WITNESS LIST

For the State:

Diane Corso, Labor Relations Manager

Janet Parker, Deputy Director for Division of Retirement and Benefits

Pat Pechacek, Senior Manager, Deloitte and Touche

Steve LeBrun, Account Manager, Aetna Health Plans

Mike Smith, Consultant, Wyatt Co.

For the Union:

Don Wasserman, AFSCME (national) Director of Collective Bargaining

Carl Smith, Benefits Consultant and Actuary, Segal Co.

Jennie Day Peterson, Business Manager, ASEA

EXHIBIT LIST

State Exhibits

A. Excerpts from the 1990-93 Collective Bargaining Agreement

B. Excerpts of the April 23, 1990 Interest Arbitration Decision and Award of J. C. Fogelberg

C. Notice, dated December 17, 1992, from Commissioner Nancy Bear Usera to General Government Unit and other bargaining units' members of changes to the State's health insurance plan

D. Order of the Alaska Labor Relations Agency, dated January 29, 1993, directing the State and ASEA to bargain over health benefits until February 15

E. Decision and Order No. 158 of the Alaska Labor Relations Agency, dated May 13, 1993, including findings and conclusions regarding the Agency's January 29 Bargaining Order

F. Proposals I through V that the State made during bargaining over health benefits in February

G. Proposals that ASEA made during bargaining over health benefits in February

H. Letter, dated February 3, 1993, from Jim Johnson to Jennie Day Peterson regarding responses to health benefits questions (with attachments)

I. Unfair labor practice accusation, dated March 17, 1993, by ASEA against the State, concerning the bargaining over health benefits in February

J. Notice of accusation, dated April 5, 1993, from the Alaska Labor Relations Agency concerning ASEA's unfair labor practice accusation (dismissing ASEA's claims regarding the State's failure to bargain over use of the reserve funds)

K. Order on ASEA's appeal from dismissal, dated May 20, 1993, from the Alaska Labor Relations Agency, affirming dismissal of ASEA's claims regarding the State's failure to bargain over use of the reserve funds

L. Order on the State's motion to compel arbitration, dated May 24, 1993, from the Alaska Labor Relations Agency, ordering ASEA to proceed to interest arbitration immediately

M. Description of the Employee Assistance Program and Human Affairs Alaska

N. Funding Requirements for the State of Alaska for February 1, 1994 through February 1, 1995, from Aetna Health Plans, dated October 1993

O. Letter, dated September 28, 1992, from Catherine C. Isham of Aetna Life Insurance Company to Mike Coughlin regarding 1993 renewal information (with attachments)

P. Professional Service Contract (with amendments) between the State and Aetna Life Insurance Company, dated July and September 1992

Q. Documents regarding Union's motions for extension of time in superior court proceedings

Union Exhibits

1. Interest Arbitration Award of Arbitrator J. C. Fogelberg dated April 23, 1990
2. ASEA/State of Alaska GGU Collective Bargaining Agreement
3. Decision and Order No. 158 of the Alaska Labor Relations Agency, dated May 13, 1993
4. State of Alaska proposals on health benefits for (Options I through V)
5. ASEA proposal on health benefits (Options A and B)
6. State of Alaska/Aetna Group Health Administrative Agreement (State approved February 4, 1992)
7. Amendment to Professional Services Contract (State approved June 1, 1993)
8. Letter, dated August 13, 1993, from Powelson to Peterson
9. Letter, dated November 30, 1993, from Jones to Clocksin
10. "Health Premiums - General Government"
11. Financial Accounting Report for July 1992 - July 1993 prepared by Aetna on October 29, 1993
12. Funding Requirements for the State of Alaska for February 1, 1994 through February 1, 1995, from Aetna Health Plans, dated October 1993
13. Financial Balances - Actives & SBS Option (July 1, 1992 and July 1, 1993)
14. Documents regarding news release to use Aetna reserves, December 1993
15. Carl D. Smith resume
16. Affidavit of Jody Osterweil
17. Alaska Statute 39.30.090 et seq.

PROCEEDINGS

This dispute, between the State of Alaska (the State or the Employer) and the Alaska State Employees Association, AFSCME Local 52 (the Union), concerns the level of health benefits to be provided to certain bargaining unit employees known as Class 1 employees for the period of time commencing with the date of this award and ending on either: 1) the effective date of a new contract, or 2) as specified by an interest arbitration award for a new contract. The parties submitted evidence and argument on the issue to the undersigned Arbitrator at hearings held in Anchorage, Alaska on December 20 and 21, 1993. They stipulated that the Arbitrator would retain jurisdiction over her award for a period of 60 days. At the conclusion of proceedings, the hearing closed and the case stood fully submitted for decision.

CRITERIA

Alaska state statute does not set forth criteria to be utilized by an arbitrator in interest arbitration proceedings. However, standards in these cases are well-established by precedent, applied both in conjunction with and separate from any state statute. The appropriate criteria, as gleaned from a number of authorities are:

(A) The lawful authority of the employer.

(B) The stipulation of the parties.

(C) The interest and welfare of the public.

(D) The financial ability of the unit of government to pay.

(E) Comparisons of the wages, hours, and conditions of employment of other employees performing similar services and with other employees generally.

(1) In public employment in comparable communities.

(2) In private employment in comparable communities.

(F) The average consumer price for goods and services, known as the cost of living.

(G) The overall compensation presently received by the employees, including the direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, continuity and stability of employment, and all other benefits received.

(H) Such other factors not confined to the foregoing which are normally or traditionally taken into consideration in the determination of wages, with hours and conditions of employment through voluntary collective bargaining, mediation, factfinding, arbitration or otherwise between the parties in the public service or in private service.

See, e.g., E. Elkouri and F. Elkouri, *How Arbitration Works*, Ch. 18 (4th ed. 1985).

In this case, because of the narrow and peculiar scope of the issue, most of the traditional interest arbitration considerations are not relevant. Nevertheless in resolving the issues before me, I have been mindful of any relevant criteria, and have given consideration to all of the evidence and arguments presented by the parties. I also am mindful of the generally-accepted premise that arbitrators favor the status quo and the burden of persuasion rests with the party seeking to change the status quo.

RELEVANT PROVISIONS OF EXPIRED CONTRACT

ARTICLE 19 - HEALTH AND SECURITY

Section 3. Health Insurance

A.1. The Employer will provide a policy of group insurance covering the employee, the employee's spouse and the employee's dependents. The Employer shall maintain the current level of benefits as modified by the Memorandum of Understanding (incorporated as Appendix H and I) executed May 19, 1989, (as amended October 4, 1989) until February 1, 1992, and thereafter shall convert to a "defined contribution plan" effective with the premium renewal date of February 1, 1992, at which time a premium "cap" to be paid by the Employer will be established at no more than 10 percent above the February 1, 1991, rate.

C. The Employer's responsibility under Section 3 is limited to the payment of necessary premiums to purchase the insurance described in paragraphs A and B of this section....

BACKGROUND INFORMATION

There are about 13,300 employees covered by the State's health care plan. About 8,000 to 8,500 of those employees are in a bargaining unit known as the "General Government Unit" (GGU), which is represented by the Union. About 2,000 to 2,200 of those employees are known as "Class 1" employees, who are defined by statute as employees whose services the State cannot do without. This definition includes police, firefighters, corrections officers and certain hospital personnel. Class 1 employees do not have the right to strike.

However, they have the right to take unresolved bargaining issues to interest arbitration.

The parties' first and only Collective Bargaining Agreement expired on December 31, 1992, as to Class 2 and 3 employees and on April 30, 1993, for Class 1 employees. Prior to the expired Collective Bargaining Agreement, the State paid the entire cost of its employee health care plan, absorbing all cost increases, which in some years were substantial. AFSCME Collective Bargaining Director Don Wasserman testified, without contradiction, that monthly full-family health care premiums in 1989 were $435 per employee and that cost-containment measures agreed to by the Union in a 1989 Memorandum of Understanding ("MOU") reduced to the State's premium to $385.[1]

Health insurance provisions of the expired contract, which remain at issue here, were awarded as to Class 1 employees through the interest arbitration process in an award of Arbitrator J.C. Fogelberg on April 23, 1990. Arbitrator Fogelberg's award noted that national trend for employers to discontinue paying the full cost of medical insurance and endorsed the movement to joint responsibility. Arbitrator Fogelberg capped the premium (specifically, the amount "paid by" the Employer)[2] at 10% over the ($385) rate in effect in

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1. In *ASEA v. Alaska*, ALRA No. 158 (May 13, 1993) the Alaska Labor Relations Agency quoted from Wasserman's Affidavit as a finding of fact (No. 3, at 2), as follows:
   > The effect of this MOU was to maintain the 'defined benefits' plan paid for by the State, but to reduce the State's costs from $435 to $385 per month per employee-- a decrease of over 11 percent. This MOU allowed the State to realize a saving of about $600,000 per month.
2. Arbitrator Fogelberg's award stated:
   > Accordingly, based upon the foregoing analysis, the Memorandum of Understanding executed by the parties and dated May 19, 1989 shall be incorporated into the new Master Agreement. Further the State is to maintain the current level of benefits as modified by the Memorandum of Understanding until February 1, 1992 and to thereafter convert to a "defined contribution plan" effective with the premium renewal

February 1991.[3] However, in recognition of the savings achieved by Union concessions in the 1989 MOU, Arbitrator Fogelberg deferred the effective date of the cap until February 1992.[4]

Thus, by reason of the Fogelberg award, until February 1, 1992, the State's premium obligation under the now-expired Collective Bargaining Agreement was to provide a prescribed level of benefits. This is known as a "defined benefit" obligation. After February 1, 1992, by contract, the State's obligation was to pay a specified amount in premiums for health insurance. This is known as a "defined contribution" obligation. Neither the Fogelberg award nor the resulting Collective Bargaining Agreement specified what happens when the premium exceeds the cap.[5]

The parties began their negotiations for a successor contract in November 1992. They have not reached agreement.

The State contracts with Aetna Insurance Company to provide an employee

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date in 1992, at which time a premium "cap" to be paid by the Employer will be established at no more than 10% above the February 1, 1991 rate. Finally, the State's proposal for the establishment of a Joint Committee on Health Benefits (or in the alternative, a Union provided health insurance plan) is to be implemented, and to coincide with the conversion to the defined contribution system in 1992.

3. Arbitrator Fogelberg also included a provision in the new contract that set up joint labor-management committee on health care issues, as well as a provision giving the Union the option of taking the defined contribution and putting it in its own health care trust.

4. After the issuance of Arbitrator Fogelberg's award, the parties adopted its provisions on health coverage as to Class 2 and 3 employees also.

5. In *ASEA v. State of Alaska*, ALRA No. 158 (May 13, 1993), the Alaska Labor Relations Agency found, at Finding of Fact No. 10, at 6:

> The arbitration award does not establish that the State has authority to make changes to the health benefits without bargaining first with ASEA. The language providing the State would retain final authority appears only in the arbitrator's summary of the State's position.

health-care plan.[6] The plan is "experience rated," meaning that premiums reflect the actual claims experience of Alaska employees for a defined period. The State pays a monthly premium for each employee, which is based on past and projected claims, plus a four percent administrative charge and a charge for a vision care plan that Aetna contract's out. Under the State's agreement with Aetna, the latter maintains reserves funded by the State and held in trust for the State.[7] Some of those reserves exist as a "margin" to protect Aetna from the risk of short-term claims fluctuations. (The State's alternative to maintaining this margin is to pay Aetna an additional premium of about 5%). However, over the years, additional reserves have accrued because the State had paid premiums in excess of actual claims. As of June 30, 1993, the unencumbered amount held in reserve was somewhere between $11 and $16 million; testimony varied as to the exact amount. That reserve has increased by about $70,000 since then. However, the claims surplus (excess of agreed-upon premiums over claims experience) between July 1 and November 30, 1993, was $3,200,000. The reserve fund did not increase significantly because during the same period of time the State paid part of the agreed-upon premiums out of that fund.[8]

A State witness testified that the State believes that all accrued reserves under

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6. The State entered into a five-year agreement with Aetna in February 1992 that provides for negotiated premium increases in the second through fifth year of that agreement. Aetna must give the State 120 days' notice of proposed premium changes. Those rates must be based "on the experience of the plan and projections for the next 12 month period. This notice must also identify the amount of the risk charge for the same period and provide financial criteria as outlined in Section 6 of this appendix."

