

LEG. FINANCE - BILLS 1985 - 1986 2425

HB 513 cont. - CS HB 517 2425

1 of the State of Alaska, "state source" means

2 (1) the undistributed income account in the permanent fund;

3 and

4 (2) all sources of money in the state general fund except

5 (A) federal sources;

6 (B) bond proceeds;

7 (C) sources from which money is received in trust for
8 a specific purpose; and

9 (D) the dividend fund established under AS 43.23.045.

10 * Sec. 2. The lieutenant governor shall include on the ballot for the
11 1986 general election an explanation that an affirmative vote on the con-
12 stitutional amendment providing for the budget reserve fund and revising
13 the appropriation limit will supersede an affirmative vote on the reconsid-
14 eration, under art. XV, sec. 27, Constitution of the State of Alaska, of
15 the 1982 amendment establishing the appropriation limit.

16 * Sec. 3. AS 37.05.159, reserve for emergency operating expenses ac-
17 count (the "rainy day fund"), is repealed, and the balance in that account
18 is transferred to the budget reserve fund.

19 * Sec. 4. Sections 1 and 3 of this Act take effect on the effective
20 date of a constitutional amendment establishing the budget reserve fund and
21 revising the appropriation limit.

22 * Sec. 5. Section 2 of this Act takes effect immediately in accordance
23 with AS 01.10.070(c).

Introduced: 1/24/86
Referred: Judiciary and
Finance

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

1 IN THE HOUSE

2

HOUSE BILL NO. 513

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act relating to the constitutional appropriation
7 limitation and budget reserve fund; and providing for
8 an effective date."

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

10 * Section 1. AS 37.05 is amended by adding a new section to read:

11 Sec. 37.05.156. BUDGET RESERVE FUND; APPROPRIATION LIMIT. (a)

12 There is established as a separate fund in the state treasury the
13 budget reserve fund. The budget reserve fund consists of money ded-
14 icated to that fund by art. IX, sec. 17 of the Alaska Constitution.

15 (b) For the purposes of determining the appropriation limitation
16 amount under art. IX, sec. 16, of the Alaska Constitution, (1) an
17 appropriation is considered to be made in the calendar year in which
18 it is enacted, and (2) "appropriation" includes money received by the
19 state, described in art. IX, sec. 17(a), of the Alaska Constitution,
20 which exceeds the maximum balance of the fund and is subsequently
21 deposited in the general fund and appropriated. For the purposes of
22 art. IX, sec. 17, of the Alaska Constitution, the amount of money
23 received by the state includes any surplus carried forward from the
24 preceding fiscal year, or is reduced by any deficit from that preced-
25 ing fiscal year.

26 (c) A reappropriation of no more than the remaining balance of
27 the amount appropriated in a prior year is considered an appropriation
28 attributable to the calendar year in which the appropriation was first
29 enacted. Only if, within a single section of an appropriation bill,

1 there is an explicit repeal of an appropriation coupled with a new
2 appropriation is there a reappropriation for the purposes of this
3 subsection.

4 (d) If the governor determines that the money received by the
5 state from state sources in a fiscal year is less than 95 percent of
6 the amount appropriated from state sources during the preceding calen-
7 dar year, amounts may be transferred from the budget reserve fund to
8 the general fund, up to a limit of either 25 percent of the budget
9 reserve fund balance, or the difference between money received from
10 state sources in that fiscal year and 95 percent of appropriations
11 during the preceding calendar year, whichever is less. Determination
12 of the need for budget reserve fund expenditures for a fiscal year
13 must be made during the final quarter of that fiscal year.

14 (e) As authorized by art. IX, sec. 17(b), of the Alaska Consti-
15 tution, 75 percent of the money received by the state, described in
16 art. IX, sec. 17(a), of the Alaska Constitution, which exceeds the
17 maximum balance of the fund, must be deposited in the Alaska permanent
18 fund.

19 (f) In art. IX, sec. 17, of the Alaska Constitution, "emergency"
20 means the events set out in AS 26.23.230(1) or a reduction of the
21 revenue from nonstate sources which seriously impairs the ability of
22 the state to perform essential functions.

23 (g) In this section and art. IX, secs. 16 and 17, of the Alaska
24 Constitution, "state source" means (1) the undistributed income ac-
25 count in the permanent fund, and (2) all sources of money in the state
26 general fund except (A) federal sources, (B) bond proceeds, and (C)
27 sources from which money is received in trust for a specific purpose.

28 * Sec. 2. The lieutenant governor shall include on the ballot for the
29 1986 general election an explanation that an affirmative vote on the

1 constitutional amendment providing for the budget reserve fund and revising
2 the appropriation limit will supersede an affirmative vote on the reconsid-
3 eration, under art. XV, sec. 27, of the Alaska Constitution, of the 1982
4 amendment establishing the appropriation limit.

5 * Sec. 3. AS 37.05.159, reserve for emergency operating expenses ac-
6 count (the "rainy day fund"), is repealed, and the balance in that account
7 is transferred to the budget reserve fund.

8 * Sec. 4. Sections 1 and 3 of this Act take effect on the effective
9 date of a constitutional amendment establishing the budget reserve fund and
10 revising the appropriation limit.

11 * Sec. 5. Section 2 of this Act takes effect immediately in accordance
12 with AS 01.10.070(c).

COMMITTEE REPORT
SENATE

FURTHER:

4/30/86

Date 5/6/86

Mr. President

The Committee on FINANCE considered CSHB 513(Fin)
relating to a budget limitation and to reserve funds; efd.

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

- do pass
- do pass with attached amendment(s)
- replace with/or adopt SCS for CSHB 513 (Fin)
- new title
- same title and recommends "DO PASS"
- and attached a "LETTER OF INTENT" NEW FISCAL NOTE
⊕ SFC
- reports it back without recommendation
- recommends referral to _____ Committee

MEMBERS SIGNING
DO PASS

[Signature]

Carl Finkle

[Signature]

[Signature]

MEMBERS HAVING
OTHER RECOMMENDATIONS

No Rec - Rick Helford

Co-Chairman [Signature]

do pass

Chairman recommendation

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : SCS CSHB 513 (Fin)
 Title : Act relating to a budget limitation and to reserve funds

Sponsor : Rules/Governor
 Requestor : _____
 Date of Request : _____

FISCAL DETAIL

Agency Affected : All
 BRU : _____

Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

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

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

POSITIONS :

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

ANALYSIS : Attach a separate page if necessary

Prepared by : _____
 Division : Senator Jan Faiks, Co-chairman
Senate Finance Committee

Phone : 465-4523
 Date : May 6, 1986

Approved by Commissioner : _____
 Agency : _____

Date : _____

Distribution (by Agency preparing fiscal note) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

cook
5/5/86

Original sponsor: Rules/Governor

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 513 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to a budget limitation and to re-
7 serve funds; and providing for an effective date."

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

9 * Section 1. AS 37.05 is amended by adding a new section to read:

10 Sec. 37.05.156. BUDGET RESERVE FUND; APPROPRIATION LIMIT. (a)

11 There is established as a separate fund in the state treasury the
12 budget reserve fund. The budget reserve fund consists of appropria-
13 tions to the fund. Money received by the state that is subject to the
14 appropriation limit under (b) of this section and that exceeds that
15 limit, may be appropriated to the budget reserve fund.16 (b) Except for appropriations to the permanent fund or for
17 Alaska permanent fund dividends, appropriations to the budget reserve
18 fund, appropriations of revenue bond proceeds, appropriations required
19 to pay the principal and interest on general obligation bonds, and
20 appropriations of money received from a nonstate source in trust for a
21 specific purpose, including revenue of a public enterprise or public
22 corporation of the state that issues revenue bonds, appropriations
23 from the treasury made in a fiscal year may not exceed appropriations
24 made in the preceding fiscal year by more than five percent plus the
25 change in population and inflation since the beginning of the pre-
26 ceding fiscal year. For purposes of applying this limit an approp-
27 riation is considered to be made in the fiscal year in which it is
28 enacted and a reappropriation remains attributed to the fiscal year in
29 which the original appropriation is enacted. The determination of

1 the change in population for purposes of this subsection shall be
2 based on an annual estimate of population by the Department of Labor.
3 The determination of the change in inflation for purposes of this sub-
4 section shall be based on the Consumer Price Index for all urban
5 consumers for Anchorage prepared by the United States Bureau of Labor
6 Statistics. The amount of money received by the state that is subject
7 to the appropriation limit includes the balance in the general fund
8 carried forward from the preceding fiscal year.

9 (c) If the legislature determines that the money subject to the
10 appropriation limit received by the state in a fiscal year is less
11 than the maximum permitted to be appropriated under (b) of this sec-
12 tion, up to 25 percent of the balance of the budget reserve fund may
13 be appropriated to the general fund.

14 (d) The Department of Revenue shall manage and invest assets of
15 the budget reserve fund in the manner set out for the management and
16 investment of the assets of the general fund under AS 37.10.070.
17 Income from investment of the budget reserve fund may be appropriated
18 to the fund each year by law.

19 (e) Notwithstanding other provisions of this section, appropria-
20 tions may be made from the budget reserve fund needed by the governor
21 to meet a disaster. In this subsection, "disaster" has the meaning
22 given in AS 26.23.230.

23 * Sec. 2. AS 37.05.159 is repealed.

24 * Sec. 3. AS 37.05.156 added by sec. 1 of this Act applies to fiscal
25 year 1988 and fiscal years thereafter.

26 * Sec. 4. This Act takes effect July 1, 1986.

**STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE**

Revision Date : _____

REQUEST

Bill/Resolution No. : CS HB 513 (FIN)
 Title : Appropriation Limit of
Budget Reserve Fund

 Sponsor : Governor
 Requestor : House Finance Committee
 Date of Request : 4/24/86

FISCAL DETAIL

Agency Affected : ALL
 BRU : _____

 Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		-0-	-0-	-0-	-0-	-0-
TRAVEL		-0-	-0-	-0-	-0-	-0-
CONTRACTUAL		-0-	-0-	-0-	-0-	-0-
SUPPLIES		-0-	-0-	-0-	-0-	-0-
EQUIPMENT		-0-	-0-	-0-	-0-	-0-
LAND & STRUCTURES		-0-	-0-	-0-	-0-	-0-
GRANTS, CLAIMS		-0-	-0-	-0-	-0-	-0-
MISCELLANEOUS		-0-	-0-	-0-	-0-	-0-
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-

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

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

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

APA

Prepared by : Representative Adams - Chairman
 Division : House Finance Committee

465-3706
 Phone : _____
 Date : 4/24/86

Approved by Commissioner : _____ Date : _____
 Agency : _____

Distribution (by Agency preparing fiscal note) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

Sectional Analysis for
CSHB 513 (Finance)
5/5/86 version

An Act relating to a budget limitation and to
reserve funds

Section 1.

(a) Establishes the Budget Reserve Fund which consists of money appropriated to it. Any funds received that are subject to the appropriation limit and exceeds the limit may be appropriated to the budget reserve fund.

(b) Provides exceptions to the appropriation limit:
-- to the Permanent Fund;
-- to the budget reserve fund;
-- for revenue bond proceeds;
-- principal and interest on G. O. bonds;
-- money received from nonstate source in trust
for a specific purpose.

Otherwise, all other appropriations can not exceed the amount enacted the preceding fiscal year plus 5% plus adjustments for population plus inflation. Specifies the types of indices to be used for population and inflation.

(c) Provides that no more than 25% of the Budget Reserve Fund can be appropriated in any one fiscal year when determined necessary by the Legislature.

(d) The assets of the Budget Reserve Fund shall be invested as is the general fund and income may be deposited back into the fund by the Legislature.

(e) Monies can be expended by the Governor for a disaster.

Section 2. Repeals the Rainy Day Fund.

Section 3. The provisions of section 1 apply to the FY 88 budget and thereafter.

Section 4. July 1, 1986 effective date.

SB 362
HB 513

Concerns with House version of Budget Reserve Fund

1. Allows a 15% increase in a budget limit over preceeding year compared to the Senate's;
2. Indicates that 25% of the Budget Reserve Fund can be appropriated in any one year (I assume it must be by the Legislature but is not specified). The emphasis here is that at the beginning of the fiscal year, the Governor shall determine if it is necessary to use some of the 25% of the BRF in putting together his budget. Therefore, by knowing you can get 25% because of the 15% increase in your budget, no incentive to keep budget at same level.
3. Says that the Governor is empowered to make appropriations from the Budget Reserve Fund when there is an emergency -- and an emergency includes when revenues from nonstate sources falls below what is necessary for critical services;
4. Includes Undistribution Income Account as a source of funds for the Budget Reserve Fund.

Senate's Version:

1. Tighter appropriation limit;
2. It is clear the Legislature has the power to decide when the Budget Reserve Fund shall be used and it will be done in the third quarter of the fiscal year.
3. Enactment is contingent on voter approval of the appropriation limit.

Fake
5/2/86

STATE OF ALASKA
THE LEGISLATURE


POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

SUBJECT: Constitutional Problems in Section 1,
CSHB 513(Fin)

TO: Senator Jan Faiks
Co-chair, Senate Finance Committee

FROM: David R. Dierdorff 
Revisor of Statutes

You have asked whether sec. 1 of CSHB 513(Fin) presents legal problems. That section uses the repeal and reenactment technique to amend AS 37.05.159 and convert the "reserve for emergency operating expenses account" (rainy day account) to the "budget reserve fund." Subsection (a) of the repealed and reenacted section also purports to transfer the balance of the rainy day account by establishing the new fund as one consisting of money appropriated to it and "of the balance of the reserve for emergency operating expenses account as of July 1, 1986." (July 1 would be the date the rainy day account becomes the reserve fund.)

It is my opinion that sec. 1, CSHB 513(Fin) presents serious constitutional problems. Section 13, Article IX, Constitution of Alaska provides:

SECTION 13. EXPENDITURES. No money shall be withdrawn from the treasury except in accordance with appropriations made by law. No obligation for the payment of money shall be incurred except as authorized by law. Unobligated appropriations outstanding at the end of the period of time specified by law shall be void.

One might argue that since the rainy day fund is in the state treasury, and the budget reserve fund is also in the

state treasury, no money is being withdrawn from the treasury, and, therefor, the transfer of the fund balance does not amount to an appropriation for purposes of sec. 13, Art. IX (or, for that matter, for the purposes of sec. 13, Art. II, which prohibits a mixture of substantive law and appropriations in the same bill).

There are several difficulties with this argument. The most significant, in my opinion, is that the balance of money that is in the rainy day fund was appropriated to that account for the purposes of that account, not for the purposes of some other account with entirely different purposes. As you know, AS 37.05.159 sets out very specific and limited uses of the rainy day fund, including procedures that must be followed in the event of an expenditure or encumbrance. Expenditure of that money for a purpose other than one for which it was appropriated would be a clear violation of sec. 13, Art. IX and of the statutes enacted to implement the constitution. See, for example, AS 37.05.170, which prohibits payments against funds unless an appropriation or expenditure authorization "has been made for the purpose for which it is intended to incur the obligation." I also note that it could be argued that upon the repeal of the rainy day fund and its replacement by a very different type of fund with very different purposes and conditions, the balance of the rainy day fund lapses into the general fund, as to hold otherwise would be to allow its expenditure in an unconstitutional manner.

It might be argued that since the new fund is a reserve for appropriations, not for expenditure, any defect in the transfer would be cured upon subsequent appropriation from the reserve fund. The argument would be that no expenditure could be made from the fund without a new appropriation, so, therefor, any expenditure from the fund would in fact be in accordance with a lawful appropriation for the purpose. Assuming for purposes of argument that the legislature is free to transfer funds by changing the name and character of a fund, and thereby avoid the appropriation process for that transfer, what if the legislature decided to provide that the new fund could be expended by the governor in some manner, in some amounts, and under some procedures, say, for example, to supplement revenue shortfalls, without further appropriation? That would clearly be an expenditure beyond the scope, and without the limitations, of appropriations to the old rainy day fund, and, therefor, illegal. It would not be an expenditure from the reserve fund under an

Senator Faiks
Page 3
May 5, 1986

appropriation, because there was no appropriation to that fund in the first instance.

Thus, one would be limited to saying that transfers without benefit of appropriation are legal only if the new fund does not allow expenditures without appropriation, and I don't think that is what the executive branch is arguing in the instant situation.

Another legal difficulty posed by sec. 1 is that combining the fund transfer with the statutory creation of the fund results in the legislature diminishing the governor's line item veto power under sec. 15, Art. II. It is irrelevant that it is the governor who desires to use the method that diminishes the governor's constitutional authority to veto or reduce an appropriation for it is not who requests an unconstitutional enactment that the court looks to to determine its constitutionality! The constitution gives the governor the power to veto or reduce an appropriation item, including fund transfers, and any attempt to avoid the governor's exercise of that power would be given very short shrift by the court.

Finally, it must be pointed out that sec. 1 of CSHB 513(Fin), in sec. 37.05.159(b), and sec. 1 of SCS CSHB 513(Fin), in sec. 37.05.156(c), purport to limit the legislature's ability to appropriate from the reserve fund. Even the legislature lacks the power to diminish its constitutional powers of appropriation. Thus, absent a constitutional amendment establishing the fund and restricting its availability for appropriation, the referenced statutory provisions would not be binding on a future legislature.

DRD:csh
c7/007

BILL SHEFFIELD
GOVERNOR



AK 532

0-124
cc

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 24, 1986

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a joint resolution proposing amendments to the Alaska Constitution relating to a budget reserve fund and an appropriation limit, and a bill to implement the joint resolution.

I am placing the bill implementing the proposed constitutional amendments before the legislature during this session to ensure that legislators and voters facing that proposal in the 1986 general election understand the scope, details, and implications of the amendments.

The bill would take effect following voter approval of the constitutional amendments. At that time, AS 37.05.159, establishing what is commonly known as the "rainy day fund," would be repealed and replaced by a new statute establishing the budget reserve fund. The balance of the money in the rainy day fund would follow the constitutional and statutory change and would be transferred to the budget reserve fund at that time. The budget reserve fund is designed to meet revenue contingencies contemplated by the rainy day fund as well as broader revenue stability needs.

At the outset, it must be emphasized that the budget reserve fund is very different in purpose and function from forward funding and cash-based budgeting proposals. We have carefully evaluated all these options, and we believe that the budget reserve fund is the fiscal management tool that is best suited to the State's situation. This fund seeks to

dampen annual budget swings. Neither forward funding nor cash-based budgeting protect us from annual budget fluctuations caused by volatility in world oil markets.

The budget reserve fund works in the following manner. In years of rising revenues, as specified in the constitutional amendments, appropriations are limited to 115 percent of appropriations made during the preceding calendar year. Any surplus money above the 115 percent limit is used first to replenish the budget reserve fund; any remaining surplus is then divided between deposits to the permanent fund and to the general fund. In years of revenue decline, as specified in the constitutional amendments and proposed statute, money is made available from the budget reserve fund in an amount that brings appropriations up to 95 percent of the appropriations in the preceding calendar year, or an amount that equals no more than 25 percent of the fund's balance, whichever is less.

These two operations of the budget reserve fund will provide a smoother expenditure pattern over the years than would result from the fluctuations of petroleum revenue alone. This is because, in high revenue years, revenue increases will flow into the budget reserve fund for subsequent appropriation during years of revenue decline, buffering fluctuations in the state's revenue stream caused by petroleum price variations. The upper limit to appropriations (the 115 percent level) will provide an effective appropriation limit, in contrast with the ineffective limit now in our constitution. We will therefore have a meaningful constitutional spending limit as desired by the people of Alaska.

