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HJ:

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WHY COPS HATE LIBERALS—AND VICE VERSA

strikes or demonstrations. The ten sought to organize the police although it is, of course, also had an ambivalent attitude police have been involved in brewing and trade-union demonstrations which have made them the criticism and counterviolence. If there remembers that the proletarian origins. During the demonstrations and strikes in Communist intellectual, Pier the New Left students that them and the police, he stood our faces are those of sons of hate you as I hate your fathers. comes through. . . . Yesterday battle in the Valle Giulia with pathies were with the police, he sons of the poor" (quoted *Lella Sera* by Melvin Lasky in *Encounter*).

shown in the welfare of the the European left, their mem- nions, and their working-class surprising that the political be- police has been more ambiva- their American compeers. On gments of the police in Europe thy for left and working-class where they have been serving ments for some time. This was ocratic Berlin and Prussia gen- in Vienna before 1931, and in Spain before 1936. The ambiva- police have shown up most where a number of police unions ter the May, 1969, events, deny- or use of force against student police organizations wanted it ernalment, not the police, was vigor of the actions taken.

at the American New Left stu- to see the police in a sympa- loited, insecure, alienated mem- privileged classes. As members of h movement which is unaffiliat- arty, they are unconcerned with of their actions on the political ger left-wing movement. To a provocative efforts reflect the ed upper middle class. Lacking a d any concern for the complexi- power" which have characterized Marxist movement, they are pre- the police, as well as conventional ion, in order to provoke police turn will validate their total re-

jection of all social institutions. Hence, we may expect a continuation of the vicious circle of confrontation and police terror tactics.

Liberal moderates properly react to this situation by demanding that the police act toward deviant behavior much as all other professionals do, that they have no more right to react aggressively toward provocative acts than psychiatrists faced by maniacal and dangerous patients, that no matter what extremists do, the police should not lose their self-control. Such a policy is easy to advocate; it is difficult to carry out.

Furthermore, it ignores the fact that most of the police are "working-class" professionals, not the products of postgraduate education. As James Q. Wilson points out, "This means they bring to the job some of the focal concerns of working-class men—a preoccupation with maintaining self-respect, proving one's masculinity 'not taking any crap,' and not being 'taken in.' Having to rely on personal qualities rather than on formal routines . . . means that the officer's behavior will depend crucially on how much deference he is shown, on how manageable the situation seems to be, and on what the participants in it seem to 'deserve.'" If society wants police to behave like psychiatrists, then it must be willing to treat and train them like psychiatrists rather than like pariahs engaged in dirty work. At present, it treats their job like a semiskilled position which requires, at best, a few weeks' training. Norman Kassoff of the research staff of the International Association of Chiefs of Police has compared the legal minimum training requirements for various occupations in the different American states. Calculated in terms of hours, the median minimums are 11,000 for physicians, 5000 for embalmers, 4000 for barbers, 1200 for beauticians, and less than 200 for policemen. The vast majority of policemen begin carrying guns and enforcing the law with less than five weeks' training of any kind.

The new tensions have increased the old conflict between the police and the liberals. For it must be said that liberals are prejudiced against police, much as many white police are biased against Negroes. Most liberals are ready to assume that all charges of police brutality are true. They tend to refuse to give the police the benefit of any doubt. They rarely denounce the extreme black groups and left radicals for their confrontationist efforts. They do not face up to the need for tactics to deal with deliberate incitement to mob violence. If the liberal and intellectual communities are to have any impact on the police, if they are to play any role in reducing the growing political alienation of many police, they must show some recognition that the police force is also composed of human beings, seeking to earn a living. They must be willing to engage in a dialogue with the police concerning their problems.

STATEMENT ON HB 195

HOUSE JUDICIARY COMMITTEE

Submitted by

Don M. Berry, Executive Director  
Alaska Municipal League

For the record my name is Don M. Berry, Executive Director of the Alaska Municipal League, an association representing 9 boroughs and 30 cities throughout the State. On behalf of the members of the League, I want to thank the Committee for this opportunity to express our opposition to HB 195.

Our opposition, of course, is to delete lines 16 and 17 on page 1 of the bill which states: "Payment of this fee is in lieu of all ad valorem taxes by local government units."

In the first place, there is no local government unit in Alaska which can stand this erosion of its tax base. The League has been gratified this year at the apparent willingness of the Legislature to try to assist political subdivisions with their financial problems. However, exemptions, such as that provided in HB 195, is certainly doing just the opposite.

It must be remembered that this property-exemption would be in addition to the millions of dollars of property owned by the federal and state governments, religious organizations, charitable institutions, etc. which are exempt under the Constitution.

More important than the revenue loss, though, is the deteriorating effect HB 195 would have on a municipality's tax base. Our bonding and financing capacity is controlled primarily by the value of the real property which can be used to support bond issues. We are sure that most of you are aware of the unfavorable market conditions now existing on municipal bonds. Provisions such as that contained in HB 195 would cause this condition to worsen insofar as Alaska local governments are concerned and would certainly make our bonds much less desirable to buyers.

Also, HB 195 does not specify whether all of the real property is exempt or just that used for banking purposes. What does the bill envision as far as that portion of the property used for office space rental, parking lots, commercial enterprises, etc. are concerned? Even religiously-owned property is exempt only to the extent that it is used for religious purposes. We question whether or not properties owned by banks should enjoy a greater tax privilege than that.

We have compiled and are submitting herewith certain figures as to the evaluation of real property owned by banks, trust companies and savings and loan associations throughout the State and the tax loss to boroughs which would result from the passage of HB 195. We wish to stress that these figures are only from the boroughs and do not take into consideration the loss which would also accrue to the cities. Nor do these figures take into consideration the taxable personal property owned by state banks.

Once again, we wish to thank the Committee for this opportunity to express our opposition to HB 195 and urge you not to act favorably on the bill as it now reads.

Respectfully submitted,

*Don M. Berry*  
Don M. Berry, Executive Director  
Alaska Municipal League

COMPILATION ON HB 195

<u>Borough</u>	<u>Mil Rate</u>	<u>Real Property Evaluation</u>	<u>Tax Loss</u>
Ketchikan Gateway	6.4	\$1,089,070	\$7,000.00
Greater Anchorage Area	14.78	9,188,950	137,834.25
Kodiak Island	7.84	334,850	2,625.00
Greater Sitka	5.5	270,000	1,485.00
Greater Juneau	12.91	1,884,200	24,494.60
Fairbanks North Star	15	179,650	2,694.75
Kenai Peninsula	7	480,750	3,365.25

It is interesting to note that in the Fairbanks Borough only 1 bank owns its building. All the others are leased and therefore the exemption in HB 195 would be of no advantage to anyone in Fairbanks. The bill would result only in an increase in the license fee.

The Greater Anchorage Area Borough reported a "considerable amount of proposed construction" as did the Kodiak Island Borough.

File AB 202

# ANCHORAGE *NATURAL* CORPORATION GAS

P. O. BOX 6288  
ANCHORAGE, ALASKA 99502

3000 SPENARD ROAD  
PHONE 277-5551



Dr. Paul Haggland  
Chairman of the Senate Commerce Committee  
Alaska Senate  
Juneau, Alaska

Dear Dr. Haggland:

We have received copy of the comments of Mr. Don Hall ("Hall"), Executive Director of the Alaska Public Service Commission regarding CSHB 202 ("202"), dated December 18, 1969. We have discussed various considerations with him, and we believe he is willing to agree to the following changes which we are suggesting:

- 1. Section 171:  
202-page 6  
Hall-page 4,  
4th paragraph

Mr. Hall had asked to delete in lines 18, 19, 20 of 202 the requirement that:

A commissioner who has not read or heard the entire record, including the argument, may not participate in making a decision of the commission.

Comment:

We suggest that the foregoing sentence be revised to read:

A commissioner may not participate in making a decision of the Commission unless he certifies that he is familiar with the testimony and evidence adduced, and has read or heard the argument.

This revision would permit a commissioner to participate in a decision after reviewing the record as required above, even though he may have missed some or all of the proceedings. Without some such requirement it could be that the Hearing Officer (or staff) version alone could become the basis for a decision. Apparently this may already have happened in Alaska and may be responsible for some current objections to the use of a Hearing Officer.

**ANCHORAGE NATURAL GAS CORPORATION**

P. O. BOX 6288  
ANCHORAGE, ALASKA

Dr. Paul Haggland  
February 12, 1970  
Page Two

2. Section 421(a): Mr. Hall had asked authority to suspend tariff changes for  
202-page 17 an initial period of six months (last 2 lines, page 15) and  
Hall-page 15/16 a further period of three months (top of page 16).

Comment: Nine months' suspension of tariff changes could be very harmful if a utility had urgent need of relief. We suggest that the six-month period be revised to three months (last 2 lines, page 15).

3. Section 421(b): Mr. Hall had intended to recommend deletion of 421(b).  
202-page 17/18  
Hall-page 16

Comment: 421(b) should be deleted if 421(a) is instituted as proposed.

4. Section 421(c): Mr. Hall had intended to recommend deletion of 421(c).  
202-page 18  
Hall-page 17

Comment: 421(c) should be deleted if 421(a) is instituted as proposed.

5. Section 421(d): Mr. Hall agrees that to place monies into escrow is not of  
202-page 18 material help to a utility during a pending tariff change, and  
Hall-page 17 that the alternative of a bond might be of real benefit.

Comment: (i) Add, at the end of 421(d):

"The utility may at its option substitute an acceptable bond in lieu of the escrow requirements hereof."

(ii) In our view (which is not Mr. Hall's past or present position) it would be most helpful to utilities, and no jeopardy to the public, to further amend the first sentence of 421(d) to read as follows: (adding the words as underlined)

"In the case of a proposed increased rate the utility may institute the new rate and the commission may by order require...."

(iii) 421(d) would become 421(b) after deleting 421(b) and 421(c).

**ANCHORAGE NATURAL GAS CORPORATION**

P. O. BOX 6288  
ANCHORAGE, ALASKA

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Page Three

6. Section 441(a)  
and (b) ;  
202-page 19  
Hall-page 18

Mr. Hall had asked that the word "fair" be deleted wherever it appears.

**Comment:**

Mr. Hall's position is that since a majority (32 out of 50) of states use depreciated original cost, Alaska should abandon the "fair" value to be considered in determining the rate base for its utilities.

It is our position that fair value has been found to be a necessary requirement for assuring successful utility regulation in 18 states, and that the decisions of the courts or commissions of 18 other states are ample precedent for use of the fair value concept in Alaska. Samples of such decisions are attached, with source references.

By retaining the word "fair" but by adopting Mr. Hall's proposed language for 441(b), a compromise position would be reached which would provide fair consideration to be given to economic factors other than original cost, while not requiring the actual determination of reproduction cost per CSHB 202.

Alaska is a "fair value" state under existing law, and this law has served as incentive to attract private capital for investment in utilities in Alaska. The consequences of over-turning this concept could be unfair to the utilities now operating in Alaska, and would surely discourage future private investment.

On this section we are not in agreement with Mr. Hall, but we believe he may be willing to accept the compromise we are suggesting above.

**ANCHORAGE NATURAL GAS CORPORATION**

P. O. BOX 6288  
ANCHORAGE, ALASKA

Dr. Paul Haggland  
February 12, 1970  
Page Four

7. Section 501:           Line 9, delete "or their affiliated interests"  
202-page 22           Line 10, delete "or its affiliated interests"  
Hall-page 33/34

Comment:                   In our view Mr. Hall's proposed language proposed as Section 511(c) provides adequate protection against "affiliated interests." If desired a new Section 511(d) could be added as follows, to amplify or strengthen Section 511(c) :

"The utility may at its discretion supply documentation to the commission to substantiate and justify its position with respect to its arrangements or agreements or practices with affiliated interests. In the event of the utility's failure so to do, the commission's findings as to the reasonableness of such arrangements or agreements or practices shall be based upon the commission's own evaluation thereof, subject to Section 42.05.551 hereof."

