

Leg. Finance-House & Senate Finance Comte Files (1991-1992) 714

STATE OF ALASKA
Department of Corrections
LEGISLATIVE POSITION PAPER
Lloyd Hames, Commissioner

P.O. Box 7, Juneau, AK 99801-2000 (907) 466-8878

Carl Nickel, Legislative Liaison

February 26, 1991

SPONSOR SUBSTITUTE HOUSE BILL NO. 27

"An act relating to the delivery and possession of controlled substances....installation of signs in the vicinity of schools....
"drug-free school zones.

The Department of Corrections supports SSHB No.27. The bill fundamentally addresses the national effort to protect young people and to encourage a drug free school environment.

SSHB No.27 does not have a fiscal impact on Corrections.

FISCAL NOTE:

ZERO
ATTACHED

APPROVED:

L.H. by *Carl Nickel*

Commissioner

DATE:

2-26-91

February 28, 1991

Sponsor: Rep. Bettye Davis

SECTIONAL ANALYSIS
SPONSOR SUBSTITUTE FOR HB 27

"An Act relating to the possession of controlled substances and imitation controlled substances, to misconduct involving controlled substances and imitation controlled substances by minors, and to the provision of information that apprises students about controlled substances and the penalties applicable to misconduct involving controlled substances; and requiring installation of signs in the vicinity of schools declaring the areas to be 'drug free school zones'; and providing for an effective date."

Sections 1 and 3 amend laws defining, respectively, the crimes of misconduct involving a controlled substance in the third and fourth degrees by

(1) broadening to 500 feet around school grounds the geographic area adjacent to a school within which possession of a controlled substance is made a criminal offense, and extending that prohibition to possession occurring on a school bus; and

(2) deleting a condition in current law that the illegal possession in or adjacent to a school bus must be by someone not a minor; the deletion thus broadens the reach of these two criminal provisions to minors. Misconduct in the third degree is a class B felony, misconduct in the fourth degree is a class C felony.

Sections 2 and 4 establishes as affirmative defenses, respectively, for the two offenses above that the alleged offense occurred within a private residence that is situated within 500 foot school grounds perimeter. (An affirmative defense simply means that, as to an issue for which an affirmative defense may be raised, once the state offers some evidence that permits the defendant to use the defense, the defendant has the burden of establishing the defense by a preponderance of the evidence.)

Section 5 defines the terms "school bus" and "school grounds," used in the preceding criminal provisions.

In an adjudication of delinquency of a minor charged with a violation of one of the two preceding criminal provision, Section 9 directs the superior court to order the minor to perform 50 hours of community service, i.e. "work on projects designed to reduce or eliminate environmental damage, protect the public health, or improve public services, lands, forests, park, roads, highways, facilities, or education."

II

Section 6 adds to the duties of the State Board of Education the responsibility of directing the Department of Education to develop and annually distribute to students enrolled in public and private schools an information pamphlet about controlled substances.

III

Section 7 directs the Department of Transportation and Public Facilities to erect "drug-free school zone" signs at locations to which the department has placed school zone signs.

Section 8 assigns the same duty to municipalities that erect official traffic control devices.

Section 10 delays until August 16, 1992, the effective date of the two-sign placement sections, allowing the department and local governments time to prepare and position signs in advance of the 1992-93 school year.



ALASKA ASSOCIATION OF ELEMENTARY SCHOOL PRINCIPALS
ALASKA ASSOCIATION OF SECONDARY SCHOOL PRINCIPALS
ALASKA ASSOCIATION OF SCHOOL ADMINISTRATORS

• ALASKA COUNCIL OF SCHOOL ADMINISTRATORS •
326 Fourth St., Suite 408, Juneau, AK 99801-1101 (907) 586-9702 FAX (907) 586-5879

POSITION STATEMENT

HOUSE BILL 27

ENTITLED: DRUG & ALCOHOL USE BY MINORS/SCHOOL ZONES

The Alaska Council of School Administrators supports having a drug free zone located around a school site.

The Alaska Association of Secondary School Principals and the Alaska Association of Elementary School Principals are very aware of detrimental affects drugs can have on our students and society and have long been involved in fighting the menace of drug abuse in Alaska. We are also very aware of the fact that drug pushers have often found a lucrative market among students who cannot say "no" to drugs.

On the national level a recent survey by the Coalition for Drug-Free School Zones shows that 23 states now have drug-free school zones on the books, and legislation is pending in several other states.

Both the Alaska Association of Secondary Principals and the Alaska Association of Elementary School Principals passed resolutions at their annual conference supporting the drug-free school zone legislation.

ASSOCIATION OF ALASKA SCHOOL BOARDS

316 West 11th Street, Juneau, Alaska 99801-1510 • Tel. (907) 586-1083 • Fax (907) 586-2995

Serving Alaskan Education



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POSITION PAPER

HB 27

IN SUPPORT OF LEGISLATION CREATING A DRUG-FREE SCHOOL ZONE

The Association of Alaska School Boards endorses and supports legislation, such as HB 27, creating a drug free school zone and urges quick passage of such legislation by the Alaska Legislature. At least 23 other states have enacted such legislation with resulting decreases in drug related activity in and around schools.

The Association of Alaska School Boards has a strong commitment to a drug-free school environment in the State of Alaska. However, current Alaska law does not dictate increased penalties associated with possession of drugs on school grounds, or with delivery of, or possession with intent to deliver on school grounds.

AASB also endorses allowing the extent of the zone to be decided by local schools. A flexible boundary zone, decided upon by local schools or a school district, would grant the necessary latitude for districts to determine an effective drug-free school zone and would recognize the differences between Alaska's very small rural villages and larger communities.

2/1/91



NEA-ALASKA

AFFILIATED WITH THE NATIONAL EDUCATION ASSOCIATION

ANCHORAGE REGIONAL OFFICE

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FAIRBANKS REGIONAL OFFICE

2118 CUSHMAN STREET
FAIRBANKS, ALASKA 99701
(907) 456-4435
FAX: (907) 456-2159

February 26, 1991

**To: Representatives Carney and Lincoln, Co-Chairs
Members, House HESS Committee**

Re: HB 27: "An Act relating to the delivery and possession of controlled substances and imitation controlled substances, to misconduct involving controlled substances, imitation controlled substances, and alcohol by minors, and to the provision of information that includes penalties applicable to misconduct involving controlled substances; and requiring installation of signs in the vicinity of schools declaring the areas to be "drug-free" school zones; and providing for an effective date."

NEA-Alaska strongly supports and encourages your favorable consideration of HB 27.

Public schools through-out our nation, unfortunately, have become focal points for those who would encourage illegal and inappropriate use of drugs and alcohol. The eventual solution to the myriad of attendant problems will happen only when the collective conscience of society is raised to such a level that alcohol and substance abuse is unacceptable behavior.

HB 27 properly increases penalties and, even more importantly, defines a process for raising an awareness of them. It is appropriate for the board of education to have a greater responsibility in providing students with specific information about controlled substances.

The creation of "drug-free" school zones is a positive step and represents a statement of public policy that it is time for all of us to deal with this problem.

Thank you for your consideration of our position.

Respectfully submitted,

Bob Manners
Executive Director

Don Oberg
President

cc: **Representative Bettye Davis**



ANCHORAGE
SCHOOL DISTRICT

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

February 27, 1991

SCHOOL BOARD

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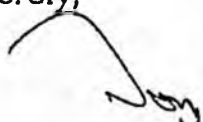
The Honorable Bettye Davis
House of Representatives
P.O. Box V
Juneau, AK 99811

Dear Bettye:

Per your request, the administration reviewed the contents of Sponsor Substitute for House Bill No. 27, and believes that it supports the existing philosophy and practice of the School District relating to the possession of controlled substances and/or imitation controlled substances involving students in our schools. Our current School Board Policy 451.4 - Illegal Drug/Alcohol (see attached), is but one example of our practice in dealing with this topic.

Because we are an educational institution, we believe we have an obligation to take a strong position on the use, sale, and possession of controlled substances by students in our schools and, where possible, provide appropriate education through regular and optional programs to those students impacted. As an educational organization, we would participate with the intent of drug free school zones.

Sincerely,


Thomas C. O'Rourke
Superintendent

mt

cc Carl LaMarr, Deputy Superintendent

Attachment: School Board Policy 451.4

NATIONAL COALITION FOR DRUG-FREE SCHOOL ZONES
State Legislation
June 1990

One of the goals of the National Coalition for Drug-Free School Zones is the passage of state drug-free school zone legislation. This goal is being achieved. To date 42 states plus the District of Columbia have state legislated Drug-Free School Zones. Five states have proposed or pending legislation (i.e., Nebraska, North Carolina, South Dakota, Texas, and Wyoming). Only three states remain without Drug-Free School Zones laws (i.e., Idaho, Montana, and Tennessee).

As each state has adopted unique DFSZ legislation, this legislation brief has been prepared to bring together all of the variations of DFSZ laws nationwide. It is hoped that this material will prove useful to leaders and legislators as they move to improve their DFSZ laws. The following are excerpts of state legislation for Drug-Free School Zones.

Alabama

Division 4.

Sale on or Near School Campus.

§ 13A-12-250. Additional penalty if unlawful sale on or near school campus.

In addition to any penalties heretofore or hereafter provided by law for any person convicted of an unlawful sale of a controlled substance, there is hereby imposed a penalty of five years incarceration in a state corrections facility with no provision for probation if the situs of such unlawful sale was on the campus or within a three-mile radius of the campus boundaries of any public or private school, college, university or other educational institution in this state. (Acts 1987, No. 87-610, p. 1060; Code 1975, § 20-2-79; Acts 1988, 1st Sp. Sess., No. 88-918, p. 512, § 2; Acts 1989, No. 89-950.)

Alaska

Sec. 11.71.030. Misconduct involving a controlled substance in the third degree.

(3) being 18 years of age or older, possesses any amount of a schedule IA or IIA controlled substance within the grounds of or on a parking lot immediately adjacent to a public or private preschool, elementary, junior high, or secondary school.

(b) It is an affirmative defense to a prosecution under (a)(3) of this section that at the time of the possession the school was closed to any organized activity involving persons under 18 years of age. [Nothing in this subsection precludes a prosecution under any other provision of this section or any other section of this chapter.]

HB 27

SENATE FINANCE COMMITTEE REPORT

DATE: 5/3/91

FURTHER:

DATE TURNED

INTO OFFICE: ~~5-12-91~~

The Finance Committee considered CS SS HB 27 (FINANCE)

Possession of controlled substances and imitation controlled substances, to misconduct involving controlled substances and imitation controlled substances by minors; provision of information that apprises students about controlled substances and penalties applicable to misconduct involving controlled substances; requiring municipalities to post signs in the vicinity of schools declaring the areas to be 'drug-free school zones'; efd and recommended:

- replace with _____ CS _____
 - or adopt _____ CS _____
 - attached amendment(s)
 - _____ letter of intent adopted
- same title
 - new title
 - technical title change (HB only)

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

ATTACHES NEW FISCAL NOTE(S):

Dept/Date:

fiscal note(s) _____

zero fiscal note(s) _____

appropriation-no fiscal note

SIGNING DO PASS:

Al Adams
Paul Smith
Quintely

APPROVES PREVIOUS:

Dept/Date:

fiscal note(s) ~~DOE 5-27-91~~

zero fiscal note(s) _____

OTHER RECOMMENDATIONS:

1. *[Signature]*

2. *[Signature] Do pass*

Co-Chairs: Signatures and Recommendations

STATE OF ALASKA
1991 LEGISLATIVE SESSION

Revision Date: _____ Department Affected: Education
 Title: Delivery and possession of controlled substances... 'drug free school zones' BRU: Executive Administration
 Component: Executive Administration
 Sponsor: Bettye Davis
 Requestor: House HESS COMPONENT SERIAL NO.

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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	12.7	11.5	11.5	11.5	11.5	11.5
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	12.7	11.5	11.5	11.5	11.5	11.5

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

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

FUNDING: (Thousands of Dollars)

GENERAL FUND	12.7	11.5	11.5	11.5	11.5	11.5
FEDERAL FUNDS						
OTHER						
TOTAL	12.7	11.5	11.5	11.5	11.5	11.5

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.) This fiscal analysis assumes distribution of the information pamphlet to 112,200 students in the 54 public school districts in the state. Four versions of the pamphlet will be developed, targeting grades K-12, 3-5, 6-8, 9-12.

Prepared By: Mary Hakala Phone: 465-2800
 Division: Commissioner's Office Date: 2/27/91
 Approved by Commissioner: Steve Hole, Acting Commissioner
 Agency: Education Date: 2/27/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 27 (FINANCE)**IN THE LEGISLATURE OF THE STATE OF ALASKA****SEVENTEENTH LEGISLATURE - FIRST SESSION****BY THE HOUSE FINANCE COMMITTEE****Offered: 4/12/91****Referred: Rules****Sponsor(s): REPRESENTATIVES B.DAVIS, Boyer, Ellis, Brown, Lincoln, Mackie, Choquette, C.Davis, Finkelstein, Navarre, Parnell, Ulmer, Gonzales, Donley, Hanley, Taylor, Moyer, Baker****A BILL****FOR AN ACT ENTITLED**

1 "An Act relating to the possession of controlled substances and imitation controlled
2 substances, to misconduct involving controlled substances and imitation controlled substances
3 by minors, and to the provision of information that appries studen's about controlled
4 substances and the penalties applicable to misconduct involving controlled substances; and
5 requiring municipalities to post signs in the vicinity of schools declaring the areas to be
6 'drug-free school zones'; and providing for an effective date."

