

LEG. FINANCE - BILLS 1983 - 1984 1988

HSCR 2 - HCR 9

1988

# COMMITTEE REPORT HOUSE

FURTHER:

2/11/83

Date: 2/10/83

Mr. Speaker:

The Committee on FINANCE has had HSCR 2  
Disapproving Executive Order No. 53.

under consideration and reports it back as follows:

- 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  Zero Fiscal Note Attached
- referred to the \_\_\_\_\_ Committee

**MEMBERS SIGNING  
DO PASS**

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

**MEMBERS HAVING  
OTHER RECOMMENDATIONS:**

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]  
CHAIRMAN

Introduced: 2/11/83  
Referred: Finance

1 IN THE HOUSE BY THE FINANCE COMMITTEE  
2 HOUSE SPECIAL CONCURRENT RESOLUTION NO. 2  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 THIRTEENTH LEGISLATURE - FIRST SESSION

5 Disapproving Executive Order No. 53.

6 WHEREAS the governor, under authority of art. III, sec. 23, of the  
7 Constitution of the State of Alaska, has proposed to merge the division of  
8 budget and management and the division of policy development and planning,  
9 including the latter's office of coastal management, into an office of  
10 management and budget within the Office of the Governor by Executive Order  
11 No. 53; and

12 WHEREAS the governor has submitted Executive Order No. 53 to the  
13 presiding officer of each house of the legislature as required by AS 24.-  
14 30.130(b); and

15 WHEREAS art. III, sec. 23, of the Constitution of the State of Alaska  
16 provides that unless disapproved within 60 days of a regular session by  
17 resolution concurred in by a majority of the members of the legislature in  
18 joint session, an executive order becomes effective at a date thereafter  
19 designated by the governor; and

20 WHEREAS it is not in the best interests of the state to merge the  
21 division of budget and management and the division of policy development  
22 and planning, including the latter's office of coastal management, into an  
23 office of management and budget within the Office of the Governor as pro-  
24 posed in Executive Order No. 53;

25 BE IT RESOLVED by the Alaska State Legislature that Executive Order  
26 No. 53 is disapproved.

THE FOLLOWING INDIVIDUAL IS EXPECTED TO TESTIFY ON HSCR 2:

Peter McDowell  
Director  
Office of Management & Budget

I. REQUEST

Bill/Resolution No.: SCS HCR 2 (State Affrs)  
 Title: Senior Cit. & Handicapped Travel  
 Sponsor: Grussendorf  
 Requestor: Transportation

II. FISCAL DETAIL

Agency Affected: DOT/PF  
 Program Category Affected: Transportation  
 BRU, Program of Subprogram(s) Affected: Marine Highways

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	N/A	(185.0)	(203.0)	(223.0)	(245.0)	(269.0)

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Martin J. Nusbaum Phone: 465-3950  
 Division: Marine Highway Systems Date: 4/19/83  
 Approved by Commissioner: *[Signature]* Date: 4/20/83  
 Department: DOT/PF

Distribution:

- Original to Legislative Finance
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- Copy to Department (for Governor introduced bills)
- Copy to Sponsor
- Copy to Requestor (if different from Sponsor)

### III. ANALYSIS

Senate Committee Substitute for House Resolution No. 2 (State Affairs), is a request relating to space available free passage for all senior citizens and handicapped persons at all times on specific vessels of the marine highway system. Those vessels called out are the M/V's AURORA, LeCONTE, CHILKAT, TUSTUMENA and BARTLETT.

The Department of Transportation and Public Facilities is in the process of completing a "User Survey" of travelers on vessels of the system. The survey reveals that during the winter, (September 15 through May 14) the majority (about 70%) of the passengers on the Marine Highway are Alaskans, of this group approximately 10% are traveling under the Senior Citizen Free Passage program. Therefore, the majority of beneficiaries of Senior Citizen Free Passage are Alaskans.

In the summer (May 16 through September 30) the majority of the systems users (approximately 80%) as reflected in the survey, are from out-of-state. It would appear then that the beneficiaries of Senior Citizens Free Passage during this time would be from out-of-state and the state would be subsidizing this travel. Senior Citizens' groups are well organized on both local and national levels.

Capacity loads are already experienced on the M/V BARTLETT during the summer on her Valdez to Whittier route. Increasing the number of travelers competing for this space, through free passage incentives, might well be counter productive. This also applies to the M/V CHILKAT and M/V TUSTUMENA on certain portions of their routes.

The "User Survey" information reflects that approximately 10% of the passengers on the Marine Highway would be eligible for Senior Citizen rates. Reducing passenger revenue by 10% for the summer months on the specified vessels would approximate the following estimates of reduced revenue.

Vessel	1982 Passenger Revenue 15 May - Oct. 1	10% of 1982 Passenger Revenue for Period
M/V AURORA	\$275,000	\$ 27,500
M/V LeCONTE	271,000	27,100
M/V CHILKAT	42,000	4,200
M/V BARTLETT	710,000	71,000
M/V TUSTUMENA	468,000	46,800

Free Senior Citizen passage for a full twelve months could approximate a loss of revenue of \$175,000 each year. Although loss of revenue due to expansion of free travel to handicapped persons on these vessels is estimated to be minimal (\$10,000 a year) there are certain considerations that must be taken into account.

Annual or unrestricted free passage on the vessels named might create a burden

on both the passengers and the vessel operations. None of the vessels, with the exception of the M/V TUSTUMENA have stateroom capacity. They do not have first aid rooms, elevators or facilities to provide for handicapped persons in restrooms, passageways or lounges. The mission of these vessels is the servicing of "outport" towns and villages. Medical facilities are far and few in these areas should the occasion arise for their need. On the other hand the "mainline" vessels are somewhat equipped for handicapped persons. All have elevators, first aid rooms, emergency medical supplies, trained personnel, handicapped facilities in the restrooms and are only a few hours from a town where medical facilities are available.

While the "User Survey" does not identify handicapped passengers as a group the ferry system has experienced a steady increase in this class passenger. It is felt as the public becomes more aware of this program it will accelerate.

Assuming a 50% discount was passed on the Senior Citizens and handicapped persons for staterooms, for a full twelve months per year, the loss of additional revenue would approximate an additional \$106,000.00. This estimate is founded using the same approach as the estimate on revenue loss on passage.

We believe there would be insurmountable administrative problems by the establishment of discounted stateroom tariffs for senior citizens and handicapped persons. The main problem would be the establishment of priorities. Would these reduced fare passengers be allowed to make reservations for staterooms or would the staterooms be on a "space available" basis?

We believe that senior citizens from out-of-state would again be the beneficiaries of such a program.

The figures outlined above are viewed as conservative losses because more senior tourists would change travel plans and travel on these vessels in Southeast Alaska instead of the larger vessels for short trips. We also believe that special rates on certain vessels would cause confusion among people not familiar with the various vessels and greatly increase the demand for expansion of free service to all vessels.

STATE OF ALASKA  
FINAL\* STATEMENT OF FISCAL IMPACT

Bill No: HSCR No. 2 Date on Bill: February 11, 1983  
 Title: Disapproving Executive Order No. 53  
 Sponsor: House Finance Committee  
 Requestor: Governor - Office of Management and Budget

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86
Capital	-0-	-0-	-0-	
Operating	-0-	-0-	-0-	
Total	-0-	-0-	-0-	

b. Revenues:

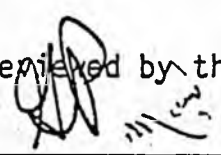
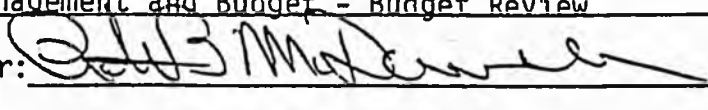

Revenue	-0-	-0-	-0-	
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2. Source of funds to offset fiscal impact of bill:

No Fiscal Impact.

3. Assumptions:

\*This statement has been reviewed by the OMB in the Office of the Governor.

Prepared By: Glen Price  Phone: 465-3538  
 Division: Office of Management and Budget - Budget Review Date: 2/24/83  
 Approved by Commissioner:  Date: 2/24/83  
 Department: OMB  
 Reviewed by OMB:  Date: 2-24-83  
 Phone: 3468

5. Distribution:

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2/24/83

## From THE UNIFORM RULES

the purpose of expelling a member under provisions of Sec. 12, Art. II, of the State Constitution. The special resolution requires a referral to the Rules Committee, three readings, and a two-thirds vote of the full membership of the house for approval.

(3) A concurrent resolution is similar to the simple resolution but reflects the will, wish, view or decision of both houses speaking concurrently. It is used particularly to handle the internal business of the legislature, e.g., adjournment of the legislature, suspension and amendment of the Uniform Rules, requesting action of executive agencies and interim committees, and fixing the time and place for joint assemblies. This resolution is also used for establishing joint committees. This resolution does not require committee referral, three readings, or anything other than approval of a majority vote of the full membership of each house unless otherwise required by the rules.

(4) A special concurrent resolution is employed to consider disapproval of an executive order of the governor laid before the legislature under provisions of Sec. 23, Art. III, of the State Constitution. This resolution must be considered by a joint committee and may be adopted by a majority vote of the full membership of the legislature in joint session without recourse to three readings.

(5) A joint resolution is the most formal type of resolution and is adopted by both houses and then signed by the governor as a ministerial formality. The joint resolution is treated in all respects as a bill but it is not subject to veto. It is usually reserved for addressees outside the state. This resolution is used mainly to express the view or wish of the legislature to the President, the Congress or agencies of the United States Government or the governments of other states. It is required for proposing or ratifying amendments to the U. S. Constitution, proposing amendments to the State Constitution under provisions of Sec. 1, Art. XIII, of the State Constitution, and for disapproval of local government boundary changes recommended by the Local Boundary Commission under provisions of Sec. 12, Art. X, of the State Constitution. Approval of a joint resolution requires a majority vote of the full membership of each house.

(b) All resolutions passed by one or both houses are sent to the governor as a matter of information and for permanent filing with the lieutenant governor. The lieutenant governor sends enrolled copies of joint resolutions to the federal and other state officers, agencies and jurisdictions. The transmittal of copies of all other resolutions to designated addressees is the responsibility of the Legislative Affairs Agency.

### LEGISLATIVE CITATIONS

**RULE 50. LEGISLATIVE CITATIONS.** (a) The appropriate instrument for expressing commendation, condolences, appreciation or congratulations to an individual or a group, or to recognize a particular event or occasion, is a "Legis-

Sec. 24.30.090. Vote on passage. No bill may become law without the affirmative vote of a majority of the membership of each house. The yeas and the nays on final passage shall be recorded in the journal. (§ 37 ch 157 SLA 1959)

Sec. 24.30.100. Action upon veto. When the governor vetoes a bill or by veto strikes or reduces an item in an appropriation bill, during a regular session of the legislature, the legislature shall proceed to act in accordance with § 16, art. II, of the state constitution as it is implemented by the rules of the legislature. A bill vetoed after adjournment of the first regular session shall be reconsidered by the legislature sitting as one body no later than the fifth day of the next regular or special session convened during that legislature. Bills vetoed after adjournment of the second regular session shall be reconsidered by the legislature sitting as one body no later than the fifth day of a special session of that legislature, if one is called. (§ 38 ch 157 SLA 1959; am § 2 ch 67 SLA 1975)

Effect of amendment. — The 1975 amendment inserted "during a regular session of the legislature" in the first sentence and added the second and third sentences.

Sec. 24.30.110. Effective date of laws.

Repealed by § 9 ch 126 SLA 1966.

Editor's note. — The repealed section derived from § 39, ch. 157, SLA 1959.

Sec. 24.30.120. Bills carry over. A bill introduced but not receiving final action in the first regular session of a legislature carries over in the same reading or status into the second regular session of the same legislature. (§ 40 ch 157 SLA 1959)

Sec. 24.30.130. Constitutional amendments and executive orders.  
(a) The legislature may propose amendments to the state constitution through the adoption of a joint resolution by an affirmative vote of two-thirds of the membership of each house. Resolutions proposing constitutional amendments shall be treated as bills.

(b) An executive order proposing a change in the executive branch and requiring the force of law under § 23, art. III, of the state constitution shall be submitted to the presiding officer of each house on the day the house organizes. The legislature has 60 days of a regular session, or a full session if of shorter duration to disapprove the order. Unless disapproved by a special concurrent resolution introduced in either house, concurred in by a majority of the members in joint session, the order becomes effective at a date thereafter to be designated by the governor. An order submitted to but not disapproved by the legislature shall be published in the bound session laws and any codification of state law. (§ 41 ch 157 SLA 1959; am § 12 ch 47 SLA 1961)

BILL SHEFFIELD  
GOVERNOR



EO 53

STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

January 17, 1983

The Honorable Speaker of the House  
Alaska State Legislature  
Pouch V  
Juneau, Alaska 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 23, of the Alaska Constitution, and in accordance with AS 24.30.130(b), I am transmitting an executive order which creates as a part of my office the office of management and budget (OMB). This new unit is being created from the division of budget and management and the division of policy development and planning.

The OMB will also be responsible for the state's federal consistency determinations and certifications under the federal Coastal Zone Management Act of 1972, as amended. This function is currently carried out by the division of policy development and planning in accordance with AS 44.19.160 -- 44.19.162 and AS 46.40.040 (in the Alaska Coastal Management Act) and Alaska Administrative Order No. 54 (April 23, 1979). The coordinator of the office of coastal management will be under the direction of the council co-chair who is selected from among the members who are state officials, instead of under the direction of the council as a whole.

Although not requiring statutory amendment, the OMB will also incorporate the existing division of internal audit and the office of regulatory reform. Section 17 of this order makes the appropriate name change (with a reference to the OMB director's designee) in the statute specifying the membership of the Alaska Power Authority.

I believe that these changes, with a consolidation of related activities, will significantly improve the efficiency of state government.

Sincerely,

Handwritten signature of Bill Sheffield in cursive.  
Bill Sheffield  
Governor

IN SENATE - Offered: 1/18/83  
Referred: State Affairs,  
Health, Education & Social  
Services and Finance

IN HOUSE -- Offered: 1/17/83  
Referred: State Affairs  
and Finance

EXECUTIVE ORDER NO. 53

Under the authority of art. III, sec. 23, of the Alaska Constitution, and in accordance with AS 24.30.130(b), I order the following:

\* Section 1. FINDINGS. As governor, I find that it would be in the best interests of efficient administration and state planning to merge the division of budget and management and the division of policy development and planning, including the latter's office of coastal management, into an office of management and budget within the Office of the Governor.

\* Sec. 2. AS 37.07.040 is amended to read:

Sec. 37.07.040. OFFICE OF MANAGEMENT AND BUDGET [DIVISION OF BUDGET AND MANAGEMENT]. The Alaska office of management and budget [BUDGET AND MANAGEMENT DIVISION] shall

(1) assist the governor in the preparation and explanation of the proposed comprehensive program and financial plan, including the coordination and analysis of state agency goals and objectives, plans, and budget requests;

(2) prepare for submission to the governor an annually updated six-year capital improvements program and the proposed capital improvements budget for the coming fiscal year, the latter to include individual project justification with documentation of estimated project cost;

(3) develop procedures to produce the information needed for effective policy decision making, including procedures to provide for the dissemination of information about plans, programs, and budget requests to be included in the annual budget and opportunity for public review and comment during the period of budget preparation;

(4) assist state agencies in their statement of goals and objectives, preparation of plans, budget requests, and reporting of program performance; all documents forwarded by the office [DIVISION]

1 to a state agency containing instructions for the preparation of pro-  
2 gram plans and budget requests and the reporting of program perfor-  
3 mance are public information after the date they are forwarded;

4 (5) administer its responsibilities under the program exe-  
5 cution provisions of this chapter so that the policy decisions and  
6 budget determinations of the governor and the legislature are imple-  
7 mented;

8 (6) provide the legislative finance division with the bud-  
9 get information it may request;

10 (7) provide the legislative finance division with an ad-  
11 vance copy of the governor's budget workbooks by the first Monday in  
12 January of each year, except that following a gubernatorial election  
13 year the advance copy shall be provided by the second Monday in Janu-  
14 ary.

15 \* Sec. 3. AS 37.07.080(b) is amended to read:

16 (b) Each state agency shall prepare an annual plan for the  
17 operation of each of its assigned programs except for programs that  
18 are exempted from this requirement by the office [DIVISION]. The  
19 operations plan shall be prepared in the form and content and be  
20 transmitted on the date prescribed by the office [DIVISION].

