248 HJ • HB 684/829 - HB 738

HB 829

Mr. Chairman, members of the Commerce Committee, I am Bernard L. Marsh, Executive Secretary of the Alaska Mobile Home Association and also the Alaska Trailer Court Association. HB 829 has not been available long enough for our membership to know about it, but I have shown it to the officers of the two associations, and have been asked to comment on the bill to this Committee.

HB 829 seems to have been written by consumer or tenants action groups with the intent of protecting consumers or tenants from abuses and from unfair expenses. In fact, the effect will likely be just the opposite. The cost to the consumer will be greater. A more serious consequence of this bill will be the creation of a new property right for tenants, which is probably unconstitutional, and which in any case will reduce the value of property and further damage the tight economic situation in the mobile home field. Let me explain:

1. Economics prohibit the production of mobile home spaces in any urban area of Alaska by independent court operators; that is, where the space rental is to provide a rate of return that will justify the investment. There have been no such spaces built in Anchorage in the last five years, and there will be none in the future under present conditions. Spaces have been, and are built by mobile home vendors, simply because you can't sell a mobile home unless there is some place to locate it. Spaces are provided by vendors simply to create sales. The spaces themselves are an economic loss to the vendor. The principle is exactly the same as that of J. C. Penney department store building a parking garage that loses money on parking, just to stimulate store sales. The reason for this situation is two fold; The increasing cost of land, and the progressively more restrictive government regulation.

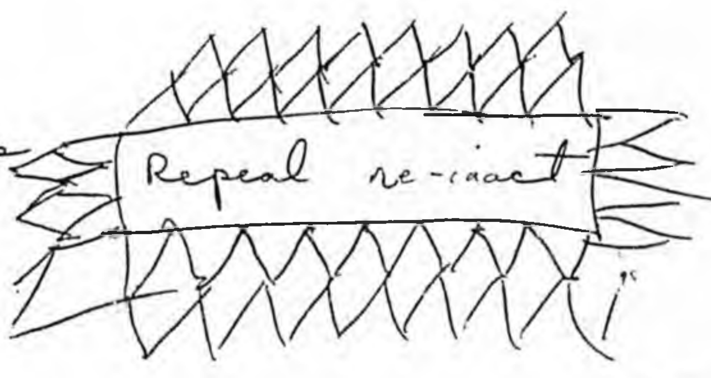
forever, even through a change of ownership. It is incredible to me that this legislature would even consider such a proposal.

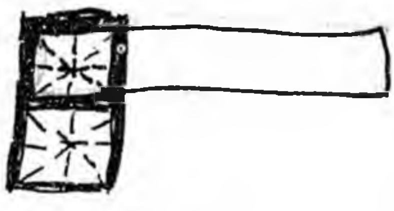
There are several sections of the bill to which we have no objection, and agree with. We agree with Sec 2 (C) (2), which would prohibit an owner from requiring a tenant to provide permanent improvements to his property. We also agree with (4) of the same section, prohibiting vendor or transfer fees as a condition of tenancy. We have no objection to all of Sec. 3. We also agree with Sec. 45.30.070 (a), beginning on line 16, page 3 of the bill. But we disagree with subsect. (b) of this section, which prohibits a perfectly legal and prudent practice on the part of a mobile home vendor. Any vendor who shipped mobile homes to Alaska at $4700 each, and had no spaces to locate them on, would be pretty foolish. Also, it would seem that creating a class of persons (mobile home vendors) who are prohibited from leasing spaces is highly discriminatory and in violation of the state Human Rights Act.

205

File HB684

4 state Employees



5,600 spaces to last year

Trailor Park court owners 100

12 dealers

3-5 dealers own courts

Renting & leasing spaces on other courts

Prevent large trailor sales from pre-leasing - exclude small businessmen

Causes increase of trailors & trailor park spaces

clarification of existing anti-trust law

No economic test though

Consent Judgement in Minnesota 3 years

---

If dealer/owner has mixed clientele hard to prove violation

Have 2 products prices of both Must be determined by the free Market

Trailor lots low - Trailor prices high

Encourage competition at both levels

File with my trailer bill

3/15/76

**RIDGEWOOD MOBILE HOME**
Sales & Court
Rt. 1 Box 523A
KETCHIKAN, ALASKA 99901

Representative Terry Gardiner
Pouch V
Juneau, Alaska 99811

Dear Terry:

I am in receipt of your letter of March 8, 1976 and thank you for your reply even though I am somewhat disturbed by the content, therefore feel it obligitory that I respond.

First I feel insulted that you did not communicate with any of the court owners, in this area regarding this bill.

Secondly I would like to point out to you, as first named sponsor of this bill, some of the falacies of the bill.

The ability to be able to control the rental of spaces in a court can only lead to the upgrading of the court and protection of conditions, environment and investment of existing home owners in the courts. And who might I ask is more entitled to that right than the person who owns the court?

This bill for all intents puts local dealers out of the sales business. Local dealers in the past have been in competition with stateside dealers who are volume dealers. After we have projected a sale on a proposal sheet they go south and show the proposed unit figures to the stateside dealer who can then undercut our prices. We don't get a second chance.

Speaking for myself, our sales in the past have subsidized our court operation in attempting to hold our rental rates at there present level.

The past 3 years have seen our sales drop considerably. This loss of sales revenue has resulted in a higher rental rate of court spaces. Additional lost sales revenue will result in additional rent increases or closure. This is fact.

You continuously use the word "force" in your letter. This is intolorably disgusting to me.

If you were to say that this bill would "force" Alaska dealers out of the sales business, or "force" court owners out of business, or "force" court owners to accept an undesirable rentor, or "force" a court owner to accept a mobile home in a degredated condition then you would be properly using the word "force".

**Phone 225-4813**

**RIDGEWOOD MOBILE HOME**
Sales & Court
Rt. 1 Box 523A
KETCHIKAN, ALASKA 99901

It is evident that you have not researched the difficulty of local financing of mobile homes or the difficulty of placing a mobile home on private property in the Gateway Borough. If you had, you would readily understand the difference between buying locally or buying in the states.

You say " the bill is an effort to promote the capitalistic theory of the open market place".

It has been evident that your support of limited entry certainly violates this theory and indicates a double tongued philosophy. You have certainly protected your interest and investment.

You also state in your letter "as long as a trailer park owner "allows" other people who buy trailers from other sales or who already own trailers to rent their trailer spaces, there should be no violation of law". Couldn't you more aptly have said, that if a trailer park owner is "forced" to rent their spaces to anyone who buys or owns their trailers there should be no violation of law? This would fit your way of thinking more appropriately.

