consists of money appropriated to it and interest earned on fund balance.
3. Account to be established in fund for each capital project for which an appropriation is made.
4. Revenue to transfer funds to department which operates capital project, each year, to pay operating costs.
5. Operating costs of projects, for which general obligation bonds are to be sold, are to be estimated to provide a schedule of expected cost of operating the proposed capital project. Net present value (NPV) of the operating cost of a project to be determined. NPV of operating cost is to be placed, as information for the voters to review, on the ballot.
6. Provisions do not apply to project with an NPV of operating costs of less than \$100,000.
7. Takes effect January 1, 1983.

(3/1/82)



Official Business

Alaska State Legislature

Senate Committee on State Affairs

Vic Fischer, Chairman • Pouch V • Juneau, Alaska 99811 • (907) 465-4954

Senate State Affairs Committee Minutes

March 4, 1982

Members Present: Sen. Vic Fischer, Chair
Sen. Mike Colletta
Sen. Brad Bradley
Sen. Dick Eliason

COMMITTEE CALENDAR

SB 689 An Act relating to appropriations and general obligation bonds for capital projects; and providing for an effective date.

SB 93 Relating to the decentralization of state government.
(Not taken up at this meeting due to time constraints.)

WITNESS REGISTER

Sen. Arliss Sturgulewski

Pouch V

Juneau, Alaska 99811

Prime sponsor of SB 689

Position statement: Supports SB 689, and concept of setting up maintenance and operating fund that is funded at same time as capital project

Rep. Terry Gardiner

Pouch V

Juneau, Alaska 99811

Position statement: Supports general concept of SB 689

Ron Lehr, Director

Office of Budget and Management

Pouch AM

Juneau, Alaska 99811

Position statement: Concerned with problem of capital project maintenance and operation costs, supports addressing the problem.

Anselm Staack, Treasury Comptroller

Dept. of Revenue

Pouch SB

Juneau, Alaska 99811

Position statement: On hand to answer questions arising from committee discussion of SB 689.

John Bates, Dep. Commissioner
Dept. of Transportation and Public Facilities
Pouch Z
Juneau, Alaska 99811

Position statement: On hand to answer questions arising from committee discussion, and to provide information on DoTPF activities relevant to creating a maintenance and operating fund.

Peter McDowell
Homan-McDowell consulting firm
128 Dixon
Juneau, Alaska 99801

Position statement: Reported on "state of the art" maintenance and operating cost forecasting for Alaska Public Facilities.

Mark Seegers
Office of Budget and Management
Pouch AM
Juneau, Alaska 99811

Position statement: Commented during committee meeting on life-cycle cost and maintenance and operating cost projections.

No previous action on SB 689.

ACTION NARRATIVE

Tape #
0545

Sen. Fischer called the meeting to order at 1:40 pm with members Sen. Colletta, Sen. Bradley, and Sen. Eliason present. Sen. Fischer opened testimony on SB 689 and on the general subject of establishing a maintenance and operating fund for capital projects.

0555 Sen. Arliss Sturgulewski, prime sponsor of SB 689 and chair of Legislative Budget and Audit Committee, described the purpose of the legislation, which sets up an operating cost fund in the Department of Revenue for capital projects financed by the Legislature. (Each project financed is to have a separate account consisting of the unexpended amount of the appropriation, and a proportional amount of income earned through investment of the capital project fund. The Commissioner of Revenue is responsible for withdrawing amounts annually for each project and shall pay that amount to Departments responsible for the project. The bill provides that any capital project funded by the state that is not financed by bond sales shall include an appropriation for operating costs for up to 30 years. The section relating to bondable projects provides the Commissioner of the responsible department shall prepare a schedule of the expected costs of operating the project for its useful life. The schedule is to serve as the basis for calculating the net present value of the operating cost of the project. "Cost of operating" and "operating cost" are defined in the bill to mean the normal, anticipated costs of maintenance and operation of a capital project, including expenses for routine

maintenance, minor repairs, utilities, local charges, fees and payments in place of taxes; and exclude costs offset by fees imposed on users, and for contributions from federal, municipal, and private sources. Provides election pamphlet contain a statement of the net present value of the operating cost for bondable projects.)