21 \* Sec. 4. AS 37.07.080(c) is amended to read:

22 (c) The office [DIVISION] shall

23 (1) review each operations plan to determine that it is  
24 consistent with the policy decisions of the governor and appropria-  
25 tions by the legislature, that it reflects proper planning and effi-  
26 cient management methods, that appropriations have been made for the  
27 planned purpose and will not be exhausted before the end of the fiscal  
28 year;

29 (2) approve the operations plan if satisfied that it meets

1 the requirements under (1) of this subsection; otherwise, the office  
2 [DIVISION] shall require revision of the operations plan in whole or  
3 in part;

4 (3) Repealed by sec. 1 ch 26 SLA 1976.

5 \* Sec. 5. AS 37.07.080(e) is amended to read:

6 (e) Transfers or changes between objects of expenditures or be-  
7 tween allocations may be made by the head of a state agency upon ap-  
8 proval of the office [DIVISION]. No transfers may be made between ap-  
9 propriations except as provided in an act making the transfers between  
10 appropriations.

11 \* Sec. 6. AS 37.07.080(f) is amended to read:

12 (f) The office [DIVISION] shall report quarterly to the governor  
13 and the legislature on the operations of each state agency, relating  
14 actual accomplishments to those planned and modifying, if necessary,  
15 the operations plan of any agency for the balance of the fiscal year.

16 \* Sec. 7. AS 37.07 is amended by adding a new section to read:

17 Sec. 37.07.090. DEFINITION. In AS 37.07, "office" means the  
18 Alaska office of management and budget established in the Office of  
19 the Governor by AS 44.19.141.

20 \* Sec. 8. AS 44.19.141 is amended to read:

21 ARTICLE 12. OFFICE OF MANAGEMENT AND BUDGET [DIVISION  
22 OF POLICY DEVELOPMENT AND PLANNING].

23 Sec. 44.19.141. ALASKA OFFICE OF MANAGEMENT AND BUDGET [DIVISION  
24 OF POLICY DEVELOPMENT AND PLANNING]. There is in the Office of the  
25 Governor the Alaska office of management and budget [DIVISION OF  
26 POLICY DEVELOPMENT AND PLANNING].

27 \* Sec. 9. AS 44.19.142 is amended to read:

28 Sec. 44.19.142. DIRECTOR. The office of management and budget  
29 [DIVISION OF POLICY DEVELOPMENT AND PLANNING] is administered by a

1 director who is appointed by, and serves at the pleasure of, the gov-  
2 ernor.

3 \* Sec. 10. AS 44.19.143 is amended to read:

4 Sec. 44.19.143. PERSONNEL. The director shall employ such per-  
5 sonnel as may be necessary to carry out the provisions of AS 44.19.-  
6 141 -- 44.19.152 and the relevant provisions of AS 37.07.

7 \* Sec. 11. AS 44.19.144 is amended to read:

8 Sec. 44.19.144. POWERS AND DUTIES OF THE DIRECTOR. (a) The di-  
9 rector shall

10 (1) supervise and administer the activities of the office  
11 [DIVISION];

12 (2) advise the governor on matters of comprehensive state  
13 planning;

14 (3) make an annual report to the governor of the activities  
15 of the office [DIVISION].

16 (b) The director may

17 (1) with the written concurrence of the governor, enter in-  
18 to contracts and subcontracts on behalf of the state to carry out the  
19 provisions of AS 44.19.141 -- 44.19.152;

20 (2) act for the state in the initiation, investigation,  
21 evaluation of or participation in any program relative to the stated  
22 purpose of AS 44.19.141 -- 44.19.152 which may involved more than one  
23 government or governmental unit;

24 (3) on behalf of the state, accept and expend any gifts or  
25 grants made to the state with the approval of the governor where such  
26 gifts or grants were made for the purposes of furthering the objec-  
27 tives of the office [DIVISION].

28 \* Sec. 12. AS 44.19.145 is amended to read:

29 Sec. 44.19.145. FUNCTIONS AND DUTIES OF THE OFFICE [DIVISION].

1 (a) The office [DIVISION] shall

2 (1) provide technical assistance to the governor and the  
3 legislature in identifying long range goals and objectives for the  
4 state and its political subdivisions;

5 (2) prepare and maintain a state comprehensive development  
6 plan;

7 (3) provide information and assistance to state agencies to  
8 aid in governmental coordination and unity in the preparation of agen-  
9 cy plans and programs;

10 (4) review planning within state government as may be nec-  
11 essary for receipt of federal, state or other funds;

12 (5) Repealed by sec. 10 ch 200 SLA 1972, effective July 1,  
13 1972.

14 (6) participate with other countries, provinces, states or  
15 subdivisions of them [THEREOF] in international or interstate plan-  
16 ning, and assist Alaska's local governments, governmental conferences  
17 and councils, in planning and coordinating their activities;

18 (7) Repealed by sec. 2 ch 60 SLA 1972.

19 (8) encourage educational and research programs that fur-  
20 ther state planning and development, and provide administrative and  
21 technical services for them;

22 (9) publish such statistical information or other documen-  
23 tary material as will further the provisions and intent of AS 44.19.-  
24 141 -- 44.19.152;

25 (10) assist the governor and the Department of Community and  
26 Regional Affairs in coordinating the activities of state agencies  
27 which have an impact on the solution of local and regional development  
28 problems;

29 (11) serve as a clearinghouse for information, data, and

1 other materials which may be helpful or necessary to federal, state or  
2 local governmental agencies in discharging their respective responsi-  
3 bilities or in obtaining federal or state financial or technical as-  
4 sistance;

5 (12) review all proposals for the location of capital im-  
6 provements by any state agency and advise and make recommendations  
7 concerning location of these capital improvements;

8 (13) perform the state's review and comment on federal con-  
9 sistency determinations and certifications authorized by sec. 307 of  
10 the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. sec.  
11 1456, and the state coastal management program.

12 (b) The office [DIVISION] shall, in carrying out its functions,  
13 consult with local, regional, state and federal officials, private  
14 groups and individuals, and with officials[,] of other countries,  
15 provinces and states, and may hold public hearings to obtain informa-  
16 tion for the purpose of carrying out the provisions of AS 44.19.141 --  
17 44.19.152.

18 (c) The governor may establish coordinating or advisory planning  
19 groups.

20 (d) The office [DIVISION] shall

21 (1) coordinate its services and activities with those of  
22 other state departments and agencies to the fullest extent possible to  
23 avoid duplication;

24 (2) prepare an integrated annual report on the long-range  
25 development program of the state and submit it to the governor for in-  
26 corporation into his report to the legislature;

27 (3) cooperate with the University of Alaska and other ap-  
28 propriate public and private institutions in research and investiga-  
29 tions.

1 \* Sec. 13. AS 44.19.152 is amended to read:

2 Sec. 44.19.152. DEFINITIONS. In AS 44.19.141 -- 44.19.152,

3 (1) ["DIVISION" MEANS THE DIVISION OF POLICY DEVELOPMENT  
4 AND PLANNING;]

5 (2) "director" means the director of the office of manage-  
6 ment and budget; [DIVISION OF POLICY DEVELOPMENT AND PLANNING.]

7 (3) "office" means the Alaska office of management and bud-  
8 get.

9 \* Sec. 14. AS 44.19.155(a)(2)(A) is amended to read:

10 (A) the director of the office of management and bud-  
11 get [DIVISION OF POLICY DEVELOPMENT AND PLANNING];

12 \* Sec. 15. AS 44.19.155(d) is amended to read:

13 (d) Each member of the council shall select one person to serve  
14 as a permanent alternate at meetings of the council. If a member of  
15 the council is unable to attend, he shall advise the alternate who may  
16 attend and act in the place of the member. The alternate for a public  
17 member appointed after July 9, 1978 under (a)(1) of this section  
18 shall, at the time of his designation and throughout the period of his  
19 service as a permanent alternate, be the mayor or member of the assem-  
20 bly or council of a municipality within the region from which the per-  
21 manent member is appointed. The alternate for the director of the  
22 office of management and budget, serving under (a)(2)(A) of this sec-  
23 tion, shall be the director's designee within that office. The alter-  
24 nate for a designated member serving under (a)(2)(B) -- (G) of this  
25 section shall be a deputy commissioner of the department or the direc-  
26 tor of a division in the department. The names of alternates shall be  
27 filed with the council.

28 \* Sec. 16. AS 44.19.162 is amended to read:

29 Sec. 44.19.162. COUNCIL STAFF. The council shall use [UTILIZE]

1 the staff of the office of coastal management within the office of  
2 management and budget [DIVISION OF POLICY DEVELOPMENT AND PLANNING] in  
3 discharging its powers and duties. The coordinator of the office of  
4 coastal management, under the direction of the council co-chair who is  
5 selected from among the members designated in AS 44.19.155(a)(2) [,  
6 WITH THE CONCURRENCE OF THE COUNCIL], may contract with or employ per-  
7 sonnel or consultants the coordinator [HE] considers necessary to car-  
8 ry out the powers and duties of the council.

9 \* Sec. 17. AS 44.83.030(2) is amended to read:

10 (2) the director of the office of [DIVISION OF BUDGET AND]  
11 management and budget, or the director's designee within that office,  
12 and three commissioners of principal executive departments appointed  
13 by the governor.

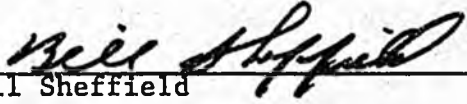
14 \* Sec. 18. TRANSITION. All litigation, hearings, investigations and  
15 other proceedings pending under a law amended or repealed by this Order, or  
16 in connection with functions transferred by this Order, continue in effect  
17 and may be continued and completed notwithstanding a transfer or amendment  
18 or repeal provided for in this Order. Certificates, orders, and regula-  
19 tions issued or adopted under authority of a law amended or repealed by  
20 this Order remain in effect for the term issued, or until revoked, vacated,  
21 or otherwise modified under the provisions of this Order. All contracts,  
22 rights, liabilities, and obligations created by or under a law amended or  
23 repealed by this Order, and in effect on the effective date of this Order,  
24 remain in effect notwithstanding this Order's taking effect. Records,  
25 equipment, and other property of agencies of the state whose functions are  
26 transferred under this Order shall be transferred commensurate with the  
27 provisions of this Order.

28 \* Sec. 19. NAME CHANGE. To be consistent with the changes made by this  
29 Order, wherever in the Alaska Statutes and in regulations adopted under

1 those statutes "division of budget and management" and "division of policy  
2 development and planning," and other terms identifying those divisions, are  
3 used, they must be read as referring to the office of management and bud-  
4 get. Similarly, references to the directors of those divisions must be  
5 read as references to the director of the office of management and budget.  
6 Under AS 01.05.031, the revisor of statutes shall implement this section in  
7 the statutes, and, under AS 44.62.125(b)(6), the regulations attorney shall  
8 implement this section in the administrative regulations.

9 \* Sec. 20. This Order takes effect March 18, 1983.

10  
11 DATED: Jan 17, 1983

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13   
14 Bill Sheffield  
15 Governor  
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## From THE UNIFORM RULES

the purpose of expelling a member under provisions of Sec. 12, Art. 11, of the State Constitution. The special resolution requires a referral to the Rules Committee, three readings, and a two-thirds vote of the full membership of the house for approval.

(3) A concurrent resolution is similar to the simple resolution but reflects the will, wish, view or decision of both houses speaking concurrently. It is used particularly to handle the internal business of the legislature, e.g., adjournment of the legislature, suspension and amendment of the Uniform Rules, requesting action of executive agencies and interim committees, and fixing the time and place for joint assemblies. This resolution is also used for establishing joint committees. This resolution does not require committee referral, three readings, or anything other than approval of a majority vote of the full membership of each house unless otherwise required by the rules.

(4) A special concurrent resolution is employed to consider disapproval of an executive order of the governor laid before the legislature under provisions of Sec. 23, Art. III, of the State Constitution. This resolution must be considered by a joint committee and may be adopted by a majority vote of the full membership of the legislature in joint session without recourse to three readings.

(5) A joint resolution is the most formal type of resolution and is adopted by both houses and then signed by the governor as a ministerial formality. The joint resolution is treated in all respects as a bill but it is not subject to veto. It is usually reserved for addressees outside the state. This resolution is used mainly to express the view or wish of the legislature to the President, the Congress or agencies of the United States Government or the governments of other states. It is required for proposing or ratifying amendments to the U. S. Constitution, proposing amendments to the State Constitution under provisions of Sec. 1, Art. XIII, of the State Constitution, and for disapproval of local government boundary changes recommended by the Local Boundary Commission under provisions of Sec. 12, Art. X, of the State Constitution. Approval of a joint resolution requires a majority vote of the full membership of each house.

(b) All resolutions passed by one or both houses are sent to the governor as a matter of information and for permanent filing with the lieutenant governor. The lieutenant governor sends enrolled copies of joint resolutions to the federal and other state officers, agencies and jurisdictions. The transmittal of copies of all other resolutions to designated addressees is the responsibility of the Legislative Affairs Agency.

### LEGISLATIVE CITATIONS

RULE 50. LEGISLATIVE CITATIONS. (a) The appropriate instrument for expressing commendation, condolences, appreciation or congratulations to an individual or a group, or to recognize a particular event or occasion, is a "Legis-

**Sec. 24.30.090. Vote on passage.** No bill may become law without the affirmative vote of a majority of the membership of each house. The yeas and the nays on final passage shall be recorded in the journal. (§ 37 ch 157 SLA 1959)

**Sec. 24.30.100. Action upon veto.** When the governor vetoes a bill or by veto strikes or reduces an item in an appropriation bill, during a regular session of the legislature, the legislature shall proceed to act in accordance with § 16, art. II, of the state constitution as it is implemented by the rules of the legislature. A bill vetoed after adjournment of the first regular session shall be reconsidered by the legislature sitting as one body no later than the fifth day of the next regular or special session convened during that legislature. Bills vetoed after adjournment of the second regular session shall be reconsidered by the legislature sitting as one body no later than the fifth day of a special session of that legislature, if one is called. (§ 38 ch 157 SLA 1959; am § 2 ch 67 SLA 1975)

**Effect of amendment.** — The 1975 amendment inserted "during a regular session of the legislature" in the first sentence and added the second and third sentences.

**Sec. 24.30.110. Effective date of laws.**

Repealed by § 9 ch 126 SLA 1966.

**Editor's note.** — The repealed section derived from § 39, ch. 157, SLA 1959.

**Sec. 24.30.120. Bills carry over.** A bill introduced but not receiving final action in the first regular session of a legislature carries over in the same reading or status into the second regular session of the same legislature. (§ 40 ch 157 SLA 1959)

**Sec. 24.30.130. Constitutional amendments and executive orders.**  
(a) The legislature may propose amendments to the state constitution through the adoption of a joint resolution by an affirmative vote of two-thirds of the membership of each house. Resolutions proposing constitutional amendments shall be treated as bills.