It is apparent that you fail to accept the simple fact that legislation that places additional costs of doing business on the businessman only results in additional costs to the consumer and that curtailments of business lends to a socialistic trend with more government involvement.

In conclusion Mr. Gardiner, I can only project that in the event HB684 becomes law you will have raised mobile home space rentals to the existing and future home owners in the Ketchikan Gateway Borough.

I would hope you would apprise yourself of this fact and determine who you are affecting and to what extent.

Bob Crowder
Ridgewood Mobile Home Sales & Court

cc: Senator Robert Zeigler
Speaker of the House Mike Bradner
President of the Senate Chancy Croft
Editor Ketchikan Daily News Lew Williams
Ketchikan Chamber of Commerce,
Legislative Review Committee

Phone 225-4813

MEMORANDUM

TO: JAY KERTTULA

FROM: JAMIE LOVE

RE: MOBILE HOME LEGISLATION (HB 684 & HB 829)

DATE: APRIL 3, 1976

---

The above-mentioned bills are designed to correct serious abuses in the mobile home industry. My interest in mobile home problems dates back to last Spring. At that time, I received a call from a woman who was living in a mobile home court that had been sold. The new owner was converting the court into another land use, and each of the 20 tenants in the court was given a 30-day eviction notice. This woman owned the trailer she lived in. Neither she nor any of the other tenants were able to locate space in another court. When I talked to the woman, she was extremely distraught. She had to move her trailer within a few weeks and could not find a space to move to.

During this period of time, she and the other tenants in the park were approached by an individual who represented a mobile home sales outlet. The sales company was able to use the trailers even though there were no mobile home spaces available for rent in the marketplace. The reason for this was that in the Winter of 1975 the overall vacancy rate for mobile home spaces dipped as the Anchorage area was experiencing a housing shortage. At that time, several of the larger mobile home dealers began quietly buying up the remainder of the vacant spaces including those in independent courts. As an added incentive to the mobile home court operators, the dealers offered a commission, or fee, of approximately $400 to $500 for each mobile home which was placed in their court.

In this particular case, almost every tenant of that court sold their mobile homes, at a fraction of their value, to the single mobile home sales dealership. The dealer then resold the mobile homes at their market value, placing them in spaces they had previously tied up.

I discussed the situation with a reporter from the Anchorage Daily News, Pam Milsap. Milsap interviewed this lady and others who were having problems at the time. Her account of the mobile home situation is attached to this memo.

Shortly after the Daily News story, the Alaska Public Interest Research Group asked the State Attorney General's Office for an investigation into the apparent abuses. After being pressed by the local Consumer Protection Office for more facts, a staff person from AkPIRG approached 26 of the largest mobile home courts in Anchorage posing as an individual interested in finding a rental space for a used trailer. The results of that investigation are detailed in a letter, attached to this memo, which was sent to Attorney G[illegible]l Avrum Gross on July 8, 1975.

Attorney General Gross initiated an investigation to determine if the alleged practices were in violation of the State Anti-Trust Act. The investigation into the matter has been slow, hampered apparently by the shortage of staff for the State's Consumer Protection Office. Only in the last two months have industry officials been subpoened, and, as of my most recent discussion with the attorneys involved, many important issues have not yet been analyzed.

Since July, other methods of dealing with the problem have been explored. The result is the bill before your committee, HB 684, which makes the tie-in arrangement between mobile home courts and mobile home dealers a violation of the State's Unfair Trade Practices Act. Support for a legislative solution resulted from a sympathy for the situation of the offending mobile home dealers. Even though the tie-in practice is, in my opinion, an unfair and harmful business practice, many of the mobile home dealers were forced into participating when they found out that other mobile home dealers were involved. Being left out of the picture in the rush for tying up spaces meant risking going out of business. Some of us reasoned that since they obviously couldn't trust each other, the State would perform a service by stepping in and forcing everyone to end the practice. Anti-trust litigation is extremely complex, time-consuming, and expensive. The enactment of legislation would relieve the dealers from the burden of paying for legal counsel in an anti-trust action.

It is my understanding that the practice of tying space rentals to sales takes place in Anchorage, Fairbanks, Valdez, Juneau, and Ketchikan, as well as other communities across the state. I am most familiar with the situation in Anchorage. As of last Summer, there were four or five large dealers who had cornered the market of available spaces. I assume the situation has not changed dramatically, although I have heard that the larger dealers are letting the smaller outfits make a few sales from time to time. This is due to a growing concern by the larger dealers over the pending legislation and the Attorney General's investigation.

The smaller dealers have a good deal at stake in a rapid resolution to the problem, but the obvious matter which your committee should address itself to is the effect which this practice has on mobile home consumers. In Anchorage, for example, instead of having dozens of sales outlets competing against each other for sales, there are a few large dealerships which have all the spaces. The price that mobile homes are sold for, now, probably has more to do with the competitive price of conventional home ownership or rentals, than competition among dealers.

This is of particular concern, since the state is experiencing such a crisis in all other areas of housing. The costs of home ownership have skyrocketed beyond the reach of many Alaskans. Rents have also risen dramatically as a result of the housing shortages which plague many areas of the state.

Mobile homes should be an important factor in moderating the effects of the current housing market. Instead, through limited competition, mobile homes have become increasingly more expensive. To illustrate just how expensive mobile homes have become, I am attaching a summary, prepared by AkPIRG, of Anchorage mobile home sales in the month of October 1975 as listed in the trade publication, Alaska Motor Report. The average selling price was $35,000, with many sales over $45,000. (Sales are for the trailer without land).

When space rentals are tied in with the purchase of new sales, consumers cannot shop for used homes from private sellers, purchase the homes from Seattle and pay the shipping, or negotiate a selling price from the wide range of dealers. All the best features of the free enterprise system have been compromised and the protection of a free marketplace has been eliminated. There is no doubt that if tie-ins were made illegal, the result would be substantial price savings to consumers on mobile home purchases.

Not surprisingly, the large mobile home dealers and court operators which have been prospering under the present system are mounting an attack against the proposed legislation. The industry lobbyist, Mr. Ben Marsh, has presented their position before the House Commerce Committee. Anticipating a less than sympathetic response to allegations of anti-competitive practices, Mr. Marsh has tried to present their case in its best light.