Sen. Sturgulewski stated that the concept was to set up a fund that was funded at the same time as the capital project. She reflected on the Borough Assembly experience: the difficulty of making cuts, of keeping a check on government growth. Alaska has tremendous capital "catch up needs" but not the ability to maintain the structure. Sen. Sturgulewski stated that she had talked with Ron Lehr (Div. of Budget and Management) about the need for long-range financial planning, and that Legislative Budget and Audit had done a great deal of planning.

She further stated that the recently enacted spending limit mandates that the information about long range costs be brought to the voters. Although she expressed doubt about the concept of a maintenance and operating fund being implemented this year, she stressed the importance of coming to grips with the issue.

0596 The bill does not cover bonded projects: there are potential problems with arbitrage and bond issues on the ballot, as there are with revolving loan funds and the attendant constitutional questions (dedication of funds) and differing opinions on the question of earnings being retained in the funds.

Sen. Sturgulewski stated that she doesn't believe there has been a "really hard AG's opinion on revolving loan funds". The legislature needs to consider, although not in this bill, with respect to maintenance and operating costs, a two year process for budgeting capital projects.

0620 Sen. Sturgulewski expressed delight that the issue was being talked about.

Sen. Colletta stated that he had to leave, but that he had two questions. He asked if there had not been a proposal years ago called life-cycle costing.

Sen. Sturgulewski responded that it had passed in 1978, and that DOTPF had started using the system. She affirmed that people need to see a demonstration of the value of such a system before they will use it.

Sen. Colletta stated that there was no specification of "what are capital projects", and suggested that the M & O (maintenance and operating fund) concept be implemented in a single pilot project. He pointed out the complexities involved in implementing the bill, using as an example school construction: does one change the Foundation Formula, which presently takes into account some of the maintenance and operating costs? Do we have an obligation to local capital projects? Sen. Colletta suggested that a project be iden-

tified on which "we can get immunity" in order to try the idea.

Sen. Sturgulewski responded to Sen. Colletta's comment on school districts, stating that many school districts, including Anchorage and the Lower Kuskokwim School Districts are taking maintenance funds out of the dollar pool which includes instruction funds, with little eye to long-range planning. The flow of dollars from municipalities to projects creates future costs. She sought confirmation from Sen. Colletta that his suggestion was to try the concept on a project.

Sen. Colletta stated that in the case of life-cycle costing the legislature ended up "passing something that still means nothing" and that there is a need to "temper the desire of the moment with the reality of the future".

Sen. Sturgulewski stated that the concept bears some discussion. She believes that "we don't have an area where as much of the capital is in the hands of the state and going into capital
0698 construction. One might find a model in Kuwait. This is a method which "says you recognize that revenues are going to drop off, a projection of amortization. Revenue bonds only cover the cost of financing. Sen. Sturgulewski concluded her presentation and Sen. Colletta had to leave for another meeting.

0717 Rep. Terry Gardiner testified in general support of the concept of the legislation. He stated that the bill (SB 689) recognizes the problem and strives to fashion some solutions. The state is confronting an accumulation and multiplier effect which is just becoming apparent in the current year operating budget. If you consider all the capital appropriations, including bonds in the last three years they amount to 3½ billion dollars (\$10,000 per taxpayer). Few of these capital projects have been completed and thus become part of the budget cycle. If the municipalities are broke, they will approach the state for assistance before the taxpayers.

Rep. Gardiner went on to explain that when four or five years of capital projects come on stream it will have an impact we are only now beginning to acknowledge. A 20% figure assigned to maintenance and operating cost has been "thrown around", and regardless of whether it is in fact 15%, 20% or 25%, it represents billions of dollars. The fact is that we don't really know what the maintenance and operating costs run for given projects.

