

**ALASKA LEGISLATURE**

**2023**

**HOUSE and SENATE FINANCE COMMITTEE FILES, 1999 - 2000**

174

**HB**

**363**

**SFIN**

**FILE**

# SENATE FINANCE COMMITTEE REPORT

DATE: 4/12/00

REPORTED OUT OF  
SFC 4/14/00

FURTHER:

DATE TURNED  
IN TO OFFICE: 4/14/00

Finance Committee considered CS FOR HOUSE BILL NO. 363(FIN)

"An Act relating to salmon product reports and to the sale of fish; and providing for an effective date."

and recommends:

- be replaced with S CS CS HB 363 (FIN)
- adopt previous \_\_\_\_\_ CS \_\_\_\_\_
- attached amendment(s) CS forthcoming
- adopt Letter of Intent by \_\_\_\_\_
- further referral to the \_\_\_\_\_ Committee

- Senate Bill:
- same title
  - new title
- House Bill:
- same title
  - technical title
  - new: SCR# \_\_\_\_\_

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Al Calder</i>	<input checked="" type="checkbox"/>	<i>Lynne Preen</i>	<input checked="" type="checkbox"/>		
<i>Alan J. Swan</i>	<input checked="" type="checkbox"/>	<i>Erny White</i>	<input checked="" type="checkbox"/>		
Co-Chair: <i>J. Boyum</i>	<input checked="" type="checkbox"/>	Co-Chair:			
Co-Chair:		Co-Chair:			

**NEW FISCAL NOTE(S):**

Department	Date	Zero	Fiscal

**PREVIOUS FISCAL NOTE(S):\***

Department	Date	Zero	Fiscal
<i>Revenue</i>	<i>4/13/00</i>		<i>38.4</i>

APPROPRIATION -- no fiscal note

\*include fiscal notes accompanying Governor's bill

# FISCAL NOTE

BILL NO. SCS CSHB 363(L&C)

2000 LEGISLATIVE SESSION

REPORTED OUT OF  
SFC 4/14/00

Revision Date/Time (Note if correction) \_\_\_\_\_  
Title Salmon Product Reports

Dept. Affected Revenue  
BRU Revenue Operations  
Component Income and Excise Audit

Sponsor Representative Austerman  
Requester (S) Finance

Component Serial No. 113

**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	32.9	32.9	32.9	32.9	32.9	32.9
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	1.0	1.0	1.0	1.0	1.0	1.0
Supplies	1.0	1.0	1.0	1.0	1.0	1.0
Equipment	3.5					
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING*</b>	<b>38.4</b>	<b>34.9</b>	<b>34.9</b>	<b>34.9</b>	<b>34.9</b>	<b>34.9</b>
<b>CAPITAL EXPENDITURES**</b>	<b>20.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>CHANGE IN REVENUES ( )</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	58.4	34.9	34.9	34.9	34.9	34.9
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>58.4</b>	<b>34.9</b>	<b>34.9</b>	<b>34.9</b>	<b>34.9</b>	<b>34.9</b>

Estimate of current year (FY00) cost: 0.0

**POSITIONS**

Full-time	0.75	0.75	0.75	0.75	0.75	0.75
Part-time						
Temporary						

**ANALYSIS:** (see attached analysis and tables)

\*\* This is a rough one-time cost estimate for FY 2001 (see attached capital expenditure narrative).

Prepared by Brett Fried, Economist and Carl Meyer, Chief of Appeals  
 Division Income and Excise Audit  
 Approved by Wilson L. Condon  
 Commissioner Department of Revenue  
 Agency

Phone 465-3682 or 465-2343  
 Date/Time April 13, 2000  
 Date \_\_\_\_\_

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## **Bill Analysis**

Section 1 amends AS 16.05.680 by adding a new subsection to prohibit a person from selling salmon that was not harvested under authority of a permit.

Section 2 amends AS 16.05.690(a) to require record-keeping, by each buyer of fish, of the Department of Fish and Game statistical area in which the fish bought were taken.

Section 3 amends AS 43.80.050(a) to require all fisheries businesses selling more than 1,000,000 pounds of salmon products at wholesale in a calendar year to report to the department for each 4 month period the prices received and the quantities of the products involved in the sales, including sales by affiliates. Under current law, reporting is only required for the prices and quantities of thermally processed salmon products sold at wholesale.

Section 4 repeals and reenacts AS 43.80.050(b) to require the fisheries businesses to include in the reports:

- ◆ The total quantity of each salmon product form sold by area of production and by species; and,
- ◆ The wholesale price received.

This reporting would be required for the following product forms:

- ◆ Thermally processed salmon products by the number of each size of container
- ◆ Fresh headed and gutted salmon products by pounds
- ◆ Fresh fillet salmon products by pounds
- ◆ Frozen headed and gutted salmon products by pounds
- ◆ Frozen fillet salmon products by pounds
- ◆ Salmon roe products by pounds

Section 5 amends AS 43.80.050(c) to require all fisheries businesses selling to affiliates to report only the subsequent sales of that salmon product by the affiliates at wholesale. The information to be reported includes:

- ◆ A description of the products sold;
- ◆ The total quantity of each salmon product form sold by area of production and by species; and,
- ◆ The wholesale price received.

Section 6 amends AS 43.80.050 by adding a new section (f) to require the filing of an annual report. The annual report covers the period from January 1 through December 31 of the calendar reporting year and must be filed by January 31 of the following calendar reporting year. The report is to include a description of the products and the

quantity, by size of container for thermally processed salmon and pounds for other salmon product forms, of each salmon product form produced by the processor and affiliates in each area of production and by species.

Section 7 amends AS 43.80.055 to require the department to determine from the reports the average monthly and annual wholesale prices for the sale of salmon products. These averages are to be determined for each pound by area of production by species by product form, except that for thermally processed salmon products the averages are determined by size of container by species.

Section 8 amends AS 43.80.055 to add a new subsection to require the department to publish the average wholesale prices in a report to be entitled the "Alaska Salmon Price Report".

Section 9 amends AS 43.80.060 to require the department to make the Alaska Salmon Price Report available to the legislature by March 15 of each year. The report is to include the wholesale prices paid and the quantities of salmon products produced during the preceding year.

Section 10 amends AS 43.80.100(5) to provide that the reporting year is the calendar year after the calendar year in which the fisheries business sells more than 1,000,000 pounds of salmon products at wholesale.

Section 11 amends AS 43.80.100(7) to eliminate deductions in the nature of cash discounts allowed on sales and commissions paid to independent brokers in determining the wholesale price.

Section 12 amends AS 43.80.100 to add new paragraphs to define the following terms: the "area of production" in which a salmon product was processed means specified fisheries areas of the state; "produce" means to process salmon into a salmon product; and "wholesale" means the first sale of a salmon product at wholesale after the fisheries business tax was paid or became payable on the salmon from which the product was produced. One problem with the definition of 'wholesale' is that 'wholesale' is also included in the meaning presenting a circular conundrum. Another problem is that since the fisheries business tax is neither paid nor payable until March 31<sup>st</sup> of the following calendar year, an argument could be made that sales made before this date are not reportable. We believe the intent, however, is that wholesale is to mean the first sale of a salmon product to a person other than the final consumer that occurs after the liability for the fisheries business tax is incurred on the salmon from which the product was produced.

Section 13 amends the uncodified law to add a new section to provide that the first report required by AS 43.80.050 is due on September 30, 2000 for the period beginning May 1, 2000 and ending August 31, 2000, and must be filed by a fisheries

business that sold more than 1,000,000 pounds of salmon products at first wholesale during the 12 months ending August 31, 2000.

Section 14 provides a September 1, 2000 effective date.

### **Operating Expenditures**

The following functions must be performed by DOR to meet the requirements of this bill: (1) public service (responding to questions from the public and processors), (2) data entry, (3) report production, (4) report and form dissemination, (5) accuracy and confidentiality checks, (6) non-filer identification, and (7) programming. We already perform these functions for the relatively simple average wholesale thermally processed salmon report (2 page report and 4 page report form). We produce this report three times a year and it takes the equivalent of one month for one individual.

The increase in estimated form length, from 4 to 20 pages does not address the increase in complexity. Table 1 (see attached spreadsheet) provides some help in understanding the change in the level of complexity. The 20 page number assumes that each page of the form includes production area, pounds (or size of container for thermally processed salmon products), wholesale price and product form by species by month. Consequently, there is a potential for 48 rows of data (8 production areas times 6 product forms). We are, however, assuming that, at most we will need to accommodate 32 rows per page. With 4 months of data and 5 species of salmon we have 20 pages. We will also have to produce an annual report using annual data. This form should be approximately 5 pages long.

Not only will the number of filers increase, by approximately 3 times, but the amount of information they must report will increase from 1 to 6 product forms, and from statewide to by 8 different regions. This increase in complexity compounds the difficulty associated with accuracy and confidentiality checks.

Because of the large increase in complexity and amount of data, we are requesting a  $\frac{3}{4}$  position to meet our obligations under this bill. An Analyst Programmer I (@\$32,850) will be needed to do the following: (1) query development and execution, (2) non-filer identification, (3) data base maintenance, (4) data entry, (5) report and form development, dissemination, and production, (6) accuracy and confidentiality checks, and (7) public service. Equipment, supplies and contractual obligations will be \$5,500 the first year because of a one-time cost of \$3,500 for computers and other equipment. After the first year, equipment costs will be zero and contractual and supply costs will be \$2,000 a year.

Another way to approach this issue is to examine how this cost compares to the cost of other tax programs that the tax division currently administers. The fisheries business tax

return is the closest in similarity (in terms of complexity) to the proposed Salmon Product Report. Table 2 provides a comparison of the attributes of both of these programs.

Clearly, the fisheries business tax has more returns, species, and reporting areas. Processors must also identify whether the processing activity is established or developing and if the activity is floating, salmon cannery or shore-based. Additionally, the cost of the program includes accounting and collections costs, which would not be an issue for the Salmon Product Report. However, the fisheries business data is annual not monthly, does not include product forms, and is only received once a year, not 3 times a year. Also, because firms filing the report will be larger fishery businesses, the reports will be more comparable to the most complex of the fisheries business tax returns. Additionally, in our experience, fisheries businesses tend to fill out their tax returns more carefully than informational reports. This then requires more vigilance and time on the part of DOR. The total administrative cost of the fisheries business tax is \$229,174, which is 6.6 times the estimated \$34,850 operating cost associated with this bill.

### **Capital Expenditures**

The only capital expenditure would be the contract for creating a database and the associated data entry interface. We currently use an excel workbook because we only need 48 spreadsheets to accommodate the current information. At a maximum we would need 640 spreadsheets (4 months x 5 species x 32 processors) to accommodate the sales data and 160 spreadsheets (5 species x 32 processors) for the production data. Each processor would have a separate spreadsheet for each month recording the pounds, product form and production area for a particular species. Although we know we would not need this many spreadsheets, even doubling the current number of spreadsheets would be too cumbersome to do in an excel workbook. We will also need to be able to execute relatively complex queries and to have a simple data entry interface.

Another advantage of using a database is it opens up the possibility of electronic filing. If electronic filing was required, we believe operating expenditures would decrease. Although we have not had time to estimate the cost of contracting out for the development of a database, from previous experience we believe it would be at least a one-time cost of \$20,000. After the database system is set up, we believe the analyst programmer will be able to maintain the system and adjust it for changes.

### **Revenue**

There is no direct revenue effect of this bill.

**TABLE 1 - CHANGES TO REPORTING REQUIREMENTS: SCS CSHB 363**

	<u>Status Quo</u>	<u>SCS CSHB 363 Estimates</u>
Number of processors reporting <sup>1</sup>	12	32
Number of product forms <sup>2</sup>	1	6
Number of reporting areas <sup>3</sup>	1	8
Number of species <sup>4</sup>	5	5
Reporting point <sup>5</sup>	sale	sale and prod.
Reporting time period <sup>6</sup>	monthly	monthly
Report due <sup>6</sup>	3 times a year	3 times a year
Report threshold <sup>7</sup>	240,000 lbs.	1,000,000 lbs.
Pages per report form <sup>8</sup>	4	20
Software <sup>9</sup>	excel	database

<sup>1</sup> According to the Alaska Department of Fish and Game, 32 processors exceed the minimum reporting threshold.