This was in the form of an argument that restrictions on mobile home tie-ins would eliminate the development of new mobile home courts. The heart of this argument is the questionable assertion that it is uneconomical to develop new mobile home courts, and that courts are developed by dealers at an economic loss to provide a market for their sales. According to Marsh, dealers are the only ones developing new courts and if they are not allowed to tie in sales to their space rental, they will abandon the court development business.

When this argument was first raised by the industry, my instinct was to accept it at face value, and to think of ways we could compromise on the tie-in question. The more analysis I gave the matter, however, the more illogical it seemed. Demand for mobile home spaces was at the root of the problem. The tie-in situation was a reponse to low vacancy rates and high consumer demand for mobile home sales. People are going crazy in Anchorage and other communities, trying to find spaces for their mobile homes. It is, in fact, almost impossible to rent a mobile home space without purchasing a new mobile home. Why then, couldn't a new mobile home court operator simply charge a higher rent to pay for the increased development costs? As long as it was cheaper to pay the court rental and the mobile home mortgage than to buy a conventional house or rent an apartment, people would continue to buy mobile homes and rent the spaces.

Why was it necessary for Marsh and others to link the survival of the mobile home court industry to the tie-in practice? In my opinion, it was simply the only justification which could be used to defend a practice which flies in the face of fair trade and healthy competition.

According to Marsh's theory, vendors are propping up the court owners by giving them a subsidy, since the court rental business no longer supports itself. I can only assume that the subsidy is paid by the mobile home consumer through increased prices for mobile homes.

Marsh went on to tell the committee that if new courts were forced to pass on the real cost of court development, the rents in all the other spaces would be raised. In other words, it was better to hide the costs in increased mobile home prices than in space rents so the court owners would not be tempted to raise rents in old courts. The fact is that space rents have gone up dramatically in the last two years (from 30% to 50% in many courts). Marsh isn't kidding anyone. No one but no one is subsidizing the mobile home consumers.

The factors which have contributed to an overall shortage of mobile home spaces are many. Planning restrictions and community pressures have discouraged the development of mobile home courts. It's no secret that a mobile home park is not the most welcome addition to a residential neighborhood. These biases against courts, regardless of their merits, have an important effect on the supply factor of spaces.

Administration officials from the Department of Commerce and the Department of Law should be able to provide further information on these points. I strongly urge passage of HB 684 and any other measure designed to deal with the tie-in situation.

Many other problems associated with mobile home court rentals are addressed in HB 829. Probably the most important and most controversial feature of the proposed legislation is the section which limits the court owner's right to evict residents of the court. Sec. 34.03.225 sets out four standards for evictions from courts. Currently, it is the practice of almost every mobile home court in Alaska to rent on a month-to-month basis. Mobile homes are treated like other tenants in the State's Landlord-Tenant law. A resident in a court may be evicted, without cause, on 30 days' notice.

It is not untypical for a mobile home owner to have 20 to 30 thousand dollars tied up in the home they are living in. The cost of moving a mobile home, if you can find a place to move to, runs from $1,000 to $2,000 on the average; or, approximately one to two years' rent in the average court. There is, obviously, very little security for the mobile home owner under the current situation. If I was living in a court, I would think twice about hassling my court manager about deferred maintenance or any other problem if I thought I could risk an eviction. If I was evicted and couldn't find a place to move the trailer to, I would be out a good deal of money. These aren't hypothetical situations, but everyday problems for the dwellers in mobile home courts.

HB 829 recognizes the unique situation of mobile home dwellers. The proposed legislation is a recognition that it is a bit more complex than throwing your clothes in a suitcase and into the back of a VW if you get evicted from a mobile home court.

By giving a home owner rights against no-cause eviction, another important problem is addressed. The main problem in the financing of mobile homes is the short amortization period of the loans. If mobile homeowners have better security for their investment, banks would have better security for their loans. This added security could result in longer loan terms and lower monthly payments.

The other features of HB 829 are important, fair, and largely unopposed. Passage of both HB 829 and HB 684 would go a long way to correct long-standing problems in the mobile home industry.

ATTACHMENTS

Article in Anchorage Daily News
Pam Milsap - "Dealers Gobble Trailer Lots"

Anchorage Area Mobile Home Sales
Alaska Motor Report October 1975

July 8, 1975 Letter to Attorney General

Letter by J. Harold Michal
11-10-75 Complaint against tie-in

HB
694

17 May

Terry:

In short, this is now the only version of the fical note in the system. Like all fiscal notes, it will be laid before the Free Conference on the Budget for approval, which ought to be a mere formality in this case.

THE LEGISLATURE OF THE STATE OF ALASKA
FISCAL NOTE
Second Session - Ninth Legislature

I. REQUEST
Bill No. HB 694
Title: Criminal Law Revision Commission
Requested by: Rep. Gardiner Date: 14 May 1976
Return Date Requested:
Agency: Legislative Affairs Agency Program: Legislative Council

II. FISCAL DETAIL
Budget Request Unit(s) Affected:
A. EXPENDITURES: (Thousands of dollars)

| OBJECT | FY 76 | FY 77 | FY 78 | FY 79 | FY 80 | FY 81 |
|---|---|---|---|---|---|---|
| 100 PERSONAL SERVICES | | | | | | |
| 200 TRAVEL | | 10.8 | -0- | | | |
| 300 CONTRACTUAL | | 80.5 | -0- | | | |
| 400 COMMODITIES | | 12.0 | -0- | | | |
| 500 EQUIPMENT | | .5 | | | | |
| 600 LAND & STRUCTURES | | | | | | |
| 700 GRANTS, CLAIMS, ETC. | | | | | | |
| | | | | | | |
| TOTAL | | 103.8 | -0- | | | |

B. FUNDING: (Thousands of dollars)

| | FY 76 | FY 77 | FY 78 | FY 79 | FY 80 | FY 81 |
|---|---|---|---|---|---|---|
| GENERAL FUND | | 103.8 | -0- | | | |
| FEDERAL FUNDS | | | | | | |
| OTHER | | | | | | |

C. POSITIONS: NONE

| | FY 76 | FY 77 | FY 78 | FY 79 | FY 80 | FY 81 |
|---|---|---|---|---|---|---|
| PERMANENT/TEMPORARY | / | / | / | / | / | / |
| MAN MONTHS (P./T.) | / | / | / | / | / | / |

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

See attached. Fiscal note prepared after review of consultant's proposed budget.