7. Some witnesses preferred to distinguish "reserves" from "surplus." In this proceeding, the difference in terminology makes no difference, so long as it is clear that one is dealing with unencumbered amounts that result from excess premiums paid by the State.

8. Between the time of the premium increase for 1992-93 and the present, the State has paid premiums equivalent to $385 per employee by check, and the balance has been drawn from reserves. This payment practice has occurred, according to a State witness, because, through oversight, the State failed to obtain a supplemental appropriation from the Legislature for funding the increased premium.

a "defined benefit" obligation is the property of the State; all accrued reserves under a "defined contribution" obligation inures to the benefit of the employees. (The Union disagrees with the second part of this witness's assertion, taking the position that all reserves accrued, no matter when, inure to the benefit of employees). There was no evidence the parties have discussed, much less agreed upon, a way of distributing the employees' reserves back to them.

Aetna set the full family monthly premium for the policy year 1991-92 at $385 per employee and the parties agreed upon the same amount for policy year 1992-93. (A policy year begins in February). Aetna, with the State's concurrence, set the premium for 1993-94 at $501.25 (a 31% increase), and has indicated it will remain at that level for 1994-95. In *ASEA v. State of Alaska*, ALRA No. 158 (Order issued January 29, 1993, followed by Decision and Order dated May 13, 1993) (hereafter referred to as "ALRA No. 158"), the Alaska Labor Relations Agency found:

> The State did not attempt to negotiate any changes in the amount of the premium increase stated by Aetna, and it did not attempt to negotiate any delay in the effective date.

Finding of Fact No. 26. The evidence supports a similar finding in this case.

While the 1993-94 premium change represents a large increase over the prior rate, it amounts to an annualized increase over three years of 9.3% per year, which Union witnesses stated was comparable to rate increases elsewhere with which they were familiar. The State hired a consultant, as it routinely does, to review the reasonableness and necessity of the rate set by Aetna. The consultant determined that the rate was reasonable and necessary.[9] The State

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9. The State changed consultants in September 1993. Both its present and former

could have, based on Aetna projections, opted for a three-percent premium decrease for 1994-95 (to $486.21), but it elected not to. Janet Parker, Deputy Director of the Division of Pensions and Benefits, explained that premium levels are a "best guess" of future claims experience; therefore, three percent is not large enough to affect its decision-making.

After learning that the premium for 1993-94 would exceed the cap and after a study of various alternatives, the State decided to unilaterally implement a modified health-care plan for all bargaining unit employees having a price tag of $423.05 monthly. The plan, to the detriment of employees, increased the deductible, co-pay and stop loss over the previous plan, but (to the employees' benefit) it also increased the maximum payment for catastrophic illness and created an employee assistance program that allows for six "free" counseling visits annually.

The Union filed unfair labor practice charges with the Alaska Labor Relations Agency ("the Agency") contending that the State violated its duty to bargain in good faith by unilaterally implementing the modified plan. The Agency agreed with the Union, and in ALRA No. 158, ordered the State to bargain the plan and it to restore the status quo ante as to employee benefits. Recognizing that restoration of the status quo ante, with its continuation during bargaining, would be costly, the Agency ordered the parties to complete bargaining by February 15, 1993. The parties bargained over the plan in February, 1993, and upon reaching impasse, brought in a federal mediator for mediation sessions held on March 9 and 10, 1993. The issue was not resolved. The State unilaterally

consultant testified at hearing. Its new consultant, Mike Smith, however, did not review the rate increase at the time it was made.

implemented the modified plan for Class 2 and 3 employees on March 15, 1993. The State has not implemented the modified plan for Class 1 employees.

On March 17, 1993, the Union again filed unfair labor practice charges, alleging, *inter alia*, that the State had not bargained the health care coverage issue in good faith and that reserves held by Aetna should be applied for the full benefit of employees. As to the latter allegation, a hearing officer for the Alaska Labor Relations Agency dismissed that contention on the grounds that the Aetna reserves are not a mandatory subject of bargaining. Therefore, the hearing officer opined, the State has no duty to bargain the use of those reserves. *ASEA v State of Alaska*, Case No. 93-205-ULP (Partial Dismissal, April 5, 1993). The Agency's Board upheld the hearing examiner's ruling. *ASEA v State of Alaska*, Case No. 93-205-ULP (Order on Appeal from Dismissal, May 20, 1993). The matter is currently pending before the courts on appeal.

On May 26, 1993, responding to a petition brought by the State, the Agency issued an order compelling the Union to proceed to interest arbitration as to Class 1 employees. *ASEA v. State of Alaska*, Case No 93-205-ULP (Order on State's Motion to Compel Arbitration, May 24, 1993). This proceeding is the one contemplated by that order.

The Union's primary evidentiary thrust in these proceedings, which it presented through the expert testimony of actuarial Carl Smith of the Seattle-based Segal Company, was that Aetna's current premium levels are substantially higher than necessary. Mr. Smith analyzed data provided by Aetna and testified that based on the State's September 1992-93 claims experience data, the current premium

(1993-94) should be about $397, as compared to the actual premium level of $501.25. Using the same methodology, the premium for 1994-95 should be about $444. Mr. Smith testified that the premium for Class 2 and 3 employees, who now are under the modified plan, should be about $375, instead of the $423.50 the State currently pays. Mr. Smith also testified that Aetna holds an aggregate $33 million in reserves or surplus (encumbered and unencumbered combined). The unencumbered portion of that reserve amounted to $11.2 million as of July 1, 1993. These funds currently accrue interest at about a 6.5% rate. He also testified that the contract with Aetna gives the State an incentive to have an artificially high premium, because it gets a 1% (of premium) rebate, which amounted to $619,000 in 1992. Finally, he testified that the State has considerable buying power, given the number of employees insured and the size of the reserves, and it would not be difficult for it to persuade Aetna to adjust premiums to a level that more closely approximate actual claims experience (plus administrative costs). (One should bear in mind that Aetna does not pocket premiums that exceed claims. Instead, the excess money goes to the reserve account).

In rebuttal to Mr. Smith's testimony, Steve LeBrun, of Aetna, testified that the following considerations could skew the results reached by Mr. Smith:

1. There is no track record of Class 1 claims experience. The data Mr. Smith used as the Class 1 experience was a pro-rated share (by population) of the total employee experience. Because Class 1 benefits are better, there may be a higher utilization, thus producing more claims. He added that separate Class 1 tracking only began in November, 1993.

2. The "SBS1" contribution rate (for employee-paid additional insurance) that Mr. Smith backed out was too high. Mr. Smith used a figure of 9.15%. The actual figure should be about 7.3%. Mr. LeBrun conceded, however, that this would affect Mr. Smith's totals by less than two percentage points.

3. Mr. LeBrun questioned the accuracy of the vision claims experience utilized by Mr. Smith because they lack a "fully mature eligibility base." (Vision coverage is subcontracted by Aetna to VSP).

4. Mr. Smith did not include a "margin" or "hedge" in his analysis. A five-percent figure (added to the premium) is frequently utilized, but because of the smaller risk pool with Class 1 employees, he would raise that figure to eight percent. (The Union pointed out that there is a $3.4 million reserve dedicated to this purpose, although Mr. LeBrun questioned its efficacy when the reserve is not mandatory).

Mr. LeBrun conceded that based on recent claims experience, Aetna could reduce the premium. He testified that the State has not asked Aetna to do this. The State did not present any evidence breaking down the $501 premium, and its expert and consultant, Mike Smith, questioned the desirability of "micro-analyzing" premium components over a relatively short time period, such as one year.

PROPOSALS

The State proposes to place Class 1 employees on the modified plan that currently covers Class 2 and 3 employees, for which the premium is $423.50, the maximum contribution level specified in the contract. The State emphasizes that its principal concern is that its obligation does not exceed the cap established in the previous Collective Bargaining Agreement, although it would prefer that Class 1 employees be covered by the modified plan.

The Union proposes that Class 1 employees remain under the plan currently in effect, and that the State fund any excess premium from reserves, as it is doing now.[10]

ARGUMENT OF THE PARTIES

Argument of the State

1. The Arbitrator should look at the "big picture" in a dispute over premiums and health care costs. The rules of this arbitration are set by the Alaska Labor Relations Agency and by the prior interest arbitration award of Arbitrator Fogelberg. The Agency ordered the parties to bargain "within the level of Employer contribution in the agreement." ALRA No. 158, at 19. The Agency also said that the reserves are not a mandatory subject of bargaining; therefore, use of those reserves is irrelevant here. Even if the Agency's ruling is overturned by the courts, use of reserves cannot be considered in these

10. During negotiations, the parties presented one another with some variations on these positions, but the "bottom line" at time of hearing is reflected in the parties' positions set forth in the text.

proceedings because they have not yet been bargained to impasse.

2. The Vogelberg award clearly distinguished a defined benefits plan from a defined contribution plan. It makes a lot of sense for reserves to accrue to the State under a defined benefits plan and for the reserves to accrue to employees under a defined contribution plan. The employer is obligated under a defined benefits plan to buy a defined level of benefits. Any unallocated money left over after the purchase should accrue to the purchaser (i.e., the State). Further, there is nothing wrong with the State using its own reserves to pay premiums. The reserves are the State's money, that is, another account of the State's. For purposes of this proceeding, it is irrelevant where the money comes from, so long as the State is using its own funds.

3. The Union wants "to have its cake and eat it too." It wants the benefit of a large group risk pool to avoid a margin premium. But, it wants a Class 1 risk rating that is separate from the GGU rating. If this is what the Union wants, it should pursue the contractual option of setting up its own plan. The Union's contention that premiums can be reduced substantially is based on incomplete data. Five months' of experience is not sufficient for projecting future claims.

4. The issue for the Arbitrator is to determine what benefits Class 1 employees will receive for $423.50. The State, for sake of uniformity, prefers the plan used by the rest of the bargaining unit. And, it deems it to be in the employees' interest to have a higher catastrophic coverage ceiling and the employee assistance plan provisions. The State deems it prudent to avoid 100% coverage, which under the old plan, employees can have by purchasing the

extra 10% in insurance. However, the State's main concern is keeping its obligation at the $423.50 level, and not higher.

5. The Union has not presented the Arbitrator with any options except for a continuation of the old $501.25 plan. That plan goes way over the premium cap in the contract, even using the Union projections.

6. The State does not have the burden of proof. There is no burden of proof in an interest arbitration proceeding.

7. The Arbitrator's award should continue the $423.50 cap on premiums and adopt the modified plan for Class 1 employees.

Argument of the Union

1. If the Arbitrator upholds the State's position, she will be allowing the State to pay $375 a month for Class 1 coverage, and not the contractually specified $423.50. The $375 month represents the actual claims experience for these employees.

2. The State has the burden of proving its position, and must present compelling evidence of the need to change health care benefits.