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

8 * **Section 1.** AS 11.71.030(a) is amended to read:

9 (a) Except as authorized in AS 17.30, a person commits the crime of misconduct
10 involving a controlled substance in the third degree if the person

11 (1) manufactures or delivers any amount of a schedule IIA or IIIA controlled
12 substance or possesses any amount of a schedule IIA or IIIA controlled substance with intent to
13 manufacture or deliver;

1 (2) delivers any amount of a schedule IVA, VA, or VIA controlled substance to
2 a person under 19 years of age who is at least three years younger than the person delivering the
3 substance; or

4 (3) [BEING 18 YEARS OF AGE OR OLDER,] possesses any amount of a
5 schedule IA or IIA controlled substance

6 (A) with reckless disregard that the possession occurs on or within 500
7 feet of school [THE] grounds; or

8 (B) on a school bus [OF OR ON A PARKING LOT IMMEDIATELY
9 ADJACENT TO A PUBLIC OR PRIVATE PRESCHOOL, ELEMENTARY, JUNIOR
10 HIGH, OR SECONDARY SCHOOL].

11 * Sec. 2. AS 11.71.030(b) is repealed and reenacted to read:

12 (b) It is an affirmative defense to a prosecution under (a)(3)(A) of this section that the
13 prohibited conduct took place entirely within a private residence located within 500 feet of the
14 school grounds, and that the prohibited conduct did not involve distributing, dispensing, or pos-
15 sessed with the intent to distribute or dispense a controlled substance for profit. Nothing in this
16 subsection precludes a prosecution under any other provision of this section or any other section
17 of this chapter.

18 * Sec. 3. AS 11.71.040(a) is amended to read:

19 (a) Except as authorized in AS 17.30, a person commits the crime of misconduct
20 involving a controlled substance in the fourth degree if the person

21 (1) manufactures or delivers any amount of a schedule IVA or VA controlled
22 substance or possesses any amount of a schedule IVA or VA controlled substance with intent to
23 manufacture or deliver;

24 (2) manufactures or delivers, or possesses with the intent to manufacture or
25 deliver, one or more preparations, compounds, mixtures, or substances of an aggregate weight
26 of one ounce or more containing a schedule VIA controlled substance;

27 (3) possesses

28 (A) any amount of a schedule IA or IIA controlled substance;

29 (B) 25 or more tablets, ampules, or syrettes containing a schedule IIIA or
30 IVA controlled substance;

31 (C) one or more preparations, compounds, mixtures, or substances of an

1 aggregate weight of three grams or more containing a schedule IIIA or IVA controlled
2 substance;

3 (D) 50 or more tablets, ampules, or syrettes containing a schedule VA
4 controlled substance;

5 (E) one or more preparations, compounds, mixtures, or substances of an
6 aggregate weight of six grams or more containing a schedule VA controlled substance;
7 or

8 (F) one or more preparations, compounds, mixtures, or substances of an
9 aggregate weight of one pound or more containing a schedule VIA controlled substance;

10 (4) [BEING 18 YEARS OF AGE OR OLDER,] possesses a schedule IIIA, IVA,
11 VA, or VIA controlled substance

12 (A) with reckless disregard that the possession occurs on or within 500
13 feet of school [THE] grounds [OF OR ON A PARKING LOT IMMEDIATELY
14 ADJACENT TO A PUBLIC OR PRIVATE PRESCHOOL, ELEMENTARY, JUNIOR
15 HIGH, OR SECONDARY SCHOOL]; or

16 (B) on a school bus;

17 (5) knowingly keeps or maintains any store, shop, warehouse, dwelling, building,
18 vehicle, boat, aircraft, or other structure or place which is used for keeping or distributing
19 controlled substances in violation of a felony offense under this chapter or AS 17.30;

20 (6) makes, delivers, or possesses a punch, die, plate, stone, or other thing which
21 prints, imprints, or reproduces a trademark, trade name, or other identifying mark, imprint, or
22 device of another or any likeness of any of these upon a drug, drug container, or labeling so as
23 to render the drug a counterfeit substance;

24 (7) knowingly uses in the course of the manufacture or distribution of a controlled
25 substance a registration number which is fictitious, revoked, suspended, or issued to another
26 person;

27 (8) knowingly furnishes false or fraudulent information in or omits material
28 information from any application, report, record, or other document required to be kept or filed
29 under AS 17.30;

30 (9) obtains possession of a controlled substance by misrepresentation, fraud,
31 forgery, deception or subterfuge; or

1 (10) affixes a false or forged label to a package or other container containing any
2 controlled substance.

3 * Sec. 4. AS 11.71.040(b) is repealed and reenacted to read:

4 (b) It is an affirmative defense to a prosecution under (a)(4)(A) of this section that the
5 prohibited conduct took place entirely within a private residence located within 500 feet of the
6 school grounds. Nothing in this subsection precludes a prosecution under any other provision
7 of this section or any other section of this chapter.

8 * Sec. 5. AS 11.71.900 is amended by adding new paragraphs to read:

9 (28) "school bus" means a motor vehicle operated by a school district or private
10 school, directly or by contract, to transport students;

11 (29) "school grounds" means a building, structure, athletic playing field,
12 playground, parking area, or land contained within the real property boundary line of a public
13 or private preschool, elementary, or secondary school.

14 * Sec. 6. AS 14.07 is amended by adding a new section to read:

15 Sec. 14.07.181. ADDITIONAL DUTIES OF BOARD. The board shall direct the
16 department to develop, adopt, periodically review, and distribute annually to each student enrolled
17 in a public school an information pamphlet. The pamphlet must be written in easily
18 understandable language, must be designed to educate the student about controlled substances,
19 and must summarize information relating to the criminal penalties applicable to the possession
20 and sale of controlled substances in public schools, in areas adjacent to schools, and on school
21 buses.

22 * Sec. 7. AS 28.01.010(d) is amended to read:

23 (d) A municipality shall erect necessary official traffic control devices on streets and
24 highways within its jurisdiction which as far as practicable conform to the current edition of the
25 Alaska Traffic Manual prepared by the Department of Transportation and Public Facilities. The
26 municipality shall post a sign indicating that the school is a "drug-free school zone" at each
27 location in which it has installed a sign identifying the location of a school.

28 * Sec. 8. AS 47.10.080(b) is amended to read:

29 (b) If the court finds that the minor is delinquent, it shall

30 (1) order the minor committed to the department for a period of time not to
31 exceed two years or in any event extend past the day the minor becomes 19, except that the

1 department may petition for and the court may grant in a hearing (A) two-year extensions of
2 commitment that do not extend beyond the child's 19th birthday if the extension is in the best
3 interests of the minor and the public; and (B) an additional one-year period of supervision past
4 age 19 if continued supervision is in the best interests of the person and the person consents to
5 it; the department shall place the minor in the juvenile facility that the department considers
6 appropriate and that may include a juvenile correctional school, detention home, or detention
7 facility; the minor may be released from placement or detention and placed on probation on order
8 of the court and may also be released by the department, in its discretion, under AS 47.10 200;

9 (2) order the minor placed on probation, to be supervised by the department, and
10 released to the minor's parents, guardian, or a suitable person; if the court orders the minor
11 placed on probation, it may specify the terms and conditions of probation; the probation may be
12 for a period of time, not to exceed two years and in no event extend past the day the minor
13 becomes 19, except that the department may petition for and the court may grant in a hearing

14 (A) two-year extensions of supervision that do not extend beyond the
15 child's 19th birthday if the extension is in the best interests of the minor and the public;
16 and

17 (B) an additional one-year period of supervision past age 19 if the
18 continued supervision is in the best interests of the person and the person consents to it;

19 (3) order the minor committed to the department and placed on probation, to be
20 supervised by the department, and released to the minor's parents, guardian, other suitable person,
21 or suitable nondetention setting such as a family home, group care facility, or child care facility,
22 whichever the department considers appropriate to implement the treatment plan of the
23 predisposition report; if the court orders the minor placed on probation, it may specify the terms
24 and conditions of probation; the department may transfer the minor, in the minor's best interests,
25 from one of the probationary placement settings listed in this paragraph to another, and the
26 minor, the minor's parents or guardian, and the minor's attorney are entitled to reasonable notice
27 of the transfer; the probation may be for a period of time, not to exceed two years and in no
28 event extend past the day the minor becomes 19, except that the department may petition for and
29 the court may grant in a hearing

30 (A) two-year extensions of commitment that do not extend beyond the
31 child's 19th birthday if the extension is in the best interests of the minor and the public;

1 and

2 (B) an additional one-year period of supervision past age 19 if the
3 continued supervision is in the best interests of the person and the person consents to it;

4 [OR]

5 (4) order the minor to make suitable restitution in lieu of or in addition to the
6 court's order under (1), (2), or (3) of this subsection; [.]

7 (5) order the minor committed to the department for placement in an adventure
8 based education program established under AS 47.21.020 with conditions the court considers
9 appropriate concerning release upon satisfactory completion of the program or commitment under
10 (1) of this subsection if the program is not satisfactorily completed; or

11 (6) in addition to an order under (1) - (5) of this subsection, if the
12 delinquency finding is based on the minor's violation of AS 11.71.030(a)(3) or
13 11.71.040(a)(4), order the minor to perform 50 hours of community service; for purposes
14 of this paragraph. "community service" includes work

15 (A) on a project identified in AS 33.30.901; or

16 (B) that, on the recommendation of the city council or traditional
17 village council, would benefit persons within the city or village who are elderly or
18 disabled.

19 * Sec. 9. Section 7 of this Act takes effect August 16, 1992.

ALASKA STATE LEGISLATURE

Office of Majority Whip

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ANCHORAGE AK 99503

PO BOX V
JUNEAU AK 99811
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VICE CHAIR
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REGIONAL AFFAIRS

INTERNATIONAL TRADE
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CHAIR
CHILDREN'S CAUCUS

REPRESENTATIVE BETTYE DAVIS

DISTRICT 14 SEAT B • EAST ANCHORAGE • MULDOON

M E M O R A N D U M

TO: SENATOR JAY KERTTULA AND PAT POURCHOT
CO-CHAIR, SENATE FINANCE COMMITTEE

FROM: REPRESENTATIVE BETTYE DAVIS

DATE: MAY 7, 1991

RE: CS FOR SSHB 27 (FINANCE) - DRUG-FREE SCHOOL ZONES

I respectfully request that CS for SSHB 27 (FINANCE) be scheduled for a hearing before the Senate Finance Committee at your earliest convenience. CS for SSHB 27 (FINANCE) relates to conviction for possession, delivery, and use of controlled substances in school, on or near school grounds, and on school buses.

Criminal justice, education, and substance abuse prevention leaders unanimously agree that the only possible resolution to the current drug epidemic lies in successful reduction of the demand for illegal drugs, particularly among our nation's youth. Of all known drug reduction strategies, the Drug Free School Zones initiative is perhaps the most promising systemic demand-reduction innovation. Drug-Free School Zones can unite community leaders in partnerships with criminal justice, education, and prevention efforts to protect children and enhance the school learning environment by constricting the supply and lessening the demand for drugs. Conceptually, Drug-Free School Zones are designed to create drug-free "safe havens" within geographic zones surrounding schools.

Recognizing the need for greater legislative innovation the following organizations strongly supported the development of drug-free school zones: National School Boards Association, National Association of Secondary School Principals, National Association of Elementary School Principals, National



Association of Partners in Education, National School Safety Center, National Association of State Alcohol and Drug Abuse Directors, Council of State Governments, National Council of Juvenile and Family Court Judges, National Association of Chiefs of Police, and the National Association of Attorneys General.

As of June 1990 forty-two (42) States plus the District of Columbia have institute Drug-Free School Zones. It has been recognized by the National Coalition for Drug-Free School Zones that Alaska already has incorporated the concept of Drug-Free School Zone in its laws. What we hope to do is enhance the law by doing the following.

(1) Amends certain criminal law provisions applicable to possession of controlled substances and imitation controlled substances on or near school grounds and on school buses;

(2) requires the State Board of Education to initiate certain activity apprising the state's public and private students about controlled substances and the criminal penalties applicable to them; and

(3) directs municipalities to install "drug-free school zone" signs near schools.

(4) mandates a court to compel a minor who is convicted or adjudicated of a violation involving possession, delivery, or use of a controlled substance in a school, 500 feet around school grounds, or on a school bus to perform a minimum of 50 hours of community service.

The Association of Alaska School Boards, Alaska Council of School Administrators, NEA-Alaska, Departments of Corrections, Education, Health and Social Services, and Public Safety all support this bill.

Thank you for scheduling this bill.

May 7, 1991

Sponsor: Rep. Bettye Davis

**SECTIONAL ANALYSIS
SPONSOR SUBSTITUTE FOR CS FOR SSHB 27 (FINANCE)**

"An Act relating to the possession of controlled substances and imitation controlled substances, to misconduct involving controlled substances and imitation controlled substances by minors, and to the provision of information that apprises students about controlled substances and the penalties applicable to misconduct involving controlled substances; and requiring installation of signs in the vicinity of schools declaring the areas to be 'drug free school zones'; and providing for an effective date."