Both the joint resolution and the bill specify that the appropriation limit applies only to unrestricted general fund money and to expenditures from the undistributed income account of the permanent fund (except for a deposit of that money to the permanent fund made in 1986). In turn, "money received" by the state includes only money in the undistributed income account and unrestricted general fund money. Excluded from both, for example, are federal receipts. The joint resolution and bill also specify that appropriations for a fiscal year are limited to 115 percent of appropriations made during the preceding calendar year. The calendar-year basis is used to ensure certainty in the determination of allowable appropriation levels for the coming fiscal year. It also avoids problems caused by supplemental appropriations late in a fiscal year.

New AS 37.05.156(c), in sec. 1 of the bill, addresses the question of how reappropriations should be treated for purposes of the appropriation limit. The intent of that provision is to distinguish between "old" and "new" money. This distinction is needed because it is sometimes difficult to determine whether a reappropriation consists entirely of money appropriated in a prior year, or exceeds the amount of money actually available from those prior appropriations, thereby entailing an appropriation of new money. Any reappropriation not clearly identifiable is also considered a new appropriation.

The maximum balance of the budget reserve fund in any fiscal year equals the amount of general fund appropriations enacted during the preceding calendar year. Money in excess of the 115 percent limit is used to bring the fund balance up to the fund's capacity. A portion of the money in excess of the budget reserve fund capacity must then be deposited in the permanent fund as savings. The bill specifies that that portion is 75 percent. The remaining excess (25 percent) must be deposited in the general fund, and is available for appropriation (effectively increasing the 115 percent limit). Any of that excess money subsequently appropriated from the general fund becomes part of the calculation of the base for the next fiscal year.

The bill specifies that if general fund revenue in a fiscal year falls to a level below 95 percent of appropriations made during the preceding calendar year, an amount may be transferred from the budget reserve fund into the general fund. That transferrable amount is limited to the lesser of (1) the amount needed to bring appropriations up to the 95 percent level, or (2) the maximum amount of the fund that may be spent in a fiscal year, which is 25 percent of the budget reserve fund balance.

As specified in the joint resolution, the budget reserve fund retains its income earnings to help ensure an adequate level of capitalization to meet appropriation demand in years of revenue decline.

The constitutional amendments permit expenditures from the fund beyond the 115 percent appropriation limit and the 25 percent fund expenditure limit to meet declared states of emergency. The bill cites existing statutory language to provide further clarification of "emergencies."

The constitutional amendments proposed in the joint resolution and the implementing statutory provisions together can

provide elected officials with the tools of sound fiscal management, and promise to the citizens of the state a means of avoiding the social and economic shocks that may result from extreme volatility in our revenue stream.

Article XV, sec. 27, of the Alaska Constitution now requires the lieutenant governor to place on the ballot in 1986 the proposition for the existing appropriation limitation, which was approved by the voters in 1982. Since that vote will occur at the same election as the vote on the attached proposal, there is the possibility that both constitutional provisions would be approved -- resulting in a direct conflict between them. To avoid confusion and to preclude legal questions arising as to this later amendment, while still having the lieutenant governor comply with art. XV, sec. 27, the attached bill (see sec. 2) requires the lieutenant governor to include an appropriate explanation on the ballot. It is expected that this explanation will be brief, with some amplification in the voter pamphlet.

Sincerely,



Bill Sheffield
Governor

Offered: 4/25/86
Referred: Rules

Original sponsor: Rules/Governor

1 IN THE HOUSE BY THE FINANCE COMMITTEE
2 CS FOR HOUSE BILL NO. 513 (Finance)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FOURTEENTH LEGISLATURE - SECOND SESSION
5 A BILL
6 For an Act entitled: "An Act relating to a budget limitation and to re-
7 serve funds; and providing for an effective date."
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:
9 * Section 1. AS 37.05.159 is repealed and reenacted to read:
10 Sec. 37.05.159. BUDGET RESERVE FUND. (a) There is established
11 as a separate fund in the state treasury the budget reserve fund. The
12 budget reserve fund consists of money appropriated to that fund and of
13 the balance of the reserve for emergency operating expenses account as
14 of July 1, 1986.
15 (b) Not more than 25 percent of the budget reserve fund balance
16 may be appropriated for any fiscal year. However, additional amounts
17 may be appropriated from the fund to meet a state emergency declared
18 by the governor as prescribed by law. For purposes of this subsection
19 "emergency" means the events set out in AS 26.23.230(1) or a reduction
20 of the revenue from nonstate sources that seriously impairs the abili-
21 ty of the state to perform essential functions.
22 * Sec. 2. AS 37.07.02(c) is amended to read:
23 (c) Proposed expenditures other than deposits to the permanent
24 fund may not exceed appropriations made from state sources in the
25 preceding calendar year by more than 15 percent. Estimated revenue
26 that exceeds that budget limit shall be shown as available for
27 appropriation to the budget reserve fund established under
28 AS 37.05.159 [ESTIMATED REVENUES FOR THE SUCCEEDING FISCAL YEAR. THE
29 EXPENDITURES PROPOSED IN THE SIX-YEAR CAPITAL IMPROVEMENTS PROGRAM AND

1 FINANCIAL PLAN SHALL NOT EXCEED THE ESTIMATED REVENUES AND BOND
2 AUTHORIZATIONS PASSED AND PROPOSED].

3 * Sec. 3. AS 37.07.020 is amended by adding new subsections to read:

4 (e) For the purpose of determining the amount of the budget
5 limit under (c) of this section

6 (1) an appropriation is considered to be made in the calen-
7 dar year in which it is enacted; and

8 (2) the amount of revenue received by the state from state
9 sources includes the amount carried forward from the preceding fiscal
10 year.

11 (f) In this section "state source" means

12 (1) the undistributed income account in the permanent fund;

13 and

14 (2) all sources of money in the state general fund except

15 (A) federal sources;

16 (B) bond proceeds;

17 (C) sources from which money is received in trust for
18 a specific purpose; and

19 (D) the dividend fund established under AS 43.23.045.

20 * Sec. 4. This Act takes effect July 1, 1986.

**HOUSE
COMMITTEE REPORT**

(11)

Date referred: 4/22/86

FURTHER REFERRALS:

DATE: _____

The FINANCE Committee has considered HB 514

"An Act relating to fire prevention activities; and providing for an effective date."

and recommends:

- do pass
- do not pass
- do pass with attached amendment(s)
- no recommendation
- replace with _____ same title
- new title

and recommends _____

further referral to the _____ Committee

- and attaches:
- letter of intent
 - first fiscal note
 - new fiscal note
 - zero fiscal note

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

Chairman

HOUSE
COMMITTEE REPORT

4/22

(7)

Date referred: 2/28/86

FURTHER REFERRALS: FINANCE

DATE: _____

The JUDICIARY Committee has considered HB 514

"An Act relating to fire prevention activities; and providing for an effective date."

and recommends:

- do pass
- do not pass
- do pass with attached amendment (L)
- no recommendation
- replace with CSHB 514 (JUD) same title
- new title

and recommends do pass

further referral to the _____ Committee

- and attaches:
- letter of intent
 - first fiscal note
 - new fiscal note
 - zero fiscal note

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

Chairman

HOUSE
COMMITTEE REPORT

2/28
JUDICIARY

(7)
Date referred: 1/27/86

FURTHER REFERRALS: FINANCE

DATE: 2-27-86

The COMMUNITY AND REGIONAL AFFAIRS Committee has considered HB 514

"An Act relating to fire prevention activities; and providing for an effective date."

and recommends:

- do pass
- do not pass
- do pass with attached amendment(s)
- no recommendation
- replace with _____ same title
- replace with _____ new title

and recommends _____

further referral to the _____ Committee

- and attaches:
- letter of intent
 - first fiscal note
 - new fiscal note
 - zero fiscal note

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

Nick Kosman
John J. ...
Peter ...
F. Kay Wallis

A.U.M. MARROU No Rec.
Myr F. ... no rec.

[Signature]
 Chairman

C. Comer

Offered: 4/22/86
Referred: Finance

Original sponsors: Cato, Koponen,
Hurley and Wallis

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 514 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to fire prevention activities; and
7 providing for an effective date."

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

9 * Section 1. AS 09.65.070(c) is amended to read:

10 (c) An [NO] action may not be maintained against an employee or
11 member of a fire department operated and maintained by a municipality
12 or village, or a fire department registered under AS 29.60.130, if the
13 claim is an action for tort [OR BREACH OF A CONTRACTUAL DUTY] and is
14 based upon the act or omission of the employee or member of the fire
15 department in the execution of a function for which the department is
16 established.

17 * Sec. 2. AS 18.70.075 is amended to read:

18 Sec. 18.70.075. AUTHORITY OF MUNICIPAL OR REGISTERED FIRE
19 DEPARTMENT OFFICERS [AND THEIR PERSONNEL]. (a) An officer of a
20 municipal fire department or a fire department registered under
21 AS 29.60.130 [OR HIS AUTHORIZED REPRESENTATIVE], while providing fire
22 protection services, has the authority to

23 (1) control and direct activities at a [THE] fire;

24 (2) order a person to leave a building or place in the
25 vicinity of a [THE] fire, for the purpose of protecting the person
26 from injury;

27 (3) blockade a public highway, street, or private right-of-
28 way temporarily while at a fire;

29 (4) trespass upon property at or near the scene of a fire

1 at any time of the day or night;

2 (5) enter a building, including a private dwelling, or
3 [UPON] premises where a fire is in progress, or where there is reason-
4 able cause to believe a fire is in progress, to extinguish [FOR THE
5 PURPOSE OF EXTINGUISHING] the fire;

6 (6) enter a building, including a private dwelling, or
7 premises near the scene of a [THE] fire for the purpose of protecting
8 the building or premises or for the purpose of extinguishing the fire
9 which is in progress in another building or premises;

10 (7) upon 24-hour notice to the owner or occupant, inspect
11 for preplanning all buildings, structures, or other places within the
12 municipality or the registered fire department's district, except the
13 interior of a private dwelling, where combustible material is or may
14 become dangerous as a fire menace to the building;

15 (8) direct the removal or destruction of a fence, house,
16 motor vehicle, or other thing judged [WHICH HE MAY JUDGE] necessary
17 [TO REMOVE OR DESTROY] to prevent the further spread of a [THE] fire.

