

ALASKA LEGISLATURE COMMITTEE BILL FILES - 1987 - 1988 8879

HB 461 cont thru HB 463

379³⁷⁹

December 8, 1987
Habitual theft offender statute

EXAMPLES OF CRIMINAL ACTIVITY AND RELATED SENTENCING

Attached to this document are copies of computer printouts pertaining to several professional thieves. For reasons of privacy their names and AKA's (also known as) have been obliterated. Data from states in the lower 48 is not included.

SUBJECT #1:

<u>Arrest date</u>	<u>Crime</u>	<u>Sentencing Date</u>	<u>Jail Term</u>
8-09-84	Shoplifting	12-11-85	3 days
8-27-84	Fail to Appear	12-11-85	3 days
9-03-85	Shoplifting	12-11-85	5 days
6-11-86	Shoplifting	10-08-86	2 days
8-30-86	Trespass	08-31-86	2 days
8-30-86	Resisting	08-31-86	2 days
9-18-86	Larceny	10-08-86	5 days
12-10-86	DWI	01-08-87	3 days
1-07-87	Driving w/lic Susp.	01-08-87	10 days
1-08-87	Shoplifting	05-06-87	10 days
1-25-87	Larceny	05-06-87	30 days
2-11-87	Obstruct Police	05-06-87	10 days
4-02-87	Shoplifting	05-06-87	40 days
4-20-87	Larceny	05-01-87	15 days
8-20-87	Robbery	(awaiting sentencing)	
8-20-87	Driving w/lic Susp.	(awaiting sentencing)	
8-20-87	Larceny	(awaiting sentencing)	
8-20-87	Obstruct Police	(awaiting sentencing)	

Subject #1 is well documented within the Anchorage Police Department as a person who participates in thefts by distracting store clerks in conversation about products or employment, while his accomplice removes cases of cigarettes or liquor.

With most small convenience stores manned by a single employee, it is a simple matter to escape detection and more often than not, the employee is not aware of the theft until Subject #1 has driven away along with his accomplice.

On 8-20-87, Subject #1 was arrested for robbery in which he drove a reported stolen vehicle while his associate, another repetitive theft offender, utilized a gun to take money from someone who had stopped to help them with their disabled vehicle.

During an interview with Subject #1, he laughed about his cocaine addiction causing him to continually steal and showed no intention to reform. He also bragged about how easy it was to sell what he had stolen to other businesses and "after-hours" houses.

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SUBJECT #2:

<u>Arrest date</u>	<u>Crime</u>	<u>Sentencing Date</u>	<u>Jail Term</u>
5-20-81	Shoplifting	06-02-81	1 day
11-06-82	Cocaine Possession	04-07-83	(no jail term)
2-07-83	Shoplifting	03-22-83	15 days
10-07-83	Conceal Merchandise	08-03-84	30 days
6-18-84	Conceal Merchandise	09-20-84	30 days
8-03-84	Probation Violation	08-03-84	(Prob. extended)
7-14-84	Shoplifting	08-03-84	30 days
12-26-84	Shoplifting	04-04-85	90 days
6-05-86	Drive w/o License	11-08-86	(no jail term)
7-07-86	Fail to Appear	11-08-86	5 days
7-12-86	Conceal Merchandise	11-08-86	12 days
9-08-86	Shoplifting	11-08-86	25 days
11-07-86	Shoplifting	03-04-87	60 days
1-26-87	Larceny	03-25-87	60 days
6-23-87	Reckless Driving	08-31-87	10 days
6-23-87	Drive w/o License	08-31-87	5 days
7-01-87	Conceal Merchandise	08-31-87	70 days
7-10-87	Shoplifting	08-31-87	110 days
7-13-87	Shoplifting	08-31-87	90 days

Subject #2 is well documented within the Anchorage Police Department as a person who has entered stores with plastic bags and boldly proceeded to fill the bag with items such as; lamps, \$150 jogging suits, and other articles of clothing.

Subject #2 has also been known to participate in thefts as a driver while his associates steal; liquor, cigarettes, or clothing. The vehicles driven by Subject #2 are routinely shared by other repetitive theft offenders and quite often the license plates are from other vehicles which inhibits attempts at suspect identification.

My attempts to interview Subject #2 and determine the reason behind his continued thefts have met with negative results with his refusal to talk with me.

Based upon his past cocaine conviction and his known association with persons addicted to cocaine, it is assumed that he is still addicted. Because of this assumption, I believe that his need to support his habit causes him to continually steal.

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SUBJECT #3:

<u>Arrest date</u>	<u>Crime</u>	<u>Sentencing Date</u>	<u>Jail Term</u>
8-04-62	Drunk in Public	08-04-62	(no jail term)
8-10-62	Disorderly Conduct	08-10-62	120 days
4-04-64	Disorderly Conduct	04-04-64	90 days
9-03-74	Disorderly Conduct	09-03-74	(no jail term)
9-03-74	Drinking in Public	09-03-74	(no jail term)
9-17-75	Larceny	09-22-75	5 days
7-16-76	Larceny	07-17-76	15 days
11-13-76	Disorderly Conduct	11-14-76	1 day
5-08-79	Open Container	05-09-79	(no jail term)
8-26-79	Disorderly Conduct	08-29-79	(no jail term)
9-27-81	Larceny	09-28-81	2 days
12-23-82	Shoplifting	02-07-83	5 days
3-17-84	Conceal Merchandise	03-18-84	5 days
4-23-84	Shoplifting	04-24-84	2 days
4-23-84	Probation Violation	04-09-85	8 days
2-03-85	Shoplifting	04-15-85	5 days
2-22-85	Disorderly Conduct	02-23-85	2 days
9-21-86	Trespass	09-22-86	5 days
9-21-86	Shoplifting	09-22-86	10 days
1-25-87	Disorderly Conduct	01-25-87	2 days
5-07-87	Shoplifting	05-08-87	5 days
5-07-87	Trespass	05-07-87	5 days
7-07-87	Shoplifting	08-26-87	15 days
7-07-87	Trespass	08-26-87	15 days

Subject #3 is documented within the Anchorage Police Department as an indigent or "Street Person" who has his food and shelter provided by the Municipality of Anchorage and other welfare agencies.

Apparently not satisfied with the free welfare provided to him, he is known to steal clothing, food, cigarettes, and liquor for his personal consumption.

His method of operation has been well established for over ten years and shows no attempt at reformation.

ADDITIONAL EXAMPLES

In addition to the previously mentioned subjects, I have personal knowledge of the following examples of known repetitive theft offenders.

One suspect repeatedly stole unattended purses from desks in office buildings for the money that they contained. This suspect was very careful to not be seen taking the purses and he was not charged with numerous thefts because there was insufficient evidence. On the first three convictions for theft, the judge ordered that he make restitution to the victims. Within days, following the judicial order, he was luckily caught stealing another purse for money to pay the court ordered restitution.

Another suspect is known to me to have posed as a hospital employee in order to gain access to offices in the hospital so that she can steal from the unattended purses of the hospital staff and patients. She is extremely competent in her craft and rarely gets caught.

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FORGOTTEN THEFTS

Not reflected in the above criminal histories are the theft charges subsequently dropped by the Prosecutor's or DA's office. Often a charge of theft will be dismissed because the Complainant cannot be located to serve with a subpoena to provide testimony against the Defendant.

Another discouraging aspect is the number of cases that I have investigated in which the Complainant has requested to have the matter dropped. All too frequently, I have heard the statement from Complainant's, "It's only a misdemeanor and they (the Judges) won't do anything with them anyway". From personal experience, I know of numerous cases, against habitual adult offenders, that were never presented to the Prosecutor's office because of the preceding statement made by Complainants.

It is obvious that something must be done to overcome the apathy surrounding misdemeanor thefts committed by the professional adult thief. A glimmer of hope must be given to the citizens of Alaska that corrective action will be taken against repetitive theft offenders that will encourage them to reform.

UNDETECTED THEFTS

As previously mentioned there was a reported loss of \$6,139,425 between January 1986 and August 1987, attributed to petty thefts within the Municipality of Anchorage. But, what about the thefts that go undetected? None of us can be naive enough to believe that a thief would be so gullible as to wear a sign saying, "Watch me, I'm going to steal from you".

The professional adult thief is clever and careful while performing his or her's self appointed employment. From interviews with professional thieves, I have been told on several occasions that, "It is an easy way to make a living". Most often these same thieves laugh at the consequences of a misdemeanor conviction.

Proof that a large number of thefts go undetected is obtained from the boasting statements of apprehended professional thieves and supported by inventory accounting conducted by retailers. Stores know how much they spend on their merchandise and following an inventory, the retailer can account for his merchandise on hand or sold. The unaccountable loss (shrinkage) of merchandise is attributed in large part to undetected thefts.

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A PLEA FOR HELP

Attached to this report are letters from the Loss Prevention Managers of; Sears, Pay'n Save, Lamonts, and Carrs. Each letter documents their suspected loss to undetected thefts. All of the letters document concern about the professional adult thief.

Fred Becker Sr., Loss Prevention Manager for Sears in Anchorage, documents that in 1986, Sears lost approximately \$104,040 to undetected thefts (based upon the suspicion that five thefts are committed for every thief apprehended). He also documents the following statements that he has heard thieves make; "What do I have to lose, nothing happens anyway?", "The case will be dismissed.", "I have to play the odds, how often do you think I get away for each time I get caught?", "The money is good." (some talk of \$50,000 to \$100,000 per year).

Betty Wills, Director of Loss Prevention for Lamonts, documents that 50% of their shrinkage is due to undetected thefts (based upon the opinion of Loss Prevention experts). Utilizing the preceding percentage, Fred Becker Jr., Loss Prevention Manager for Lamonts in Anchorage, documents that Lamonts lost \$912,000 to undetected thieves in 1986.

Bill Hughes, Loss Prevention Manager for Pay'n Save, documented that he suspects that the Pay'n Save stores in Alaska lose \$200,000 annually to undetected thieves.

Peter Johnson, Director of Loss Prevention for Carrs, documented that the Carrs stores attribute an annual loss of \$1,000,000 per year from thefts.

PRIOR HABITUAL CRIMINAL STATUTES

Habitual criminal statutes are not new to Alaska. Prior to the 1980 revision of our State's criminal code, two statutes were in existence. One of the statutes, AS12.55.040, titled; "Increased punishment for habitual criminal after conviction of petty larceny or misdemeanor involving fraud", mandated a punishment of imprisonment for not less than one year nor more than ten years which would be considered a felony by the State's current criminal code. A copy of that code is attached to this report.

Following the 1980 revision, the criminal code adopted presumptive sentencing for repetitive felony offenders. No where was there mentioned action against the habitual adult theft offender of misdemeanor level thefts.

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CONCLUSION

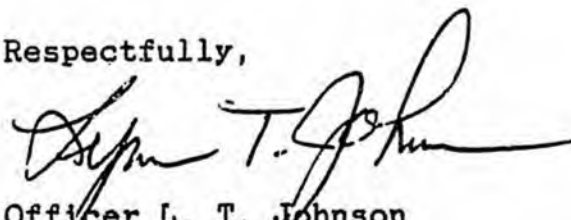
Currently under the criminal code, a person who "borrows" another persons car without permission is sentenced at a misdemeanor level on the first conviction. If that same person is foolish enough to commit the same act after the first conviction, the penalty for the second offense increases to the level of a C felony.