Sections 1 and 3 amend laws defining, respectively, the crimes of misconduct involving a controlled substance in the third and fourth degrees by

(1) broadening to 500 feet around school grounds the geographic area adjacent to a school within which possession of a controlled substance is made a criminal offense, and extending that prohibition to possession occurring on a school bus; and

(2) deleting a condition in current law that the illegal possession in or adjacent to a school bus must be by someone not a minor; the deletion thus broadens the reach of these two criminal provisions to minors. Misconduct in the third degree is a class B felony, misconduct in the fourth degree is a class C felony.

Sections 2 and 4 establishes as affirmative defenses, respectively, for the two offenses above that the alleged offense occurred within a private residence that is situated within 500 foot school grounds perimeter. (An affirmative defense simply means that, as to an issue for which an affirmative defense may be raised, once the state offers some evidence that permits the defendant to use the defense, the defendant has the burden of establishing the defense by a preponderance of the evidence.)

Section 5 defines the terms "school bus" and "school grounds," used in the preceding criminal provisions.

In an adjudication of delinquency of a minor charged with a violation of one of the two preceding criminal provision, Section 8 directs the superior court to order the minor to perform 50 hours of community service, i.e. "work on projects designed to reduce or eliminate environmental damage, protect the public health, or improve public services, lands, forests, park, roads, highways, facilities, or education."

II

Section 6 adds to the duties of the State Board of Education the responsibility of directing the Department of Education to develop and annually distribute to students enrolled in public and private schools an information pamphlet about controlled substances.

III

Section 7 directs the Municipality shall post sign indicating that the school is a "drug-free school zone" signs at each location in which it has installed a sign identifying the location of a school.

Section 9 delays until August 16, 1992, the effective date of the two-sign placement sections, allowing the department and local governments time to prepare and position signs in advance of the 1992-93 school year.

HB 33

HOUSE COMMITTEE REPORT

(11)

Date Referred: March 15, 1991

FURTHER REFERRALS:

Date of Committee Action: 4-17-91

The FINANCE Committee considered:

SSHB 33

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 33 PENALTIES FOR VIOLATION OF OSHA LAWS

"An Act relating to penalties for violation of workplace safety laws; and assessing costs for an employer's failure to appear at certain hearings of the OSHA Review Board."

RECOMMENDATIONS:

be replaced with CSSSH 33 (no) the same title
 a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): _____ (Dept)

APPROVES PREVIOUS: _____ (Dept/Date)

fiscal impact _____

fiscal note(s) LABOR 3-15-91

zero fiscal note _____

zero fiscal note(s) _____

SIGNING <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Mark Baye</i>	✓	<i>Eileen P. Meehan</i>		✓	
<i>Kim Foxworth</i>	✓	<i>(CROSS) JERIC</i>		✓	
<i>Mike Spavone</i>	✓	<i>Patricia Barnes</i>		✓	
<i>Steve A. ...</i>	✓	<i>Ben A. ...</i>		✓	
<i>John ...</i>	✓				
<i>John ...</i>	✓				
<i>Ronald J. ...</i>	x				

Mike Spavone *Eileen P. Meehan*
 CHAIRMAN'S SIGNATURE

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 33 (JUDICIARY)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 3/15/91
Referred: Finance

Sponsor(s): REPRESENTATIVES KOPONEN, Brown, Donley, Moyer

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to penalties for violation of workplace safety laws; and assessing costs
2 for an employer's failure to appear at certain hearings of the OSHA Review Board."

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

4 * Section 1. AS 18.60.093 is amended by adding a new subsection to read:

5 (f) If an employer fails without good cause to appear at a hearing held under this section
6 after receiving proper notice of the hearing, the OSHA Review Board may order the employer
7 to pay all reasonable expenses incurred by the board for the hearing, including the board's actual
8 travel expenses and per diem.

9 * Sec. 2. AS 18.60.085 is amended to read:

10 Sec. 18.60.085. PROHIBITION OF UNAUTHORIZED NOTICE OF INSPECTION. A
11 person may not give [NO] unauthorized notice of a department safety or health inspection
12 [MAY BE GIVEN]. A person who gives unauthorized notice of a safety or health inspection,
13 upon conviction, is punishable by a fine of not more than \$7,000 [\$1,000], or by imprisonment
14 for not more than 180 days, or by both.

1 * Sec. 3. AS 18.60.095(a) is amended to read:

2 (a) An employer who knowingly [WILFULLY] or repeatedly violates a provision of
3 AS 18.60.010 - 18.60.105 that is applicable to the employer or a standard or regulation adopted
4 under AS 18.60.010 - 18.60.105 may be assessed by the commissioner a civil penalty of not more
5 than \$70,000 [\$10,000] for each violation. Except when a settlement is negotiated, the
6 commissioner shall assess a minimum penalty of \$5,000 for a violation under this subsection
7 that was committed knowingly.

8 * Sec. 4. AS 18.60.095(b) is amended to read:

9 (b) An employer who receives a citation for a serious violation of a provision of
10 AS 18.60.010 - 18.60.105 that is applicable to the employer or of a standard or regulation
11 adopted under AS 18.60.010 - 18.60.105 shall be assessed by the commissioner a civil penalty
12 of up to \$7,000 [\$1,000] for each violation. For purposes of this subsection, a serious violation
13 is considered to exist if the violation creates in the place of employment a substantial probability
14 of death or serious physical harm. However, a serious violation is not considered to exist if the
15 employer did not, and could not with the exercise of reasonable diligence, know of the presence
16 of the violation.

17 * Sec. 5. AS 18.60.095(c) is amended to read:

18 (c) An employer who receives a citation for a violation of a provision of AS 18.60.010 -
19 18.60.105 that is applicable to the employer or a standard or regulation adopted under
20 AS 18.60.010 - 18.60.105, and the violation is specifically determined not to be of a serious
21 nature, may be assessed by the commissioner a civil penalty of up to \$7,000 [\$1,000] for each
22 violation.

23 * Sec. 6. AS 18.60.095(d) is amended to read:

24 (d) An employer who fails to correct a violation within the period permitted for its
25 correction for which a citation has been issued may be assessed by the commissioner a civil
26 penalty of not more than \$7,000 [\$1,000] for each day during which the failure to correct the
27 violation continues.

28 * Sec. 7. AS 18.60.095(e) is amended to read:

29 (e) An employer who knowingly, [WILFULLY] or repeatedly with criminal negligence,
30 as defined in AS 11.81.900, violates a provision of AS 18.60.010 - 18.60.105 that is applicable
31 to the employer or a standard or regulation adopted under AS 18.60.010 - 18.60.105, and the

1 violation causes death to an employee, upon conviction, is guilty of a class A misdemeanor
2 punishable under AS 12.55, except that the maximum fine that the court may impose on a
3 defendant who is an individual is \$70,000 for a first conviction under this subsection and
4 \$140,000 for a subsequent conviction under this subsection. This subsection does not
5 preclude prosecution brought under AS 11 [BY A FINE OF NOT MORE THAN \$10,000.
6 OR BY IMPRISONMENT FOR NOT MORE THAN SIX MONTHS, OR BY BOTH.
7 HOWEVER, UPON A SECOND CONVICTION AFTER A PRIOR CONVICTION FOR A
8 VIOLATION CAUSING DEATH, AN EMPLOYER IS PUNISHABLE BY A FINE OF NOT
9 MORE THAN \$20,000, OR BY IMPRISONMENT FOR NOT MORE THAN ONE YEAR. OR
10 BY BOTH].

11 * Sec. 8. AS 18.60.095(f) is amended to read:

12 (f) A person who knowingly makes a false statement, representation, or certification in
13 an application, record, report, plan or other document filed or required to be maintained under
14 AS 18.60.010 - 18.60.105, upon conviction, is punishable by a fine of not more than \$70,000
15 [\$10,000], or by imprisonment for not more than six months, or by both.

16 * Sec. 9. AS 18.60.095(g) is amended to read:

17 (g) An employer who violates the posting requirements of this chapter shall be assessed
18 by the commissioner a civil penalty of up to \$7,000 [\$1,000] for each violation.

19 * Sec. 10. AS 18.60.085 and 18.60.095, as amended by secs. 2 - 9 of this Act, apply to violations
20 that occur on or after the effective date of this Act.

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. No. 2
Bill Version CSSSHB 33(JUD)
(H) Publish Date: 3/15/91

Revision Date: _____
Title: "An Act relating to penalties for violation of workplace safety laws;..."
Sponsor: Representative Koponen
Requestor: House Judiciary

Department Affected: Labor
BRU: Labor Standards & Safety
Component: Occupational Safety & Health
COMPONENT SERIAL NO. 970

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL	10.0	10.0				
CONTRACTUAL	20.0	20.0				
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	30.0	30.0	0.0	0.0	0.0	0.0

CAPITAL						
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REVENUE	215.0	86.0	34.0	14.0	6.0	0.0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	30.0	30.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
TOTAL	30.0	30.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

see attached

Prepared by: Robert Libbey, Director Phone: 264-2452
Division: Labor Standards & Safety Date: 3/12/91

Approved by Commissioner: Nancy Bear Usara
Agency: Department of Labor Date: 3/12/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Fiscal Note Analysis for:

"An Act relating to penalties for violation of workplace safety laws..."

This bill would increase the amount of the penalties charged for the violation of workplace safety laws. Because of the increase in penalties, we expect an increase in the number of contested violations and in the number of requests for informal conferences. This increased workload would result in additional travel for existing staff as well as the OSHA Review Board members. Additional legal support for the review board would also be required.

Expenditures

Travel	\$10.0
OSH Review Board (5.0)	
Existing Staff (5.0)	
Contractual	\$20.0
Legal support for Review Board (15.0)	
Legal support for department (5.0)	
<u>Total Cost</u>	<u>\$30.0</u>

These costs should decrease after the first two years if the bill achieves its goal of providing more incentive for employers to voluntarily correct hazards so that we find fewer serious violations. Therefore we should have no additional costs beyond 1993.

Revenues

The department assessed a total of \$300,600 in penalties in FY 90 with a collection rate of approximately 70%. We estimate about \$300,000 in additional penalties would be assessed in FY 92 with the new rates. Assuming our 70% collection rate, revenues would increase by \$210,000.

After the first year, we anticipate revenues would decrease as employers voluntarily correct hazards and fewer violations are detected. Thus, after five years with the new penalties we project the deterrent affect of the higher rates would bring revenues back to what they currently are.

The bill would also permit the collection of expenses incurred when employers fail to appear at an OSH Review Board Hearing. The average daily cost for the OSH Review Board to hold hearings is \$1,000. If it must cancel five days of hearings because employers do not appear at hearings, the Board could ask for \$5,000 in reimbursable expenses from employers. Once employers understand that they may be liable for such costs, the number of cancellations should decrease and therefore, it is expected after the second year, no significant revenue will be raised under this provision.

Assumption: Effective date of July 1, 1991.

**Alaska State Legislature
Representative Niilo Koponen**

Pouch V
Juneau, Alaska 99811
(907) 465-4992

House District 21

119 N. Cushman, Suite 207
Fairbanks, Alaska 99701
(907) 456-8172

POSITION PAPER

HB 33

Both Minor and Gross violations of Alaska's Occupational Safety and Health Statutes remained at the same \$10,000 or lower level since passage of the original legislation in 1973.

In November of 1990 Congress passed legislation requiring the federal Occupational Safety and Health Administration to increase penalties for OSHA violations. Under the State occupational safety and health plan, Alaska is required to raise their standards to comply with the new federal OSHA penalties. If we fail to do so, Alaska could lose its enforcement power to the Federal Agency.

The amendments provide for a maximum of \$70,000 for willful and repeated violations, a minimum of \$5,000 for each willful violation, and a maximum of \$7,000 for serious, violations. This is a substantial increase from earlier penalties and more than doubled the increase in penalties that I originally wanted to raise in this legislation.

Congress believes that this increased maximum penalty will encourage businesses to conform to workplace safety laws and regulations. As businesses adjust to a tight economic environment, it is important that worker health and safety not be sacrificed. Maintaining a safe workplace is less costly than facing the potential of high penalties and paying the costs of accidents and injuries. HB 33 will bring Alaska into conformity with Federal law.

According to the latest statistics, Alaska occupational safety and health injury and illness incidence rate is 43% higher than that of the nation and is now the second highest in the nation.

It is my sincere hope that this legislation will result in fewer injuries, fewer fines and lower workers' compensation insurance costs. The continually rising number of injuries and fatalities to Alaskan workers testifies to the ineffectiveness of our present statutes. So long as it is cheaper to pay the fine than to correct a dangerous situation we cannot expect improvement in the workplace.

STATE OF ALASKA

DEPARTMENT OF LABOR

OFFICE OF THE COMMISSIONER

S WALTER J. HICKEL, GOVERNOR

P.O. BOX 21149
JUNEAU, ALASKA 99802-1149
PHONE: (907) 465-2700

FAX: (907) 465-2784

March 12, 1991

Honorable Dave Donley, Chairman
Judiciary Committee
House of Representatives
P. O. Box V
Juneau, Alaska 99801

Dear Representative Donley:

Apparently there has been some confusion over HB 33, to increase occupational safety and health penalties, with regard to which provisions are necessary to adopt in order to bring Alaska into parity with the federal Occupational Safety and Health Act, and which are discretionary. There are three issues contained in the bill. These follow:

1. The penalty increases set out in Sections 3, 4, 5, 6 and 9 of the draft Judiciary committee substitute correspond to the federal increases and need to be adopted to insure State compliance with federal statutes.
2. The increases proposed in Section 2, 7 and 8, are not mandated. They relate to criminal penalties which were not increased at the federal level. Alaska has never had a criminal conviction under its occupational safety and health statutes. For this reason, we do not feel strongly whether or not the criminal penalties are increased at this time.
3. Section 1 of the bill was requested by the department on behalf of the Occupational Safety and Health Review Board which hears appeals of violations and penalties. A hearing before the Board is scheduled at an employer's specific request. Accordingly, it is appropriate and reasonable for the employer to appear at such a hearing.