0784 Rep. Gardiner discussed the inflationary impacts of capital projects, for example highway construction running between 25% and 30% per year, and housing costs (a good index) between 30%-40% per year. This will "come back to haunt us" and result in (a) marginally economical projects being pushed off; hydro-electric projects, for example are subject to 20%, 30% or 40% inflation and (b) businesspersons will be affected, and will push off projects marginally economical to them.

With respect to capital project costs, financing, and planning, the state must take into account a detailed plan; we need a system more accurate about the net costs. Presently the fiscal notes on bills are not binding.

- 0850 It raises consciousness about the true cost of a bill to have such things as fiscal notes; even if not mandated, this system would have a positive effect in that regard. It would force people to deal more realistically with capital projects. With this comment Rep. Gardiner closed his formal presentation.

Sen. Sturgulewski stated that there is some merit in exploring the idea, in creating a statute mandating the use of accurate cost projection including maintenance and operating costs. The system should also cover projects financed through bonds.

- Rep. Gardiner stated that the life-cycle cost concept is still valid. At the time of its inception, the life-cycle cost concept was to be implemented in DoTPF; it would be sensible to apply it within the Office of Budget and Management. There is a need for a system requiring that some planning has been done before an appropriation is made. Rep. Gardiner cited occasions where supplemental appropriations keep having to be made to complete
- 0892 a project.

- 0909 Ron Lehr, Director of the Office of Budget and Management, responded to Rep. Gardiner. This year the office is operating with an eye to a six year capital budget; the first two or three years one pays close attention to. Ron Lehr discussed the Public Facilities Planning Fund, and touched on the subject of this year's capital budget. His office looks at agencies' projections of cost over time. They have been trying to work up Maintenance and Operating formulas to improve agency information, taking into account interaction with the spending limit, the portion of funds to be operational.

- 0950 The committee members turned their attention to a question which has yet to be definitively answered: the constitutionality of investing earnings of a fund in the fund balance.

Anselm Staack, Comptroller for the State Treasury in the Dept. of Revenue, stated that the Power Development Fund has been sued over an unspecified interest amount being automatically included; some contend that this is illegal. This legal question affects many funds. The status of this question will be clarified in about a week.

Sen. Fischer commented that he thinks "that they'll find that it's legal".

- 0974 Ron Lehr stated that a problem may arise with the constitutionality of the revolving aspect of various funds. There are a number of accounts to keep track of. He referred to Section F of the bill under discussion, noting that money is not even appropriated, it

is just kept in an account which is drawn on. He thinks that it ought to be appropriated to control the flow--and wouldn't want that discretion given to the Commissioner of Revenue ("that's nothing against the Commissioner"). One might avoid a potential problem with a "dedicated fund". He further noted that the the bill's provision for the calculation of the way money goes into the fund leaves "quite a cushion".

With respect to the bill defining operational costs, Ron Lehr posed the question, "Do you include only physical plant operation, or also program costs?" In many cases, such as the Pioneers' Homes and schools, it is difficult to find costs. He suggested something be added to the bill addressing program costs. He raised the question of replacement cost (replacing the MV Tustemina cost DoTPF \$55 million) which is not specifically addressed in the 1028 legislation, and touched briefly on the "municipal grant hitch" and costs which will be borne by municipalities.

1037 Sen. Sturgulewski asked Ron Lehr if he was approaching this issue at all in current financial planning.

Ron Lehr responded that they are using a five year budget model which they will start putting on a computer next month.

1053 John Bates, Deputy Commissioner of DoTPF spoke on the State Public Facility plan. A requirement has been in existence since 1978 to include some life-cycle costing for projects. The emphasis on the state facilities plan has waned.

John Bates discussed aspects of life-cycle costs, and stated that DoTPF is providing a cost-out statement for the Governor's budget.