<sup>2</sup> The following product forms are to be reported: (1) fresh headed and gutted, (2) thermally processed, (3) fresh fillet salmon products, (4) frozen headed and gutted, (5) frozen fillet and (6) salmon roe. Because thermally processed salmon products must be reported by the size of the container in which they are sold, they must be broken out separately from the other product forms. Although there are a large number of sizes, the vast majority of thermally processed salmon will fall under the four most common can sizes.

<sup>3</sup> The eight areas of production are (1) Southeastern and Yakutat, (2) Prince William Sound, (3) Cook Inlet, (4) Kodiak, (5) Chignik, (6) Aleutian Islands, Alka-Amli Islands and Alaska Peninsula, (7) Bristol Bay, (8) Kuskokwim, Yukon-Northern, Norton Sound-Port Clarence, and Kotzebue.

<sup>4</sup> Under SCS CSHB 363, there are the following five species of salmon (1) Chinook, (2) Sockeye, (3) Coho, (4) Pink, and (5) Chum.

<sup>5</sup> Under SCS CSHB 363, the total quantity of salmon products produced and sold must be reported. However, production must only be reported once a year on an annual (not monthly basis).

<sup>6</sup> The processor must provide monthly sales data every four months to the Department of Revenue and annual production data once a year.

<sup>7</sup> Under SCS CSHB 363, a processor only has to fill out the report if during the previous calendar year the processor has sold more than 1,000,000 pounds at wholesale.

<sup>8</sup> Because of the increase in the number of product forms (from 1 to 6), and the reporting by production area: (8 production areas), we estimate that the report length will increase by a factor of 5. Additionally, it will increase in complexity. For example, for thermally processed salmon it will increase from three data fields (pounds or size, value and months) to 5 (pounds or size, value, months, product form and production area) data fields.

<sup>9</sup> An excel spreadsheet with 48 pages linked to a summary page is all that is currently necessary. This will no longer work with 32 processors reporting 6 product forms, by 8 production areas, by species and by month (see operating expenditures discussion).

Salmon e Reports  
SCS CSHB 363(L&C)  
April 13, 2000  
Page 7 of 7

**TABLE 2 - A COMPARISON OF SCS CSHB 363 REPORT & FISH. BUS. TAX**

	<u>Fisheries Business</u>	<u>SCS CSHB 363 Estimates</u>
Number of processors reporting <sup>1</sup>	<b>449</b>	<b>32</b>
Number of product forms <sup>2</sup>	<b>0</b>	<b>6</b>
Number of reporting areas <sup>3</sup>	<b>54</b>	<b>8</b>
Number of species <sup>4</sup>	<b>all</b>	<b>5</b>
Reporting point <sup>5</sup>	<b>proc. or trans.</b>	<b>sale and prod.</b>
Reporting time period <sup>6</sup>	<b>annual</b>	<b>monthly</b>
Report due <sup>6</sup>	<b>once a year</b>	<b>3 times a year</b>
Report threshold <sup>7</sup>	<b>none</b>	<b>1,000,000 lbs.</b>
Pages per report form <sup>8</sup>	<b>26</b>	<b>20</b>
Software <sup>9</sup>	<b>database</b>	<b>database</b>

<sup>1</sup> According to the Alaska Department of Fish and Game, 32 processors exceed the minimum reporting threshold.

<sup>2</sup> Under SCS CSHB 363, the following product forms are to be reported: (1) fresh headed and gutted, (2) thermally processed, (3) fresh fillet salmon products, (4) frozen headed and gutted, (5) frozen fillet and (6) salmon roe. Because thermally processed salmon products must be reported by the size of the container in which they are sold, they must be broken out separately from the other product forms. Although there are a large number of sizes, the vast majority of thermally processed salmon will fall under the four most common can sizes.

<sup>3</sup> The eight areas of production are (1) Southeastern and Yakutat, (2) Prince William Sound, (3) Cook Inlet, (4) Kodiak, (5) Chignik, (6) Aleutian Islands, Alka-Amli Islands and Alaska Peninsula, (7) Bristol Bay, and (8) Kuskokwim, Yukon-Northern, Norton Sound-Port Clarence, and Kotzebue. For the fisheries business tax, we have included the number of communities that received fisheries business shared tax revenue in FY 99.

<sup>4</sup> Under SCS CSHB 363, there are the following five species of salmon (1) Chinook, (2) Sockeye, (3) Coho, (4) Pink and (5) Chum. Species are listed by species code on the fisheries business tax return.

<sup>5</sup> Under SCS CSHB 363, the total quantity of salmon products produced and sold must be reported. Because both of these separate events occur at different points in time, they will be reported separately. However, production must only be reported once a year on an annual (not monthly basis). For the fisheries business tax, pounds and value must be reported once, either when the fish is processed or transported out-of-state unprocessed.

<sup>6</sup> Under SCS CSHB 363, the processor must provide monthly data every four months to the Department of Revenue. The fisheries business tax return is due once a year.

<sup>7</sup> Under SCS CSHB 363, a processor only has to fill out the report if during the previous calendar year the processor has sold more than 1,000,000 pounds at wholesale

<sup>8</sup> Because of the increase in the number of product forms (from 1 to 6), the reporting of salmon products produced and sold (from just sold) and the reporting by production area (8 production areas), we estimate that the report length will be 20 pages. Currently, the fisheries business tax return is 26 pages long.

<sup>9</sup> An excel spreadsheet with 48 pages linked to a summary page is all that is currently necessary. This will no longer work with 32 processors reporting 6 product forms, by 8 production areas, by species and by month (see operating expenditures discussion).

## **Bill Analysis**

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Section 13 repeals Section 12, ch. 37, SLA 1998, which would have repealed AS 43.80.050 – 100 on July 1, 2003.

Section 14 amends the uncodified law to add a new section to provide that the first report required by AS 43.80.050 is due on September 30, 2000 for the period beginning May 1, 2000 and ending August 31, 2000, and must be filed by a fisheries business that sold more than 1,000,000 pounds of salmon products at first wholesale during the 12 months ending August 31, 2000.

Section 15 provides a September 1, 2000 effective date.

### **Operating Expenditures**

The following functions must be performed by DOR to meet the requirements of this bill: (1) public service (responding to questions from the public and processors), (2) data entry, (3) report production, (4) report and form dissemination, (5) accuracy and confidentiality checks, (6) non-filer identification, and (5) programming. We already perform these functions for the relatively simple average wholesale thermally processed salmon report (2 page report and 4 page report form). We produce this report three times a year and it takes the equivalent of one month for one individual.

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Another way to approach this issue is to examine how this cost compares to the cost of other tax programs that the tax division currently administers. The fisheries business tax return is the closest in similarity (in terms of complexity) to the proposed Salmon Product Report. Table 2 provides a comparison of the attributes of both of these programs.

Clearly, the fisheries business tax has more returns, species, and reporting areas. Processors must also identify whether the processing activity is established or developing and if the activity is floating, salmon cannery or shore-based. Additionally, the cost of the program includes accounting and collections costs, which would not be an issue for the Salmon Product Report. However, the fisheries business data is annual not monthly, does not include product forms, and is only received once a year, not 3 times a year. Also, because firms filing the report will be larger fishery businesses, the reports will be more comparable to the most complex of the fisheries business tax returns. Additionally, in our experience, fisheries businesses tend to fill out their tax returns more carefully than informational reports. This then requires more vigilance and time on the part of DOR. The total administrative cost of the fisheries business tax is \$229,174, which is 6.6 times the estimated \$34,850 operating cost associated with this bill.

### Capital Expenditures

The only capital expenditure would be the contract for creating a database and the associated data entry interface. We currently use an excel workbook because we only need 48 spreadsheets to accommodate the current information. At a maximum we would need 640 spreadsheets (4 months x 5 species x 32 processors) to accommodate the sales data and 160 spreadsheets (5 species x 32 processors) for the production data. Each processor would have a separate spreadsheet for each month recording the pounds, product form and production area for a particular species. Although we know we would not need this many spreadsheets, even doubling the current number of spreadsheets would be too cumbersome to do in an excel workbook. We will also need to be able to execute relatively complex queries and to have a simple data entry interface.

Another advantage of using a database is it opens up the possibility of electronic filing. If electronic filing was required, we believe operating expenditures would decrease. Although we have not had time to estimate the cost of contracting out for the development of a database, from previous experience we believe it would be at least a one-time cost of \$20,000. After the database system is set up, we believe the analyst programmer will be able to maintain the system and adjust it for changes.

### Revenue

There is no direct revenue effect of this bill.

## ALASKA DEPARTMENT OF REVENUE

Salmon Price Reports  
 CSHB 363(FIN)  
 March 30, 2000  
 Page 6 of 7

**TABLE 1 - CHANGES TO REPORTING REQUIREMENTS: CSHB 363**

	Status Quo	CSHB 363 Estimates
Number of processors reporting <sup>1</sup>	12	32
Number of product forms <sup>2</sup>	1	6
Number of reporting areas <sup>3</sup>	1	8
Number of species <sup>4</sup>	5	5
Reporting point <sup>5</sup>	sale	sale and prod.
Reporting time period <sup>6</sup>	monthly	monthly
Report due <sup>6</sup>	3 times a year	3 times a year
Report threshold <sup>7</sup>	240,000 lbs.	1,000,000 lbs.
Pages per report form <sup>8</sup>	4	20
Software <sup>9</sup>	excel	database

<sup>1</sup> According to the Alaska Department of Fish and Game, 32 processors exceed the minimum reporting threshold.

<sup>2</sup> The following product forms are to be reported: (1) fresh headed and gutted, (2) thermally processed, (3) fresh fillet salmon products, (4) frozen headed and gutted, (5) frozen fillet and (6) salmon roe. Because thermally processed salmon products must be reported by the size of the container in which they are sold, they must be broken out separately from the other product forms. Although there are a large number of sizes, the vast majority of thermally processed salmon will fall under the four most common can sizes.

<sup>3</sup> The eight areas of production are (1) Southeastern and Yakutat, (2) Prince William Sound, (3) Cook Inlet, (4) Kodiak, (5) Chignik, (6) Aleutian Islands, Atka-Amlia Islands and Alaska Peninsula, (7) Bristol Bay, (8) Kuskokwim, Yukon-Northern, Norton Sound-Port Clarence, and Kotzebue.

<sup>4</sup> Under CSHB 363, there are the following five species of salmon (1) Chinook, (2) Sockeye, (3) Coho, (4) Pink, and (5) Chum.

<sup>5</sup> Under CSHB 363, the total quantity of salmon products produced and sold must be reported. However, production must only be reported once a year on an annual (not monthly basis).

<sup>6</sup> The processor must provide monthly sales data every four months to the Department of Revenue and annual production data once a year.

<sup>7</sup> Under CSHB 363, a processor only has to fill out the report if during the previous calendar year the processor has sold more than 1,000,000 pounds at wholesale.

<sup>8</sup> Because of the increase in the number of product forms (from 1 to 6), and the reporting by production area (8 production areas), we estimate that the report length will increase by a factor of 5. Additionally, it will increase in complexity. For example, for thermally processed salmon it will increase from three data fields (pounds or size, value and months) to 5 (pounds or size, value, months, product form and production area) data fields.

<sup>9</sup> An excel spreadsheet with 48 pages linked to a summary page is all that is currently necessary. This will no longer work with 32 processors reporting 6 product forms, by 8 production areas, by species and by month (see operating expenditures discussion).

## ALASKA DEPARTMENT OF REVENUE

Salmon Price Reports  
 CSHB 363(FIN)  
 March 30, 2000  
 Page 7 of 7

**TABLE 2 - A COMPARISON OF CSHB 363 REPORT & FISH. BUS. TAX**

	<u>Fisheries Business</u>	<u>CSHB 363 Estimates</u>
Number of processors reporting <sup>1</sup>	<b>449</b>	<b>32</b>
Number of product forms <sup>2</sup>	<b>0</b>	<b>6</b>
Number of reporting areas <sup>3</sup>	<b>54</b>	<b>8</b>
Number of species <sup>4</sup>	<b>all</b>	<b>5</b>
Reporting point <sup>5</sup>	<b>proc. or trans.</b>	<b>sale and prod.</b>
Reporting time period <sup>6</sup>	<b>annual</b>	<b>monthly</b>
Report due <sup>6</sup>	<b>once a year</b>	<b>3 times a year</b>
Report threshold <sup>7</sup>	<b>none</b>	<b>1,000,000 lbs.</b>
Pages per report form <sup>8</sup>	<b>26</b>	<b>20</b>
Software <sup>9</sup>	<b>database</b>	<b>database</b>

<sup>1</sup> According to the Alaska Department of Fish and Game, 32 processors exceed the minimum reporting threshold.