3. The State is incorrect in arguing that the Alaska Labor Relations Agency and the Arbitrator Fogelberg award have defined the rules of the game. The Arbitrator is not bound by those decisions. The state interest arbitration statute does not compel the Arbitrator to select the "last best offer" either.

4. The Union agrees that the contract caps the Employer's contribution at $423.50. However, this figure does not include the use of reserves.

5. The problem the Union faces is that the State seems happy to pay Aetna whatever Aetna asks, even though the experts agree that the actual claims experience is the true cost of the health coverage. The record shows that the State never questioned or negotiated the $501.25 premium with Aetna. The witness from Aetna agreed that based on recent claims experience, the premium could be lowered. But he also testified that the State has never asked to do so. Even at the outset, the State was given the option of reducing the premium by three percent, and it elected not to. The State should not be allowed to continue to hide behind the defense that it lacks the ability to challenge the premium. The Union has argued in the past that the premium is overstated and the Union always has been right. The record shows that the State could negotiate with Aetna to readjust the premium at any time.

6. Aetna's Steve LeBrun testified that he found Carl Smith's analysis flawed. But the State presented no data challenging Mr. Smith's analysis and conclusion. Carl Smith used Aetna's own data, which Mr. LeBrun now claims are unreliable. Even conceding an error in the SBS1 reduction, that error affects the results by less than two percent. Mr. LeBrun's suggestion that a five to eight percent margin be added on was brought up for the first time in the hearing, and should be disregarded, considering the already sizable reserve the State maintains for this margin. Finally, even Mr. LeBrun conceded the premium could be lowered.

7. The Union contends that the Arbitrator, using the Union's projections, could order the State to maintain existing benefits, and the cost should be within the cap of $423.50. According to the Union's data, the cost through February of 1994 should be $397. Between February and July 1994, it will be slightly over $423. If for some reason the parties do not have a new contract by then, the cost might exceed the cap, but only slightly, which the State can cover from reserves.

8. The Union maintains that the premium is not based on experience. Instead, it is based on politics. Evidence of "politics" is shown when Aetna and the State agreed to renew the premium at $385 in 1992, even though the State agreed to pay excess costs out of reserves. One reason the State is not interested in challenging the premium is the one percent rebate: The higher the premium, the higher the rebate. But its primary motive, the Union believes, is to create a justification for reducing benefits, an objective the State obtained for Class 2 and 3 employees.

9. As to reserves, AS 39.31.150 states that premiums that exceed claims are to be retained "for the sole benefit of employees." This is logical, since it is the employees' usage that drives the costs.

10. The State maintains that the reserves belong to employees under the defined contribution plan, and not under the defined benefits plan. Although the Union does not agree, even if this is true, the difference between the actual amounts paid and the state cap is an excess of $3.2 million between July and

November 1993. This works out to over $6 million annually that should accrue to the employees' benefit. The reason the size of the reserves has not increased during this time period is because the State has been drawing on the reserves. Thus, the State is bootstrapping itself in its argument that the use of reserves is irrelevant.

11. The Union seeks relief in three parts:

A. The Union seeks an order maintaining the existing level of benefits for Class 1 employees until the parties have a new contract;

B. The Arbitrator should order the State to pay the $423.50 premium in "new" money; in other words, it should not make part of this payment from reserves;

C. If claims exceed $423.50 during the period of the award, the State should pay the excess from reserves.

DISCUSSION AND ANALYSIS

As a first analytical step, it is important to precisely define the Arbitrator's mission. As the Union noted in its pre-hearing brief, the posture of this case is unusual. This is not a grievance arbitration where the arbitrator is authorized to determine whether there has been a breach of contract and prescribe a remedy if such a breach is found. Although this is an interest arbitration proceeding, it

is not one to determine unresolved provisions of a new contract. Rather, the parties have stipulated that this award will cover the period from the award's issue date to the effective date of a new contract (i.e., part of the "hiatus" period between contracts). In addition, there is only one issue here, health care benefits.

The Agency stated in ALRA No. 158, at 14:

> That obligation [to bargain in good faith] requires that the terms and conditions of an expired agreement continue until a new agreement is negotiated or the parties reach impasse. [citation omitted].

Thus, the terms and conditions of the relationship between the State and the Union continues undisturbed until a new contract takes effect. This means that the point of reference for the Arbitrator's jurisdiction is the expired contract. Here, the expired contract states:

> A.1. The Employer will provide a policy of group insurance covering the employee, the employee's spouse and the employee's dependents. The Employer shall maintain the current level of benefits as modified by the Memorandum of Understanding (incorporated as Appendix H and I) executed May 19, 1989, (as amended October 4, 1989) until February 1, 1992, and thereafter shall convert to a "defined contribution plan" effective with the premium renewal date of February 1, 1992, at which time a premium "cap" to be paid by the Employer will be established at no more than 10 percent above the February 1, 1991, rate.
>
> C. The Employer's responsibility under Section 3 is limited to the payment of necessary premiums to purchase the insurance described in paragraphs A and B of this section....

The expired contract is clear that the Employer's responsibility is limited to the payment of a specified amount monthly (which the parties agree amounts to $423.50) for health insurance.

On the other hand, ALRA No. 158 found:

> The arbitration award does not establish that the State has authority to make changes to the health benefits without bargaining first with ASEA.

Finding of Fact No. 10, at 6. Thus, the contract does not specify what happens when the cost of insurance exceeds the contractual ceiling.

The rule preserving the status quo during a contract's "hiatus" period does not apply when the subject matter of a dispute is not addressed in the expired agreement. The Employer has a duty to bargain proposed changes of mandatory bargaining subjects not addressed in the labor agreement. Accordingly, in ALRA No. 158, the Agency established the legal parameters for this proceeding. The Agency found, at 15 (emphasis added):

> [T]he change [in contract language] can only mean that the contribution level was defined for the term of the contract, but the specific benefits to be provided within that contribution still must be negotiated under AS 23.40.100 and AS 23.40.250.

In Conclusion of Law No. 5, at 16, the Agency stated (emphasis added):

> The ASEA/State agreement states that the employer will provide a defined benefit plan until February of 1992. On that day, the plan converted to a defined contribution plan with the State's contribution capped at about $423.00 per month per employee. The employer is not required to pay any increases when a plan is capped. [Citation omitted]. The cap, however, does not justify unilateral changes in the benefits provided.

The Agency further stated in Conclusion of Law No. 8, at 17 (emphasis added):

> We conclude that maintaining status quo in this case would be to provide benefits and to pay increases up to a cap of $423.00. Notwithstanding that the parties' agreement caps the State's obligation to pay for employee health benefits after February 1, 1992 at 110 percent of the monthly per employee rate of approximately $385.00, ASEA did not relinquish in the agreement its right to bargain changes in the terms and conditions of employment. If changes are necessitated by the cap, the parties' joint

committee on health benefits is to meet and make recommendations on the changes. The changes must themselves be bargained, however,...

After reading the above-quoted language from ALRA No. 158, I find it clear that the Agency would view the Arbitrator's authority as limited to addressing the benefits that the State will provide Class 1 employees, which was a matter not addressed in the expired contract or Fogelberg award. As to the amount the State would spend, the Fogelberg award placed a limit on the Employer's liability at $423.50. That amount remains in effect until either the parties agree to a change or an interest arbitrator imposes a change. This Arbitrator, however, according to the reasoning of ALRA No. 158, lacks the authority to modify the $423.50 ceiling - even to the extent necessary to reflect increases in the cost of living. Instead, this arbitration addresses the bargaining issue that was not addressed in the Fogelberg award and subsequent contract. That issue is: What benefits will the State provide under its health-care plan for $423.50? ALRA No. 158 expressly stated that the State could not unilaterally decide this question.[11] The question must be decided through negotiation or, failing that, through interest arbitration.

The State has presented the Arbitrator with a package of benefits that it maintains it can purchase for $423.50 (the "modified plan"). The Union does not actually quarrel with that benefit mix, as far as it goes. The Union, however, essentially contends that the State could buy a lot more for $423.50.

---

11 The Union argues that the State is incorrect in asserting that the Alaska Labor Relations Agency and the Arbitrator Fogelberg award have defined scope of this Arbitrator's authority. I disagree. The $423.50 premium cap specified in Arbitrator Fogelberg's award, for the reasons explained, remains in effect for the purposes of this proceeding. The Agency responsible for interpreting and enforcing Alaska's collective bargaining laws has defined the scope of this arbitration as pertaining solely to the question of benefits – within the $423.50 cap.

Alternatively, the Union argues that the State could buy more with the $423.50 if it were willing or directed to pay for excess costs out of reserves.

Were it clear that the benefit package proposed by the State is the best it can do for $423.50, and were there no question of reserves, then the decision in this case would be simple. I would find that since the Union has presented no argument or evidence that the benefit mix is inappropriate, the package selected by the State will be the one utilized by Class 1 employees.

The matter is not so simple, however. The Union presented considerable evidence suggesting that the State could buy a better insurance package for the money. It also presented evidence of the reserves available to use for funding purposes.

I will address the reserve issue first. Although estimates of the amount of unencumbered reserve held in trust by Aetna varied at hearing, it is clear that the reserve fund is substantial, even after subtracting that which is needed for the "margin" or "risk" factor. It also is clear that most of the reserve moneys accrued while the State was acting under a "defined benefit" obligation. The State maintains that reserves accruing under this obligation belong to the State. Such funds are the same as any other "bank account" of the State's. While it is money available for spending, the Union cannot claim this money on behalf of the bargaining unit as a matter of right to use for health care premiums or any other purpose.

I agree with the State's analysis. Under its defined benefit obligation, the State

paid in an amount estimated to cover, if not exceed, the anticipated claims under the plan. After paying claims from this premium and subtracting its 4% administrative charge, Aetna placed any surplus into reserves and held those funds in trust for the State. Aetna pays the State interest on that fund (currently about 6%). Except for reserves needed as a "margin" against an unexpected surge in claims, the State was and remains free to withdraw its moneys from that fund. Under the State's defined benefit obligation, the State was required to provide a specific level benefits to employees, regardless of cost. The employees' interest, therefore, was in the benefits provided, and not in the cost of those benefits. It was not until the State's contractual obligation became a defined contribution requirement that the employees acquired an interest in the cost of benefits. At that point, their interest was to ensure that the $423.50 was optimally spent for the benefit of employees. Accordingly, it makes sense to view the reserve fund, under the defined benefit plan, like one would view any other cash account belonging exclusively to the State. Under the defined contribution plan, any excess premiums, however, inure to the benefit of the employees. The employees have a claim on those amounts, whereever held.

The Alaska Labor Relations Agency's ruling, which addressed reserves that accrued under the State's defined benefit obligation, is consistent with this analysis. The hearing examiner found:

> The parties' agreement does not address the reserves or their use. The facts do not suggest nor does ASEA allege any basis for concluding that the issue of the reserves is a mandatory subject of bargaining.

ASEA v State of Alaska, Case No. 93-205-ULP (Partial Dismissal, April 5, 1993) at 2. The Board upheld that order. *ASEA v State of Alaska*, Case No. 93-205-ULP (Order on Appeal from Dismissal, May 20, 1993). If, as the Union

contends, the reserve fund is somehow encumbered by an obligation to the employees, then the Agency would have held it to be a mandatory subject of bargaining. Instead, the Agency had no trouble concluding that the use of these funds was a permissive subject of bargaining, a finding that only can be reconciled with a finding that the reserves are simply part of the State's general fund.

The Agency, while not specifically addressing AS 39.30.090, implicitly rejected the Union's contention that this statute supports its position. Subsection 6, cited by the Union, states:

> If the aggregate of dividends payable under the group insurance policy exceeds the governmental unit's share of the premium, the excess shall be applied by the governmental unit for the sole benefit of the employees.