(b) An executive order proposing a change in the executive branch and requiring the force of law under § 23, art. III, of the state constitution shall be submitted to the presiding officer of each house on the day the house organizes. The legislature has 60 days of a regular session, or a full session if of shorter duration to disapprove the order. Unless disapproved by a special concurrent resolution introduced in either house, concurred in by a majority of the members in joint session, the order becomes effective at a date thereafter to be designated by the governor. An order submitted to but not disapproved by the legislature shall be published in the bound session laws and any codification of state law. (§ 41 ch 157 SLA 1959; am § 12 ch 47 SLA 1961)

Introduced: 2/11/83  
Referred: Finance

1 IN THE HOUSE BY THE FINANCE COMMITTEE  
2 HOUSE SPECIAL CONCURRENT RESOLUTION NO. 2  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 THIRTEENTH LEGISLATURE - FIRST SESSION

5 Disapproving Executive Order No. 53.

6 WHEREAS the governor, under authority of art. III, sec. 23, of the  
7 Constitution of the State of Alaska, has proposed to merge the division of  
8 budget and management and the division of policy development and planning,  
9 including the latter's office of coastal management, into an office of  
10 management and budget within the Office of the Governor by Executive Order  
11 No. 53; and

12 WHEREAS the governor has submitted Executive Order No. 53 to the  
13 presiding officer of each house of the legislature as required by AS 24.-  
14 30.130(b); and

15 WHEREAS art. III, sec. 23, of the Constitution of the State of Alaska  
16 provides that unless disapproved within 60 days of a regular session by  
17 resolution concurred in by a majority of the members of the legislature in  
18 joint session, an executive order becomes effective at a date thereafter  
19 designated by the governor; and

20 WHEREAS it is not in the best interests of the state to merge the  
21 division of budget and management and the division of policy development  
22 and planning, including the latter's office of coastal management, into an  
23 office of management and budget within the Office of the Governor as pro-  
24 posed in Executive Order No. 53;

25 BE IT RESOLVED by the Alaska State Legislature that Executive Order  
26 No. 53 is disapproved.

Introduced: 2/11/83  
Referred: Finance

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2

HOUSE SPECIAL CONCURRENT RESOLUTION NO. 2

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - FIRST SESSION

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22 and planning, including the latter's office of coastal management, into an  
23 office of management and budget within the Office of the Governor as pro-  
24 posed in Executive Order No. 53;

25 BE IT RESOLVED by the Alaska State Legislature that Executive Order  
26 No. 53 is disapproved.



Introduced: 1/17/83  
Referred: Transportation and Finance

1 IN THE HOUSE BY GRUSSENDORF AND FRITZ  
2 HOUSE CONCURRENT RESOLUTION NO. 2  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 THIRTEENTH LEGISLATURE - FIRST SESSION  
5 Relating to travel by senior citizens  
6 aboard vessels of the state marine  
7 highway system.  
8 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:  
9 WHEREAS, since 1974, in response to House Concurrent Resolution  
10 No. 52, the state marine highway system has provided for travel on ferries  
11 by persons 65 years of age and older on a space-available basis within  
12 Alaska without charge during the months of November to April, inclusive;  
13 and  
14 WHEREAS, during 1980, in response to Legislative Resolve No. 2, 1980,  
15 the period of free passage for older Alaskans aboard state marine highway  
16 vessels was extended to October 1 to May 15 inclusive; and  
17 WHEREAS this service has been used by increasing numbers of older  
18 Alaskans, permitting travel on the marine highway system at no cost while  
19 increasing the number of foot passengers on vessels of the system; and  
20 WHEREAS the policy of free passage for older persons allows only  
21 passage without cost during the "off-season", is not extended to other  
22 services for senior citizens traveling aboard vessels, and in fact requires  
23 older persons to pay full costs of lodging; and  
24 WHEREAS many senior citizens find it difficult to use vessels of the  
25 marine highway system because of the unavailability and high cost of lodg-  
26 ing;  
27 BE IT RESOLVED that the Alaska State Legislature respectfully requests  
28 the Governor to direct the commissioner of transportation and public facil-  
29 ities to direct the division of marine highways to extend free passage on

1 the Aurora, Le Conte, Chilkat, Tustumena, and Bartlett, to senior citizens  
2 during every month of the year to permit them to travel between Alaskan  
3 ports on a space-available basis; and be it

4       FURTHER RESOLVED that the Governor direct the division of marine high-  
5 ways to investigate the possibility of making staterooms aboard state  
6 ferries available at a reduced rate to senior citizens when traveling  
7 between Alaskan ports.

THE LEGISLATURE OF THE STATE OF ALASKA  
THIRTEENTH LEGISLATURE .

FISCAL NOTE

I. REQUEST

Bill/Resolution No. HCR 2 - Re travel by senior citizens aboard vessels  
 Title of the state marine highway system.  
 Requested by Grussendorf & Fritz Date 1/17/83

II. FISCAL DETAIL

Agency Affected DOT/PF  
 Program Category Affected Transportation  
 BRU, Program, Or Subprogram(s) Affected Marine Highway Systems  
 (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 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		0	0			

FUNDING (Thousands of Dollars)

GENERAL FUND		0	0			
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

IV. DATE 1/26/83 PREPARED BY Marty Nusbaum, Acting Director  
 AGENCY Marine Highway Systems  
 Original: Legislative Finance PHONE 465-3950  
 cc: Budget and Management  
 Prime Sponsor (First Legislator Named)  
 33-001 (Rev. 12/82)

### III. ANALYSIS

House Concurrent Resolution No. 2, references space available free passage for all senior citizens on an annual basis. It further specifies only the smaller "feeder class" vessels of the system. The exception would be the M/V TUSTUMENA but still one of the smaller vessels.

The Department of Transportation and Public Facilities is in the process of completing a "User Survey" of travelers on vessels of the system. The survey reveals that during the winter, (Sept. 15 through May 14) the majority (about 70%) of the passengers on the Marine Highway are Alaskans, of this group approximately 10% are traveling under the Senior Citizen Free Passage program. Therefore, the majority of beneficiaries of Senior Citizen Free Passage are Alaskans.

In the summer (May 16 through Sept. 30) the majority of the systems users (approximately 80%) as reflected in the survey, are from out of state. It would appear then that the beneficiaries of Senior Citizens Free Passage during this time would be from out of state and the state would be subsidizing this travel. Senior Citizens' groups are well organized on both local levels and nationally. We believe these groups would tend to fill the system vessels to the detriment of full fare paying passengers and would require an expansion of service to meet the needs of the older passengers.

Capacity loads are already experienced on the M/V BARTLETT during the summer on her Valdez to Whittier route. Increasing the number of travelers competing for this space, through free passage incentives, might well be counter productive. This also applies to the M/V CHILKAT and M/V TUSTUMENA on certain portions of their routes.

The "User Survey" information reflects that approximately 10% of the passengers on the Marine Highway would be eligible for Senior Citizen routes. Reducing passenger revenue by 10% for the summer months on the specified vessels would approximate the following estimates of reduced revenue.

Vessel	1982 Passenger Revenue 15 May - Oct. 1	10% of 1982. Passenger Revenue for Period
M/V AURORA	275,000	27,500
M/V LeCONTE	271,000	27,100
M/V CHILKAT	42,000	4,200
M/V BARTLETT	710,000	71,000
M/V TUSTUMENA	468,000	46,800

Free Senior Citizen passage for a full twelve months could approximate a loss of revenue of \$175,000 each year.

Assuming a 50% discount was passed on the Senior Citizens for staterooms, for a full twelve months per year, the loss of additional revenue would approximate an additional \$100,000.00. This estimate is founded using the same approach as the estimate on revenue loss on passage.

We believe there would be insurmountable administrative problems by the establishment of discounted stateroom tariffs for senior citizens. The main problem would be the establishment of priorities. Would these reduced fare senior citizens be allowed to make reservations for staterooms or would the staterooms be on a "space available basis?"

We believe that senior citizens from out of state would again be the beneficiaries of such a program.

The following individuals are expected to testify on HCR 2:

Rep. Ben Grussendorf, Prime Sponsor

Marty Nusbaum, Division of Marine Highway Systems, DOTPF

Jon Wolfe, Executive Director, Older Alaskans Commission,  
Department of Administration

Dove Kull

*CP*

THE LEGISLATURE OF THE STATE OF ALASKA  
THIRTEENTH LEGISLATURE

FISCAL NOTE

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400 COMMODITIES						
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700 GRANTS, CLAIMS, ETC.						
TOTAL		0	0			

FUNDING (Thousands of Dollars)

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TEMPORARY						

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Original: Legislative Finance PHONE 465-3950  
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*jm*

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We believe that senior citizens from out of state would again be the beneficiaries of such a program.

# Alaska State Legislature

## House of Representatives

### Committee on Transportation

Pouch V  
State Capitol  
Juneau, Alaska 99811  
(907) 465-4858



Rep. Bette Cato, Chairman

HOUSE TRANSPORTATION  
STANDING COMMITTEE  
February 7, 1983  
8:30 a.m.

Members Present: Rep. Bette Cato, Chairman  
Rep. Miller, Vice-Chairman  
Rep. Abood  
Rep. Davis  
Rep. Herrmann  
Rep. Lacher  
Rep. McBride  
Rep. Phillips  
Rep. Szymanski

Members Absent: None

#### COMMITTEE CALENDAR

HCR 2: Relating to travel by senior citizens aboard  
vessels of the state marine highway system.

#### WITNESS REGISTER

Representative Ben Grussendorf  
Pouch V, State Capitol  
Juneau, AK 99811  
Position Statement: Spoke in favor of HCR 2

Marty Nusbaum  
Acting Director, Marine Highway Systems  
Dept. Transportation/Public Facilities  
Juneau, AK  
Position Statement: Various comments on bill

#### POSITION STATEMENT

None

#### ACTION NARRATIVE

Tape #5

Recording  
Number 0018

Chairman Cato called the House Transportation Committee to order at 8:35 a.m. Committee staff present were Steve Soenksen and Rhonda Cargill. Chairman Cato called upon Rep. Ben Grussendorf to testify on his ~~bill~~. resolution

Number 0020

Rep. Grussendorf explained that HCR 2 adds an additional 75 days a senior citizen may ride on the ferry system. The excluded dates which exist at present time, are times which senior citizens would most likely be able to visit relatives or enjoy harvests (i.e. berry-picking). This resolution would allow only free passage on a space-available basis between Alaskan ports on the shuttle ferries, (not ports out of Seattle or Rupert) in an attempt to assist the elderly with transportation.

Last year the fiscal impact showed a loss of \$140,000 and this year a loss of \$175,000, which isn't much when one weighs the costs against the benefits. This resolution does not include staterooms or transporting vehicles, it is only walk-on passage. Whether the ferry shuttle has a full capacity of people or if it is empty, it still makes a scheduled run between ports. Yes, there will be a loss in revenue, but monies are budgeted for running the ferry system with or without people aboard.

Number  
0117

From this point until near the end of the ~~of~~ committee meeting there was much committee discussion on this resolution which dealt with such topics as discrimination in regards to senior citizens outside the State of AK, how to identify senior citizens; the fact that the State already subsidizes the marine highway system and this would just be increasing that subsidy a small amount; the intent of the marine system is to give people an extension of the road system to Southeast Alaska; perhaps the committee should draft a letter of intent that upon implementation of this resolution that it be directed to Alaska senior citizens;

Number  
0532

At ease

Number 0535

Marty Nusbaum gave comments on the resolution

that he agrees with the concept of the resolution and would like to see more Alaska senior citizens travel on the ferries but was concerned about opening up the marine highway system to outside travelers. At present, senior citizen groups schedule tours as close to summer months as possible and would be concerned that if free passage opened up during summer months that administrative problems would occur at the time when vessels would be heavily used.

Number  
0576

Rep. Lacher requested a copy of any legal opinion or court case on this topic if available.

Number  
0586

The committee continued to discuss the pros and cons of free passage to senior citizens on a space-available basis.

Number  
07..

Chairman Cato requested that the staff of Rep. Grussendorf and the committee staff meet to define and confirm "space available" in the resolution for a committee substitute since it is the general consensus of the committee to pass this resolution out of committee

Number  
0750

Meeting adjourned

REPRESENTATIVE  
BEN GRUSSENDORF  
P.O. BOX 928  
SITKA, ALASKA 99835  
(907) 747-8458

## Alaska State Legislature



WHILE IN JUNEAU  
POUCH V  
JUNEAU, ALASKA  
99811  
(907) 465-3824  
(907) 465-3870

CHAIRMAN  
COMMUNITY AND REGIONAL AFFAIRS COMMITTEE  
MEMBER RESOURCES COMMITTEE

DISTRICT 3  
ELFIN COVE  
PELICAN  
PORT ALEXANDER  
SITKA  
YAKUTAT

House of Representatives

February 24, 1983

### MEMORANDUM

TO: Rep. Albert Adams  
FROM: Rep. Ben Grussendorf  
RE: HCR 2

The effect of this resolution would be to extend the time period that senior citizens could travel free on the Alaska Marine Highway system. Senior citizens are already allowed free travel in Alaska on the ferry system from October 1 through May 14. This resolution would extend free travel to seniors from May 15 to September 30, thus providing free travel to senior citizens for the entire year. Only the smaller "feeder class" ferries, not the mainline ferries, would be included in the time period from May 15 to September 30 (except for the M/V Tustumena, a somewhat larger vessel). This was done to eliminate the majority of the out of state seniors who travel extensively on the mainline ferries in the summer months. This resolution only applies to seniors who are walk on (foot) passengers, and they would be allowed free passage only if there were room for them after all paying passengers were on board and the capacity of the vessel had not been reached.

This presents little or no problem with the ferries that service Southeast communities (the M/V Aurora, Le Conte and the Chilcat). These ferries are seldom full and do not even accept reservations for walk on passengers except during the state fair in Haines and in the event of a special land sale or basketball tournament is going on in one of the communities.

The situation is a little different on the Southwestern Alaska ferries. The M/V Bartlett, servicing Valdez, Cordova and Whittier, does accept reservations for walk on passengers in the summer. This is to accommodate the heavy tourist travel in the summer months to the Columbia Glacier. The Div. of Marine Highways said that this ferry is booked solid for

Page two  
Rep. Adams  
February 24, 1983

the summer walk on traffic months in advance. This would leave little chance for free passage for any senior citizen.

There is a question as to how many seniors from outside of Alaska would be taking advantage of the reduced fare. Most seniors who travel to Southeast Alaska in the summer are with tour groups. They travel on the mainline ferries because they can be booked by travel agents for staterooms. Most of these groups are on a very tight schedule and would probably not have the time to stray far from their planned itinerary to try and get on a different ferry where they could ride free of charge.

The communities frequented by senior citizen tour groups in Southeast in the summer are Ketchikan, Sitka, Juneau, Haines and Skagway. These ports are all serviced by mainline ferries in addition to the smaller ferries included in the resolution.

The Department of Transportation and Public Facilities has claimed there will be a loss of revenue because of less ticket sales to senior citizens, but the Commissioner has submitted a zero fiscal note because an accurate amount could not be decided on.

REPRESENTATIVE  
BEN GRUSSENDORF  
P.O. BOX 828  
SITKA, ALASKA 99835  
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# Alaska State Legislature



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February 24, 1983

the summer walk on traffic months in advance. This would leave little chance for free passage for any senior citizen.

There is a question as to how many seniors from outside of Alaska would be taking advantage of the reduced fare. Most seniors who travel to Southeast Alaska in the summer are with tour groups. They travel on the mainline ferries because they can be booked by travel agents for staterooms. Most of these groups are on a very tight schedule and would probably not have the time to stray far from their planned itinerary to try and get on a different ferry where they could ride free of charge.

The communities frequented by senior citizen tour groups in Southeast in the summer are Ketchikan, Sitka, Juneau, Haines and Skagway. These ports are all serviced by mainline ferries in addition to the smaller ferries included in the resolution.

The Department of Transportation and Public Facilities has claimed there will be a loss of revenue because of less ticket sales to senior citizens, but the Commissioner has submitted a zero fiscal note because an accurate amount could not be decided on.

REPRESENTATIVE  
**BEN GRUSSENDORF**  
P.O. BOX 928  
SITKA, ALASKA 99835  
(907) 747-8458

CHAIRMAN  
COMMUNITY AND REGIONAL AFFAIRS COMMITTEE  
MEMBER RESOURCES COMMITTEE

DISTRICT 3  
ELFIN COVE  
PELICAN  
PORT ALEXANDER  
SITKA  
YAKUTAT

## Alaska State Legislature



### House of Representatives

WHILE IN JUNEAU  
POUCH V  
JUNEAU, ALASKA  
99811  
(907) 465-3824  
(907) 465-3870

#### Alaskan Ports Serviced by Ferries Included in HCR 2

M/V Aurora- Ketchikan, Sitka, Hoonah, Tenakee, Pelican, Angoon, Hollis, Petersburg, Kake, Juneau, Haines and Skagway

M/V Le Conte- Same as the M/V Aurora

M/V Chilkat- Ketchikan, Hollis and Metlakatla

M/V Bartlett- Valdez, Cordova and Whittier

M/V Tustumena- Kodiak, Pt. Lyons, Seward, Homer, Seldovia, Cordova, Dutch Harbor, Chignik, Sand Point, King Cove, Cold Bay, Whittier and Valdez

cc

LETTER OF INTENT TO ACCOMPANY  
HCR 2  
HOUSE TRANSPORTATION COMMITTEE

It is the intent of the House Transportation Committee that the Department of Transportation and Public Facilities establish a procedure to define "space available basis".

The Committee intends the definition of "space available basis" in the context of this resolution to require passengers so traveling, be on stand-by until all paying passengers have been accommodated. Passengers would not be allowed to receive confirmed reservations unless they are paying passengers and would not be allowed reimbursement in the event that they purchased tickets and were later able to travel "space available".