Why then can't the same reasoning behind repetitive vehicle theft be applied to the habitual adult theft offender? I believe that it can and must.

The problem of the professional adult thief is well documented and the conclusion must necessarily address the question, "What can be done?". I am of the opinion that a statute must be enacted that would specifically address harsher action against the habitual adult theft offender.

Without inhibiting the District Attorney's office from exercising established case review procedures, I suggest that following a conviction for theft of any degree, any adult committing a second theft offense (defined by current Title 11 code) within five years of the first conviction should be subject to the penalties of a class C felony.

Respectfully,



Officer L. T. Johnson
Misdemeanor Crimes Investigation Unit
Anchorage Police Department

Attachments

- #1. Copy of prior habitual petty theft statute
- #2. Copies of letters from Loss Prevention Managers
- #3. Copies of criminal histories

for the nonpayment of the fine, the defendant may make application in writing to a judge or magistrate in the district where he is imprisoned, setting out his inability to pay the fine, and, after notice to the district attorney, the judge or magistrate shall proceed to hear and determine the matter. If on examination it appears to him that the defendant is unable to pay the fine and that he has no property exceeding \$50 in value, except property which is by law exempt from being taken on execution for debt, the judge or magistrate shall administer to him the following oath: "I do solemnly swear that I do not have any property, real or personal, to the amount of \$50, except property which is by law exempt from being taken on civil process for debt, and that I have no property in any way conveyed or concealed or any way disposed of for my future use or benefit. So help me God." The judge or magistrate shall discharge the defendant after he takes the oath. (§ 8.03 ch 34 SLA 1962; am § 17 ch 8 SLA 1971)

Effect of amendment. — The 1971 amendment inserted "judge or" twice in the first sentence, once in the second sentence, and once in the last sentence.

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

Constitutionality.—This section, which, upon proof of indigency, limits the sentence in lieu of payment of a fine to 30 days, is unconstitutional. *Hood v. Smedley*, Sup. Ct. Op. No. 800 (File No. 1406), 498 P.2d 120 (1972).

The injustice under this section that is to be remedied is not the imposition of the fine itself, but the requirement that it be satisfied immediately or be

automatically converted into a jail term. *Hood v. Smedley*, Sup. Ct. Op. No. 800 (File No. 1406), 498 P.2d 120 (1972).

This section applies to all poor convicts imprisoned solely for nonpayment of fines. *United States v. Stromberger*, 9 Alaska 689 (1940).

Valid methods for enforcing payment of fines.—For methods which the State of Alaska may employ to serve its valid interest in enforcing the payment of fines, see *Hood v. Smedley*, Sup. Ct. Op. No. 800 (File No. 1406), 498 P.2d 120 (1972).

Quoted in *Williams v. Illinois*, 399 U.S. 235, 90 S. Ct. 2018, 26 L. Ed. 2d 586 (1970).

Sec. 12.55.040. Increased punishment for habitual criminal after conviction of petty larceny or misdemeanor involving fraud. A person convicted of petty larceny or a misdemeanor in which fraud or intent to defraud is an element who, subsequent to March 9, 1939, has been three times convicted in this state or elsewhere of a crime which would constitute burglary, larceny except changing brands, embezzlement, or obtaining money or property by false pretenses under Alaska law shall be adjudged an habitual criminal, and is punishable by imprisonment for not less than one year nor more than 10 years. (§ 8.04 ch 34 SLA 1962; am § 38 ch 43 SLA 1964)

Effect of amendment. — The 1964 amendment substituted "less than one year nor more than 10 years" for "more than 10 years" at the end of the section.

Section inapplicable to offense committed before October 1, 1964.— See 1964 Op. Att'y Gen., No. 8.

SEARS

October 17, 1987

Officer L.T. Johnson
Anchorage Police Department
4501 South Bragaw
Anchorage, AK 99507

Dear L.T.:

While we both realize that losses suffered by retail merchants can be very hard to evaluate, there are a number of accepted formulas that can be utilized to reach a reasonable conclusion.

Statistics tell us that security departments apprehend anywhere from 1 in 30 to 1 in 10 thieves. I feel that my department ranks a little better and estimate that we may even be as good as 1 in 5. My chart will compare those three figures against my actual apprehensions and dollar recovery for 1985, 1986, and 1987 through August.

	<u>1985</u>	<u>1986</u>	<u>1987</u>
Shoplift Apprehensions	491	609	259
Escaped Detection 1 in 5	1,964	2,436	1,036
Escaped Detection 1 in 10	4,419	5,481	2,331
Escaped Detection 1 in 30	14,239	17,661	7,511
Dollar Recovery	\$29,154	\$26,010	\$23,595
Dollars Lost to Shoplifters 1 in 5	\$116,616	\$104,040	\$94,380
Dollars Lost to Shoplifters 1 in 10	\$262,386	\$234,090	\$212,355
Dollars Lost to Shoplifters 1 in 30	\$845,466	\$754,290	\$684,255

As you can see, the losses that I suffer from shoplifters are considerable. My company has spent well over \$100,000.00 in the same years in shoplifting deterrents. That figure does not include the security department's payroll.

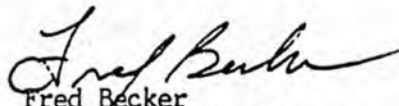
A problem that I consider significant is the "professional" shoplifter or "refund artist". I have personally been involved in, or arrested a number of repeat offenders, some as many as five times; yet each APD officer issues a citation and the suspect is released. The suspects have been quite talkative at times and have said:

- a. "What do I have to loose, nothing happens anyway."
- b. "The case will be dismissed."
- c. " I have to play the odds - how often do you think I get away for each time I get caught."
- d. "The money is good." (Some talk of \$50,000. to \$100,000. a year.)

Officer L.T. Johnson
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October 17, 1987

I feel that when a person is arrested the third time for shoplifting he should be charged with a Class C Felony. Certainly this will have a significant effect on the professional thieves. Perhaps if they see jail time in front of them, shoplifting will loose some of its' allure. Maybe Alaska will become less comfortable as well, and they will leave the state.

Sincerely,


Fred Becker
Loss Prevention Manager

ml

Lamonts

THE FAMILY CLOTHING STORE

3150 Richards Rd. Bellevue, WA 98005
(206) 644-5700

November 4, 1987

To Whom It May Concern:

Our overall shrinkage company-wide was .3 lower than our Alaskan stores.

In the opinion of Loss Prevention experts, 50% of store shrinkage can be attributed to external theft. The further breakdown being 25% paper error and 25% due to employee theft.

We find we have several repeat offenders in the Anchorage area. Sometimes the same individuals are arrested at all three stores.

Any legislation to help combat repeat offenders would be of benefit to the entire community.

Sincerely,



Betty Wills
Director of Loss Prevention
Lamonts Apparel

BW:sk

Lamonts

THE FAMILY CLOTHING STORE

OFFICER L. T. JOHNSON
ANCHORAGE POLICE DEPT.
4501 SOUTH BRAGAW
ANCH. AK. 99507

SIR:

LAMONTS AS A CORPORATION HAS SUSTAINED SUCH GREAT LOSSES TO EXTERNAL THEFT THAT ONLY THIS YEAR HAVE WE HAD TO GO FROM A CUSTOMER ORIENTED DETECT SYSTEM (TAGGED CLOTHING) TO A IN HOUSE LOSS PREVENTION DEPARTMENT. AS NOTED IN THE LETTER FROM THE DIRECTOR OF LOSS PREVENTION FOR LAMONTS LAST YEAR LAMONTS ATTRIBUTED 50% OF ALL SHRINDAGE TO EXTERNAL THEFT, SHOPLIFTERS. FOR THE ANCHORAGE AREA ONLYSHRINKAGE FIGURES ARE AS SHOWN:

1986 ALONE

UNIVERSITY CENTER	SHRINKAGE LOSSES AMOUNTED TO	\$ 583,952
NORTHWAY MALL	SHRINKAGE LOSSES AMOUNTED TO	\$ 697,204
DIAMOND MALL	SHRINKAGE LOSSES AMOUNTED TO	\$ 542, 930
	ANCHORAGE BOWL LOSSES TOTALED	\$ 1,824,086

TO ATTRIBUTE ONLY 50% OF THOSE LOSSES TO EXTERNAL LOSS WOULD GIVE YOU A FIGURE OF OVER \$912,000 LAMONTS LOSS TO SHOPLIFTERS IN 1986 ALONE, IN THE ANCHORAGE BOWL AREA.

AS LOSS PREVENTION MANAGER FOR THE UNIVERSITY CENTERFOR THE LAST NINE MONTHS AND HAVING WORKED LOCALLY FOR THE PAST FOUR YEARS, I DO NOT SEE THE PROBLEM STEMMING FROM THE FIRST TIME OFFENDERS, OR THE ONES WHO JUST MADE A BAD JUDGEMENT DECISION, THE LOSSES FROM WHAT I HAVE SEEN AND FROM THOSE I HAVE ARRESTED ARE TAKING PLACE BY THE REPEAT OFFENDERS. THOSE ARE THE ONES WHO HAVE BEEN PLAYING THE ODDS OR HAVE BEEN THROUGH THE SYSTEM AND SEEN THAT THEY CAN HAVE THE SYSTEM WORK IN THIER FAVOR. SO OFTEN I HAVE HEARD SOMEONE I HAVE ARRESTED STATE "THIS WILL JUST GET DISSESSED, JUST LIKE . . . LAST TIME" OR "I AM JUST DOING IT FOR THE MONEY, BECAUSE IT IS SO GOOD." I FEEL THAT ACTION NEEDS TO BE DIRECTED TO THESE REPEAT OFFENDERS, I ALSO BELIEVE THAT BY MAKING THE THIRD TIME OFFENSE A CLASS C FELONY THIS WOULD AFFECT AND IN FACT DETTER THIER ACTIVITY. SOMEONE WHO IS ARRESTED FOR THIER THIRD OFFENSE WOULD BE IN FACT ON THIER SIXTYTH SHOPLIFT ATTEMPT (FIGURES

Lamonts

THE FAMILY CLOTHING STORE

SHOW THAT YOU WILL ARREST SOMEONE ONLY ONE IN TWENTY SHOPLIFT ATTEMPTS).
THAT I THINK WOULD CONSITUTE A PROBLEM SHOPLIFTER, AND MAYBE BY SEEING
SOME TYPE OF REAL DETERNT IN FRONT OF THEM SUCH AS YOUR INTENT ON MAKING
THE THIRD TIME OFFENSE A CLASS C FELONY, WE AS MERCHANTS MIGHT SEE OUR
SHRINKAGE FIGURES SHRINK.

SINCERELY

A handwritten signature in cursive script that reads "Frederick C. Becker". The signature is written in dark ink and is positioned above the typed name.

FREDERICK C. BECKER V
LOSS PREVENTION MANAGFR
LAMONTS CLOTHING APPAREL



PAY 'n SAVE STORES INC.

A Subsidiary of PAY 'n SAVE INC.