The referenced statute neither defines "dividend" nor "premium." Based on the common understanding of those terms, however, this provision does not appear to be analogous to funds resulting from excess premiums over claims. Without more in the way of legal analysis from the Union in support of its argument, I will defer to the tacit ruling of the Agency on the meaning of that statutory provision.

The Union argues also that the reserves should accrue to the employees' benefit because it is the employees' thriftiness in utilizing defined benefits that caused the reserves to grow. I find the facts upon which this argument is premised to be speculative. The fact that is more apparent, and which will be discussed next, is that the State simply has been paying Aetna more than enough to cover its defined benefits obligation. How much more it chose to pay (when it had a defined benefits obligation) was purely the State's business. Thus, excess payments should be refunded to the State. The reserves held in

trust by Aetna are a form of refund. Accordingly, for the preceding reasons, I conclude that any payment from reserves that accrued under the State's defined benefit obligation must be included within the $423.50 contribution cap.

I turn now to the remaining question before me, which concerns the "amount" of benefits that can be bought for $423.50. The Union argues that the State could reasonably be expected to negotiate a benefit package equal to that which Class 1 employees currently enjoy for less than $423.50, even though the current premium is $501. The Union's expert, Carl Smith, reviewed the claims history for the entire GGU bargaining unit. He based his cost analysis, as follows, on the Class 1 employees' presumed prorata share:

$ 407.56 - monthly claims average (September 1992-93)

+ 16.30 - 4% administrative charge

- 37.29 - claims attributable to employee-paid SBS1 (9.15%)

+ 10.43 - claims attributable to vision coverage

$ 397.00 - total (as compared to current premium of $501.25)

The above analysis reflects the per employee claims average from September 1992 to September 1993 of $407.57. To that is added Aetna's four percent administrative charge. However, from this total the amount attributable to claims under the employee-paid supplemental insurance (SBS1) must be backed out. Then the amount of claims attributable to vision coverage, which is subcontracted out by Aetna, must be added on. The result, according to the Union, is that the 1992-93 claims experience was $397.00 monthly.

To estimate the cost of health care for the following premium year, (February

1994-95), the Union's expert added in a 9.3% trending factor (adjusted upwards for the addition of five months), which is the historical rate of increase of health care claims (for the period 1990 to 1993), as follows:

$ 407.56 - monthly claims average (September 1992-93)

- 37.29 - claims attributable to employee-paid SBS1 (9.15%)

+ 45.91 - 9.3% trending factor (adjusted for an additional five months)

+ 16.30 - 4% administrative charge

+ 11.26 - claims attributable to vision coverage, with a 6% trending factor

$ 444.09 - total (as compared to projected 1994-95 premium of $501.25)

The Union pointed out that this should be the monthly per employee cost spread over the entire year. The cost will be lower (about $435 per month) if one is to look at the first half of the year only (and assume the parties will have a new contract by the second half) Mr. Smith also testified that the September 1992 to September 1993 cost of health care under the modified plan for Class 2 and 3 employees, using the same methodology as above, was $374.51, even though the State is paying a premium of $423.50.

The State challenged some of the Union's analysis, but not in a way that convinces me that the results would be significantly affected. The State's expert, Steve LeBrun from Aetna, testified that the SBS1 deduction should have been 7.3% instead of 9.15%. However, this adjustment would affect the results by only a few percentage points. Mr. LeBrun questioned the accuracy of the vision claims experience utilized by Mr. Smith because they lack a "fully mature

eligibility base.". However, he did not venture an opinion as to how this would affect the results, and given the relatively small size of the vision premium, it is apparent a higher claims experience would not significantly affect the Union's results. Mr. LeBrun criticized the Union for not including a "margin" or "hedge" in its analysis. A five-percent figure is frequently utilized, but because of the smaller risk pool with Class 1 employees, Mr. LeBrun would raise that figure to eight percent. I agree with the Union's response that $3.4 million of the reserve is intended to act in lieu of a premium "margin" requirement. Since this analysis attempts to replicate the cost of health care under the arrangements in effect at the time of the expired contract (being the status quo), I believe it is appropriate to assume that the reserve continues to substitute for the margin premium. Although the reserve may not be mandatory, as Mr. LeBrun suggests, Aetna is satisfied with the arrangement; therefore, the Union's assumptions in this regard are valid. Finally, Mr. LeBrun suggested that the claims experience of the GGU bargaining unit as a whole (under two different plan mixes) may not be the same as the claims experience of the Class 1 employees. Since the current Class 1 benefits are greater (viz., lower deductible and co-payments), one would expect their rate of utilization to be higher. In other words, not only do they receive more reimbursement, but with the better coverage comes a tendency towards greater use of health care services. Mr. LeBrun, however, did not quantify what this higher utilization might be, and Aetna, at the time of hearing, lacked sufficient data upon which to base an estimate.[12] While I believe this may be a factor to consider, the State offered no suggestions as to how to factor this in.

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12. I note that based on all GGU claims between the period September 1992 and September, 1993, total claims postdating the modified plan were only slightly lower (1.4%) than claims predating that plan. (See Union Exhibit 12, at 7). I realize, of course, that the period measured by this statistic is inadequate. Moreover, the data is skewed by the inclusion of Class 1 employee claims.

Finally, I take into account the undisputed fact that Aetna gave the State the option of taking a 3% reduction in premium, an option the State rejected.

I find that the Union has presented substantial evidence that the State is paying a premium that is higher than is reasonably and prudently necessary. The entire structure of the State's contract with Aetna contains no incentive (other than a concern about cash flow) to do otherwise. When insurance is purchased on a smaller scale, the premium is fixed, with no rebate or reward for submitting claims that are substantially less than the premium. Thus, the buyer has an incentive to shop for the best deal (i e , the lowest premium), with the objective of shifting as much of the risk onto the seller (the insurer). However, the State, with its large purchasing power, acts like a self-insurer, with Aetna as its claim's administrator. Aetna's only risk, so far as I could discern at hearing, was that the claims rate would suddenly escalate so far over the premium rate that the reserve would be exhausted and the State would not renew, so that Aetna could not recoup its losses from future premium increases. Basically, however, the State, like a self-insurer, assumes the risk of normal claims fluctuations (which it does by maintaining a sizable reserve). And, the amount by which the premiums exceed claims paid is always refunded to the State. Stated differently, the State's true "cost" of insurance is not the same as the premium. If the claims experience (including administration costs and vision) for a given year averages $400 per month per employee, it does not matter whether the State paid in $500 or $600. Its ultimate "cost" will be only $400. The excess paid in is invested for the State at a fair yield (assuming the principle is safe), so that one cannot accuse the State of losing some of the time-value of this

money.[13]

While the State disputes the Union's contention that the State can buy a much better insurance package for the money, it does not dispute the essential fact that the State's "premium" and the State's "cost" are not the same. It is not clear whether Arbitrator Fogelberg meant the $423.50 cap to pertain to the State's premium or to the State's cost. I believe that Arbitrator Fogelberg intended the $423.50 cap to pertain to the State's costs because, given the nature of the State's insurance agreement with Aetna, that is the only way to insure that employees will receive the full benefit of the specified amount of money. A different construction would allow the State to undermine the agreement by not negotiating the tightest deal it can. In fact, the Union's evidence suggests that this, in fact, is what has occurred.

While my construction of the Fogelberg award and the expired contract favors the Union by helping to ensure that the State actually spends the $423.50 cap on its Class 1 employees, there nevertheless remains three legal and/or practical obstacles to a result in this proceeding that would be satisfactory to the Union.

First, the State's claims "costs" are unknown until at the conclusion of a defined period, such as a policy year. Yet, with the $423.50 cap, a benefit plan must be prescribed that will fall under that ceiling. The only way to do this with certainty

13. The Union also contends that the contract contains some incentive for a large premium by rebating 1% of the premium to the State. The Aetna-State contract actually states that "not to exceed" one percent of the premium will go back to the State as reimbursement for the State's health care program operating expenses. If this amount is deducted before the surplus, if any, is calculated, it would appear that the amount the State ultimately receives back is the same.

is to prescribe the benefits retroactively, which is obviously an impractical solution.

Second, the Arbitrator's jurisdiction here is limited to defining the benefits. If I were to define the benefits as those which are offered under the $501 plan (as the Union requests) and it turned out that the "costs" exceeded $423.50, the result begs the question before me: What happens when the costs exceed $423.50? I have already ruled out the use of reserves that accrued under the defined benefits plan as being nothing more than use of the State's money and an additional cost to the State.[14] Ordering the state to pay the excess would contravene the contract and the decision in ALRA No. 158. Ordering the employees to pay the excess would work a hardship on the employees (especially if they were picking up costs retroactively).

Third, one might consider ordering the State to negotiate a better benefit package with Aetna for $423.50. However, for this remedy to be effective, I would have to order the State to <u>obtain</u> a better package, something the Arbitrator cannot do when Aetna, as a necessary party to an insurance agreement, is not subject to the jurisdiction of the Arbitrator.

Thus, I consider none of the options available to me as both practical and legal. The only viable solution remaining is to order that the modified plan (the $423.50 plan) be applied to Class 1 employees, with all excess of premium

---

[14]. I also could not order the State to use the approximately $3.2 million in reserves accrued since the State began the defined contribution plan for Class 2 and 3 employees because Class 1 employees, who remained on a defined benefits plan, did not contribute to those reserves. In addition, the period of accrual of those reserves probably is not sufficient for determining, within reason, the amount of the surplus.

payments over claims accruing, from the date of implementation, to the employees' benefit. While the State agrees that the money belongs to the employees, it has not indicated how the money should be used. Logic dictates that the Union, at least during the effective period of this award, should determine the use of those funds.[15] It might, for example, be used to fund better benefits in future years. This award is not wholly unfair to the Class 1 employees, if in fact, their claims experience continues to be lower than the State's cap. Of course, this means that the employees will not reap the benefit of a defined contribution plan reserve fund immediately. Nevertheless, of all the options available, I am compelled to adopt this one as the only viable option that is consistent with my authority, even though I might reach a different result were this a grievance arbitration under the old contract or an interest arbitration for a new contract.

AWARD

Commencing with the date of this award and until such time a new contract takes effect or as ordered by an interest arbitrator, Class 1 employees will receive benefits under the "modified plan" that currently covers Class 2 and Class 3 employees. Surplus funds (defined as the amount by which State payments under that plan ($423.50) exceeds employee claims as measured over

---

15. Agency Order No. 158 reflects the basic labor law principle that the employer must maintain the status quo until all impasse resolution procedures are exhausted, or a new contract is reached. The status quo under the expired contract has the State funding (over and above the $423.50 cap) the "margin" reserves. Thus, I would not deem it proper for the State to apply the employees' reserves to maintain this margin.

a reasonable time, consistent with sound insurance practices) will accrue to the benefit of covered employees and will be applied for the benefit of those employees. The State will maintain sufficient "margin" reserves with Aetna (with the cost of maintaining those reserves to be in addition to the State's $423.50 contractual obligation) as to preclude Aetna from having to add an additional "margin" percentage cost to the premium. Pursuant to the stipulation of the parties, the Arbitrator will retain jurisdiction over this award, solely for the purpose of clarifying the award or correcting clerical errors, for a period of 60 days.