<sup>2</sup> Under CSHB 363, the following product forms are to be reported: (1) fresh headed and gutted, (2) thermally processed, (3) fresh fillet salmon products, (4) frozen headed and gutted, (5) frozen fillet and (6) salmon roe. Because thermally processed salmon products must be reported by the size of the container in which they are sold, they must be broken out separately from the other product forms. Although there are a large number of sizes, the vast majority of thermally processed salmon will fall under the four most common can sizes.

<sup>3</sup> The eight areas of production are (1) Southeastern and Yakutat, (2) Prince William Sound, (3) Cook Inlet, (4) Kodiak, (5) Chignik, (6) Aleutian Islands, Alka-Amlia Islands and Alaska Peninsula, (7) Bristol Bay, and (8) Kuskokwim, Yukon-Northern, Norton Sound-Port Clarence, and Kotzebue. For the fisheries business tax, we have included the number of communities that received fisheries business shared tax revenue in FY 99.

<sup>4</sup> Under CSHB 363, there are the following five species of salmon (1) Chinook, (2) Sockeye, (3) Coho, (4) Pink and (5) Chum. Species are listed by species code on the fisheries business tax return.

<sup>5</sup> Under CSHB 363, the total quantity of salmon products produced and sold must be reported. Because both of these separate events occur at different points in time, they will be reported separately. However, production must only be reported once a year on an annual (not monthly basis). For the fisheries business tax, pounds and value must be reported once, either when the fish is processed or transported out-of-state unprocessed.

<sup>6</sup> Under CSHB 363, the processor must provide monthly data every four months to the Department of Revenue. The fisheries business tax return is due once a year.

<sup>7</sup> Under CSHB 363, a processor only has to fill out the report if during the previous calendar year the processor has sold more than 1,000,000 pounds at wholesale

<sup>8</sup> Because of the increase in the number of product forms (from 1 to 6), the reporting of salmon products produced and sold (from just sold) and the reporting by production area (8 production areas), we estimate that the report length will be 20 pages. Currently, the fisheries business tax return is 26 pages long.

<sup>9</sup> An excel spreadsheet with 48 pages linked to a summary page is all that is currently necessary. This will no longer work with 32 processors reporting 6 product forms, by 8 production areas, by species and by month (see operating expenditures discussion).



## REPRESENTATIVE ALAN AUSTERMAN Alaska State Legislature

P.O. Box 2368, Kodiak, Alaska 99615 (907) 486-5930 • Session: State Capitol, Juneau, Alaska 99801 465-2487

### Committee Substitute HOUSE BILL 363 (FIN) SPONSOR STATEMENT

**House Bill 363** renames the existing **Wholesale Price Report** (WPR, also referred to as AWPR or WCPR) to become the **Alaska Salmon Price Report (ASPR)** by updating it to include all salmon product types. This report will capture the bulk of Alaska's commercial salmon trade in a timely and accurate manner.

Currently AS43.80.050 requires processors who sell 240,000 pounds or more of thermally processed salmon in a calendar year to report three times each year, the volume and price of cans sold. The ASPR will reflect the changing times in the processing technology, which has evolved to include all salmon products, thermally processed plus fresh, frozen, and roe products. A Finance Committee amendment changed the reporting threshold from 240,000 pounds to 1,000,000 pounds, which will account for 97% of all salmon products in Alaska.

HB 363 encompasses ex-vessel value, production, and wholesale price reporting to the state. In order to track the production of the state's resource, the ASPR adds a section that requires processors to report the quantity of each salmon product form and species, by area of production, along with the wholesale prices of product sold.

The tax revenue realized from the salmon fishery is generated from the ex-vessel price. Fishery business taxes, raw fish tax, landing tax, ASMI tax and aquaculture assessments are all based on the ex-vessel values of Alaska salmon products. The ASPR information is important for anyone planning income streams derived from the sale of salmon products. For example, legislators projecting revenue to the state or regional aquaculture associations planning production and marketing strategies. The ASPR's accurate and timely information may be used by the university system and by data collectors for up-to-date reporting. It will provide real-time wholesale inventories and values for the public, their decision-makers, and the commercial industry to the benefit of all.

#### History

This issue has been debated for a long time and in numerous forums. In 1984 the Department of Commerce and Economic Development published a report on the possible development of a program to determine wholesale price averages for salmon products. The arguments that were detailed in that report in 1984 are the same today.

Page Two  
CSHB 363(FIN)  
SPONSOR STATEMENT

When mediators suggest that harvesters and processors get together to come up with a compromise and find a way to share price information, the processors say that the information is proprietary and the harvesters say that they need a timely point of reference to begin dialogue about markets and how it can be shared. The ASPR is attempting to provide that platform that would supply accurate information without compromising confidentiality.

Introduction of this bill is the direct outcome of recommendations made in recent in-depth forums:

1) In the Governor's Alaska Salmon Forum '99, a focus group, made up of state agencies, processors and fishermen, came to mutually agreed-upon goals. Among the most important items to be addressed were 1) for the processors to "include fishermen in discussions on short and long-term marketing strategies", and 2) to "expand timely collection of salmon wholesale value and harvest information including, at a minimum, one more COAR report."

2) In November 1999, the Alaska Department of Fish and Game (ADF&G), harvesters, and processors attended a meeting to directly address the United Salmon Association's proposal for a report on wholesale prices for salmon, and if this could be accomplished in the Commercial Operator's Annual Report (COAR). In that meeting, it was determined that "Option 1" was a direction to follow by adding fresh, frozen, and roe salmon product forms to the Department of Revenue's already existing WPR. HB 363 pursues this avenue.

**COAR (ADF&G's Commercial Operators Annual Report)**

Currently, Alaska's fresh and frozen salmon information is published in ADF&G's COAR report, which is made available one time per year, approximately 12 months after the previous fishing season. Since there is no clear definition of FOB (Freight On Board) nor an enforcement mechanism within ADF&G to substantiate the figures, the belated data therein is not reliable nor is it auditable. The only fresh & frozen salmon data that is available in the year 2000 is from the 1998 fishing season.

ADF&G's COAR report contains information from all processors in Alaska, for all fish species and shellfish, detailed by individual product codes and gear types, and from every commercial fishery management area. Out of the 600-700 processors with an intent-to-operate license, 154 are salmon. This is specific information valuable for ADF&G's uses. With the new ASPR, the cost to the state will be less, compared to the cost of compiling and maintaining the COAR database. The ASPR would require 51 salmon processors to report, those producing over 240,000 pounds in a calendar year (which constitutes 99.1% of the products). These reports would be in aggregate product forms, i.e. all roe products, all fillet products, etc., and the production areas will be consolidated.

Page Three  
CSHB 363(FIN)  
SPONSOR STATEMENT

**WPR (Dept. of Revenue's Wholesale Price Report)**

In 1997, the WPR was legislatively updated to mandate three times (3x) per year reporting, increased from twice a year. Since that time, the ex-vessel prices (for canned salmon, which is 36% of the market) have remained constant and the wholesale value has fluctuated in relation to pack size and inventory. The increased reporting has allowed harvesters and processors to enter into year-round revenue-sharing contracts. Since 1997 the 3x per year reporting has allowed for a better understanding of the canned product market without causing any disruption with the market or confidentiality concerns.

**AWPR (Alaska Wholesale Price Report)**

The appropriate vehicle for reporting price information on Alaska's salmon fisheries is the Alaska Salmon Price Report through the Department of Revenue. The new ASPR would publish first wholesale price averages from all processors within large geographical production areas based on reported fishery business taxes. This average price would be an aggregate of product forms and the reports would be published 3-6 months after the fish is caught, thus protecting the confidentiality issues raised by the processors. By requiring one annual report on production, released on March 15, processors' proprietary inventory information will be protected, and the information will be published in time for the coming fishing season negotiations in order provide the harvesters and others with the information that is required.

Finally, the information provided through the ASPR will give the State of Alaska accurate information regarding the fish taxes coming to the state for general fund use.

Passage of HB 363 should help fishermen and others in their pursuit of better information. As industry contracts become the norm, sophistication involving product form and marketing partnerships will become more and more dependent on the state's collection of wholesale data. This process, in turn, should gradually bring a rise to ex-vessel prices, thus benefiting the communities and, in turn, by raising revenue, benefiting the state.

Excerpts from the MEETING NOTES from COAR Meeting  
November 9-10, 1999

\*Entire meeting notes available upon request from Sponsor

*Meeting focus: Discussions of potential changes to the Commercial Operators Annual Report database, processor reporting requirements, and United Salmon Association proposal for a report on wholesale prices for salmon products.*

Options

1. Add product forms to Revenue WPR
2. USA Proposal to use COAR.
3. Tune-up COAR
4. 3<sup>rd</sup> party reporting directly to fishermen/ processors subject to contract.

Larry Persily arrived; the group resumed discussion of Option 1 – Add product forms to WPR. Larry felt that the WPR was not a Revenue function. Revenue doesn't audit these reports nor do they have the staff to do audits. Scott and Bruce disagreed. Every tax dollar is at the exvessel level. Expansion to the wholesale level is a proprietary black hole. Harvesters pay ASMI and other taxes and it gives us a tool to negotiate and increase the exvessel price. It is in our best interest to increase world market share. This will bring up the tax base.

Larry said it would take the equivalent of one person or \$60,000. And that would not include any auditing capabilities. Revenue would have to respect confidentiality. Revenue will release summarized information for 3 or more taxpayers.

**Option 1 – Add product forms (fresh, frozen, roe) to WPR**

Goals/ Objectives

- a) Provide fishermen information they need
- b) Doesn't change COAR
- c) Good fit between WPR and additional reporting
- d) Reporting frozen, fresh, roe by ADF&G area

**Option 1 – Add product forms (fresh, frozen, roe) to WPR**

Method to achieve objectives

- a) Seek legislation
- b) Seek funding
- c) Industry agreement to support this option and the means to achieve – lobby for it

**Option 1 – Add product forms (fresh, frozen, roe) to WPR**

What are intended uses/ Who uses

- a) Fishermen
- b) Customers of processors
- c) Academics/ researchers
- d) Salmon Marketing Information Service
- e) Any member of the public

# STATE OF ALASKA

TONY KNOWLES, GOVERNOR

## DEPARTMENT OF FISH AND GAME

### DIVISION OF COMMERCIAL FISHERIES

P.O. BOX 25526  
JUNEAU, AK 99802-5526  
PHONE: (907) 465-8133  
FAX: (907) 465-2804

March 2, 2000

Mr. Bruce Schactler  
USA  
Kodiak, AK 99615

Dear Mr. Schactler:

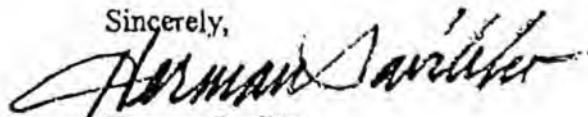
You asked that I run some numbers from our Commercial Operators Annual Report database to determine salmon processing statistics.

I completed those today. While individual data is confidential, I can summarize some numbers for you with reference to HB 363.

The most current available data is for 1998. That year there were 165 companies (unique Federal Identification numbers) processing salmon in Alaska. Using the Alaska Department of Revenue's 240,000-pound limit, there would be 51 companies that fall above that poundage limit. Those 51 companies also process 99.1% of the total production volume for that year (442.7 million pounds net weight was the reported total for salmon production that year). If the cutoff requirement were raised to 540,000 pounds instead of 240,000, there would be 39 companies falling within those limits. If the limit were raised to 1,000,000 pounds then 32 companies would fit that category. Those 32 companies account for nearly 97% of all salmon production in Alaska. Finally, if the limit was 10 million pounds, 12 companies would be involved, accounting for approximately 79% of Statewide salmon production.

If you have any additional questions, please contact me.