Alaska Regional Offices: Woodland Business Park

3710 Woodland Drive • Suite 2100

ANCHORAGE, ALASKA 99517-2564

Phone (907) 243-4498

October 23, 1987

Anchorage Police Department
Officer LT. Johnson
4501 S. Bragaw
Anchorage, Alaska 99507

Dear Officer Johnson,

Pay'n Save Stores Incorporated, like any other retailer has felt the adverse impact on profitability that shoplifting has. By nature of our volume and numerous locations throughout the state, we probably have felt it worse than most.

Especially damaging are those adults who are repeat shoplifters. The adult men and women who have been repeatedly caught are the same adults who are repeatedly successful at causing losses. Although the actual percentage of adult repeat offenders is low, this single group is, in my opinion, the most damaging. This group does not seem to be attracted toward small dollar items, rather these folks seem to be attracted toward TV's, VCR's and shopping bags full of compact disc recordings. Additionally, there appears to be a tendency for repeat offenders to be more violent. Although I can not site an exact figure which Pay'n Save loses due to undetected shoplifters, however, based upon my experiences I would estimate a figure in excess of \$200,000.00 annually.

Pay'n Save gives full support to your effects to amend the criminal code to make it a felony offence for shoplifting based upon repeat convictions.

Should you need additional information, have questions or require additional support, please feel free to contact me.

Best wishes for your success.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bill Hughes", is written over a horizontal line.

Bill Hughes
Loss Prevention Manager
Pay'n Save/Alaska

CARRS

QUALITY CENTERS

1341 Fairbanks Street

Anchorage, Alaska 99501

(907) 277-6639

November 25, 1987

Officer L. T. Johnson
Misdemeanor Follow-Up
Anchorage Police Department
4501 South Bragaw
Anchorage, Alaska 99507

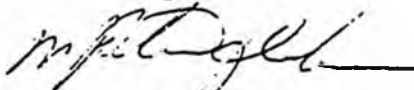
Dear Sir:

It is my understanding that a proposal has been made to draft legislation making third-time shoplift offenses a felony. We at Carrs wholeheartedly support such a proposal.

We have arrested over 1,000 shoplifters so far this year. Literally dozens of these people are repeat offenders back on the street after receiving relatively minor sentences. It is our belief that third time and greater offenders should receive stiffer sentences.

Our estimated shoplifting losses are in the neighborhood of a million dollars a year. Repeat offenders comprise a disproportionate share of that dollar loss. Consumers should not be made to bear the burden. Let's send the message that shoplifting is a serious property crime offense and repeaters will face serious sanctions.

Sincerely,



M. Peter Johnson, Jr.
Director of Loss Prevention

MPJ/tb

TO: REP. JOHN SUND
 FROM: PETE TOMLINSON - CARRE'S QUALITY CENTER'S
 DATE: MARCH 1, 1988
 SUBJ: SHOPLIFT DOLLAR LOSS

ESTIMATED \$1,000,000 ANNUAL LOSS

① STORE DETECTIVES SPENT 5165 HOURS ON DUTY IN CARRE'S STORES IN 1987. 75% OF THAT TIME OR 3874 HOURS (APPROX) WERE SPENT ON THE FLOOR.

WE HAVE 13 CARRE'S STORES OPEN 24 HRS PER DAY 364 DAYS A YEAR. THIS EQUALS 113,568 STORE HOURS/YR.

ASSUMING OUR SUCCESS RATE IS AVERAGE FOR ALL STORE HOURS AND STORE DETECTIVES APPREHEND 50% OFF ALL SHOPLIFTERS WHILE WORKING ON THE FLOOR THEN,

3874 HOURS = 3.4% OF STORE OPEN HOURS

3.4% = 1/29

29 x 2 (50% SUCCESS RATE) x (1987 LOSS) 10,576.50 = \$961,437

② ESTIMATED MINIMUM OF 15 SHOPLIFTERS PER DAY PER STORE.

AVERAGE ARREST = \$15.42

15 x \$15.42 x 13 STORES x 364 DAYS = \$1,094,511.

③ THIS METHOD GIVES REAL CREDENCE TO 1 AND 2 ABOVE. I AM SOMEWHAT LIMITED IN DIVULGING INFORMATION WITHOUT AUTHORIZATION FROM A CORPORATE OFFICER HOWEVER, IN THAT PROPRIETARY INFORMATION INVOLVING GROSS SALES AND SHRINK PERCENTAGE ARE COMPONENTS OF THE CALCULATION.

SUFFICE IT TO SAY THAT SUPERMARKETS OPERATE ON A 1 TO 3% PROFIT MARGIN. SHRINK PERCENTAGES OF 1 TO 2% ARE COMMONPLACE.

WE AT CARRS KNOW WHAT OUR SHRINK PERCENTAGE AMOUNTS TO IN DOLLAR LOSS. SHRINK IS ATTRIBUTED TO INTERNAL THEFT, EXTERNAL THEFT (SHOPLIFT) AND PAPERWORK AND INVENTORY ERRORS. COMMONLY ATTRIBUTED PERCENTAGES ARE:

- 50% - PAPERWORK / INV. ERRORS
- 25% - INTERNAL THEFT
- 25% - EXTERNAL THEFT

USING THOSE PERCENTAGES, CARRS LOSSES DUE TO SHOPLIFT ARE IN EXCESS OF ONE MILLION DOLLARS.

Original sponsor: Cotten

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 461 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act increasing the penalties for repeat con-
7 victions for the crimes of theft and concealment of
8 merchandise."

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

10 * Section 1. AS 11.46.120(a) is amended to read:

11 (a) A person commits the crime of theft in the first degree if
12 the person commits theft as defined in AS 11.46.100 and

13 (1) the value of the property or services is \$25,000 or
14 more; or

15 (2) the value of the property or services is \$500 or more
16 but less than \$25,000 and within the preceding five years the person
17 has been convicted and sentenced on two or more separate occasions in
18 this or another jurisdiction of a crime set out in (1) of this sub-
19 section or AS 11.46.130(a)(1) - (3) or an offense under another law or
20 ordinance with similar elements.

21 * Sec. 2. AS 11.46.130(a) is amended to read:

22 (a) A person commits the crime of theft in the second degree if
23 the person commits theft as defined in AS 11.46.100 and

24 (1) the value of the property or services is \$500 or more
25 but less than \$25,000;

26 (2) the property is a firearm or explosive; [OR]

27 (3) the property is taken from the person of another; or

28 (4) the value of the property is \$50 or more but less than
29 \$500 and within the preceding five years the person has been convicted

1 and sentenced on two or more separate occasions in this or another
2 jurisdiction of a crime set out in (1) - (3) of this subsection or
3 AS 11.46.140(a)(1) or (2) or an offense under another law or ordinance
4 with similar elements.

5 * Sec. 3. AS 11.46.140(a) is amended to read:

6 (a) A person commits the crime of theft in the third degree if
7 the person commits theft as defined in AS 11.46.100 and

8 (1) the value of the property or services is \$50 or more
9 but less than \$500; [OR]

10 (2) the property is a credit card; or

11 (3) the value of the property is less than \$50 and within
12 the past five years the person has been convicted and sentenced on two
13 or more separate occasions in this or another jurisdiction of theft or
14 an offense under another law or ordinance with similar elements.

15 * Sec. 4. AS 11.46.220(c) is amended to read:

16 (c) Concealment of merchandise is

17 (1) a class C felony if

18 (A) the merchandise is a firearm;

19 (B) [OR] the value of the merchandise is \$500 or more;

20 or

21 (C) the value of the merchandise is \$50 or more but
22 less than \$500 and within the preceding five years the person has
23 been convicted and sentenced on two or more separate occasions in
24 this or another jurisdiction of the offense of concealment of
25 merchandise that has a value of \$50 or more or an offense under
26 another law or ordinance with similar elements;

27 (2) a class A misdemeanor if

28 (A) the value of the merchandise is \$50 or more but
29 less than \$500; or

1 (B) the value of the merchandise is less than \$50 and
2 within the preceding five years the person has been convicted and
3 sentenced on two or more separate occasions of the offense of
4 concealment of merchandise in any degree or an offense under
5 another law or ordinance with similar elements;

6 (3) a class B misdemeanor if the value of the merchandise
7 is less than \$50.

8 * Sec. 5. AS 11.46 is amended by adding a new section to article 1 to
9 read:

10 Sec. 11.46.295. PRIOR CONVICTIONS. For purposes of considering
11 prior convictions in prosecuting a crime of theft under AS 11.46.-
12 120(a)(2), 11.46.130(a)(4), or 11.46.140(a)(3), or in prosecuting the
13 crime of concealment of merchandise under AS 11.46.22C(c), a convic-
14 tion for an offense under another law or ordinance with similar ele-
15 ments is a conviction of an offense having elements similar to those
16 of an offense defined as such under Alaska law at the time the offense
17 was committed.

1 IN THE HOUSE

BY COTTEN

2

HOUSE BILL NO. 461

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6

For an Act entitled: "An Act increasing the penalties for repeat con-
7 victions for the crimes of theft and concealment of
8 merchandise."

9

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

10

* Section 1. AS 11.46.120(a) is amended to read:

11

(a) A person commits the crime of theft in the first degree if
12 the person commits theft as defined in AS 11.46.100 and

13

(1) the value of the property or services is \$25,000 or
14 more; or

15

(2) within the preceding five years.

16

(A) the person has been convicted three or more times
17 in this or another jurisdiction of a crime set out in AS 11.46.-
18 120 - 11.46.210 or an offense under another law or ordinance with
19 substantially similar elements; and

20

(B) at least one of the convictions under (A) of this
21 paragraph was for theft as defined in (1) of this subsection, or
22 for theft as defined in AS 11.46.130(a)(1) - (3), or an offense
23 under another law or ordinance with substantially similar ele-
24 ments.

25

* Sec. 2. AS 11.46.130(a) is amended to read:

26

(a) A person commits the crime of theft in the second degree if
27 the person commits theft as defined in AS 11.46.100 and

28

(1) the value of the property or services is \$500 or more
29 but less than \$25,000;

- 1 (2) the property is a firearm or explosive; [OR]
2 (3) the property is taken from the person of another; or
3 (4) within the preceding five years,

4 (A) the person has been convicted three or more times
5 in this or another jurisdiction of a crime set out in AS 11.46.-
6 120 - 11.46.210 or an offense under another law or ordinance with
7 substantially similar elements; and

8 (B) none of the convictions under (A) of this para-
9 graph was for theft as defined in AS 11.46.120(a)(1), or for
10 theft as defined in (1) - (3) of this subsection, or an offense
11 under another law or ordinance with substantially similar ele-
12 ments.

13 * Sec. 3. AS 11.46.220(c) is amended to read:

14 (c) Concealment of merchandise is

15 (1) a class C felony if

16 (A) the merchandise is a firearm;

17 (B) [OR] the value of the merchandise is \$500 or more;

18 or

19 -(C) within the preceding five years, the person has
20 been convicted three or more times in this or another jurisdic-
21 tion of the offense of concealment of merchandise or an offense
22 under another law or ordinance with substantially similar ele-
23 ments;

24 (2) a class A misdemeanor if the value of the merchandise
25 is \$50 or more but less than \$500;

26 (3) a class B misdemeanor if the value of the merchandise
27 is less than \$50.