1096 According to John, this involves "getting with the state agencies to define generalized types of operating cost formulas". The legislature is going to have to appropriate several times the amount of capital project appropriations for operation and maintenance. He stressed the importance of two year cycle funding, and described how this process provides an opportunity to show the true cost of a capital facility. He also discussed Public Facility Planning Fund monies. Many projects in the Governor's '82 budget have '81 design and engineering work done on them--this is an improvement, and a good system. He agreed to supply the committee with life-cycle cost figures at the next meeting on SB 689 (life-cycle cost figures include the life-time cost
1123 of the project).

1149 Sen. Fischer responded that he was impressed by the progress made in the last 12 months. Sen. Sturgulewski agreed, stating that as long as this system is used the data will get better and people will use the system (life-cycle costing) more. There is a need to start getting accurate information and a need to build a reliable model.

1172 Anselm Staack referred to the fiscal note for SB 689, stating that

it was valid for management of the invested funds portion; it does not cover administrative costs. The fiscal note will be the same whether the assets amount to 50 million or 1 billion dollars; a larger fund would not require additional administrative positions.

He added that there is no question about the long-term impact of bonds, and acknowledged that the dedication of interest without specific appropriations (as previously discussed) does present a problem. If the interest were earned with the fund and appropriated each year it might "close potential legal problems". It was the "unspecified amount" which has caused present legal troubles.

1198 Sen. Fischer suggested the possibility of appropriating future interest earnings to the fund in a blanket appropriation in advance.

1210 Sen. Sturgulewski raised questions about appropriating the corpus (as in the case of the Agriculture Revolving Loan Fund) and "never seeing it again---it doesn't come up for appropriation again."

Anselm Staack responded that this creates the same problem as we confront with the Permanent Fund dividend program. If the AG's opinion comes back and states that the interest must be specifically appropriated for projects "that will change everything". The cleanest way is to get a specific dollar appropriation later on. Sen. Fischer said he looked forward to getting the AG's opinion and Anselm's advice on how to further improve the bill (SB 689).

1242 Peter McDowell, of Honan-McDowell, reported on "state-of-the-art" maintenance and operating cost projections for Alaska public facilities. He brought with him a report on maintenance and operating costs on school buildings in Alaska, and described how the information was organized. Broken out by school district, the state has over 502 attendance centers, costing 12½ million dollars per square foot. The districts spent \$6½ million in 1981 just for facilities. The report, Peter McDowell stated, could be part of a data base from now on, could be an index for cost of building maintenance in various places, become a "rule of thumb".

1273 Peter McDowell discussed the concept of conceiving of maintenance and operating expenses occurring rateably, with relatively constant discount rates. It is "only the first 10 years you really care about for determining operating and maintenance costs". Peter

1315 then read an excerpt from a paper written by Dr. Malcolm Gillis 10-23-81 regarding maintenance costs.

Sen. Fischer asked if program costs could be added to the information in Peter McDowell's study. Peter responded that both operating and program costs are included in the report.

Mark Seegers, employed at the Office of Budget and Management

pointed out that life-cycle cost is a relative thing. "You don't get an absolute value for maintenance and operating costs." A specific building type (such as those covered in McDowell's study) will not make a general formula.

1361 Peter McDowell responded that the figures are representative for the purposes of estimating maintenance and operating values for various areas---for use as a data base.

1379 Sen. Sturgulewski stated that she was grateful for the hearing and for the good input. The Budget and Audit Committee wants to advance the whole issue of maintenance and operating cost funding, and needs assistance with the practical aspect. They are looking for practical applications.

1397 Peter McDowell stated that what is lacking is bringing together the pieces: Departments of Education, Transportation and Public Facilities, etc.

It was mentioned that Price-Waterhouse is doing some study on state financing. Sen. Sturgulewski commented that a brainstorming session might be useful, and concluded that it would be a challenge to others to think about it.