REPRESENTATIVE  
BEN GRUSSENDORF  
P.O. BOX 92B  
SITKA, ALASKA 99835  
(907) 747-8458

CHAIRMAN  
COMMUNITY AND REGIONAL AFFAIRS COMMITTEE  
MEMBER RESOURCES COMMITTEE

DISTRICT 3  
ELFIN COVE  
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SITKA  
YAKUTAT

## Alaska State Legislature



### House of Representatives

WHILE IN JUNEAU  
POUCH V  
JUNEAU, ALASKA  
99811  
(907) 465-3824  
(907) 465-387C

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# Alaska State Legislature

## House of Representatives

### Committee on Transportation



Rep. Bette Cato, Chairman

Pouch V  
State Capitol  
Juneau, Alaska 99811  
(907) 465-4858

HOUSE TRANSPORTATION  
STANDING COMMITTEE  
February 7, 1983  
8:30 a.m.

Members Present: Rep. Bette Cato, Chairman  
Rep. Miller, Vice-Chairman  
Rep. Abood  
Rep. Davis  
Rep. Herrmann  
Rep. Lacher  
Rep. McBride  
Rep. Phillips  
Rep. Szymanski

Members Absent: None

#### COMMITTEE CALENDAR

HCR 2: Relating to travel by senior citizens aboard  
vessels of the state marine highway system.

#### WITNESS REGISTER

Representative Ben Grussendorf  
Pouch V, State Capitol  
Juneau, AK 99811  
Position Statement: Spoke in favor of HCR 2

Marty Nusbaum  
Acting Director, Marine Highway Systems  
Dept. Transportation/Public Facilities  
Juneau, AK  
Position Statement: Various comments on bill

#### POSITION STATEMENT

None

#### ACTION NARRATIVE

Tape #5

Recording  
Number 0018

Chairman Cato called the House Transportation Committee to order at 8:35 a.m. Committee staff present were Steve Soenksen and Rhonda Cargill. Chairman Cato called upon Rep. Ben Grussendorf to testify on his ~~bill~~. resolution

Number 0020

Rep. Grussendorf explained that HCR 2 adds an additional 75 days a senior citizen may ride on the ferry system. The excluded dates which exist at present time, are times which senior citizens would most likely be able to visit relatives or enjoy harvests (i.e. berry-picking). This resolution would allow only free passage on a space-available basis between Alaskan ports on the shuttle ferries, (not ports out of Seattle or Rupert) in an attempt to assist the elderly with transportation.

Last year the fiscal impact showed a loss of \$140,000 and this year a loss of \$175,000, which isn't much when one weighs the costs against the benefits. This resolution does not include staterooms or transporting vehicles, it is only walk-on passage. Whether the ferry shuttle has a full capacity of people or if it is empty, it still makes a scheduled run between ports. Yes, there will be a loss in revenue, but monies are budgeted for running the ferry system with or without people aboard.

Number  
0117

From this point until near the end of the ~~of~~ committee meeting there was much committee discussion on this resolution which dealt with such topics as discrimination in regards to senior citizens outside the State of AK, how to identify senior citizens; the fact that the State already subsidizes the marine highway system and this would just be increasing that subsidy a small amount; the intent of the marine system is to give people an extension of the road system to Southeast Alaska; perhaps the committee should draft a letter of intent that upon implementation of this resolution that it be directed to Alaska senior citizens;

Number  
0532

At ease

Number 0535

Marty Nusbaum gave comments on the resolution

that he agrees with the concept of the resolution and would like to see more Alaska senior citizens travel on the ferries but was concerned about opening up the marine highway system to outside travelers. At present, senior citizen groups schedule tours as close to summer months as possible and would be concerned that if free passage opened up during summer months that administrative problems would occur at the time when vessels would be heavily used.

Number  
0576

Rep. Lacher requested a copy of any legal opinion or court case on this topic if available.

Number  
0586

The committee continued to discuss the pros and cons of free passage to senior citizens on a space-available basis.

Number  
07..

Chairman Cato requested that the staff of Rep. Grussendorf and the committee staff meet to define and confirm "space available" in the resolution for a committee substitute since it is the general consensus of the committee to pass this resolution out of committee

Number  
0750

Meeting adjourned

cc

LETTER OF INTENT TO ACCOMPANY  
HCR 2  
HOUSE TRANSPORTATION COMMITTEE

It is the intent of the House Transportation Committee that the Department of Transportation and Public Facilities establish a procedure to define "space available basis".

The Committee intends the definition of "space available basis" in the context of this resolution to require passengers so traveling, be on stand-by until all paying passengers have been accommodated. Passengers would not be allowed to receive confirmed reservations unless they are paying passengers and would not be allowed reimbursement in the event that they purchased tickets and were later able to travel "space available".

POSITION PAPER

OLDER ALASKANS COMMISSION

Bill Number: HCR 2

Date: February 24, 1983

Title: Relating to travel by senior citizens aboard vessels of the state marine highway system

This resolution, if implemented, would request the Administration to extend free space-available in-state travel on the State's smaller ferries to senior citizens on a year-round basis and also request the administration to investigate the possibility of reduced rates on staterooms for senior citizens for in-state-travel.

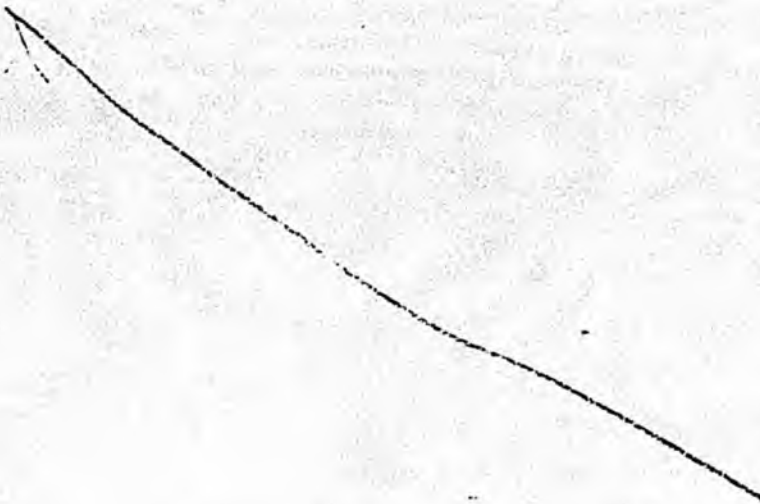
In its analysis of this proposed resolution, the Older Alaskans Commission has also reviewed the House Transportation Committee's letter of intent and the Department of Transportation and Public Facilities' zero fiscal note with analysis which appears in House Journal Supplement No. 6.

Concerning the proposed extended travel season on the smaller ferries, the Older Alaskans Commission is cognizant that the Department of Transportation and Public Facilities' view is that the State would lose too much revenue and does not support the resolution. The Commission, however, believes that with the House Transportation Committee's proposed definition of "space available" there would be little loss of revenue as all paying passengers (presumably this includes paying stand-by passengers as well) would be accommodated first. Also the Commission believes that many of the senior citizens who now travel free are people who would not otherwise make such trips, so revenue loss is probably less than that noted by the Department of Transportation and Public Facilities because the only true revenue loss is from those who would be travelling regardless of whether the fare is free.

Concerning investigation of the possibility of reducing stateroom rates for senior citizens, the Commission believes that reduced stateroom rates, too, can be accomplished on a space-available basis, whereby all paying passengers would be accommodated first so there would be little loss of revenue (on the same basis as stated above).

The Older Alaskans Commission fully supports this resolution with the definition of "space-available basis" recommended by the House Transportation Committee. Reducing ferry system travel costs is something the State can do at no significant cost to the taxpayer which will help some of the State's older citizens immensely. Many older Alaskans use the ferry system when travel is required to obtain health care and other services. Therefore, incentives to their use of the system frequently has a direct and positive health benefit.

HCR2



*Lisa Rudd*

---

Lisa Rudd  
Commissioner of Administration

Introduced: 1/17/83  
Referred: Transportation and Finance

1 IN THE HOUSE

BY GRUSSENDORF AND FRITZ

2

HOUSE CONCURRENT RESOLUTION NO. 2

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - FIRST SESSION

5

Relating to travel by senior citizens

6

aboard vessels of the state marine

7

highway system.

8

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

9

WHEREAS, since 1974, in response to House Concurrent Resolution

10

No. 52, the state marine highway system has provided for travel on ferries

11

by persons 65 years of age and older on a space-available basis within

12

Alaska without charge during the months of November to April, inclusive;

13

and

14

WHEREAS, during 1980, in response to Legislative Resolve No. 2, 1980,

15

the period of free passage for older Alaskans aboard state marine highway

16

vessels was extended to October 1 to May 15 inclusive; and

17

WHEREAS this service has been used by increasing numbers of older

18

Alaskans, permitting travel on the marine highway system at no cost while

19

increasing the number of foot passengers on vessels of the system; and

20

WHEREAS the policy of free passage for older persons allows only

21

passage without cost during the "off-season", is not extended to other

22

services for senior citizens traveling aboard vessels, and in fact requires

23

older persons to pay full costs of lodging; and

24

WHEREAS many senior citizens find it difficult to use vessels of the

25

marine highway system because of the unavailability and high cost of lodg-

26

ing;

27

BE IT RESOLVED that the Alaska State Legislature respectfully requests

28

the Governor to direct the commissioner of transportation and public facil-

29

ities to direct the division of marine highways to extend free passage on

1 the Aurora, Le Conte, Chilkat, Tustumena, and Bartlett, to senior citizens  
2 during every month of the year to permit them to travel between Alaskan  
3 ports on a space-available basis; and be it

4       FURTHER RESOLVED that the Governor direct the division of marine high-  
5 ways to investigate the possibility of making staterooms aboard state  
6 ferries available at a reduced rate to senior citizens when traveling  
7 between Alaskan ports.

COMMITTEE REPORT  
SENATE

FURTHER:

6/2/83

Date: 6/15/83

Mr. President:

The Committee on FINANCE has had CSSS HJR 7(Jud)

Proposing amendments to the Constitution of Alaska relating to the election of the attorney general.

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 *Attached F.N. 2/23/83 # 6/26/83*
- referred to the \_\_\_\_\_ Committee

MEMBERS SIGNING  
DO PASS

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

MEMBERS HAVING  
OTHER RECOMMENDATIONS:

*V. Fisher Do NOT PASS*

*J. P. ... Do NOT PASS*

*Bob ... Do NOT Pass*

*... No Rec*

*... No Rec*

*John ... - No not pass*

*[Signature]*

CHAIRMAN

*no Rec*

STATE OF ALASKA  
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: SS HJR 7 Date on Bill: 2/11/83  
 Title: "proposing amendments to the Constitution..relating to the election of the  
Sponsor: Uehling, Ward et al attorney general"  
 Requestor: House Judiciary Committee

1. Estimated fiscal impacts on: Office of the Governor, Division of Elections

a. Expenditures:

(Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86
Capital				
Operating		-0-	-0-	
Total				

b. Revenues:

Revenue				
---------	--	--	--	--

2. Source of funds to offset fiscal impact of bill:

3. Assumptions: Implementation of this resolution would result in a Constitutional amendment question to be asked in the 1984 general election. As a single question on the ballot it would not incur a fiscal impact.

4. Disclaimer:

This statement has not been reviewed by the OMB in the Office of the Governor. It does not represent the policy of the Sheffield Administration or the final estimate of fiscal impact.

Prepared By: TPTThoma, Information Officer Phone: 4611  
 Division: Elections Date: 2/23/83

Approved by Commissioner: \_\_\_\_\_ Date: \_\_\_\_\_  
 Department: \_\_\_\_\_

STATE OF ALASKA  
FISCAL NOTE

Revision Date \_\_\_\_\_, 1983

I. REQUEST

Bill/Resolution No.: CSSSHJR No. 7 (Judiciary)  
 Title: "...election of the Attorney General."  
 Sponsor: House Judiciary (Orig.-Uehling)  
 Requestor: Senate State Affairs

II. FISCAL DETAIL

Agency Affected: Department of Law  
 Program Category: Affected: General Govt.  
 BRU, Program of Subprogram(s) Affected: Legal Services, Administrative Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING			*	*	*	*
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME			*	*	*	*
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

\* Because expenditures would not begin until the latter part of FY 85, actual costs cannot be determined at this time. Please see Analysis.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Richard I. Pegues, Director Phone: 465-3672  
 Division: Administrative Services Division Date: May 26, 1983  
 Approved by Commissioner: Richard I. Pegues / for /  
 Department: Norman C. Gorsuch, Attorney General Date: May 26, 1983  
 Department: Department of Law

Distribution:

Original to Legislative Finance  
 Copy to Office of Management and Budget (for Legislature introduced bills)  
 Copy to Department (for Governor introduced bills)  
 Copy to Sponsor  
 Copy to Requestor (if different from Sponsor)

CSSSHJR No. 7 (Judiciary)  
Analysis

This resolution provides for a ballot proposition that would, if approved by the voters, amend the state's constitution by changing the position of attorney general from an appointed office to an elected office. The proposed amendments would also remove the governor's organizational and supervisory controls over any function or unit of government headed by the attorney general.

These controls are normally maintained through executive branch procedural requirements imposed on other executive branch agencies by the Department of Administration and the Office of Management and Budget. The controls are exercised by requiring that other departments obtain OMB's and Administration's approval for: purchasing, leasing and supply; professional services contracting; duplicating services; personnel administration and labor relations; equal employment opportunity programs; data processing, information management and telecommunications services; records management; preaudit accounting services; and budget preparation and budget management.

It will be very expensive for an elected attorney general to provide all or most of these services in-house. Although an attorney general may decide to use some of the centrally provided services, key areas such as: personnel; professional services contracting; purchasing, supply and leasing; data processing; and budget preparation and management, would have to be provided in-house if the attorney general's functions are to be at least reasonably free of the governor's supervision. In addition, it is more than likely that attorney timekeeping would be required throughout the Civil Division because most client agencies would not share the same priorities and program goals of an elected attorney general and they would undoubtedly insist that all interagency-funded legal services provided on their behalf be accurately documented and fully substantiated.

Additional costs, expressed in FY 83 dollars, that will provide for complete independence from the organizational and supervisory control of the governor are shown below. Even if the attorney general were to forego a part of this independence, the savings would only amount to 20 or 30% of the total cost because of the necessity to retain in-house control over the essential support services that determine a department's freedom of action.

<u>Function</u>	<u>Positions</u>	<u>Salary/ Benefits</u>	<u>Other Position Costs</u>	<u>Total</u>
<b>Director's Office</b>				
	(1) Budget Analyst R19		Travel 2,500	
	(1) Admin. Officer R17		Contractual 24,100	
	(1) Clk. Typist R8		Commod.-ongoing 5,400	
			Commod.-one-time 4,500	
			Equip.-one-time 18,100	
	(3)	113,805	54,600	168,405
<b>Personnel</b>				
	(1) Personnel Mgr. R21		Travel 2,500	
	(2) Personnel Analysts R16		Contractual 54,200	
	(1) Training Officer R18		Commod.-ongoing 14,400	
	(2) Personnel Tech.'s R12		Commod.-one-time 12,000	
	(1) Payroll Clerk R10		Equip.-one-time 24,100	
	(1) Clk. Typist R8			
	(8)	255,307	107,200	362,507
<b>Property/Supply</b>				
	(1) Materials Mgr. R21		Travel 2,500	
	(1) Purchasing Agent R18		Contractual 19,600	
	(1) Supply Officer R16		Commod.-ongoing 7,200	
	(1) Clk. Typist R8		Commod.-one-time 6,000	
			Equip.-one-time 19,300	
	(4)	161,843	54,600	216,443
<b>Finance/Accounting</b>				
	(1) Finance Officer R21		Travel 2,500	
	(1) Acct. Supervisor R16		Contractual 19,900	
	(1) Acct. Clerk R10		Commod.-ongoing 5,400	
			Commod.-one-time 4,500	
			Equip.-one-time 3,600	
	(3)	120,427	35,900	156,327

Attorney Timekeeping

(1) Accountant R18		Travel	1,800	
(3) DP Clerks R11/R9		Contractual	33,000	
		Commod.-ongoing	7,200	
		Commod.-one-time	6,000	
		Equip.-one-time	16,000	
(4)	111,023		64,000	175,023

Records Management

(1) Records Analyst R18		Travel	1,800	
(1) Records Supervisor R15		Contractual	81,200	
(1) Records Handler R12		Commod.-ongoing	9,000	
(2) Microfilm Operators R10/R14		Commod.-one-time	7,500	
		Equip.-one-time	81,000	
(5)	180,432		180,500	360,932

Data Processing/Communications

(1) DP Mgr. R21		Travel	2,500	
(1) Programmer Analyst R18		Contractual	319,900	
(1) DP/Comm. Sys. Supvr. R18		Commod.-ongoing	5,400	
		Commod.-one-time	4,500	
		Equip.-one-time	41,600	
(3)	142,116		373,900	516,016

Duplication Svcs.