Sincerely,



Herman Savikko  
Fishery Information Officer/Fishery Biologist  
Fisheries Coordination Section

## Final Average Wholesale Price Report Recipients

US Department of Commerce, NOAA Fisheries Development Division  
National Marine Fisheries Service/Statistics & Economic Division  
Alaska Department of Fish and Game  
Alaska Board of Fisheries  
Department of Commerce and Economic Development  
University of AK-Anchorage/ Gunnar Knapp  
Alaska SeaGrant – Craig Weise  
McDowell Group  
The Fisherman  
Seafood Trend Newsletter  
United Fishermen's Marketing Association.  
United Salmon Association  
SE AK Seiners Association  
C.D.F.U. – Chris Nerison  
National Food Processors Association  
Alaska General Seafoods  
Deep Creek Custom Packing Inc.  
Icicle Seafoods Inc.  
Kodiak Salmon Packers  
Nelbro Packing Company  
Norquest Seafoods Inc.  
North Pacific Processors Inc.  
Ocean Beauty Seafoods Inc.  
Peter Pan Seafoods Inc.  
Polar Equipment/Cook Inlet Processing  
Royal Pacific Canning  
Sea Catch, Inc  
Trident Seafoods Corporation  
Ward Cove Packing Company  
Wrangell Seafoods Inc.  
Woodbine Alaska Fish Company  
Senator Jerry Mackie  
Representative Alan Austerman

February 23, 2000

This letter is in response to a request made by Representative Austerman's office regarding House Bill 363, a proposal to increase the frequency of wholesale price reporting of certain salmon products. The Salmon Market Information Service (SMIS), as a user of such data, was asked to comment on increased reporting frequency.

The SMIS program would benefit substantially from increased reporting frequency of Alaska production and wholesale salmon prices specified in HB 363. The program would welcome the consistency of such government-compiled data, an improvement over the information that is now available. It should be noted that the absence of this data (the result of present data-release timing) is not a major impediment to the existing program. Market indicators are available from other sources and the program is currently using those sources.

The SMIS researches and reports on market conditions for salmon. The "flagship" of the program is the Salmon Market Bulletin, published 6-7 times annually. Since November 1998, McDowell Group has published eight bulletins, serving a subscription list of just over 3,000. Two times a year, the bulletin is sent to all Alaska salmon permit holders (over 11,000) plus the non-permit holders on the subscriber list.

A comparison of two state-generated reports containing wholesale price and volume data illustrates the usefulness of more frequent reporting. The two reports are:

- The Wholesale Price report (WPR) for thermally processed salmon, including canned salmon. Published three times a year by Alaska Department of Revenue. Between 1989 and 1998, canned salmon made up 36% of Alaska production volume.
- Data from the Commercial Operators Annual Report (COAR) is available through ADF&G, via database queries, usually 5 to 6 months after the end of the calendar-year reporting period. The COAR covers those fresh and frozen salmon products specifically identified in HB 363. Between 1989 and 1998, fresh and frozen salmon made up 61% of Alaska production volume.

The COAR, because of its timing, is of limited use in reporting market trends. We use it primarily for historical analyses of data and for identifying product-form composition of past seasons. Data drawn from the COAR is used in two of our eight bulletins, both times as a source for back-page items in the "bits and pieces" section. By comparison, six of eight salmon market bulletins contain information from the WPR for canned salmon, including two major articles with accompanying tables and graphs. The WPR is more pertinent because of its reporting frequency and we use it to identify volume and pricing trends of the current sales year. It is used frequently in the bulletin, in presentations and to satisfy a large number of data requests.



Consulting and Research in Economics, Business and Marketing

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While additional information on salmon markets is always desirable, the data that would result from HB 363 would be especially useful, as fresh and frozen salmon make up over 60% of Alaska production. Such data would enable the SMIS to provide reasonably pertinent reporting and analysis of Alaska production and wholesale price information for over 95% of production. Currently, the SMIS is able to do so for only 36% of production: namely, canned salmon as reported in the WPR three times a year.

A handwritten signature in cursive script, appearing to read "Chris McDowell".

Chris McDowell

Project Manager, Salmon Market Information Service



P.O. Box 762 • Kodiak • AK • 99615

Phone: (907) 486-6899 • Fax: (907) 486-7058 • Email: [usalmon@ptialaska.net](mailto:usalmon@ptialaska.net)

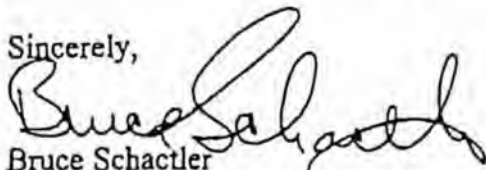
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Six reasons United Salmon Association supports HB 363, that creates the new Alaska Salmon Price Report.

1. So all stake holders will know the full value of Alaska's salmon industry in a timely and accurate accounting of current wholesale values. Existing information sources are outdated and unreliable once they become available.
2. So ASMI can better plan and evaluate marketing strategies. All salmon fishermen pay one percent of their gross into salmon marketing. Without timely wholesale price information there is no way for them to accurately assess the benefits of their marketing efforts.
3. So PNP aquaculture associations may best plan their production and cost recovery efforts. Assessing the results of wholesale prices will be helpful in making good decisions based on timely and accurate market information
4. For the University of Alaska and its ongoing evaluation of commercial fisheries. Where ever the value of Alaska's salmon fisheries is in demand reliable and timely wholesale information is lacking.
5. So the legislature and the board of fish can best assess the value of Alaska's commercial salmon fisheries. Information concerning the economic benefits of commercial salmon fisheries is always sketchy when these two bodies meet to discuss salmon fisheries and their economic benefits.
6. So all stakeholders can better assess the relationship between ex-vessel prices and wholesale markets. Without this information no one knows if ex-vessel prices or the revenues they generate are fair.

Accounting the benefits of commercial fishing revenues and taxes has little meaning to stakeholders and administrators without also accounting wholesale values as a means of evaluating the economic performance of this most important Alaskan industry.

Sincerely,

  
Bruce Schactler  
President



# UNITED FISHERMEN OF ALASKA

March 2, 2000

211 Fourth Street, Suite 110  
Juneau, Alaska 99801-1172  
907/586-2820  
Fax: 907/463-2545  
E-Mail: ufa@alaska.net

Representative Carl Morgan, Jr.  
Representative John Harris  
Co-Chairs  
House Special Committee on Fisheries  
Alaska State Legislature  
State Capitol (MS 3100)  
Juneau, AK 99801-1182

Dear Representatives Morgan and Harris,

United Fishermen of Alaska represents 23 commercial fishermen's groups and over 8,000 fishermen. We support HB 363.

This bill is intended to modernize and clarify the economic value of Alaska's commercial salmon fisheries for all stakeholders and to end the mystery of how ex-vessel salmon prices are determined.

All Alaskans are stakeholders in commercial salmon fisheries. There is a clear link between stakeholders and the salmon resources, for the salmon belong to all Alaskans.

But the connection between stakeholders other than harvesters and commercial salmon fisheries may not be so clear. Given that commercial salmon fisheries generate fisheries business taxes that go into Alaska's general fund and 50% is passed on to local government, all Alaskans are clearly stakeholders in those fisheries.

History shows us that for the first seventy years of the last century the salmon industry was the largest industry in Alaska and a major contributor to this nation's food production. Canned salmon was a staple on food shelves particularly through out the British Commonwealth. Through this time a business culture developed between processors and harvesters based on a "buy now settle later" price arrangement. In this arrangement grounds prices are paid to fishermen in season, then later when the harvest is over and the bulk of fish have been sold, final payments are made to fishermen based on wholesale prices, known only to the processors.

Also during this time, it was established that the taxes the industry pays are based on ex-vessel prices. This "buy now settle later" price arrangement on which all taxes are paid clearly impacts harvesters and all stakeholders in the outcome of wholesale prices. But to this day stakeholders are denied the price information needed to know and understand their position in wholesale markets that determine salmon prices.

#### MEMBER ORGANIZATIONS

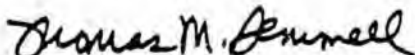
Alaska Longline Fishermen's Association • Alaska Trollers Association • Concerned Area "M" Fishermen  
Cook Inlet Aquaculture Association • Copper River Salmon Producers Association • Cordova District Fishermen United  
Kenai Peninsula Fishermen's Association • Kodiak Regional Aquaculture Association • Kodiak Seiners Association • North Pacific Fisheries Association  
Northern Southeast Regional Aquaculture Association • Northwest Setnetters Association • Petersburg Vessel Owners Association

Without knowledge of wholesale prices the "buy now settle later" arrangement between processors and harvesters leaves an unaccounted hole in the price structure of Alaska's salmon industry. This is the mystery of commercial salmon prices. How much money does the commercial salmon harvest generate at first wholesale and how does that compare to ex-vessel prices where taxes are collected? All stakeholders directly or indirectly have an interest in salmon markets and it is important to have a clear picture of this revenue source for the use and benefit of all Alaskans.

Passage of SB 363 will fill this unaccounted hole in salmon pricing and provide all stakeholders in Alaska's most precious natural resource the information they require to know and understand the benefits of the commercial salmon industry.

We are aware of some concerns raised by some processors and are willing to work toward a reasonable resolution of this issue.

Sincerely,



Thomas M. Gemmell  
Executive Director

Copy: Representative Alan Austerman

# Cordova District Fishermen United

Celebrating 65 Years of Service to Commercial Fishermen in Cordova, Alaska  
P.O. Box 939 Cordova, Alaska 99574 / Telephone (907) 424-3447 / Fax (907) 424-3430

February 24, 2000

House Special Committee on Fisheries  
State Capitol (MS 3100)  
Juneau, AK 99801-1182

**SENT VIA FACSIMILE TO 907.465.3799**

Dear Members,

Cordova District Fishermen United (CDFU) is pleased to provide comment to you regarding our support for HB 363.

Timely, accurate, and verifiable reporting of the ex-vessel and wholesale values of Alaska's salmon, as well as known production, provides a variety of benefits to our industry, coastal communities, programs dependent upon ex-vessel value assessments, and the State of Alaska. HB 363 provides a proven mechanism for gathering and providing the information that will form the basis for better decision-making by those dependent upon the reporting that this legislation requires.

We are all too well aware of the vagaries of natural resource markets. Access to timely and accurate information regarding the condition of salmon markets will afford more accurate evaluation of the myriad of decisions that are constantly being made by those impacted by Alaska's salmon fisheries.

We urge your support for HB 363.

Respectfully Submitted,



Sue Aspelund  
Executive Director

cc: Representative Alan Austerman

# KODIAK REGIONAL AQUACULTURE ASSOCIATION

BOX 3407 KODIAK, ALASKA 99615

(907) 486-6555

Fax (907) 486-4105



February 23, 2000

Representative Alan Austerman  
Alaska State Representative  
State Capitol  
Juneau 99801-1182

Dear Alan:

House Bill #363, an Act Relating to Salmon Production Reports, was reviewed by the Kodiak Regional Aquaculture Association's Board of Directors, at their meeting of February 22, 2000. The Board voted 9-2 to support passage of this Bill as written.

KRAA, being an active, major financial supporter of Kodiak salmon enhancement projects and an entity whose funding source is directly related to salmon ex-vessel value has a keen interest in developing a clear understanding of how ex-vessel salmon prices are determined.

To that end, we offer our support for passage of House Bill #363.