1419 The meeting adjourned.



Alaska State Legislature

Senate Committee on State Affairs

Vic Fischer, Chairman • Pouch V • Juneau, Alaska 99811 • (907) 465-4954
Interim office: 511 West 4th Ave., Suite 5,
Anchorage, Alaska 99501 phone: 278-3654

Official Business

M E M O R A N D U M

TO: All senators

FROM: Sen. Vic Fischer *Vic*

DATE: November 24, 1981

SUBJECT: Funding, maintenance and operation for future capital projects

I have become increasingly concerned about the ease with which we fund capital projects without much concern, if any, for meeting the cost of maintaining and operating each project. The problem exists at both the state and local levels.

I would appreciate your considering the attached analysis of and proposal for controlling capital project maintenance and operation costs.

The state has embarked on an ever increasing volume of public works and other construction programs, and there is a growing concern about the impact that the cost of maintaining and operating capital projects will have on future state operating budgets. The prospective constitutional limit on operating budgets may cause a real squeeze on ongoing programs when new capital projects come on line.

Maintenance and operations expenses can, over the life of a capital project, exceed original construction costs by as much as 400%. Although authorizing a capital project guarantees that the state will incur future maintenance and operating expenditures, the legislature does not provide for the financing of such future expenses. It is quite possible that in future years the state might not be able to afford to meet costs that are being committed at this time.

The burden of future maintenance and operation expenses

Memo
All Senators
Nov. 24, 1981

can be controlled by: (1) not constructing capital projects with excessive maintenance and operation costs and (2) providing current appropriations to meet future maintenance and operation expenses. The second course is discussed in the attached paper. This paper, prepared at my request by Ira Winograd and Anne DeVries of the House Research Agency, examines a proposal for creating a Maintenance and Operation Fund that would require state government to take realistic fiscal responsibility for the full costs of capital projects, including both the construction and the maintenance and operation expenses.

I believe we have to establish such an approach or some other method if the projects we build today are to serve us effectively in the future. Otherwise we may have jails that we can't afford to operate, transportation facilities that can't be maintained, or other projects that don't serve the function for which they were developed. And although this paper deals strictly with state level projects, I believe we must also make sure that attention is given to a similar situation existing at the municipal level, frequently encouraged by state grants to localities.

I would greatly appreciate your comments on the alternatives in this report and any suggestions about other options that ought to be considered to control the capital project maintenance and operations component of operating budgets.

Thanks for your consideration, and best regards.



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

August 24, 1981

TO: Senator Vic Fischer
FROM: Ira Winograd ^{IW} and Anne DeVries AWD
Research Staff

RE: Feasibility of a Maintenance and Operation Fund

In response to your request, this memorandum discusses issues surrounding the creation of a fund to finance future maintenance and operation (M&O) expenditures on State capital projects. We have circulated a review draft of this memorandum to staff of the executive and legislative branch agencies that are involved in the capital budgeting process. Many of their comments are reflected in this final memorandum; in addition, we have attached a letter from Kit Duke, Regional Director for Planning and Programming in DOTPF's Central Region with her comments (Appendix A).

Our discussion is divided into five sections covering:

- the problem of financing future maintenance and operations expenditures for those capital projects currently being planned or built;
- the mechanics of how an M&O fund might be structured and funded;
- the problems associated with financing future M&O expenditures through a special fund; and,
- a summary of findings and a discussion of other M&O research.

Definition of M&O Costs

Maintenance and operating costs are not well-defined in the State's capital budgeting process. For the purposes of this memorandum, M&O costs will be those associated with: 1) the day-to-day operation of the physical plant of a capital project, such as lights, heat, plumbing, cleaning and garbage pick-up; and, 2) those associated with routine maintenance, such as replacement of broken windows, roof repairs, road and dock repairs. Program costs associated with the operation of a facility, such as additional State troopers to service highways, nurses and therapists in Pioneers' Homes, teachers and administrators in school buildings, and biologists in fish hatcheries, are not included within the definition of M&O costs used in this paper.

THE PROBLEM OF MAINTENANCE AND OPERATING COSTS

As a result of the rapid growth in oil lease and tax revenues, the State has embarked on a substantial capital construction program. There is a growing concern about the impact that the costs of maintaining and operating these capital projects will have on the State's operating budget.