8. Section 701(2)(E)   Mr. Hall has advised that regulation of pipelines for  
202-page 27           "petroleum or petroleum products" (line 20 of 202) may be  
Hall-page 70           undertaken per a new bill with authority vested in the  
Department of Natural Resources. For this reason we  
would recommend:

Line 20, delete "petroleum or petroleum products"  
Line 23, delete "for gas, petroleum or petroleum products as operating expenses"

Comment:                   These deletions would remove commission jurisdiction from and responsibility for the transmission of crude oil (e.g. TAPS) and petroleum products, while leaving intact the commission's power to establish for gas transmission the "reasonable price to be allowed in determining the reasonableness of the regulated public utilities rates."

9. Section 701(6) :   Mr. Hall has agreed that 701(6)(H) is a duplication of  
202-page 28           701(6)(D) already included in CSHB 202, and should be  
Hall-page 72           deleted.

**ANCHORAGE NATURAL GAS CORPORATION**

P. O. BOX 6288  
ANCHORAGE, ALASKA

Dr. Paul Haggland  
February 12, 1970  
Page Five

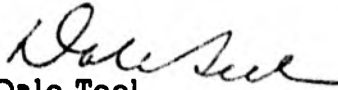
Comment: Paragraphs (G), (I), and (J) also should be deleted, regardless of Mr. Hall's experience with such law in Oregon.

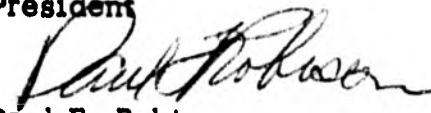
Paragraph (G) might effectively prevent a utility from attracting to its Board of Directors any person having a directorship or officership in any other business or profession, since such other business or profession would become an "affiliated interest" and could be subjected to unreasonable restraints, investigations, or harrassment.

Paragraphs (I) and (J) are likewise unreasonable, impractical, and intolerable, regardless of Mr. Hall's experience in Oregon. These paragraphs could serve as a basis to investigate or harrass almost anyone having contact with a utility or its management. There is no justification, stated or real, for such a far-ranging definition, other than the precedent in Oregon. These paragraphs should be deleted.

We have addressed our comments to those elements of CSHB 202 which we believe need attention for administrative reasons, and we are not commenting on regulation of municipalities, composition of the Commission, duplication of regulatory responsibility, etc. We hope that the legislature will favor a gradual and orderly evolution of the regulatory process in Alaska rather than immediate and major changes. We hope the decision will be to build upon the existing organization, rather than to reorganize the utility regulatory process which now exists in Alaska.

Very truly yours,

  
Dale Teel  
President

  
Paul F. Robison  
Counsel for  
Anchorage Natural Gas Corporation  
and  
Alaska Pipeline Company

cc: Senate Commerce Committee  
House Judiciary Committee  
PSC Commissioners  
Mr. Don Hall, Exec. Director  
Mr. Walter Kubley,  
Commissioner of Commerce

## RATE CASES RELATED TO FAIR VALUE

ILLINOIS Commerce Commission v. Peoples Gas, Light & Coke Co. (1953) 99 PUR NS 361. The Commission, in determining present fair value for rate making, is required to consider current economic conditions, price levels, reproduction cost, and original cost as well as the cost of improvements and the probable earning capacity of the property under prescribed rates.

INDIANA Re Indiana Bell Teleph. Co. (1950) 85 PUR NS 129. The commission, in determining the fair value of utility property, must give consideration to all bases of valuation which may be presented and to the reasonable cost of bringing the property to its present state of efficiency.

MISSOURI Missouri ex rel. Dyer v. Missouri P.S.C. (1960) 37 PUR 3d 507. The commission did not act arbitrarily or unreasonably in fixing a rate base calculated upon the fair value of utility properties (an amount between net original cost and net reproduction cost).

TEXAS Re Houston Nat. Gas Corp. (1963) 52 PUR 3d 244. The commission, in fixing rates, must determine a reasonable balance between original cost less book depreciation and replacement cost new less an adjustment for present age and condition, and in doing so it must use its own judgment and discretion.

NEW MEXICO Re Moyston (Hobbs Gas Co.) (1963) 48 PUR 3d 459. A fair value rate base for a gas utility was computed on the basis of the average of original cost and reproduction cost.

ILLINOIS Re Northern Ill. Water Corp. (1959) 26 PUR 3d 497. The commission, in arriving at a fair value rate base, must use reasonable judgment in determining the weight to be given reproduction cost, original cost, depreciation, book cost, work in progress, materials and supplies and cash working capital.

ILLINOIS Re General Telephone Co. of Illinois (1959) 29 PUR 3d 369. Fair value is not original cost depreciated, nor is it reproduction cost depreciated, nor is it a matter of formulas, but it is rather a matter of reasonable judgment based upon the consideration of all relevant facts.

NORTH CAROLINA Re Piedmont Nt. Gas Co. (1961) 40 PUR 3d 62. Upon evidence of average net original cost of a gas company's properties of \$17 million, net property value at the end of the period of \$19,600,000, and trended original cost of \$31,500,000, and considering that no evidence of reconstruction new cost or present-day values by visual appraisal was offered, the commission fixed a fair value rate base of \$20,300,000.

NORTH CAROLINA Re Nantahala Power & Light Co. (1963) 51 PUR 3d 96. The commission, in establishing a fair value rate base, considered all the evidence offered relating thereto, including, but not limited to, trended cost, reproduction cost new, original cost, average net investment, allocated cost, actual investment, normal depreciated value, and accelerated depreciation value.

DELAWARE Re Wilmington Suburban Water Corp. (1962) 47 PUR 3d 175. In determining a fair value rate base, the commission must give weight to original cost depreciated and reproduction cost depreciated.

OHIO Re Cleveland Electric Illum. Co. (1963) 47 PUR 3d 44. A fair rate of return is a figure which must be determined under Ohio law on the reproduction cost new less depreciation rate base.

April 15, 1969

Senator P. B. Hagglund  
Chairman  
Senate Commerce Committee  
Alaska State Legislature  
Juneau, Alaska 99801

Dear Senator Hagglund:

HB 202 as introduced provided in Sec. 42.05.421(b) that in determining fair value of public utility property for rate making purposes the Commission shall be guided primarily by the element of original cost less accrued depreciation. The committee substitute changed this in Sec. 42.05.441(b) to provide that the Commission shall be guided primarily by the average of original cost, less accrued depreciation, and reproduction cost, less physical depreciation. This change is not sound in principle and would create major difficulties in practice. The Alaska Public Service Commission has rejected the RCND approach for use in Alaska. For example in an order entered December 30, 1965 in P-65-2-1, entitled A. J. Rate Investigation the Commission said:

"A comment is in order regarding "reproduction cost new depreciated" (sometimes called RCND) and "trended original cost" methods of arriving at fair value. Even though they may be used in some other jurisdictions, the Commission specifically rejects them for use in Alaska, except as they may be used in connection with other techniques to establish the value of a substitute plant. After studying the matter, the Commission is convinced that to admit their use here would result in gross injustice to the ratepayer.

For one thing, both the RCND and trended original cost methods ignore the higher operating expenses of older plants, even though operating expenses make up the "lion's share" of gross revenue requirements. Another argument against their use is that no one is going to build an old, out-of-date, obsolete plant and there is therefore no reliable way of knowing what it would cost."

April 15, 1969

The entire approach is not realistic. First it allows a utility to obtain a return on investment never made by the utility. It provides a reconstruction dollar value at today's price which in many cases is completely divorced from economic realism. It does not allow for economic or functional obsolescence, allowing only for physical depreciation. Where major plant items are relatively new or have relatively short lives this factor is not greatly unresponsive to the cost of a substitute plant but, at least in the production of electricity major plant items of very long useful lives are involved. In such cases this approach injects a wholly unrealistic element into the valuation. For instance here in Juneau a large concrete dam built in 1914 or thereabout is a key element in supplying electrical energy to the Borough. Competent engineers have testified in court and before the Public Service Commission that no one would build a dam in that manner today. The dam is adequate for its purpose and apparently has, with reasonable maintenance, an almost indefinite useful life. In a superior court case contesting the valuation of the A. J. Complex for tax purposes RCND was estimated at \$1,934,600. The court held that the fair market value was original cost, depreciated, which amounted to \$389,260. (A. J. Industries v Greater Juneau Borough, First Judicial District, Civ. No. 65-300). Adding these together and dividing by two, as the substitute provision requires gives a rate base value of \$1,161,930. Since the major components of these, especially the dam, deteriorate very slowly physically unless a sharp reversal of the economic trend toward increasing prices occurs, the rate base valuation will constantly increase even though with the pace of modern technology the functional obsolescence will become even greater.

This is not an isolated case, the same situation would occur in any system which combined major elements with long service lives and an even moderate rate of technological advancement. Placing such a premium on functional obsolescence seems to insure that modernization will come to Alaska only limping haltingly on unsure, uncertain feet.

The formula would double the problem of determination of value since the original cost study, with its attendant question would remain as controversial and as necessary as ever while the RCND study would be added.

This is certainly not an argument against the bill as a whole. We do however agree fully with the Commission's statement quoted above that to admit this technique would be to work a gross injustice

Senator Hagglund  
Page 3

April 15, 1969

on the rate-payer. For these reasons we strongly submit that it would serve the public interest best if the language in the original bill were substituted for the language of the committee substitute.

Very truly yours,



Billy G. Berrier  
Borough Attorney

cc: Rep. Barry Jackson, Chairman  
House Judiciary Committee

BGB/llh



*File  
HB 202*

OFFICE OF THE MAYOR  
CITY OF ANCHORAGE  
BOX 400  
ANCHORAGE, ALASKA 99501

GEORGE M. SULLIVAN  
MAYOR

February 26, 1969


The Honorable Barry Jackson  
Alaska House of Representatives  
Pouch V Capitol Building  
Juneau, Alaska 99801

Dear Barry:

On Friday, February 21, 1969, the Anchorage City Council and the Fairbanks City Council met in joint session to consider the merits of Senate Bills #54 and #128 which would confer jurisdiction over certain municipal utilities to the Public Service Commission.

The enclosed Resolution was unanimously approved at the joint Council meeting. Your consideration in reviewing this joint resolution will be greatly appreciated.

Sincerely yours,

  
George M. Sullivan  
Mayor

GMS:gm

JOINT RESOLUTION NO. A/F-2-69

A JOINT RESOLUTION OF THE CITY COUNCILS OF THE CITIES OF ANCHORAGE AND FAIRBANKS OPPOSING REGULATION BY THE PUBLIC SERVICE COMMISSION OF MUNICIPAL UTILITIES AND URGING LEGISLATION TO RESOLVE SERVICE AREA CONFLICTS.