CSHB

461

SENATE COMMITTEE REPORT

FURTHER

5/3/88

DATE TURNED INTO OFFICE 5/7/88

Mr. President:

Finance Committee considered CSHB 461 (JUD)

increasing the penalties for repeat convictions for the crimes of theft and concealment of merchandise

and recommended

[] replace with _____ CS _____) [] same title
[] or adopt _____ CS _____) [] new title

[] attached amendment(s) and

[] do pass

[] do not pass

~~[] no recommendation~~

~~[] individual recommendations~~

[] further referral to _____

[] letter of intent adopted _____

Committee [] attached or [] adopted fiscal note(s)

[] new [] updated or [] previous

~~0-5 PC / corrections~~ [] zero [] fiscal impact

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

Paul V. Z. Shuff No Rec
Paul Trich No Rec
Richard J. (No Rec)
John J. [unclear] (No Rec)

Rich Halford do pass
Chairman signature and recommendation

[] Committee Backup attached

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: Act increasing the penalties
repeat convictions for crimes
Sponsor: Judiciary Committee
Requestor: Senate Finance Committee

Agency Affected: Dept. of Corrections
BRU: Statewide Operations
Components: Statewide Programs

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
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						
FEDERAL FUNDS						
OTHER						
TOTAL		0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: *Rick Halford*
Division: Senator Rick Halford, Co-chairman
Senate Finance Committee

Phone: 465-3753
Date: May 7, 1988

Approved by Commissioner: _____
Agency: _____

Date: _____

Distribution (by preparer):

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

Original sponsor: Cotten

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE
2 CS FOR HOUSE BILL NO. 461 (Judiciary)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act increasing the penalties for repeat con-
7 victions for the crimes of theft and concealment of
8 merchandise."

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

10 * Section 1. AS 11.46.120(a) is amended to read:

11 (a) A person commits the crime of theft in the first degree if
12 the person commits theft as defined in AS 11.46.100 and

13 (1) the value of the property or services is \$25,000 or
14 more; or

15 (2) the value of the property or services is \$500 or more
16 but less than \$25,000 and within the preceding five years the person
17 has been convicted and sentenced on two or more separate occasions in
18 this or another jurisdiction of a crime set out in (1) of this sub-
19 section or AS 11.46.130(a)(1) - (3) or an offense under another law or
20 ordinance with similar elements.

21 * Sec. 2. AS 11.46.130(a) is amended to read:

22 (a) A person commits the crime of theft in the second degree if
23 the person commits theft as defined in AS 11.46.100 and

24 (1) the value of the property or services is \$500 or more
25 but less than \$25,000;

26 (2) the property is a firearm or explosive; [OR]

27 (3) the property is taken from the person of another; or

28 (4) the value of the property is \$50 or more but less than
29 \$500 and within the preceding five years the person has been convicted

1 and sentenced on two or more separate occasions in this or another
2 jurisdiction of a crime set out in (1) - (3) of this subsection or
3 AS 11.46.140(a)(1) or (2) or an offense under another law or ordinance
4 with similar elements.

5 * Sec. 3. AS 11.46.140(a) is amended to read:

6 (a) A person commits the crime of theft in the third degree if
7 the person commits theft as defined in AS 11.46.100 and

8 (1) the value of the property or services is \$50 or more
9 but less than \$500; [OR]

10 (2) the property is a credit card; or

11 (3) the value of the property is less than \$50 and within
12 the past five years the person has been convicted and sentenced on two
13 or more separate occasions in this or another jurisdiction of theft or
14 an offense under another law or ordinance with similar elements.

15 * Sec. 4. AS 11.46.220(c) is amended to read:

16 (c) Concealment of merchandise is

17 (1) a class C felony if

18 (A) the merchandise is a firearm;

19 (B) [OR] the value of the merchandise is \$500 or more;

20 or

21 (C) the value of the merchandise is \$50 or more but
22 less than \$500 and within the preceding five years the person has
23 been convicted and sentenced on two or more separate occasions in
24 this or another jurisdiction of the offense of concealment of
25 merchandise that has a value of \$50 or more or an offense under
26 another law or ordinance with similar elements;

27 (2) a class A misdemeanor if

28 (A) the value of the merchandise is \$50 or more but
29 less than \$500; or

1 (B) the value of the merchandise is less than \$50 and
2 within the preceding five years the person has been convicted and
3 sentenced on two or more separate occasions of the offense of
4 concealment of merchandise in any degree or an offense under
5 another law or ordinance with similar elements;

6 (3) a class B misdemeanor if the value of the merchandise
7 is less than \$50.

8 * Sec. 5. AS 11.46 is amended by adding a new section to article 1 to
9 read:

10 Sec. 11.46.295. PRIOR CONVICTIONS. For purposes of considering
11 prior convictions in prosecuting a crime of theft under AS 11.46.-
12 120(a)(2), 11.46.130(a)(4), or 11.46.140(a)(3), or in prosecuting the
13 crime of concealment of merchandise under AS 11.46.220(c), a convic-
14 tion for an offense under another law or ordinance with similar ele-
15 ments is a conviction of an offense having elements similar to those
16 of an offense defined as such under Alaska law at the time the offense
17 was committed.

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: CSHB 461 (JUD)
PUBLISH DATE: HOUSE 4/13/88

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act increasing the penalties for repeat convictions for the crimes..."
Sponsor: Judiciary Committee
Requestor: _____
Agency Affected: Department of Corrections
BRU: Statewide Operations
Components: Statewide Programs

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	-0-	348.5	348.6	348.6	348.5	348.6
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	848.6	848.6	848.6	848.6	848.6

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

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

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	848.6	848.6	348.6	848.6	848.6
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	848.6	848.6	848.6	848.6	848.6

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

See Attached

Susan E. Knighton

Prepared by: Susan E. Knighton, Director
Division: Administrative Services
Phone: 465-3376
Date: 4-5-88
Approved by Commissioner: Susan Humphrey-Barnett
Agency: Department of Corrections
Date: 4-5-88

- Distribution (by preparer):
- Legislative Finance
 - Legislative Sponsor
 - Requestor
 - Office of Management and Budget
 - Impacted Agency(ies)

CONTINUATION of FISCAL NOTE ANALYSIS**For Bill/Resolution No.**ANALYSIS

This proposed legislation would increase the penalties imposed on persons who are repeatedly convicted for the crimes of theft. It would have a fiscal impact on the Department of Corrections.

To determine the effect, we have analyzed recidivism data for the State of Alaska, the number of offenders in the theft categories who are being placed in the custody of the Department, the amount of jail time currently being served and the amount of jail time proposed in this legislation.

The recidivism rates are as follows:

Theft II	33%
Theft III	39%
Theft IV	74%
Concealment	68%

This fiscal note is based upon the yearly incarceration of repeat theft offenders in Restitution Centers or Community Residential Centers. They would serve 77.5 man-years more than is currently served.

Using the Anchorage daily soft bed cost of \$30.00 per day, the estimated yearly fiscal impact is \$848,625. Using the statewide average cost of \$45.00 per day, the estimated yearly fiscal impact is \$1,272,937.

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: CSHB 461 (JUD)
PUBLISH DATE: HOUSE 4/13/88

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act increasing the penalties for repeat convictions ... theft ..."
Sponsor: House Judiciary
Requestor: House Finance

Agency Affected: Department of Law
BRU: Prosecution
Components: All

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

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

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Please see the attached analysis.

Prepared by: Richard I. Pegues, Director Phone: 465-3672
Division: Administrative Services Date: April 6, 1988

Approved by Commissioner: Grace Berg Schepke Date: April 6, 1988
Agency: Department of Law

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

RECEIVED

APR 8 1988

LEGISLATIVE FINANCE

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No.

The committee substitute for HB 461 amends AS 11.46 to provide stiffer penalties for third-time theft offenders. For instance, a person convicted of theft of property or services with a value of \$500 or more but less than \$25,000, normally theft in the second degree, would be guilty of theft in the first degree if the person had been convicted and sentenced on two or more separate occasions within the preceding five years for the crime of theft in the second degree. Likewise, a third conviction for a crime normally constituting theft in the third degree or a third conviction for a crime normally constituting theft in the fourth degree would result in conviction at the next higher level. As a consequence, the penalty for a third conviction normally resulting in a class C felony would be raised to a class B felony. A third conviction normally resulting in a class A misdemeanor would be raised to a class C felony. A third conviction normally resulting in a class B misdemeanor would be raised to a class A misdemeanor. Repeat offenses for the crime of concealment of merchandise would be treated in a similar manner.

Because this legislation is primarily a sentencing bill it is not expected to have a fiscal impact on the Department of Law sufficient enough to warrant fiscal note costs. Some additional prosecutor time may be required to prove the repeat status of some offenders. And because of the increased penalties, prosecutors may face a more spirited defense in some cases. For the most part, however, these are cases that the department is already handling, and an appreciable additional expense is not anticipated.

REPRESENTATIVE
SAM COTTEN
DISTRICT 15



P.O. BOX 296, EAGLE RIVER, AK 99577
P.O. BOX V, JUNEAU, AK 99811

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

MEMO

TO: Senator Rick Halford
Co-Chairman, Finance Committee

FROM: Rep. Sam Cotten, C

DATE: May 3, 1988

RE: Scheduling of HB 461

HB 461, an Act increasing penalties for repeat convictions for the crimes of theft and concealment of merchandise, has been assigned to your committee. In light of the short time remaining to this session, I would appreciate your scheduling the bill for a hearing as soon as possible.

HB 461 was introduced at the request of the Anchorage Police Department Employees Association. Repeat misdemeanor offenders are not covered by presumptive sentencing under the revised criminal code. As a result of this, sentences are increased only slightly when a person commits numerous misdemeanors in even a short period of time.

The bill addresses this problem by setting in motion a loop that will gradually increase a repeat offenders sentence. I have attached an analysis of the House Judiciary substitute.

I believe HB 461 fills a void left by the revision of the criminal code and again ask that it be scheduled before the Judiciary committee at the earliest possible date.

Thank you.

CSHB 461 (Judiciary)

An Act increasing the penalties for repeat convictions for the crimes of theft and concealment

SECTIONAL ANALYSIS

Section 1. A person who has been convicted of two Class C felonies or above and is charged with a third Class C felony within a five-year period will be sentenced with a Class B felony.

Section 2. A person who has been convicted of two Class A misdemeanors or above and is charged with a third Class A misdemeanor within a five-year period will be sentenced with a class C felony.

Section 3. A person who has been convicted of two Class B misdemeanors or above and is charged with a third Class B misdemeanor within a five-year period will be sentenced with a class A misdemeanor.

Section 4. In the case of concealment, a person who is charged with a Class A misdemeanor concealment charge and who has had two prior convictions within the past five-years of concealment of merchandise valued at \$50 or more will be sentenced with a class C felony.

A person charged with a Class B concealment charge who has been previously convicted of any two concealment charges will be sentenced with a class A misdemeanor.

Section 5. Definition of prior convictions with similar elements.