18 (b) An owner or occupant of a building or place specified in
19 this section or any other person on the site of a fire or other fire
20 department emergency who refuses to obey the order of an officer of a
21 municipal or registered fire department [OR HIS AUTHORIZED REPRESENTA-
22 TIVE] in the exercise of [HIS] official duties is guilty of a class B
23 misdemeanor [, AND UPON CONVICTION, IS PUNISHABLE BY IMPRISONMENT FOR
24 ONE YEAR, OR BY A FINE OF NOT MORE THAN \$1,000, OR BY BOTH].

25 (c) In this section, "inspect for preplanning" means to conduct
26 limited examinations [INSPECTIONS] for purposes of preparing a fire
27 attack plan in the event of a future emergency, but does not include
28 inspections for purposes of determining compliance with statutory or
29 municipal fire code requirements.

1 * Sec. 3. AS 18.70.080 is amended to read:

2 Sec. 18.70.080. REGULATIONS. The Department of Public Safety
3 shall adopt [RULES AND] regulations for the purpose of protecting life
4 and property from fire and explosion by establishing minimum standards
5 for

6 (1) fire detection and suppression equipment;

7 (2) fire and life safety plan check criteria in commercial,
8 industrial, business, institutional or other public buildings [BUILD-
9 ING], and buildings used for residential purposes containing four or
10 more dwelling units that are to be built, or are to be substantially
11 remodeled in a way that will affect a fire or life safety feature;

12 (3) fire and life safety inspection criteria in the follow-
13 ing types of buildings:

14 (A) a building used for public assembly, with a capac-
15 ity of more than 50 persons;

16 (B) a building used for educational or child care
17 purposes for more than six children;

18 (C) an institutional building, including structures
19 for the full-time care of more than five children, hospitals,
20 nursing homes, and adult and juvenile correctional facilities;

21 (D) a residential building that is more than two
22 stories in height, and that has more than 15 dwelling units or 20
23 guest rooms;

24 (E) a high-rise building with a floor level used for
25 human occupancy, which is 35 feet above the lowest level of fire
26 department vehicle access;

27 (4) any activity in which combustible or explosive materi-
28 als are stored or handled in commercial quantities;

29 (5) [(4)] conditions or activities carried on outside a

1 building described in (2), [OR] (3), or (4) of this section likely to
2 cause injury to persons or property.

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4 (b) The Department of Public Safety may establish, by regula-
5 tion, reasonable fees to be charged for the fire and life safety plan
6 check as described in (a)(2) of this section.

7 * Sec. 5. AS 18.70.090 is amended to read:

8 Sec. 18.70.090. ENFORCEMENT OF REGULATIONS. The Department of
9 Public Safety and the chief of each municipal or registered [CITY]
10 fire department and their authorized representatives [IN THEIR RESPEC-
11 TIVE AREAS] may enforce the regulations adopted by the Department of
12 Public Safety for the prevention of fire or for the protection of life
13 and property [AGAINST FIRE OR PANIC]. All state peace officers may
14 assist the Department of Public Safety in the enforcement of AS 18.-
15 70.010 - 18.70.100 and the regulations adopted under those sections
16 [IT]. The authority conferred in AS 18.70.010 - 18.70.100 extends to
17 the enforcement of the provisions of AS 11.46.400 - 11.46.450, 11.-
18 46.484(a)(4), and AS 11.56.800(a)(3) [AS 11.46.400 - 11.46.430].

19 * Sec. 6. This Act takes effect immediately in accordance with AS 01.-
20 10.070(c).

Cramer

Introduced: 1/27/86
Referred: Community & Regional
Affairs, Judiciary and Finance

1 IN THE HOUSE

BY CATO AND KOPONEN

2 HOUSE BILL NO. 514

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to fire prevention activities; and
7 providing for an effective date."

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12 or village, or a fire department registered under AS 29.60.130, if the
13 claim is an action for tort or breach of a contractual duty and is
14 based upon the act or omission of the employee or member of the fire
15 department in the execution of a function for which the department is
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26 from injury;

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7 premises near the scene of a [THE] fire for the purpose of protecting
8 the building or premises or for the purpose of extinguishing the fire
9 which is in progress in another building or premises;

10 (7) upon 24-hour notice to the owner or occupant, inspect
11 for preplanning all buildings, structures, or other places within the
12 municipality or the registered fire department's district, except the
13 interior of a private dwelling, where combustible material is or may
14 become dangerous as a fire menace to the building;

15 (.) direct the removal or destruction of a fence, house,
16 motor vehicle, or other thing judged [WHICH HE MAY JUDGE] necessary
17 [TO REMOVE OR DESTROY] to prevent the further spread of a [THE] fire.

18 (b) An owner or occupant of a building or place specified in
19 this section or any other person on the site of a fire or other fire
20 department emergency who refuses to obey the order of an officer of a
21 municipal or registered fire department [OR HIS AUTHORIZED REPRESENTA-
22 TIVE] in the exercise of [HIS] official duties is guilty of a class B
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10 more dwelling units that are to be built, or are to be substantially
11 remodeled in a way that will affect a fire or life safety feature;

12 (3) fire and life safety inspection criteria in the follow-
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22 stories in height, or with more than 15 dwelling units or 20
23 guest rooms;

24 (E) a high-rise building with a floor level used for
25 human occupancy, which is 35 feet above the lowest level of fire
26 department vehicle access;

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15 70.010 - 18.70.100 and the regulations adopted under those sections
16 [IT]. The authority conferred in AS 18.70.010 - 18.70.100 extends to
17 the enforcement of the provisions of AS 11.46.400 - 11.46.450, 11.-
18 46.484(a)(4), and AS 11.56.800(a)(3) [AS 11.46.400 - 11.46.430].

19 * Sec. 6. AS 18.70.082 is repealed.

20 * Sec. 7. This Act takes effect immediately in accordance with AS 01.-
21 10.070(c).

OE
2/28

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : HB 514
Title : An act relating to fire prevention activities.

Sponsor : Cato & Koponen
Requestor : H. Comm. & Regional Affairs
Date of Request : _____

FISCAL DETAIL

Agency Affected : Public Safety
BRU : Fire Prevention

Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

REVENUE	0	0	0	0	0	0
---------	---	---	---	---	---	---

FUNDING : (Thousands of Dollars)

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

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

No fiscal impact anticipated.

K/1/28

Prepared by : G.E. BRUNTON *brun*
Division : Fire Prevention

Phone : 465-4331
Date : 1/28/86

Approved by Commissioner : *[Signature]*
Agency : Public Safety

Date : 1/29/86

Distribution (by Agency preparing fiscal note) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

ALASKA STATE LEGISLATURE

14th Legislature SECOND Session

HOUSE BILL..... NO. 514....

By CATO, KOPONEN.....

"An Act relating to fire prevention activities; and providing for an effective date."

fire prevention

Introduced in the House . 1/27...., 1986.

HISTORY IN THE HOUSE

19 86	Read first time and referred to Committee on
Jan 27	CSRA, JUDICIARY AND FINANCE Reported back with recommendation that
	Read second time and
	Read third time and
	PASS Effective Date
	Yeas Yeas
	Nays Nays
	Absent Absent
	Excused Excused
	Reconsideration
	PASS Effective Date
	Yeas Yeas
	Nays Nays
	Absent Absent
	Excused Excused
	Reported correctly engrossed
	Signed by Speaker
	Sent to Senate

CHIEF CLERK OF THE HOUSE

HISTORY IN THE SENATE

19	Read first time and referred to Committee on
	Reported back with recommendation that
	Read second time and
	Read third time and
	PASS Effective Date
	Yeas Yeas
	Nays Nays
	Absent Absent
	Excused Excused
	Reconsideration
	PASS Effective Date
	Yeas Yeas
	Nays Nays
	Absent Absent
	Excused Excused
	Reported correctly engrossed
	Signed by President
	Returned to House

SECRETARY OF THE SENATE

HISTORY IN THE HOUSE

19	Received from Senate
	Concurred in Senate amendment thus adopting: VOTE
	Failed to concur in Senate amendment; asked Senate to recede VOTE
	Senate receded from amendment VOTE
	Senate failed to recede from amendment VOTE
	CC appointed by House
	CC appointed by Senate
	CC adopted by House VOTE
	CC adopted by Senate VOTE
	To enrolling Reported correctly enrolled Sent to Governor by Governor
	Filed with Lt. Governor
	Chapter No.

Offered: 4/22/86
Referred: Finance

Original sponsors: Cato, Koponen,
Hurley and Wallis

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 514 (Judiciary)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FOURTEENTH LEGISLATURE - SECOND SESSION

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20 10.070(c).

Introduced: 1/27/86
Referred: Community & Regional
Affairs, Judiciary and Finance

1 IN THE HOUSE

BY CATO AND KOPONEN

2

HOUSE BILL NO. 514

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

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27 attack plan in the event of a future emergency, but does not include
28 inspections for purposes of determining compliance with statutory or
29 municipal fire code requirements.