January 17, 1994

Jane R. Wilkinson
Arbitrator

ALL STATE EMPLOYEES WITH PERSONAL LEAVE BALANCES >450 HRS., BY BARGAINING UNIT

BARGAINING UNIT	EMPLOYEE COUNT	TOTAL HOURS	TOTAL CASH VALUE
Public Safety Officers	140	117,768	3,804,538
Airport Security Officers	29	22,477	606,132
Excluded From Existing Units	2	1,291	37,172
Correction Officers	175	143,521	3,290,966
General Government	1	534	11,910
Confidential Employees	26	22,568	625,534
Labor, Trades, and Crafts	371	316,904	7,683,251
Supervisory Employees	576	535,484	17,496,695
Mt. Edgecumbe Teachers Assoc.	13	20,209	543,487
Partially Exempt and Exempt Executive Branch Emp.	170	142,198	5,785,567
Judicial Branch	65	60,476	1,767,578
Legislative Branch Employees	28	21,215	671,235
TOTALS	**1596**	**1,404,645**	**42,324,064**

EO 101

Alaska State Legislature
Senate

OFFICIAL BUSINESS

STATE CAPITOL, ROOM 213
JUNEAU, ALASKA 99801-1182
(907) 465-3701
FAX: 465-2832

January 10, 2000

MEMORANDUM

TO: Senator Parnell, Cochair
Senator Torgerson, Cochair
Finance Committee

FROM: Heidi Vogel
Secretary of the Senate

RE: Executive Order No. 101

The President has referred Executive Order No. 101 (relocating the highway safety planning agency from the Department of Public Safety to the Department of Transportation and Public Facilities) to your committee.

Section 23, Article III of the Constitution states:

> The governor may make changes in the organization of the executive branch or in the assignment of functions among its units which he considers necessary for efficient administration. Where these changes require the force of law, they shall be set forth in executive orders. The legislature shall have sixty days of a regular session, or a full session if of shorter duration, to disapprove these executive orders. Unless disapproved by resolution concurred in by a majority of the members in joint session, these orders become effective at a date thereafter to be designated by the governor.

Executive Orders are treated differently than bills. If you wish to report any recommendations to the body, please do so with a memo or in accordance with Section 23, Article III of the Constitution within the sixty day limit.

Attachment

HV:vsw

TONY KNOWLES
GOVERNOR
governor@gov.state.ak.us

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

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Juneau, Alaska 99811-0001
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www.gov.state.ak.us

January 10, 2000

The Honorable Drue Pearce
President of the Senate
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear President Pearce:

I am transmitting an Executive Order to transfer the Alaska Highway Safety Planning Agency from the Department of Public Safety to the Department of Transportation and Public Facilities.

This transfer will make the agency more effective by placing it in the department that is ultimately responsible for providing and maintaining safe, well-designed highways and roads. The Department of Transportation and Public Facilities (DOT&PF) already administers many Federal Highway Administration grant programs and may be able to combine staff resources to more efficiently administer the highway safety grant program.

The Highway Safety Planning Agency would become part of the Statewide Planning Division of DOT&PF. Agency duties and responsibilities are well aligned with the Statewide Planning Division, including planning, data collection and program effectiveness analysis. Statewide Planning also programs and administers over $300 million in federal transportation funding each year.

The program transfer would include funding, personnel and all relevant functions of the agency to DOT&PF. In an effort to enhance our ability to make Alaska's highways safe, I urge your support of this Executive Order.

Sincerely,

Tony Knowles
Governor

FISCAL NOTE

No. 2

Bill Version: EO 101

(S) Publish Date: 1/10/00

STATE OF ALASKA
2000 LEGISLATIVE SESSION

Revision Date/Time (Note if correction) _____ Dept. Affected DOT&PF

Title: Executive Order - transferring the Highway Safety Planning Agency to DOT&PF

BRU: Planning

Component: Statewide Planning

Sponsor: Rules

Requester: Governor

Component No.: 1951

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	*	*	*	*	*	*
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	*	*	*	*	*	*

Estimate of any current year (FY2000) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

Executive Order takes effect July 1, 2000.

Funding and positions will be transferred from the Department of Public Safety to the Department of Transportation and Public Facilities by submission of an FY2001 budget amendment.

Prepared by: Dennis Poshard, Special Assistant to the Commissioner Phone 465-3904

Division: Commissioner's Office Date/Time 1/5/00 11:08 AM

Approved by Commissioner _____ Date 1/5/00

Agency: for Joseph L. Perkins, DOT&PF

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FISCAL NOTE

No. 1
Bill Version: EO 101
(S) Publish Date: 1/10/00

STATE OF ALASKA
2000 LEGISLATIVE SESSION

Revision Date
Title: Executive Order - transferring the Highway Safety Planning Agency to DOT/PF
Sponsor: Rules
Requester: Governor

Dept. Affected: Public Safety
BRU: Highway Safety Planning Agency
Component: HSPA Operations & Federal Grants
Component No.: 498 & 499

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual						
Supplies						
Equiprnent						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	*	*	*	*	*	*
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	*	*	*	*	*	*

Estimate of any current year (FY2000) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

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Prepared by: Royce Weller, Special Assistant to the Commissioner
Phone: 465-4322
Division: Commissioner's Office
Date/Time: 1/4/00 12:00:00 AM
Approved by Commissioner: Joel Bennett
Date: 1/4/00
Agency: Ronald L. Otte, Department of Public Safety

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January 10, 2000

The Honorable Drue Pearce
President of the Senate
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear President Pearce:

I am transmitting an Executive Order to transfer the Alaska Highway Safety Planning Agency from the Department of Public Safety to the Department of Transportation and Public Facilities.

This transfer will make the agency more effective by placing it in the department that is ultimately responsible for providing and maintaining safe, well-designed highways and roads. The Department of Transportation and Public Facilities (DOT&PF) already administers many Federal Highway Administration grant programs and may be able to combine staff resources to more efficiently administer the highway safety grant program.

The Highway Safety Planning Agency would become part of the Statewide Planning Division of DOT&PF. Agency duties and responsibilities are well aligned with the Statewide Planning Division, including planning, data collection and program effectiveness analysis. Statewide Planning also programs and administers over $300 million in federal transportation funding each year.

The program transfer would include funding, personnel and all relevant functions of the agency to DOT&PF. In an effort to enhance our ability to make Alaska's highways safe, I urge your support of this Executive Order.

Sincerely,

Tony Knowles
Governor

HB

3

HOUSE COMMITTEE REPORT

(11)

Date Referred to Committee: March 11, 1999 FURTHER REFERRALS:

Date of Committee Action: 3/31/99

The FINANCE Committee considered: HB 3

HOUSE BILL NO. 3 DRUGS: POSSESSION OF LISTED CHEMICALS

"An Act relating to controlled substances and to the possession and distribution of certain chemicals."

recommends it be replaced with the following committee substitute CSHB 3 (Jud) [ ] the same title [ ] a new title

[ ] additional referral to _____ Committee
[ ] attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept) APPROVES PREVIOUS: (Dept/Date)

[Y] fiscal note(s) DOA [ ] fiscal note(s) _____

_____ _____

2 [X] zero fiscal note(s) DPS, LAW [ ] zero fiscal note(s) _____

_____ _____

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
Therriault	X			
Bunde	X			
Kohring	X			
Grussendorf	X			
DAVIS	X			
J. DAVIES	X			
Foster	X			
Mulder	X			

CHAIR'S SIGNATURE Therriault Mulder

CD -

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. CSHB 3 (JUD)

Revision Date: _____
Title: "An Act relating to controlled substances and to the possession of certain chemicals"
Sponsor: Representative Brice
Requestor: (H) FIN

Department Affected: Administration
BRU: Legal and Advocacy Services
Component: Public Defender Agency

COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2 002	FY 2003	FY 2004	FY 2005
PERSONAL SERVICES	**	**	**	**	**	**
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	**	**	**	**	**	**
CAPITAL EXPENDITURE^	**	**	**	**	**	**
CHANGE IN REVENUES ( )	**	**	**	**	**	**

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts	**	**	**	**	**	**
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	**	**	**	**	**	**

Estimate of any current year (FY 98) cost: $_____

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

See attached.

Prepared by: Barbara Brink, Director
Division: Public Defender Agency

Phone: (907) 264-4414
Date: _____

Approved by Commissioner: Robert Poe, Jr. Alaska M. Eley
Agency: Department of Administration

Date: 4/2/99

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Rev 10/97

ANALYSIS: (continued)

This bill increases the level of offense for manufacturing methamphetamine. Under current law it is a class B felony. (Methamphetamine is classified as a "Schedule IIA" controlled substance. Manufacture or delivery of Schedule IIA substances has traditionally been a class B felony.) Under Section 1 of the bill, manufacturing methamphetamine would be a class A felony.

The bill also makes it a class A felony offense to manufacture or possess with intent to manufacture "immediate precursors" of methamphetamine. Finally, Section 1 makes it a class A felony to possess "listed chemicals" that can be used in manufacturing methamphetamine. Possession of "precursor chemicals" is already a violation of federal statutes. See 21 U.S.C. § 841(d). This bill would, for the first time, make possession of such chemicals illegal under state law. The "listed chemicals" are not controlled substances. Many of them, such as acetone or iodine, are common and often used for legal purposes. The state would have to prove that the possession was with intent to manufacture methamphetamine.

The Public Defender Agency (PDA) does not have information on how many new prosecutions would result if this law is passed or how many cases PDA would be appointed to. However, PDA has to assume that there would be additional cases if this bill is passed and the law is enforced by police and prosecutors. Therefore, an indeterminate fiscal note is being submitted.

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. CSHB 3(JUD)

Revision Date 3/11/99
Title Precursor Drugs
Sponsor Representative Brice
Requester H. FIN

Dept. Affected Public Safety
BRU AST
Component
Component Serial No.

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY99) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

Prepared by Sandy Perry-Provost, Special Assistant
Phone 465-4322
Division Office of the Commissioner
Date/Time 3/19/99 3:41 PM
Approved by Commissioner Ronald L. Otte
Date 3/25/99
Agency Department of Public Safety

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FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. CSHB 3 (JUD)

Revision Date/Time (Note if correction)
Dept. Affected Law
Title "An Act relating to controlled substances and to the possession of certain chemicals."
BRU Criminal Division
Component 1st-4th Jud Dist, Crim Apps/Spec Lit
Sponsor Representative Brice
Requester House Judiciary Committee
Component Serial No. 2198-99/2261/79/01/03

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY99) cost:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

CSHB 3 (JUD) provides that it is a class A felony to manufacture methamphetamine, or to possess precursers or certain chemicals with the intent to manufacture methamphetamine. Manufacture of methamphetamine is extremely dangerous, not only to those working in the laboratories, but to those in the surrounding areas.

Passage of this bill is not anticipated to have a fiscal impact on the Department of Law. The department already has the ability to prosecute most instances of manufacture of a controlled substance under existing law.

Prepared by Joan M. Kasson
Division Attorney General's Office
Phone 465-5370
Date/Time 3/11/99, 10:33 AM

Approved by Commissioner Bruce M. Botelho, Attorney General
Agency Department of Law
Date 3/11/99

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(Rev 10/98) 99fnform.xls/OMB

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM March 16, 1999

SUBJECT: Sectional Summary of CSHB 3(JUD). (Work Order No. 21-LS0040\I)

TO: Representative Tom Brice
Attn: Bonnie Carroll

FROM: Gerald P. Luckhaupt
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, please note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill - the bill itself is the best statement of its contents.

Section 1. Amends AS 11.71.020(a) by providing that a person that (1) manufactures methamphetamine or an immediate precursor of methamphetamine, (2) possesses an immediate precursor of methamphetamine with the intent to manufacture methamphetamine, or (3) possesses a listed chemical with the intent to manufacture methamphetamine or an immediate precursor of methamphetamine, commits misconduct involving a controlled substance in the second degree, a class A felony.

Section 2. Provides a cross reference to a definition.