IV. ATTACHMENTS

Commission Budget

V. DATE: 14 May 1976 PREPARED BY: James B. Rhode

James B. Rhode
AA to Rep. Malone, Chairman
House Finance Committee

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

H/S 50

CRIMINAL LAW REVISION COMMISSION
Budget

Contractual Services

| | |
|---|---|
| Project Director (¼ time) | 12.0 |
| Staff Counsel (full time) | 40.32 |
| Associate Staff (¼ time) | 8.4 |
| Research Director (¼ time) | 9.0 |
| Secretary II (full time) | 10.8 |
| TOTAL | 80.5 |

Travel

| | |
|---|---|
| 3 trips to consult with experts<br>1 East Coast at .55<br>2 West Coast at .4 | 1.0 |
| 15 Staff trips in Alaska at .20 | 2.4 |
| Commission travel<br>10 trips at .20 for 13 members | 2.0 |
| Per diem | 5.4 |
| TOTAL | 10.8 |

| | |
|---|---|
| Supplies | 3.99 |
| Equipment | .48 |
| Printing | 7.99 |
| TOTAL | 12.5 |
| GRAND TOTAL | 103.800 |

LA11 0003 11.30 LA01 0006 12.23 04/23/76

HB 684

TO: HOUSE JUDICIARY COMM- MR. GARDINER
FROM: JOHN HAVELOCK

THE FOLLOWING MESSAGE HAS BEEN MAILED TO YOU BUT I UNDERSTAND YOU NEED THIS SOONER.)
CRIMINAL CODE REVISION COMMISSION PROPOSED BUDGET JULY L 76 - JULY 77

PERSONAL SERVICES
PRO. DIR. 1/4 TIME 12,000
RESEARCH DIRCTOR 1/4 TIME 9,000
SEC. 12,468
SEC. 11,688
COL INCREASE 9% 2,032
BENEFITS 18 1/2 % 8, 730 TOTAL $55,918
CONTRCTUAL SVCS. - COUNSEL 40,32
CONSULTANT FESS (4 CONS. 2 DAYS AT 135 PER) 1,080 TOTAL 49,800
TRAVEL & PER DIEM
CONSULTANTS 4 AT 500 PER TRIP 2,000
STAFF - 3 TRIPS (ETC.) 1,080
MONTHLY MEETINGS -
COMM. 10 TRIPS BY 4 FROM JUN. 10 ANCHO 10 BY 2 FBKS TO JUNAU & 2 TO ANCHORA
2 TRIPS BY 7 MBRS. FROM ANCH. TO JUN. AND 2 JUNEAU TRIPS BY 5 STAFF
TOTAL ++ 11, 370 (CONTD.)

LA11 0004 11.34 LA01 0007 12.24 04/23/76

MESSAGE CONTINUED.

PUBLIC HEARINGS - IN JUNEAU; IN FAIRBANKS, 4,560

TOTAL TRAVEL+ $15,930

PER DIEM BASED ON 2-DAY MTS. AND HEARINGS 19,200

TOTAL PER DIEM AND TRAVEL 38, 210.
SUBTOTAL: $143,928

SUPPLIES & OPERATING EXPENSES
SUPPLIES 1,200; POSTAGE 600, TELEPHONE 600; XEROX 840; MC/ST RENT 1,200
TOTAL: 4,440

EQUIPMENT 500 PRINTING / REPRODUCTION 8,000
INDIRECT COSTS (10% OF DIRECT LABOR COST) 5,592

GRANT TOTAL $162,460.

EOM. H.J.

Criminal Law Revision Commission Budget.

April 1976 to July 1977

| | 15 months | 12 months |
|---|---|---|
| Personal Services | | |
| Project director (1/4 time) | 15.0 | 12.0 |
| Staff counsel (full time) | 50.4 | 40.32 |
| Associate staff (1/4 time) | 10.5 | 8.4 |
| Research director (1/4 time) | 11.25 | 9.0 |
| Secretary I (full time) | 15.0 | 12.0 |
| Secretary II (full time) | 13.5 | 10.8 |
| Cost of living increase January 1, 1977 at 9% | 4.165 | 4.165 |
| Benefits 17% | 20.369 | 16.295 |
| Total | 140.184 | 112.980 |
| Contractual Services | | |
| Consultant fees | 3.5 | 2.799 |
| Travel | | |
| 3 trips to consult with experts 2 West coast at .4 1 East coast at .55 | 1.35 | 1.08 |
| 15 staff trips in Alaska at .20 | 3.0 | 2.4 |
| Commission travel 10 trips at .20 for 13 members | 5.2 | 4.159 |
| Per diem | 13.6 | 10.879 |
| Total | 23.15 | 18.519 |
| Supplies | 5.0 | 3.99 |
| Equipment | 0.6 | .48 |
| Printing | 10.0 | 7.99 |
| Indirect costs | 14.018 | 11.214 |
| Total | 196.452 | 152.162 |

PROPOSED BUDGET

(summary)

| | |
|---|---|
| Personal Services | $140,184 |
| Contractual Services | 3,500 |
| Travel | 23,150 |
| Supplies | 5,000 |
| Equipment | 600 |
| Printing | 10,000 |
| Indirect Costs | 14,018 |
| Total | $196,452 |
| Twelve Month Total | (157,162) |

WORK SCHEDULE[1] FOR A REVISED

CRIMINAL CODE

WORK ORDER -- BLOCK 1: Part I of General Provisions, Offenses against Property and Sentencing Structure

BLOCK 2: Crimes against the Person

BLOCK 3: Offenses against the Family
Offenses against Public Administration
Offenses against Public Order

BLOCK 4: Offenses against Public Health and Decency

BLOCK 5: General Provisions Part II and Miscellaneous

SCHEDULE --

| | |
|---|---|
| Jan. 31, 1976 | Legislative Presentation of Preliminary Report and Block one drafts, submission to Commission of first drafts, Block 2 |
| Feb. 28, 29 | Commission presentation and first review of first drafts, Block 2 |
| March 20, 21 | Presentation of first drafts, Block 3 |
| April 3, 4 | Commission first review of first drafts, Block 3 |
| April 24, 25 | Commission second review of first drafts, Block 2 |
| May 15, 16 | Commission second review of first drafts, Block 3 |
| May 24, 25 | Commission presentation of first drafts, Block 4 |
| June 7, 8 | First review of first drafts, Block 4 |
| June 28, 29 | Commission presentation of first drafts, Block 5 |
| July 12, 13 | Commission first review of first drafts, Block 5 |
| July 26, 27 | Second review of first drafts, Block 4 |
| Aug. 9, 10 | Second review of first drafts, Block 5 |
| Aug. 16 - 31 | First round public hearings |
| Sept. 15 - Nov. 15 | Commission reviews (according to emphases emanating |

[1] contingent upon timely funding

from hearings and the Commission's sense of the firmness of each block), each block to be brought to a third review.