1 * Sec. 3. AS 18.70.080 is amended to read:

2 Sec. 18.70.080. REGULATIONS. The Department of Public Safety
3 shall adopt [RULES AND] regulations for the purpose of protecting life
4 and property from fire and explosion by establishing minimum standards
5 for

6 (1) fire detection and suppression equipment;

7 (2) fire and life safety plan check criteria in commercial,
8 industrial, business, institutional or other public buildings [BUILD-
9 ING], and buildings used for residential purposes containing four or
10 more dwelling units that are to be built, or are to be substantially
11 remodeled in a way that will affect a fire or life safety feature;

12 (3) fire and life safety inspection criteria in the follow-
13 ing types of buildings:

14 (A) a building used for public assembly, with a capac-
15 ity of more than 50 persons;

16 (B) a building used for educational or child care
17 purposes for more than six children;

18 (C) an institutional building, including structures
19 for the full-time care of more than five children, hospitals,
20 nursing homes, and adult and juvenile correctional facilities;

21 (D) a residential building that is more than two
22 stories in height, or with more than 15 dwelling units or 20
23 guest rooms;

24 (E) a high-rise building with a floor level used for
25 human occupancy, which is 35 feet above the lowest level of fire
26 department vehicle access;

27 (4) any activity in which combustible or explosive materi-
28 als are stored or handled in commercial quantities;

29 (5) [(4)] conditions or activities carried on outside a

1 building described in (2), [OR] (3), or (4) of this section likely to
2 cause injury to persons or property.

3 * Sec. 4. AS 18.70.080 is amended by adding a new subsection to read:

4 (b) The Department of Public Safety may establish, by regula-
5 tion, reasonable fees to be charged for the fire and life safety plan
6 check as described in (a)(2) of this section.

7 * Sec. 5. AS 18.70.090 is amended to read:

8 Sec. 18.70.090. ENFORCEMENT OF REGULATIONS. The Department of
9 Public Safety and the chief of each municipal or registered [CITY]
10 fire department and their authorized representatives [IN THEIR RESPEC-
11 TIVE AREAS] may enforce the regulations adopted by the Department of
12 Public Safety for the prevention of fire or for the protection of life
13 and property [AGAINST FIRE OR PANIC]. All state peace officers may
14 assist the Department of Public Safety in the enforcement of AS 18.-
15 70.010 - 18.70.100 and the regulations adopted under those sections
16 [IT]. The authority conferred in AS 18.70.010 - 18.70.100 extends to
17 the enforcement of the provisions of AS 11.46.400 - 11.46.450, 11.-
18 46.484(a)(4), and AS 11.56.800(a)(3) [AS 11.46.400 - 11.46.430].

19 * Sec. 6. AS 18.70.082 is repealed.

20 * Sec. 7. This Act takes effect immediately in accordance with AS 01.-
21 10.070(c).

Introduced: 1/27/86
Referred: Community & Regional
Affairs, Judiciary and Finance

1 IN THE HOUSE

BY CATO AND KOPONEN

2

HOUSE BILL NO. 514

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act relating to fire prevention activities; and
7 providing for an effective date."

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

9 * Section 1. AS 09.05.070(c) is amended to read:

10 (c) An [NO] action may not be maintained against an employee or
11 member of a fire department operated and maintained by a municipality
12 or village, or a fire department registered under AS 29.60.130, if the
13 claim is an action for tort or breach of a contractual duty and is
14 based upon the act or omission of the employee or member of the fire
15 department in the execution of a function for which the department is
16 established.

17 * Sec. 2. AS 18.70.075 is amended to read:

18 Sec. 18.70.075. AUTHORITY OF MUNICIPAL OR REGISTERED FIRE
19 DEPARTMENT OFFICERS [AND THEIR PERSONNEL]. (a) An officer of a
20 municipal fire department or a fire department registered under
21 AS 29.60.130 [OR HIS AUTHORIZED REPRESENTATIVE], while providing fire
22 protection services, has the authority to

23 (1) control and direct activities at a [THE] fire;

24 (2) order a person to leave a building or place in the
25 vicinity of a [THE] fire, for the purpose of protecting the person
26 from injury;

27 (3) blockade a public highway, street, or private right-of-
28 way temporarily while at a fire;

29 (4) trespass upon property at or near the scene of a fire

1 at any time of the day or night;

2 (5) enter a building, including a private dwelling, or
3 [UPON] premises where a fire is in progress, or where there is reason-
4 able cause to believe a fire is in progress, to extinguish [FOR THE
5 PURPOSE OF EXTINGUISHING] the fire;

6 (6) enter a building, including a private dwelling, or
7 premises near the scene of a [THE] fire for the purpose of protecting
8 the building or premises or for the purpose of extinguishing the fire
9 which is in progress in another building or premises;

10 (7) upon 24-hour notice to the owner or occupant, inspect
11 for preplanning all buildings, structures, or other places within the
12 municipality or the registered fire department's district, except the
13 interior of a private dwelling, where combustible material is or may
14 become dangerous as a fire menace to the building;

15 (8) direct the removal or destruction of a fence, house,
16 motor vehicle, or other thing judged [WHICH HE MAY JUDGE] necessary
17 [TO REMOVE OR DESTROY] to prevent the further spread of a [THE] fire.

18 (b) An owner or occupant of a building or place specified in
19 this section or any other person on the site of a fire or other fire
20 department emergency who refuses to obey the order of an officer of a
21 municipal or registered fire department [OR HIS AUTHORIZED REPRESENTA-
22 TIVE] in the exercise of [HIS] official duties is guilty of a class B
23 misdemeanor [, AND UPON CONVICTION, IS PUNISHABLE BY IMPRISONMENT FOR
24 ONE YEAR, OR BY A FINE OF NOT MORE THAN \$1,000, OR BY BOTH].

25 (c) In this section, "inspect for preplanning" means to conduct
26 limited examinations [INSPECTIONS] for purposes of preparing a fire
27 attack plan in the event of a future emergency, but does not include
28 inspections for purposes of determining compliance with statutory or
29 municipal fire code requirements.

1 * Sec. 3. AS 18.70.080 is amended to read:

2 Sec. 18.70.080. REGULATIONS. The Department of Public Safety
3 shall adopt [RULES AND] regulations for the purpose of protecting life
4 and property from fire and explosion by establishing minimum standards
5 for

6 (1) fire detection and suppression equipment;

7 (2) fire and life safety plan check criteria in commercial,
8 industrial, business, institutional or other public buildings [BUILD-
9 ING], and buildings used for residential purposes containing four or
10 more dwelling units that are to be built, or are to be substantially
11 remodeled in a way that will affect a fire or life safety feature;

12 (3) fire and life safety inspection criteria in the follow-
13 ing types of buildings:

14 (A) a building used for public assembly, with a capac-
15 ity of more than 50 persons;

16 (B) a building used for educational or child care
17 purposes for more than six children;

18 (C) an institutional building, including structures
19 for the full-time care of more than five children, hospitals,
20 nursing homes, and adult and juvenile correctional facilities;

21 (D) a residential building that is more than two
22 stories in height, or with more than 15 dwelling units or 20
23 guest rooms;

24 (E) a high-rise building with a floor level used for
25 human occupancy, which is 35 feet above the lowest level of fire
26 department vehicle access;

27 (4) any activity in which combustible or explosive materi-
28 als are stored or handled in commercial quantities;

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2 cause injury to persons or property.

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11 TIVE AREAS] may enforce the regulations adopted by the Department of
12 Public Safety for the prevention of fire or for the protection of life
13 and property [AGAINST FIRE OR PANIC]. All state peace officers may
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15 70.010 - 18.70.100 and the regulations adopted under those sections
16 [IT]. The authority conferred in AS 18.70.010 - 18.70.100 extends to
17 the enforcement of the provisions of AS 11.46.400 - 11.46.450, 11.-
18 46.484(a)(4), and AS 11.56.800(a)(3) [AS 11.46.400 - 11.46.430].

19 * Sec. 6. AS 18.70.082 is repealed.

20 * Sec. 7. This Act takes effect immediately in accordance with AS 01.-
21 10.070(c).

**HOUSE
COMMITTEE REPORT**

(11)

Date referred: 4/11/86

FURTHER REFERRALS:

DATE: 4-23-86

The FINANCE Committee has considered HB 516

"An Act relating to the impeachment of judges of the court of appeals and the district court and to disqualification of judges for cause."

and recommends:

- do pass
- do not pass
- do pass with attached amendment(s)
- no recommendation
- replace with CS HB 514 (JUD) same title
- new title

and recommends do pass

further referral to the _____ Committee

- and attaches:
- letter of intent
 - first fiscal note
 - new fiscal note
 - zero fiscal note

SIGNING DO PASS:

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

SIGNING OTHER RECOMMENDATIONS:

[Signature] NO-Rec

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]
Chairman

**STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE**

Revision Date: _____

REQUEST

Bill Resolution No. OSHB 516 (JUD)
 Title: "An Act relating to impeachment of judges of the court of appeals and the district court and to disqualification of judges for cause."
 Sponsor: Gruenberg
 Requestor: House Judiciary
 Date of Request: 4/10/86

FISCAL DETAIL

Agency Affected: Alaska Court System
 BRU: _____
 Components: _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		0	0	0	0	0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

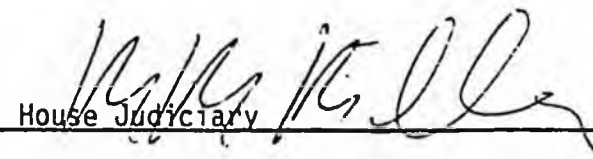
FUNDING : (Thousands of Dollars)

GENERAL FUND		0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

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

ANALYSIS : Attach a separate page if necessary

Prepared by: House Judiciary  Phone: _____
 Division: _____ Date: 4/10/86

Approved by Commissioner: _____ Date: _____
 Agency: _____

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

Offered: 4/11/86
Referred: Finance

Original sponsors: Gruenberg, Taylor,
Pettyjohn, et al

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE
2 CS FOR HOUSE BILL NO. 516 (Judiciary)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FOURTEENTH LEGISLATURE - SECOND SESSION
5 A BILL

6 For an Act entitled: "An Act relating to the impeachment of judges of the
7 court of appeals and the district court and to dis-
8 qualification of judges for cause."