Section 3. Amends AS 11.71.030(a)(1) to clarify that this provision only applies to conduct that is not proscribed under AS 11.71.020(a), amended in sec. 1 of the bill.

Section 4. Amends AS 11.71.195 to provide that the exemption for certain substances provided by this statute only applies if the conduct in regard to the substances is not otherwise made illegal under our controlled substance laws.

Section 5. Defines what listed chemicals are and identifies listed chemicals.

GPL:glc
99-100.glc

Representative Tom Brice
ALASKA STATE LEGISLATURE

113 N. Cushman, Ste. 205
Fairbanks, AK 99701
907-456-7423 / Fax: 451-9293
While in Juneau
State Capitol
Juneau, AK 99801-1182
907-465-3466

Sponsor Statement
CS for HB 3, Drugs: Possession of Precursor Chemicals

Methamphetamine is an addictive stimulant that dramatically affects the central nervous system. Methamphetamine is commonly known as "crank," "speed," and "ice." The drug is easily made in laboratories with relatively inexpensive, over-the-counter ingredients. Meth labs are extremely dangerous, even if they are not producing as the combinations of the chemicals that are used in the production process are highly explosive. These factors make methamphetamine a dangerous drug with great potential for widespread abuse.

The CS for HB 3 will address the problem of increasing production and use of methamphetamines in Alaska, and the danger posed by these illicit laboratories. This is accomplished by raising the penalties for the manufacture of methamphetamines and their immediate precursors, and the possession of listed chemicals with the intent to manufacture these drugs. Under the CS, the manufacture of methamphetamines and their immediate precursors will be a class A felony, punishable as provided in AS 12.55.125. Since this offense will be a class A felony, someone causing the death of a person while committing this crime will be subject to prosecuting for felony murder under AS 11.41.110. An attempt to manufacture methamphetamine or its immediate precursors will be punishable as a class B felony under as 11.31.100.

The CS also identifies chemicals that are legal to posses but are used for the manufacture of controlled substances. Possession of these chemicals with the intent to manufacture methamphetamines or their immediate precursors is made a class A felony. Since the manufacture of methamphetamines or their immediate precursors is being elevated to a class A felony, it automatically becomes a ground for eviction by a land lord under the definition of illegal activity involving a controlled substance under AS 34.03.360.

Methamphetamine labs are very dangerous, even if they are not producing drugs. By increasing the penalties for methamphetamine offenses, the CS for HB 3 will discourage people from producing methamphetamine thereby protecting the lives and property of people who may be living in an area where methamphetamine is being produced.

STATE OFFICE
ALASKA PEACE OFFICERS ASSOCIATION

P.O. Box 240106 Anchorage, Alaska 99524-0106 Phone (907) 277-0515 Fax (907) 272-5355

Representative Brice
Alaska State Legislature
State Capital
Juneau, Alaska 99801-1182

February 19, 1999

Dear Representative Brice,

At a recent meeting of the APOA Board of Directors, we unanimously agreed to endorse HB 3.

Please contact us if there is anything we can do to assist you with this bill as it proceeds through the legislative process. You may contact us at the APOA office in Anchorage at 277-0515.

Thank you for sponsoring this legislation.

Sincerely,

J. Charbonneau

John Charbonneau
State President
Alaska Peace Officers Association

Public Safety Employees Association, Inc.

"Representing Alaska's Finest"

February 16. 1999

Honorable Representative Tom Brice
State Capitol
Juneau. AK 99801-1182

Re: House Bill 3

Dear Representative Brice:

Thank you for sponsoring House Bill 3. This legislation establishes a felony crime for those who possess certain chemicals with the intent to manufacture schedule IA, IIA, IIIA, IVA or VA drugs.

The Public Safety Employees Association fully supports this bill and advocates its quick passage so that Alaska's law enforcement officers can charge people who are using these dangerous chemicals to make methamphetamine and or other illegal drugs.

This important tool will allow officers to apprehend and deter methamphetamine traffickers and ensure our neighborhoods are safer places to live.

Please call us if you need any assistance in passing this bill. We have members who are involved with drug enforcement and who, on behalf of PSEA, would gladly testify as to the importance of this legislation.

Sincerely,

Keith Perrin
Business Manager

4300 Boniface Parkway, Suite 116, Anchorage, Alaska 99504
Phone (907) 337-1979 FAX (907) 337-1753 E-Mail psea@alaska.net

Founded 1881

NDMA

NONPRESCRIPTION DRUG MANUFACTURERS ASSOCIATION

Better Health Through Responsible Self-Medication

March 5, 1999

The Honorable Pete Kott
Chair, House Judiciary Committee
Alaska House of Representatives
State Capitol, Room 118
Juneau, Alaska 99801-1182

Re: House Bill 3 – An Act Relating to Controlled Substances And to the Possession of Certain Chemicals

Dear Representative Kott:

I received a copy this week of the Committee Substitute for Alaska House Bill 3, a bill that would impose criminal penalties for the possession of precursor chemicals if there is intent to manufacture methamphetamine. I am writing to let you know that we were very pleased to see that the Committee had decided to include our suggested changes to this important piece of legislation.

The inclusion of more severe penalties for manufacturing and possessing violations, while maintaining an OTC exemption for legitimate activities involving FDA-approved products, fully addresses our previous concerns with H.B. 3. Eliminating the registration and recordkeeping requirements also is in line with NDMA's belief that legislation such as H.B. 3 should punish the criminals, not the retailers and consumers. We now support H.B. 3 in its current form.

We appreciate yours and the Committee's commitment to working with industry on this key issue. Thank you for the opportunity to work with the Committee and for its consideration of our views on this important legislation. Should you have any questions or comments, please do not hesitate to contact me.

Sincerely,

Nancy A. Bukar
State Government Counsel

cc: Representative Tom Brice

NAB/jz

1150 Connecticut Avenue, N.W., Washington, D.C. 20036 • Tel: (202) 429-9260 • Fax: (202) 223-6835

REPRESENTATIVE ERIC CROFT

MEMORANDUM

TO: Members of the House Judiciary Committee
FROM: Rep. Eric Croft
DATE: 3/1/99
RE: Committee Substitute for HB 3

The ad hoc Committee on HB3 consisted of the following persons meeting at various different times.

Rep. Eric Croft
Rep. Tom Brice
Kevin Jardell, Majority Leader's Office
Cory Winchell, House Judiciary Committee
Bonnie Carroll, Rep. Brice's Office
Samuel Shepard, Rep. Croft's Office
Gerald Luckhaupt, Leg. Legal
Sandy Perry-Provost, Dept. Public Safety
Anne Carpeneti, Dept. of Law
Wilda Rodman, Rep. Therriault's Office

The ad hoc Committee proposes the following CS. We took it as our mission to address and hopefully solve the concerns raised at the initial Judiciary Committee meeting, including the following:

1) **REGISTRATION.** The registration provisions in the original bill were costly and cumbersome. The sponsor indicated that he had no objection to removing these provisions if adequate assurance was made that the federal authorities were cooperating with state and local authorities in Alaska. Del Smith made this assurance at the hearing.
2) **CLASS A OR B FELONY.** The original bill punished possession of listed chemicals with the intent to manufacture meth as a Class A Felony. Under current law, actual production of meth is a Class B Felony. Punishing the attempt lower than the completed crime raises substantial problems in prosecution and logic.
3) **TO LIST OR NOT TO LIST.** There was substantial discussion about the practical difficulties of keeping a controlled substance list current. Members expressed concern that any list not be exclusive.

January-May: State Capitol • Juneau, Alaska 99801-1182 • (907) 465-4998 • (800) 689-4998 • Fax (907) 465-4419
June-December: 716 W. 4th Avenue • Anchorage, Alaska 99501 • (907) 258-8162
Representative_Eric_Croft@legis.state.ak.us

Some discussion was had about the constitutional difficulties with allowing additions to the controlled substance list by regulation.

4) **EXEMPTED DRUGS.** The NPDMA wanted us to be careful to exempt drugs from criminal penalties that are federally regulated. Nobody had any objection to this concern, the only issue was how to accomplish it in our statutes.

The proposed CS meets each of these concerns.

1) **REGISTRATION PROVISIONS REMOVED.** The registration provisions have been removed from the CS.

2) **BOTH CRIMES CLASS A FELONIES.** After much discussion and analysis of various options, the CS raises both the actual manufacture and possession of listed chemicals with intent to manufacture to a Class A felony. This eliminates the logical oddity. The dangerous nature of meth labs makes this punishment warranted. In addition, making the crime a Class A felony brings it under the felony murder and the eviction power statutes. Under the CS, if a person is killed by a meth lab explosion, the operator of the lab may be guilty of felony murder and a tenant may be evicted for possession of listed chemicals with the intent to manufacture meth even if the lab has not yet produced any product.

3) **LIST AND ATTEMPT.** The CS continues to use a list of chemicals and, in fact, combines the List I and II to simplify the statutes. By raising the level of the felony, we have raised the attempt to manufacture meth to a Class B Felony. (In general, attempt is one level lower than the completed crime.) If a person purchases chemicals or other items with the intent to use them to produce meth, this probably a sufficient "substantial step" to convict on attempt. Therefore, the general attempt statutes serve as a catch-all for meth ingredients that are discovered after the effective date of this bill.

4) **EXEMPTED DRUGS.** After review, Section 4 as written meets the NPDMA concerns.

Enclosed is a copy of the CS. Call Rep. Brice's office with any questions.

METH: Suspected methamphetamine cook released; loophole found in la

ontinued from Page A-1

To extradite, the Bryan ounty district attorney needed o submit a warrant request to he Oklahoma governor, who in urn would sign it and send it to Alaska Gov. Tony Knowles for pproval. Local authorities could hen send Anderson back to Oklahoma.

They had 90 days. Bryan County officials, however, didn't egin the process until early September, more than 70 days after Anderson's arrest in Fairbanks.

Beverly Jackson, an extradition secretary in Bryan County, said she waited because Anderson at first said he would return willingly and because she thought Alaska would file felony drugs charges.

The documents were still in the governor's office in Oklahoma when time ran out Sept. 21. Blakely said it was "absolutely" disappointing Anderson slipped through their fingers.

Anderson walked out of jail in Fairbanks on Sept. 22.

Meanwhile, the district attorney's office in Fairbanks had reached a plea agreement with Anderson. He pleaded no contest to driving with a suspended license; the state dismissed the false report charge. That case

Despite provisions in Alaska statutes that say manufacturing methamphetamine constitutes third-degree drugs misconduct, a felony, charges were never filed.

"We don't have a statute which makes it illegal to possess precursor drugs," said District Attorney Harry Davis, adding that the state may yet consider pinning other charges on Anderson.

State law says it is illegal to manufacture "any amount" of a controlled substance—suggesting that some amount of finished product must be recovered for the charge to apply, Davis said. It's also a felony to be in possession of certain illegal substances with the intent of using them to make drugs—but many precursors and chemicals used to make methamphetamine apparently are not defined as illegal.

Yet some of those same chemicals are so toxic or volatile that investigators say methamphetamine cooks may be putting an entire neighborhood at risk.

State Rep. Tom Brice, D-Fairbanks, wants to make Alaska's methamphetamine law more clear by defining other precursors as illegal substances. He said he was approached by investigators this summer and plans to introduce legislation next session if re-

"If (investigators) see the boxes of all the precursors going into a house, it will allow them to crack that house before it goes into production," Brice said. "There's nothing else you can do with all that stuff except blow up the block."

Brice's legislation also would require stores to notify authorities when someone buys extremely large quantities of legal, over-the-counter drugs that can be used to make methamphetamine.