This concern has been prompted by three inter-related factors:

- 1) the anticipated decline in State revenues due to production declines on the Prudhoe Bay oil field later in this decade;
- 2) the proposed constitutional spending limit, which would limit growth in the State's operating expenditures to the cumulative growth in inflation and population; and,
- 3) uncertainty about the size of future M&O expenditures.

Given the projected decline in real revenues from oil and gas taxes as production from Prudhoe Bay falls later in the decade, the State is expected to incur large budget deficits if the current rate of spending continues. Such deficits would require decisionmakers to reduce agency budgets. It is not clear how expenditures for maintaining and operating the State's capital stock will fare in a highly competitive contest for State funds.

The proposed constitutional amendment to limit State spending also raises concern regarding the funding of M&O costs. Under the terms of the proposed amendment, the operating budget may only grow as fast as the combined growth of population and inflation. Given that the State will soon be incurring new M&O expenses for the capital projects nearing completion or in the planning stages, it would appear some other elements of the budget would have to grow at a slower rate in order to absorb these costs within the proposed budget constraints.

In addition, the proposed constitutional amendment may not place an effective limit on capital spending. Not only does it require that at least one-third of the budget be used for capital projects, it permits unlimited use of bond issues to finance these projects. Passage of the amendment may create a situation where the State's capital investment increases while its ability to operate and maintain that investment is not permitted to expand accordingly.

The third factor giving rise to concern is simply that the magnitude of these future M&O costs cannot be estimated. The State's capital budgeting system does not have any reliable way of projecting M&O costs for all projects funded through State appropriations. The implications

of this lack of information are noted by the General Accounting Office, in its study of capital budgeting practices in different governmental and private organizations:

Several of the [organizations] we surveyed were not only unaware of the condition of their existing capital infrastructure, they had also failed to make the connection between adding capital assets and the corresponding costs of operations and maintenance. Failure to grasp this connection is important because the relationship between the two is not linear. Accumulated physical capital can magnify the longterm effects of operations and maintenance, particularly when more staff are needed. Also, without careful advance planning, requirements for repairs can peak, causing a heavy financial burden when many assets are acquired in a relatively short space of time.¹

Clearly, the uncertainty regarding the size of future M&O expenditures creates a serious problem for fiscal planners, particularly in light of uncertainty regarding both the amount of future State revenues and restrictions on how they may be spent.

The State has the following options for dealing with this anticipated problem of funding M&O costs:

- 1) Construction of some new capital projects might be curtailed, thereby reducing additions to future M&O obligations;
- 2) The budgets for other State programs might be decreased to insure that sufficient revenues are available for M&O expenditures;
- 3) Current revenues might be set aside in an income-producing fund which could be used solely for future M&O expenditures, thereby reducing competition for funds in the future;
- 4) Facilities might be: closed; operated at a reduced level of service; and/or allowed to deteriorate as required maintenance expenditures are deferred.

¹ U.S. General Accounting Office, Federal Capital Budgeting: A Collection of Haphazard Practices, A Report to Congress, February 26, 1981, page 47. This study evaluates the successfulness of the capital budgeting process at different levels of government and in private industry.

Given the low priority usually given to M&O expenditures in governmental organizations across the country, there is speculation that the State's approach to these future funding requirements may rely primarily on the fourth option - that of spending fewer maintenance and operating dollars than are really needed because the funds cannot be diverted from other programs. Unfortunately, many local and state governments, as well as the federal government, are treating M&O expenses in this way, as noted by the GAO study:

They [unsuccessful capital budgeting organizations] tended to add capital items inexorably with no thought as to how they would pay for operations and maintenance in the future. They are now finding it difficult to make repairs and renovations, and their bridges, roads, and other capital assets show signs of serious deterioration.²

The remainder of this paper discusses the feasibility of the third option mentioned above: that of setting aside current revenues into an income-producing fund for the purpose of funding future M&O expenditures.