	<u>Fine</u>	(and/or)	<u>Jail Term</u>
1st degree theft = Class B felony	\$50,000		0-10 years
2nd degree theft = Class C felony	50,000		0-5 years
3rd degree theft = Class A misdemeanor	5,000		0-1 years
4th degree theft = Class B misdemeanor	1,000		0-90 days

THEFT

B felony if value of property or services is \$25,000 or more	
C felony	\$500 - 25,000
A misdemeanor	\$50 - 500
B misdemeanor	less than \$50

CONCEALMENT

- C felony if the: merchandise is a firearm
value of the merchandise is \$500 or more
- A misdemeanor if the value of the merchandise is \$50 - 500
- B misdemeanor if the value of the merchandise is less than \$50

SENATE COMMITTEE REPORT

revd 4/27

FURTHER

FINANCE

4/27/88

DATE TURNED INTO OFFICE _____

Mr. President:

Judiciary Committee considered CSHB 461 (JUD)

increasing the penalties for repeat convictions for the crimes of theft and concealment of merchandise

and recommended

[] replace with _____ CS _____) [] same title
[] or adopt _____ CS _____) [] new title

[] attached amendment(s) and

Report
[] do pass

[] do not pass

[] no recommendation

individual recommendations

[] further referral to _____

[] letter of intent adopted _____

Committee attached or [] adopted fiscal note(s)

[] new [] updated or [] previous
[] zero fiscal impact

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

Colin Sturgis
Pratt

2 All present - No Rec.

[] Committee Backup attached

Kurtz
Chairman signature and recommendation

H B

4 6 3

HOUSE COMMITTEE REPORT

(11)

Date referred: 2/29/88

FURTHER REFERRALS:

DATE: 5-3-88

The Finance Committee has considered HB 463

"An Act making a special appropriation to the Department of Education for grants to school districts and regional educational attendance areas for asbestos management plans; and providing for an effective date."

RECOMMENDS:

- replace with CS HB 463 (FIN) the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published _____
- zero with analysis

SIGNING DO PASS:

Cee Adams
Bob Swack
Max Meyer
Kay Wallis

SIGNING OTHER RECOMMENDATIONS:

Pat [unclear] no rec
Bob [unclear] no Rec
[unclear] no rec.
Ray Brown
Mike Dours

Cee Adams
 Chairman's signature

Original sponsors: Boyer, Frank,
Davis, et al.

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 CS FOR FOR HOUSE BILL NO. 463 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act making an appropriation to the permanent fund
7 of all money received by the general fund because of
8 amendment of the economic limit factor by the Fif-
9 teenth Legislature; and providing for an effective
10 date."

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

12 * Section 1. All money received before July 1, 1989, by the general
13 fund as a result of the amendment of the economic limit factor
14 (AS 43.55.013(b)) by the Fifteenth Alaska State Legislature is appropriated
15 from the general fund to the principal of the permanent fund.

16 * Sec. 2. This Act takes effect immediately under AS 01.10.070(c).
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Alaska State Legislature

House of Representatives

COMMITTEE ON HEALTH, EDUCATION
AND SOCIAL SERVICES

OFFICIAL BUSINESS

POUCH
JUNEAU AM 398
465 375

HOUSE HESS LETTER OF INTENT

TO HB 463

It is the intent of the House Health, Education and Social Services Committee that the appropriation designated in HB 463, relating to asbestos management plans for schools, be included in HB 375, the budget bill.

Handwritten signature of Niilo Koponen in cursive script.

Niilo Koponen, Co-Chair
House HESS Committee

Handwritten signature of Jonny Ellis in cursive script.

Jonny Ellis, Co-Chair
House HESS Committee

DATED: February 29, 1988

ESTIMATED COST OF AHERA COMPLIANCE

March 9, 1988

The following figures were compiled by the Department of Education and are intended only to estimate the cost of AHERA compliance. These figures were received verbally from the indicated firms. Each job will have to be examined separately. In most cases estimates do not include travel expenses to the rural areas.

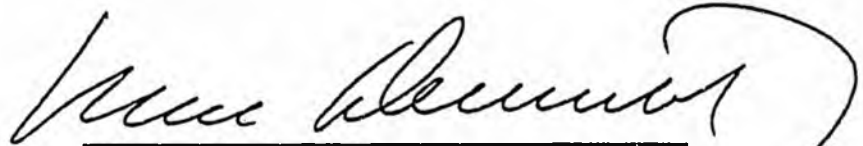
FIRM/LOCATION	ESTIMATES OF COST
PSI - Professional Testing Lab Anchorage	7¢ per square feet with a \$1500 minimum for schools with less than 20,000 square feet - does not include travel or sampling
i-TEM, Inc. Maryland	10.4¢ per square feet - may include additional cost for travel
Hall-Kimbrell Lawrence, Kansas	14.7¢ per square feet
Hazard Management Sitka	26¢ per square feet
Pickering/Kelly Anchorage	14¢ - 35¢ per square feet - does not include travel - (average cost = 24.5¢ per square feet)
Montgomery Engineers Juneau	48¢ per square feet
Ocean Tech Fairbanks	50¢ to 80¢ per square feet - (average cost = 65¢ per square feet)
Environmental Health Science Anchorage	13.0¢ per square feet

The average cost is plus or minus 26¢ per square feet. If you eliminate the high and low estimates, the average cost would be 22.7¢ per square feet. The Statewide impact would then be estimated at \$4,438,200.

The State has already received \$475,000 in Federal funds and has applied for an additional \$500,000 under this same program. The results of the latter application will not be known until after April 1, 1988.

Position Paper
Department of Education
on House Bill No. 463

The Department of Education supports House Bill No. 463, an act making a special appropriation to the Department of Education for grants to school districts and regional educational attendance areas for asbestos management plans; and providing for an effective date.

A handwritten signature in cursive script, appearing to read "William G. Demmert", written in dark ink. The signature is positioned above a horizontal line.

William G. Demmert
Commissioner

ASBESTOS INSPECTION AND MANAGEMENT PLAN
ASSISTANCE PROGRAM

FACT SHEET
OCTOBER 1987

On October 17, 1987, \$5 million in grants were awarded to states to assist financially needy school districts conduct asbestos inspections and develop management plans for school buildings in accordance with the Asbestos Hazard Emergency Response Act (AHERA).

To ease the burden on public school districts and private schools to comply with the new AHERA regulations, the Agency developed the Asbestos Inspection and Management Plan Assistance Program (AIMPAP). Five million dollars were made available to assist needy schools in 12 states conduct inspections and develop management plans. The awards range from \$100,000 to \$500,000 per state and may be used by the recipients to: 1) reimburse schools directly to offset the costs they incur for hiring accredited inspectors; 2) reimburse schools directly to offset the costs they incur for hiring accredited management plan developers; 3) purchase the services of accredited persons who will perform inspections or develop management plans for schools; and 4) compensate state employees (who are accredited inspectors) to perform inspections and develop management plans.

The 12 states receiving these awards were selected from among 27 states which applied for approximately \$10 million in federal assistance.

The following states will receive awards to reimburse LEAs for the costs of hiring accredited inspectors:

Kansas

Oregon

The following states will receive awards to reimburse LEAs to offset the costs of hiring both inspectors and management plan developers:

Alaska
Arkansas
Kentucky

Montana
North Dakota
Wisconsin

PROPOSED NEW EPA REGULATIONS WILL HAVE A DRAMATIC EFFECT ON ASBESTOS ABATEMENT INDUSTRY

by: William M. Ewing Jr., CIH

On October 22, 1986 President Ronald Reagan signed into law the Asbestos Hazard Emergency Response Act of 1986. This Act was the Congressional mandate that the U.S. Environmental Protection Agency (EPA) shall establish specific rules and regulations governing the identification, evaluation and control of asbestos-containing materials (ACM) in our Nation's schools. Many in the asbestos identification and control field followed the passage of this law with great interest, knowing that it would undoubtedly serve as the blueprint for handling asbestos in other buildings, including public, commercial and even private buildings.

Even before Halloween the EPA's Asbestos Action Program in Washington, D.C. was busily underway planning their strategy to produce the voluminous regulations before the six-month deadline set by Congress. Unlike most previous Congressional Legislation, this one contained a "hammer clause" providing EPA with the incentive to get the regulations proposed quickly. If the EPA had not published the proposed regulations, provisions contained in the Act itself would become law. One of these provisions would have essentially turned the document *Guidance For Controlling Asbestos-Containing Materials in Buildings* into law. The "purple book," as it is readily referred to, was never designed to be a regulation and would be subject to wide-ranging interpretation, misinterpretation, and be almost impossible to enforce. The "hammer clause" did serve a very useful purpose for EPA during the formation of the newly proposed regulations. It was an easy way to determine what was the intent of the Congressional architects of the Act.

Regulation by Negotiation

In the past, most regulations have been written by EPA staffers after studies are reviewed, fact-finding missions completed, experts consulted, and hearings held. However, a more recent trend has been the use of negotiation to prepare proposed regulations. In this process, representatives from numerous factions having differing views on various issues to be addressed are called together and given the task of writing the rule. It is a novel concept which relies on the theory that through the negotiation process and inevitable conflicts that occur, the cream rises to the top. It also can be effective in making the rule more acceptable to the various parties that will be affected by it. In the case of AHERA, the EPA pulled together representatives from various associations and interest groups to comprise a 24-member panel who from February through April, met regularly to wade through the issues surrounding asbestos in schools.

The rule, as published, is the culmination of their efforts. While no one interested party at the regulatory negotiation can say they were in complete agreement with the rule as it was proposed, there did appear to be agreement on the necessity of the rule and the intended impact it was to have on schools (i.e., move those to action that had not done so under the old asbestos-in-schools identification and notification rule).

ELEMENTS OF THE PROPOSED REGULATIONS

The new proposed regulations, commonly referred to as AHERA, will be found in 40 CFR 763 Subpart E §763.80 -§ 763.99 and apply to all primary and secondary schools, public

and private, in the U.S. and its territories/possessions, including American schools on military bases in foreign countries. Below, by section, are the key elements of the rule followed by a short discussion of the Model Accreditation Program issued in conjunction with the regulations, but not formerly a part of the proposal for comment by the public and interested parties.

§ 763.80 **SCOPE AND APPLICATION:** This rule requires Local Educational Agencies (LEA's) to identify friable and non-friable asbestos-containing material in public and private elementary and secondary schools by visually inspecting school buildings for such materials, sampling friable materials, and having samples analyzed by appropriate techniques referred to in the rule. The rule requires Local Education Agencies to submit management plans to the Governor of their State by October 12, 1988, begin to implement the plans by July 9, 1989, and complete implementation of the plans in a timely fashion. In addition, the LEA's are required to use persons who have been accredited to conduct inspections, develop management plans, or perform response actions. The rule also includes recordkeeping requirements.

§ 763.81 **DEFINITIONS:** The rule contains some definitions that may be unfamiliar to even the most experienced professionals in the field. For example, friable now means, for the purposes of this rule, material, which when dry, may be crumbled, pulverized, or reduced to powder by hand pressure, and includes non-friable material after such previously non-friable material becomes damaged to the extent that

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(CONTINUED)**

when dry it may be crumbled, pulverized, or reduced to powder by hand pressure. Other key definitions that created heated disputes during the regulatory negotiations include those for damaged friable surfacing ACM and significantly damaged friable surfacing ACM.