Sincerely,

Lawrence M. Malloy,  
Executive Director

SENATE FINANCE  
COMMITTEE #1  
Amendment Number: #1  
Bill Number: HB 363  
Sponsor: Leman Date: 4/14/00  
Logged In By: Mindy

AMENDMENT

OFFERED IN SENATE FINANCE COMMITTEE

Senator Leman

TO: CS HB 363 (L&C)

Page 5, Lines 23-24:

Delete "September 30, 2000, must cover the period of May 1, 2000, through August 31, 2000"

Insert "January 31, 2001, must cover the period of September 1, 2000, through December 31, 2000"

Kelly COMMITTEE  
2000 COMMITTEE ACTION

Bill Number	HB 303		
Amendment	# 1		
Motion	adopt		
<u>Motion by</u>	Leman		
<u>Objection by</u>	none		
Removed			
<u>Second Objection by</u>			
<u>Committee Member</u>	Y	<u>Vote</u>	N
Senator Pete Kelly			
Senator Lyda Green			
Senator Randy Phillips			
Senator Dave Donley			
Senator Loren Leman			
Senator Al Adams			
Senator Gary Wilken			
Co-Chair Sean Parnell			
Co-Chair John Torgerson			
<u>Tally</u>			
Yea			
Nay			
Absent			
<u>MOTION</u> Pass			



# Teleconference Participants

TCN: 10773

## Participant Lists

View List for

KOD



Testifiers



Go >>>

Close Window

## Participants

Unidentified Testifiers: 0

Unidentified Observers: 0

### KODIAK (KOD)

1



Name: Mr. Thom Wischer

Phone:

Address:

Affiliation:

City /St /Zip:

Type: Testifier

Bill: HB 363: SALMON PRICE REPORTS/SALE OF FISH

2

Name: Ms. Virginia Adams

Phone:

Address:

Affiliation:

City /St /Zip:

Type: Testifier

Bill: HB 363: SALMON PRICE REPORTS/SALE OF FISH

✓ Cordova ~ Herb Jensen

HB 363

United Salmon Association

Cordova District Fishermen United

• Copper River Salmon Producers

SENATE FINANCE COMMITTEE

SIGN-IN

HB 363-SALMON PRICE REPORTS/SALE OF FISH

NAME: Scott McAllister Subject/Bill No: 363  
Co./Dept./Title: \_\_\_\_\_ Phone: 463-5831  
Address: 520 Dixon St Jcc AK Zip: 99801  
Do you wish to testify?  Yes  No  Respond To Questions

NAME: Kris Norosz Subject/Bill No: 363  
Co./Dept./Title: Trade Services Phone: 772-4294  
Address: Box 1147 Petersburg Zip: 99833  
Do you wish to testify?  Yes  No  Respond To Questions

NAME: Brett Fried Subject/Bill No: 363  
Co./Dept./Title: DOR / Economist Phone: 465-3682  
Address: Department of Revenue 11<sup>th</sup> Floor SCB <sup>Bureau, AK</sup> Zip: 99801  
Do you wish to testify?  Yes  No  Respond To Questions

NAME: \_\_\_\_\_ Subject/Bill No: \_\_\_\_\_  
Co./Dept./Title: \_\_\_\_\_ Phone: \_\_\_\_\_  
Address: \_\_\_\_\_ Zip: \_\_\_\_\_  
Do you wish to testify?  Yes  No  Respond To Questions

**HB**

**366**

**HFIN**

**FILE**

(11)

# HOUSE COMMITTEE REPORT

Date Referred to Committee: February 25, 2000

FURTHER REFERRALS:

Date of Committee Action: 3/29/00

The FINANCE Committee considered:

HB 366

HOUSE BILL NO. 366

CRIME VICTIMS RIGHTS & DOMESTIC VIOLENCE

"An Act relating to the rights of crime victims, the crime of violating a protective order or injunction, mitigating factors in sentencing for an offense, and the return of certain seized property to victims; expanding the scope of the prohibition of compromise based on civil remedy of misdemeanor crimes involving domestic violence; amending Rules 10, 11, 13, 16, and 17, Alaska District Court Rules of Civil Procedure and Rule 9, Alaska Rules of Administration."

recommends it be replaced with the following committee substitute CSHR 366 (FIN)  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)

fiscal note(s) \_\_\_\_\_ 2  fiscal note(s) Admin, Doc 2-11-0

zero fiscal note(s) \_\_\_\_\_ 2  zero fiscal note(s) DPS, LAW 2-11-0

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<u>Tom Therriault</u> Therriault			X	
<u>Van Bunde</u> Bunde	✓		/	
<u>Alan Rusterman</u> Rusterman			X	
<u>Col N. Davie</u> Davie	X			
<u>Ben Grussendorf</u> Grussendorf		X		
<u>Paul E. Moses</u> Moses			X	
<u>Larry Davis</u> DAVIS			X	
<u>W. K. Williams</u> Williams			X	
<u>Lail Phillips</u> Phillips	✓			
<u>Foster</u> Foster	X			

CHAIR'S SIGNATURE Tom Therriault

FISCAL NOTE

No: 4

STATE OF ALASKA  
2000 LEGISLATIVE SESSION

Bill Version: HB 366  
(H) Publish Date: 2/11/00

Revision Date: \_\_\_\_\_  
Title: "An Act relating to the rights of crime victims..."

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

Sponsor: Rules Committee  
Requestor: Governor

COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES:

(Thousands of Dollars)

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						
TOTAL	**	**	**	**	**	**

Estimate of any current year (FY 00) cost: \$ -0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

See attached sheet.

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

Phone: (907) 264-4414  
Date: \_\_\_\_\_

Approved by Commissioner: Robert Poe, Jr. *[Signature]*  
Agency: Department of Administration

Date: 2/10/99

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FISCAL NOTE

STATE OF ALASKA

BILL NO. \_\_\_\_\_

2000 LEGISLATIVE SESSION

ANALYSIS: (continued)

This bill contains a number of provisions that would affect the Public Defender Agency's operations. The bill makes violating protective orders entered in Child in Need of Aid (CINA) cases a misdemeanor. It reduces the authority of the courts to allow compromises in misdemeanor cases. Finally, it creates a mitigating factor that can be used in felony sentencings. An offense can be mitigated if the defendant reduces the impact of the offense on the victim by pleading guilty or no contest within 30 days of the arraignment.

We expect to have some additional misdemeanor cases because of the new misdemeanor offense of violating a CINA protective order. However, we cannot make an accurate estimate of the number of additional cases to which we would be appointed.

Allowing fewer civil compromises and creating the new mitigator will result in more work in our existing caseload. However, we do not expect a significant fiscal impact.

Based on this analysis, the Public Defender Agency is submitting an indeterminate fiscal note on this bill.

# FISCAL NOTE

Bill Version: HB 366

(H) Publish Date: 2/11/00

**STATE OF ALASKA  
2000 LEGISLATIVE SESSION**

Revision Date/Time (Note if correction) \_\_\_\_\_ Dept. Affected Department of Corrections  
 Title An Act relating to the rights of crime victims, BRU Administration and Operations  
the crime of violating a protective order of injunction, ... Component All  
 Sponsor Rules Committee  
 Requester Governor Component No. #0694

**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						
<b>TOTAL OPERATING</b>	***	***	***	***	***	***

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**FUND SOURCE (Thousands of Dollars)**

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

Estimate of any current year (FY2000) cost: 0.0

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

The Department of Corrections is submitting an indeterminate fiscal note for this legislation. This legislation will provide criminal consequences for a person who violates a protective injunction in child in need of aid proceedings.

Information provided by the Dept. of Law suggests approximately 12 offenders per year will be convicted. It is difficult to determine the length of sentence the Court will assign to these offenders. It presumably will be less than the mandatory minimum sentence of 20 days for an assault 4 in conjunction with the violation of a domestic violence restraining order.

Prepared by: Candy Brower, Legislative Liaison Phone 465-3307  
 Division Commissioner's Office Date/Time 2/9/00 9:30 AM  
 Approved by Commissioner Margaret M. Pugh *Margaret M. Pugh* Date 2-9-00  
 Agency Dept. of Corrections

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# FISCAL NOTE

Bill Version: HB 366

(H) Publish Date: 2/11/00

## STATE OF ALASKA 2000 LEGISLATIVE SESSION

Revision Date/Time (Note if correction)	Dept. Affected	Law
Title "An Act relating to the rights of crime victims, the crime of violating a protective order or injunction ..."	BRU	Criminal Division
Sponsor Rules Committee	Component	1st-4th Judicial Districts; Criminal Appeals/Special Litigation
Requester Governor	Component No.	2198-99;2201/03/61/79

### 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						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ( )						
------------------------	--	--	--	--	--	--

### FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2000) cost: \_\_\_\_\_

### POSITIONS

Full-time						
Part-time						
Temporary						

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

This bill makes several amendments related to the protection of crime victims. It makes the violation of a protective injunction a class A misdemeanor. Like protective orders in a domestic violence case, protective injunctions may be ordered by the court to prevent or limit a person's contact with a child if it is established that the person has sexually or physically abused the child, or engages in conduct that constitutes a clear and present danger to the welfare of the child. While domestic violence protective orders are a class A misdemeanor, under current law, the only remedy for violations of a protective injunction is a finding of contempt by the court.

The bill also would clarify the means by which a victim can petition for the return of their property seized by law enforcement from a pawnbroker or second hand dealer; and broadens prohibitions against "compromising

Prepared by: Joan M. Kasson *Joan M. Kasson*  
 Division: Attorney General's Office  
 Approved by Commissioner: Bruce M. Bolte *Bruce M. Bolte*, Attorney General  
 Agency: Department of Law

Phone: 465-5370  
 Date/Time: 2/10/00, 11:27 AM  
 Date: 2/10/00

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**ANALYSIS CONTINUATION**

misdemeanors\* (paying a victim's expenses in return for criminal charges being dropped) to include domestic violence as defined in current law. The bill also adds a new mitigating factor for presumptive sentences when a defendant pleads guilty or no contest within 30 days of arraignment on a charge.

Any potential fiscal impact of the bill on the Department of Law would come from the creation of the new class A misdemeanor for violating a protective injunction. The department expects to see only a handful of new cases arising from this provision each year, and anticipates any increased workload can be handled with existing resources.

# FISCAL NOTE

Bill Version: HB 366

(H) Publish Date: 2/11/00

## STATE OF ALASKA 2000 LEGISLATIVE SESSION

Revision Date \_\_\_\_\_ Dept. Affected Public Safety  
 Title An Act relating to the rights of crime victims ... BRU CDVSA  
 Component CDVSA  
 Sponsor Rules Committee  
 Requester Governor Component No. 521

### 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						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

### FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2000) cost: 0.0

### POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill is not expected to adversely impact the budget.

Prepared by: Royce Weller, Special Assistant Phone 465-4322  
 Division Office of the Commissioner Date/Time 12/21/99  
 Approved by Commissioner Ronald L. Otis Date 12/21/99  
 Agency Department of Public Safety

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AMENDMENT

2  
Adopted

OFFERED IN THE HOUSE

TO: HB 366

Page 1, line 2: after "injunction," insert the following:

"enforcement of protective orders,"

Page 5, following line 2: Insert the following:

\*Sec. 7. AS 18.66.140(a) is amended to read:

(a) A certified copy of an unexpired protective order issued in another jurisdiction **has**  
**the same effect and must be enforced in the same manner as a protective order issued by a**  
**court of this state and** may be filed with the clerk of court in any judicial district in this state.

\*Sec. 8. AS 18.66.140(b) is repealed.

Renumber following sections accordingly.

*Adopted*

AMENDMENT

#1

OFFERED IN THE HOUSE  
TO: HB 366

BY REPRESENTATIVE DAVIES

1 Page 2, following line 10:

2 Insert a new bill section to read:

3 **\*\* Sec. 3.** AS 11.56.740(c) is amended to read:

4 (c) In this section, "protective order" means an order issued or filed under  
5 AS 18.66.100 - 18.66.180 or issued by another state under laws substantially  
6 similar to AS 18.66.100. *-910"*

7 Page 5, line 5:

8 Delete "sec. 3"

9 Insert "sec. 4"

10 Page 5, line 9:

11 Delete "Section 3"

12 Insert "Section 4"

13 Page 5, line 14:

14 Delete "sec. 3"

15 Insert "sec. 4"

16 Page 5, line 16:

17 Delete "sec. 3"

18 Insert "sec. 4"

19 Page 5, line 17:

20 Delete "sec. 3"

# LEGAL SERVICES

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LEGISLATIVE AFFAIRS AGENCY  
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FAX (907) 465-2029  
Mail Stop 3101


State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

March 30, 2000

**SUBJECT:** CSHB 366(FIN); Editorial matters

**TO:** Representative Gene Therriault, Co-Chair  
House Finance Committee  
Attn: Shar

**FROM:** Pamela Finley   
Revisor of Statutes

The referenced CS is based on a Governor's bill that did not have a draft CS prepared by our office and therefore was not edited by our office. The following changes should be made if the bill is to conform to the general style of the Alaska Statutes and the drafting manual:

1. In sec. 1, delete "of the Alaska Constitution" and insert ", Constitution of the State of Alaska".
2. In sec. 2, "subject to" should be moved to the introductory language, and deleted after "(1)" and "(2)".
3. In sec. 4, in the last line of AS 12.36.070(c), the comma after "property" should be deleted.
4. In sec. 4, in the last sentence of AS 12.36.070(f), "section" should be deleted and "subsection" inserted. (The term being defined only appears in subsection (f), and if the term were to apply to the entire section, the definition should be moved to subsection (j).)
5. In sec. 4, in the second sentence of AS 12.36.070(g), a comma should be inserted after "pleadings".
6. In sec. 7, "effect" should replace "impact" and "after being arraigned" should replace "of being arraigned".
7. In sec. 10, "secondhand" should replace "second-hand".