To further compound the issue, on March 1, 1991, the federal Occupational Safety and Health Administration issued a change in their methodology for adjusting penalties. This change came subsequent to the bill's introduction, and may have some implications which need to be clarified.

March 12, 1991

A review of the new procedures indicates that although the maximum penalty for occupational safety and health violations has increased seven fold, the administrative procedures OSHA started using on March 1, 1991 will not result in a seven fold increase in the actual penalties that will be assessed.

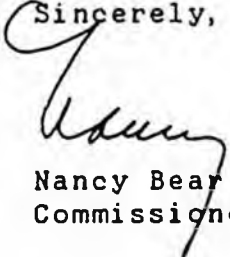
OSHA's new procedures will first provide an adjustment of from 30 to 70 percent based on the severity of the injury that could occur and the probability of that injury occurring. It would then allow up to an additional 95 percent reduction for size of employer, the good faith the employer shows in correcting the violation and for previous inspection history. The current penalty adjustment methodology used by the State does not provide for any adjustment based on severity and probability and only provides for an 80 percent reduction for the items listed above.

Attached are comparisons of the method currently used by the State and the method which federal OSHA started using on March 1, 1991 based on actual violations and penalties.

Inasmuch as the Department will be tailoring its penalty adjustment procedures after those of federal OSHA, we will be revising our fiscal note to decrease our original revenue projections, which were based on a seven-fold increase in penalties assessed. The revised fiscal note will also reflect a decrease in our proposed operating expenditures since, under the revised penalty methodology, we would not expect an increase in contest activity to the extent originally projected.

Thank you, and if additional information or clarification is needed, please let me know.

Sincerely,



Nancy Bear Usera
Commissioner

Enclosure

cc: Honorable Niilo Koponen

A COMPARISON OF CURRENT PENALTY ADJUSTMENT PROCEDURES
AND THOSE THAT ARE BEING USED BY
FEDERAL OSHA AFTER THE INCREASE IN MAXIMUM PENALTY AMOUNTS

This comparison is based on actual State OSH cases:

Case # 1:

Violation description: Guardrail was not installed on scaffolding that was approximately 18 feet above the ground. This is a violation of paragraph 05.120 (b)(1)(D) of the Construction Safety Code and is classified as a **serious** violation.

Employer background: This employer is a construction contractor who employs seven employees. All seven employees use the scaffold on a daily basis. When the violation was brought to the employer's attention, he corrected the hazard immediately. The employer had not been previously inspected by the Occupational Safety and Health Section.

Current Penalty Adjustment Procedure:

* The \$1,000 maximum penalty for serious violations is reduced by 40 percent because the employer employs fewer than 10 employees; by another 30 percent for good faith as the employer immediately corrected the violation; and by another 10 percent because the employer did not have a previous record of occupational safety and health violations. The final assessed penalty is therefore \$200.

Federal OSHA Penalty Procedure (the one that will be adopted by the State if HB 33 becomes law.):

* The compliance officer must first make a determination as to the severity of the injury that is likely to occur and the probability of the accident occurring. In the above case the severity of the injury is high because a fall of 18 feet can result in death or a permanent disability injury and the probability of the accident occurring is also high because seven employees use the scaffold daily for several hours. Under the OSHA procedure, the \$7,000 maximum penalty would first be reduced to \$5,000 base on the high severity/probability determination. The \$5,000 would then be adjusted 60 percent for size of employer (less than 25 employees), 25 percent for good faith (immediate correction of hazard) and 10 percent for history (no previous serious violations). This would result in a reduction of 95 percent and the final assessed penalty would be \$250.

Case # 2:

Violation description: Heavy engine and automobile parts are stored and stacked in an unstable manner. This is a violation of paragraph 01.0701(b) of the General Safety Code and is classified as a serious violation.

Employer background: This employer is a corporation that employs 609 employees. The engine and automobile parts are stored in a warehouse that is used by five employees. When the hazard was brought to the attention of the employer, he showed reluctance in correcting the violation. This employer has been inspected in the past and each inspection revealed several serious violations.

Current Penalty Adjustment Procedure:

* The \$1,000 maximum for serious violation is reduced by 20 percent for good faith as the employer was reluctant to correct the hazard but indicated that he would do so. No reduction is provided for size as the employer employs over 100 employees and no reduction is provided for history because previous inspections revealed other serious violations. The \$1,000 penalty is reduced 20 percent and a penalty of \$800 is assessed.

Federal OSHA Penalty Procedure:

* The violation is of medium severity as the injury, a blow to the body or head from a falling part, may result in hospitalization but the injury would result in only a limited period of disability. The probability of the injury is low because only one of the five employees in the warehouse is required to enter the area where the automobile parts are stored for approximately half hour a day. Under the federal OSHA procedure the \$7,000 maximum penalty would be reduced to \$2,000 based on the severity/probability determination. The \$2,000 would then be reduced by 15 percent for good faith. No reduction would be provided for size as the employer employs more than 250 employees and no reduction for history would be provided because previous inspections revealed serious violations. The final assessed penalty would therefore be \$ 1,700.

Case # 3:

Violation description: The dead front was missing from the main circuit breaker panel located in the process area of a fish processing plant. This is a violation of paragraph 03.200(g)(2)(A), Electric Safety Code.

Employer background: This employer operates a seafood processing plant employing 20 employees. The employer was cited for the same violation during an inspection conducted two years ago. This is, therefore a repeat violation.

Current Penalty Adjustment Procedure:

* The \$1,000 maximum penalty for serious violation is multiple by two because it is a repeat violation. The \$2,000 is then reduced by 30 percent for size of employer. No reduction is given for good faith or history because this is a repeat violation. The final assessed penalty is therefore \$ 1,400.

Federal OSHA Penalty Procedure:

* A determination of the severity of the injury and the probability that the accident would occur for this serious violation would first be made. The severity is medium as the injury, an electric shock, may result in hospitalization but the injury would only result in a limited period of disability. The probability is low as only one employee, the maintenance foreman, may be required to go near the circuit breaker. Under federal OSHA's procedure the \$7,000 maximum penalty would be reduced to \$2,000 based on the severity/probability determination. The \$2,000 would then be multiplied by 2 for the repeat violation for a \$4,000 penalty. It would then be reduced by 40 percent for the size of the employer. No reduction would be given for good faith or history because of the repeat violation. The final assessed penalty would, therefore, be \$ 2,400.

Case # 4:

Violation description: A automobile body repair shop is inspected and is cited for improper storage of combustible substances per paragraph 01.1002 (d)(2)(G). This violation is classified as other-than-serious. When the employer fails to notify the Department that he has corrected the violation, a follow-up inspection is conducted and it is discovered that the employer failed to correct the violation. The department cites the employer for a "Failure to Abate" violation.

Employer background: This automobile body repair shop employer employs five employees.

Current Penalty Adjustment Procedure:

* As there was no penalty assessed for this violation when it was first cited, the department starts with a \$100 base. This base is multiplied by 10 as the employer allowed this hazard to go uncorrected for over 10 days (the maximum number of times the statute allows the department to multiple a failure to abate penalty is 10 days). The \$1,000 penalty is then reduced by 40 percent for size of the employer for a final assessed penalty of \$600.

Federal OSHA Penalty Procedure:

* OSHA starts with a penalty of \$1,000 when no penalty was originally assessed. This penalty is then multiplied by 10 (see reason above) for a unadjusted penalty of \$10,000. This amount will then be reduced by 60 percent for size of the employer for a final assessed penalty of \$ 4,000.

Case # 5:

Violation description: An employee is killed in an industrial accident at a laundry. The department's investigation reveals that the death was caused when an employee reached into a commercial washer during the spin cycle and was torn to death when the machine failed to stop. This is a violation of paragraph 11.110(f)(2)(A)(i) of the Laundry Safety Code which requires all commercial washing machines to have an automatic stopping device when they are opened when they are operating. The investigation reveals that the employer was well aware of this requirement and was warned by several employees that this was a dangerous hazard. The department, based on this information, determined that this was a willful violation.

Employer background: This employer operates a chain of laundry and dry cleaning establishments and employs 50 employees throughout the State.

Current Penalty Adjustment Procedure:

* The \$10,000 maximum penalty for willful violation is not adjusted as it is the department's current methodology does not reduce penalties for violations that can be determined to have caused a serious disability injury or death to an employee. The final assessed penalty is \$10,000.

Federal OSHA Penalty Procedure:

* A determination will be made as to the severity of the injury and the probability of the injury occurring. In the above case the severity would be consider high and the probability high because five employees were required to use the defective machine several times during the day. Under OSHA procedures, the starting penalty would be \$5,000 for the violation. This base would be multiplied by seven because it is a willful violation. The \$35,000 unadjusted penalty would be adjusted 40 percent for size. No reduction will be provided for good faith because the violation is classified as willful. A 10 percent adjustment for history would be given because this was the first inspection conducted at this employer's work site. The \$35,000 penalty would therefore be reduced by 50 percent for a final assessed penalty of \$ 17,500.

FATALITY RATES 1983 - 1989

	United States	Alaska
1983	5.6	15.3
1984	6.4	14.7
1985	6.2	16.1
1986	5.9	14.8
1987	5.4	29.0
1988	4.4	15.4
1989	-	8.3

ILLNESS RATES USING A BASE OF 10,000 WORKERS

	United States	Alaska
1984	18.4	21.4
1985	18.0	28.7
1986	19.2	23.2
1987	26.4	38.6
1988	32.2	31.2
1989	-	53.7

Comparison of Alaska and US Injury/Illness Rate by Industry.

	Ak US 1985	% Above US	Ak US 1986	% Above US	Ak US 1987	% Above US	Ak US 1988	% Above US	Ak US 1989	% Above US
Oil & Gas Extraction	9.7 10.1	-4	8.2 8.1	1	9.0 8.3	8	8.6 8.3	4	9.5 7.6	25
Construction	19.4 15.2	28	16.2 15.2	7	17.1 14.7	16	13.6 14.6	-7	17.6 14.3	23
Seafood Proc - Canned	30.3 -		34.3 19.1	30	35.2 26.4	33	37.5 23.8	33	39.3 25.9	52
Seafood Proc - Frozen	33.9 19.2	77	33.0 18.2	31	35.3 18.8	38	27.1 19.7	38	33.2 24.3	37
Lumber & Wood Product	34.6 18.5	109	33.9 18.9	169	48.6 18.9	157	30.3 19.5	153	41.1 18.4	123
Transport. & Utility	11.3 8.6	31	11.3 8.2	38	10.9 8.4	30	10.1 8.9	13	15.8 9.2	72
Wholesale Trade	10.9 7.2	51	6.0 7.2	11	9.4 7.4	27	10.7 7.6	41	10.3 7.7	34
Retail Trade	9.8 7.5	31	9.2 7.8	18	9.3 7.8	19	10.1 7.9	28	10.7 8.1	32
Services	5.5 5.4	2	5.4 5.3	2	6.5 5.5	18	6.0 5.4	11	5.9 5.5	7

U.S. Department of Labor

Assistant Secretary for
Occupational Safety and Health
Washington, D.C. 20210



JAN 23 1991

MEMORANDUM FOR: STATE DESIGNEES

FROM: GERARD F. SCANNELL
Assistant Secretary

SUBJECT: Statutory Increase in Penalty Levels

A handwritten signature in dark ink, appearing to read "G. Scannell", is written over the typed name and title of the sender.

As you are aware, the Omnibus Budget Reconciliation Act of 1990, that was effective on November 5, amended section 17 of the Occupational Safety and Health Act to provide for increased penalty levels for violations of the Act. The excerpt of the Conference Report on the Budget Act which discusses penalties was sent to you on October 31. The amendments provide for a maximum of \$70,000 for willful and repeat violations, a minimum of \$5,000 for each willful violation, and a maximum of \$7,000 for serious, other than serious, failure to abate, and posting violations.

The Congress (as evidenced by the Conference Report) believes that the increased maximum penalty authority will serve as an important deterrent and will encourage employers to comply with safety and health regulations before they are inspected. Employers should realize that maintaining a safe and healthful workplace is less costly than facing the potential of high penalties, in addition to the major cost of accidents and injuries.

Since the \$5,000 floor for willful penalties is within currently authorized limits, in the interest of national consistency, the States are encouraged to implement it administratively, concurrently with Federal OSHA's implementation. (The Conference Report makes clear that negotiated settlement of willful violations may result in a lower penalty.) OSHA has developed procedures for implementing the new penalty calculations, in consultation with State plan representatives, and will begin proposing penalties at the new levels on all inspections beginning on ~~March 1, 1991~~ after March 1, 1991 for violations which occurred on or after November 5, 1990. (A copy of the final directive is attached, for your information.)