WHEREAS, Senate Bills No.'s 54 and 128 have been introduced in the Senate to confer jurisdiction over certain municipal utilities to the Public Service Commission; and

WHEREAS, few states have granted such jurisdiction over municipal utilities, and most granting jurisdiction only do so in limited cases; and

WHEREAS, no studies, facts or findings have been advanced to show, or attempting to show, that municipal utility rates are unreasonable or that municipal utility services are inadequate to the extent that a public service commission could lawfully remedy such rates or services; and

WHEREAS, municipally owned and operated utilities have, in fact, and traditionally, furnished the lowest cost utility services feasible to its consumers; and

WHEREAS, the Public Service Commission itself has not requested the Legislature to grant the Commission any jurisdiction over municipally owned and operated utilities; and

WHEREAS, municipal utilities can best be regulated by city councils and their citizen boards on a local level and at a place accessible to consumers, and consumers have a forum at all meetings to voice their grievances and criticisms as to rates and services without compliance with complicated and costly Public Service Commission proceedings in Anchorage; and

WHEREAS, the Public Service Commission regulation over municipal utilities would be a costly and undue burden on municipal utilities and their consumers, particularly since S.B. 54 would create a gross business tax of 1/2 of 1% on municipal utilities; and

WHEREAS, the Public Service Commission regulation would undoubtedly lead to increased rates for consumers because the costs of such regulation must be passed on to the consumers; and

WHEREAS, proponents of Public Service Commission regulation contend that such regulation is necessary to enable consumers outside the corporate boundaries to have a forum for their complaints and to resolve service area conflicts between municipal electric utilities and R.E.A. electric cooperatives in a few cities in this State; and

WHEREAS, a long standing history of a lack of complaints to the city councils and citizen boards concerning municipal rates and services outside corporate limits does not appear to justify any contention that customers outside of the area have complaints not justified by sparse, scattered populations outside cities and economic feasibility; and

WHEREAS, the city councils and their citizen boards have not been shown to be unresponsive to complaints over rates and services; and

WHEREAS, the proposed legislation would not eliminate the duplication of facilities in service areas in that no standards are provided and no provision is made in any proposed legislation for payment to a utility for the loss of the facilities and service and utilities could serve within their duplicating grandfather areas; and

WHEREAS, the service area conflicts and problems may be resolved by legislation other than costly and ineffective public service commission regulation; and

WHEREAS, millions of dollars of publicly owned utilities

controlled by the elected officials responsible to the public, and assisted by citizen boards, should not be entrusted to a part-time public service commission and insufficient staff; and

WHEREAS, the Alaska Municipal League has opposed regulation of municipally owned and operated utilities by the Public Service Commission; and

WHEREAS, regulation of municipally owned and operated utilities is contrary to the principle in this State that local governments are best able to govern themselves and municipal utility regulation should remain with local government;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCILS OF THE CITIES OF ANCHORAGE AND FAIRBANKS THAT:

1. The City Councils of the Cities of Anchorage and Fairbanks, strongly oppose the passage of Senate Bills No.'s 54 and 128, or any other legislation granting jurisdiction over municipally owned and operated utilities.

2. The City Councils urge that the Legislature study, develop, and enact, in consultation with cities and R.E.A. electric cooperatives, adequate legislation to resolve the alleged service area conflicts between municipal utilities and R.E.A. cooperatives by agreement or arbitration without resort to public service commission regulation.

3. Copies of this resolution be sent to the Honorable Keith Miller, Governor of the State of Alaska, and all members of the Alaska State Legislature.

4. This resolution shall become effective immediately upon passage.

Passed and approved by the City Councils of the cities of Anchorage and Fairbanks, Alaska, at a special joint council meeting, the 21 day of February, 1969.

ATTEST:

B. B. B.  
City Clerk, City of Anchorage

George D. Sullivan  
Mayor, City of Anchorage

*W.A. Bowler*  
\_\_\_\_\_  
Mayor, City of Fairbanks

ATTEST:  
*W. G. ...*  
\_\_\_\_\_  
City Clerk, City of Fairbanks

The Legislature of the State of Alaska  
 FISCAL NOTE  
 First Session - Sixth State Legislature

COPIES: THE CHAIRMAN OF THE COMMITTEE MAKING THE REQUEST, POUCH V  
THE LEGISLATIVE FINANCE COMMITTEES' STAFF, POUCH Y  
THE DIVISION OF BUDGET & MANAGEMENT, POUCH C  
RETAIN A COPY FOR YOUR FILES

subject HB 188 SB  
 requested by Chairman Barry W. Jackson, House Judiciary Committee  
 referred to \_\_\_\_\_ date of request \_\_\_\_\_  
 completion date requested \_\_\_\_\_ date received \_\_\_\_\_

EXPENDITURE DETAIL	FY 1969-70	FY 1970-71	FY1971-72
100 PERSONAL SERVICES	\$243,300	\$265,400	\$272,700
200 TRAVEL	28,500	26,300	27,000
300 CONTRACTUAL SERVICES	120,400	73,000	73,200
400 COMMODITIES	4,000	5,000	5,000
500 EQUIPMENT	7,700	2,500	2,500
600 LAND AND STRUCTURES			
700 GRANTS, CLAIMS & SHARED REVENUE			
900 Inter-agency Charges	22,000	23,000	23,000
TOTAL	\$425,900	\$395,200	\$403,400

FUNDING DETAIL			
FEDERAL RECEIPTS	\$	\$	\$
SPECIAL FUNDS			
UNRESTRICTED GENERAL FUND RECEIPTS	425,900	395,200	403,400
Man Months	180	204	216
Permanent Positions	15	17	18
Temporary Positions	0	0	0

FISCAL ANALYSIS

Please see attached.

DATE 3/4/69

SIGNATURE *George Sharrock*

NAME & TITLE George Sharrock, Commissioner of Commerce

## MEMORANDUM

State of Alaska

TO: B. L. McMurtrey  
Deputy Commissioner  
Department of Commerce

DATE : February 27, 1969

FROM: Don Hall  
Executive Director  
Public Service Commission

SUBJECT: HB 188 and HB 202

You asked for my comments in regard to HB 188 but made no similar request in regard to HB 202.

I have compared HB 188 and SB 54 and find that they are identical in every respect. I have also compared HB 202 with SB 128 and find that they too are identical in every respect with one exception; namely, that Sec. 42.05.691(b) of SB 128 has been omitted from HB 202. This deletion has the effect of broadening the Commission's authority.

I have already prepared detailed comments on SB 54 and SB 128, copies of which are in Mr. Sharrock's possession--and these comments, of course, apply also to their respective House companion bills.

You have the Commission's original budget in the amount of \$347,800 as subsequently modified by the cost of upgrading certain positions and by adding \$8,500 to cover the cost of regulating pipeline companies (principally the Alaska Pipeline Company). The cost of administering SB 54 would be somewhat greater than the cost of administering SB 128 because of the fact that SB 54 requires more extensive regulation of municipally owned and operated utilities. However, I believe that the aforementioned original budget as modified would be adequate to administer SB 54, at least during the first year.

Estimates have also been submitted regarding our budgetary requirements for the years ending June 30, 1970, 1971, and 1972. These estimates were specifically based upon administering SB 128 and consist of a three-year projection compiled in one document.

I believe the foregoing is an adequate response to your request for information in regard to the House and Senate bills mentioned above.

By Don Hall

DH:SG

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ALASKA PUBLIC SERVICE COMMISSION

Detail of Personnel Requirements

NOTE #1

Position Title	Approved FY 1968-1969	Projected FY 1969-1970	Projected FY 1970-1971	Projected FY 1971-1972
Executive Director	18,888	21,612	21,612	21,612
Deputy Director	17,844	19,992	19,992	19,992
Utilities Engineer	14,916	17,844	17,844	17,844
Financial Analyst II	15,876	15,876	15,876	15,876
Tariff Specialist II		15,876	15,876	15,876
Financial Analyst I	12,156	13,908	13,908	13,908
Tariff Specialist I		13,908	13,908	13,908
Accountant IV			13,032	13,032
Assistant Utilities Engineer		12,156	12,156	12,156
Administrative Officer I		12,156	12,156	12,156
Accountant II	9,960			
Secretary III		8,496	8,496	8,496
Secretary II	7,956			
Secretary I		7,488	7,488	7,488
Secretary I		7,488	7,488	7,488
Documents Clerk III		7,488	7,488	7,488
Clerk Steno II	6,420	6,420	6,420	6,420
Clerk Steno II			6,420	6,420
Clerk Typist III	6,420	6,420	6,420	6,420
Clerk Typist III				6,420
Sub-total	110,436	187,128	206,560	213,000
Commissioner 5 es @\$6,000 each per year		30,000	30,000	30,000
Employee Benefits	11,164	26,172	28,820	29,700
Total Personnel Services	\$121,600	\$243,300	\$265,400	\$272,700

The difference between this amount and the request for personnel services included on our original FY 1969-1970 budget request (\$228,300 - \$194,900 = \$33,400) is comprised of nominal salaries for the five Commissioners plus six reclassifications which were recommended by consultants in recommendations on Commission Staffing.

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ALASKA PUBLIC SERVICE COMMISSION Cont.

NOTE # II

200 Travel

We anticipate that our travel fund requirements, both outside and within the State, will remain fairly constant for the next three years. The moderate decrease projected for FY 1970-1971 is comprised of two items included in our present budget (ACS Sale Bid Proposal Evaluation conferences and transportation of new employees) which will no longer be needed. The moderate increase in FY 1971-1972 is anticipated because of increase in workload. Add increase of 2,000 for each Year covering additional 2 commissioners for a total of 5 .

NOTE # III

300 Contractual Services

The \$28,500 increase in FY 1969-1970 projected requirements is made up of the following costs:

- a) \$20,000 to provide funds for hearing officers appointed pursuant to AS 42.05, Section 181 of SB-128
- b) \$8,500 to provide funds for consultants to investigate operations of existing oil transmission pipelines within the State

The \$47,400 decrease in FY 1970-1971 was computed as follows:

- a) \$5,100 increase in overall contractual services account due to increase in workload and change in methods and procedures utilized in accomplishing program of utility regulation.
- b) \$52,500 total decrease possible because of anticipated finalization of ACS sale by July 1, 1970 (\$35,000); completion of investigation of safety programs of natural gas utilities (\$18,500); completion of investigation of oil transmission pipelines (\$8,500); and an increase of \$10,000 for hearing officer fees.

NOTE # IV

400 Commodities

Our requirements in this area have reached a fairly stable level. The increase in FY 1970-1971 is necessary because of additional personnel to handle the added workload. However, we then expect requirements in this account to level off at the amount shown.

NOTE V

500 Equipment

Continuing decrease in requirements in this area is a reflection of the adequacy of budget requests made and appropriations received in the past.

NOTE VI

900 Interagency Charges

Moderate increase is for additional travel funds for the attorney on full-time assignment from Department of Law.

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FY 1969 - 1970

FY 1970 - 1971

FY 1971 - 1972

	Original			Projected			Projected			Projected
	APSC Request	Increase	Decrease	Budget Re- quirement	Increase	Decrease	Budget Re- quirement	Increase	Decrease	Budget Re- quirement
General Services (See attached Note I)	194,900	33,400		228,300	22,100		250,400	7,300		257,700
Travel (See attached Note II)	26,500			24,500 25,000		2,000	24,700 + 2,000	200		25,700 + 2,000
Statistical Services										
Communications	5,100			5,100	900		6,000	500		6,500
Information Systems	3,000			2,500	1,500		2,000	2,000		3,000
Postage	4,500			4,600	1,200		10,500			10,500
Repairs	700			700	500		1,000	200		1,200
Competition of Price	1,200			1,200		500	700			700
Equipment Rental	2,600			2,600	1,000		3,600			3,600
Books & Supplies	500			300	100		400			400
Supplies (See attached Note)	68,000	28,500		96,500		52,000	44,500	1,500		46,000
Utilities fees	300			300	100		1,000			1,000
Subtotal (See attached Note III)	91,900			120,400			73,000			73,200
Publications	4,000			4,000	1,000		5,000			5,000
Equipment (See attached Note IV)	7,700			7,700		5,200	2,500			2,500
Contingency Charge (See attached Note V)	22,000			22,000	1,000		23,000			23,000
TOTALS	347,000			408,900 + 17,000			378,200 + 17,000			381,400 + 17,000

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# Memorandum

Alaska Court System

TO:  Representative Irwin L. Metcalf

DATE : March 17, 1969

FROM: Judge Thomas B. Stewart *TBS*

SUBJECT: House Bill No. 226

You asked for my very brief comment on H.B. No. 226. After further consideration, I think I should not comment specifically on its merits without making a full explanation, and it is not feasible to do this in the time available to me today.


In general I would not favor the bill in its present form, if only because of vagueness of the amendatory language. This is solely a personal view and should not be attributed to the Alaska Court System.

## MEMORANDUM

State of Alaska

TO:  Representative Irwin L. Metcalf  
Sixth State Legislature

DATE : March 17, 1969

FROM:  Commissioner Mel J. Personett  
Department of Public Safety

SUBJECT: HB 226  
Our File #151 - 1969

As you have requested, the following are my comments on HB 226:

1. As the situation now stands, I would personally prefer that the entire section be repealed, and information be made available as it is with adults.