§ 763.82 GENERAL LEA RESPONSIBILITIES: This section of the regulation makes it clear that the LEA is responsible for compliance with the provisions of this regulation. It requires the school system to perform inspections, reinspections, periodic surveillance, develop and update management plans, develop and implement response actions (i.e. removal, enclosure, etc.), develop and implement operations and maintenance programs, as well as train all custodial and maintenance personnel. It places the burden on the school to notify parents, school employees, and outside contractors about the locations of the asbestos and what actions are being taken to prevent unnecessary exposure to asbestos. This section further lists other responsibilities of the school system in relation to the law.

§ 763.85 INSPECTION AND REINSPECTIONS: This section of the law requires all schools to inspect their buildings for both friable and non-friable asbestos-containing materials and construct an inventory of the locations of proven or assumed ACM. This section further requires the LEA to reinspect the school once every 3 years to reassess the condition of the material and determine if previously non-friable material has become friable. All inspections must be performed by an accredited inspector (See EPA Model Accreditation Plan).

§ 763.86 SAMPLING: Bulk sampling is not required since a school may elect to assume any or all materials contain asbestos. However, to prove that a material suspected of being ACM (i.e. fireproofing, pipe lagging) does not contain asbestos bulk sampling must be conducted as described in this section. Bulk samples must be collected by an

accredited inspector.

§ 763.87 ANALYSIS: All bulk samples must be analyzed in a laboratory accredited by the National Bureau of Standards (or EPA in the interim). The method must be polarized light microscopy (PLM). A finding of less than 1 percent asbestos is required for all samples in a homogenous area to determine no ACM; but only one sample needs to be analyzed to determine the homogenous area contains ACM.

§ 763.88 ASSESSMENT: This section of the law requires the accredited inspector to assess all friable known or assumed ACM in a school building. The ACM must be classified into categories according to the degree of damage of the material (i.e., damaged or significantly damaged) and the potential for future damage or significant damage.

§ 763.90 RESPONSE ACTIONS: Thermal insulation which is damaged or significantly damaged must be repaired, or if it cannot be repaired, must be removed. Significantly damaged friable surfacing insulation must be removed, unless through the use of encapsulation and/or enclosure the material can be reclassified into the "damage category," where it can either be removed or repaired. Where there exists a potential for damage or significant damage the ACM must be removed, unless it can be shown that enclosure, encapsulation, or an operations and maintenance program alone can eliminate the reasonable likelihood that the ACM will become damaged. All response actions (i.e., removal, enclosure, encapsulation and repair) must be carried out by an accredited design professional, an accredited contractor, and using only certified asbestos abatement workers. Following a removal, enclosure, or encapsulation project the work area must be cleared using visual inspections and aggressive sampling techniques during air monitoring. Small projects (less than 150 square feet or 260 linear feet) may be cleared using phase-contrast microscopy (PCM), when no sample exceeds 0.01 fibers per cubic centimeter of air (f/cc). For larger projects, transmission electron

microscopy (TEM) must be performed and the average of the results must not exceed 0.02 f/cc (or the outside air, whichever is higher) to clear the project. These TEM clearance requirements will be phased in over a three-year period to allow for laboratories to become accredited under the National Bureau of Standards accreditation program.

§ 763.91 OPERATIONS AND MAINTENANCE: The LEA must implement an operations and maintenance program (OMP) in any building where friable asbestos-containing building material (ACBM) is present or assumed to be present. All must receive a two-hour training session; and those employees who may disturb any ACBM must receive an additional 14 hours of instruction. Initial cleaning of the areas containing friable surfacing material or damaged thermal insulation must be performed. Periodic surveillance must be performed at least every six months. Additional requirements for the OMP and specific directions for responding to fiber release episodes are also included in this section.

§ 763.93 MANAGEMENT PLANS: On or before October 12, 1988, each LEA must develop an asbestos management plan for each school, including all buildings of the school that they lease, own, or otherwise use. The management plan must be developed by an accredited management planner. The details of the management plan are described in this section. Essentially, the plan must include where the asbestos-containing materials are located, what actions are being taken by the LEA, and how the LEA is complying with the provisions of this standard.

§ 763.95 WARNING LABELS: The LEA must attach warning labels adjacent to any friable and non-friable ACBM located in routine maintenance areas of each school building. The warning label must read "CAUTION: ASBESTOS. HAZARDOUS. DO NOT DISTURB WITHOUT PROPER TRAINING AND EQUIPMENT."

§ 763.97 COMPLIANCE AND ENFORCEMENT: Depending upon

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the nature of the violation the LEA may be fined \$5,000-\$25,000 per day in violation. If a violation is knowing or willful, criminal penalties may also be assessed. Additional information regarding injunctive relief, citizen complaints, and EPA inspections are contained in this section of the rule.

§ 763.98 WAIVER; DELEGATION TO STATE: This section of the law deals with the procedures for EPA to waive their enforcement of this rule in any state that has an equivalent state program. It also requires EPA to monitor the state program and determine its effectiveness.

§ 763.99 EXCLUSIONS: This section of the law deals with the procedures allowing certain LEAs to be excluded from parts of this law if they have already achieved substantial compliance through actions they have already taken. Note: simple compliance with the old "asbestos-in-schools rule" does not exempt a school from this regulation.

APPENDICES: Included among the Appendices to this regulation are the "Interim Transmission Electron Microscopy Analytical Method and Field Sampling Protocol for the Clearance Testing of an Abatement Site" (ed. note: see summary of protocol by James R. Millene, this issue) and the "Work Practices and Engineering Controls for Small-Scale, Short-Duration Asbestos Operations, Maintenance and Repair Activities."

EPA MODEL ACCREDITATION PLAN: The 1986 Asbestos Hazard Emergency Response Act required EPA to develop a model plan for the

accreditation of persons who perform any of the following functions for compliance with this rule.

- (1) Inspect for ACM in school buildings (Accredited Inspectors).
- (2) Assess the condition of the material and prepare management plans for schools (Accredited Management Planners).
- (3) Design response actions, such as removal projects (Accredited Design Professionals).
- (4) Carry out response actions such as removal projects (Accredited Asbestos Contractors).

Additionally, the model accreditation plan specifies the requirements for the certification of asbestos abatement workers. The model accreditation plan does not apply to those persons who perform only small-scale, short-duration operations and maintenance tasks. The training requirements of these personnel are addressed in the operations and maintenance section of the regulation.

The intention of the plan is to provide a guide for states to adopt in setting up their own programs. It is hoped that the states will adopt a plan similar to the model program establishing some degree of uniformity and allowing reciprocity among states. For each accreditation referred to above, specific requirements are listed as minimum to become accredited under the plan. For the most part it includes attendance at an approved training course and successfully completing an examination covering the topics of the course. Re-accreditation is required through re-training. Individuals who can document that they have received equivalent training and passed an equivalent examination can be grandfathered into the accreditation program for a period of one year.

SUMMARY AND CONCLUSIONS

The new AHERA regulations, in conjunction with the recent OSHA Asbestos Standard (29 CFR 1926.58) will undoubtedly serve as the basis for addressing the problem of asbestos-in-buildings. The above regulations are currently proposed, and may change before they become final in October 1987. This offers a great opportunity for those professionals experienced in asbestos identification, evaluation and control to have input through public comment and the inevitable hearings on this new rule during the upcoming weeks. Regardless of the final outcome of the rule, we can expect AHERA to shape the future with respect to asbestos in schools and other buildings.

(Post-script Note: Those wishing to comment on the proposed regulations should send their written comments before June 26, 1987, to: Document Control Officer (TS-790), Office of Toxic Substances, Environmental Protection Agency, Room NE-G004., 401 M Street, SW, Washington, DC 20460. Comments should include the docket control number (OPTS--62048C). For further information on the comment process contact: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Room E-543, 401 M Street, SW, Washington, DC 20460; Telephone: (202) 554-1404.

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Fact Sheet
Final Rule: Asbestos-Containing Materials in Schools
Asbestos Hazard Emergency Response Act (AHERA)

On October 22, 1986, President Reagan signed into law the Asbestos Hazard Emergency Response Act (AHERA) of 1986 (PL99-519). Under AHERA, the Environmental Protection Agency (EPA) is directed to promulgate regulations which provide a framework for addressing asbestos problems in public and private elementary and secondary schools. The proposed rule was published on April 30, 1987 and the final rule will be issued on October 17, 1987, in accordance with the statutory deadline. The rule requires schools to inspect buildings, develop management plans and implement response actions.

Inspections

- The rule requires an accredited inspector to visually inspect all areas to identify location of all asbestos-containing materials (ACM) - both friable (easily crumbled) and non-friable.
- Exclusions: An initial inspection of portions of the school or the entire school is unnecessary if:
 1. an accredited inspector has determined that a previous inspection identified ACM or indicated no ACM was present;
 2. the school is built after October 12, 1988 and an architect or project engineer or accredited inspector signs a statement indicating that no ACM was specified for use in construction documents;
 3. a school's inspection and abatement records indicate that all ACM was removed.

Reinspection and Periodic Surveillance:

- Local Education Agencies (LEAs) will be required to monitor ACM left in place.
- Periodic surveillance requires checking ACM every six months to determine if its condition has changed since the last inspection or surveillance.
- LEA may use unaccredited personnel (custodian or maintenance workers) to perform periodic surveillance activities.
- Re-inspection is required every three years, to re-assess the ACM and must be conducted by an accredited inspector.

Management Plans

- LEAs are required to develop an asbestos management plan for each school under their administrative control.
- Plan must be developed by an accredited asbestos management planner.
- Plan must include a description of inspection and response actions; an assurance that accredited persons were used to conduct inspections, develop management plans, and design or conduct response actions; and a plan for reinspection and operations and maintenance.
- LEAs are to submit their management plans to their State on or before October 12, 1988. The state has 90 days to disapprove the plan. The LEA is allowed 30 days to review its plan to conform with the State's changes.
- Each LEA must begin to implement its plan on or before July 9, 1989.
- LEAs must notify in writing parent and teacher organizations annually about the availability of the plan.

Response Actions

- AHERA directs the LEA to select and implement appropriate response actions for ACM which was assessed by the accredited inspector.
- The five major response actions include: operations and maintenance (O&M), repair, encapsulation, enclosure and removal. The rule describes appropriate circumstances for selecting each response action as well as steps which shall be taken to properly conduct the response actions. Response actions must meet the statutory standard.-- protect human health and the environment.
- Successful completion of response actions is determined by air sampling. For two years after effective date of rule Phase Contrast Microscopy (PCM) clearance at .01 f/cc is acceptable for projects of 3,000 square feet or 1,000 linear feet or less. Transmission Electron Microscopy (TEM) is required for these projects after two years. For an additional year, PCM is permissible for clearance of 1,500 square feet or 500 linear feet or less, then TEM would be required for these projects. TEM clearance is accomplished through analysis and comparison of indoor and outdoor samples.