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

10 * Section 1. AS 22.07 is amended by adding a new section to read:

11 Sec. 22.07.075. IMPEACHMENT. A judge of the court of appeals is
12 subject to impeachment by the legislature for malfeasance or mis-
13 feasance in the performance of official duties. Impeachment must
14 originate in the senate and must be approved by two-thirds vote of its
15 members. The motion for impeachment must list fully the basis for the
16 proceeding. Trial on impeachment shall be conducted by the house of
17 representatives. A supreme court justice designated by the court
18 shall preside at the trial. Concurrence of two-thirds of the members
19 of the house is required for a judgment of impeachment. The judgment
20 may not extend beyond removal from office, but does not prevent pro-
21 ceedings in a court on the same or related charges.

22 * Sec. 2. AS 22.15 is amended by adding a new section to read:

23 Sec. 22.15.205. IMPEACHMENT. A district judge is subject to
24 impeachment by the legislature for malfeasance or misfeasance in the
25 performance of official duties. Impeachment must originate in the
26 senate and must be approved by two-thirds vote of its members. The
27 motion for impeachment must list fully the basis for the proceeding.
28 Trial on impeachment shall be conducted by the house of representa-
29 tives. A supreme court justice designated by the court shall preside

1 at the trial. Concurrence of two-thirds of the members of the house
2 is required for a judgment of impeachment. The judgment may not
3 extend beyond removal from office, but does not prevent proceedings in
4 the courts on the same or related charges.

5 * Sec. 3. AS 22.20.020(a) is repealed and reenacted to read:

6 (a) A judicial officer may not act in a matter in which

7 (1) the judicial officer is a party or is related to a
8 party or a party's attorney by consanguinity or affinity within the
9 third degree;

10 (2) the judicial officer is a material witness;

11 (3) the judicial officer or the spouse of the judicial
12 officer, individually or as a fiduciary, or a child of the judicial
13 officer has a direct financial interest in the matter;

14 (4) a party, except the state or a municipality of the
15 state, has retained or been professionally counseled by the judicial
16 officer as its attorney within two years preceding the assignment of
17 the judicial officer to the matter;

18 (5) the judicial officer has represented a person as attor-
19 ney for the person against a party, except the state or a municipality
20 of the state, in a matter within two years preceding the assignment of
21 the judicial officer to the matter;

22 (6) an attorney for a party has represented the judicial
23 officer or a person against the judicial officer, either in the judi-
24 cial officer's public or private capacity, in a matter within two
25 years preceding the filing of the action;

26 (7) the law firm with which the judicial officer was asso-
27 ciated in the practice of law within the two years preceding the
28 filing of the action has been retained or has professionally counseled
29 either party with respect to the matter;

1 (8) the Judicial officer feels that, for any reason, a fair
2 and impartial decision cannot be given.

3 * Sec. 4. AS 22.20.020 is amended by adding a new subsection to read:

4 (d) In this section "municipality" has the meaning given in
5 AS 29.71.800.



Alaska Court System
State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

KARLA L. FORSYTHE
General Counsel

303 K Street
Anchorage, AK 99501

March 24, 1986

Representative Max Gruenberg
Alaska State Legislature
P. O. Box V
Juneau, Alaska 99811

Dear Representative Gruenberg:

The Alaska Supreme Court in its administrative capacity has reviewed your proposed amendments to HB 516, an act relating to the impeachment of certain judges, and to disqualification of judges for cause. The amendments contained in the 2/26/86 draft appear to create no administrative, procedural or fiscal difficulties for the court system.

If you have any questions about the court system's position, please let me know.

Sincerely,

A handwritten signature in cursive script, appearing to read "Karla L. Forsythe".

Karla L. Forsythe
General Counsel

KLF:smh

cc: Chief Justice Jay A. Rabinowitz
Arthur H. Snowden, II

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800


LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 22, 1986

SUBJECT: Judges
(Work Order No. 14-1356)

TO: Representative Max Gruenberg

FROM: Richard A. Bradley
Legislative Counsel 

You have requested a sectional analysis of the above described bill.

As a preliminary matter, note that a sectional analysis or summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Sections 1 and 2 of the bill amend AS 22 by adding sections that make explicit the authority of the legislature to impeach judges of the court of appeals and district court judges. The sections track verbatim the existing sections regarding justices of the supreme court (AS 22.05.120) and judges of the superior court (AS 22.10.170). The actual source of the legislative power to impeach all judges is art. III, sec. 12 of the Alaska Constitution.

Section 3 of the bill amends AS 22.20.020(a) and deals explicitly with the situations where a judge "may not act" as a judge.

Section 4 of the bill amends AS 22.20.020 by adding a new subsection that references the municipal code's definition of municipality for the usage of that term in sec. 20(a).

If I may be of further assistance, please advise.

RAB:mkr
M2:067

*Judge
helli*

AS 22.20.020

THE QUESTION OF THE DISQUALIFICATION OF A JUDGE BECAUSE OF A RELATIONSHIP TO A PARTY IN LITIGATION BEFORE THE JUDGE IS CONSIDERED.

The Supreme Court of Alaska held that under a law requiring a judge to disqualify himself when he is related to a "party" to litigation before him, if the person is not a named party, but merely the business associate of a named party, the judge is not required to disqualify himself in that case. The Court interpreted sec. 20 as an "objective test" but noted that in 1974, Congress decided that disqualification is appropriate as to the Federal judiciary "when a relative has an interest that could be affected" by the litigation and Congress required disqualification in these cases. The Court then stated: "While making this a required ground for disqualification may be a sound measure, the Alaska legislature has not, as yet, chosen to do so." Blake v. Gilbert, 702 P.2d 631.

Review is recommended.

NOTES TO DECISIONS

Magistrates are "judges of other courts" within the meaning of Alaska Const., art. IV, § 4. *Buckalew v. Holloway*, Sup. Ct. Op. No. 1988 (File No. 4058), 604 P.2d 240 (1979).
 Applied in *Larson v. State*, Sup. Ct. Op. No. 1430 (File No. 2433), 564 P.2d 365 (1977).

Sec. 22.20.020. Disqualification of judicial officer for cause. (a)
 A judicial officer may not act as such in a court of which the judicial officer is a member in an action in which

- (1) the judicial officer is a party or is directly interested;
- (2) the judicial officer was not present and sitting as a member of the court at the hearing of a matter submitted for its decision;
- (3) the judicial officer is a material witness;
- (4) the judicial officer is related to either party by consanguinity or affinity within the third degree;
- (5) either party has retained the judicial officer as their attorney or has been professionally counseled by him in any matter within two years preceding the filing of the action;
- (6) the judicial officer feels that, for any reason, a fair and impartial decision cannot be given.

(b) In an action specified in (a) (4) and (5) of this section the disqualification may be waived by the parties and is waived unless a party raises the objection.

(c) If a judicial officer disqualifies himself or herself or consents to disqualification, the presiding judge of the district shall immediately transfer the action to another judge of that district to which the objections of the parties do not apply or are least applicable and if there is no such judge, the chief justice of the supreme court shall assign a judge for the hearing or trial of the action. If a judicial officer denies disqualification the question shall be heard and determined by another judge assigned for the purpose by the presiding judge of the next higher level of courts or, if none, by the other members of the supreme court. The hearing may be ex parte and without notice to the parties or judge. (§ 54-2-1 ACLA 1949; am § 1 ch 48 SLA 1967)

Cross references. — For other statutory provisions concerning disqualification of judges, see AS 22.30.070 (a). As to when a judge should disqualify himself, see Canon 3C of the Code of Judicial Conduct.

Editor's notes. — This section was redrafted by the revisor of statutes to

remove personal pronouns in conformity with AS 01.05.031(c) and § 4, Chapter 58, SLA 1982.

Legislative history reports. — For report on ch. 48, SLA 1967 (SB 66), see 1967 House Journal, p. 311.

NOTES TO DECISIONS

- I. General Consideration.
- II. Basis for Disqualification.
 - A. Paragraph (a)(2).
 - B. Paragraph (a)(5).
 - C. Paragraph (a)(6).

I. GENERAL CONSIDERATION.

The right of an impartial tribunal is embodied in this section. *Amidon v. State*, Sup. Ct. Op. No. 1999 (File No. 3664), 604 P.2d 575 (1979).

The fact that a judge, as a trier of fact in a pretrial motion, found defendant's testimony "not believable" does not in itself preclude his presiding at the subsequent trial. *Coffey v. State*, Sup. Ct. Op. No. 1732 (File No. 3002), 585 P.2d 514 (1978), modified on rehearing on other grounds, 596 P.2d 10 (1979).

Defendant to request appointment of another judge for disqualification question. — Under subsection (c) of this section, it is incumbent on defendant to request the chief justice, as presiding judge of the next higher court, to appoint another judge to determine the question of disqualification. *Coffey v. State*, Sup. Ct. Op. No. 1732 (File No. 3002), 585 P.2d 514 (1978), modified on rehearing on other grounds, 596 P.2d 10 (1979).

Where no request was made to appoint another judge to determine the disqualification question, the fact that defendant was faced with imminent commencement of trial did not justify his failure to pursue his rights under subsection (c) of this section since the entrapment ruling which provided the basis for the allegation of bias was entered nearly three months before trial. *Coffey v. State*, Sup. Ct. Op. No. 1732 (File No. 3002), 585 P.2d 514 (1978), modified on rehearing on other grounds, 596 P.2d 10 (1979).

Quoted in *Wamser v. State*, Sup. Ct. Op. No. 1768 (File No. 4166), 587 P.2d 232 (1978).