Six meetings, one on each block, every two weeks

| | |
|---|---|
| Nov. 29 - Dec. 10 | Final hearing round |
| Dec. 10, 1976 - Feb. 1, 1977 | Final draft revision presented to legislature - substantive code |
| Feb. 1, 1978 | Presentation of Final draft, procedural code revision |

U of A
272-5522

Original sponsor: Rules Committee by request of the Legislative Council Criminal Code Revision Subcommittee

Offered: 3/3/76
Referred: Rules

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 694

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the Criminal Law Revision Commis-
7 sion; and providing for an effective date."

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

9 * Section 1. ESTABLISHMENT. There is established as a legislative
10 advisory commission of the Alaska Legislative Council the Criminal Law
11 Revision Commission.

12 * Sec. 2. MEMBERSHIP. (a) The commission is composed of the following
13 members:

14 (1) the chairman of the judiciary committee of the state house of
15 representatives or his designee from that committee and the chairman of the
16 judiciary committee of the state senate or his designee from that committee;

17 (2) the attorney general, or his designee;

18 (3) the commissioner of public safety, or his designee;

19 (4) the director of the division of corrections, Department of
20 Health and Social Services, or his designee;

21 (5) a judge of the superior court appointed by the chief justice;

22 (6) a judge of the district court appointed by the chief justice;

23 (7) the public defender, or his designee;

24 (8) one social worker appointed by the council;

25 (9) one mayor or his designee, from a municipality, designated by
26 the council;

27 (10) one person, representative of rural Alaska, designated by the
28 council;

29 (11) an 3 attorney appointed by the president of the Alaska Bar

Association;

(12) one representative of the general public appointed by the council;

(13) one representative of the general public appointed by the governor.

(b) An appointing authority or a designated member of the commission may name an alternate to serve in his stead when the member is unable to attend a meeting.

* Sec. 3. TERMS, REMOVAL, COMPENSATION. (a) Members serve ex officio or at the pleasure of the appointing authority. The term of an appointed member is four years. Public

(b) Members receive no salary but are entitled to per diem and travel expenses authorized by law for other boards and commissions.

* Sec. 4. DUTIES OF THE COMMISSION. The commission shall

(1) advise the governor and the legislature on necessary and appropriate revision of the criminal law;

(2) prepare a comprehensive revision of the state criminal laws including but not limited to necessary substantive and topical revisions of crimes, criminal procedure, sentencing, and parole and probation of offenders, for submission to the legislature;

(3) conduct studies of criminal justice practices and procedures;

request the Council subject to funds available

(4) receive and expend grants and appropriations from private and governmental sources for the purpose of carrying out its duties under this section;

(5) contract with other agencies or persons for the performance of necessary services;

(6) submit a report with recommendations to the First Session of the Tenth Legislature concerning substantive or topical revisions to the criminal laws before February 1, 1977;

(7) submit a report and recommendations to the Second Session of the Tenth Legislature before February 1, 1978 concerning revision of the laws governing criminal procedure and other pertinent matters relating to criminal law on which no previous report has been made, together with any recommendations concerning the future existence, purposes, or composition of the commission.

* Sec. 5. CHAIRMAN, MEETINGS, QUORUM. (a) The commission shall select a chairman and vice-chairman from among its members.

(b) The commission may hold public hearings and other meetings as necessary throughout the state and shall determine an appropriate quorum for conducting business.

* Sec. 6. DEFINITIONS. In this Act, unless the context otherwise requires,

(1) "council" means the Alaska Legislative Council established under AS 24.20.010;

(2) "commission" means the Criminal Law Revision Commission established under sec. 1 of this Act.

* Sec. 7. The commission established by this Act expires February 1, 1978.

* Sec. 8. This Act takes effect immediately in accordance with AS 01.10.-070(c).

file Crim Code Revision

AMERICAN BAR ASSOCIATION

SECTION OF CRIMINAL JUSTICE

1800 M ST., N.W., 2ND FL., WASHINGTON DC 20036 TELEPHONE (202) 331-2260

CHAIRMAN
Robert M. Ervin
P.O. Box 1170
Tallahassee, FL 32302

CHAIRMAN-ELECT
Alan Y. Cole
1730 K St. NW
Washington, DC 20006

VICE-CHAIRMAN
James George, Jr.
Wayne State University
Center for Administration of Justice
6001 Cass St.
Detroit, MI 48202

SECRETARY
Kenneth J. Hodson
Room 708
1975 Conn. Ave., NW
Washington, DC 20036

ASSISTANT SECRETARY
Edwin K. Bethune
P.O. Box 36
Searcy, AR 72134

LAST RETIRING CHAIRMAN
Ben R. Miller
P.O. Box 1588
Baton Rouge, LA 70321

SECTION DELEGATE TO HOUSE OF DELEGATES
Jack G. Day
Court of Appeals
Cleveland, OH 44113

BOARD OF GOVERNORS LIAISON
William H. Erickson
Denver, CO

COUNCIL MEMBERS
Gerald M. Caplan, Washington, DC
George D. Crowley, Chicago, IL
Albert J. Datz, Jacksonville, FL
C. Anthony Friloux, Houston, TX
Tom Karas, Phoenix, AZ
Herbert S. Miller, Washington, DC
Constance Baker Motley, New York, NY
John M. Price, Sacramento, CA
A. Kenneth Pye, Durham, NC
Paul K. Rooney, New York, NY
Joe W. Sanders, New Orleans, LA
Donald E. Santarelli, Washington, DC
Paul T. Smith, Boston, MA
Carol S. Vance, Houston, TX
Steven C. Charen, Law Student Division Liaison, New York, NY

STAFF:
H. Lynn Edwards, Staff Director
Lauren A. Arn, Deputy Project Director
Laurie O. Robinson, Assistant Staff Director

March 3, 1976

Honorable Terry Gardiner
House Judiciary Committee
House of Representatives
State of Alaska
Juneau, Alaska

Dear Terry:

I want to thank you for a wonderful weekend. My trip was just the right mix of business and pleasure.

I hope you will let me know how you fare in the Legislature with respect to Criminal Code Revision. Almost everyone I met was aware of the need for revision and I feel confident that you will succeed.

Juneau is a lovely place and I shall always remember the Lemon Creek Turn as we flew north to Anchorage. John and Sheila took me by the Mendenhal Glacier on the way to the airport. It is beautiful and awesome.