Use of Accredited Persons

- LEAs shall use accredited persons to inspect for ACM in school buildings, prepare management plans for schools, and design or carry out response actions with respect to ACM in schools.
- As required by AHERA, EPA issued a final Model Contractor Accreditation Plan on April 20, 1987. According to AHERA, each state must adopt a contractor accreditation program at least as stringent as the EPA Model Plan. Persons can receive accreditation from a State that meets the requirements of the EPA Model, or by taking an EPA-approved training course and exam.
- The Model Plan requires persons seeking accreditation to take an initial training course, pass an examination and participate in continuing education.
- AHERA enables EPA to permit persons to be grandfathered into the accreditation system for an interim period if they had attended prior EPA-approved asbestos training and passed or pass an asbestos exam. These provisions apply only to persons who have taken a suitable training course since January 1, 1985. The interim accreditation is for only 1 year after the date on which the State where the person is employed establishes an accreditation program at least as stringent as the EPA Model.

Worker and Occupant Protection

- AHERA extends coverage of the EPA Worker Protection Rule (40 C.F.R., Part 763) to maintenance and custodial personnel in schools who are not covered by OSHA's construction standard or approved State OSHA programs.
- LEAs are required, through air monitoring procedures or historic air monitoring data, to document and assure that the Permissible Exposure Limit (PEL) of 0.2 f/cc has not been reached or to implement proper protection practices to control exposure when the action level of .1 f/cc is met.
- LEAs may choose to institute the provision of Appendix B of the act in the case of small-scale, short duration projects rather than comply with the full EPA worker protection rule.
- Basic occupant protection requirements are established for any O&M activity in a school which disturbs ACBM including restricted areas, posted signs and modified air movement outside of the area.

Waiver for State Program

- States may receive a waiver from some or all of the requirements of the proposed rule if the State has established and is implementing or intends to implement a program of asbestos inspection and management at least as stringent as the requirements of the proposed rule.

10/19/87

- QUESTIONS AND ANSWERS -
FINAL REGULATIONS - ASBESTOS HAZARD EMERGENCY
RESPONSE ACT OF 1986 (AHERA)

1.) What does AHERA require schools to do about asbestos?

The AHERA regulations require all public and private elementary and secondary schools to inspect buildings for friable (i.e., crumbled to powder under hand pressure) and nonfriable asbestos-containing materials (ACM), develop management plans and submit them to their State Governor or a designated State agency, and implement response actions to reduce asbestos exposure. Schools are required to use accredited persons for these activities.

2.) Are there any deadlines for these activities?

Congress set deadlines in the AHERA legislation for these activities. EPA's regulations reflect the deadlines established by Congress. Schools must complete their inspections and submit their management plans by October 12, 1988. States have 90 days to review and disapprove the plans. Schools must begin implementation of their plans by July 9, 1989. There is no deadline for completion of response actions.

3.) Do schools which have previously inspected their buildings have to inspect again?

This varies according to the individual circumstances at the school. Exclusions can be granted from the AHERA inspection requirements for previous inspections which were done properly. Most schools which have inspected did not check for nonfriable materials and will now be required to do so under the AHERA regulations.

4.) Do the regulations require schools to remove ACM?

No. The regulation requires schools to choose a response action which protects human health and the environment. The range of response actions the school can choose depends on the condition of the ACM. The response action is chosen by the school with the assistance of the accredited management planner. A school may choose to remove ACM if removal is the preferred response action.

5.) How many schools will be affected by the regulation and what is the cost of the regulation?

About 107,000 schools in over 40,000 school districts will be affected in some way by the requirements. Some schools have little remaining work to do to meet the requirements, other schools which have not even inspected could have many tasks ahead of them. The cost of the

regulation will vary according to the circumstances in the school, but EPA estimates the average cost of conducting inspections and developing management plans to be \$3,600 for a public secondary school. Response action costs will vary depending on the response action chosen. EPA estimates that about 46,000 schools will implement response actions (removal, enclosure, encapsulation or operations and maintenance) over a 30 year period and at an average cost of \$40,000. The total cost of the regulation over a 30 year period will be about \$3.1 billion.

- 6.) What has EPA done to ensure that there will be enough accredited persons to perform the AHERA work?

One of the challenges of AHERA implementation will be training and accrediting a cadre of inspectors, management planners, and abatement contractors. The combination of existing or newly developing state programs plus EPA-approved training courses should supply a sufficient number of accredited persons.

EPA has done the following ...

- reviewed and approved more than 40 courses for accreditation of inspectors, management planners, and contractors -- these courses will be listed in Federal Register when rule is published
- developed a model inspector/management planner course for use by state accreditation programs and other training providers
- prepared grant awards for 17 states to fund new program to train and accredit inspectors and management planners (These will be awarded as soon as FV 88 appropriation is received)

- 7.) Are there any funds available to assist schools?

EPA has issued a total of \$5 million in grants to 12 states to help schools pay for inspections and management plan development required by AHERA. Under the Asbestos School Hazard Abatement Act of 1984 (ASHAA), EPA has issued about \$134 million in grants and loans to schools for asbestos abatement over the last three years. At this time, Congress has not completed the 1988 appropriation process, so availability of further funds is not clear.

- 8.) What will EPA do to promote compliance with this regulation?

EPA will be mailing the regulations and a guidance document to over 40,000 public school districts and private schools in the next few weeks. A teleconference for school administrators is also being planned. EPA will immediately begin a compliance outreach program designed to respond to LEA's of their compliance responsibilities under the AHERA regulations. EPA will also conduct inspections of LEA's and schools to assure compliance with AHERA.

- 9.) Will EPA continue to conduct compliance inspections for the 1982 school inspection rule after the effective date of the AHERA regulations?

No.

- 10.) When will EPA begin to inspect for violations of AHERA regulations?

Compliance inspections for the AHERA regulations will start on October 12, 1988, the statutory deadline for submission of management plans by the schools.

- 11.) Will EPA impose the statutory civil penalty of \$5,000 per day for each violation of AHERA?

A civil penalty of \$5,000 per day per violation is the maximum allowable civil penalty. AHERA also provides that the actual civil penalty assessed must reflect the significance of the violation, the culpability of the violator (including previous history of violations under AHERA), the ability of the violator to pay the penalty, and the ability of the violator to continue to provide educational services to the community. AHERA specifies that fines assessed against schools are to be used by the school for the purpose of asbestos abatement in that school. Residual amounts of fines are to be added to the Asbestos Trust Fund. AHERA also contains provisions for assessing criminal penalties of up to \$25,000 per day.

- 12.) What will schools be required to do regarding transport and disposal of asbestos waste?

EPA had planned to use revised final regulations issued under the National Emission Standards for Hazardous Air Pollutants (NESHAP) of the Clean Air Act to provide requirements for transport and disposal of asbestos from schools. Unfortunately, revised NESHAP regulations have not been completed and, as specified in Section 204 of AHERA, the EPA publication "Asbestos Waste Management Guidance Document" is now in effect for transport and

disposal of asbestos waste. (This document is in addition to existing Department of Transportation and NESHAP regulations.) EPA will soon issue proposed revised NESHAP regulations to supersede the guidance document.

13.) What are states required to do under AHERA?

First, states are required to notify schools by October 17, 1987 regarding where school management plans are to be submitted. Second, states may review and disapprove plans within 90 days of receipt from schools. (If states do not disapprove plans, the plans are implemented.) Finally, states are required to establish accreditation programs.

QUESTIONS FOR INTERNAL USE

- Q. Why has EPA not issued the study of asbestos in public and commercial buildings?
- A. AHERA requires EPA to assess the presence and condition of asbestos in public and commercial buildings, evaluate existing regulations on asbestos, and make recommendations about the need for further action. The study directs EPA to advise Congress and the nation about a major public policy question -- what, if anything, should be done about the estimated 733,000 buildings which contain asbestos?

The Agency is giving very careful attention to this study and, quite simply, more time is necessary to produce a report that will contribute to a responsible public discussion of this question. The report is currently undergoing internal review by various EPA offices. We expect to issue the report in a few weeks.

- Q. What were the major changes in the final rule compared to the April proposal?
- A. Most of the changes were for clarification, others to enhance public notification or enforcement.
- changed response action section to emphasize that response actions must protect human health and environment -- then least burdensome method can be selected from among response actions which protect human health and environment
 - expanded definitions of damage and significant damage by adding more description of characteristics which indicate damage
 - changed notification of parent and employee organizations to require written notification
 - added requirement for management planner to make a recommendation to LEA about the need for additional cleaning
- Q. Has EPA appointed an asbestos ombudsman?
- A. EPA plans to appoint an ombudsman by the time the AHERA regulations go into effect in late November. An interim ombudsman is available to respond to public inquiries. The interim ombudsman can be reached at (202) 544-1404.

- Q. Will EPA issue civil penalties for first-time violations of AHERA, or will notices of Noncompliance (NON's) be issued for first-time violations as was done under AIS?
- A. EPA plans to issue civil penalties for violations of AHERA. Congress set the compliance deadlines in the AHERA legislation, and EPA believes Congress intended these dates to be fully enforced.
- Q. Has the Agency adopted an air monitoring standard to guide schools in assessing the asbestos hazard in their buildings?
- A. EPA continues to believe that an air monitoring standard is not viable as the method for assessing asbestos hazards. There are several reasons for this. First, there is no agreed-upon level of airborne asbestos concentration which can be considered safe. Second, air measurements provide only a "snap shot" of the fiber levels in a building and cannot account for peak exposures that occur when material is disturbed. Third, even if a safe level could be established, a rigorous and lengthy air monitoring program would be required in order to produce meaningful, representative data. In short, air monitoring which detects low levels of fibers cannot be viewed as definitive evidence that no hazard exists in a building with ACM.

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or recreational activities for an academic course in physical education.

(3) Any other facility used for the instruction or housing of students for the administration of educational or research programs.

(4) Any maintenance, storage, or utility facility, including any hallway, essential to the operation of any facility described in this definition of "school building" under paragraphs (1), (2), or (3).

(5) Any portico or covered exterior hallway or walkway.

(6) Any exterior portion of a mechanical system used to condition interior space.

"Significantly damaged friable miscellaneous ACM" means damaged friable miscellaneous ACM where the damage is extensive and severe.

"Significantly damaged friable surfacing ACM" means damaged friable surfacing ACM in a functional space where the damage is extensive and severe.

"State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the Virgin Islands.

"Surfacing ACM" means surfacing material that is ACM.

"Surfacing material" means material in a school building that is sprayed-on, troweled-on, or otherwise applied to surfaces, such as acoustical plaster on ceilings and fireproofing materials on structural members, or other materials on surfaces for acoustical, fireproofing, or other purposes.

"Thermal system insulation" means material in a school building applied to pipes, fittings, boilers, breeching, tanks, ducts, or other interior structural components to prevent heat loss or gain, or water condensation, or for other purposes.

"Thermal system insulation ACM" means thermal system insulation that is ACM.

"Vibration" means the motion of friable ACM that results in the release of fibers.

§ 763.84 General local education agency responsibilities.

Each local education agency shall:

(a) Ensure that the activities of any persons who perform inspections, re-inspections, and periodic surveillance, develop and update management plans, and develop and implement response actions, including operations and maintenance, are carried out in accordance with Subpart E of this part.