We can give you another final with these changes if you want. If not, you may want to pass this memo on to the next committee (either Rules or the committee of first referral in the other body.)

PF:glc  
00-150.glc

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Juneau, Alaska 99801-1182  
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## MEMORANDUM

March 30, 2000

**SUBJECT:** Single Subject CSHB 366(FIN) (Work Order No. 21GH2024\D)

**TO:** Representative Gene Therriault, Chair  
House Finance Committee  
Attn: Mike Tibbles

**FROM:** Gerald P. Luckhaupt *Jeg*  
Legislative Counsel

Enclosed is the Final CS(FIN) you requested. I have one comment. It is my opinion that this bill no longer is confined to a single subject and violates Art. II, § 13, Constitution of the State of Alaska.<sup>1/</sup>

The courts have given the single-subject requirement a liberal interpretation, adopting, in *Gellert v. State*, 522 P.2d 1120 (Alaska 1974), the position stated by the Minnesota Supreme Court in 1891:

All that is necessary is that [the] act should embrace some one general subject; and by this is meant, merely, that all matters treated of should fall under some one general idea, be so connected with or related to each other, either logically or in popular understanding, as to be parts of, or germane to, one general subject.

*Id.*, at 1123, quoting *Johnson v. Harrison*, 50 N.W. 923, 924 (Minn. 1891). Five years after *Gellert*, the court stated that the test

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<sup>1/</sup>That section provides:

**SECTION 13. Form of Bills. Every bill shall be confined to one subject** unless it is an appropriation bill or one codifying, revising, or rearranging existing laws. Bills for appropriations shall be confined to appropriations. The subject of each bill shall be expressed in the title. The enacting clause shall be: "Be it enacted by the Legislature of the State of Alaska."

... requires no more than that the various provisions of [a] single legislative enactment fairly relate to the same subject, or have a natural connection therewith.

*Short v. State*, 600 P.2d 20, 24 (Alaska 1979).

In construing the single-subject rule, the court will "disregard mere verbal inaccuracies" and "resolve doubts in favor of validity"; "in order to warrant the setting aside of enactments for failure to comply, the violation must be substantial and plain." *Suber v. Alaska State Bond Committee*, 414 P.2d 546, 557 (Alaska 1966). The rule should be "construed with considerable breadth. Otherwise statutes might be restricted unduly in scope and permissible subject matter, thereby multiplying and complicating the number of necessary enactment(s) and their interrelationships." *Gellert*, at 1122.

Using this broad construction of the rule, the court has approved such single-subjects as "water resources" in *Gellert*; "state taxation" in *North Slope Borough v. Sohio Petroleum Corp.*, 585 P.2d 534 (Alaska 1978); "land" in *State v. First Nat'l. Bank of Anchorage*, 660 P.2d 406 (Alaska 1982); and "transportation" in *Yute Air Alaska, Inc. v. McAlpine*, 698 P.2d 1173 (Alaska 1985). The Alaska Court of Appeals has approved the single-subjects "liquor regulation" in *Van Brunt v. State*, 646 P.2d 872 (Ak. App. 1982); and "criminal law" in *Galbraith v. State*, 693 P.2d 880 (Ak. App. 1985). In fact, the Alaska Supreme Court and the Alaska Court of Appeals have never found that an Alaska statute violated the single-subject rule.<sup>2/</sup> This is consistent with the record of other states that have substantially the

---

<sup>2/</sup>In recent years, however, the Alaska Supreme Court has begun to reevaluate its broad interpretation of the single-subject rule. In *First Nat'l. Bank of Anchorage*, the court expressed reservations about prior cases, but was unwilling in that case to overturn past precedents. In *Yute Air Alaska, Inc.*, the court again expressed concern with the broad interpretation of the rule, but gave three reasons why it was not ready to reject its past approach: (1) "it is not at all clear that there are workable stricter standards"; (2) the legislation in that case was the result of a voter initiative and the sponsors of the initiative had relied on the court's precedents in preparing it; and (3) because the sponsors were not experts at drafting, the court was reluctant to invalidate a worthy or popular cause merely because of doubtful legality.

In his dissent in *Yute Air Alaska, Inc.*, former Justice Moore blasted the majority's "test" as meaningless. "This court has mistakenly continued to give the rule such an extremely liberal interpretation that the rule has become a farce," he said. *Id.*, at 1182. Moore suggested a new test: "An act or initiative should embrace one subject. By this we mean that all matters treated should be logically connected." This, he said, means that various provisions of legislation will pass muster if they are inextricably intertwined, if they have an effect on one another, or if they are reasonably interdependent. Moore urged that "[e]nactments should be presented clearly and candidly," and that the court should "use a plainer standard and be more willing to look closely at the logic of an asserted connection and the reasonable  
(continued...)

Representative Gene Therriault

March 30, 2000

Page 3

same rule. Usually, only clear violations of the single-subject requirement have been found unconstitutional. See e.g., *State ex rel Hinkle v. Franklin County Board of Elections*, 580 N.E.2d 767 (Ohio 1991), finding a violation of the single subject requirement where a bill on a local option election for allowing the sale of alcoholic beverages was added to a bill concerning elected judicial offices. Lately though state supreme courts have appeared more willing to strike down bills that combine subjects and there appears to me to have been an increased recognition of the importance of single subject provisions. See, *St. Louis Health Care Network v. State*, 968 S.W.2d 145 (Mo. 1998) (single subject of "entities" unconstitutional - the listing of all of the contents of the bill in the title did not save the bill from having to pertain to one single subject); *State ex rel. Ohio Academy of Trial Lawyers v. Sheward*, 86 Ohio St.3d 451, 715 N.E.2d 1062 (1999).

HB 366 pertains to criminal law. While one or two of the provisions in the bill relate to the criminal aspects of domestic violence, a number of provisions do not have anything to do with domestic violence. Clearly, its single subject must be criminal law.

Amendment No. 2 adds to the bill provisions amending AS 18.66 that relate to domestic violence protective orders. While some of the effects of this amendment may be in the criminal arena, domestic violence protective orders are civil process and arise in a civil context. The conduct giving rise to these orders may not be criminal at all. Clearly, the subject of this amendment is domestic violence, civil process, court orders, or something in a similar vein. It is not criminal law. Because it is not criminal law, its inclusion in HB 366 is improper unless another common subject can be found. I have been unable to discern a single subject that includes Amendment No. 2 unless one considers "laws," "a lot of stuff," or "criminal law and something else that sometimes involves criminal law" to be a single subject. Of course, I do not consider these a single subject and can only conclude that this bill violates Art. II, § 13.

My opinion here is consistent with my opinion in 1996 when the legislature adopted the omnibus domestic violence bill that enacted AS 18.66. My opinion at that time was that the single subject of that bill was domestic violence thereby allowing the bill to encompass criminal law and procedure and civil law and procedure and other topics. Each provision, though, related to domestic violence. I concluded that the inclusion of provisions relating to criminal law but not domestic violence violated Art. II, § 13.

I am not as unconcerned as some people are about single subject. My concern stems from what occurs if a violation of single subject provision of the Constitution is found. If a bill is not confined to a single subject, the bill is defective, and the entire bill, not just the offending provisions, could be struck down. Since we are dealing with criminal law, a subject that has been reviewed by the Alaska courts and been found to be a single subject,

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<sup>2/</sup>(...continued)

interdependence of separate provisions. . . . to discourage logrolling and . . . duplicity." *Id.*, at 1186.

Representative Gene Therriault

March 30, 2000

Page 4

inclusion of things that are not necessarily criminal law could result in the loss of HB 366 if it were to be successfully challenged.

GPL:pl

00-116.plm

AMENDMENT #1

OFFERED IN THE HOUSE

BY REPRESENTATIVE DAVIES

TO: HB 366

1 Page 2, following line 10:

2 Insert a new bill section to read:

3 **\*\* Sec. 3.** AS 11.56.740(c) is amended to read:

4 (c) In this section, "protective order" means an order issued or filed under  
5 AS 18.66.100 - 18.66.180 or issued by another state under laws substantially  
6 similar to AS 18.66.100.<sup>a</sup> -910"

7 Page 5, line 5:

8 Delete "sec. 3"

9 Insert "sec. 4"

10 Page 5, line 9:

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16 Page 5, line 16:

17 Delete "sec. 3"

18 Insert "sec. 4"

19 Page 5, line 17:

20 Delete "sec. 3"

# FISCAL NOTE

Bill Version: HB 366  
 (H) Publish Date: 2/11/00

**STATE OF ALASKA  
 2000 LEGISLATIVE SESSION**

Revision Date \_\_\_\_\_ Dept. Affected Public Safety  
 Title An Act relating to the rights of crime victims ... BRU CDVSA  
 Component CDVSA  
 Sponsor Rules Committee  
 Requester Governor Component No. 521

**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						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**FUND SOURCE (Thousands of Dollars)**

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

Estimate of any current year (FY2000) cost: 0.0

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This bill is not expected to adversely impact the budget.

Prepared by: Royce Weller, Special Assistant Phone 465-4322  
 Division Office of the Commissioner Date/Time 12/21/99  
 Approved by Commissioner Ronald L. Otte Date 12/21/99  
 Agency Department of Public Safety

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# FISCAL NOTE

Bill Version: HB 366

(H) Publish Date: 2/11/00

**STATE OF ALASKA  
2000 LEGISLATIVE SESSION**

Revision Date/Time (Note if correction)	Dept. Affected	Law
Title "An Act relating to the rights of crime victims, the crime of violating a protective order or injunction ..."	BRU	Criminal Division
Sponsor Rules Committee	Component	1st-4th Judicial Districts; Criminal Appeals/Special Litigation
Requester Governor	Component No.	2198-99;2201/03/61/79

**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						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE (Thousands of Dollars)**

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

Estimate of any current year (FY2000) cost:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This bill makes several amendments related to the protection of crime victims. It makes the violation of a protective injunction a class A misdemeanor. Like protective orders in a domestic violence case, protective injunctions may be ordered by the court to prevent or limit a person's contact with a child if it is established that the person has sexually or physically abused the child, or engages in conduct that constitutes a clear and present danger to the welfare of the child. While domestic violence protective orders are a class A misdemeanor, under current law, the only remedy for violations of a protective injunction is a finding of contempt by the court.

The bill also would clarify the means by which a victim can petition for the return of their property seized by law enforcement from a pawnbroker or second hand dealer; and broadens prohibitions against "compromising

Prepared by: Joan M. Kasson  
 Division: Attorney General's Office  
 Approved by Commissioner: Bruce M. Bolger, Attorney General  
 Agency: Department of Law

Phone: 465-5370  
 Date/Time: 2/10/00, 11:27 AM  
 Date: 2/10/00

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FISCAL NOTE

STATE OF ALASKA  
2000 LEGISLATIVE SESSION

BILL NO.

ANALYSIS CONTINUATION

misdemeanors" (paying a victim's expenses in return for criminal charges being dropped) to include domestic violence as defined in current law. The bill also adds a new mitigating factor for presumptive sentences when a defendant pleads guilty or no contest within 30 days of arraignment on a charge.

Any potential fiscal impact of the bill on the Department of Law would come from the creation of the new class A misdemeanor for violating a protective injunction. The department expects to see only a handful of new cases arising from this provision each year, and anticipates any increased workload can be handled with existing resources.