Again, I want to thank you for your hospitality and wish you the very best in the future.

Sincerely,

[signature]

EB/cp

Terry Gardiner

Box 1092, Ketchikan, Alaska 99901 Pouch V, Juneau, Alaska 99811

March 8, 1976

Lew Williams
Box 79
Ketchikan, Alaska 99901

Dear Lew,

I received your note concerning the addition of a representative of the Alaska Judicial Council to the Criminal Code Revision Commission. The membership of the Commission recommended in HB 694 was a well argued suggestion by the present Criminal Code Revision Commission.

The original Commission started out with nine members and then was later expanded to bring in representatives of more groups that were part of the criminal justice community. The Judicial Council along with various other groups were suggested for membership on the Commission. The Commission was expanded to fourteen to accomodate representatives of these other groups. One appointment by the Legislative Council and another by the Governor were left open to allow for interested groups that were not thought of.

House Bill 694 is presently on its way to the Senate and will probably be referred to the Senate Judiciary Committee. I will let Senator Ziegler know of your suggestion.

Sincerely,

Terry Gardiner

Terry! Don't you think that to conform with the duties of the Alaska Judicial Council, as set out by the constitution, we should have a representative of the council on this commission? The council has and is conducting a number of studies which would be useful to the group. I'd suggest the executive director of the Judicial Council for membership — Lew Williams

Introduced: 2/6/76
Referred: Judiciary

1 IN THE HOUSE

BY THE RULES COMMITTEE BY REQUEST OF THE LEGISLATIVE COUNCIL CRIMINAL CODE REVISION SUBCOMMITTEE

2 HOUSE BILL NO. 694

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the Criminal Law Revision Commis-
7 sion; and providing for an effective date."

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

9 * Section 1. AS 24.20 is amended by adding new sections to read:

10 Sec. 24.20.470. ESTABLISHMENT. There is established as a legisla-
11 tive advisory commission of the Alaska Legislative Council the Criminal
12 Law Revision Commission.

13 Sec. 24.20.480. MEMBERSHIP. (a) The commission is composed of
14 the following members:

15 (1) one member of the state house of representatives and one
16 member of the state senate, both appointed by the Alaska Legislative
17 Council;

18 (2) the attorney general, or his designee;

19 (3) the commissioner of public safety, or his designee;

20 (4) the director of the division of corrections, Department
21 of Health and Social Services, or his designee;

22 (5) a judge of the superior court appointed by the chief
23 justice;

24 (6) a judge of the district court appointed by the chief
25 justice;

26 (7) the public defender, or his designee;

27 (8) one social worker appointed by the council;

28 (9) one mayor or his designee, from a municipality, desig-
29 nated by the Alaska Legislative Council;

(10) one person, representative of rural Alaska, designated by the Alaska Legislative Council;

(11) an attorney appointed by the president of the Alaska Bar Association;

(12) one representative of the general public appointed by the Alaska Legislative Council;

(13) one representative of the general public appointed by the governor.

(b) An appointing authority or a designated member of the commission may name an alternate to serve in his stead when the member is unable to attend a meeting.

Sec. 24.20.490. TERMS, REMOVAL, COMPENSATION. (a) Members serve ex officio or at the pleasure of the appointing authority. The term of an appointed member is four years.

(b) Members receive no salary but are entitled to per diem and travel expenses authorized by law for other boards and commissions.

Sec. 24.20.500. DUTIES OF THE COMMISSION. The commission shall

(1) advise the governor and the legislature on necessary and appropriate revision of the criminal law;

(2) prepare a comprehensive revision of the state criminal laws including but not limited to necessary substantive and topical revisions of crimes, criminal procedure, sentencing, and parole and probation of offenders;

(3) conduct studies of criminal justice practices and procedures;

(4) receive and expend grants and appropriations from private and governmental sources for the purpose of carrying out its duties under this section;

(5) contract with other agencies or persons for the perfor-

mance of necessary services;

(6) submit a report with recommendations to the First Session of the Tenth Legislature concerning substantive or topical revisions to the criminal laws before February 1, 1977;

(7) submit a report and recommendations to the Second Session of the Tenth Legislature before February 1, 1978 concerning revision of the laws governing criminal procedure and other pertinent matters relating to criminal law on which no previous report has been made, together with any ecommendations concerning the future existence, purposes, or composition of the commission.

Sec. 24.20.510. CHAIRMAN, MEETINGS, QUORUM. (a) The commission shall select a chairman and vice-chairman from among its members.

(b) The commission may hold public hearings and other meetings as necessary throughout the state and shall determine an appropriate quorum for conducting business.

* Sec. 2. This Act takes effect immediately in accordance with AS 01.10.-070(c).

Introduced: 2/6/76
Referred: Judiciary

BY THE RULES COMMITTEE BY REQUEST OF THE LEGISLATIVE COUNCIL CRIMINAL CODE REVISION SUBCOMMITTEE

1 IN THE HOUSE

2 HOUSE BILL NO. 694

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the Criminal Law Revision Commis-

7 sion; and providing for an effective date."

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

9 * Section 1. AS 24.20 is amended by adding new sections to read:

10 Sec. 24.20.470. ESTABLISHMENT. There is established as a legisla-

11 tive advisory commission of the Alaska Legislative Council the Criminal

12 Law Revision Commission.

13 Sec. 24.20.480. MEMBERSHIP. (a) The commission is composed of

14 the following members:

Chairman or his designee from the Judiciary Com.

15 (1) one member of the state house of representatives and one

16 member of the state senate, both appointed by the Alaska Legislative

17 Council;

18 (2) the attorney general, or his designee;

19 (3) the commissioner of public safety, or his designee;

20 (4) the director of the division of corrections, Department

21 of Health and Social Services, or his designee;

22 (5) a judge of the superior court appointed by the chief

23 justice;

24 (6) a judge of the district court appointed by the chief

25 justice;

26 (7) the public defender, or his designee;

27 (8) one social worker appointed by the council;

28 (9) one mayor or his designee, from a municipality, desig-

29 nated by the Alaska Legislative Council;

(10) one person, representative of rural Alaska, designated by the Alaska Legislative Council;

(11) an attorney appointed by the president of the Alaska Bar Association;

(12) one representative of the general public appointed by the Alaska Legislative Council;

(13) one representative of the general public appointed by the governor.

(b) An appointing authority or a designated member of the commission may name an alternate to serve in his stead when the member is unable to attend a meeting.