The original idea and intent of juvenile proceedings was good -- informal hearing, rules of evidence relaxed, etc. -- with the entire thought being to help the child and straighten him out if necessary. In many cases it was possible to do so before the child actually went so far as to actually commit an offense.

This is no longer possible since rules of evidence and constitutional guarantees as interpreted by the Supreme Court also apply to juveniles.

Juvenile court, as it existed when this statute was necessary and desirable, is a thing of the past.

2. If AS 47.10.090 (a) and (b) were amended to be applicable only to minors 14 years of age or younger, the persons most in need of protection would still be covered.

HB 226 would still protect the unlicensed or "license suspended" 17-year old drunken driver since it states, "holder of an operator's license".

1. The juvenile concept is based on a sacrifice of certain legal rights by a minor child in return for special measures of judicial processes designed to rehabilitate those young offenders while they are still "impressionable". Given the benefit of special counseling, separate facilities, and an informal, confidential atmosphere the system remains in balance. But when benefits are taken away, legal rights must be restored, or the system gets out of balance. Recently the U. S. Supreme Court has found that "rehabilitation" facilities in the various states were largely unsatisfactory, and accordingly restored a number of legal rights to the minor child. See In Re Gault.
2. The State of Alaska has subjected the minor child to adult court for certain violations of Title 28 dealing with motor vehicles. AS 47.10.010(b). This is quite proper, as full legal rights are then afforded. If the legislature deemed it in the public interest to except certain other crimes from juvenile jurisdiction under AS 47.10.010(b), there could be no objection.
3. HB 226, however seeks to leave jurisdiction alone, but alter the balance of the juvenile concept. It would accomplish this by removing the benefit of confidentiality of a juvenile proceeding without restoring any "legal rights". In effect, HB 226 is saying... "we're going to privately, confidentially, informally and without affording you your legal rights, adjudicate you a delinquent. We're thereby going to make you a 'child of the state' for dispositive purposes. And when we get through setting you up, we're

going to tell the world about it if there was a motor vehicle involved in your misconduct." This would not be proper.

4. There is another objection to HB 226, in that the language it seeks to insert into AS 47.10.090(b) is quite vague. A motor vehicle may be "used in connection with the act" in an infinite variety of collateral ways. Under HB 226 it doesn't even have to be used by the minor child, so that if a licensed 16 year old hides marijuana in his dad's car, the case would seem to qualify for publication. This may not be the legislative intent.

# STATE OF ALASKA

## DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

46258  
KEITH H. MILLER, GOVERNOR

POUCH S—JUNEAU 99801

January 23, 1970

The Honorable Barry W. Jackson  
Chairman, Judiciary Committee  
House of Representatives  
Alaska State Legislature  
Juneau, Alaska 99801

Re: House Bill No. 258

Dear Mr. Jackson:

Reference is made to your letter to Commissioner Morrison dated January 15, 1970 asking for our current views relating to House Bill 258 which deals with the bond required to be filed by nonresidents.

It is our recommendation that Article 4 of AS 43.10 which consists of AS 43.10.160-200 be repealed and re-enacted to read as set forth on the attached proposed Committee Substitute Bill.

The advantages gained by the State from the existing statute (AS 43.10.160) are so small compared to the problems it presents and the hard feelings it engenders from legitimate businesses that the statute requiring the bond should be repealed. However, to assist the State in collecting taxes from nonresident firms, particularly those involved in the construction field it is requested that the State adopt two sections which are set forth in the accompanying draft of a committee substitute bill. The first section was passed by Congress for the Internal Revenue Service in 1966 to correct abuses in the construction industry. The second section is taken from AS 23.20.265 of the Labor Code. It has been most beneficial to the Employment Security Division in collecting its taxes.

Enclosed with the draft of the committee substitute bill is a copy of the Internal Revenue Code section and the Department of Labor section.

When your Committee considers this bill it is requested that I be given an opportunity to appear and clarify any questions that it may have.

Thank you for your interest and concern in this matter.

Very truly yours,



Vernon L. Snow, Deputy Commissioner

VLS/ge

Enclosures as noted

cc: John Beard w/enclosures

CS FOR HOUSE BILL NO. 258

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act repealing the bond required to be filed with the Department of Revenue by nonresidents under AS 43.10.160 and providing other methods of protecting tax revenue; and providing for an effective date."

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

\* Section 1. Article 4 of AS 43.10 consisting of AS 43.10.160-200 are repealed and re-enacted to read:

ARTICLE 4

LIABILITY OF CONTRACTORS AND THIRD PARTIES

FOR TAXES, LICENSES AND FEES

\* Sec. 43.10.160. Liability of third parties paying or providing for wages.

(a) If a lender, surety, or other person, who is not the employer, pays wages directly to an employee or group of employees, employed by one or more employers, or to an agent on behalf of the employee or employees, the lender, surety, or other person shall be liable in his own person and estate to the state of Alaska in a sum equal to the taxes (together with interest) required to be deducted and withheld from such wages by the employer.

(b) If a lender, surety, or other person supplies funds to or for the account of an employer for the specific purposes of paying wages of the employees of the employer, with actual notice or knowledge that the employer does not intend to or will not be able to make timely payment of the amounts of tax required by statute to be deducted and withheld by such employer

from the wages, the lender, surety, or other person shall be liable in his own person and estate to the state of Alaska in a sum equal to the taxes (together with interest) which are not paid over to the state of Alaska by the employer with respect to the wages. However, the liability of the lender, surety, or other person shall be limited to an amount equal to 25 per cent of the amount so supplied to or for the account of the employer for such purpose.

(c) Effect of payment. Any amounts paid to the state of Alaska pursuant to this section shall be credited against the liability of the employer.

\* Sec. 43.10.170. Liability of contractor and principal for taxes. (a) No employing unit which contracts with or has under it a contractor or subcontractor who is an employer under the provisions of this section may make a payment to the contractor or subcontractor for a debt due until the contractor or subcontractor has paid or furnished a sufficient bond acceptable to the department for payment of taxes, licenses and fees, including penalty and interest, due or to become due for personal services which have been performed by individuals for the contractor arising during the course of the employment of the contractor or subcontractor by the employing unit.

(b) Failure to comply with this section makes the employing unit directly liable for the taxes, licenses and fees, including penalty and interest, and the department has the remedies of collection against the employing unit under this title as though the services in question were performed directly for the employing unit.

(c) "employer" means an employing unit which for some portion of a day within the calendar year has or had in employment one or more individuals.

(d) "employing unit" means an individual or type of organization, partnership, association, trust, estate, joint trust company, insurance company or domestic or foreign corporation, or the receiver, referee in bankruptcy, trustee, or successor of one of these, or the legal representative of a deceased person, which has one or more individuals performing service for it within the state.

\* Sec. 2. This Act takes effect on the day after its passage and approval or on the day it becomes law without approval.

# STATE OF ALASKA

## DEPARTMENT OF LABOR

OFFICE OF THE COMMISSIONER

KEITH H. MILLER, GOVERNOR

BOX 1149 - JUNEAU 99801

February 3, 1970

The Honorable Barry W. Jackson  
Chairman  
House Judiciary Committee  
House of Representatives  
Alaska State Legislature  
Pouch V  
Juneau, Alaska 99801

Dear Mr. Jackson:

Vernon L. Snow, Deputy Commissioner, Department of Revenue, has asked me to write you concerning our experience with AS 23.20.265 (liability of contractor and principal for contributions).

AS 23.20.265 was passed in 1955, and amended slightly in 1959.

Our Employment Security Division advises that the section has been a great aid in the collection of Employment Security contributions during the past 15 years. To their knowledge, there has never been a question of constitutionality raised about this section.

We recommend adoption of a section similar to AS 23.20.265 for the Department of Revenue to assist it in the collection of taxes.

Very truly yours,



William K. Jermain  
Deputy Commissioner of Labor

cc: Vernon L. Snow

R. E. ROBERTSON (1865-1961)  
M. E. MONAGLE  
F. O. EASTAUGH  
R. J. ANNIS  
J. S. BRADLEY  
W. G. RUDDY  
~~XXXXXXXXXX~~  
T. P. BLANTON

ROBERTSON, MONAGLE, EASTAUGH & ANNIS  
ATTORNEYS AT LAW  
P. O. BOX 1211  
JUNEAU, ALASKA 99801

200 NATIONAL BANK OF ALASKA BLDG.  
PHONE JUNIPER 6-3340  
CABLE ADDRESS: ROMEA

April 2, 1969

Hon. Wendell P. Kay  
House of Representatives  
Alaska State Legislature  
Juneau

Re: House Bill No. 258

Dear Wendell:

Enclosed is the "proposed language".

Reviewing Ch. 71. SLA 1955 I found "unencumbered"  
to be redundant.

Let me know when convenient to discuss this.

Sincerely,



F. O. Eastaugh

FOE:bh  
Enc.

# STATE OF ALASKA

KEITH H. MILLER, GOVERNOR

## DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

POUCH S—JUNEAU 99801

February 21, 1970

The Honorable Barry Jackson  
Chairman, House Judiciary Committee  
Alaska State Senate  
Juneau, Alaska 99801

Re: CSHB 258

Dear Mr. Jackson:

Committee Substitute for House Bill 258 repeals AS 43.10.160 - AS 43.10.200 which require a bond to be filed with the Department of Revenue by nonresident businesses to cover estimated taxes which will be incurred during the year. The bond is a condition precedent to doing business in the state. The Department of Revenue has never collected on one of these bonds.

AS 43.10.150 provides that if acquiring the bond would be a hardship on the business the Attorney General may waive the bond. This waiver provision has resulted in most businesses asking for a waiver. A business which is sound financially can seldom ever show a hardship and must obtain a bond by paying a premium which seldom goes to an Alaska business. A nonresident business which can show a hardship is often a business in a poor financial condition and is a business which should not receive a waiver. The result is a sound business is penalized and the unsound business has a way out.

The Department of Revenue recommends and concurs in section 1 of CSHB 258 which repeals the nonresident bond requirement.

Section 2 of Committee Substitute for House Bill 258 adds two new sections. The first (section 43.10.165) is adopted from the Internal Revenue Code of 1954. It makes a lender, surety, or other person who pays the wages directly to an employee or a person who supplies funds to or for the account of an employer for the purposes of paying wages when he knows the employer does not intend or will not be able to make timely payment of the tax deducted from employees wages liable for the tax.

The second section (43.10.175) is adopted from AS 23.20.265 of the Labor Code. It provides that a contractor is liable for the taxes of his subcontractor.

The two new sections will assist the Department of Revenue in collecting taxes in the construction field which is probably our major collection problem area.

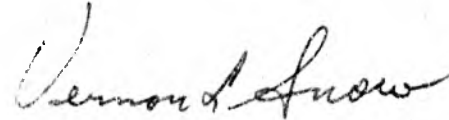
The Honorable Barry Jackson

-2-

February 21, 1970

CSHB 258 will not cost the state any additional funds. It will result in savings in administering the bill and should help increase collections.

Very truly yours,



Vernon L. Snow  
Deputy Commissioner

VIS /ge  
cc: John Beard

## MEMORANDUM

## State of Alaska

TO:  John Beard  
 Legislative Assistant  
 Office of the Governor

DATE : February 24, 1970

FROM: Vernon L. Snow  
 Deputy Commissioner  
 Department of Revenue

SUBJECT: CSHB 258 - Repeal of Nonresident  
 Bond Requirement

Reference is made to my conversation with you on February 24, 1970. At that time I suggested that you talk with Representative Boardman and other legislators regarding the administration's position with respect to House Bill 258. I pointed out to you the Department of Revenue and the administration favors the adoption of the House Judiciary Committee's Substitute Bill for House Bill 258. A brief history of this act and our reasons for favoring the Committee Substitute Bill are set forth below.