THE MECHANICS OF AN M&O FUND

This section describes how an M&O fund might be structured and operated. The following section discusses whether or not such a fund would be able to achieve its objective of meeting future M&O funding needs.

Funding Options

A fund to finance future M&O costs could be structured in one of two ways:

- 1) an amount equal to the present value of estimated future M&O costs for a particular capital project(s) could be appropriated into a self-liquidating fund. Over the life of the project, principal and income from this fund would be used to pay M&O costs; a self-liquidating fund is not designed to finance the M&O expenses of capital projects having an indefinite life, such as highways.
- 2) an amount sufficient to generate annual income equal to projected M&O costs for a project(s) could be appropriated into a permanent

² GAO, page 47.

fund. Only the income off invested principal would be used to pay M&O costs. As only the earnings from this fund would be used, the initial appropriation would be much larger than that for a self-liquidating fund. For example, if the fund earns 10% on its principal and it must finance annual future M&O expenditures of \$100 million, then its principal balance would need to be \$1 billion.

Either a self-liquidating or permanent fund may be financed by a one-time appropriation or an annual appropriation; clearly, a fund receiving a one-time appropriation has a fixed amount of financial resources which limits its ability to finance increasing M&O costs.

An annual appropriation might consist of dedicated revenues or General Fund appropriations which are automatically transferred to the fund. Annual appropriations into a self-liquidating fund would ideally be calculated to cover all or part of the present value of the future M&O costs associated with that year's capital expenditures. Funds would be provided for those projects on a fixed liquidation schedule approximating the life of the project.

Legal Basis

Either legislation or a constitutional amendment could be used to create a self-liquidating fund. Although there is no guarantee that future legislation would not abolish the fund, AS 37.25.010 provides for the creation of "valid obligations", such as an endowment fund. If a fund is considered a valid obligation the unexpended balance is automatically reappropriated, as stated below:

The unexpended balance of a one year appropriation authorized in an appropriations bill lapses on June 30 of the fiscal year for which appropriated. However, a valid obligation (encumbrance) existing on June 30, is automatically reappropriated for the fiscal year beginning the succeeding July 1, if it is recorded with the Department of Administration by August 31 of the succeeding fiscal year. (AS 37.25.010)

In order to insure the continuation of a self-liquidating fund for its planned life, it might be preferable to adopt a constitutional amendment. However, constitutional amendments creating legal provisions with a fixed liquidation date are seldom adopted; in addition, the creation of several funds through amendments to the constitution is a cumbersome process.

A "permanent M&O fund" also could be created by either legislation or a constitutional amendment. However, a constitutional amendment would

be required to guarantee the continued existence of a "permanent" fund, fund, as future legislatures are not bound by prior legislation. In addition, a constitutional amendment is required to dedicate revenues: "The proceeds of any state tax or license shall not be dedicated to any special purpose except as provided in section 15 of this article..." (Art. IX Sec. 7)

Allocation

A permanent or a self-liquidating fund might finance the entire amount, or a portion of M&O expenses for single projects (e.g. Susitna), single entities (e.g. University of Alaska, Juneau), or single types of capital projects (e.g. airport runways).

In order to allocate funds, the M&O expenses of the selected projects must have their own budget classification. Legislation would be needed which required separate M&O accounts for specific capital projects or operating entities. A separate classification would allow monies to be allocated strictly for maintenance and operations. This data is needed to evaluate the accuracy of both expense projections and revenue allocations to the fund. If these estimates are inaccurate and the inaccuracy is not corrected, specified capital project(s) might not be funded at the level desired. In this event, it is likely that individual accounts would have to be revised by supplemental appropriations making corrections for inaccurate projections.

A formula for allocating funds to specific projects could be established by legislation and administrative responsibility could then be given to an executive branch agency. Allocation might also be considered a legislative or executive prerogative. Direct allocation by a policy-making body would allow for more discretionary use of the fund. The allocations might be readily adjusted to reflect policy changes or earnings performance.