As you are aware, State plan approval criteria in section 18 of the Act and 29 CFR 1902 require the States to provide for standards and enforcement of standards which are at least as effective as OSHA's standards and enforcement. Further, OSHA regulations at 29 CFR 1953.20 and 1953.23 provide that when there is a change in the Federal program (examples given include

revisions in enforcement policies or procedures, and legislative or regulatory changes) the States are required to implement corresponding changes within six months of the Federal change. The time limit may be extended if the Assistant Secretary determines that a State has made a timely and specific showing that good cause exists to extend the time limitation for that State.

We recognize that this is a significant change in the OSHA program for both the Federal and State programs; and that State legislative action is necessary to effect a comparable change. States, in order to be considered at least as effective as the Federal program, must have statutory penalty authority for their private sector programs that at least reflects the new Federal maximums. We urge all States to try to effect this statutory change within the required six months and are available to provide any assistance you may need. However, we also recognize that because of differing State legislative schedules, etc., some States may be unable to accomplish such a change within six months. OSHA will work with each State on an individual basis to effect the required increases as soon as practicable. You also should be aware that State implementation of the new penalty authority, once enacted, need not be identical to Federal procedures, though State performance will be evaluated by OSHA to assure equivalent effectiveness.

Please notify your respective Regional Administrator as soon as possible, if you foresee any problems in accomplishing this legislative change.

Attachment

cc: Regional Administrators

Department of Labor
Proposed Amendments to House Bill 33

1. Amend line 13 on page 1 to read:

than \$70,000 [\$10,000] for each violation. A minimum penalty of \$5,000 must be assessed under this section.

2. Page 2, line 4:

Change \$3,000 to \$7,000

3. Page 2, line 13:

Change \$3,000 to \$7,000

4. Page 2, line 18:

Change \$3,000 to \$7,000

5. Page 2, line 24:

Change \$30,000 to \$70,000

6. Page 2, line 26:

Change \$60,000 to \$140,000

7. Page 2, line 31:

Change \$30,000 to \$70,000

8. Page 3, line 4:

Change \$3,000 to \$7,000

News

United States
Department
of Labor

Office of Information

Washington, D.C. 20210

NBU ✓

Sp Asst	
So Asst	
Info Off	
Adm Asst	
Int Asst	
ESD	
LS&S	
W/C	
CC: Reg. Kaganen	
CC:	



Occupational Safety and Health Administration

USDL: 91-28

CONTACT: Frank Kane
OFFICE: (202) 523-8151
AFTER HOURS: (703) 360-7080

FOR RELEASE: 1:00 PM EST
Thursday, Jan. 24, 1991

OSHA ANNOUNCES PROCEDURES FOR IMPLEMENTING NEW SYSTEM OF CIVIL PENALTIES

Procedures for implementing its new system of civil monetary penalties for violations of occupational safety and health law and regulations were announced today by the Occupational Safety and Health Administration (OSHA) of the U.S. Department of Labor.

Congress enacted a seven-fold increase in the maximum limits for such penalties in the Omnibus Budget Reconciliation Act of 1990. The maximum allowable civil penalty now is \$70,000 for each willful or repeated violation; and \$7,000 for each serious or other-than-serious violation as well as \$7,000 for each violation of the posting requirements and \$7,000 for each day beyond a stated abatement date for failure to correct a violation.

Assistant Secretary of Labor Gerard F. Scannell, who heads OSHA, said, "I want to emphasize that these amounts are ceilings--not floors. We will not automatically assess penalties that are seven times what they were previously, although there will be some increases."

He added that OSHA's basic approach will remain the same---striving for voluntary compliance by America's employers with occupational safety and health requirements.

The new civil penalty policy will be applicable to citations issued as the result of inspections initiated after March 1, 1991, for violations occurring after Nov. 5, 1990---the effective date of the Budget Reconciliation Act.

The procedures for implementing the new penalty policy are contained in a new chapter for OSHA's Field Operations Manual which is being distributed to all the agency's regional and area offices.

As in the past, when calculating penalties, OSHA will take into account these factors: the gravity of the violation; the size of the employer as determined by the number of employees; the employer's good faith as principally demonstrated by efforts to implement a sound, effective workplace safety and health program such as given in the voluntary "Safety and Health Management Guidelines" issued by OSHA in January, 1989; and the employer's past history of compliance with the Occupational Safety and Health Act and OSHA regulations.

"The largest monetary penalties will be reserved for those employers who demonstrate the least concern with their workers' safety and health and who expose those workers to the most serious hazards," Scannell said.

This is in line with Congress's aim in establishing larger maximum penalties as a deterrent to employers who might otherwise decide to ignore workplace safety and health requirements.

To ensure that the most flagrant violators are in fact fined at an effective level, a minimum penalty of \$5,000 for a willful violation of the OSH Act was adopted by Congress. Specific language in the legislative history of the Budget Reconciliation Act, however, gives OSHA the discretion to adjust this amount during a settlement process.

The new penalty system also will apply to those states with OSHA-approved state occupational safety and health programs, under the Congressional direction that these state plans must be "as least as effective" as the national plan. The participating states are being given a reasonable time to implement the new penalty structure which takes into account the states' legislative calendars.

###

HB 33

SENATE FINANCE COMMITTEE REPORT

DATE: 5/9/92

FURTHER:

DATE TURNED INTO OFFICE:

5/11/92

The Finance Committee considered CS SSB 33 (JUDICIARY) am

"An Act relating to penalties for violation of workplace safety laws; and assessing costs for an employer's failure to appear at certain hearings of the OSHA Review Board."

and recommends:

- replace with _____ CS _____ (FINANCE)
- or adopt previous SCS C SSB 33 (JUD)
- attaches amendment(s)

- same title
- new title
- technical title change (HB only)

adopts _____ Letter of Intent

further referral to the _____

do pass

do not pass

no recommendation

individual recommendations

NEW FISCAL NOTES: Dept/Date

zero fiscal notes _____

fiscal notes _____

appropriation--no fiscal note

PREVIOUS FISCAL NOTES: Dept/Date

zero fiscal notes _____

fiscal notes Debar 15.0 1-10-92

DO PASS:

OTHER RECOMMENDATIONS:

1. *[Signature]*

Co-Chair: Signature/Recommendation

2. *[Signature]*

Co-Chair: Signature/Recommendation

FISCAL NOTE

5-11-92

STATE OF ALASKA
1992 LEGISLATIVE SESSION

REPORTED OUT OF

Bill NO :

SCS CSSSHB 33(Jud)

Revision Date: _____
Title: " An Act relating to penalties for violation of workplace safety laws..."
Sponsor: Representative Koponen, et.al.
Requestor: Senate Finance

Department Affected: Labor
BRU: Labor Standards & Safety
Component: Occupational Safety & Health
COMPONENT SERIAL NO. 970

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	15.0	15.0				
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	15.0	15.0	0.0	0.0	0.0	0.0

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

REVENUE	224.0	172.0	86.0	22.0	6.0	0.0
FUND SOURCE:	GF #1004	GF #1004	GF #1004	GF #1004	GF #1004	

FUNDING: (Thousands of Dollars)

GENERAL FUND	15.0	15.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
TOTAL	15.0	15.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

See attached

Prepared by: Richard Arab, Deputy Director

Phone: 465-4855

Division: Labor Standards & Safety

Date: 5/9/92

Approved by Commissioner: C. W. Mahlen

Agency: Department of Labor

Date: 5/9/92

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Fiscal Note Analysis for:

"An Act relating to penalties for violation of workplace safety laws..."

This bill would increase the amount of the penalties charged for the violation of workplace safety laws. Because of the increase in penalties, we expect an increase in the number of contested violations and in the number of requests for informal conferences. We estimate an additional \$15,000 of legal support for the OSH review board would be needed in FY 93 and FY 94. These costs should decrease after the first two years if the bill achieves its goal of providing more incentive for employers to voluntarily correct hazards so that we find fewer serious violations. Therefore, we would have no additional costs beyond 1994.

Revenues

The department assessed a total of approximately \$ 292,000 in penalties in FY 91 with a collection rate of approximately 80%. Since Federal OSHA started to assess higher penalties starting in March, 1991, their average penalty amount has increased by approximately 95%. Assuming that Alaska will have the same experience as OSHA, we estimate that approximately \$ 280,000 in additional penalties would be assessed in FY 93. Assuming our 80% collection rate, revenue would increase by approximately \$ 224,000.

After the first year, we anticipate revenue would decrease as employers voluntarily correct hazards and fewer violations are detected. Thus, after five year with the new penalties, we project the deterrent affect of the higher rates would bring revenues back to what they currently are.

The reason that federal OSHA penalties have not increased seven fold is that they have adopted a penalty adjustment policy that significantly lowers penalties based on factors such as severity of the violation; good faith of the employer in correcting the violation; the employer's past history of violations; and the size of the employer's work force. If HB 33 is enacted the Department will adopt the same adjustment policy. The following is an explanation of the adjustment method:

* The penalty is adjusted based on the severity of the injury that could occur and the probability of that injury occurring. OSHA has developed a formula that will reduce the \$7,000 maximum to a high of \$5,000 and a low of \$1,500.

* The adjusted penalty based on severity and probability will then be adjusted further based on size of employer, good faith and history. The maximum reduction of 95% can be provided through these factors.

For example, an employer with 50 employees is cited for a serious violation because heavy engine and automotive parts were stored and stacked in an unstable manner. The following penalty adjustment would occur:

* The violation is of medium severity as the injury, a blow to the body or head from a falling part, may result in hospitalization but the injury would result in only a limited period of disability. The probability of the injury is low because only two employees must enter the warehouse where these automotive parts are stored for approximately one hour a day. The \$7,000 penalty would be reduced to \$2,000 based on the severity/probability determination. The \$2,000 would then be reduced by 25% because the employer exhibited good faith and corrected the violation immediately. It would be further reduced by 40 percent because the employer only has 50 employees and it would be reduced by a further 10 percent because the employer had no history of violations with the department. Thus the final assessed penalty would be \$ 500.

It should be noted that the states of Washington, Oregon, California, Utah, North Carolina, Maryland, Indiana, Tennessee, and Nevada have passed legislation to increase occupational safety and health penalties to come into compliance with the OSHA higher penalties and the other states with occupational safety and health state jurisdiction have legislation pending to conform with the higher penalty rates.

The Bill would also permit the collection of expenses incurred when employers fail to appear at an OSH Review Board Hearing. The average daily cost for the OSH Review Board to hold hearings is \$1,000. If it must cancel five days of hearings because employers do not appear at hearings, the Board could ask for \$5,000 in reimbursable expenses from employers. Once employers understand that they may be liable for such costs, the number of cancellations should decrease and therefore, it is expected after the second year, no significant revenue will be raised under this provision.

SENATE CS FOR CS FOR SS FOR HOUSE BILL NO. 33 (JUDICIARY)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 5/9/92
Referred: Finance

Sponsor(s): REPRESENTATIVES KOPONEN, Brown, Donley, Moyer

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to penalties for violation of workplace safety laws; and assessing costs
2 for an employer's failure to appear at certain hearings of the OSHA Review Board."

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

4 * Section 1. AS 18.60.085 is amended to read:

5 Sec. 18.60.085. PROHIBITION OF UNAUTHORIZED NOTICE OF INSPECTION. A
6 person may not give [AN] unauthorized notice of a department safety or health inspection
7 [MAY NOT BE GIVEN]. A person who gives unauthorized notice of a safety or health
8 inspection, upon conviction, is punishable by a fine of not more than \$7,000 [\$1,000], or by
9 imprisonment for not more than 180 days, or by both.

10 * Sec. 2. AS 18.60.093 is amended by adding a new subsection to read:

11 (f) If an employer fails without good cause to appear at a hearing held under this section
12 after receiving proper notice of the hearing, the OSHA Review Board may order the employer
13 to pay all reasonable expenses incurred by the board for the hearing, including the board's actual
14 travel expenses and per diem.

1 * Sec. 3. AS 18.60.095(a) is amended to read:

2 (a) An employer who wilfully or repeatedly violates a provision of AS 18.60.010 -
3 18.60.105 that is applicable to the employer or a standard or regulation adopted under
4 AS 18.60.010 - 18.60.105 may be assessed by the commissioner a civil penalty of not more than
5 \$70,000 [\$10,000] for each violation. Except when a settlement is negotiated, the
6 commissioner shall assess a minimum penalty of \$5,000 for a violation under this subsection
7 that was committed wilfully.

8 * Sec. 4. AS 18.60.095(b) is amended to read:

9 (b) An employer who receives a citation for a serious violation of a provision of
10 AS 18.60.010 - 18.60.105 that is applicable to the employer or of a standard or regulation
11 adopted under AS 18.60.010 - 18.60.105 shall be assessed by the commissioner a civil penalty
12 of up to \$7,000 [\$1,000] for each violation. For purposes of this subsection, a serious violation
13 is considered to exist if the violation creates in the place of employment a substantial probability
14 of death or serious physical harm. However, a serious violation is not considered to exist if the
15 employer did not, and could not with the exercise of reasonable diligence, know of the presence
16 of the violation.

17 * Sec. 5. AS 18.60.095(c) is amended to read:

18 (c) An employer who receives a citation for a violation of a provision of AS 18.60.010 -
19 18.60.105 that is applicable to the employer or a standard or regulation adopted under
20 AS 18.60.010 - 18.60.105, and the violation is specifically determined not to be of a serious
21 nature, may be assessed by the commissioner a civil penalty of up to \$7,000 [\$1,000] for each
22 violation.