(1) Duplication Mgr. R19		Travel	1,000	
(1) Printing Tech. R17		Contractual	74,500	
(2) Machine Operators R12		Commod.-ongoing	57,200	
		Commod.-one-time	6,000	
		Equip.-one-time	154,800	
(4)	163,768		293,500	457,268

TOTAL

(34)	1,248,721		1,164,200	2,412,921
------	-----------	--	-----------	-----------

Non-salary costs include anticipated space rental of 6,000 sq. ft. for the additional staff of 34, at \$2.00 per sq. ft., per month, plus 2,000 sq. ft. each, for records management and duplication services. Also costed in is \$200 per month per employee for contractual services to cover telephone, copying and postage. Ongoing commodities are estimated at \$150 per month, per employee. New position costs include \$1,500 per employee for one-time commodities (furniture and equipment costing less than \$500 per item), and \$1,200 per employee for new position equipment costing more than \$500 per item. Special items include \$15,000 for employee recruitment advertising for non-attorney job applicants, \$5,000 for personnel system printing, and \$20,000 for a data processing program to maintain EEO statistics. Word processors will cost \$14,500 each for a total cost of \$48,000. Records management equipment include storage devices and microfilm/graphics equipment totalling \$75,000. Duplication equipment will cost approximately \$150,000. DP terminals for both the DP section and the timekeeping section will cost \$50,000. Data processing computer-time should be at \$150,000 per year and an additional \$150,000 is included to maintain and enhance the department's work management, timekeeping, opinion indexing, Westlaw and PROMIS systems.

The total additional cost of \$2,412,921 is an enormous increase over the department's current administrative overhead of \$449,800 projected for FY 84. It is, however, part of the price that must be paid if the proposal to have an elected attorney general is adopted by the electorate during the 1984 general election.

Another major cost area that will eventually occur as a result of changing from an appointed to an elected attorney general, will be a proliferation of special counsel on the staff of major departments. Historically, such counsel have been employed by executive branch agencies to give department heads a "second" opinion in controversial matters in states having an elected attorney general. Such counsel usually do not have the authority to litigate, but they do provide legal advice to department heads and submit amicus briefs in litigation affecting their department's programs. It is not unusual in these states to see four or five separate briefs filed in a single matter, in addition to the attorney general's brief, representing the varying viewpoints of different agencies. Costs for just a single special counsel, including secretarial assistance, total about \$150,000 per year in 1983 dollars. Although it is impossible, at this time, to accurately say how extensive the use of in-house counsel will be if there is an elected attorney general, the additional cost for such counsel could easily exceed \$1.0 million annually, within just a few years.

Offered: 3/4/83  
Referred: Rules

Original sponsors: Uehling, Ward,  
Barnes, et al

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE  
2 CS FOR SPONSOR SUBSTITUTE FOR HOUSE JOINT RESOLUTION NO. 7 (Judiciary)  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 THIRTEENTH LEGISLATURE - FIRST SESSION

5 Proposing amendments to the Constitution  
6 of the State of Alaska relating to the  
7 election of the attorney general and to  
8 procedures governing the election and  
9 term for state offices to be elected  
10 under the constitution.

11 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

12 \* Section 1. Article III, sec. 23, Constitution of the State of Alaska  
13 is amended to read:

14 SECTION 23. REORGANIZATION. (a) Except as provided in (b) of  
15 this section, the [THE] governor may make changes in the organization  
16 of the executive branch or in the assignment of functions among its  
17 units which he considers necessary for efficient administration.  
18 Where these changes require the force of law, they shall be set forth  
19 in executive orders. The legislature shall have sixty days of a  
20 regular session, or a full session if of shorter duration, to disap-  
21 prove these executive orders. Unless disapproved by resolution con-  
22 curred in by a majority of the members in joint session, these orders  
23 become effective at a date thereafter to be designated by the gover-  
24 nor.

25 (b) The governor shall make no change in the organization or  
26 function of any unit of the executive branch which is headed by the  
27 attorney general.

28 \* Sec. 2. Article III, sec. 24, Constitution of the State of Alaska is  
29 amended to read:

1           SECTION 24. SUPERVISION. Except for any unit of the executive  
2           branch which is headed by the attorney general, each [EACH] principal  
3           department shall be under the supervision of the governor.

4           \* Sec. 3. Article III, sec. 25, Constitution of the State of Alaska is  
5 amended to read:

6           SECTION 25. DEPARTMENT HEADS. The head of each principal de-  
7           partment shall be a single executive unless otherwise provided by law.  
8           He shall be appointed by the governor, subject to confirmation by a  
9           majority of the members of the legislature in joint session, and shall  
10          serve at the pleasure of the governor, except as otherwise provided in  
11          this article with respect to the lieutenant governor and the attorney  
12          general [SECRETARY OF STATE]. The heads of all principal departments  
13          shall be citizens of the United States.

14          \* Sec. 4. Article III, Constitution of the State of Alaska is amended  
15 by adding new sections to read:

16          SECTION 28. ATTORNEY GENERAL: QUALIFICATIONS. There shall be  
17          an attorney general. He shall be at least thirty years of age and a  
18          qualified voter of the State. He shall have been a resident of Alaska  
19          at least five years immediately preceding his filing for office, and  
20          he shall have been a citizen of the United States for at least seven  
21          years. He shall be licensed to practice law in the State and shall  
22          possess additional qualifications prescribed by law.

23          SECTION 29. ELECTION OF ATTORNEY GENERAL. The attorney general  
24          shall be chosen by the qualified voters of the State on nonpartisan  
25          ballots. Candidates for attorney general shall file for the office as  
26          prescribed by law. The candidates receiving the greatest and the  
27          second greatest number of votes on a nonpartisan ballot at the primary  
28          election shall be candidates in the general election. The candidate  
29          receiving the greatest number of votes on a nonpartisan ballot at the

1 general election shall be attorney general.

2 SECTION 30. LIMIT ON TENURE. No person who has been elected  
3 attorney general for two full successive terms shall be again eligible  
4 to hold that office until one full term has intervened.

5 SECTION 31. VACANCY. In case of a vacancy in the office of  
6 attorney general for any reason, a successor shall be elected for the  
7 remainder of the unexpired term at the first general election occur-  
8 ring not less than six months after the office becomes vacant. The  
9 governor may appoint a qualified person to fill the office between the  
10 date it becomes vacant and the date it is filled by election.

11 SECTION 32. COMPENSATION. The compensation of the attorney  
12 general shall be prescribed by law and shall not be diminished during  
13 his term of office, unless by general law applying to all salaried  
14 officers of the State.

15 SECTION 33. DUTIES. The attorney general shall be the legal  
16 adviser of the state officers, and shall perform other duties pre-  
17 scribed by law.

18 SECTION 34. ELECTION AND TERM OF NEWLY ESTABLISHED ELECTED STATE  
19 OFFICES. The first election for a state office required by the con-  
20 stitution to be elected shall occur at the first general election  
21 occurring after the office is established under the constitution. If  
22 a vacancy occurs in the office before the first general election held  
23 after the office is established under the constitution, the office  
24 shall be filled under the law as it existed before the office was  
25 established under the constitution. Except as otherwise provided in  
26 the constitution, the term of office of a state office required by the  
27 constitution to be elected begins at noon on the first Monday in  
28 December following the general election for that office and it expires  
29 at noon on the first Monday in December four years later.

1       \* Sec. 5. The amendments proposed by this resolution shall be placed  
2 before the voters of the state at the next general election in conformity  
3 with art. XIII, sec. 1, Constitution of the State of Alaska, and the elec-  
4 tion laws of the state.

COMMITTEE REPORT

SENATE

FURTHER: FINANCE

5/27/83

Date: 6/1/83

Mr. President:

The Committee on JUDICIARY has had CS SSHJR 7 (Jud)  
Proposing amendments to the Constitution of Alaska relating to the  
election of the attorney general.

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

✓ [Signature]

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3 [Signature]

\_\_\_\_\_

MEMBERS HAVING  
OTHER RECOMMENDATIONS:

1 3 in - Do Not Pass  
1 Boyer - Do NOT PASS

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Bill Ray  
CHAIRMAN  
1 Do NOT PASS

COMMITTEE REPORT  
SENATE

3/24/83

FURTHER:

JUDICIARY

*Finance*

Date:

5/26/83

Mr. President:

The Committee on STATE AFFAIRS has had CS SSHJR 7 (Jud)

Proposing amendments to the Constitution of Alaska relating to the election of the attorney general

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"  <sup>Zero</sup> New Fiscal Note  
*Analysis*
- reports it back without recommendation
- referred to the \_\_\_\_\_ Committee

MEMBERS SIGNING  
DO PASS

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

MEMBERS HAVING  
OTHER RECOMMENDATIONS:

*Tom Kelly - No Rec*

*Curtis Stumpf - No Rec*

*Bill Ray - No Rec*

\_\_\_\_\_

\_\_\_\_\_

*V. Fischer DO NOT PASS*

\_\_\_\_\_

CHAIRMAN

Offered: 3/4/83  
Referred: Rules

Original sponsors: Uehling, Ward,  
Barnes, et al

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE  
2 CS FOR SPONSOR SUBSTITUTE FOR HOUSE JOINT RESOLUTION NO. 7 (Judiciary)  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 THIRTEENTH LEGISLATURE - FIRST SESSION

5 Proposing amendments to the Constitution  
6 of the State of Alaska relating to the  
7 election of the attorney general and to  
8 procedures governing the election and  
9 term for state offices to be elected  
10 under the constitution.

11 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

12 \* Section 1. Article III, sec. 23, Constitution of the State of Alaska  
13 is amended to read:

14 SECTION 23. REORGANIZATION. (a) Except as provided in (b) of  
15 this section, the [THE] governor may make changes in the organization  
16 of the executive branch or in the assignment of functions among its  
17 units which he considers necessary for efficient administration.  
18 Where these changes require the force of law, they shall be set forth  
19 in executive orders. The legislature shall have sixty days of a  
20 regular session, or a full session if of shorter duration, to disap-  
21 prove these executive orders. Unless disapproved by resolution con-  
22 curred in by a majority of the members in joint session, these orders  
23 become effective at a date thereafter to be designated by the gover-  
24 nor.

25 (b) The governor shall make no change in the organization or  
26 function of any unit of the executive branch which is headed by the  
27 attorney general.

28 \* Sec. 2. Article III, sec. 24, Constitution of the State of Alaska is  
29 amended to read:

1           SECTION 24. SUPERVISION. Except for any unit of the executive  
2           branch which is headed by the attorney general, each [EACH] principal  
3           department shall be under the supervision of the governor.

4           \* Sec. 3. Article III, sec. 25, Constitution of the State of Alaska is  
5 amended to read:

6           SECTION 25. DEPARTMENT HEADS. The head of each principal de-  
7           partment shall be a single executive unless otherwise provided by law.  
8           He shall be appointed by the governor, subject to confirmation by a  
9           majority of the members of the legislature in joint session, and shall  
10          serve at the pleasure of the governor, except as otherwise provided in  
11          this article with respect to the lieutenant governor and the attorney  
12          general [SECRETARY OF STATE]. The heads of all principal departments  
13          shall be citizens of the United States.

14          \* Sec. 4. Article III, Constitution of the State of Alaska is amended  
15 by adding new sections to read:

16          SECTION 28. ATTORNEY GENERAL: QUALIFICATIONS. There shall be  
17          an attorney general. He shall be at least thirty years of age and a  
18          qualified voter of the State. He shall have been a resident of Alaska  
19          at least five years immediately preceding his filing for office, and  
20          he shall have been a citizen of the United States for at least seven  
21          years. He shall be licensed to practice law in the State and shall  
22          possess additional qualifications prescribed by law.

23          SECTION 29. ELECTION OF ATTORNEY GENERAL. The attorney general  
24          shall be chosen by the qualified voters of the State on nonpartisan  
25          ballots. Candidates for attorney general shall file for the office as  
26          prescribed by law. The candidates receiving the greatest and the  
27          second greatest number of votes on a nonpartisan ballot at the primary  
28          election shall be candidates in the general election. The candidate  
29          receiving the greatest number of votes on a nonpartisan ballot at the

1 general election shall be attorney general.

2 SECTION 30. LIMIT ON TENURE. No person who has been elected  
3 attorney general for two full successive terms shall be again eligible  
4 to hold that office until one full term has intervened.

5 SECTION 31. VACANCY. In case of a vacancy in the office of  
6 attorney general for any reason, a successor shall be elected for the  
7 remainder of the unexpired term at the first general election occur-  
8 ring not less than six months after the office becomes vacant. The  
9 governor may appoint a qualified person to fill the office between the  
10 date it becomes vacant and the date it is filled by election.

11 SECTION 32. COMPENSATION. The compensation of the attorney  
12 general shall be prescribed by law and shall not be diminished duri-  
13 his term of office, unless by general law applying to all salaried  
14 officers of the State.

15 SECTION 33. DUTIES. The attorney general shall be the legal  
16 adviser of the state officers, and shall perform other duties pre-  
17 scribed by law.

18 SECTION 34. ELECTION AND TERM OF NEWLY ESTABLISHED ELECTED STATE  
19 OFFICES. The first election for a state office required by the con-  
20 stitution to be elected shall occur at the first general election  
21 occurring after the office is established under the constitution. If  
22 a vacancy occurs in the office before the first general election held  
23 after the office is established under the constitution, the office  
24 shall be filled under the law as it existed before the office was  
25 established under the constitution. Except as otherwise provided in  
26 the constitution, the term of office of a state office required by the  
27 constitution to be elected begins at noon on the first Monday in  
28 December following the general election for that office and it expires  
29 at noon on the first Monday in December four years later.

1       \* Sec. 5. The amendments proposed by this resolution shall be placed  
2 before the voters of the state at the next general election in conformity  
3 with art. XIII, sec. 1, Constitution of the State of Alaska, and the elec-  
4 tion laws of the state.

COMMITTEE REPORT  
HOUSE

FURTHER:

2/14/83

Date: 3/11/83

Mr. Speaker:

The Committee on FINANCE has had HCR 9

Calling for erection of a suitable memorial to honor veterans of all wars involving the United States on the site presently occupied by "Nimbus".

under consideration and reports it back as follows:

- do pass  do not pass
- do pass with attached amendments(s)
- replace with CS for HCR 9 (Finance)  same title  
 new title
- and recommends individual recommendations
- AND attaches a "Letter of Intent"  New Fiscal Note
- reports it back without recommendation  Zero Fiscal Note Attached
- referred to the \_\_\_\_\_ Committee

MEMBERS SIGNING  
DO PASS

MEMBERS HAVING  
OTHER RECOMMENDATIONS:

[Signature]  
[Signature]  
[Signature]  
[Signature]  
[Signature]  
[Signature]  
[Signature]  
[Signature]  
[Signature]

[Signature] (No Rec)  
[Signature] (No Rec)  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

[Signature]  
CHAIRMAN

Original sponsors: Bettisworth, Cato,  
Phillips and Flood

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 CS FOR HOUSE CONCURRENT RESOLUTION NO. 9 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - FIRST SESSION

5 Calling for erection of a suitable  
6 memorial to honor veterans of all wars  
7 involving the United States on the site  
8 presently occupied by "Nimbus".