Administration

Administration includes management of the principal, and management of allocations to endowed projects. Although ultimate responsibility for managing a fund rests with State officials, the day to day management responsibility might rest with agency staff or professional financial managers. For instance, the principal of the Alaska Permanent Fund is administered by the Department of Revenue. The Commissioner of Revenue is advised by a committee appointed by the Governor and he may enter into contracts for services providing investment advice.

ISSUES ASSOCIATED WITH M&O FUND FINANCING

It would appear that setting aside current funds so that the State's growing capital stock can be adequately operated and maintained in the future is prudent fiscal policy. However, there are a number of problems involved in implementing such a concept which detract from its usefulness in practice. This section discusses these potential problems.

Accounting Constraints

In order to implement a "fund" approach to financing M&O expenditures, it is necessary to: 1) project these expenditures with some confidence; and, 2) isolate these costs in operating budgets so that the funds can be allocated properly. During the course of our research it became apparent that an M&O fund could not be implemented at this time in Alaska because:

- 1) existing budget procedures do not record M&O expenses by the project for which they are incurred; consequently, there is no cost history by project, under Alaskan conditions, on which to base a projection;
- 2) costs vary widely in different parts of the state for the same type of M&O activity; this makes "rules of thumb" less useful as a way of estimating M&O costs; and,
- 3) M&O expenses currently are not broken out as a budget category, so there is no straightforward way of matching M&O fund monies allocated for a capital project to the costs incurred. (A description of the State's capital budgeting process is found in Appendix B).

As Jay Hogan, the Director of the Legislative Finance Division, noted, 'it is technically impossible to make accurate maintenance and operation projections and it would be difficult to keep track of extensive supplemental appropriations.'

Under current procedures, it would not be possible to determine the amount of money which should be appropriated to the fund, nor would it be possible to distribute those funds as needed to different capital projects. Implementing an M&O fund concept given these limitations in accounting practices would result in either 1) some capital projects receiving more money than they needed while others received less, if the fund allocates on a project basis, or 2) M&O expenditures as a whole being overfunded or underfunded, if the fund is used for all M&O costs regardless of project.

Flexible Priorities

Advocates of M&O funds argue that the dedication of revenues to provide a consistent source of financing for financial obligations incurred now is an act of fiscal responsibility. Opponents, however, argue that fiscal responsibility is better maintained through the ongoing legislative process than through a dedication which is binding on the future. They argue that there should be competition for funding among diverse public needs on a regular basis, because such competition and repeated evaluation permit changing priorities to be accommodated through the budget process. Problems might be created in the future if an M&O fund has more revenues than it requires while other programs have to sustain budget cuts.

Increased Future Revenues Through Investment Earnings

Advocates of endowment funds argue that they have the potential to appreciate in value through profitable investment of the principal. However, endowment funds also have the potential to depreciate in value; if their yield is below the inflation rate, the real value of the principal would be decreased. For example, during fiscal year 1980 the Alaska Permanent Fund had a rate of return of 11.3 percent, which provided little if any real growth.

Greater investment risk generally yields greater rewards and a strong profit motive, not present in the public sector, is necessary for successful investing. Therefore, it can be argued that public bodies are not well suited to make profitable investments as they tend to avoid risk. At the same time that the Permanent Fund was earning 11.3 percent, many private sector financial management firms, including those with low risk investment policies, have obtained rates of return far superior to the rates of return earned by some of the largest publicly administered funds.

It is generally recognized that large financial markets provide better opportunities for conservative investment than smaller markets. As the large financial markets are external to Alaska, the best opportunities for profitable low risk investment are often outside the state. However, many Alaskans object to external investments as they result in less money being made available for in-state use.

Limitation of Current Expenditures

While endowment funds do provide an opportunity to save current excess revenues and limit current expenditures, opponents of such funds see two problems: 1) limiting current spending does not allow the State to take the opportunity to make up for years of insufficient