Sec. 24.20.490. TERMS, REMOVAL, COMPENSATION. (a) Members serve ex officio or at the pleasure of the appointing authority. The term of an appointed member is four years.

(b) Members receive no salary but are entitled to per diem and travel expenses authorized by law for other boards and commissions.

Sec. 24.20.500. DUTIES OF THE COMMISSION. The commission shall

(1) advise the governor and the legislature on necessary and appropriate revision of the criminal law;

(2) prepare a comprehensive revision of the state criminal laws including but not limited to necessary substantive and topical revisions of crimes, criminal procedure, sentencing, and parole and probation of offenders; for submission to the Legis.

(3) conduct studies of criminal justice practices and procedures;

(4) receive and expend grants and appropriations from private and governmental sources for the purpose of carrying out its duties under this section;

(5) contract with other agencies or persons for the perfor-

mance of necessary services;

(6) submit a report with recommendations to the First Session of the Tenth Legislature concerning substantive or topical revisions to the criminal laws before February 1, 1977;

(7) submit a report and recommendations to the Second Session of the Tenth Legislature before February 1, 1978 concerning revision of the laws governing criminal procedure and other pertinent matters relating to criminal law on which no previous report has been made, together with any recommendations concerning the future existence, purposes, or composition of the commission.

Sec. 24.20.510. CHAIRMAN, MEETINGS, QUORUM. (a) The commission shall select a chairman and vice-chairman from among its members.

(b) The commission may hold public hearings and other meetings as necessary throughout the state and shall determine an appropriate quorum for conducting business.

* Sec. 2. This Act takes effect immediately in accordance with AS 01.10.-070(c). The com. dies Feb 1, 1978.

Introduced: 2/6/76
Referred: Judiciary

BY THE RULES COMMITTEE BY REQUEST OF THE LEGISLATIVE COUNCIL CRIMINAL CODE REVISION SUBCOMMITTEE

IN THE HOUSE

HOUSE BILL NO. 694

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the Criminal Law Revision Commission; and providing for an effective date."

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

* Section 1. AS 24.20 is amended by adding new sections to read:

Sec. 24.20.470. ESTABLISHMENT. There is established as a legislative advisory commission of the Alaska Legislative Council the Criminal Law Revision Commission.

Sec. 24.20.480. MEMBERSHIP. (a) The commission is composed of the following members:

(1) one member of the state house of representatives and one
Judiciary Committee chairman or designee
member of the state senate, both appointed by the Alaska Legislative Council;

(2) the attorney general, or his designee;

(3) the commissioner of public safety, or his designee;

(4) the director of the division of corrections, Department of Health and Social Services, or his designee;

(5) a judge of the superior court appointed by the chief justice;

(6) a judge of the district court appointed by the chief justice;

(7) the public defender, or his designee;

(8) one social worker appointed by the council;

(9) one mayor or his designee, from a municipality, designated by the Alaska Legislative Council;

1 (10) one person, representative of rural Alaska, designated by
2 the Alaska Legislative Council;
3 (11) an attorney appointed by the president of the Alaska Bar
4 Association;
5 (12) one representative of the general public appointed by the
6 Alaska Legislative Council;
7 (13) one representative of the general public appointed by the
8 governor.
9 (b) An appointing authority or a designated member of the commis-
10 sion may name an alternate to serve in his stead when the member is
11 unable to attend a meeting.
12 Sec. 24.20.490. TERMS, REMOVAL, COMPENSATION. (a) Members serve
13 ex officio or at the pleasure of the appointing authority. The term of
14 an appointed member is four years.
15 (b) Members receive no salary but are entitled to per diem and
16 travel expenses authorized by law for other boards and commissions.
17 Sec. 24.20.500. DUTIES OF THE COMMISSION. The commission shall
18 (1) advise the governor and the legislature on necessary and
19 appropriate revision of the criminal law;
20 (2) prepare a comprehensive revision of the state criminal
21 laws including but not limited to necessary substantive and topical
22 revisions of crimes, criminal procedure, sentencing, and parole and
23 probation of offenders;
24 (3) conduct studies of criminal justice practices and pro-
25 cedures;
26 (4) receive and expend grants and appropriations from private
27 and governmental sources for the purpose of carrying out its duties
28 under this section;
29 (5) contract with other agencies or persons for the perfor-

mance of necessary services;

(6) submit a report with recommendations to the First Session of the Tenth Legislature concerning substantive or topical revisions to the criminal laws before February 1, 1977;

(7) submit a report and recommendations to the Second Session of the Tenth Legislature before February 1, 1978 concerning revision of the laws governing criminal procedure and other pertinent matters relating to criminal law on which no previous report has been made, together with any recommendations concerning the future existence, purposes, or composition of the commission.

Sec. 24.20.510. CHAIRMAN, MEETINGS, QUORUM. (a) The commission shall select a chairman and vice-chairman from among its members.

(b) The commission may hold public hearings and other meetings as necessary throughout the state and shall determine an appropriate quorum for conducting business.

* Sec. 2. This Act takes effect immediately in accordance with AS 01.10.-070(c).

1. Fiscal note
2. back up info
3. referral to finance ?

1
3 1/4 times
2 sec

PROPOSED BUDGET

(summary)

| | |
|---|---|
| Personal Services | $140,184 |
| Contractual Services | 3,500 |
| Travel | 23,150 |
| Supplies | 5,000 |
| Equipment | 600 |
| Printing | 10,000 |
| Indirect Costs | 14,018 |
| Total | $196,452 |
| Twelve Month Total | (157,162) |

HB
705

"An Act relating to the powers of the Alaska Pipeline Commission; and providing for an effective date."