The nonresident bond requirement (AS 43.10.160-200) was passed in 1955 apparently because many construction firms and fishery businesses were coming into the State and leaving without paying their taxes. Since that time several changes have occurred which require a change be made in our law. Among these are the following:

1. AS 43.75 requires fish processors to post a bond covering the fishery taxes. Thus the bond required by AS 43.10.160 is no longer needed for the fish processors tax.
2. Experience indicates that we have never collected on any bond which has been filed with the department.
3. A tremendous amount of time is required to administer the non-resident bond statute because nearly all businesses ask for a waiver. Not only does this entail searching our records to ascertain the current status of the business, but it also requires us to transmit this information to the Attorney General who in turn must examine it to see if a waiver should be granted. If one is granted then additional search is required. Correspondence is created by the "reams".
4. AS 43.10.160 provides that a waiver may be given to a business which can show that furnishing the bond is a hardship. A firm which is financially responsible such as a billion dollar corporation can seldom ever show that payment of a bond premium is a hardship. For example one large corporation paid out \$21,000 for premium for a bond for one year. On the other hand a financially weak business which could show a hardship in posting a bond and obtain a waiver is the very company which may end up not paying the state taxes and should not be given a waiver. Accordingly, the good business is penalized and the poor business may obtain a waiver.
5. Few if any of the bond premiums paid for bonds posted with this department are paid to Alaska insurance firms. The nonresident firm generally gets its bond from a broker in the city where its home office is located.

During the 1969 session of the legislature the administration introduced H.B. 258 which would do away with the waiver provision and require that nonresident businesses post the bond, prepay the tax, or own sufficient real property in Alaska not to need to file a bond under the act. This change would eliminate most of the wasted expenditure of time in the Departments of Revenue and Law. It would also have eliminated any possibility of favoritism being claimed in granting waivers to some and refusing waivers to others.

House Bill 258 was referred to the House Congress Committee which approved the original bill with one or two minor changes. The bill then went to the House Judiciary Committee.

Hearings were held by the House Judiciary Committee in 1969 on House Bill 258. Because of the harshness of the bond requirement and the absurd results that could and did arise other approaches were sought. One committee substitute was proposed by a lobbyist, but that proposal would have been more onerous and burdensome to the Department of Revenue in administering the law than the present act. Finally near the end of the 1969 session the Judiciary Committee requested the Department of Revenue to provide it with additional recommendations at the commencement of the 1970 session.

After reviewing the entire nonresident bond provisions and the act's history the Department of Revenue concluded that difficulties in administering the present act far exceed the benefits received. Accordingly we recommended to you in our memorandum of January 21, 1970 that the entire nonresident bond provisions (AS 43.10.160-200) be repealed and two new sections be adopted in its place to assist the Department of Revenue in collecting taxes in the construction industry which constitutes the principal delinquent area where we have trouble.

The first new section is adopted from section 3505 of the Internal Revenue Code of 1954. It provides that a lender, surety, or other person who supplies funds for the payment of wages for an employee is liable for the taxes withheld from the employee's wages if the lender has actual notice or knowledge that the employer does not intend to or will not be able to make timely payment of the taxes. This section was adopted by the United States Congress in 1966 to assist the Internal Revenue Service in dealing with its problem in the collection of taxes from contractors.

The second section which we recommended was patterned after AS 23.20.265 of the Alaska Labor Code. That section holds a prime contractor liable for the taxes of the subcontractor arising from personal services which have been performed on the contract.

After obtaining your approval, we communicated to Representative Barry Jackson our revised views. Committee hearings were held and the House Judiciary Committee adopted our new recommendations with slight wording changes to the second section we recommended be adopted.

John Beard

-3-

February 24, 1970

Although the House Judiciary Committee has changed the title to House Bill 258, the Committee Substitute does represent the Department of Revenue's position on this subject. It is recommended that you notify Representative Boardman and other legislators that Committee Substitute for House Bill No. 258 be adopted.

VLS/ge

Enclosure: Copy of CSHB 258  
cc: Copy of this memorandum w/enclosure

## Judiciary Committee Report

on

### CS for HOUSE BILL NO. 258

Committee Substitute for House Bill No. 258 repeals AS 43.10.160-AS 43.10.200 which require a bond to be filed with the Department of Revenue by nonresident businesses to cover estimated taxes which will be incurred during the year. The bond is a condition precedent to doing business in the state. The Department of Revenue has never collected on one of these bonds.

AS 43.10.160 provides that if acquiring the bond would be a hardship on the business the Attorney General may waive the bond. This waiver provision has resulted in most businesses asking for a waiver. A business which is sound financially can seldom ever show a hardship and must obtain a bond by paying a premium which seldom goes to an Alaska business. A nonresident business which can show a hardship is often a business in poor financial condition and is a business which should not receive a waiver. The result is that sound business is penalized and unsound business has a way out.

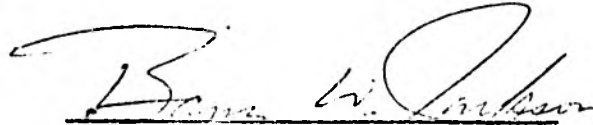
The Department of Revenue recommends and concurs in Section 1 of CSHB-258 which repeals the nonresident bond requirement.

Section 2 of CSHB-258 adds two new sections. The first (section 43.10.165) is adopted from the Internal Revenue Code of 1954. It makes a lender, surety, or other person who pays the wages directly to an employee or a person who supplies funds to or for the account of an employer for the purposes of paying wages when he knows the employer does not intend or will not be able to make timely payment of the tax deducted from employees wages liable for the tax.

The second section (43.10.175) is adopted from AS 23.-20.265 of the Labor Code. It provides that a contractor is liable for the taxes of his subcontractor.

The two new sections will assist the Department of Revenue in collecting taxes in the construction field which is probably the major collection problem area.

According to the Department of Revenue, which supports the committee substitute, CSHB-258 will not cost the state any additional funds. It will result in savings in administration and should help increase collections.

A handwritten signature in cursive script, appearing to read "Barry W. Jackson", written over a horizontal line.

Barry W. Jackson  
Chairman  
House Judiciary Committee

A M E N D M E N T

Offered in the HOUSE

By Commerce

To: HOUSE Bill No. 258

SENATE Bill No.

AMENDMENT: Page 1 Line 10

Add:

Section 1. AS 43.10.160 (a), (b), and (c)

Second amendment:

Delete the words "before June 2 of" of Sec. 43.10.160 of Article 4 as follows:

Sec. 43.10.160

(a) Every nonresident person, as a condition precedent to the act of severing or taking resources from or transacting or doing business in the state, shall file (BEFORE JUNE 2 OF) each year a sworn statement in affidavit form with the Department of Revenue setting forth the following information;

CS FOR HOUSE BILL NO. 258

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act repealing the bond required to be filed with the Department of Revenue by nonresidents under AS 43.10.160 and providing other methods of protecting tax revenue; and providing for an effective date."

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

\* Section 1. Article 4 of AS 43.10 consisting of AS 43.10.160-200 are repealed and re-enacted to read:

ARTICLE 4

LIABILITY OF CONTRACTORS AND THIRD PARTIES

FOR TAXES, LICENSES AND FEES

\* Sec. 43.10.160. Liability of third parties paying or providing for wages.

(a) If a lender, surety, or other person, who is not the employer, pays wages directly to an employee or group of employees, employed by one or more employers, or to an agent on behalf of the employee or employees, the lender, surety, or other person shall be liable in his own person and estate to the state of Alaska in a sum equal to the taxes (together with interest) required to be deducted and withheld from such wages by the employer.

(b) If a lender, surety, or other person supplies funds to or for the account of an employer for the specific purposes of paying wages of the employees of the employer, with actual notice or knowledge that the employer does not intend to or will not be able to make timely payment of the amounts of tax required by statute to be deducted and withheld by such employer

from the wages, the lender, surety, or other person shall be liable in his own person and estate to the state of Alaska in a sum equal to the taxes (together with interest) which are not paid over to the state of Alaska by the employer with respect to the wages. However, the liability of the lender, surety, or other person shall be limited to an amount equal to 25 per cent of the amount so supplied to or for the account of the employer for such purpose.

(c) Effect of payment. Any amounts paid to the state of Alaska pursuant to this section shall be credited against the liability of the employer.

\* Sec. 43.10.170. Liability of contractor and principal for taxes. (a) No employing unit which contracts with or has under it a contractor or subcontractor who is an employer under the provisions of this section may make a payment to the contractor or subcontractor for a debt due until the contractor or subcontractor has paid or furnished a sufficient bond acceptable to the department for payment of taxes, licenses and fees, including penalty and interest, due or to become due for personal services which have been performed by individuals for the contractor arising during the course of the employment of the contractor or subcontractor by the employing unit.

(b) Failure to comply with this section makes the employing unit directly liable for the taxes, licenses and fees, including penalty and interest, and the department has the remedies of collection against the employing unit under this title as though the services in question were performed directly for the employing unit.

(c) "employer" means an employing unit which for some portion of a day within the calendar year has or had in employment one or more individuals.

(d) "employing unit" means an individual or type of organization, partnership, association, trust, estate, joint trust company, insurance company or domestic or foreign corporation, or the receiver, referee in bankruptcy, trustee, or successor of one of these, or the legal representative of a deceased person, which has one or more individuals performing service for it within the state.

\* Sec. 2. This Act takes effect on the day after its passage and approval or on the day it becomes law without approval.

Work Draft

Original sponsor: Rules Committee by  
request of the Governor

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 258

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the collection of taxes, licenses,  
7 and fees; and providing for an effective date."

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

9 \* Section 1. AS 43.10.160 - 43.10.200 are repealed.

10 \* Sec. 2. AS 43.10 is amended by adding new sections to read:

11 ARTICLE 4. LIABILITY OF EMPLOYERS AND THIRD PARTIES  
12 FOR TAXES, LICENSES AND FEES.

13 Sec. 43.10.165. LIABILITY OF THIRD PARTIES. (a) If a lender,  
14 surety, or other person, who is not the employer, pays wages directly  
15 to an employec, employed by one or more employers, or to an agent on  
16 behalf of the employee, the lender, surety, or other person is liable  
17 in his own person and estate to the State of Alaska in a sum equal to  
18 the taxes (together with interest) required to be deducted and withheld  
19 from the wages by the employer.

20 (b) If a lender, surety, or other person supplies funds to or for  
21 the account of an employer for the specific purpose of paying wages of  
22 the employees of the employer, with actual notice or knowledge that the  
23 employer does not intend to or will not be able to make timely payment  
24 of the amounts of tax required by statute to be deducted and withheld  
25 by the employer from the wages, the lender, surety, or other person is  
26 liable in his own person and estate to the State of Alaska in a sum  
27 equal to the taxes (together with interest) which are not paid over to  
28 the State of Alaska by the employer with respect to the wages. How-  
29 ever, the liability of the lender, surety, or other person is limited

Work Draft

1 to an amount equal to 25 per cent of the amount so supplied to or for  
2 the account of the employer for this purpose.

3 (c) An amount paid to the State of Alaska under this section shall  
4 be credited against the liability of the employer.

5 Sec. 43.10.175. LIABILITY OF EMPLOYER AND CONTRACTOR. (a) A  
6 <sup>Contractor</sup> person who contracts with or employs a ~~contractor~~ or subcontractor who  
7 is an employer is liable for taxes, licenses and fees, including penalty  
8 and interest, due or to become due for personal services which have  
9 been performed in the state by an individual for the contractor or  
10 subcontractor arising during the course of the contract with or employ-  
11 ment of the contractor or subcontractor; and the department has the  
12 remedies of collection, provided in this title, against the person  
13 as though the services in question were performed directly for him.  
14 The department shall, however, first <sup>attempt to collect the taxes, licenses,</sup> pursue the collection remedies  
15 <sup>and fees from</sup> against the contractor or subcontractor who is the immediate employer  
16 of the individual performing the services.