23 * Sec. 6. AS 18.60.095(d) is amended to read:

24 (d) An employer who fails to correct a violation within the period permitted for its
25 correction for which a citation has been issued may be assessed by the commissioner a civil
26 penalty of not more than \$7,000 [\$1,000] for each day during which the failure to correct the
27 violation continues.

28 * Sec. 7. AS 18.60.095(e) is amended to read:

29 (e) An employer who wilfully or repeatedly violates a provision of AS 18.60.010 -
30 18.60.105 that is applicable to the employer or a standard or regulation adopted under
31 AS 18.60.010 - 18.60.105, and the violation causes death to an employee, upon conviction, is

1 punishable by a fine of not more than \$10,000, or by imprisonment for not more than six months,
2 or by both. However, upon a second conviction after a prior conviction for a violation causing
3 death, an employer is punishable by a fine of not more than \$20,000, or by imprisonment for not
4 more than one year, or by both. This subsection does not preclude prosecution of the
5 employer under AS 11.

6 * Sec. 8. AS 18.60.095(f) is amended to read:

7 (f) A person who knowingly makes a false statement, representation, or certification with
8 the intent to mislead in an application, record, report, plan or other document filed or required
9 to be maintained under AS 18.60.010 - 18.60.105 is guilty of unsworn falsification [, UPON
10 CONVICTION, IS PUNISHABLE BY A FINE OF NOT MORE THAN \$10,000, OR BY
11 IMPRISONMENT FOR NOT MORE THAN SIX MONTHS, OR BY BOTH].

12 * Sec. 9. AS 18.60.095(g) is amended to read:

13 (g) An employer who violates the posting requirements of this chapter shall be assessed
14 by the commissioner a civil penalty of up to \$7,000 [\$1,000] for each violation.

15 * Sec. 10. AS 18.60.085, as amended by sec. 1 of this Act, and AS 18.60.095, as amended by
16 secs. 3 - 9 of this Act, apply to violations that occur on or after the effective date of this Act.

FISCAL NOTE

No. 3

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL N 1 Version: SCSC555 HB 33(xtc)

(S) Publish Date: 2-5-92

Revision Date: _____
Title: " An Act relating to penalties for violation of workplace safety laws..."
Sponsor: Representative Koponen, et.al.
Requestor: _____

Department Affected: Labor
BRU: Labor Standards & Safety
Component: _____
Occupational Safety & Health
COMPONENT SERIAL NO. 970

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	15.0	15.0				
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	15.0	15.0	0.0	0.0	0.0	0.0

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

REVENUE	229.0	172.0	86.0	22.0	6.0	0.0
FUND SOURCE:	GF #1004	GF #1004	GF #1004	GF #1004	GF #1004	GF #1004

FUNDING: (Thousands of Dollars)

GENERAL FUND	15.0	15.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
TOTAL	15.0	15.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

See attached

Changes in CSHB 33 (SJR) reflect NO FISCAL CHANGE from the original fiscal note. This fiscal note is appropriate.

1/10/92 CA
date Comte Aide (initial)

Prepared by: Richard Arab, Deputy Director

Division: Labor Standards & Safety

Phone: 465-4855

Date: 1/10/92

Approved by Commissioner: John G. Abshire, Acting Commissioner

Agency: Department of Labor

Date: 1/10/92

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Fiscal Note Analysis for:

"An Act relating to penalties for violation of workplace safety laws..."

This bill would increase the amount of the penalties charged for the violation of workplace safety laws. Because of the increase in penalties, we expect an increase in the number of contested violations and in the number of requests for informal conferences. We estimate an additional \$15,000 of legal support for the OSH review board would be needed in FY 93 and FY 94. These costs should decrease after the first two years if the bill achieves its goal of providing more incentive for employers to voluntarily correct hazards so that we find fewer serious violations. Therefore, we would have no additional costs beyond 1994.

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After the first year, we anticipate revenue would decrease as employers voluntarily correct hazards and fewer violations are detected. Thus, after five year with the new penalties we project, the deterrent affect of the higher rates would bring revenues back to what they currently are.

The reason that federal OSHA penalties have not increased seven fold is that they have adopted a penalty adjustment policy that significantly lowers penalties based on factors such as severity of the violation; good faith of the employer in correcting the violation; the employer's past history of violations; and the size of the employer's work force. If HB 33 is enacted the Department will adopt the same adjustment policy. The following is an explanation of the adjustment method:

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For example, an employer with 50 employees is cited for a serious violation because heavy engine and automotive parts were stored and stacked in an unstable manner. The following penalty adjustment would occur:

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It should be noted that the states of Washington, Oregon, California, Utah, North Carolina, Maryland, Indiana, Tennessee, and Nevada have passed legislation to increase occupational safety and health penalties to come into compliance with the OSHA higher penalties and the other states with occupational safety and health state jurisdiction have legislation pending to conform with the higher penalty rates.

The Bill would also permit the collection of expenses incurred when employers fail to appear at an OSH Review Board Hearing. The average daily cost for the OSH Review Board to hold hearings is \$1,000. If it must cancel five days of hearings because employers do not appear at hearings, the Board could ask for \$5,000 in reimbursable expenses from employers. Once employers understand that they may be liable for such costs, the number of cancellations should decrease and therefore, it is expected after the second year, no significant revenue will be raised under this provision.

**Alaska State Legislature
Representative Niilo Koponen**

Pouch V
Juneau, Alaska 99811
(907) 465-4992

House District 21

119 N. Cushman, Suite 207
Fairbanks, Alaska 99701
(907) 456-8172

***POSITION PAPER*
CS HB33 (Jud)**

In November of 1990 Congress passed legislation requiring the federal Occupational Safety and Health Administration to increase penalties for OSHA violations. Under the State occupational safety and health plan, Alaska is required to raise their standards to comply with the new federal OSHA penalties. If we fail to do so, Alaska could lose its enforcement power to the Federal Agency.

The amendments provide for a maximum of \$70,000 for willful and repeated violations, a minimum of \$5,000 for each willful violation, and a maximum of \$7,000 for serious, violations.

Congress believes that this increased maximum penalty will encourage businesses to conform to workplace safety laws and regulations. As businesses adjust to a tight economic environment, it is important that worker health and safety not be sacrificed. Maintaining a safe workplace is less costly than facing the potential of high penalties and paying the costs of accidents and injuries.

Alaska continues to have the second highest occupational injury rate in the nation. In just one year we have jumped from an occupational safety, health injury and illness incidence rate of 31% to 43% higher than that of the national average. This is not a record of which we can be proud. CSHB 33 will bring Alaska into conformity with Federal law.

Due to the request of the Department of Law, the criminal penalties were increased to that of the federal mandated civil penalties. It did not make sense for the criminal penalty to be less than the federal mandated civil penalties. The federal law does not have any requirements for criminal penalties. This is provided by state law.

It is my sincere hope that this legislation will result in fewer injuries, fewer fines and lower workers' compensation insurance costs. The continually rising number of injuries and fatalities to Alaskan workers testifies to the ineffectiveness of our present statutes. So long as it is cheaper to pay the fine than to correct a dangerous situation we cannot expect improvement in the workplace.

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION

WALTER J. HICKEL, GOVERNOR

REPLY TO:

CRIMINAL DIVISION CENTRAL OFFICE
P.O. BOX KC
JUNEAU, ALASKA 99811-0310
PHONE: (907) 465-3428

OFFICE OF SPECIAL PROSECUTIONS
AND APPEALS
1031 WEST 4TH AVENUE, SUITE 318
ANCHORAGE, ALASKA 99501-5993
PHONE: (907) 279-7424

May 6, 1991

The Honorable Niilo Koponen
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Re: HB 33 (Penalties for viol. of workplace safety laws)

Dear Representative Koponen:

This letter is to indicate our support for CS HB33 (Jud), "An Act relating to penalties for violation of workplace safety laws," and particularly for section 7 of the bill, which amends the criminal penalties that may be imposed for wilful or repeated violations that cause an employee's death.

If the defendant is an individual, the bill makes the criminal penalties as great as the civil penalties. This only makes sense; a criminal offense must have consequences at least as serious as a civil violation.

If the defendant is an organization, the bill makes available the criminal penalties already set out for organizations in AS 12.55. AS 12.55.035(c), relating to fines, was amended by the legislature last year to give sentencing judges greater discretion in setting fines for organizations. That amendment can be made effective only if it applies in cases such as these.

Once again, we support this bill and thank you for the opportunity to comment on it. If there are any questions that we may be able to answer, please do not hesitate to call upon us.

Very truly yours,

CHARLES E. COLE
ATTORNEY GENERAL

By: 

Margot O. Knuth
Assistant Attorney General

MOK:mm-046

U.S. Department of Labor

Assistant Secretary for
Occupational Safety and Health
Washington, D.C. 20210



JAN 23 1991

MEMORANDUM FOR: STATE DESIGNEES

FROM: GERARD F. SCANNELL
Assistant Secretary

SUBJECT: Statutory Increase in Penalty Levels

A handwritten signature in cursive script, reading "G. Scannell", is written over the typed name of Gerard F. Scannell.

As you are aware, the Omnibus Budget Reconciliation Act of 1990, that was effective on November 5, amended section 17 of the Occupational Safety and Health Act to provide for increased penalty levels for violations of the Act. The excerpt of the Conference Report on the Budget Act which discusses penalties was sent to you on October 31. The amendments provide for a maximum of \$70,000 for willful and repeat violations, a minimum of \$5,000 for each willful violation, and a maximum of \$7,000 for serious, other than serious, failure to abate, and posting violations.

The Congress (as evidenced by the Conference Report) believes that the increased maximum penalty authority will serve as an important deterrent and will encourage employers to comply with safety and health regulations before they are inspected. Employers should realize that maintaining a safe and healthful workplace is less costly than facing the potential of high penalties, in addition to the major cost of accidents and injuries.

Since the \$5,000 floor for willful penalties is within currently authorized limits, in the interest of national consistency, the States are encouraged to implement it administratively, concurrently with Federal OSHA's implementation. (The Conference Report makes clear that negotiated settlement of willful violations may result in a lower penalty.) OSHA has developed procedures for implementing the new penalty calculations, in consultation with State plan representatives, and will begin proposing penalties at the new levels on all inspections beginning on or after March 1, 1991 for violations which occurred on or after November 5, 1990. (A copy of the final directive is attached, for your information.)

As you are aware, State plan approval criteria in section 18 of the Act and 29 CFR 1902 require the States to provide for standards and enforcement of standards which are at least as effective as OSHA's standards and enforcement. Further, OSHA regulations at 29 CFR 1953.20 and 1953.23 provide that when there is a change in the Federal program (examples given include

revisions in enforcement policies or procedures, and legislative or regulatory changes) the States are required to implement corresponding changes within six months of the Federal change. The time limit may be extended if the Assistant Secretary determines that a State has made a timely and specific showing that good cause exists to extend the time limitation for that State.

We recognize that this is a significant change in the OSHA program for both the Federal and State programs; and that State legislative action is necessary to effect a comparable change. States, in order to be considered at least as effective as the Federal program, must have statutory penalty authority for their private sector programs that at least reflects the new Federal maximums. We urge all States to try to effect this statutory change within the required six months and are available to provide any assistance you may need. However, we also recognize that because of differing State legislative schedules, etc., some States may be unable to accomplish such a change within six months. OSHA will work with each State on an individual basis to effect the required increases as soon as practicable. You also should be aware that State implementation of the new penalty authority, once enacted, need not be identical to Federal procedures, though State performance will be evaluated by OSHA to assure equivalent effectiveness.

Please notify your respective Regional Administrator as soon as possible, if you foresee any problems in accomplishing this legislative change.

Attachment

cc: Regional Administrators

MEMORANDUM

State of Alaska

Director	✓
Deputy	
Sr Asst	
Asst	
Adm Asst	
Int Aud	
ASD	
ESD	
LS&S	
W/C	
cc: Senator Collins	
cc: Rep. Kagenon	

TO: Robert W. Libbey, Director
Labor Standards and Safety

DATE: May 6, 1991

RECEIVED
MAY 6 1991
Office of the Commissioner

TELEPHONE NO: 465-4856

FROM: *RA*
Richard Arab, Deputy Director
Labor Standards and Safety

SUBJECT: Scheduling Enforcement
Inspections and
Solicitation of
Consultative Inspections

The OSH Section has a system to schedule enforcement inspections and to solicit employers to ask them to request our consultative and training services. The key stone to this system is the annual occupational injury and illness survey conducted by the Research and Analysis Section. This survey uses the methodology developed by the Bureau of Labor Statistics.

The results of this survey provides us with a list of industries that are considered "most hazardous." This list is updated each year. Of course many of the industries do not change i.e. logging, seafood processing, construction. The high hazard list is prepared by OSHA for each state. We supplement the OSHA high hazard list which is based on national statistics with what we called our "local emphasis" list. For safety inspections it is those industries not on the OSHA high hazard list that have an occupational injury and illness rate that is at least one point higher than the statewide average. For health we use the history of our inspection results to determine if there are industries not on the high hazard list that should be included on our programmed inspection list.

In addition to the "high hazard" and "local emphasis" programmed inspection list, we have also developed a list of state and local government agencies for safety and health programmed inspections.