Phil Moberly, chief of the Statewide Narcotics Unit based at the district attorney's office in Anchorage, said his team is researching interpretations of statutes applying to methamphetamine labs. He didn't want to comment definitively until after attending a "clandestine lab" class in Anchorage this week.

"Prosecution of (labs) is an evolving thing up here. We don't have a lot of experience with it," Moberly said. "I think we're going to see more."

Moberly has been involved with three methamphetamine lab cases in Anchorage; two of which were prosecuted federally. In the third case, a defunct lab was found in someone's house; the defendant was charged with possession of methamphetamine and maintaining a dwelling containing drug-producing apparatus.

In Fairbanks, two methamphetamine labs have been raided. Crist A. Bigler, the alleged cook at a lab found four days before authorities discovered one in Anderson's trailer, has been charged in federal court.

Assistant U.S. Attorney Stephen Cooper declined to comment Thursday on the possibility of prosecuting the Anderson case, but Roberts said it isn't likely.

Anderson's public defender speculated something must have gone awry in the investigation. If it were simply a loophole in state law, Jim Cannon said federal prosecutors would have just picked up the case.

"The feds have [illegible] bleeding chemical under [illegible] (illegal)," Cannon said. "I guess they found [illegible] couldn't use the evidence [illegible] homa never came up with [illegible] ernor's warrant, and [illegible] guy sat in jail for 90 days."

Roberts countered that [illegible] vestigators had done every [illegible] by the book—and if they had [illegible] attorneys would have told [illegible] about it.

He pledged Saturday to [illegible] sleuthing out meth labs.

"Regardless of what the [illegible] ations are, it's not going to [illegible] down our efforts to investigate [illegible] and bring them down," he said. "It's still illegal."

Meth lab suspect released

Loophole in law halts charges

By JOLIE LEWIS
Staff Writer

Highly explosive materials stored near exposed live wires; hazardous chemicals left uncapped in a trailer where two people lived. Authorities characterized the methamphetamine lab as criminally dangerous.

To their disappointment, the 42-year-old Oklahoma transplant and the lab's alleged drug cook is now back on the streets three months after his arrest.

Oklahoma failed to produce a governor's warrant for Raymond C. Anderson's extradition before a 90-day window expired Sept. 21, and Alaska never filed drug charges.

Methamphetamine labs—described as extremely dangerous operations by Alaska State Troopers Statewide Drug Enforcement Unit investigators—are a new enough criminal trend in Alaska that prosecutors are just now discovering a possible loophole in state statute.

RAYMOND ANDERSON

The chemical process Anderson allegedly used to cook the drug may not be illegal.

"Somewhere, the system has failed," said Jeff Deutsch, the North Pole police officer who first sought a warrant for Anderson's arrest on a traffic charge. "Now it becomes a community problem again."

But Sgt. J.R. Roberts, chief of the local drug enforcement unit, said the setback should almost have been expected.

"It's something that's new to Alaska," Roberts said of meth labs. "It's new to the system. It's new to us. We're all novices when it comes to this."

North Pole police and drug investigators in mid-June converged on the junkyard Atco unit where Anderson apparently lived with his teen-age son. They had a warrant alleging Anderson had provided a false name during a traffic stop—his own license was suspended—and had fled from justice in Oklahoma.

Authorities didn't find Anderson that day, but they did discover hazardous chemicals and drug-manufacturing apparatus in a "poor man's" set-up that spooked even experienced methamphetamine lab investigators. There were no drugs, however.

Anderson was arrested a week later in a Fairbanks apartment on the warrant.

Oklahoma authorities said they would extradite. Though Anderson was wanted in two counties in southeastern Oklahoma, prosecutors from one took charge of extradition.

In this case, it was Bryan County, where Anderson was wanted for failing to show up in court in January on charges of possessing methamphetamine and marijuana after a felony conviction. Further drugs charges are pending in other cases, said assistant district attorney Greg Jenkins.

In neighboring Choctaw County, Anderson missed court dates in cases alleging he delivered drugs and conspired to manufacture them. Assistant District Attorney Maria Blakely said Anderson has a "whole slew" of prior drugs convictions.

Oklahoma bondsman Wayne Holder, an agent for a company that posted more than $30,000 of bonds on Anderson's behalf in Choctaw County, searched for Anderson for approximately six months. He tracked Anderson to Fairbanks and provided information to local investigators.

"It was just a long, hard deal," said Holder, who ultimately salvaged the company's bond. "We did our job. We got him incarcerated up there. ... As bondsmen, we're exonerated."

See METH Page A-3

Sam Harrel/News-Miner

METH LAB—In this summer file photo, an investigator enters an Atco building suspected to be a methamphetamine lab Wednesday in a junk yard off the Old Richardson Highway south of North Pole.

03/31/99 LEGISLATIVE TELECONFERENCE NETWORK SYSTEM LTN1150
13:55:09 PARTICIPANT LIST (TESTIFIERS ONLY) BY:JNU
TCN:90499 SCHEDULED FOR:03/31/99 13:30 TO 15:30 FOR:ALL
PUBLIC HEARING HOUSE FINANCE

LOCATION:ANCHORAGE

HB 3		BLAIR	MCCUNE	PUBLIC DEFEND	TESTIFY
HB 161		ERNEST	DUMMANN	DU ALASKA	TESTIFY
HB 161		JOHN	WOODWARD		TESTIFY
HB 161		ROBYN	HENRY		TESTIFY
HB 161		KARLEEN	JACKSON		TESTIFY
HB 161		JEFF	JESSEE		TESTIFY

LOCATION:FAIRBANKS

HB 161	MR.	AL	AARON	NAMI OF FBKS	TESTIFY
HB 161	MS.	KATE	DAS	NAMI OF FBKS	TESTIFY
HB 161	MS.	JEANNETTE	GRASTO	NAMI OF FBKS	TESTIFY
HB 161	MS.	CHERYL	WHEAT	NAMI OF FBKS	TESTIFY
HB 161	MR.	GENE	GRASTO	NAMI OF FBKS	TESTIFY

ANC. OFFNET
HB 3 SGT HUDSON

HB

3

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

DATE: 1/25/00

REPORTED OUT OF SFC 4/13/00

FURTHER:

DATE TURNED IN TO OFFICE: 4/13/00

Finance Committee considered CS FOR HOUSE BILL NO. 3(JUD)

"An Act relating to controlled substances and to the possession of certain chemicals."

and recommends:

[ ] be replaced with S CS CSHB 3 (Fin)

[ ] adopt previous _____ CS _____ (_____)

[ ] attached amendment(s) Forthcoming CS

[ ] adopt Letter of Intent by ___ ___

[ ] further referral to the _____

Senate Bill:
[✓] same title
[ ] new title

House Bill:
[ ] same title
[ ] technical title
[ ] new: SCR"_____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
	✓				
	✓				
	✓				
	✓				
	X				
	✓				
	✓				
Co-Chair:	✓	Co-Chair:			
Co-Chair:	✓	Co-Chair:			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal	
Adm.	1/19/00		XXX	#5
Law	1/13/00	✓		#6
Public Safety	1/18/00	✓		#7

[ ] APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

REPORTED OUT OF SFC 4/13/00

FISCAL NOTE

STATE OF ALASKA
000 LEGISLATIVE SESSION

No. 5
Bill Version: CSHB 3(JUD)
(S) Publish Date: 1-25-00

Revision Date: January 19, 2000
Title: "An Act relating to controlled substances and to the possession of certain chemicals"
Sponsor: Representative Brice
Requestor: (H) Finance

Department Affected: Administration
BRU: Legal and Advocacy Services
Component: Public Defender Agency

COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2 003	FY 2004	FY 2005	FY 2006
PERSONAL SERVICES	**	**	**	**	**	**
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	**	**	**	**	**	**
CAPITAL EXPENDITURES	**	**	**	**	**	**
CHANGE IN REVENUES ( )	**	**	**	**	**	**

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts	**	**	**	**	**	**
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	**	**	**	**	**	**

Estimate of any current year (FY 00) cost: $_____

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)
See attached.

Prepared by: Barbara Brink, Director
Division: Public Defender Agency
Phone: (907) 264-4414
Date:

Approved by Commissioner: Robert Poe, Jr. Alison W. Elgee
Agency: Department of Administration
Date: 1/19/00

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ANALYSIS: (continued)

This bill increases the level of offense for manufacturing methamphetamine. Under current law it is a class B felony. (Methamphetamine is classified as a "Schedule IIA" controlled substance. Manufacture or delivery of Schedule IIA substances has traditionally been a class B felony.) Under Section 1 of the bill, manufacturing methamphetamine would be a class A felony.

The bill also makes it a class A felony offense to manufacture or possess with intent to manufacture "immediate precursors" of methamphetamine. Finally, Section 1 makes it a class A felony to possess "listed chemicals" that can be used in manufacturing methamphetamine. Possession of "precursor chemicals" is already a violation of federal statutes. See 21 U.S.C. § 841(d). This bill would, for the first time, make possession of such chemicals illegal under state law. The "listed chemicals" are not controlled substances. Many of them, such as acetone or iodine, are common and often used for legal purposes. The state would have to prove that the possession was with intent to manufacture methamphetamine.

The Public Defender Agency (PDA) does not have information on how many new prosecutions would result if this law is passed or how many cases PDA would be appointed to. However, PDA has to assume that there would be additional cases if this bill is passed and the law is enforced by police and prosecutors. Therefore, an indeterminate fiscal note is being submitted.

SENATE FINANCE COMMITTEE
Amendment Number: #1
Bill Number: HB 3
Sponsor: Parnell Date: 4/7/00
Logged in By: Mindy

1-LS0040\I.1
Luckhaupt
2/21/00

AMENDMENT

OFFERED IN THE SENATE

BY SENATOR PARNELL

TO: CSHB 3(JUD)

Page 1, line 2, following "**chemicals**":

Insert "**; and providing for an effective date**"

Page 2, following line 31:

Insert a new bill section to read:

"*** Sec. 4.** AS 11.71.170(b) is amended by adding a new paragraph to read:

(29) ketamine hydrochloride."

Renumber the following bill sections accordingly.

Page 4, following line 23:

Insert a new bill section to read:

"*** Sec. 7.** This Act takes effect immediately under AS 01.10.070(c)."

SENATE FINANCE
COMMITTEE
Amendment Number: #1
Bill Number: HB 3
Sponsor: Parnell Date: 4/7/00
Logged In By: Mindy

1-LS0040\I.1
Luckhaupt
2/21/00

AMENDMENT

OFFERED IN THE SENATE BY SENATOR PARNELL

TO: CSHB 3(JUD)

Page 1, line 2, following "**chemicals**":

Insert "**; and providing for an effective date**"

Page 2, following line 31:

Insert a new bill section to read:

"*** Sec. 4.** AS 11.71.170(b) is amended by adding a new paragraph to read:

(29) ketamine hydrochloride."

Renumber the following bill sections accordingly.

Page 4, following line 23:

Insert a new bill section to read:

"*** Sec. 7.** This Act takes effect immediately under AS 01.10.070(c)."