(b) Ensure that all custodial and maintenance employees are properly

trained as required by this Subpart E and other applicable Federal and/or State regulations (e.g., the Occupational Safety and Health Administration asbestos standard for construction, the EPA worker protection rule, or applicable State regulations).

(c) Ensure that workers and building occupants, or their legal guardians, are informed at least once each school year about inspections, response actions, and post-response action activities, including periodic reinspection and surveillance activities that are planned or in progress.

(d) Ensure that short-term workers (e.g., telephone repair workers, utility workers, or exterminators) who may come in contact with asbestos in a school are provided information regarding the locations of ACM and suspected ACM assumed to be ACM.

(e) Ensure that warning labels are posted in accordance with § 763.85.

(f) Ensure that management plans are available for inspection and notification of such availability has been provided as specified in the management plan under § 763.83(g).

(g)(1) Designate a person to ensure that requirements under this section are properly implemented.

(2) Ensure that the designated person receives adequate training to perform duties assigned under this section. Such training shall provide, as necessary, basic knowledge of:

- (i) Health effects of asbestos.
- (ii) Detection, identification, and assessment of ACM.
- (iii) Options for controlling ACM.
- (iv) Asbestos management programs.
- (v) Relevant Federal and State regulations concerning asbestos, including those in this Subpart E and those of the Occupational Safety and Health Administration, U.S. Department of Labor, the U.S. Department of Transportation and the U.S. Environmental Protection Agency.

(h) Consider whether any conflict of interest may arise from the interrelationship among accredited personnel and whether that should influence the selection of accredited personnel to perform activities under this subpart.

(i) Consider whether any conflict of interest may arise from the interrelationship among accredited personnel and whether that should influence the selection of accredited personnel to perform activities under this subpart.

§ 763.85 Inspection and re-inspections.

(a) *Inspection.* (1) Except as provided in paragraph (a)(2) of this section, before a local education agency shall inspect each school building that they lease, own, or otherwise use as a school building to identify all locations of friable and nonfriable ACM.

(2) Any building leased or acquired on or after October 12, 1988, that is to be

used as a school building shall be inspected as described under paragraphs (a) (3) and (4) of this section prior to use as a school building. In the event that emergency use of an uninspected building as a school building is necessitated, such buildings shall be inspected within 30 days after commencement of such use.

(3) Each inspection shall be made by an accredited inspector.

(4) For each area of a school building, except as excluded under § 763.99, each person performing an inspection shall:

(i) Visually inspect the area to identify the locations of all suspected ACM.

(ii) Touch all suspected ACM to determine whether they are friable.

(iii) Identify all homogeneous areas of friable suspected ACM and all homogeneous areas of nonfriable suspected ACM.

(iv) Assume that some or all of the homogeneous areas are ACM, and, for each homogeneous area that is not assumed to be ACM, collect and submit for analysis bulk samples under §§ 763.86 and 763.87.

(v) Assess, under § 763.88, friable material in areas where samples are collected, friable material in areas that are assumed to be ACM, and friable ACM identified during a previous inspection.

(vi) Record the following and submit to the person designated under § 763.84 a copy of such record for inclusion in the management plan within 30 days of the inspection:

(A) An inspection report with the date of the inspection signed by each accredited person making the inspection, State of accreditation, and if applicable, his or her accreditation number.

(B) An inventory of the locations of the homogeneous areas where samples are collected, exact location where each bulk sample is collected, dates that samples are collected, homogeneous areas where friable suspected ACM is assumed to be ACM, and homogeneous areas where nonfriable suspected ACM is assumed to be ACM.

(C) A description of the manner used to determine sampling locations, the name and signature of each accredited inspector who collected the samples, State of accreditation, and, if applicable, his or her accreditation number.

(D) A list of whether the homogeneous areas identified under paragraph (a)(4)(vi)(B) of this section are surfacing material, thermal system insulation, or miscellaneous material.

(E) Assessments made of friable material, the name and signature of each accredited inspector making the

★ Fairbanks North Star Borough

809 Pioneer Road

P.O. Box 1267

Fairbanks, Alaska 99707

907/452-4761

February 4, 1988

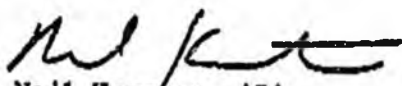
The Honorable Mark Boyer
House of Representatives
P. O. Box V (Mail Stop 3100)
Juneau, AK 99811

Dear Representative Boyer:

The Fairbanks North Star Borough has approximately 2,000,000 square feet of school buildings. Cost for detailed inspection as outlined in the federal register (see attached) has been \$0.25 to \$0.50 per square foot depending on age and complexity of the building. We have estimated \$0.30 to arrive at a total of \$600,000.

Please let me know if further information is desired.

Sincerely,



Neil Kersten, AIA
Director
Department of Public Works

NK5-4/ij

Attachments

cc: Juanita Helms, Borough Mayor
Cindy Marquette, Special Assistant to the Mayor

File: 1988 GIP



EF/original

ANCHORAGE
SCHOOL DISTRICT

4600 DeBarr Avenue
P.O. Box 196614
Anchorage, Alaska 99519-6614
AREA CODE [907] 333-9561

February 25, 1988

SCHOOL BOARD

Mertha Roderick
President

William Frick
Vice President

Jim Robinson
Clerk
Past President
1981-82, 1984-85

Betty Davis
Treasurer
Past President
1985-86

Darryl Jordan
Clerk Pro Tem

Jean Buchanan
Assistant Treasurer
Past President
1983-84, 1986-87

Carol Stolpe
Parliamentarian

SUPERINTENDENT

William Coats, Ph.D.

Representative Mark Boyer
Pouch V
Juneau, Alaska 99811

Attention: Mr. Ed Flannigan

Re: AHERA

Dear Sir:

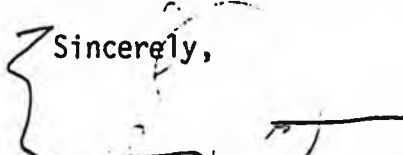
As we discussed over the phone on Wednesday, one of the provisions of the Asbestos Hazardous Emergency Response Act, requires that Local Education Agencies (LEA's) develop management plans to deal with the problem of asbestos containing materials in public facilities.

It is reassuring to learn that our legislators are aware of the cost impact to comply with the law.

While the 30 cents a square foot, being utilized elsewhere in the state, seems artificially high, it may be useful in developing rough order of magnitude cost estimates for completing the plans that must be forwarded to the Governor's office by mid-October of this year.

Attached is a summary comparison of what we believe to be the cost to complete our management plan and the rule of thumb estimate of 30 cents/square foot. Please note the modest projected costs reflect the existence of base line data.

Sincerely,


E. Louis Overstreet, P. E.
Executive Director
Facilities, Maintenance, & Operations

gl
CP5.148
Attachment

cc: William Coats, Superintendent
Richard Arndt, Director of Facilities
Bill Tanner, Director of Maintenance
Sue Miller, Dept. of Education

ANCHORAGE SCHOOL DISTRICT
 AHERA INSPECTION AND MANAGEMENT REPORT
 COST PROJECTIONS

A. Rule of Thumb Estimate:

82 facilities totaling approximately 5,900,000 square feet

$$30¢/\text{sq. ft.} \times 5,900,000 \text{ sq. ft.} = \$1,770,000$$

B. Line Item Estimate:

Staff Training

Technical	\$25,000
Maintenance	\$30,000

Staff Salaries*

3 Technical Persons (F.T.)	\$125,000
5 Technical Persons (P.T.)	\$ 85,000
1 Clerical person (F.T.)	\$ 25,000

Consultants (testing laboratories, cost estimators, designers, etc.)	\$150,000
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Equipment & Supplies	\$ 50,000
----------------------	-----------

Reproduction	<u>\$ 10,000</u>
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\$500,000

* Projected at 7 months, includes payroll burdens.

Note: The work to be performed by staff could be performed by consultants, however, this cost would be 25 - 50 percent higher. Existing staff is familiar with the facilities, planning resources available, and future plans to modify the facilities. Additionally the cost would be recurring as the plan requires updating and monitoring. Also, the District would not be in a position to utilize institutional knowledge if the knowledge existed external to the District.

PROJECT TITLE: AHERA ASBESTOS COMPLIANCE GRANTS			
LOCATION:		COMPLETION DATE:	ELECTION DISTRICT:
APPROPRIATION TO: Educational Finance and Support Services		PROGRAM:	
FUNDING:	CAPITAL REQUEST	OPERATING COSTS	NEW POSITIONS (PFT):
1002 FEDERAL RECEIPTS	_____	_____	_____
1003 GENERAL FUND MATCH	_____	_____	_____
1004 GENERAL FUND	1,000.0	_____	_____
1006 INTER-AGENCY RECEIPTS	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
TOTALS:	1,000.0	_____	_____

PROJECT DESCRIPTION AND JUSTIFICATION:

On October 22, 1986 President Reagan signed into law the Asbestos Hazard Emergency Response Act (AHERA). EPA was required to promulgate regulations by October 1987. This law required that all schools, both public and private be inspected for both friable and non friable asbestos containing building materials (ACBM). This inspection must be performed by an AHERA accredited inspector. The law also requires that if any ACBM is found than an AHERA accredited management planner must write a management plan detailing the location of the ACBM as well as the appropriate response action for that asbestos. There are a number of different response actions. They are stipulated in the EPA regulations and are dependent on the type of ACBM and the extent of damage or the potential for damage of that material. All public and private schools are required to submit copies of their management plans to state governors on or before October 17, 1988. On October 1, 1987 Governor Cowper designated the Department of Education as the agency that would review management plans for the state of Alaska. Failure to submit management plans could result in fines to the schools or school districts of up to \$5000 per day per building.

CP1 CAPITAL PROJECTS DESCRIPTION
PRIORITY <u>1</u> OF <u>3</u>

AGENCY Education-EFSS

Page <u>1</u> of <u>2</u>
Revised Date: _____

FY 89

000065

Introduced: 2/11/88
Referred: Health, Education & Social
Services and Finance

5-1856A

<u>Funding Information</u>	
General Fund	\$2,525,000
Other Funds	-0-
	<u>\$2,525,000</u>

1 IN THE HOUSE

BY BOYER, FRANK, DAVIS,
KOPONEN, MILLER AND NAVARRE

2

HOUSE BILL NO. 463

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6

For an Act entitled: "An Act making a special appropriation to the Department of Education for grants to school districts and regional educational attendance areas for asbestos management plans; and providing for an effective date."

7

8

9

10

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

12

* Section 1. The sum of \$2,525,000 is appropriated from the general fund to the Department of Education for the fiscal year ending June 30, 1989, for grants under AS 14.11.105 - 14.11.132 to assist school districts and regional educational attendance areas to comply with federal regulations adopted under the Asbestos Hazards Emergency Response Act of 1986 (Public Law 99-519) requiring inspection, inventory, and development of management plans for asbestos-containing materials in schools.

19

* Sec. 2. The unexpended and unobligated portion of the appropriation made by this Act lapses into the general fund June 30, 1989.

21

* Sec. 3. This Act takes effect July 1, 1988.