We have a contract with Research and Analysis to add individual company injury frequency rates for the industries that we have identified as "high hazard" and "local emphasis". This will allow us to inspect those companies with the highest injury frequency rate in our list of industries to be inspected.

U.S. Department of Labor

Occupational Safety & Health Administration
1111 Third Avenue - Suite 715
Seattle, Washington 98101-3212
Telephone: (206) 553-5930
Fax: (206) 553-6489



Refer to: FSO/SND
AK STP 2-1.163

April 30, 1992

The Honorable Charles W. Mahlen
Commissioner, Alaska Department of Labor
P.O. Box 21149
Juneau, AK 99802-1149

Dear Commissioner Mahlen:

This is in reference to Alaska House Bill (HB) 33 addressing proposed penalty legislation for the State 18(b) program. Regional and OSHA National Office review of the HB has been ongoing for the past several weeks. I have attached a copy of the memorandum from our National Office dated April 21, 1992, about HB 33 for your review and appropriate action.

Essentially, review of HB 33 has resulted in the following issues for your consideration:

- AKOSH criminal provisions at AS 18.60.095(f) should provide maximum monetary penalties equivalent to those available under federal OSHA as found in section 17(g) of the OSH Act; and
- the penalty and prison term levels should be stated in the text.

Although, all other sections of HB 33 are acceptable, it could be concluded that modifying Alaska's current provisions under AS 18.60.095(f) may jeopardize Alaska's at least as effective status regarding penalties. Please be aware, however, it is imperative Alaska enact into law the seven-fold civil penalty provisions of HB 33 during the current Alaska legislative session.

If there are questions, or you would like to discuss this matter in more detail, please contact me.

Sincerely,

James W. Lake
Regional Administrator

Enclosure

cc: Randy Carr, Acting Director, w/enclosure
Richard Arab, Deputy Director, w/enclosure
Barry Noll, Area Director, w/enclosure

News

United States
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of Labor

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Occupational Safety and Health Administration

USDL: 91-28

CONTACT: Frank Kane
OFFICE: (202) 523-8151
AFTER HOURS: (703) 360-7080

FOR RELEASE: 1:00 PM EST
Thursday, Jan. 24, 1991

OSHA ANNOUNCES PROCEDURES FOR IMPLEMENTING NEW SYSTEM OF CIVIL PENALTIES

Procedures for implementing its new system of civil monetary penalties for violations of occupational safety and health law and regulations were announced today by the Occupational Safety and Health Administration (OSHA) of the U.S. Department of Labor.

Congress enacted a seven-fold increase in the maximum limits for such penalties in the Omnibus Budget Reconciliation Act of 1990. The maximum allowable civil penalty now is \$70,000 for each willful or repeated violation; and \$7,000 for each serious or other-than-serious violation as well as \$7,000 for each violation of the posting requirements and \$7,000 for each day beyond a stated abatement date for failure to correct a violation.

Assistant Secretary of Labor Gerard F. Scannell, who heads OSHA, said, "I want to emphasize that these amounts are ceilings--not floors. We will not automatically assess penalties that are seven times what they were previously, although there will be some increases."

He added that OSHA's basic approach will remain the same--striving for voluntary compliance by America's employers with occupational safety and health requirements.

The new civil penalty policy will be applicable to citations issued as the result of inspections initiated after March 1, 1991, for violations occurring after Nov. 5, 1990--the effective date of the Budget Reconciliation Act.

The procedures for implementing the new penalty policy are contained in a new chapter for OSHA's Field Operations Manual which is being distributed to all the agency's regional and area offices.

-more-

Sharon
Nils

The

WCCA Sounder

"A publication for people concerned about workers' compensation reform"

January, 1991

Timber
industry
record
improves

Workplace casualty rate highest

A set of statistics from the early 1980s was released by the Alaska Department of Labor recently and served as a timely reminder of earlier times, before safety programs and other measures implemented by employers caused significant reductions in the rate of job-related accidents and deaths. Today, these safety programs are threatened by a court case that held an insurance carrier liable for additional damages—even after the carrier had paid compensation. The so-called "Van Biene" decision jeopardized safety inspection programs throughout the state. Seeking legislative relief from Van Biene is WCCA's top legislative priority for 1991.

An unusually high percentage of perilous occupations kept Alaska's workplace casualty rate by far the highest in the nation throughout the early 1980s. But Alaska's employers, spurred by the high cost of workers' compensation insurance, have been successful in cutting those accident rates, in some cases dramatically.

During the six years between 1979 and 1985, Alaskans died on the job at a rate two to four times higher than their Lower 48 counterparts.

Seafood processors, loggers, construction workers and oil rig workers accounted for most of the casualties. Some 34.2 deaths per 100,000 workers have been recorded each year in these high-risk fields. Not included in the numbers were the accidents in the offshore fishing industry, which includes floating processors and fishing fleets. Had these categories been added to the total, the annual death toll would have topped 65.

Aviation and logging accounted for the greatest number of fatalities. In 1988 aviation claimed the lives of eight pilots and five loggers as well as three construction workers and two shore-based fish processors.

Klukwan Forest Products CEO Dick Reagan attributed part of the industry's statistics to Alaska's higher-than-average numbers of transient, inexperienced loggers. A Department of Labor researcher also cited rough terrain, harsh weather and huge trees that require large ground crews with chainsaws. More than half the accidents to loggers involved sprains and strains,

while contusions and bruises accounted for another 10 percent.

Improved education programs and mandatory drug testing in the timber industry were two elements of beefed-up safety programs which caused a significant drop in injuries and illnesses as well as fatalities. Preliminary statistics for 1989 indicate that injury and illness rates fell from 53.2 to 44.9 per 100 workers, while only a single fatality was recorded in 1990.

Inside...

2nd-hand smoke

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Medical costs by state

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VDTs and you

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HB37

CS FOR HOUSE BILL NO. 37 (STATE AFFAIRS)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE STATE AFFAIRS COMMITTEE

Offered: 2/19/91
Referred: Finance

Sponsor(s): REPRESENTATIVES ULMER, Koponen, B.Davis, Davidson

A BILL

FOR AN ACT ENTITLED

1 "An Act establishing the Alaska State Pension Corporation; relating to management and
2 investment of state pension funds and other state funds; and providing for an effective
3 date."

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

5 * Section 1. FINDINGS. The legislature finds that after the Alaska State Pension Corporation has
6 been established and begun to manage the state pension funds, the state should develop a comprehensive
7 retirement organization. This organization should integrate the investment of pension funds with
8 retirement benefit administration responsibilities for all state related retirement systems, including the
9 Elected Public Officers Retirement System (former AS 39.37). Retirement benefit administration
10 responsibilities should be integrated into the corporation when prudent.

11 * Sec. 2. AS 37.10 is amended by adding new sections to read:

12 ARTICLE 5. ALASKA STATE PENSION CORPORATION.

13 Sec. 37.10.210. ALASKA STATE PENSION CORPORATION. (a) There is established
14 the Alaska State Pension Corporation. The corporation is a public corporation in the Department

1 of Revenue managed by a board of trustees. The purpose of the corporation is to provide
2 professional management and investment of state pension and benefits funds and of other state
3 funds upon agreement with the managers of those funds.

4 (b) The board consists of nine trustees. Four of the trustees shall be elected by the
5 members of the retirement systems. Nominations may be made by the teachers' retirement board,
6 the public employees' retirement board, or by petition signed by at least 10 persons eligible to
7 vote in the election. One of the elected trustees must be an active member of the public
8 employees' retirement system, one must be receiving a benefit from the public employees'
9 retirement system, one must be an active member of the teachers' retirement system, and one
10 must be receiving a benefit from the teachers' retirement system. A fifth elected member must
11 be an employee who is making contributions to the supplemental employee benefits system under
12 AS 39.30.150 - 39.30.180, and who is elected by employees making contributions to the
13 supplemental employee benefits system. Nominations for this position shall be made by petition
14 signed by at least 10 persons eligible to vote in that election. The division of retirement and
15 benefits in the Department of Administration shall conduct the elections for all the elected
16 positions. The governor shall appoint two trustees from a list of nominees submitted by
17 employers in the retirement systems. The governor shall appoint one additional trustee from a
18 list of nominees submitted by the other eight trustees. The commissioner of revenue serves as
19 a trustee.

20 (c) The appointed and elected trustees shall serve for staggered terms of four years and
21 may be reappointed or reelected to the board.

22 (d) The governor may remove an elected or appointed trustee for just cause, including
23 failure to comply with AS 37.10.230, by written notice to the trustee. After a trustee receives
24 written notice of removal from the governor, the trustee may not participate in board business
25 and may not be counted for purposes of establishing a quorum.

26 (e) A vacancy on the board of trustees shall be promptly filled in the same manner as
27 the seat was originally filled. A person filling a vacancy holds office for the balance of the
28 unexpired term of the person's predecessor. A vacancy on the board does not impair the
29 authority of a quorum of the board to exercise all the powers and perform all the duties of the
30 board.

31 (f) The board of trustees shall annually elect a chair from among its members.

1 (g) Five trustees constitute a quorum for the transaction of business and the exercise of
2 the powers and duties of the board.

3 (h) A trustee may not designate another person to serve on the board in the absence of
4 the trustee.

5 (i) Trustees shall participate in financial education training.

6 Sec. 37.10.220. POWERS AND DUTIES OF THE BOARD. (a) The board shall

7 (1) hold regular and special meetings at the call of the chair or of at least four
8 members;

9 (2) establish investment policies for the funds for which it is responsible after
10 reviewing recommendations from the investment advisory council;

11 (3) submit long-range and quarterly investment reports to the Legislative Budget
12 and Audit Committee;

13 (4) report to the governor, the legislature, and employers participating in the
14 retirement systems by the first day of each regular legislative session concerning the investment
15 of funds for which the corporation is responsible including financial and investment policies
16 established by the board and enclose a summary of the most recent performance evaluations of
17 the funds managed by the corporation;

18 (5) contract with external performance evaluators to review the performance of
19 each fund for which the corporation is responsible and report each year on the fund's condition
20 to the board of trustees and to the other appropriate boards;

21 (6) engage independent certified public accountants to prepare an annual audit of
22 each of the funds for which the corporation is responsible and to report to the board with the
23 results of the audit.

24 (b) The board may

25 (1) employ outside investment advisors to review investment policies and make
26 recommendations to the board;

27 (2) employ legal counsel;

28 (3) enter into an agreement with the manager of another state fund to assume
29 fiduciary, administrative, or management responsibilities for investing the other state fund;

30 (4) provide for actuarial valuations of the retirement systems and other entities
31 whose funds the board manages;

1 (5) do all acts necessary, convenient, or desirable to carry out the powers
2 expressly granted or necessarily implied in this chapter.

3 Sec. 37.10.230. CONFLICTS OF INTEREST. (a) Trustees, the executive director,
4 investment officers, and other fiduciaries who are employees of the corporation are subject to the
5 provisions of AS 39.50. The board may designate other employees who are also subject to the
6 provisions of AS 39.50.

7 (b) If a trustee, officer, or employee of the corporation acquires, owns, or controls an
8 interest, direct or indirect, in an entity or project in which assets under the control of the
9 corporation are invested, the trustee, officer, or employee shall immediately disclose the interest
10 to the board. The disclosure is a matter of public record and shall be included in the minutes
11 of the board meeting next following the disclosure. The board shall adopt regulations to restrict
12 trustees, officers, and employees from having a substantial interest in an entity or project in
13 which assets under the control of the corporation are invested.

14 (c) Failure to comply with the requirements of this section or regulations enacted under
15 it is grounds for termination of employment.

16 Sec. 37.10.240. REGULATIONS. The board may adopt regulations under the Admin-
17 istrative Procedure Act (AS 44.62) to implement AS 37.10.210 - 37.10.390.

18 Sec. 37.10.250. COMPENSATION OF TRUSTEES. Trustees, other than trustees who
19 are employees of the state or a political subdivision of the state, receive an honorarium of \$150
20 for each day spent at a meeting of the board or at a meeting of a subcommittee of the board or
21 at a public meeting as a representative of the board. Trustees who are state employees are
22 entitled to administrative leave for service as a trustee. Trustees who are employees of a political
23 subdivision of the state are entitled to leave benefits provided by their employers comparable to
24 those provided to state employees for service as a trustee. Trustees are entitled to per diem and
25 travel expenses authorized for boards and commissions under AS 39.20.180.

26 Sec. 37.10.260. STAFF. (a) The board shall employ an executive director. The
27 executive director must be qualified by training and experience to manage, administer, and direct
28 the investment of funds. The board shall fix the compensation of the executive director and other
29 employees. The executive, administrative, and investment functions of the board are vested in
30 the executive director who serves under the supervision of the board. With approval of the
31 board, the executive director may appoint employees of the corporation as necessary.

1 (b) The board shall adopt regulations that restrict the executive director, investment
2 directors, other officers, and employees from having financial interest, directly or indirectly, in
3 firms or corporations that provide services to the corporation. Officers and employees of the
4 corporation are subject to AS 39.52.

5 (c) The executive director and each investment director shall file a bond for the faithful
6 performance of duties in the amount and with the sureties as required by the board.

7 (d) Officers and employees of the corporation are members of the exempt service under
8 AS 39.25.110.

9 (e) A deed, contract, or other document that must be executed by or on behalf of the
10 corporation shall be signed by the executive director.