Cited in *Peterson v. State*, Sup. Ct. Op. No. 1411 (File No. 2642), 562 P.2d 1350 (1977); *Halligan v. State*, Sup. Ct. Op. No. 2299 (File No. 5035), 624 P.2d 281 (1981); *Deivert v. Oseira*, Sup. Ct. Op. No. 2357 (File No. 4910), 628 P.2d 575 (1981).

II. BASES FOR DISQUALIFICATION.

A. Paragraph (a)(2).

Issuing orders based on both live and recorded testimony. — Where, in a superior court proceeding to terminate

parental rights in which the judge sat as the trier of fact, one judge presided over the first part of the adjudication hearing, observed the testimony of two of the state's witnesses, and neither made written findings of fact or conclusions of law with respect to this testimony, nor entered an adjudication order; and another judge presided over the continuation of the hearing, observed the testimony of one witness for the state, listened to the tape recorded testimony given before the first judge, and on the basis of both the recorded and live testimony, issued both the order adjudicating the child a neglected child and the order of disposition, the supreme court noted that the terms of paragraph (a)(2) of this section might prohibit the practice adopted by the superior court. In *re C.L.T.*, Sup. Ct. Op. No. 1866 (File No. 3607), 597 P.2d 518 (1979).

B. Paragraph (a)(5).

The purposes of paragraph (a)(5) are to ensure the actual impartiality of a judge and to eliminate any possible appearance or suspicion of bias, thereby preserving the integrity of the judicial process and the confidence of the public. *Keel v. State*, Sup. Ct. Op. No. 1290 (File No. 2883), 552 P.2d 155 (1976).

By expanding paragraph (a)(5) in 1967, Alaska's legislature evidenced concern about a somewhat distinct problem: namely, that any professional relationship between a judge and one of the parties, formed or nurtured in any manner during the months preceding the judge's elevation to the bench, might create a risk of partiality or the appearance of partiality. *Keel v. State*, Sup. Ct. Op. No. 1290 (File No. 2883), 552 P.2d 155 (1976).

Disqualification where judge previously employed by state government. — The legislature did not intend, in enacting paragraph (a)(5), to disqualify a judge because of his prior employment by the state government from all cases in which the state appears as a party during the prohibited period of time. *Keel v. State*, Sup. Ct. Op. No. 1290 (File No. 2883), 552 P.2d 155 (1976).

Superior court judge who had been employed as an assistant district attorney was not disqualified in a case brought by the state against a defendant where there was no possibility that he might have learned of the facts of the alleged crime while serving in his prosecu-

torial role. *Keel v. State*, Sup. Ct. Op. No. 1290 (File No. 2883), 552 P.2d 155 (1976).

C. Paragraph (a)(6).

Maintenance of appearance of impartiality. — Paragraph (a)(6) of this section does not provide for disqualification where the sole concern is maintenance of the appearance of impartiality. However, in light of the importance of promoting public confidence in the integrity and impartiality of the judiciary, it would be well to permit disqualification under such circumstances. *Amidon v. State*, Sup. Ct. Op. No. 1999 (File No. 3664), 604 P.2d 575 (1979).

Review of decisions under paragraph (a)(6). — The supreme court rejected the argument that the disqualification standards under paragraph (a)(6) are wholly subjective and therefore not amenable to appellate review. Clearly, review is contemplated on a challenge for cause grounded in bias. The supreme court's duty to assure that judicial proceedings comply with due process mandates appellate scrutiny of allegations of bias. *Coffey v. State*, Sup. Ct. Op. No. 1732 (File No. 3002), 585 P.2d 514 (1978), modified on rehearing on other grounds, 596 P.2d 10 (1979).

Since the initial determination under paragraph (a)(6) of this section has been placed in the discretion of the trial judge, that judge's decision should be given substantial weight. When the judge does not recuse himself or herself, the decision should be reviewable on appeal only if it amounted to an abuse of discretion. *Amidon v. State*, Sup. Ct. Op. No. 1999 (File No. 3664), 604 P.2d 575 (1979).

Sec. 22.20.022. Peremptory disqualification of a superior court judge. (a) If a party or a party's attorney in a district court action or a superior court action, civil or criminal, files an affidavit alleging under oath the belief that a fair and impartial trial cannot be obtained, the presiding district court or superior court judge, respectively, shall at once, and without requiring proof, assign the action to another judge of the appropriate court in that district, or if there is none, the chief justice of the supreme court shall assign a judge for the hearing or trial of the action. The affidavit shall contain a statement that it is made in good faith and not for the purpose of delay.

(b) No judge or court may punish a person for contempt for making, filing or presenting the affidavit provided for in this section, or a motion founded on the affidavit.

Collateral references. —

Disqualification of judge by relative's ownership of stock in corporation which is a party to action. 8 ALR 295; 110 ALR 472.

Right of party in course of litigation to challenge title or authority of judge. 114 ALR 1207.

Disqualification of judge in pending case as subject to revocation or removal. 162 ALR 641.

Relationship of judge to one who is party in an official or representative capacity as disqualification. 10 ALR2d 1307.

Mandamus as remedy to compel assertedly disqualified judge to recuse self or to certify his disqualification. 45 ALR2d 937.

Relationship to attorney as disqualifying judge. 50 ALR2d 143.

Disqualification of judge in proceedings to punish contempt against or involving himself or court of which he is a member. 64 ALR2d 600.

Prior representation or activity as attorney or counsel as disqualifying judge. 72 ALR2d 443.

Time for asserting disqualification. 73 ALR2d 1238.

Intervenor's right to disqualify judge. 92 ALR2d 1110.

Disqualification of judge for bias against counsel for litigant. 23 ALR3d 1416.

Disqualification of original trial judge to sit on retrial after reversal or mistrial. 60 ALR3d 176.

Disqualification of judge by state, in criminal case, for bias or prejudice. 68 ALR3d 509.

Membership in fraternal or social club or order affected by a case as ground for disqualification of judge. 75 ALR3d 1021.

Offered: 4/11/86
Referred: Finance

Original sponsors: Gruenberg, Taylor,
Pettyjohn, et al

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE
2 CS FOR HOUSE BILL NO. 516 (Judiciary)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FOURTEENTH LEGISLATURE - SECOND SESSION
5 A BILL
6 For an Act entitled: "An Act relating to the impeachment of judges of the
7 court of appeals and the district court and to dis-
8 qualification of judges for cause."
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:
10 * Section 1. AS 22.07 is amended by adding a new section to read:
11 Sec. 22.07.075. IMPEACHMENT. A judge of the court of appeals is
12 subject to impeachment by the legislature for malfeasance or mis-
13 feasance in the performance of official duties. Impeachment must
14 originate in the senate and must be approved by two-thirds vote of its
15 members. The motion for impeachment must list fully the basis for the
16 proceeding. Trial on impeachment shall be conducted by the house of
17 representatives. A supreme court justice designated by the court
18 shall preside at the trial. Concurrence of two-thirds of the members
19 of the house is required for a judgment of impeachment. The judgment
20 may not extend beyond removal from office, but does not prevent pro-
21 ceedings in a court on the same or related charges.
22 * Sec. 2. AS 22.15 is amended by adding a new section to read:
23 Sec. 22.15.205. IMPEACHMENT. A district judge is subject to
24 impeachment by the legislature for malfeasance or misfeasance in the
25 performance of official duties. Impeachment must originate in the
26 senate and must be approved by two-thirds vote of its members. The
27 motion for impeachment must list fully the basis for the proceeding.
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29 tives. A supreme court justice designated by the court shall preside

1 at the trial. Concurrence of two-thirds of the members of the 'ouse
2 is required for a judgment of impeachment. The judgment may not
3 extend beyond removal from office, but does not prevent proceedings in
4 the courts on the same or related charges.

5 * Sec. 3. AS 22.20.020(a) is repealed and reenacted to read:

6 (a) A judicial officer may not act in a matter in which

7 (1) the judicial officer is a party or is related to a
8 party or a party's attorney by consanguinity or affinity within the
9 third degree;

10 (2) the judicial officer is a material witness;

11 (3) the judicial officer or the spouse of the judicial
12 officer, individually or as a fiduciary, or a child of the judicial
13 officer has a direct financial interest in the matter;

14 (4) a party, except the state or a municipality of the
15 state, has retained or been professionally counseled by the judicial
16 officer as its attorney within two years preceding the assignment of
17 the judicial officer to the matter;

18 (5) the judicial officer has represented a person as attor-
19 ney for the person against a party, except the state or a municipality
20 of the state, in a matter within two years preceding the assignment of
21 the judicial officer to the matter;

22 (6) an attorney for a party has represented the judicial
23 officer or a person against the judicial officer, either in the judi-
24 cial officer's public or private capacity, in a matter within two
25 years preceding the filing of the action;

26 (7) the law firm with which the judicial officer was asso-
27 ciated in the practice of law within the two years preceding the
28 filing of the action has been retained or has professionally counseled
29 either party with respect to the matter;

1 (8) the judicial officer feels that, for any reason, a fair
2 and impartial decision cannot be given.

3 * Sec. 4. AS 22.20.020 is amended by adding a new subsection to read:

4 (d) In this section "municipality" has the meaning given in
5 AS 29.71.800.