# FISCAL NOTE

Bill Number: HB 366

(H) Publish Date: 2/11/00

## STATE OF ALASKA 2000 LEGISLATIVE SESSION

Revision Date/Time (Note if correction) \_\_\_\_\_ Dept. Affected Department of Corrections  
 Title An Act relating to the rights of crime victims, BRU Administration and Operations  
the crime of violating a protective order of injunction, ... Component All  
 Sponsor Rules Committee  
 Requester Governor Component No. #0694

### 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						
<b>TOTAL OPERATING</b>	<b>***</b>	<b>***</b>	<b>***</b>	<b>***</b>	<b>***</b>	<b>***</b>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )						
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### FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2000) cost: 0.0

### POSITIONS

Full-time						
Part-time						
Temporary						

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

The Department of Corrections is submitting an indeterminate fiscal note for this legislation. This legislation will provide criminal consequences for a person who violates a protective injunction in child in need of aid proceedings.

Information provided by the Dept. of Law suggests approximately 12 offenders per year will be convicted. It is difficult to determine the length of sentence the Court will assign to these offenders. It presumably will be less than the mandatory minimum sentence of 20 days for an assault 4 in conjunction with the violation of a domestic violence restraining order.

Prepared by: Candy Brower, Legislative Liaison Phone 465-3307  
 Division Commissioner's Office Date/Time 2/9/00 9:30 AM  
 Approved by Commissioner Margaret M. Pugh *Margaret M. Pugh* Date 2-9-00  
 Agency Dept. of Corrections

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FISCAL NOTE

Bill Version: HB 366  
(H) Publish Date: 2/11/00

STATE OF ALASKA  
2000 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_  
Title: "An Act relating to the rights of crime victims..."

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

Sponsor: Rules Committee  
Requestor: Governor

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: \$ -0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

See attached sheet.

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

Phone: (907) 264-4414  
Date: \_\_\_\_\_

Approved by Commissioner: Robert Poe, Jr. *[Signature]*  
Agency: Department of Administration

Date: 2/10/99

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FISCAL NOTE

STATE OF ALASKA

BILL NO. \_\_\_\_\_

2000 LEGISLATIVE SESSION

ANALYSIS: (continued)

This bill contains a number of provisions that would affect the Public Defender Agency's operations. The bill makes violating protective orders entered in Child in Need of Aid (CINA) cases a misdemeanor. It reduces the authority of the courts to allow compromises in misdemeanor cases. Finally, it creates a mitigating factor that can be used in felony sentencings. An offense can be mitigated if the defendant reduces the impact of the offense on the victim by pleading guilty or no contest within 30 days of the arraignment.

We expect to have some additional misdemeanor cases because of the new misdemeanor offense of violating a CINA protective order. However, we cannot make an accurate estimate of the number of additional cases to which we would be appointed.

Allowing fewer civil compromises and creating the new mitigator will result in more work in our existing caseload. However, we do not expect a significant fiscal impact.

Based on this analysis, the Public Defender Agency is submitting an indeterminate fiscal note on this bill.

HB 366

TONY KNOWLES  
GOVERNOR  
*Governor of the State of Alaska*

Office of the Governor  
Juneau, Alaska 99801  
Phone: 907-465-1100  
Fax: 907-465-1101  
www.governor.alaska.gov

STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

February 10, 2000

The Honorable Brian Porter  
Speaker of the House  
Alaska State Legislature  
State Capitol  
Juneau, AK 99801-1182

HB 366

Dear Speaker Porter:

The Victims' Rights Amendment (art. I, sec. 24, of the Alaska Constitution) was approved by 87 percent of Alaskan voters, and has been in effect since December 30, 1994. Since then, our knowledge of both the difficulties that a crime victim suffers and efforts to minimize the effects of victimization continues to grow. This bill I am transmitting today results from this increased knowledge. It contains four proposals, which are described in further detail below.

- Allowing a mitigated presumptive sentence for speedy no contest or guilty pleas;
- Simplifying procedures for victims to recover stolen property;
- Establishing a crime for violating protective injunctions in child in need of aid cases;
- Extending current disallowance of civil compromise in some domestic violence cases to all domestic violence cases.

Mitigated Presumptive Sentences. The bill allows the court to mitigate a presumptive sentence when the defendant pleads no contest or guilty within 30 days after being charged. The reasoning is that early admission on the part of the defendant relieves the victim of some of the suffering involved in long, drawn out court procedures. This concept has already been recognized by the courts as a non-statutory mitigating factor. State v. McKinney, 946 P.2d 456 (Alaska 1997).

Recovering Stolen Property. The bill establishes a simplified procedure for theft victims to recover property that is in the possession of a law enforcement agency after having been recovered from a pawnshop or secondhand dealer. The current process is based on federal procedure and requires the victim to initiate formal legal proceedings to recover

The Honorable Brian Porter  
February 10, 2000  
Page 2

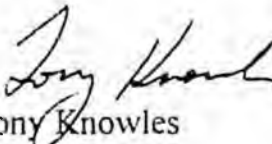
property. Under this less formal procedure, the victim could file a petition in state court supported by affidavit of ownership. The pawnshop or secondhand dealer can file a response supported by affidavit. Ownership may then be decided based on the information in the affidavits.

Protective Injunction Violations. Alaska law authorizes the court to issue a protective injunction in child in need of aid (CINA) proceedings that orders perpetrators to stay away from a child. These are similar to protective orders in domestic violence cases. Unlike domestic violence protective orders, however, it is not a separate crime to violate a protective injunction for a child in a CINA proceeding. The bill corrects this unjust inconsistency by making it a class A misdemeanor for a perpetrator to violate the CINA injunction.

Civil Compromise in Domestic Violence Cases. Alaska allows a person charged with a misdemeanor that harms a person or property to enter into a civil compromise by agreeing to pay the victim for personal costs, such as medical expenses or property damage. If the victim appears in court and acknowledges in writing that the defendant has paid the damages, the court may dismiss the charges, even if the prosecution objects to the dismissal. There are several exceptions in the statute allowing for civil compromise. One of the exceptions disallows compromise of cases between spouses and former spouses, or persons living together in a family or spousal relationship. The exception does not, however, include all domestic violence crimes. For example, it does not include domestic violence by a person who lived with another person if the court determines that the relationship was not a spousal relationship. This bill extends the disallowance of civil compromise to all cases involving domestic violence as defined in the Domestic Violence Prevention and Victim Protection Act of 1996. Civil compromise is not appropriate in domestic violence cases. This bill ensures that it will not occur.

This bill continues the state's efforts to better protect victims of crimes and deserves your favorable consideration.

Sincerely,

  
Tony Knowles  
Governor

**HB**

**368**

**HFIN**

**FILE**

(11)

# HOUSE COMMITTEE REPORT

Date Referred to Committee: March 6, 2000

FURTHER REFERRALS:

Date of Committee Action: 4-6-00

The FINANCE Committee considered:

HB 368

HOUSE BILL NO. 368

RELEASE OF CRIMINAL DEFENDANT

"An Act relating to release of persons before trial and before sentencing or service of sentence; relating to custodians of persons released, to security posted on behalf of persons released, and to the offense of violation of conditions of release; amending Rule 41(f), Alaska Rules of Criminal Procedure; and providing for an effective date."

recommends it be replaced with the following committee substitute PS HB 36B (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)

fiscal note(s) \_\_\_\_\_

fiscal note(s) Corrections 2/11/00

DOA 2/11/00

zero fiscal note(s) \_\_\_\_\_

zero fiscal note(s) Law 2/11/00

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
<i>Gordon Muldoon</i>	Muldoon	X			
<i>Carla Bunde</i>	Bunde	✓			
<i>Alan Austinman</i>	Austinman			X	
<i>J. N. T. Davis</i>	J. DAVIS			X	
<i>Greg Grossindorf</i>	Grossindorf			X	
<i>John G. Davis</i>	G. DAVIS			X	
<i>Ed Williams</i>	Williams			X	
<i>Keith Phillips</i>	Phillips	✓			
<i>Gene Therriault</i>	THERRIAULT			X	
<i>John Foster</i>	Foster			X	

CHAIR'S SIGNATURE *Gordon Muldoon* *Gene Therriault* (3) (3)

FISCAL NOTE

No:

STATE OF ALASKA  
2000 LEGISLATIVE SESSION

Bill Version: HB 368  
(H) Publish Date: 2/11/00

Revision Date: 2/7/00  
Title: "An Act relating to release of persons before trial..."

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

Sponsor: Rules Committee  
Requestor: Governor

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	26.8	26.8	26.8	26.8	26.8	26.8
TRAVEL	1.0	1.0	1.0	1.0	1.0	1.0
CONTRACTUAL	3.2	3.2	3.2	3.2	3.2	3.2
SUPPLIES	0.5	0.5	0.5	0.5	0.5	0.5
EQUIPMENT	6.5	0.6	0.6	0.6	0.6	0.6
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>38.0</b>	<b>32.1</b>	<b>32.1</b>	<b>32.1</b>	<b>32.1</b>	<b>32.1</b>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )						
------------------------	--	--	--	--	--	--

FUND SOURCE:

(Thousands of Dollars)

1002 Federa' Receipts						
1003 GF Match						
1004 GF	38.0	32.1	32.1	32.1	32.1	32.1
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
<b>TOTAL</b>	<b>38.0</b>	<b>32.1</b>	<b>32.1</b>	<b>32.1</b>	<b>32.1</b>	<b>32.1</b>

Estimate of any current year (FY 00) cost: \$ -0-

POSITIONS:

FULL-TIME						
PART-TIME	1	1	1	1	1	1
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

See attached.

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

Phone: (907) 264-4414  
Date: 2/7/00

Approved by Commissioner: Bob Poe  
Agency: Department of Administration

Date: 2/7/00

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FISCAL NOTE

STATE OF ALASKA

BILL NO. \_\_\_\_\_

2000 LEGISLATIVE SESSION

ANALYSIS: (continued)

This bill creates a new misdemeanor offense: Violation of Condition of Release. In addition, the bill provides for "performance bonds." Under current practice, when people are released on bail, judges routinely impose conditions of release in addition to an "appearance bond." If they fail to appear, they can be charged with a crime and the appearance bond can be forfeited. Currently, if defendants appear as ordered but violate conditions of release, they are generally returned to jail. If this bill becomes law, defendants would be charged with a new offense (Violation of Condition of Release) and be required to forfeit performance bonds.

This bill would affect Public Defender Agency operations. We represent many people in bail hearings every day. We did a rough study of court calendars in Anchorage, Fairbanks, Palmer, and Kenai for a ten-day period last year. We covered 335 bail and arraignment hearings just in that period. Most defendants who are released on conditions do not violate conditions. But given the volume, there are a substantial number who will. The Public Defender Agency will need additional staff to handle the increased workload in bail hearings and new misdemeanor cases this bill would cause.

Anchorage is our busiest court location for bail hearings. The addition of a half-time Associate Attorney I on our Anchorage staff would enable us to meet handle the additional workload this bill would cause.

# FISCAL NOTE

Bill Version: HB 368  
 (H) Publish Date: 2/11/00

**STATE OF ALASKA  
 2000 LEGISLATIVE SESSION**

Revision Date/Time (Note if correction)	_____	Dept. Affected	Law
Title	"... relating to release of persons before trial	BRU	Criminal Division
and ... to the offense of violation of conditions of release ..."	_____	Component	1st-4th Judicial Districts; Criminal Appeals/Special Litigation
Sponsor	Rules Committee	Component No.	2198-99:2201/03/61/79
Requester	Governor		

**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						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE (Thousands of Dollars)**

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

Estimate of any current year (FY2000) cost: \_\_\_\_\_

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This bill adopts stronger enforcement measures to encourage persons released before trial, imposition of sentence, or service of sentence to abide by conditions of release. One of the enforcement measures included in the bill is the creation of a new crime. The bill provides that it is a class A misdemeanor for a person to violate release conditions if the person is charged with a felony, and a class B misdemeanor to violate conditions for a person charged with a misdemeanor. Currently, although it is a crime to wilfully fail to appear as ordered by the court, there are few options for violation of other release conditions except incarcerating the person.

The bill also clarifies the law as it relates to performance bonds, and the forfeiture of the posted security on violation of conditions of release; provides that the court may find a third-party custodian in contempt for failure to report immediately a defendant's violations of conditions of release; and clarifies the court may order a person begin their

Prepared by:	Joan M. Kasson <i>Joan M. Kasson</i>	Phone	465-5370
Division	Attorney General's Office	Date/Time	2/9/00, 10:07 AM
Approved by Commissioner	<i>Bob M. Betelho</i> Bob M. Betelho, Attorney General	Date	2/9/00
Agency	Department of Law		

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FISCAL NOTE

STATE OF ALASKA  
2000 LEGISLATIVE SESSION

BILL NO.