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

10 WHEREAS military personnel who served in wars involving the United  
11 States should be honored in Alaska; and

12 WHEREAS military personnel who served at least 180 days active duty  
13 with a United States military organization during time of war, or were  
14 discharged sooner as a result of illness or injury in service in a war in  
15 which the United States participated, deserve special recognition; and

16 WHEREAS a memorial to honor these persons would be appropriately  
17 visible to the public if placed by the State Court and Office Building in  
18 Juneau, Alaska; and

19 WHEREAS the sculpture "Nimbus", currently located on the grounds of  
20 the State Court and Office Building in Juneau, could be located elsewhere;

21 BE IT RESOLVED by the Alaska State Legislature that the sculpture  
22 "Nimbus" should be removed from the grounds of the State Court and Office  
23 Building in Juneau and be replaced with a suitable memorial honoring mili-  
24 tary personnel who served 180 days or more active duty with a United States  
25 military organization during time of war or were discharged sooner as a  
26 result of illness or injury in service in a war in which the United States  
27 participated; and be it

28 FURTHER RESOLVED that a committee be established consisting of a rep-  
29 resentative of the Veterans of Foreign Wars, a representative of the

1 American Legion, a representative from the Vietnam Veterans of Alaska, the  
2 director of the Alaska State Council on the Arts or the designee of the  
3 director, the mayor of the City and Borough of Juneau or the mayor's  
4 designee, a member of the House of Representatives of the Alaska State  
5 Legislature, appointed by the speaker of the house, and a member of the  
6 Alaska State Senate, appointed by the president of the senate, to meet and  
7 make recommendations to the legislature within 45 days on

8 (1) the disposition of "Nimbus";

9 (2) the type of memorial to be constructed; and

10 (3) the time frame for construction of the memorial; and be it

11 FURTHER RESOLVED that the memorial should be commissioned to an  
12 Alaskan artist.

FISCAL NOTE

I. REQUEST

Bill/Resolution No. CSHCR 9 (Finance)  
 Title Erection of a suitable memorial to honor veterans of all wars/site presently  
 Requested by occupied by "Nimbus". Date 3/11/83  
House Finance Committee

II. FISCAL DETAIL

Agency Affected Legislative Affairs Agency  
 Program Category Affected Legislature  
 BRU, Program, Or Subprogram(s) Affected \_\_\_\_\_  
 (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 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
<b>TOTAL</b>		-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

IV. DATE 3/11/83 PREPARED BY Al Adams, Chairman  
 AGENCY House Finance Committee  
 Original: Legislative Finance PHONE 465-3706  
 cc: Budget and Management  
 Prime Sponsor (First Legislator Named)  
 33-001 (Rev. 12/82)

The following individuals are expected to testify on HCR 9:

Rep. Bob Bettisworth, Prime Sponsor

Pete Kelly, Vietnam Veterans of Alaska

Dick Rountree from the Department of Military Affairs will not be in town, but states that the Department favors the bill.

THE LEGISLATURE OF THE STATE OF ALASKA  
THIRTEENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. CSHCR 9 (Finance)  
 Title Erection of a suitable memorial to honor veterans of all wars/site presently  
 Requested by occupied by "Nimbus". Date 3/11/83  
House Finance Committee

II. FISCAL DETAIL

Agency Affected Legislative Affairs Agency  
 Program Category Affected Legislature  
 BRU, Program, Or Subprogram(s) Affected \_\_\_\_\_  
 (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 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

IV. DATE 3/11/83 PREPARED BY Al Adams, Chairman  
 AGENCY House Finance Committee  
 Original: Legislative Finance PHONE 465-3706  
 cc: Budget and Management  
 Prime Sponsor (First Legislator Named)  
 33-001 (Rev. 12/82)



THE LEGISLATURE OF THE STATE OF ALASKA  
THIRTEENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. House Concurrent Resolution No. 9  
 Title Veteran's Memorial in place of "Nimbus"  
 Requested by House State Affairs Date 04 Jan 1983

II. FISCAL DETAIL

Agency Affected Military Affairs  
 Program Category Affected Public Protection  
 BRU, Program, Or Subprogram(s) Affected Life & Property 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 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		-0-	-0-	-0-		

FUNDING (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
FULL TIME						
PART TIME						
TEMPORARY						

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

No apparent fiscal impact.

IV. DATE 04 Jan 1983 PREPARED BY *Dick* Dick Rountree  
 AGENCY Military Affairs

Original: Legislative Finance PHONE 465-4601  
 cc: Budget and Management  
 Prime Sponsor (First Legislator Named)

"publication by the government" within meaning of former section 8 of this title which provided that "publication by the government" of a copyrighted document did not abridge or annul the copyright. *Bell v. Combined Registry Co.*, C.A.111, 1970, 530 F.2d 104, certiorari denied 97 S. Ct. 530, 420 U.S. 1001, 50 L.Ed.2d 612.

Speeches, which contained copyright notice, which were made by vice admiral in United States Navy to private organizations on vice admiral's own time and

which concerned matters removed from official duties of vice admiral who prepared speeches on his own time and only used government facilities for purpose of duplicating the same to obtain security clearance and to distribute copies thereof to press and others, did not form a part of his official duties and were private property of vice admiral who was entitled to copyright therein. *Public Affairs Associates, Inc. v. Rickover*, D.C.11.C.105, 268 F.Supp. 444.

## § 106. Exclusive rights in copyrighted works

Subject to sections 107 through 118, the owner of copyright under this title has the exclusive rights to do and to authorize any of the following:

- (1) to reproduce the copyrighted work in copies or phonorecords;
- (2) to prepare derivative works based upon the copyrighted work;
- (3) to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
- (4) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly; and
- (5) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly.

Pub.L. 94-553, Title I, § 101, Oct. 19, 1976, 90 Stat. 2546.

### Historical Note

Notes of Committee on the Judiciary, House Report No. 94-1476. *General Scope of Copyright.* The five fundamental rights that the bill gives to copyright owners—the exclusive rights of reproduction, adaptation, publication, performance, and display—are stated generally in section 106 [this section]. These exclusive rights, which comprise the so-called "bundle of rights" that is a copyright, are cumulative and may overlap in some cases. Each of the five enumerated rights may be subdivided indefinitely and, as discussed below in connection with section 201 [section 201 of this title], each subdivision of an exclusive right may be owned and enforced separately.

The approach of the bill is to set forth the copyright owner's exclusive rights in broad terms in section 106 [this section], and then to provide various limitations, qualifications, or exemptions in the 12 sections that follow. Thus, everything in section 106 [this section] is made "subject to sections 107 through 118 [sections 107 through 118 of this title]," and must be read in conjunction with those provisions.

The exclusive rights accorded to a copyright owner under section 106 [this section] are "to do and to authorize" any of the activities specified in the five numbered clauses. Use of the phrase "to authorize" is intended to avoid any ques-

tions as to the liability of co-infringers. For example, a person who lawfully acquires an authorized motion picture would be an infringer if he or she engages in the renting of it to others for purposes of authorized public performance.

*Rights of Reproduction, Adaptation, and Publication.* The first three clauses of section 106 [this section], which confer the exclusive rights of reproduction, performance and display, encompass every kind of copyrighted work. The exclusive rights encompassed by these clauses, though closely related, are not necessarily independent; they can generally be exercised in combination. For example, adaptation, and publishing. A violation of infringement may violate the exclusive rights at once, as where a person produces, adapts, and sells a person's copyrighted work as a publishing venture. Infringement may also occur when any one of the rights is exercised; where, for example, a person produces copies without selling them, or where a retailer sells copies without the permission of the copyright owner. The word "copies or phonorecords" in the plural, are intended throughout the bill to include singular (1 U.S.C. § 1 [section 1, General Provisions]).

*Reproduction.*—Read together with the relevant definitions in section 101 of this title, the phrase "to produce the copyrighted work or phonorecords" means the production of a material object in which the work is duplicated, transcribed, or simulated in a fixed form from which it can be "perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device." Under the present law, a work would be infringed by reproduction in whole or in any substantial part, and by duplicating it exactly or by imitation or simulation. Works or variations from the original work would still be an infringement as long as the author's "expressions" are copied, rather than merely the author's "ideas." An exception to this principle, applicable to the reproduction of copyrighted sound recordings, is provided in section 114 [section 114 of this title].

"Reproduction" under clause (1) of section 106 [cl. (1) of this section] is distinguished from "display" under clause (5). For a work to be "displayed," its fixation in a tangible medium must be "sufficiently permanent"

tions as to the liability of contributory infringers. For example, a person who lawfully acquires an authorized copy of a motion picture would be an infringer if he or she engages in the business of renting it to others for purposes of unauthorized public performance.

**Rights of Reproduction, Adaptation, and Publication.** The first three clauses of section 106 (this section), which cover all rights under a copyright except those of performance and display, extend to every kind of copyrighted work. The exclusive rights encompassed by these clauses, though closely related, are independent; they can generally be characterized as rights of copying, recording, adaptation, and publishing. A single act of infringement may violate all of these rights at once, as where a publisher reproduces, adapts, and sells copies of a person's copyrighted work as part of a publishing venture. Infringement takes place when any one of the rights is violated; where, for example, a printer reproduces copies without selling them or a retailer sells copies without having anything to do with their reproduction. The references to "copies or phonorecords," although in the plural, are intended here and throughout the bill to include the singular (1 U.S.C. § 1 [section 1 of Title 1 General Provisions]).

**Reproduction.**—Read together with the relevant definitions in section 101 [section 101 of this title], the right "to reproduce the copyrighted work in copies or phonorecords" means the right to produce a material object in which the work is duplicated, transcribed, imitated, or simulated in a fixed form from which it can be "perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device." As under the present law, a copyrighted work would be infringed by reproducing it in whole or in any substantial part, and by duplicating it exactly or by imitation or simulation. Wide departures or variations from the copyrighted work would still be an infringement as long as the author's "expression" rather than merely the author's "ideas" are taken. An exception to this general principle, applicable to the reproduction of copyrighted sound recordings, is specified in section 114 [section 114 of this title].

"Reproduction" under clause (1) of section 106 (cl. (1) of this section) is to be distinguished from "display" under clause (5). For a work to be "reproduced," its fixation in tangible form must be "sufficiently permanent or stable

to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration." Thus, the showing of images on a screen or tube would not be a violation of clause (1), although it might come within the scope of clause (5).

**Preparation of Derivative Works.**—The exclusive right to prepare derivative works, specified separately in clause (2) of section 106 (cl. (2) of this section), overlaps the exclusive right of reproduction to some extent. It is broader than that right, however, in the sense that reproduction requires fixation in copies or phonorecords, whereas the preparation of a derivative work, such as a ballet, pantomime, or improvised performance, may be an infringement even though nothing is ever fixed in tangible form.

To be an infringement the "derivative work" must be "based upon the copyrighted work," and the definition in section 101 [section 101 of this title] refers to "a translation, musical arrangement, dramatization, fictionalization, motion picture version, sound recording, art production, abridgment, condensation, or any other form in which a work may be recast, transformed, or adapted." Thus, to constitute a violation of section 106(2) [cl. (2) of this section], the infringing work must incorporate a portion of the copyrighted work in some form; for example, a detailed commentary on a work or a programmatic musical composition inspired by a novel would not normally constitute infringements under this clause.

**Use in Information Storage and Retrieval Systems.**—As section 117 [section 117 of this title] declares explicitly, the bill is not intended to alter the present law with respect to the use of copyrighted works in computer systems.

**Public Distribution.**—Clause (3) of section 106 (cl. (3) of this section) establishes the exclusive right of publication: The right "to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending." Under this provision the copyright owner would have the right to control the first public distribution of an authorized copy or phonorecord of his work, whether by sale, gift, loan, or some rental or lease arrangement. Likewise, any unauthorized public distribution of copies or phonorecords that were unlawfully made would be an infringement. As section 109 [section 109 of this title] makes clear, however, the copyright owner's rights under section 106(3) (cl. (3) of

this section] cease with respect to a particular copy or phonorecord once he has parted with ownership of it.

**Rights of Public Performance and Display. Performing Rights and the "For Profit" Limitation.**—The right of public performance under section 100(4) [cl. (4) of this section] extends to "literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works and sound recordings" and, unlike the equivalent provisions now in effect, is not limited by any "for profit" requirement. The approach of the bill, as in many foreign laws, is first to state the public performance right in broad terms, and then to provide specific exemptions for educational and other nonprofit uses.

This approach is more reasonable than the outright exemption of the 1909 statute. The line between commercial and "nonprofit" organizations is increasingly difficult to draw. Many "non-profit" organizations are highly subsidized and capable of paying royalties, and the widespread public exploitation of copyrighted works by public broadcasters and other noncommercial organizations is likely to grow. In addition to these trends, it is worth noting that performances and displays are continuing to supplant markets for printed copies and that in the future a broad "not for profit" exemption could not only hurt authors but could dry up their incentive to write.

The exclusive right of public performance is expanded to include not only motion pictures, including works recorded on film, video tape, and video disks, but also audiovisual works such as filmstrips and sets of slides. This provision of section 100(4) [cl. (4) of this section], which is consistent with the assimilation of motion pictures to audiovisual works throughout the bill, is also related to amendments of the definitions of "display" and "perform" discussed below. The important issue of performing rights in sound recordings is discussed in connection with section 114 [section 114 of this title].

**Right of Public Display.**—Clause (5) of section 100 [cl. (5) of this section] represents the first explicit statutory recognition in American copyright law of an exclusive right to show a copyrighted work, or an image of it, to the public. The existence or extent of this right under the present statute is uncertain and subject to challenge. The bill would give the owners of copyright in "literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graph-

ic, or sculptural works", including the individual images of a motion picture or other audiovisual work, the exclusive right "to display the copyrighted work publicly."

**Definitions.** Under the definitions of "perform," "display," "publicly," and "transmit" in section 101 [section 101 of this title], the concepts of public performance and public display cover not only the initial rendition or showing, but also any further act by which that rendition or showing is transmitted or communicated to the public. Thus, for example: a singer is performing when he or she sings a song; a broadcasting network is performing when it transmits his or her performance (whether simultaneously or from records); a local broadcaster is performing when it transmits the network broadcast; a cable television system is performing when it retransmits the broadcast to its subscribers; and any individual is performing whenever he or she plays a phonorecord embodying the performance or communicates the performance by turning on a receiving set. Although any act by which the initial performance or display is transmitted, repeated, or made to recur would itself be a "performance" or "display" under the bill, it would not be actionable as an infringement unless it were done "publicly," as defined in section 101 [section 101 of this title]. Certain other performances and displays, in addition to those that are "private," are exempted or given qualified copyright control under sections 107 through 115 [sections 107 through 115 of this title].

To "perform" a work, under the definition in section 101 [section 101 of this title], includes reading a literary work aloud, singing or playing music, dancing a ballet or other choreographic work, and acting out a dramatic work or pantomime. A performance may be accomplished "either directly or by means of any device or process," including all kinds of equipment for reproducing or amplifying sounds or visual images, any sort of transmitting apparatus, any type of electronic retrieval system, and any other techniques and systems not yet in use or even invented.

The definition of "perform" in relation to "a motion picture or other audio visual work" is "to show its images in any sequence or to make the sounds accompanying it audible." The showing of portions of a motion picture, filmstrip, or slide set must therefore be sequential to constitute a "performance" rather than a "display", but no particular order need

be maintained. The purely aural performance of a motion picture track, or of the sound portions of a audiovisual work, would constitute a performance of the "motion picture or audiovisual work"; but, where so the sounds have been reproduced separately on phonorecords, a performance from the phonorecord would not constitute performance of the motion picture or audiovisual work.

The corresponding definition of "display" covers any showing of a "copy" of the work, "either directly or by means of a film, slide, television image, or other device or process." Since "copies" are defined as including the material "in which the work is first embodied," the right of public display applies to original works of art as well as to reproductions of them. With respect to motion pictures and other audiovisual works, it is a "display" (rather than "performance") to show their "images nonsequentially." In addition to the direct showings of a copy of a "display" would include the projection of an image on a screen or other surface by any method, the transmission of an image by electronic or other means, showing of an image on a cathode tube, or similar viewing apparatus connected with any sort of information storage and retrieval system.

Under clause (1) of the definition of "publicly" in section 101 [section 101 of this title], a performance or display is "public" if it takes place "at an open to the public or at any place where a substantial number of persons of a normal circle of a family or acquaintance is gathered." The principal purposes of the definition was to make clear that, contrary to a decision in *Metro-Goldwyn-Mayer v. Wyatt*, 21 F.2d 503 (D.Md.1932), performances in "public" places such as clubs, hotels, summer camps, and schools are "public performances" subject to copyright control. The term "a normal circle" would include an individual living alone, so that a gathering to the individual's social acquaintance would normally be regarded as "public." Routine meetings of businesses

Amount of fines for certain violations of copyright law, see section 506 of the Copyright Code.  
Construction of words denoting "public" in several provisions.