17 \* Sec. 3. This Act takes effect on the day after its passage and approv-  
18 al or on the day it becomes law without approval.  
19  
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AL 269

Ketchikan League of Women Voters  
President Mrs. Jeff Collins  
P. O. Box 1133  
January 26, 1970

The Honorable Barry Jackson  
Chairman: House Judiciary Committee  
House of Representatives  
Juneau, Alaska

Dear Mr. Jackson:

Last spring the Ketchikan League of Women Voters studied the problem of the dual city council-borough seats. After studying the problem we came to the conclusion that this was not a desirable arrangement. Our group felt that the two seats should be separate, and each should be voted upon by the city voters. Since this can be accomplished only at the state level, we are urging support for House Bill 264, which provides for assemblymen representing a first class city to be elected by the city voters rather than being appointed by and from city councils.

Our reasons for supporting legislation to make the city council and borough assembly seats separate positions are:

1. Voters inside the city limits would like to have a direct vote as to who would represent them on the borough assembly.
2. The duties of a city councilman and a borough assemblyman are too time consuming for one man to adequately do both jobs.
3. Since over 80% of our borough budget is ear-marked for schools, the voters would like to select someone to fill the assembly seat who has an interest in working with the schools.
4. A man running for city councilman does not find out until after he takes office whether he will also be appointed to the borough assembly.

In the last session this bill did not get out of your committee. Please act on this bill so that it can get out on the floor and get passed.

Thank you.

Sincerely,

*Melva Joan Hiatt*  
Melva Joan Hiatt  
Chairman, Borough Studies Comm.



# CITY OF ANCHORAGE



# ALASKA

*International*  
*Polar air crossroads of the world*

March 25, 1969

Hon. Barry Jackson, Chairman  
House Judiciary Committee,  
Alaska State House of Representatives  
Capitol Building  
Juneau, Alaska 99801

Re: HB 265 - Leasing of Public Buildings

Dear Representative Jackson:

I would have only two comments in regard to the above bill which would permit cities and boroughs to acquire and construct public building and facilities for cities and boroughs. It would probably be advisable for the State to be mentioned as a party in that all three forms of government may in many instances be able to use one public building. The second comment would be to permit an option to purchase the building after a specified period of time. Without such a provision, a long term rental proposition may prove to be more attractive to government planning if public ownership of the building would be a possibility. I have not explored the result of what would happen to the tax problems, and these questions would have to be answered upon further analysis.

Very truly yours,

Karl L. Walter, Jr.,  
City Attorney

KLW/gl



# STATE OF ALASKA

## DEPARTMENT OF LABOR

OFFICE OF THE COMMISSIONER

*file  
HB-280*  
KEITH H. MILLER, GOVERNOR

BOX 1149 - JUNEAU 99801

January 20, 1970

*Jackson placing  
Hold on this  
1-22-70*

The Honorable Barry W. Jackson  
Chairman  
Judiciary Committee  
House of Representatives  
Pouch V  
Juneau, Alaska 99801

Dear Mr. Jackson:

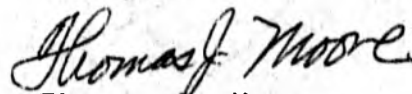
Thank you for the opportunity to comment on Committee Substitute for House Bill 280.

The Department of Labor has questioned whether or not it should properly have the responsibility for involvement in this area.

It is now our understanding that the Inland Boatmen's Union, at whose behest this bill was originally introduced, no longer feels there is urgent need for such legislation by the State of Alaska; as it is now anticipated that Federal regulations will be extended to this area of maritime safety.

Since Committee Substitute for House Bill 280 provides that vessels subject to similar regulation by an agency or department of the United States would be exempt from the provisions of the bill, it appears that this legislation is not needed at this time.

Sincerely,



Thomas J. Moore  
Commissioner of Labor

46281



*Question of appeal from Dist. C*

Supreme Court

State of Alaska  
Pouch U  
Box 5004

JUNEAU, ALASKA  
99801

*Case please review & review as a committee report*

BUELL A. NESBETT, CHIEF JUSTICE  
JOHN H. DIMOND, ASSOCIATE JUSTICE  
JAY A. RABINOWITZ, ASSOCIATE JUSTICE

April 1, 1969

Hon. Barry W. Jackson, Chairman  
House Judiciary Committee  
State Capitol Building  
Juneau, Alaska 99801

Dear Mr. Jackson:

House Bill 281 has been recommended by the Alaska Judicial Council and its Statewide Committee composed of judges, lawyers, legislators and prominent citizens from all areas of the state.

Appellate courts of the states of the United States and the federal courts have held that they do not have the inherent authority to review and modify a lawful criminal sentence, ~~imposed by a trial judge on the ground that the sentence was excessive or too lenient. The decisions of these courts are based in large part on the fact that during the growth of the common law the prerogative of prescribing punishment for the violation of criminal ordinances was in the crown and later in the legislative bodies.~~ The majority of the courts have held that where a sentence imposed by a trial judge is within the limits prescribed by statute and otherwise legal, an appellate court cannot review the discretion of the trial judge exercised in determining the sentence, even though it may appear in retrospect to have been too severe or too lenient. >

X

Hon. Barry W. Jackson

April 1, 1969

Page 2

The concept that the discretion of the trial judge exercised in imposing a particular sentence should not be questioned on appeal is now being challenged in more and more jurisdictions. In approximately eleven states of the United States constitutional or statutory provision for the appellate review of criminal sentences is now provided. The Congress of the United States has held hearings for the past three years on proposed federal legislation which would provide for the appellate review of sentences in the federal courts. ~~It is predicted by~~ Senator Hruska<sup>11.B.281</sup> that the pending legislation will be enacted into law during the 1969 session of Congress. For the past ten years the states of Massachusetts and Connecticut have provided by statute for the appellate review of criminal sentences and only recently the state of Maryland has adopted the techniques employed in those two states.

The general advantages of appellate review of sentences are considered to be:

1. Prison unrest generated by long-term prisoners can be alleviated to a large extent by providing for review of sentences which are claimed to be excessive on the ground that the trial judge "railroaded" the offender.

2. Where sentences are appealed by the offenders the appellate review panel can adjust the sentence upward as well as downward if in its opinion the original sentence was too lenient or too severe, resulting in a more just treatment of the defendant and the state.

3. Since every other aspect of a criminal trial prior to conviction is subject to appellate review there is, in this enlightened day, no reason in logic or justice why a sentence imposed by the trial judge after conviction should not likewise be reviewed.

X  
Enactment of <sup>11.B.281</sup> ~~the above~~ legislation would provide the jurisdiction and substantive guidelines required to provide for appellate review of sentences in Alaska. The supreme court of Alaska would promulgate detailed rules of procedure providing for the preparation and forwarding of the record, hearing procedures, etc. In general these rules

It is expected that

Hon. Barry W. Jackson  
April 1, 1969  
Page 3

X  
would be identical with those proposed to implement the federal legislation. Upon the institution of an appeal the clerk of court would forward to the appellate court the probation officer's report, the district attorney's recommendation, the defendant's statement, the written statement of the judge explaining in detail why the sentence was imposed and any other written material which was before the trial judge at the time he imposed the sentence. The record would also include a transcript of the proceedings held in court at the time the sentence was imposed. No other record would be forwarded and the appeal would be determined by the court on the record unless in its discretion it ordered the production of the defendant before the court. Such production would be required in any case where the court considered increasing the sentence. The additional expense to the state which would result from providing appellate review ~~as above contemplated~~ would be negligible. *According to Chief Justice Norbit,*

*X* Experience in Massachusetts and Connecticut has indicated that the fact that a sentence may be modified by the appellate body upward as well as downward has restricted the appeals taken by defendants to those cases where the defendant sincerely believes that his sentence was excessive. *B* The statistics of those states also reveal that less than 20 percent of sentences imposed are appealed. During the past calendar year a total of 113 sentences of one year or more were imposed by the superior courts of the state. These statistics indicate that approximately 20 appeals from superior court sentences might be expected annually. Since many of the criminal appeals already being taken would be able to incorporate as an additional point an appeal for claimed excessiveness of the sentence imposed, it is not expected that the total number of separate appeals from the sentence alone would exceed 15 in a given year. Under the same reasoning it is not expected that the number of appeals from the district or magistrate's courts to the superior court would exceed a total of 35 in a given year in the entire court system.

Hon. Barry W. Jackson  
April 1, 1969  
Page 4

X The ~~legislation~~ <sup>act</sup> ~~should be made~~ <sup>effective</sup> effective, six months from the date of enactment in order to give the courts time to formulate rules of procedure. The act <sup>is</sup> ~~should be made~~ applicable only to sentences imposed after its effective date, as has been provided in the federal legislation. *date is*

Sincerely yours,

Buell A. Nesbett  
Chief Justice



Supreme Court

State of Alaska

POUCH U. CAPITOL BUILDING

JUNEAU, ALASKA

99801

BUELL A. NESBETT, CHIEF JUSTICE  
JOHN H. DIMOND, ASSOCIATE JUSTICE  
JAY A. RABINOWITZ, ASSOCIATE JUSTICE  
GEORGE F. BONEY, ASSOCIATE JUSTICE  
ROGER G. CONNOR, ASSOCIATE JUSTICE

April 11, 1969

Honorable Barry W. Jackson  
Chairman, House Judiciary Committee  
Capitol Building  
Juneau, Alaska 99801

Re: HB 281 - Appellate Review of  
Criminal Sentences

Dear Chairman Jackson:

In our recent conversation I was under the impression that we had agreed that the captioned bill should be amended to provide that the superior court would have the power to modify a sentence upward as well as downward. I notice that the bill has come out of Judiciary without this amendment, perhaps by oversight.

The amendment would have two desirable effects, I believe:

- (1) It would discourage appeals of every sentence on the "gamble" that a "break" might be received.

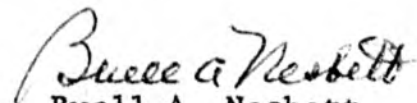
Honorable Barry W. Jackson  
April 11, 1969  
Page 2

- (2) It would be more likely to pass the Senate where some senators view the act as one to obtain more lenient sentences.

The change could be effected by interlining the words "upward or" between the words "from" and "downward" in line 18 of page 2 of House Bill 281.

I urge this amendment.

Sincerely yours,

  
Buell A. Nesbett  
Chief Justice



*Jackson*

Alaska Judicial Council

941 FOURTH AVENUE  
ANCHORAGE, ALASKA  
99501

February 26, 1969

The Honorable Jalmar M. Kerttula  
Speaker of the House  
Alaska House of Representatives  
Capitol Building  
Juneau, Alaska 99801

Dear Speaker Kerttula:

House Concurrent Resolution No. 47 of the 1968 session asked the Alaska Court System to review its sentencing techniques and suggested that it hold a sentencing seminar for its judges. Efforts were made to appraise sentencing techniques and methods and a sentencing seminar was held at the annual judicial conference in Ketchikan in May of 1968. Other sentencing seminars are planned.

In addition, the Alaska Judicial Council voted in 1968 to sponsor a study of the need for a procedure to provide for the appellate review of sentences in Alaska. In the course of its study it further undertook to review and report to the Alaska legislature on the pending proposed revised criminal code and the sentencing aspects of this proposed code. To provide a broad base for its studies the Judicial Council created a statewide blue ribbon committee composed of approximately 60 legislators, judges, lawyers and leading lay leaders in Alaska. Considerable background study material was collected and distributed to all members of the committee. Nationally recognized experts on the subject from Connecticut, New York and California were brought to Alaska to assist the statewide committee in its studies and discussions at its first meeting held in Sitka on December 12, 1968. As a result of the two-day Sitka conference on sentencing the statewide committee voted to establish subcommittees to further study the main interests of the statewide committee as evidenced at the Sitka conference.

Accordingly subcommittees on Appellate Review of Sentences, Probation and Parole in the Courts, and Sentencing Aspects of the Proposed Revised Alaska Criminal Code were created. These committees studied the aspects of sentencing assigned to them and reported to the Statewide Committee at its meeting held in Juneau

on February 19, 1969.