ANALYSIS CONTINUATION

sentence at a later date than when the sentence is imposed.

The Department of Law does not anticipate a fiscal impact from passage of this legislation. The department already appears in court when conditions of release are violated to try and get the person's release revoked by the court, and passage of this bill will not increase the time commitment already required.

# FISCAL NOTE

Bill Version: HB 368  
 (H) Publish Date: 2/11/00

**STATE OF ALASKA  
 2000 LEGISLATIVE SESSION**

Revision Date/Time (Note if correction) \_\_\_\_\_ Dept. Affected Department of Corrections  
 Title An Act relating to release of persons before BRU Administration and Operations  
trial and before sentencing or service of sentence; relating... Component All  
 Sponsor Rules Committee  
 Requester Governor Component No. #0594

**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						
<b>TOTAL OPERATING</b>	<b>***</b>	<b>***</b>	<b>***</b>	<b>***</b>	<b>***</b>	<b>***</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE (Thousands of Dollars)**

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

Estimate of any current year (FY2000) cost: 0.0

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** *(Attach a separate page if necessary)*  
 This legislation creates the new crime of "violation of condition of release." The Dept. of Corrections believes this new crime will have a small impact on the number of offenders in DOC custody and therefore is submitting an indeterminate fiscal note. Under current law, if offenders violate their conditions of release they cannot be arrested unless a new crime is committed. This presents a problem for law enforcement and public safety. If passed, this legislation would allow for an immediate arrest and return to custody of violators and a decrease in the risk to the public safety. Under current law the offender would eventually be returned to custody. This is simply a more efficient method of removing an offender from the community immediately upon violation as opposed to waiting for the offender to be brought before the Court. If an offender is convicted of this new crime, they will most likely receive a concurrent sentence. A small fraction may receive sentences in addition to their original conviction resulting in a small cost to DOC.

Prepared by: Candy Brower, Legislative Liaison Phone 465-3307  
 Division Commissioner's Office Date/Time 2/9/00 10:05 AM  
 Approved by Commissioner Margaret M. Pugh *Margaret M. Pugh* Date 2/8/00  
 Agency Dept. of Corrections

# FRED'S BAIL BONDING

Fred Adkerson • 2550 Denali Street, Suite 1302 • Anchorage, AK 99503 • (907) 276-3443 • Fax (907) 274-2245

April 5, 2000

TO: ALASKA STATE LEGISLATURE  
HOUSE FINANCE COMMITTEE  
JUNEAU, ALASKA

Fax: 1-907-465-6813

RE: HB 368

I am Fred Adkerson, the owner and operator of Fred's Bail Bonding for the past 31 years. I was on the telephone for two and one-half hours today in an attempt to testify personally, but apparently you were not able to take testimony today on the above captioned Bill, so I respectfully request that the attached be read into the record as my testimony in opposition to HB 368.

Should you have any further questions, please feel free to contact me at the above number.

Thank you for your consideration.

Very truly yours,



FRED ADKERSON

FA:blg  
Attachment

**FRED'S BAIL BONDING**

Fred Adkerson • 2550 Denali Street, Suite 1302 • Anchorage, AK 99503 • (907) 276-3443 • Fax (907) 274-2245

Re. HB 368

This is a bad bill. HB 368 sponsored by the Governor and Department of Law is a bad bill and should be rejected as agreed upon by the Court of Appeals of the State of Alaska on February 18th, 2000 (Opinion Nr. 1661 Lonis vs. State of Alaska) in which Judge Zervos of Ketchikan tried to uphold a performance bond but the Court of Appeals found this to be unacceptable.

HB 368 will increase jail overcrowding and add to the Taxpayers' burden. For example, approximately 70% of the prisoners at CIPT in order to make bail are required to have some sort of performance requisite and/or Third Party Custodianship which either delays or prevents their ability to bail. This in turn adds to the jail overcrowding problem for which the Taxpayer foots the bill.

For your information, Alaska is the only State in the Nation requiring Third Party Custodians. Getting rid of the Third Party Custodian requirement would greatly reduce jail overcrowding; and at the same time allow defendants their constitutional right to reasonable bail as is already delineated in the Alaska Statutes. Elimination of the Third Party Custodian requirement would free bed space to accommodate incoming prisoners. And, this would help eliminate Department of Corrections having to send prisoners outside, e.g., to Arizona.

Getting rid of the Third Party Custodian requirement, alone, would save the State of Alaska millions of dollars.



FRED ADKERSON

# FISCAL NOTE

Bill Version: HB 368

(H) Publish Date: 2/11/00

## STATE OF ALASKA 2000 LEGISLATIVE SESSION

Revision Date/Time (Note if correction)	Dept. Affected	Law
Title <u>"... relating to release of persons before trial</u>	BRU	Criminal Division
and <u>... to the offense of violation of conditions of release ..."</u>	Component	1st-4th Judicial Districts; Criminal
Sponsor <u>Rules Committee</u>		Appeals/Special Litigation
Requester <u>Governor</u>	Component No.	<u>2198-99;2201/03/61/79</u>

### 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						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES						
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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)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2000) cost: \_\_\_\_\_

### POSITIONS

Full-time						
Part-time						
Temporary						

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

This bill adopts stronger enforcement measures to encourage persons released before trial, imposition of sentence, or service of sentence to abide by conditions of release. One of the enforcement measures included in the bill is the creation of a new crime. The bill provides that it is a class A misdemeanor for a person to violate release conditions if the person is charged with a felony, and a class B misdemeanor to violate conditions for a person charged with a misdemeanor. Currently, although it is a crime to wilfully fail to appear as ordered by the court, there are few options for violation of other release conditions except incarcerating the person.

The bill also clarifies the law as it relates to performance bonds, and the forfeiture of the posted security on violation of conditions of release; provides that the court may find a third-party custodian in contempt for failure to report immediately a defendant's violations of conditions of release; and clarifies the court may order a person begin their

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 Approved by Commissioner: Bob M. Betelho *Bob M. Betelho* Attorney General  
 Agency: Department of Law

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 Date/Time 2/9/00, 10:07 AM  
 Date 2/9/00

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2000 LEGISLATIVE SESSION

ANALYSIS CONTINUATION

sentence at a later date than when the sentence is imposed.

The Department of Law does not anticipate a fiscal impact from passage of this legislation. The department already appears in court when conditions of release are violated to try and get the person's release revoked by the court, and passage of this bill will not increase the time commitment already required.

## SECTIONAL ANALYSIS - HB 368

### Pretrial Release

The purpose of HB 368 is to give the criminal justice system more tools to allow a person charged with a crime to be released before trial, or pending sentence or appeal, and at the same time protect the public and ensure that the person will appear for trial or other procedures. When a court releases a defendant on condition that the defendant abide by certain conditions, it is important to the safety of the public and the victim that the defendant honor the conditions.

Sections 1, 2, and 4: One important tool for pretrial release is putting the defendant in the custody of a third party. The custodian is charged with the responsibility of making sure that the defendant abides by conditions the court has imposed; the custodian must report to the courts or the police if the defendant violates conditions. It is a responsibility that most custodians take very seriously. Some, however, do not. The bill specifies that a custodian must promise to immediately notify the police or court if the defendant has violated conditions, or face the possibility of being found in contempt.

Section 3: Currently, if a defendant is released before trial on certain conditions, violation of the condition results in the possibility that the defendant may be put back in jail for the original charge. The defendant will be given credit for time served against any sentence imposed on the original charge; there aren't additional consequences for the violation that would discourage the defendant from violating conditions. The bill adopts a misdemeanor offense for a person who violates release conditions - a class A misdemeanor if the person is charged with a felony, and a class B misdemeanor if the person is charged with a misdemeanor. Both the Municipality of Anchorage and the City and Borough of Juneau have similar ordinances, and have found them to be very useful tools in encouraging defendants to abide by conditions of release.

Section 4: The bill specifically allows courts to impose performance bonds; performance bonds allow a court to require a defendant to post a bond which will be forfeited if the defendant does not abide by conditions of release. Judges in some parts of the state have been imposing performance bonds for many years; these are very useful in encouraging people to honor their conditions. On February 18, 2000, however, the Court of Appeals decided that the bail statutes do not allow for imposition of performance bonds. (*Lonis v. State*, Op. No. 1661, February 18, 2000.) This bill specifically provides specific statutory authorization of performance bonds. Defendants have a monetary reason, in addition to other reasons, to honor release conditions if a performance bond is imposed.

Sections 5, 6 and 8: Amends the bail statutes and the court rule for forfeiture of security by requiring forfeiture of security if the defendant violates a condition of release that prohibits contact with a victim or witness. It allows the court to forfeit security if the person violates other conditions. It provides that a person may ask the court to set aside the forfeiture if the failure to appear or abide by conditions, not including a condition not

to contact a victim or witness, was due to circumstances beyond the control of the defendant. The forfeiture may be set aside for violation of a condition not to contact a victim or witness if the contact was not knowing or intentional.

Section 7: Clarifies the law to specifically allow courts to order defendants to begin service of a sentence date in the future. This is important in managing prison populations.

Sections 9 and 10: These adopt applicability and effective date clauses.

TONY KNOWLES  
GOVERNOR  
GOVERNOR OF THE STATE OF ALASKA

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February 10, 2000

The Honorable Brian Porter  
Speaker of the House  
Alaska State Legislature  
State Capitol  
Juneau, AK 99801-1182

Dear Speaker Porter:

I am transmitting a bill that will protect the public by adopting stronger enforcement measures to encourage persons to abide by their conditions of release before trial, imposition of sentence, or service of sentence. Specifically, the bill addresses four areas explained in more detail below:

- Establishing the crime of violating conditions of release;
- Authorizing courts to order performance bonds;
- Charging contempt of court for third-party custodian's failure to report condition violation;
- Authorizing delayed reporting date for jail time.

Violating Conditions of Release. In criminal cases, an accused has a constitutional right to be released on bail before trial. Persons who have been found guilty of a crime may be released before sentence is imposed or before ordered to serve a sentence. When releasing a person, the court may impose both general conditions, such as requiring that the accused violate no laws, and conditions specific to the particular case or defendant, such as forbidding an accused in a domestic violence case from contacting the victim. The safety of the victim often depends on the enforcement of release conditions. Currently, although it is a crime to willfully fail to appear as ordered by the court, there are few options for violation of other release conditions, except incarcerating the person. The bill provides that it is a class A misdemeanor for a person to violate release conditions if the person is charged with a felony, and a class B misdemeanor to violate conditions for a person charged with a misdemeanor.

The Honorable Brian Porter  
February 10, 2000  
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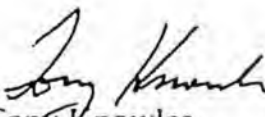
Performance Bonds. The bill clarifies the law by specifically authorizing the court to order the accused to post a performance bond, and requires that the court forfeit the security if the person violates a condition of no contact with the victim or witness in a proceeding. The court may forfeit the security if the accused violates other conditions. The standard for forfeiture of security in Rule 41(f), Alaska Rules of Criminal Procedure, is amended to require that security be forfeited unless the defendant could not comply due to circumstances beyond the control of the defendant. An example of such circumstances includes weather conditions that prevent airplane transportation. if there is no alternative way to travel to court.

Third Party Custodians. Courts often release a defendant to the custody of a third party, either an individual or an organization. Custodians are required to report to the court or the police if the defendant violates release conditions, but often do not. The bill provides that a third-party custodian can be found in contempt for failing to report immediately a defendant's violations of conditions of release ordered by the court, and requires the court to inform the custodian of the possible consequences of ignoring the duty to report.

Delayed Reporting Date. The bill specifically gives the court the authority to order a person sentenced to a period of incarceration to begin serving the sentence at a date sometime after it was imposed. With overcrowded correctional facilities, this is useful to help avoid "bottlenecks" in admissions by proper scheduling.

I urge your prompt and favorable consideration of this measure.

Sincerely,

  
Tony Knowles  
Governor