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maintained. The purely aural performance of a motion picture sound track or of the sound portions of an audiovisual work, would constitute a performance of the "motion picture or other audiovisual work"; but, where some of the sounds have been reproduced separately on phonorecords, a performance on the phonorecord would not constitute a performance of the motion picture or audiovisual work.

The corresponding definition of "display" covers any showing of a "copy" of a work, "either directly or by means of film, slide, television image, or any other device or process." Since "copies" is defined as including the material object in which the work is first fixed, the right of public display applies to material works of art as well as to reproductions of them. With respect to motion pictures and other audiovisual works, it is a "display" (rather than a "performance") to show their "individual pieces nonsequentially." In addition to direct showings of a copy of a work, "display" would include the projection of an image on a screen or other surface by any method, the transmission of an image by electronic or other means, and the showing of an image on a cathode ray tube or similar viewing apparatus connected with any sort of information storage and retrieval system.

Under clause (1) of the definition of "publicly" in section 101 [section 101 of this title], a performance or display is "public" if it takes place "at a place open to the public or at any place where a substantial number of persons outside a normal circle of a family and its social acquaintances is gathered." One of the principal purposes of the definition is to make clear that, contrary to the decision in *Metro-Goldwyn-Mayer Distributing Corp. v. Wyatt*, 21 C.O.Bull. 25 (D.Md.1932), performances in "semi-public" places such as clubs, lodges, factories, summer camps, and schools are "public performances" subject to copyright control. The term "a family" in this context would include an individual living alone, so that a gathering confined to the individual's social acquaintances would normally be regarded as private. Routine meetings of businesses and gov-

ernmental personnel would be excluded because they do not represent the gathering of a "substantial number of persons."

Clause (2) of the definition of "publicly" in section 101 [section 101 of this title] makes clear that the concepts of public performance and public display include not only performances and displays that occur initially in a public place, but also acts that transmit or otherwise communicate a performance or display of the work to the public by means of any device or process. The definition of "transmit"—to communicate a performance or display "by any device or process whereby images or sound are received beyond the place from which they are sent"—is broad enough to include all conceivable forms and combinations of wired or wireless communications media, including but by no means limited to radio and television broadcasting as we know them. Each and every method by which the images or sounds comprising a performance or display are picked up and conveyed is a "transmission," and if the transmission reaches the public in any form, the case comes within the scope of clauses (4) or (5) of section 106 [cls. (4) or (5) of this section].

Under the bill, as under the present law, a performance made available by transmission to the public at large is "public" even though the recipients are not gathered in a single place, and even if there is no proof that any of the potential recipients was operating his receiving apparatus at the time of the transmission. The same principles apply whenever the potential recipients of the transmission represent a limited segment of the public, such as the occupants of hotel rooms or the subscribers of a cable television service. Clause (2) of the definition of "publicly" is applicable "whether or the members of the public capable of receiving the performance or display receive it in the same place or in separate places and at the same time or at different times."

**Effective Date.** Section effective Jan. 1, 1978, except as otherwise expressly provided, see section 102 of Pub.L. 94-553, set out as a note preceding section 101 of this title.

**Cross References**

- Amount of fines for certain willful infringements of sound recordings or motion pictures, see section 506 of this title.
- Capital asset as not including copyright, see section 1221 of Title 20, Internal Revenue Code.
- Construction of words denoting number, gender, etc., see section 1 of Title 1, General Provisions.

## Note 1

- Copyright royalties as personal holding company income, see section 513 of Title 26, Internal Revenue Code.
- Importation of copies or phonorecords as infringement of exclusive right to distribute, see section 602 of this title.
- Preemption of other laws relating to exclusive rights within general scope of copyright, see section 301 of this title.
- Reproduction, compilation, and distribution for research of regularly scheduled newscasts or on-the-spot coverage of news events by Librarian of Congress, see section 170 of Title 2, The Congress.
- Transfer of exclusive rights comprised in copyright, see section 201 of this title.
- Violator of exclusive rights guaranteed by this section as infringer of copyright, see section 501 of this title.

## Library References

Copyrights — 30, 39.

C.J.S. Copyright and Literary Property §§ 01, 02.

## Notes of Decisions

Absolute nature of rights	8
Antitrust violations	23
Audiovisual works, public performance	21
Common law	1
Constitutionality	2
Construction	3
Creation of other works	13
Dramatic works, public performance	20
Exclusiveness of rights	9
Independent nature of rights	10
Law governing	5
Lease	16
Literary works, public performance	18
Motion pictures and other audiovisual works, public performance	21
Musical works, public performance	19
Patent rights distinguished	7
Power of Congress	6
Preparation of derivative copies	14
Public display	22
Public performance	
Generally	17
Dramatic works	20
Literary works	18
Motion pictures and other audiovisual works	21
Musical works	19
Purpose	4
Reproduction	12
Sale or other transfer of ownership	15
Separate and independent nature of rights	10
Statutory nature of rights	11
Transfer of ownership	15

## 1. Common law

The common law right to a monopoly in the publication of an author's productions was superseded by statute in this country as well as in England. *Holmer v. Hurst*, N.Y.1899, 19 S.Ct. 606, 607, 174 U.S. 82, 43 L.Ed. 604.

- Common law copyright protects against unauthorized copying, publishing, vending, performing and recording. *Letter Edged in Black Press, Inc. v. Public Bldg. Commission of Chicago*, D.C.Ill. 1970, 320 F.Supp. 1303.

The common law of copyright protected author only until first publication, whereas peculiar right conferred by statutory copyright is to multiply copies after publication to exclusion of others. *Carew v. Melrose Music*, D.C.N.Y.1950, 92 F.Supp. 971.

Property rights in a literary production before publication were exclusively in the author, both at common law and under this title. *Herry v. Hoffman*, 1937, 180 A. 516, 125 Pa.Super. 201.

## 2. Constitutionality

Constructing the exclusive right given to authors to dramatize their works, as extending to the public exhibition of moving pictures of the incidents of a copyrighted work did not render former section 1 of this title invalid as exceeding the power given to Congress by U.S. Const. Art. 1, § 8, cl. 5, to secure to authors for a limited time the exclusive right to their writings. *Kalem Co. v. Harper Bros.*, N.Y.1911, 32 S.Ct. 20, 222 U.S. 55, 50 L.Ed. 92.

## 3. Construction

Court did not permit general policy of former section 1 of this title to be obscured by drastic technological changes that have arisen since its enactment. *Edward B. Marks Music Corp. v. Colorado Magnetics, Inc.*, C.A.Okl.1974, 497 F.2d 285, certiorari denied 95 S.Ct. 801, 419 U.S. 1120, 42 L.Ed.2d 819.

Former section 1 of this title granted valuable rights to persons who created

subject matter which was copyrighted and useless technicalities were not to be allowed to cut down benefits conferred. *U. S. v. Hacker*, C.C.A.N.Y.1943, 134 F. 533.

Former section 1 of this title should have been reasonably construed, in view to effecting purpose intended, not unduly extended to include privilege not intended nor so narrowly construed as to destroy rights Congress intended grant. *Metro-Goldwyn-Mayer Illustrating Corporation v. Bijou Theatre Co.*, C.A.Mass.1932, 59 F.2d 70.

Former section 1 of this title, which granted exclusive rights in copyright publications, might have applied to situations not anticipated by Congress and when fairly construed, such situations came within its intent and meaning. *Remick v. American Automobile Accessories Co.*, C.C.A.Ohio 1925, 5 F.2d 411, A.L.R. 1511, certiorari denied 40 S.Ct. 269 U.S. 556, 70 L.Ed. 22.

## 4. Purpose

A fundamental purpose of the exclusive right of public performance granted by former section 1 of this title was to protect copyright proprietors against invasion of the market for their work. *United Artists Television, Inc. v. Eightly Corp.*, C.A.N.Y.1967, 377 F.2d reversed on other grounds 88 S.Ct. 392 U.S. 390, 20 L.Ed.2d 1176, rehearing denied 89 S.Ct. 65, 303 U.S. 902, 21 2d 190.

Purpose of this title is to protect original designs from copying, not to give to the proprietor any right to exclude others from the market place for such items. *Herbert Rosenthal Jewelry v. Honora Jewelry Co., Inc.*, D.C.N.Y. 378 F.Supp. 485, affirmed 569 F.2d 69.

The purpose and effect of former section 1 of this title was to secure to right owner the exclusive right to multiply copies. *Fawcett Publications v. Hot Pub. Co.*, D.C.N.Y.1942, 40 F. 717.

## 5. Law governing

An author's right to monopoly publications is measured and determined by this title. *American Code Co. v. Singer*, C.C.A.N.Y.1922, 282 F. 820; also, *Bentley v. Tibbals*, N.Y.1915, 247, 139 C.C.A. 48; *Loew's Inc. v. Superior Court of Los Angeles County*, 37 P.2d 983, 18 Cal.2d 419.

The measure of the rights and remedies of a copyright proprietor is

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Subject matter which was copyrightable, but useless technicalities were not to be allowed to cut down benefits conferred. *C.S. v. Backer*, C.C.A.N.Y.1043, 134 F.2d 11.

Former section 1 of this title should have been reasonably construed, with view to effecting purpose intended, and be unduly extended to include privileges not intended nor so narrowly construed as to destroy rights Congress intended to grant. *Metro-Goldwyn-Mayer Distributing Corporation v. Bijou Theatre Co.*, C.C.Mass.1032, 50 F.2d 70.

Former section 1 of this title, which granted exclusive rights in copyrighted publications, might have applied to new situations, not anticipated by Congress and when fairly construed, such situations came within its intent and meaning. *Benick v. American Automobile Accessories Co.*, C.C.A.Ohio 1925, 5 F.2d 411, 40 U.L.R. 1511, certiorari denied 46 S.Ct. 19, 29 U.S. 556, 70 L.Ed. 22.

**1. Purpose**

A fundamental purpose of the exclusive right of public performance granted by former section 1 of this title was to protect copyright proprietors against dilution of the market for their works. *United Artists Television, Inc. v. Fort-Litchly Corp.*, C.A.N.Y.1067, 377 F.2d 872, reversed on other grounds 88 S.Ct. 2084, 20 U.S. 300, 20 L.Ed.2d 1170, rehearing denied 88 S.Ct. 95, 303 U.S. 902, 21 L.Ed. 2190.

Purpose of this title is to protect original designs from copying, not to convey to the proprietor any right to exclude others from the market place for similar items. *Herbert Rosenthal Jewelry Corp. v. Honora Jewelry Co., Inc.*, D.C.N.Y.1974, 15 F.Supp. 485, affirmed 509 F.2d 61.

The purpose and effect of former section 1 of this title was to secure to copyright owner the exclusive right to multiply copies. *Fawcett Publications v. Elton Pub. Co.*, D.C.N.Y.1042, 46 F.Supp. 177.

**1. Law governing**

An author's right to monopoly of his publications is measured and determined by this title. *American Code Co. v. Beninger*, C.C.A.N.Y.1022, 282 F. 829. See, also, *Bentley v. Tibbals*, N.Y.1015, 223 F.2d 135 C.C.A. 48; *Loew's Inc. v. Superior Court of Los Angeles County*, 1941, 115 P.2d 953, 18 Cal.2d 410.

The measure of the rights and liabilities of a copyright proprietor must be

found in language of this title. *Miller v. Goody*, D.C.N.Y.1054, 125 F.Supp. 348.

**6. Power of Congress**

Congress has the power to prescribe the conditions on which an exclusive right in an author shall be enjoyed. *Wheaton v. Peters*, Pa.1834, 33 U.S. 591, 8 Pet. 591, 8 L.Ed. 1035.

Unlike owner of patent, owner of copyright is not given by statute any exclusive right to use the work, though he does have exclusive right to "print, reprint, publish, copy and vend the copyrighted work". *Time, Inc. v. Bernard Gels Associates*, D.C.N.Y.1008, 203 F.Supp. 130.

**7. Patent rights distinguished**

A copyright of a book merely secures to author exclusive right of printing and publishing book and does not give author exclusive property of art described therein, but author, if he desire to acquire exclusive right to art recited, must attain patent therefor. *Alfred Bell & Co. v. Catalda Fine Arts*, C.A.N.Y.1051, 191 F.2d 49.

**8. Absolute nature of rights**

Composer's copyright is absolute right to prevent others from copying his work. *Granite Music Corp. v. United Artists Corp.*, C.A.Cal.1970, 532 F.2d 718.

**9. Exclusiveness of rights**

"Literary property" is in essence a right to exclude to a greater or lesser extent, others from making some or all use of the expressed thoughts of an author. *Capitol Records v. Mercury Records Corp.*, C.A.N.Y.1955, 221 F.2d 657.

Copyright is not identical with copyrighted work, but exists separately from it as intangible right to exclude all others from printing, publishing, copying or vending the work. *Lantern Press, Inc. v. American Publishers Co.*, D.C.N.Y.1970, 419 F.Supp. 1207.

Copyright proprietor has exclusive right to publish, copy and vend compositions. *Austin v. Steiner*, D.C.Ill.1002, 207 F.Supp. 376.

A copyright monopoly merely gives the copyright possessor the exclusive right to exploit the form of his expression. *Greenlee v. Noble*, D.C.N.Y.1957, 151 F. Supp. 45.

**10. Separate and independent nature of rights**

The printing and publishing rights, mechanical reproduction rights, and pub-

lic performance for profit rights acquired by writer of a musical composition upon compliance with former section 10 of this title were separate and independent and they could have been retained by the owner or disposed of by him to others either singly or in their entirety. *Schwartz v. Broadcast Music, Inc.*, D.C. N.Y.1050, 180 F.Supp. 322.

#### 11. Statutory nature of rights

Copyrights and the rights flowing therefrom are entirely creatures of statute. *Loew's Inc. v. Columbia Broadcasting System*, D.C.Cal.1955, 131 F.Supp. 165, affirmed 230 F.2d 532, affirmed 78 S.Ct. 607, 350 U.S. 43, 2 L.Ed.2d 583, rehearing denied 78 S.Ct. 770, 350 U.S. 934, 2 L.Ed.2d 704. See, also, *Mura v. Columbia Broadcasting System, Inc.*, D.C.N.Y.1005, 245 F.Supp. 537; *Miller v. Goody*, D.C.N.Y.1034, 125 F.Supp. 348.

#### 12. Reproduction

Reception of radio broadcast and its translation into sound constitutes reproduction, not mere audition, of original program. *Buck v. Jewell-La Salle Realty Co.*, Mo.1031, 51 S.Ct. 410, 253 U.S. 191, 75 L.Ed. 971.

This title created a new property right giving to the author after publication the exclusive right to multiply copies for a limited period. *Callga v. Inter Ocean Newspaper Co.*, Ill.1909, 30 S.Ct. 38, 215 U.S. 182, 54 L.Ed. 150.

Statutory copyright does not give monopoly over idea or musical phrase, but merely protects against unlawful reproduction of original work. *Granite Music Corp. v. United Artists Corp.*, C.A.Cal. 1970, 532 F.2d 718.

The exclusive right to copy copyrighted architectural plans belongs to the architect, even though the plans give him no unique claim on any feature of the structure they detail. *Imperial Homes Corp. v. Lamont*, C.A.Fla.1972, 459 F.2d 895.

A copyright confers the exclusive right to copy the copyrighted work and right not to have others copy it. *Alfred Bell & Co. v. Catalda Fine Arts*, C.A.N.Y.1951, 101 F.2d 90.

A copyright in any form, whether statutory or at common law, is a monopoly consisting only in the power to prevent others from reproducing the copyrighted work. *RCA Mfg. Co. v. Whiteman*, C.C. A.N.Y.1940, 114 F.2d 86, certiorari denied 61 S.Ct. 393, 311 U.S. 712, 85 L.Ed. 463.

The exclusive right to multiply or control copies of a literary work or composi-

tion is only derived from the copyright statute of different governments. *Atlas Mfg. Co. v. Street & Smith*, Mo.1013, 204 F. 398, 122 C.C.A. 568, 47 L.R.A.,N.S., 1002, appeal dismissed 34 S.Ct. 73, 231 U.S. 345, 58 L.Ed. 202, certiorari denied 34 S.Ct. 323, 231 U.S. 755, 58 L.Ed. 468.

Reproductions of copyrighted article cannot be made without consent of creator. *Grove Press, Inc. v. Greenleaf Pub. Co.*, D.C.N.Y.1965, 247 F.Supp. 518.