11 Sec. 37.10.270. INVESTMENT ADVISORY COUNCIL. (a) The board shall appoint
12 an investment advisory council composed of at least three and not more than five members.
13 Members of the council shall possess experience and expertise in financial investments and
14 portfolio management.

15 (b) Members of the council serve at the pleasure of the board for staggered terms of three
16 years.

17 (c) The board shall establish the compensation of members of the council. Members of
18 the council are entitled to per diem and travel expenses authorized for boards and commissions
19 under AS 39.20.180.

20 (d) The council shall

21 (1) review the investments made by the board;

22 (2) make recommendations to the board concerning the board's investment
23 policies, investment strategy, and investment procedures;

24 (3) advise the board on selection of performance consultants, auditors, and on the
25 form and content of annual reports;

26 (4) provide other advice as requested by the board.

27 (e) With approval of the board, the council may contract with other state agencies to
28 provide investment advice.

29 Sec. 37.10.280. INSURANCE. The corporation shall protect trusted assets and its own
30 assets, services, and employees by purchasing insurance or providing for self-insurance retention
31 in amounts recommended by the executive director and approved by the board to cover the acts,

1 including fiduciary acts, errors, and omissions of its board members, officers, employees, and
2 agents. Insurance must protect the corporation and the state from liability to others and from loss
3 of trusteed assets and assets of the corporation.

4 Sec. 37.10.290. SURETY FOR DEPOSITS WITH BANKS. Banks, trust companies,
5 savings banks, and other persons carrying on a banking business are authorized to give sureties
6 to the corporation. The sureties shall be approved by the corporation to the effect that the banks
7 or banking institutions shall faithfully keep and pay over to the order of or upon the warrant of
8 the corporation or its authorized agent all money deposited with them by the corporation and
9 agreed interest, at the times or upon the demands agreed on with the banks or banking
10 institutions. In lieu of these sureties, a depository bank or other banking institution shall deposit
11 with the corporation or its authorized agent or a trustee as collateral, securities approved by the
12 corporation. The deposits of the corporation may be evidenced by agreements in the form and
13 upon the terms and conditions that are agreed upon by the corporation and the depository banks
14 or banking institutions.

15 Sec. 37.10.300. LIMITATIONS. The corporation may not engage in commercial banking
16 activity or private trust activity. The corporation may not act as a depository or trustee for a
17 private person, association, or corporation. The corporation may not act as a lender to a private
18 person, association, or corporation of money from any source except state funds under
19 management by the corporation.

20 Sec. 37.10.310. LIABILITY. A liability incurred by the corporation shall be satisfied
21 exclusively from the assets or revenue of the corporation and a creditor or other person may not
22 have a right of action against the state because of a debt, obligation, or liability of the
23 corporation. A liability of the corporation may not be satisfied from trust assets unless expressly
24 authorized by law.

25 Sec. 37.10.390. DEFINITIONS. In AS 37.10.210 - 37.10.390, unless the context
26 otherwise requires,

- 27 (1) "board" means the board of trustees of the corporation;
28 (2) "corporation" means the Alaska State Pension Corporation;
29 (3) "retirement systems" means the teachers' retirement system, the judicial
30 retirement system, the Alaska National Guard and Alaska Naval Militia retirement system, and
31 the public employees' retirement system.

1 * Sec. 3. AS 06.05.025 is amended by adding a new subsection to read:

2 (d) At the request of the board of trustees of the Alaska State Pension Corporation or of
3 the legislative auditor, the department shall make an examination of the corporation under this
4 section.

5 * Sec. 4. AS 14.25.035(d) is amended to read:

6 (d) The commissioner of administration shall report to the board concerning the condition
7 and administration of the system. The reports shall be distributed to the members of the system.
8 The Alaska State Pension Corporation [COMMISSIONER OF REVENUE] shall provide
9 reports to the board on the condition and investment performance of the teachers' retirement trust
10 fund including a summary of an annual external performance review.

11 * Sec. 5. AS 14.25.180 is amended to read:

12 Sec. 14.25.180. MANAGEMENT AND INVESTMENT OF FUND. (a) The Alaska
13 State Pension Corporation [COMMISSIONER OF REVENUE] is the [TREASURER OF THE
14 SYSTEM AND THE] fiduciary of the fund. In managing the fund, the Alaska State Pension
15 Corporation [COMMISSIONER OF REVENUE] shall

16 (1) consider the status of the fund's investments and the system's liabilities on
17 both a current and a probable future basis;

18 (2) determine the appropriate investment objectives for the fund;

19 (3) establish investment policies aimed at achieving the objectives; and

20 (4) act only in regard to the best financial interests of the system's beneficiaries.

21 (b) The Alaska State Pension Corporation [COMMISSIONER OF REVENUE] may
22 invest the fund on the basis of probable total rate of return without regard to the distinction
23 between principal and income or to the generation of income.

24 (c) In carrying out investment duties under this chapter, the Alaska State Pension
25 Corporation [COMMISSIONER OF REVENUE] has the same powers and duties in regard to
26 the teacher's retirement trust fund as are provided in AS 37.10.071, except that the standard of
27 prudence that the corporation [COMMISSIONER] must obey under AS 37.10.071(c) shall be
28 in regard to the management of large trust investments rather than large investments.

29 * Sec. 6. AS 22.25.048(c) is amended to read:

30 (c) The Alaska State Pension Corporation [COMMISSIONER OF REVENUE] is the
31 [TREASURER OF THE SYSTEM AND THE] fiduciary of the fund and has the same powers

1 and duties under this section in regard to the judicial retirement trust fund as are provided in
2 AS 14.25.180.

3 * Sec. 7. AS 26.05.228(c) is amended to read:

4 (c) The Alaska State Pension Corporation [COMMISSIONER OF REVENUE] is the
5 [TREASURER OF THE SYSTEM AND THE] fiduciary of the fund and has the same powers
6 and duties under this section in regard to the fund as are provided under AS 14.25.180.

7 * Sec. 8. AS 36.30.850(b)(15) is amended to read:

8 (15) a contract that is a delegation, in whole or in part, of investment powers held
9 by the commissioner of revenue under [AS 14.25.180,] AS 14.40.400, AS 14.42.200, 14.42.210,
10 AS 18.56.095, [AS 22.25.048, AS 26.05.228,] AS 37.10.070, 37.10.071, or AS 37.14 [, OR
11 AS 39.35.080];

12 * Sec. 9. AS 36.30.990(1) is amended to read:

13 (1) "agency"

14 (A) means a department, institution, board, commission, division,
15 authority, public corporation, the Alaska Pioneers' Home, or other administrative unit of
16 the executive branch of state government;

17 (B) does not include

18 (i) the University of Alaska;

19 (ii) the Alaska State Housing Authority;

20 (iii) the Alaska Railroad Corporation;

21 (iv) the Alaska Housing Finance Corporation;

22 (v) a regional Native housing authority created under
23 AS 18.55.996, or a regional electrical authority created under AS 18.57.020; or

24 (vi) the Alaska State Pension Corporation;

25 * Sec. 10. AS 37.10.071 is amended to read:

26 Sec. 37.10.071. INVESTMENT POWERS AND DUTIES. (a) In making investments
27 under this section, the fiduciary of a state fund [COMMISSIONER OF REVENUE] shall

28 (1) act as official custodian of cash and investments by securing adequate and safe
29 custodial facilities for them;

30 (2) receive all items of cash and investments;

31 (3) collect and deposit the principal of and income from owned or acquired

- 1 investments;
- 2 (4) invest and reinvest the assets in accordance with this section;
- 3 (5) receive and spend appropriations to cover the cost of the exercise of duties
4 under this section;
- 5 (6) exercise the powers of an owner with respect to the assets;
- 6 (7) perform all acts, not prohibited by this section, whether or not expressly
7 authorized, that the fiduciary [COMMISSIONER] considers necessary or proper in administering
8 the assets;
- 9 (8) maintain accounting records in accordance with generally accepted
10 [INVESTMENT] accounting principles;
- 11 (9) engage an independent certified public accountant to conduct an annual audit
12 of the financial condition and investment transactions;
- 13 (10) enter into and enforce contracts or agreements considered necessary,
14 convenient, or desirable for the investment purposes of this section; and
- 15 (11) when choosing to acquire or dispose of investments, secure competitive
16 national or international market rates or prices, or the equivalence of those rates or prices in the
17 judgment of the fiduciary [COMMISSIONER].
- 18 (b) Under this section, the fiduciary of a state fund or the fiduciary's
19 [COMMISSIONER OR THE COMMISSIONER'S] designee may
- 20 (1) delegate investment, custodial, or depository authority on a discretionary or
21 nondiscretionary basis to officers or employees of the state or to independent firms, banks, or
22 trust companies, by designation through appointments, contracts, or letters or authority;
- 23 (2) acquire or dispose of investments either directly, indirectly, or through
24 investment pools or trusts, by competitive or negotiated agreements, contracts, or auctions, in
25 public or private markets;
- 26 (3) concentrate or diversify investments as the fiduciary [COMMISSIONER]
27 considers appropriate to increase the probable total rate of return or to decrease the overall
28 exposure to potentially adverse market value risks;
- 29 (4) protect the market value or the rate of return of the investments by entering
30 into forward agreements to buy or sell assets at a future date as a hedge against existing held
31 assets or as a precommitment of future cash flows;

1 (5) lend assets, under an agreement and for a fee, against deposited collateral of
2 equivalent market value;

3 (6) borrow assets on a short-term basis, under an agreement and for a fee, against
4 the deposit of collateral consisting of other assets in order to accommodate temporary cash or
5 investment needs;

6 (7) hold investments in bearer or registered form in the name of the state, a fund,
7 or nominees authorized by the fiduciary [COMMISSIONER];

8 (8) utilize consultants, advisors, custodians, investment services, and legal counsel
9 for assistance in investment matters on either a continuing or a limited-term basis and with or
10 without compensation;

11 (9) declare records to be confidential and exempt from AS 09.25.110 and
12 09.25.120 if the records contain information that discloses the particulars of the business or the
13 affairs of a private enterprise, investor, borrower, advisor, consultant, counsel, or manager.

14 (c) In exercising investment, custodial, or depository powers or duties under this section,
15 the fiduciary of a state fund [COMMISSIONER] shall exercise the judgment and care under
16 the circumstances then prevailing that an institutional investor of ordinary professional prudence,
17 discretion, and intelligence exercises in managing large investments with consideration for the
18 purpose of the fund, the investment objectives, the continuing disposition of the fund's
19 investments, and the probable safety of the capital as well as the probable investment returns.
20 With respect to the Alaska State Pension Corporation, the fiduciaries of the corporation
21 shall apply the prudent investor rule and exercise their fiduciary duty in the sole financial
22 best interest of the funds entrusted to them and of the beneficiaries of those funds. The
23 trustees may not make or authorize investment decisions or the voting of shares for a
24 purpose other than the sole financial best interest of the funds or beneficiaries.

25 (d) In exercising investment, custodial, or depository powers or duties under this section,
26 the fiduciary or the fiduciary's [COMMISSIONER OR A] designee [OF THE
27 COMMISSIONER] is liable for a breach of a duty that is assigned or delegated under this
28 section, or under AS 14.25.180, AS 14.40.400(b), AS 37.10.070, AS 37.14.110(c), 37.14.160,
29 37.14.170, or AS 39.35.080. However, the fiduciary or the [COMMISSIONER OR THE
30 COMMISSIONER'S] designee is not liable for a breach of a duty that has been delegated to
31 another person if the delegation is prudent under the applicable standard of prudence set out in

1 statute or if the duty is assigned by law to another person, except to the extent that the fiduciary
2 [COMMISSIONER] or designee

3 (1) knowingly participates [PARTICIPATE] in, or knowingly undertakes to
4 conceal, an act or omission of another person, knowing that the act or omission is a breach of
5 that person's duties under this chapter;

6 (2) by failure to comply with this section in the administration of specific
7 responsibilities, enables another person to commit a breach of duty; or

8 (3) has knowledge of a breach of duty by another person, unless the fiduciary
9 [COMMISSIONER] or designee makes reasonable efforts under the circumstances to remedy the
10 breach.

11 (e) The state shall defend and indemnify the fiduciary [COMMISSIONER] or an officer
12 or employee of the state against liability under (d) of this section to the extent that the alleged
13 act or omission was performed in good faith and was prudent under the applicable standard of
14 prudence.

15 (f) In this section, "fiduciary of a state fund" or "fiduciary" ["COMMISSIONER OF
16 REVENUE" OR "COMMISSIONER"] means

17 (1) the commissioner of revenue for investments under [AS 14.25.180 OR]
18 AS 37.10.070; [OR]

19 (2) with respect to the Alaska State Pension Corporation, for investments
20 under AS 14.25.180,

21 (A) each trustee who serves on the corporation's board of directors;

22 (B) each officer of the corporation; and

23 (C) any other person who exercises control or authority with respect
24 to management or disposition of assets held by the corporation or who gives
25 investment advice to the corporation; or

26 (3) the person or body provided by law to manage the investments, for
27 investments not subject to AS 14.25.180 or AS 37.10.070.

28 * Sec. 11. AS 39.25.110(11) is amended by adding a new subparagraph to read:

29 (G) Alaska State Pension Corporation;

30 * Sec. 12. AS 39.30 is amended by adding a new section to read:

31 Sec. 39.30.175. INVESTMENT OF BENEFIT PROGRAM RECEIPTS. The Alaska State