SENATE FINANCE COMMITTEE

2000 COMMITTEE ACTION

Bill Number	HB 2
Amendment	#1
Motion	
Motion by	SP
Objection	
Objection by	
Removed	
Second Objection by	
Committee Member	***Vote***
Senator Al Adams	
Senator Gary Wilken	
Senator Pete Kelly	
Senator Lyda Green	
Senator Randy Phillips	
Senator Dave Donley	
Senator Loren Leman	
Co-Chair Sean Parnell	
Co-Chair John Torgerson	
Tally	
Yea	**0**
Nay	**0**
Absent	**0**
MOTION	Do Pass

Representative Tom Brice
ALASKA STATE LEGISLATURE

119 N. Cushman, Ste. 205
Fairbanks, AK 99701
907-456-7423 / Fax: 451-9293
While in Juneau
State Capitol
Juneau, AK 99801
907-465-3466 / Fax: 465-2937

Sponsor Statement
CSHB 3, Drugs: Possession of Precursor Chemicals

Methamphetamine is an addictive stimulant that dramatically affects the central nervous system. Methamphetamine is commonly known as "crank," "speed," and "ice." The drug is easily made in laboratories with relatively inexpensive, over-the-counter ingredients. Meth labs are extremely dangerous, even if they are not producing as the combinations of the chemicals that are used in the production process are highly explosive. These factors make methamphetamine a dangerous drug with great potential for widespread abuse.

The CSHB 3 will address the problem of increasing production and use of methamphetamines in Alaska, and the danger posed by these illicit laboratories. This is accomplished by raising the penalties for the manufacture of methamphetamines and their immediate precursors, and the possession of listed chemicals with the intent to manufacture these drugs. Under the CSHB 3, the manufacture of methamphetamines and their immediate precursors will be a class A felony, punishable as provided in AS 12.55.125. Since this offense will be a class A felony, someone causing the death of a person while committing this crime will be subject to prosecuting for felony murder under AS 11.41.110. An attempt to manufacture methamphetamine or its immediate precursors will be punishable as a class B felony under as 11.31.100.

CSHB 3 also identifies chemicals that are legal to posses but are used for the manufacture of controlled substances. Possession of these chemicals with the intent to manufacture methamphetamines or their immediate precursors is made a class A felony. Since the manufacture of methamphetamines or their immediate precursors is being elevated to a class A felony, it automatically becomes a ground for eviction by a land lord under the definition of illegal activity involving a controlled substance under AS 34.03.360.

Methamphetamine labs are very dangerous, even if they are not producing drugs. By increasing the penalties for methamphetamine offenses, the CSHB 3 will discourage people from producing methamphetamine thereby protecting the lives and property of people who may be living in an area where methamphetamine is being produced.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM March 16, 1999

SUBJECT: Sectional Summary of CSHB 3(JUD). (Work Order No. 21-LS0040\I)

TO: Representative Tom Brice
Attn: Bonnie Carroll

FROM: Gerald P. Luckhaupt
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, please note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill - the bill itself is the best statement of its contents.

Section 1. Amends AS 11.71.020(a) by providing that a person that (1) manufactures methamphetamine or an immediate precursor of methamphetamine, (2) possesses an immediate precursor of methamphetamine with the intent to manufacture methamphetamine, or (3) possesses a listed chemical with the intent to manufacture methamphetamine or an immediate precursor of methamphetamine, commits misconduct involving a controlled substance in the second degree, a class A felony.

Section 2. Provides a cross reference to a definition.

Section 3. Amends AS 11.71.030(a)(1) to clarify that this provision only applies to conduct that is not proscribed under AS 11.71.020(a), amended in sec. 1 of the bill.

Section 4. Amends AS 11.71.195 to provide that the exemption for certain substances provided by this statute only applies if the conduct in regard to the substances is not otherwise made illegal under our controlled substance laws.

Section 5. Defines what listed chemicals are and identifies listed chemicals.

GPL:glc
99-100.glc

REPRESENTATIVE ERIC CROFT

MEMORANDUM

TO: Members of the House Judiciary Committee
FROM: Rep. Eric Croft
DATE: 3/1/99
RE: Committee Substitute for HB 3

The ad hoc Committee on HB3 consisted of the following persons meeting at various different times.

Rep. Eric Croft
Rep. Tom Brice
Kevin Jardell, Majority Leader's Office
Cory Winchell, House Judiciary Committee
Bonnie Carroll, Rep. Brice's Office
Samuel Shepard. Rep. Croft's Office
Gerald Luckhaupt, Leg. Legal
Sandy Perry-Provost, Dept. Public Safety
Anne Carpeneti, Dept. of Law
Wilda Rodman, Rep. Therriault's Office

The ad hoc Committee proposes the following CS. We took it as our mission to address and hopefully solve the concerns raised at the initial Judiciary Committee meeting, including the following:

1) **REGISTRATION.** The registration provisions in the original bill were costly and cumbersome. The sponsor indicated that he had no objection to removing these provisions if adequate assurance was made that the federal authorities were cooperating with state and local authorities in Alaska. Del Smith made this assurance at the hearing.
2) **CLASS A OR B FELONY.** The original bill punished possession of listed chemicals with the intent to manufacture meth as a Class A Felony. Under current law, actual production of meth is a Class B Felony. Punishing the attempt lower than the completed crime raises substantial problems in prosecution and logic.
3) **TO LIST OR NOT TO LIST.** There was substantial discussion about the practical difficulties of keeping a controlled substance list current. Members expressed concern that any list not be exclusive.

January-May: State Capitol • Juneau, Alaska 99801-1182 • (907) 465-4998 • (800) 689-4998 • Fax (907) 465-4419
June-December: 716 W. 4th Avenue • Anchorage, Alaska 99501 • (907) 258-8162
Representative_Eric_Croft@legis.state.ak.us

Some discussion was had about the constitutional difficulties with allowing additions to the controlled substance list by regulation.

4) EXEMPTED DRUGS. The NPDMA wanted us to be careful to exempt drugs from criminal penalties that are federally regulated. Nobody had any objection to this concern. the only issue was how to accomplish it in our statutes.

The proposed CS meets each of these concerns.

1) REGISTRATION PROVISIONS REMOVED The registration provisions have been removed from the CS.
2) BOTH CRIMES CLASS A FELONIES. After much discussion and analysis of various options, the CS raises both the actual manufacture and possession of listed chemicals with intent to manufacture to a Class A felony. This eliminates the logical oddity. The dangerous nature of meth labs makes this punishment warranted. In addition, making the crime a Class A felony brings it under the felony murder and the eviction power statutes. Under the CS. if a person is killed by a meth lab explosion, the operator of the lab may be guilty of felony murder and a tenant may be evicted for possession of listed chemicals with the intent to manufacture meth even if the lab has not yet produced any product.
3) LIST AND ATTEMPT. The CS continues to use a list of chemicals and, in fact, combines the List I and II to simplify the statutes. By raising the level of the felony, we have raised the attempt to manufacture meth to a Class B Felony. (In general, attempt is one level lower than the completed crime.) If a person purchases chemicals or other items with the intent to use them to produce meth, this probably a sufficient "substantial step" to convict on attempt. Therefore, the general attempt statutes serve as a catch-all for meth ingredients that are discovered after the effective date of this bill.
4) EXEMPTED DRUGS. After review, Section 4 as written meets the NPDMA concerns.

Enclosed is a copy of the CS. Call Rep. Brice's office with any questions.

Founded 1981
NDMA
NONPRESCRIPTION DRUG MANUFACTURERS ASSOCIATION

Better Health Through Responsible Self-Medication

March 5, 1999

The Honorable Pete Kott
Chair, House Judiciary Committee
Alaska House of Representatives
State Capitol, Room 118
Juneau, Alaska 99801-1182

Re: House Bill 3 – An Act Relating to Controlled Substances And to the Possession of Certain Chemicals

Dear Representative Kott:

I received a copy this week of the Committee Substitute for Alaska House Bill 3, a bill that would impose criminal penalties for the possession of precursor chemicals if there is intent to manufacture methamphetamine. I am writing to let you know that we were very pleased to see that the Committee had decided to include our suggested changes to this important piece of legislation.

The inclusion of more severe penalties for manufacturing and possessing violations, while maintaining an OTC exemption for legitimate activities involving FDA-approved products, fully addresses our previous concerns with H.B. 3. Eliminating the registration and recordkeeping requirements also is in line with NDMA's belief that legislation such as H.B. 3 should punish the criminals, not the retailers and consumers. We now support H.B. 3 in its current form.

We appreciate yours and the Committee's commitment to working with industry on this key issue. Thank you for the opportunity to work with the Committee and for its consideration of our views on this important legislation. Should you have any questions or comments, please do not hesitate to contact me.

Sincerely,

Nancy A. Bukar
State Government Counsel

cc: Representative Tom Brice

NAB/jz

1150 Connecticut Avenue, N.W., Washington, D.C. 20036 • Tel: (202) 429-9260 • Fax: (202) 223-6835

STATE OFFICE
ALASKA PEACE OFFICERS ASSOCIATION

P.O. Box 240106 Anchorage, Alaska 99524-0106 Phone (907) 277-0515 Fax (907) 272-5355

Representative Brice
Alaska State Legislature
State Capital
Juneau, Alaska 99801-1182

February 19, 1999

Dear Representative Brice,

At a recent meeting of the APOA Board of Directors, we unanimously agreed to endorse HB 3.

Please contact us if there is anything we can do to assist you with this bill as it proceeds through the legislative process. You may contact us at the APOA office in Anchorage at 277-0515.

Thank you for sponsoring this legislation.

Sincerely,

John Charbonneau
State President
Alaska Peace Officers Association

Representative Tom Brice
ALASKA STATE LEGISLATURE

119 N. Cushman, Ste. 205
Fairbanks, AK 99701
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GPL:glc
99-100.glc

Subject: [Fwd: HB3 HOUSE CALENDAR]
Date: Thu, 22 Apr 1999 10:01:14 -0800
From: Joe Hayes <Joe_Hayes@legis.state.ak.us>
Organization: Alaska State Legislature
To: Bonnie Carroll <Bonnie_Carroll@legis.state.ak.us>

Subject: HB3 HOUSE CALENDAR
Date: Thu, 22 Apr 1999 09:19:32 -0800
From: Sandra Perry-Provost <sandra_perry-provost@dps.state.ak.us>
Organization: Department of Public Safety
To: "Stone, Cliff" <Cliff_Stone@legis.state.ak.us>,
"Lovell, Jeanne" <Jeanne_Lovell@legis.state.ak.us>,
"Karish, Rosemary" <Rosemary_Karish@legis.state.ak.us>,
"Hayes, Joe" <Joe_Hayes@legis.state.ak.us>,
"Swenson, Patricia" <Patti_Swenson@legis.state.ak.us>,
"Terrel, Paula" <Paula_Terrel@legis.state.ak.us>,
"Moss, Rynnieva" <Rynnieva_Moss@legis.state.ak.us>,
"Pignalberi, Marco" <Marco_Pignalberi@legis.state.ak.us>,
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"Labolle, Larry" <Larry_Labolle@legis.state.ak.us>,
"Jardell, Kevin" <Kevin_Jardell@legis.state.ak.us>, Douglas_Rickey@legis.state.ak.us,
"Lack, Jonathon" <Jonathon_Lack@legis.state.ak.us>,
"Manly, John" <John_Manly@legis.state.ak.us>,
"Wilcox, Walter" <Walter_Wilcox@legis.state.ak.us>,
"Cotting, Barbara" <Barbara_Cotting@legis.state.ak.us>,
"Panamaroff, Thomas" <Tom_Panamaroff@legis.state.ak.us>,
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"Matheny, Katrina" <Katrina_Matheny@legis.state.ak.us>,
"Rodman, Wilda" <Wilda_Rodman@legis.state.ak.us>, Lori_Backes@legis.state.ak.us,
"Ecklund, Peter" <Peter_Ecklund@legis.state.ak.us>
CC: "Smith, Delbert" <delbert_smith@pssun02x.dps.state.ak.us>

To all:

The Department of Public Safety has worked with Representative Brice and the Judiciary Committee on CSHB 3 (JUD) "An Act relating to controlled substances and to the possession and distribution of certain chemicals" and supports the Committee Substitute as written.