The Statewide Committee adopted the subcommittee report on Appellate Review of Sentences and recommended it to the Alaska Judicial Council for further recommendation to the Alaska Legislature. At its meeting on February 20, 1969 the Alaska Judicial Council adopted the report and recommendations of the subcommittee and voted to recommend the passage of legislation which would provide authority for the appellate review of sentences by Alaska's courts.

1 Appellate courts of the states of the United States and the federal courts have held that they do not have the inherent authority to review and modify a lawful criminal sentence imposed by a trial judge on the ground that the sentence was excessive or too lenient. The decisions of these courts are based in large part on the fact that during the growth of the common law the prerogative of prescribing punishment for the violation of criminal ordinances was in the crown and later in the legislative bodies. The majority of the courts have held that where a sentence imposed by a trial judge is within the limits prescribed by statute and otherwise legal, an appellate court cannot review the discretion of the trial judge exercised in determining the sentence, even though it may appear in retrospect to have been too severe or too lenient.

2 The concept that the discretion of the trial judge exercised in imposing a particular sentence should not be questioned on appeal is now being challenged in more and more jurisdictions. In approximately eleven states of the United States constitutional or statutory provision for the appellate review of criminal sentences is now provided. The Congress of the United States has held hearings for the past three years on proposed federal legislation which would provide for the appellate review of sentences in the federal courts. It is predicted by Senator Hruska that the pending legislation will be enacted into law during the 1969 session of Congress. For the past ten years the states of Massachusetts and Connecticut have provided by statute for the appellate review of criminal sentences and only recently the state of Maryland has adopted the techniques employed in those two states.

The general advantages of appellate review of sentences are considered to be:

3 1. Prison unrest generated by long-term prisoners can be alleviated to a large extent by providing for review of sentences which are claimed to be excessive on the ground that the trial judge "railroaded" the offender.

2. Where sentences are appealed by the offenders the appellate review panel can adjust the sentence upward as well as

downward if in its opinion the original sentence was too lenient or too severe, resulting in a more just treatment of the defendant and the state.

3. Since every other aspect of a criminal trial prior to conviction is subject to appellate review there is, in this enlightened day, no reason in logic or justice why a sentence imposed by the trial judge after conviction should not likewise be reviewed.

The Alaska Judicial Council, assisted by its statewide committee, has considered all aspects of the problem and has concluded that the administration of criminal justice would be improved if the courts of Alaska were granted jurisdiction to review and modify criminal sentences imposed by the trial judges. The Council was considerably impressed by the simplicity of the procedure proposed for federal appellate review of sentences and its suggested method of providing such review in Alaska is based primarily on proposed federal legislation.

The Alaska Judicial Council therefore respectfully requests that this legislature grant jurisdiction to the Supreme Court of Alaska to sit in appellate judgement on criminal sentences imposed by the Superior Courts of Alaska by enacting the following:

Amend AS 22.05.010 to add the following two sentences:

The supreme court has jurisdiction to hear appeals of sentences of imprisonment lawfully imposed by the superior courts upon the ground that the sentence or sentences are excessive or too lenient and in the exercise of this jurisdiction may modify the sentence as provided under law and under the constitution of this state. For the purpose of considering appeals of sentences upon the above grounds the supreme court may sit in divisions.

DISCUSSION: Enactment of the above would give the Supreme Court of Alaska the jurisdiction to hear appeals of criminal sentences which it has held in a recent decision that it does not now have. The last portion of the first sentence which reads "may modify the sentence as provided under law and under the constitution of this state" was worded in that manner rather than to state, as was originally proposed, that the court "may modify the sentence upward or downward." The reason being that where the defendant appeals he can be held to have waived his constitutional right not to be twice placed in jeopardy for the same offense in the event the sentence should be modified upward. However, where the state has

appealed on the ground that the sentence is too lenient, but the defendant has not also appealed, the court would not be justified in holding that the defendant had waived his right against double jeopardy and would be prevented from increasing the sentence by reason of that fact. The above wording was finally adopted which provides for modifying the sentence upward or downward where the defendant himself has appealed but prevents the court from modifying the sentence upward if the defendant has not appealed but the state has appealed.

Add as separate sections to Chapter 25, Title 12 of Alaska Statutes the following:

Sentence Appeal.

(a) Any sentence or sentences of imprisonment lawfully imposed by the superior court for a term or for aggregate terms exceeding one year may be appealed to the supreme court by the defendant upon the ground that the sentence or sentences are excessive. By a sentence appeal under this section the defendant waives any right to plead that by any revision of the sentence resulting from such appeal he has been twice placed in jeopardy for the same offense.

(b) Any sentence of imprisonment lawfully imposed by the superior court may be appealed to the supreme court by the state upon the ground that the sentence is too lenient provided, however, that when a sentence has not also been appealed by the defendant, the court is not authorized to increase the sentence but may express its approval or disapproval and its reasons therefore in a written opinion.

(c) A sentence appeal under this section does not confer or enlarge any right to bail pending appeal. Where a defendant in the prosecution of a regular appeal urges excessiveness of the sentence as an additional ground for appeal, the defendant's right to bail pending appeal shall be governed by the statutes and rules of court.

DISCUSSION: It is believed that the above proposed sections are self-explanatory. Subsection (b) takes care of the situation mentioned in the above discussion with respect to appeals by the state. The advantage of enacting this subsection would be to permit the state to draw to the attention of the appellate courts sentences which were considered to be too lenient. The appellate court would review such sentences and express its approval or

disapproval in a written opinion. Whether the appellate court affirmed the sentence on the ground that it was not too lenient or whether it merely expressed disapproval of the sentence on the ground that it was too lenient, the written opinions of the court would in time provide guidelines for the other courts of Alaska to use in their determination of the appropriate sentence. As the case law of Alaska built up over the years considerable guidelines would be supplied to the lower courts which would be binding upon those courts within the limits of the exercise of their judicial discretion. It is believed that this would be a tremendous advantage because at the present time there are no binding guidelines for the courts of Alaska to employ in determining the appropriate sentence. Subsection (c) would prevent indiscriminate appeal being taken on the ground that the sentence was excessive in order to obtain release pending appeal. It was not intended to prevent release of the defendant on bail pending appeal where the excessiveness of the sentence was only one of several grounds of appeal in the usual appeal. In those situations the defendant should have the right to release on bail pending appeal provided he can convince the court that he qualified for bail pending appeal under the statutes and rules of court now in effect.

In subdivision (a) of AS 22.10.020, interline the following sentence as a next to last sentence:

An appeal to the superior court may be taken on the ground that a sentence of imprisonment of 180 days or more was excessive and the superior court in the exercise of this jurisdiction has the power to modify the sentence appealed from downward.

DISCUSSION: This would provide an appeal for the defendant only from the magistrate's and district courts to the superior court. The Council felt that the appellate review procedure should be extended to the lower courts, for it is in those courts, particularly the courts presided over by lay judges, that abuses of discretion too often occur. The appeal would be heard by a single superior court judge on the record created by the defendant's written statement, the sentencing judge's written statement of reasons, and the district attorney's or the enforcement officer's written statement. The hearing procedure would be fairly summary and expeditious, but it would provide for a mature review by a more experienced judge and would undoubtedly prevent occasional injustices.

The Hon. Jalmar M. Kerttula  
February 26, 1969.  
Page 6

4 { Enactment of the above legislation would provide the jurisdiction and substantive guidelines required to provide for appellate review of sentences in Alaska. The Supreme Court of Alaska would promulgate detailed rules of procedure providing for the preparation and forwarding of the record, hearing procedures, etc. In general these rules would be identical with those proposed to implement the federal legislation. Upon the institution of an appeal the clerk of court would forward to the appellate court the probation officer's report, the district attorney's recommendation, the defendant's statement, the written statement of the judge explaining in detail why the sentence was imposed and any other written material which was before the trial judge at the time he imposed the sentence. The record would also include a transcript of the proceedings held in court at the time the sentence was imposed. No other record would be forwarded and the appeal would be determined by the court on the record unless in its discretion it ordered the production of the defendant before the court. Such production would be required in any case where the court considered increasing the sentence. The additional expense to the state which would result from providing appellate review as above contemplated would be negligible.

5 { Experience in Massachusetts and Connecticut has indicated that the fact that a sentence may be modified by the appellate body upward as well as downward has restricted the appeals taken by defendants to those cases where the defendant sincerely believes that his sentence was excessive. The statistics of those states also reveal that less than 20% of sentences imposed are appealed. During the past calendar year a total of 113 sentences of one year or more were imposed by the superior courts of the state. These statistics indicate that approximately 20 appeals from superior court sentences might be expected annually. Since many of the criminal appeals already being taken would be able to incorporate as an additional point an appeal for claimed excessiveness of the sentence imposed, it is not expected that the total number of separate appeals from the sentence alone would exceed 15 in a given year. Under the same reasoning it is not expected that the number of appeals from the district or magistrate's courts to the superior court would exceed a total of 35 in a given year in the entire court system.

6 { The legislation should be made effective six months from the date of enactment in order to give the courts time to formulate rules of procedure. The act should be made applicable only to sentences imposed after its effective date, as has been provided in the federal legislation.

Sincerely,

*Buell A. Nesbitt*  
Buell A. Nesbitt  
Chairman, Alaska Judicial Council

JUDICIARY COMMITTEE REPORT

ON

HOUSE BILL NO. 281

This bill draws on the concepts for appellate review of criminal sentences contained in proposed federal legislation. Such legislation is expected to be enacted into law during the 1969 session.

The majority of the courts have held that where a sentence imposed by a trial judge is within the limits prescribed by statute and otherwise legal, an appellate court cannot review the discretion of the trial judge exercised in determining the sentence, even though it may appear in retrospect to have been too severe or too lenient.

Enactment of House Bill No. 281 would provide the jurisdiction and substantive guidelines required to provide for appellate review of sentences in Alaska. The supreme court of Alaska would promulgate detailed rules of procedure providing for the preparation and forwarding of the record, hearing procedures, etc. In general, it is expected that these rules would be identical with those proposed to implement the federal legislation. Upon the institution of an appeal the clerk of court would forward to the appellate court the probation officer's report, the district attorney's recommendation, the defendant's statement, the written statement of the judge explaining in detail why the sentence was imposed and any other written material which was before the trial judge at the time he imposed the sentence. The record would also include a transcript of the proceedings held in court at the time the sentence was imposed. No other record would be forwarded and the appeal would be determined by the court on the record unless in its discretion it ordered the production of the defendant before the court. Such production would be required in any case where the court considered increasing the sentence. According to Judge Nesbitt, the additional expense to the state which would result from providing appellate review would be negligible.

The effective date is six months from the date of enactment in order to give the courts time to formulate rules or procedure. The act is applicable only to sentences imposed after its effective date, as has been provided in the federal legislation.

---

Barry Jackson  
Chairman  
House Judiciary Committee

NO. 3

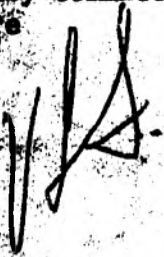
HB

# MEMORANDUM

State of Alaska <sup>File of</sup> <sup>HB 309</sup>

TO: The Honorable Barry Jackson  
Chairman, House Fiduciary Committee  
Alaska State Legislature  
Juneau, Alaska

FROM: V. W. Snow  
Deputy Commissioner  
Department of Revenue



DATE: February 3, 1970

SUBJECT: House Bill 309, An Act  
Relating to Motor Vehicle  
Financial Security and  
Providing an Effective  
Date of January 1, 1970

A copy of our fiscal note on HB 309 is attached per your request. We have reviewed the attached and find it valid. The effective date of the bill should be changed to January 1, 1971.

We would be happy to provide any additional data that you might require.