Introduced: 1/27/86
Referred: Judiciary and
Finance

BY GRUENBERG, TAYLOR, PETTYJOHN,
SUND, PHILLIPS AND MARROU

1 IN THE HOUSE

HOUSE BILL NO. 516

2

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

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7 (1) the judicial officer is a party or is related to a
8 party or a party's attorney by consanguinity or affinity within the
9 third degree;

10 (2) the judicial officer was not present at the hearing on
11 the matter;

12 (3) the judicial officer may be a material witness;

13 (4) the judicial officer or the spouse of the judicial
14 officer, individually or as a fiduciary, or a child of the judicial
15 officer has a direct financial interest in the matter;

16 (5) a party, except the state or a municipality of the
17 state, has retained or been professionally counseled by the judicial
18 officer or an attorney with whom the judicial officer was associated
19 in the practice of law as its attorney within two years preceding the
20 assignment of the judicial officer to the matter;

21 (6) the judicial officer or an attorney with whom the
22 judicial officer was associated in the practice of law has represented
23 a person as attorney for the person against a party, except the state
24 or a municipality of the state, in a matter within two years preceding
25 the assignment of the judicial officer to the matter;

26 (7) an attorney for a party has represented the judicial
27 officer or a person against the judicial officer, either in the
28 judicial officer's public or private capacity, in a matter within two
29 years preceding the filing of the action;

1 (8) the judicial officer feels that, for any reason, a fair
2 and impartial decision cannot be given.

3 * Sec. 4. AS 22.20.020 is amended by adding a new subsection to read:

4 (d) In this section "municipality" has the meaning given in
5 AS 29.71.800.

COMMITTEE REPORT

SENATE

FURTHER:

5/7/86

Date 5/11/86

Mr. President

The Committee on FINANCE considered CSHB 517(Jud)am relating to the private sale and consignment of works of art.

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

- do pass
- do pass with attached amendment(s)
- replace with/or adopt 5 CS for CSHB 517 (L+C)
- new title
- same title and recommends Do Pass
- and attached a "LETTER OF INTENT" NEW FISCAL NOTE
8 law
- reports it back without recommendation
- recommends referral to _____ Committee

MEMBERS SIGNING
DO PASS

J. Kuffel
J. Keck/Halford
Paul Grube
R. Glavin
J. J. J.

MEMBERS HAVING
OTHER RECOMMENDATIONS

J. J. J.
Chairman

do pass
Chairman recommendation

Offered: 5/8/86
Referred: Finance

Original sponsors: Gruenberg, Goll,
Koponen, et al

BY THE LABOR AND
COMMERCE COMMITTEE

1 IN THE HOUSE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 517 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the private sale and consignment
7 of works of art."

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

9 * Section 1. AS 45.02.326(e) is repealed and reenacted to read:

10 (e) When an artist delivers a work of art to an art dealer as
11 described in AS 45.67.010, the art dealer shall prominently display a
12 sign stating substantially, "Works of art for sale are on consign-
13 ment." Works of art on consignment are not subject to the claims of
14 the art dealer's creditors.

15 * Sec. 2. AS 45 is amended by adding a new chapter to read:

16 CHAPTER 67. ARTISTS AND WORKS OF ART.

17 Sec. 45.67.010. ARTISTS AND ART DEALER RELATIONSHIPS. (a) When
18 an artist delivers or causes to be delivered a work of art of the
19 artist's own creation to an art dealer for the purpose of sale, or
20 exhibition and sale, on a commission, fee, or other basis of compen-
21 sation, the acceptance of the work of art by the art dealer is a
22 consignment, and

23 (1) the art dealer is, with respect to the work of art, the
24 agent of the artist;

25 (2) the work of art is trust property in the hands of the
26 art dealer for the benefit of the artist; and

27 (3) proceeds from the sale of the work of art are trust
28 funds in the hands of the art dealer for the benefit of the artist,
29 and the dealer shall transmit the proceeds to the artist within 30

1 days of the sale of the work of art.

2 (b) A work of art initially received as a consignment remains
3 trust property notwithstanding the subsequent purchase of the artwork
4 by the art dealer directly or indirectly for the art dealer's own
5 account until the consignment price due to the artist is paid in full.
6 If the work of art is resold to a bona fide third party before the
7 artist has been paid in full, the proceeds of the resale are trust
8 funds in the hands of the art dealer for the benefit of the artist to
9 the extent necessary to pay any balance still due to the artist. The
10 trusteeship continues until the fiduciary obligation of the art dealer
11 with respect to the transaction is discharged in full.

12 Sec. 45.67.020. WAIVER. (a) A provision of a contract or
13 agreement whereby the artist waives a provision of AS 45.67.010 is
14 void except as provided in this subsection. An artist may waive the
15 provisions of AS 45.67.010(a)(3) if the waiver is clear, conspicuous,
16 and agreed to in writing by the artist. A waiver under this subsec-
17 tion is not valid with respect to the proceeds of a work of art ini-
18 tially received as a consignment but subsequently purchased by the art
19 dealer directly or indirectly for the art dealer's own account.

20 (b) A waiver under (a) of this section may not inure to the
21 benefit of the art dealer's creditors in a manner that is inconsis-
22 tent with the artist's rights under AS 45.67.010.

23 Sec. 45.67.030. RETURN TO ARTIST. Unless the artist and art
24 dealer have otherwise agreed in writing, the art dealer shall return
25 an unsold work of art on demand of the artist.

26 Sec. 45.67.040. APPLICABILITY. (a) The provisions of AS 45.-
27 67.010, 45.67.020, and 45.67.030 may not be construed to have an
28 effect upon a written or oral contract or arrangement in existence on
29 the effective date of this section, except by the mutual written

1 consent of the parties.

2 (b) The provisions of AS 45.67.010 and 45.67.020 apply notwith-
3 standing the absence of, or a conflict with, a written agreement
4 between the artist and the art dealer concerning any matter covered by
5 AS 45.67.010 and 45.67.020. In the event of a conflict between
6 AS 45.67.010, 45.67.020, or 45.67.030 and AS 45.01 - AS 45.01' (Uniform
7 Commercial Code) or other provision of law, the provisions of AS 45.-
8 67.010, 45.67.020, and 45.67.030 govern.

9 Sec. 45.67.050. RIGHT TO REPRODUCE WORKS OF ART. (a) When a
10 work of art is sold or otherwise transferred by or on behalf of the
11 artist who created it, or the heirs or personal representatives of the
12 artist, the right of reproduction is reserved to the grantor until it
13 passes into the public domain by act or operation of law, unless the
14 right is sooner expressly transferred by an instrument, note, or
15 memorandum in writing signed by the owner of the right or an author-
16 ized agent of the owner.

17 (b) When an exclusive or nonexclusive conveyance of a right of
18 reproduction is made by the holder of the right, or the holder's
19 authorized agent, ownership of the physical art work is presumed to
20 remain with and be reserved to the grantor unless expressly trans-
21 ferred in writing signed by the grantor or the grantor's authorized
22 agent.

23 (c) This section may not be construed to prohibit the fair use
24 of a work of art or to conflict with federal copyright law.

25 Sec. 45.67.100. DEFINITIONS. In this chapter, unless the con-
26 text otherwise requires,

27 (1) "artist" means the creator of a work of art or, if
28 deceased, the heirs or personal representatives of the creator;

29 (2) "art dealer" means a person engaged in the business of

1 selling works of art, other than a person exclusively engaged in the
2 business of selling goods at public auction;

3 (3) "consignment" means that no title to or estate in the
4 goods or right to possession superior to that of the consignor vests
5 in the consignee, notwithstanding the consignee's power or authority
6 to transfer and convey, to third person, all of the right, title and
7 interest of the consignor, in and to the goods;

8 (4) "creditor" has the meaning given in AS 45.01.201;

9 (5) "right of reproduction" means a right to reproduce,
10 prepare derivative works of, distribute copies of, or publicly display
11 a work of art;

12 (6) "work of art" means a painting, sculpture, drawing,
13 work of graphic art, photograph, or craft work, in any medium.

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : CSHB 517 (L&C)
 Title : "An Act relating to the private sale and consignment of works of art."

Sponsor : Repr. Gruenberg
 Requestor : House Labor & Commerce
 Date of Request : February 11, 1986

FISCAL DETAIL

Agency Affected : Department of Law
 BRU : Legal Services

Components : Legal Services Operations

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING : (Thousands of Dollars)

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

POSITIONS :

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

ANALYSIS :

This bill sets out some of the property rights of artists, providing for the sale and consignment of works of art under Title 45. The bill, which adds a new Chapter to this Title, does not contain penalty provisions. Any disputes arising from the provisions of the bill would be civil matters between private parties and would not involve the Department of Law.

Prepared by: Richard I. Pegues, Director
 Division : Administrative Services Division

Phone : 465-3672
 Date : 2/12/86

Approved by Commissioner: Richard I. Pegues/Fel
Harold M. Brown, Attorney General
 Agency : Department of Law

Date : 2/12/86

Offered: 4/11/86
Referred: Rules

Sp 5/8/86

Original sponsors: Gruenberg, Goll,
Koponen, et al

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE

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29 the effective date of this section, except by the mutual written

1 consent of the parties.

2 (b) The provisions of AS 45.67.010 and 45.67.020 apply notwith-
3 standing the absence of, or a conflict with, a written agreement
4 between the artist and the art dealer concerning any matter covered by
5 AS 45.67.010 and 45.67.020. In the event of a conflict between
6 AS 45.67.010, 45.67.020, or 45.67.030 and AS 45.01 - AS 45.09 (Uniform
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13 passes into the public domain by act or operation of law, unless the
14 right is sooner expressly transferred by an instrument, note, or
15 memorandum in writing signed by the owner of the right or an author-
16 ized agent of the owner.

17 (b) When an exclusive or nonexclusive conveyance of a right of
18 reproduction is made by the holder of the right, or the holder's
19 authorized agent, ownership of the physical art work is presumed to
20 remain with and be reserved to the grantor unless expressly trans-
21 ferred in writing signed by the grantor or the grantor's authorized
22 agent.

23 (c) A person may not reproduce a work of art that is reproduced
24 as reproduced in a limited edition, beyond the number of copies repre-
25 sented to be contained in the edition.

26 (d) This section may not be construed to prohibit the fair use
27 of a work of art or to conflict with federal copyright law.

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16 work of graphic art, photograph, or craft work, in any medium.