A copyright grants an author the exclusive right of multiplying copies of what he has written or printed. *Richards v. Columbia Broadcasting System, Inc.*, D.C.D.C.1958, 161 F.Supp. 510. See, also, *Mazer v. Stein*, Md.1954, 74 S.Ct. 460, 347 U.S. 201, 98 L.Ed. 630, rehearing denied 74 S.Ct. 637, 347 U.S. 910, 98 L.Ed. 1090; *Independent Film Distributors Limited v. Chesapeake Industries, Inc.*, C.A.N.Y.1958, 250 F.2d 951; *Leon v. Pacific Telephone & Telegraph Co.*, C.C.A.Cal. 1037, 91 F.2d 484; *Jeweler's Circular Pub. Co. v. Keystone Pub. Co.*, C.C.A.N.Y.1922, 281 F. 83, certiorari denied 42 S.Ct. 464, 250 U.S. 591, 60 L.Ed. 1074; *Robbs-Merrill Co. v. Strauss*, N.Y.1900, 147 F. 15, 77 C.C. A. 607, 15 L.R.A.,N.S. 766, affirmed 25 S.Ct. 722, 210 U.S. 330, 52 L.Ed. 1080; *Munson v. New York*, C.C.N.Y.1880, 3 F. 335, reversed on other grounds 8 S.Ct. 622, 124 U.S. 601, 31 L.Ed. 589; *Doran v. Sunset House Distributing Corp.*, D.C.Cal.1961, 197 F.Supp. 940, affirmed 304 F.2d 251; *Lawrence v. Dana*, C.C.Mass.1806, Fed. Cns.No.8,136.

Copyright proprietor's right is limited to right to make or use copies of protected material, and such protection is absolute and copyrighted art under protection of valid copyright cannot be copied for any purpose without consent of proprietor. *Stein v. Rosenthal*, D.C.Cal.1952, 103 F.Supp. 227, affirmed 205 F.2d 633.

#### 13. Creation of other works

A copyright owner's sole liberty of printing, publishing and vending copyrighted work means liberty to make use of corporeal object by means of which author expressed himself, not the sole liberty to create other works, though identical, especially works on same period in history. *Oxford Book Co. v. College Entrance Book Co.*, C.A.N.Y.1935, 98 F.2d 688.

#### 14. Preparation of derivative copies

A manufacturer of a phonograph record comprising poem set to music was not making another "version" of the poem within former section 1(b) of this title.

*Corcoran v. Montgomery Ward & Co.*, C.C.A.Cal.1941, 121 F.2d 572, certiorari denied 62 S.Ct. 300, 314 U.S. 687, 80 L.Ed. 550.

Memoranda sheets prepared by a teacher for the use of his students from a copyrighted work constituted "copies" or "other versions" of the work and an infringement. *Macmillan Co. v. King*, D.C. Mass.1914, 223 F. 802.

A book containing a brief résumé of the plot of certain copyrighted operas was not "any other version thereof" within the meaning of former section 1 of this title so as to constitute an infringement of the copyrighted work. *Illicordi v. Mason*, N.Y.1913, 210 F. 277, 135 C.C.A. 125.

Act Mar. 3, 1891, c. 565, 26 Stat. 1107 which amended R.S. § 4052, made the exclusive right of authors and their assigns to dramatize and translate any of their copyrighted works a part of the copyright itself. *Atlas Mfg. Co. v. Street & Smith*, Mo.1013, 204 F. 398, 122 C.C.A. 568, 47 L.R.A.,N.S., 1002, certiorari denied 7 S.Ct. 323, 231 U.S. 755, 58 L.Ed. 409, petition denied 34 S.Ct. 602, 232 U.S. 724, 5 L.Ed. 815.

Exclusive right of copyright owner of musical composition to make a version and arrangement, is limited to printing, reprinting, etc., and does not include the right to mechanical reproduction which is distinct from such right to print, etc., and also from the right to publicly perform for profit. *Edward B. Marks Music Corp. v. Foulton*, D.C.N.Y.1948, 70 F.Supp. 694, affirmed 171 F.2d 605.

#### 15. Sale or other transfer of ownership

Under former section 1 of this title which gave copyright owner the exclusive right to "print, reprint . . . or vend" his work, addition of "vend" did not enlarge scope of the copyright as to protect owner of copyright on performance of sale of phonograph records embracing the poem as set to music. *Corcoran v. Montgomery Ward & Co.*, C.C.A.C. 1941, 121 F.2d 572, certiorari denied 62 Ct. 300, 314 U.S. 687, 80 L.Ed. 550.

The copyright holder had the exclusive right to sell his copyrighted work. *Illegriani v. Allegrini*, D.C.Pa.1924, 2 F. 810.

Each author or proprietor of a painting may acquire by copyright the sole liberty of copying and vending the same. *DeJonge & Co. v. Breuker, etc., Co.*, 1911, 101 F. 35, 111 C.C.A. 567, affirmed 5 S.Ct. 6, 235 U.S. 33, 59 L.Ed. 113.

*Corcoran v. Montgomery Ward & Co., C. C.A. Cal. 1941, 121 F.2d 572, certiorari denied 121 F.2d 572, 314 U.S. 687, 80 L.Ed. 250.*

Memoranda sheets prepared by a teacher for the use of his students from a copyrighted work constituted "copies" or "other versions" of the work and an infringement. *Macmillan Co. v. King, D.C. Mass. 1914, 223 F. 802.*

A book containing a brief résumé of the plot of certain copyrighted operas was not "any other version thereof" within the meaning of former section 1 of this title so as to constitute an infringement of the copyrighted work. *Hickford v. Mason, N.Y. 1913, 210 F. 277, 127 C.C.A. 125.*

Act Mar. 3, 1891, c. 565, 26 Stat. 1107, which amended R.S. § 4952, made the exclusive right of authors and their assigns to dramatize and translate any of their copyrighted works a part of the copyright itself. *Atlas Mfg. Co. v. Street & Smith, Mo. 1913, 204 F. 398, 122 C.C.A. 508, 67 L.R.A., N.S., 1002, certiorari denied 34 S.Ct. 323, 231 U.S. 755, 58 L.Ed. 468, petition denied 34 S.Ct. 602, 232 U.S. 724, 58 L.Ed. 815.*

Exclusive right of copyright owner of a musical composition to make a version and arrangement, is limited to printing, printing, etc., and does not include the right to mechanical reproduction which is distinct from such right to print, etc., and also from the right to publicly perform for profit. *Edward B. Marks Music Corp. v. Foulton, D.C.N.Y. 1948, 79 F.Supp. 94, affirmed 171 F.2d 905.*

**15. Sale or other transfer of ownership**  
Under former section 1 of this title, which gave copyright owner the exclusive right to "print, reprint . . . copy and vend" his work, addition of "vend" did not enlarge scope of the copyright so as to protect owner of copyright on poem from sale of phonograph records embodying the poem as set to music. *Corcoran v. Montgomery Ward & Co., C.C.A. Cal. 1941, 121 F.2d 572, certiorari denied 121 F.2d 572, 314 U.S. 687, 80 L.Ed. 550.*

The copyright holder had the exclusive right to sell his copyrighted work. *Pellegriani v. Allegrini, D.C.Pa. 1924, 2 F.2d 62.*

Each author or proprietor of a painting may acquire by copyright the sole liberty of copying and vending the same. *Louis L'Esjange & Co. v. Breuker, etc., Co., Pa. 1911, 191 F. 35, 111 C.C.A. 507, affirmed 35 S.Ct. 6, 235 U.S. 33, 59 L.Ed. 113.*

Selling to subscribers only, and not generally to dealers, was protected by this title. *Henry Hill Pub. Co. v. Smythe, C.C. Ohio 1886, 27 F. 914.*

This title includes right to vend and publish as protected right, as complement to preservation of right to copy. *Blazon, Inc. v. Deluxe Game Corp., D.C.N.Y. 1965, 208 F.Supp. 416.*

Exclusive right to vend copyrighted material resides in owner of copyrights. *Shapiro, Bernstein & Co. v. Bleeker, D.C. Cal. 1965, 243 F.Supp. 969.*

Former section 1 of this title gave person owning copyright not only exclusive right to copy but also to vend the copyrighted work. *Shapiro, Bernstein & Co. v. Bleeker, D.C. Cal. 1963, 224 F.Supp. 595.*

Grant of an exclusive copyright confers on holder an exclusive right to vend copyrighted work and implies prohibition of unauthorized sales. *Platt & Munk Co. v. Playmore, Inc., D.C.N.Y. 1902, 218 F.Supp. 267.*

A mere offer to sell an infringing book, without more, did not constitute a "vend" within meaning of former section 1 of this title. *Greenlee v. Noble, D.C.N.Y. 1957, 151 F.Supp. 45.*

A "copyright" embraces the right of one to make copies of a literary work and to publish and vend the work to the exclusion of others. *Brunner v. Stix, Baer & Fuller Co., 1944, 151 S.W.2d 643, 352 Mo. 1225.*

#### 16. Lease

The legal effect of a "copyright" is to create in the owner an exclusive property right with the incidental power to lease or license the use thereof by others on stipulated terms. *Westway Theatre v. Twentieth Century-Fox Film Corporation, D.C.Md. 1940, 30 F.Supp. 830, affirmed 113 F.2d 932.*

#### 17. Public performance—Generally

Singers and actors have an exclusive right in their art and may prohibit an unauthorized public performance of reproductions thereof. *Waring v. Dunlap, D.C.N.C. 1939, 26 F.Supp. 335.*

#### 18. — Literary works

Producing the words of a narrative poem in combination with music was not a "dramatization" of the poem, and hence did not infringe author's copyright. *Corcoran v. Montgomery Ward & Co., C.C.A. Cal. 1941, 121 F.2d 572, certiorari denied 121 F.2d 572, 314 U.S. 687, 80 L.Ed. 550.*

Doggerel verse entitled "Plain Bull" which described a cowboy's attempt to brand a maverick bull, having action in plenty but lacking dialogue and perceptible plot, was a "narrative poem" and not a "dramatic work" within former section 1 of this title. *Id.*

Right to dramatize book was a part of existing copyright under R.S. § 4052, as amended by Act Mar. 3, 1891, § 1, 26 Stat. 1100. *Stephens v. Howells Sales Co.*, D. C.N.Y.1920, 16 F.2d 805.

An exclusive right to dramatize a novel "for presentation on the stage" meant an exclusive right to dramatize a spoken play and did not comprehend the independent right to dramatize the novel for a moving picture play. *Klein v. Beach*, D.C.N.Y.1916, 232 F. 240, affirmed 239 F. 109, 151 C.C.A. 282.

Under former section 5 of this title the rights to dramatize a novel in the usual form and in the form of a motion picture play were separable, and there could be a copyright for each dramatization. *Photo-Drama Motion Picture Co. v. Social Uplift Film Corporation*, N.Y.1915, 220 F. 448, 137 C.C.A. 42.

The filing of the title of a magazine for copyright and the insertion of the proper notice secured a copyright of a story published therein and protected the right to dramatize the same where the publisher was the owner of both the story and the dramatic rights. *Dunn v. Kirk La Shelle Co.*, N.Y.1910, 175 F. 902, 99 C.C.A. 392, 20 Ann.Cas. 1173, 41 L.R.A., N.S., 1002.

Copyright owner of book has right to produce the book in dramatic form and can sue to enjoin an infringing play even if he is not at that time producing a play or, if he is producing a play, without showing that the infringing play will injure his play. *Douglas Intern. Corp. v. Baker*, D.C.N.Y.1971, 335 F.Supp. 282.

Copyright owner's exclusive right to dramatize a nondramatic work includes monopoly in presentation of such work in dramatic form on radio broadcast. *Warner Bros. Pictures v. Columbia Broadcasting System*, D.C.Cal.1951, 102 F.Supp. 141, affirmed in part reversed in part on other grounds 210 F.2d 945, certiorari denied 75 S.Ct. 532, 348 U.S. 971, 99 L.Ed.2d 750.

An author has the exclusive right to dramatize his works. *Gillette v. Stoll Film Co.*, 1922, 200 N.Y.S. 787, 170 Misc. 850.

## 19. — Musical works

Those who listen to radio broadcast of a copyrighted musical composition do not "perform" the composition. *Twentieth Century Music Corp. v. Aiken*, Pa.1975, 95 S.Ct. 2040, 422 U.S. 151, 45 L.Ed.2d 84.

The radio reception of broadcast of copyrighted musical compositions did not constitute a "performance" of the copyrighted songs and restaurant owner, who presented music to his customers by the use of a radio set to which were connected loudspeakers located in the restaurant ceiling, did not infringe copyright holders' exclusive right, under former section 1 of this title, to perform the copyrighted work publicly for profit. *Twentieth Century Music Corp. v. Aiken*, Pa.1975, 95 S.Ct. 654, 410 U.S. 1007, 42 L.Ed.2d 663.

Acts of hotel proprietor in making available to guests, through radio receiving set and loud speakers, hearing of copyrighted musical composition, constituted "performance". *Buck v. Jewell-La Salle Realty Co.*, Mo.1931, 51 S.Ct. 410, 283 U.S. 191, 75 L.Ed. 971.

That no detailed choice of selections was given hotel proprietor operating radio receiving set and loud speakers did not prevent rendition of copyrighted music from constituting "performance". *Id.*

Single rendition of musical selection may result in several public "performances", and novelty of means of performance does not lessen duty of courts to protect copyright monopoly. *Id.*

Defendants' concert, in which story line of rock opera was preserved by performing 20 of 23 selections from the opera in identical sequence as in copyrighted opera, with one exception, and in which singers entered and exited, maintained specific roles, and occasionally gestured, was a "dramatic" performance, even though there was no scenery, costumes or intervening dialogue, and plaintiff, who owned the rights for stage productions and dramatic presentations, was entitled to have defendants preliminarily enjoined from performing the songs in sequence, from using costumes, scenery or intervening dialogue, and from referring to the opera in their advertising. *Robert Stigwood Group Limited v. Sperber*, C.A.N.Y.1972, 457 F.2d 50.

The song, "Kiss Me Again", was not a dramatic composition as it stands, though former section 1 of this title gave the copyright owner the right to dramatize a nondramatic work. *Witmark v. Pastime Amusement Co.*, D.C.S.C.1924, 28 F. 470, affirmed 2 F.2d 1020.

The right of public performance in connection with copyrighted music positions includes separate and rights, among others the right of cation, motion picture rights, rights, recording rights, and radio-duction rights. *Remick Music Co. Interstate Hotel Co. of Neb.*, I 1944, 58 F.Supp. 523, affirmed 17 744, certiorari denied 67 S.Ct. 622, S. 809, 91 L.Ed. 691, rehearing de S.Ct. 709, 330 U.S. 554, 91 L.Ed. 129 also, *Buck v. Swanson*, D.C.Neb. F.Supp. 377, reversed on other gro S.Ct. 909, 313 U.S. 406, 85 L.Ed. 7 A.L.R. 1434.

That musical compositions were ighted and published as individu ties, and that units out of musica were copyrighted and published se ly from the copyrights of the shows of which they were parts, permit them to be performed publ profit without the license or con copyright owners. *Remick Mus v. Interstate Hotel Co. of Neb.*, I 1944, 58 F.Supp. 523, affirmed 17 744, certiorari denied 67 S.Ct. 622, S. 809, 91 L.Ed. 691, rehearing de S.Ct. 709, 330 U.S. 554, 91 L.Ed. 1290.

A radio station was not free to copyrighted musical composition because it was taken from a pub record. *Associated Music Publi Irlis Memorial Radio Fund*, I.C.N 46 F.Supp. 820, affirmed 141 F.2d e thorial denied 65 S.Ct. 120, 323 I 59 L.Ed. 613.

Copyright owner may exclude ers from performing musical com: publicly for profit. *Buck v. H Country Club*, D.C.Iowa 1937, 17 645.

Former section 1 of this title the copyright proprietor the right to perform copyrighted compositions in public for profit. *Robbins Music Corporation*, 1942, 8.2d 337.

## 20. — Dramatic works

Under former section 1 of th which gave the holder of a copyri exclusive right to perform or re the copyrighted work publicly if ma, and gave the exclusive right form the copyrighted work publ profit if it was a musical comp the holder of the copyright of constituting a part of a dramatic and those claiming under him, l exclusive right to present it p *Green v. Luby*, C.C.N.Y.1909, 177