VLS:cs

Attachment


cc: R. D. Stevenson, Supervisor  
Excise Tax Section

# MEMORANDUM

# State of Alaska

TO:  The Honorable Bill Ray  
Chairman, House Finance Committee  
Alaska State Legislature  
Juneau, Alaska

DATE : April 8, 1969

FROM:   
R. D. Stevenson  
Chief, Excise Tax Section  
Department of Revenue  
Alaska Office Building  
Juneau, Alaska

SUBJECT: House Bill No. 309, An Act  
relating to motor vehicle  
financial security and pro-  
viding an effective date of  
January 1, 1970

Attached is a copy of a memorandum from P. A. Wall, Director, Administrative Services Division, Department of Revenue to Mr. George A. Morrison, Commissioner of Revenue concerning House Bill 309, An Act relating to motor vehicle financial security and providing for an effective date of January 1, 1970.

Mr. Wall is extremely familiar with the operation of the Motor Vehicle Division of the Department of Revenue and prepared his report after conferring with Paul D. Goodrich, Director of the Motor Vehicle Division in Anchorage.

A detailed fiscal note is included. Mr. Goodrich in a wire to Mr. Wall advised "that the bill has intermingled functions and responsibilities of two departments, Public Safety and Revenue Motor Vehicle Division in the administration of the Act and delegated those responsibilities and functions to Public Safety".

Mr. Wall would be most happy to discuss any or all of the information contained in the attached memorandum concerning House Bill no. 309. He may be reached at the Department of Revenue by calling 6-5265.

RDS:se

cc: Mr. P. A. Wall  
Director  
Administrative Services Division  
Department of Revenue

# MEMORANDUM

State of Alaska

TO: G. A. Morrison, Commissioner of Revenue

DATE : April 4, 1969

FROM: P. J. Wall, Director  
Administrative Services Division

SUBJECT: House Bill 309 "An act relating  
to Motor Vehicle Financial  
Security."

This bill requires an operator of a motor vehicle to show proof of financial security as a pre requisite to operation of a motor vehicle in the state.

#### EFFECT UPON THE TREASURY:

Section 28.18.040 - requires that an abstract of the operating records of a person to whom the chapter applies that contains a lists of accidents, the conviction record for violation of motor vehicle laws and a record of vehicle registered in the operators name be furnished for a fee of one dollar. It is our experience that in other states having a liked law that insurance companies and the courts do request abstracts upon the renewal of each insurance policy and in conjunction with each court case. The minimum number of abstracts is estimated at 150,000 for effect upon the treasury of an increase of \$150,000.

#### ADMINISTRATION:

A very detailed fiscal note is attached as prepared by Mr. Goodrich. We believe that the bill lays the burden of information retrieval upon the Department of Revenue, and that the Department of Public Safety will be required to furnish the Department of Revenue with drivers record and violation data to which the Department of Revenue would add a record of the motor vehicle operated by the individual and, for which the Department of Revenue would collect with the one dollar abstract fee.

The annual cost of this bill is estimated at \$218,076. This estimate does not include the cost to the Department of Public Safety for establishing files of drivers licenses and violations in promptly retrievable form. It does not include the additional cost of Motor Vehicle Department for establishing files on approximately 8,000 vehicles now operated by military personnel, and who are not presently required to license their vehicles in Alaska.

We also note that probable correction on page 17 line 27 where the new included Alaska Statutes Reference of AS 28.22.050 should probably be AS 28.18.050.

#### COMMENTS:

The Department of Revenue presently charges one dollar for a search for the title and registration files. This one dollar would be preempted by the new charge of one dollar in section 28.18.040 of the bill.

G. A. Morrison, Commissioner

(2)

April 4, 1969

When we compare the cost of the program which is over \$200,000.00 for the Department of Revenue annually, it is recommended that the charge for each abstract be raised to \$10.00 to cover the cost of the assembling and certifying each request.

PAW:pr

cc: Vernon L. Snow, Deputy Commissioner

R. D. Stevenson, Supervisor Excise Tax Section

ATTACHMENT:

This report very briefly describes the factors, personal services, forms and other costs that will be necessary in the Administration of the Bill.

28.18.040

Requires the Department to furnish a certified abstract of accidents and a record of vehicles registered in that persons name. The fee per abstract is \$1.00.

Comment: The cost will be substantially in excess of \$1.00. It requires this department \$1.00 per item to research Title and Registration files. The abstract specified would be very extensive. Recommended fee - \$10.00.

28.18.050

This section requires that the owner of any vehicle submit proof of financial security.

- (A) Requires Certificate of Insurance with each registration.
- (B) Requires Financial Security Deposit.
- (C) Requires statement of security at renewal.

Forms: Financial Statement  
Insurance Certificate  
Yearly Statement

Personal Services:

At initial registration, each document submitted will be examined for accuracy and compliance. There will be a document generated at every initial registration and at every transfer of registration for each year during her registration for every vehicle.

Section B

There will be a continuous flow of insurance documents into the system as insurance is renewed, terminated or cancelled, or when a person adds to or deletes from a specific policy or when other conditions of the policy changes.

28.18.070

The department will receive, account for, deposit and control financial security deposits.

Personal Services:

Accounting Services, Files and Records

28.18.070  
Section 8

This section will require some type of evidence such as a Title Search to determine that there are no unsatisfied judgments against the depositor. The department would be required to examine and verify whatever documents are submitted.

28.18.090 & 100

Requires that a Bond be filed with the Department. This Act specifies that the Department must maintain a record of actions and damages pending or judgments outstanding or unsatisfied, etc.

Files and Personal Services:

Actions pending, Liabilities outstanding or unsatisfied, drivers involved in accidents.

Forms: Affidavit of Non-existence of these facts.

28.19.110

Files: Self Insurer  
Forms: Certificate of Self-Insurance

(B) Forms & Files:  
Financial Statement by Self Insurer

(C) Substantial clerical services required to process files and initiate correspondence.

28.18.120

Sets out action to be taken when evidence is received that security is no longer in effect. Revocation of registration occurs; clerical services will be required for the purpose of initiating correspondence and maintaining files. Very probably, services of a Field Representative will be required in many instances to take physical possession of license plates and Driver's license.

28.18.130

Specifies action to be taken on any transfer of Motor Vehicles. It would required an examination of all Titles registered to any specific individual or firm. It would require very substantial clerical services.

25.18.190

Concerns the removal of vehicles from the United States or Canada and would require the maintenance of still another file and records. Clerical services would be required for the purpose of initiating correspondence and maintaining the files on the specific vehicles.

25.18.210

This section defines the Liability policy that must exist on each initial registration. It is required that a Certificate of Insurance be submitted and that this insurance meet certain standards and specifications. It would be necessary, on each initial registration to examine both the owner and the vehicle to make certain of the following facts:

1. That the insurance is of the amount and type specified.
2. That all persons driving any one vehicle registered to any given individual are included in the policy.
3. That none of the individuals driving any of the vehicles had violated the Motor Vehicle Operator's Code.

This procedure will be similar to our Title examining function except more extensive. A substantial number of clerical personnel will be required as Policy Examiners.

25.18.230

Forms: Certificate of Insurance.  
 There will be one for every initial registration, one for every transfer and one for every change in policy on each individual vehicle. There will be an affidavit certificate on each individual vehicle for every re-registration period.

The procedures required to administer this act, insofar as the Motor Vehicle Division is concerned, will be essentially the same as our Title Examining function. Certificates of insurance replacing Lien documents but examined for similar purposes.

There would be exceptions (additional procedures) to the Title Examining parallel, however. For example:

1. There will be a yearly statement to be filed on each active Title (vehicle currently registered) which must be recorded and filed.
2. There will be statements or affidavits generated in each instance where the condition of a policy changes.
3. There will be terminations and cancellations throughout the year.
4. There will be reports of suits pending, liabilities unpaid and judgements issued, to be recorded and appropriate action taken.

Personal Services

Policy Examiners

Examine each initial title

- a. That policy is in compliance as related to vehicle.
- b. That self insurer is qualified.
- c. That registered owner nor any person driving vehicle currently in violation of Operators License Ordinance.

- d. That policy covers all vehicles registered to any one person.
- e. That all persons operating vehicle (including registered owner) are properly insured to operate this specific vehicle.

5	Document Processing Clerks I	@ \$6,264	\$31,320
1	Document Processing Clerks III	@ \$7,764	7,764

File Clerks

- 1. Each initial registration generates one document (certificate of insurance) 120,000 estimated for 1970.
- 2. Each re-registration generates one document (Affidavit of insurance) 161,000 estimated for 1970.
- 3. Each change in condition of insurance either generates new document or moves the files.
- 4. A separate "Financial Statement" is generated by each self insurer.
- 5. Files will move in each instance of revocation by virtue of
  - a. Cancellation of insurance Policy
  - b. Revocation of Operators permit
  - c. Failure to maintain financial responsibility.
  - d. Suit is pending or judgment given

4	Clerks I	@ \$5,880	\$23,520
1	Clerk III Sup.	@ \$6,600	6,600

There will be an area of work concerned with violations or non-compliance with the Act. The processing of folio where a suit is pending or judgement has been given. The control of vehicles moved from the U.S.A. and other requirements of the act. Work will be extensive and exacting and will require the services of higher grade clerical personnel. There will be very extensive correspondence and reports.

2	Clerk Typist IV	@ \$7,200	\$14,400
1	Clerk Typist V	@ 8,256	8,256
2	Clerk Steno	@ 6,264	12,528
2	Clerks I	@ 5,880	11,760

The prime end function of this program will be the production of reports and information for use by the Courts and which must be in suitable form. All must be extremely accurate and generally suitable for admission as evidence. In conjunction, there will be a wide assortment of documents generated by various court actions which will require some action by the department.

There must be an area of supervision and guidance, then, within this section staffed by a person reasonably skilled in legal areas. Probably an attorney will be required but possible a secretary (Legal) with exceptional training and experience might suffice.

1	Administrative Assistant	\$10,320
1	Secretary II	8,808

The Accounting sections will be required to process a number of Revenue Documents roughly equal to those presently processed under the Motor Vehicle Act, since there will be a Revenue bearing document, generated at each registration and re-registration. In addition, the Accounting section will receive, hold and control disbursements against security deposits. There will be a substantial number of miscellaneous fees generated. Accounting requirements for the Administration of the Act will, in fact, parallel the present Motor Vehicle Accounting system. Since the present system is effective in processing bulk quantities of paper.

Equipment

3 Desks	@ \$300	\$ 900
3 Chairs	@ 30	90
2 File Cabinets	@ 150	300

Personnel Services

1 Accountant III		\$11,796
2 Accounting Clerks II	@ \$7,200	14,400

There will be a substantial amount of field investigation and activity involving the locating of and personal contact with persons. The repossession of plates and/or Drivers Licenses, physical inspection and identification of vehicles. Will require the services of either a full time State Trooper or a Special Agent.

1 Agent	@ \$13,344	\$13,344
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The function will require about 14,000 square feet of area at \$3.00 per square foot.

\$8,400

15	Desks	@ \$ 300	\$4,500
15	Chairs	@ 30	450
5	Chairs	@ 50	250
15	File Cabinets	@ 150	2,250
10	Tiele File Cabinets	@ 200	2,000
2	Dictaphones	@ 400	800
6	Typewriters	@ 400	2,400
1	Duplicator	@ 1,000	1,000 (Year)
	Microfilm Unit	@ 3,500	3,500

Certificate of Insurance - 1st Year  
 (Initial registration and New registration, Transfer, etc.)  
 240,000 @ 23. per thousand \$ 5,520.00

Affidavits of Renewal Re-registration

(1st Year re-registration 150,000 @ 23. per thousand \$3,450.00

Other Fees:

- a. Security Deposit or Bond
- b. Self insurer
- c. Financial Statement (Self-insurer)
- d. Notice of Revocation of Plates or Driver's license
- e. Notice of execution against Security Deposits
- f. Affidavit of Non-Existence of violations
- g. Affidavit of Removal of Vehicle
- h. Other

150,000 @ 23.00 \$ 3,450.00  
 Misc. - Stationery-Postage, etc. 2,000.00  
 \$5,450.00

We cannot consider the matter of correlating Driver's Licensing information to vehicle licensing, having insufficient data. It appears that the only feasible manner would be by either incorporating the two functions into one operating entity or by combining the records by making provision for a very extensive and fairly sophisticated computerized system.