# COMMITTEE REPORT

2/10/76

## HOUSE

Mr. Speaker: Date March 18, 1976

The Committee on JUDICIARY has had HB 705 under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

(✓) recommends it BE REPLACED WITH CS FOR HB 705 AND THAT CS FOR HB 705 DO PASS

( ) "and" recommends it BE REFERRED TO THE ______ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

[signatures]

Members NOT concurring in the Majority report:

[signature] recommends:

______ recommends:

______ recommends:

______ recommends:

______ recommends:

Tony Vaudrin Chairman

# ALASKA PIPELINE COMMISSION

## ANNUAL REPORT

## 1975

TABLE OF CONTENTS

| | Page |
|---|---|
| INTRODUCTION | 1 |
| SUMMARY OF SIGNIFICANT ACTIVITIES -- 1974 TO PRESENT | 2 |
| Trans-Alaska Pipeline Certification | 2 |
| Knowledge of Pipeline Regulation | 2 |
| Commission Practice & Procedure Regulations | 4 |
| Ex Parte No. 308, <u>Valuation of Common Carrier Pipelines</u> | 4 |
| Kenai Pipe Line Tariff Protests | 6 |
| Watching Service | 8 |
| Application of Nikiski Alaska Pipeline Co. | 9 |
| TAPS Audit | 10 |
| 1976 FORECAST | 11 |
| Regulations | 11 |
| Contracts & Studies | 12 |
| Staffing | 13 |
| Nikiski Pipeline | 13 |
| Trans-Alaska Pipeline | 13 |
| Jurisdiction | 14 |
| Proceedings Before Federal Government | 15 |
| CONCLUSION | 16 |

ALASKA PIPELINE COMMISSION

1975 Annual Report

## INTRODUCTION

With the discovery of substantial reserves of oil and gas on state-owned lands in the 1960's, and with the emergence of general concern regarding the importance of the transportation systems to be utilized in moving these resources to market, it became apparent to state lawmakers that transportation of oil and gas by pipeline was a business which involved e public interest.

As a result of extensive study, examination, and review of the innumerable facets of oil and gas pipeline transportation and regulation, the Alaska Legislature in 1972 enacted legislation (Alaska Pipeline Commission Act; Ch. 139 SLA 1972; AS 42.06) which brought into being the Alaska Pipeline Commission. This commission was given broad comprehensive powers to regulate (to the extent not preempted by federal authority) pipelines and pipeline carriers in the state, including the rates, classifications, tariffs, services, practices, and facilities of pipeline carriers. It was also given the responsibility to represent the interests of the state in any proceeding relating to pipelines and pipeline facilities before any officer, department, board, commission or court of this or of another state of the United States.

In the course of its work, the commission naturally adheres to the legislative declaration of policy stated in the Act (AS 42.06.010) and that is to (1) promote and oversee the development of an oil and gas pipeline transportation system in the state properly adopted to the present and future needs of the domestic commerce of the state and of the interstate and foreign commerce of the United States; and (2) promote and insure, in conjunction with the Alaska Public Utilities Commission within its jurisdiction, nondiscriminatory, efficient and economical oil and gas pipeline transportation at reasonable rates.

It was not until April 1974 that three members were officially appointed to the Alaska Pipeline Commission. One member, acting as chairman, was appointed on a full-time basis and the remaining two members assumed part-time status. A vacancy on the commission in December 1974 followed the resignation of Martin A. Farrell, Jr. (the attorney member) and the position remained vacated until October 15, 1975.

At that time, Russell E. Mulder was appointed on a full-time basis to fill the remainder of Commissioner Farrell's unexpired term.

## SUMMARY OF SIGNIFICANT ACTIVITIES -- 1974 TO PRESENT

### Trans-Alaska Pipeline Certification

The first formal action of the commission, following the appointment of the commissioners in April 1974, was issuance of Certificates of Public Convenience and Necessity to the seven owner companies of the Trans-Alaska Pipeline System (TAPS). This action was mandated by the legislature in Section 240 of the Alaska Pipeline Commission Act. In essence, this section of the Act eliminated, for all practical purposes, the requirement that all pipeline carriers engaging (now or in the future) in the transportation of oil and gas subject to the jurisdiction of the commission be scrutinized by the commission before they are issued a certificate of public convenience and necessity. This provision exempted pipeline carriers already engaged in transportation of oil and gas by pipeline or construction of an oil or gas pipeline on or before January 1, 1974 (January 1, 1974, was substituted by the legislature for January 1, 1973, by an amendment enacted during the special legislative session of 1973). The inclusion of these "grandfather" rights foreclosed any possibility of lengthy hearings and proceedings by the Alaska Pipeline Commission which might have delayed construction of TAPS.

This mandatory issuance of certificates was also conducted for those pipeline carriers other than TAPS who were operating in Alaska and who fell within the parameters of the statutory exemption.

### Knowledge of Pipeline Regulation

During the latter half of 1974, the commission initiated a concerted effort to acquire a thorough understanding of oil and gas pipelines and the regulation of them by both state and federal authorities.

In addition to acquiring, studying, and analyzing the basic written materials available on the subject of pipeline regulation, the commission attempted to familiarize itself with the practices in other states and at the federal level in regard to this type of regulation. In the course of this endeavor, the members of the commission found it

both necessary and informative to make a number of trips to meet and discuss matters of mutual concern with representatives of other states and the federal government.

The commission met with the Texas Railroad Commission and the California and Washington State Public Utilities Commissions.

It became obvious to the members of the commission that other states did not have a compelling desire, from a public interest standpoint, in regulating pipelines. The reasoning behind this was varied, but seemed to originate from several factors: competitive forces in the transportation field tended to hold pipeline rates down to what most state officials termed "acceptable" levels; complaints against pipeline carriers and their rates were rare; many lines were interstate and thus regulation was left to federal authorities; and pipelines transported production to a great extent from lands leased from private and federal interests. Consequently, most state efforts in the field of pipeline regulation were reduced to one of monitoring such activities.

Commission members traveled on various occasions to Washington, D.C., to ascertain the federal scheme of regulation.

It became abundantly clear from a number of these encounters with the federal government that the Interstate Commerce Commission (ICC) lacked both the resources and the desire to regulate crude oil pipelines. (For the commissioners, this was not so much a matter of gaining new insight as it was a matter of confirming often mentioned criticism of the ICC.) Lack of certification authority and power over connections, abandonment, throughput, and so forth left it with essentially two functions: establishing valuation and approving (not setting) rates. The ICC's enforcement powers, however, enable it to investigate carriers and rates on its own motion (which is practically unheard of) or on complaint by a third party (a rare event).

The Federal Power Commission, on the other hand, was found to vigorously regulate gas pipelines and aggressively assert its powers. Its scheme of economic regulation is clearly defined and it possesses broad authority through its power of certification.

Against these comparative methods of regulation, and comprehending the reasoning behind the need for pipeline regulation at the state level, the commission proceeded to undertake the task of drafting regulations applicable to carriers operating in the State of Alaska.

Commission Practice and Procedure Regulations

Regulations governing rules of practice and procedure before the commission became effective in January 1976.

These regulations are of paramount importance because they establish the methods by which the commission is to carry out its appointed functions. Namely, they set forth the manner in which interested persons can bring relevant issues before the commission, the procedures to be employed by the commission in affording due process of law to all persons having dealings with the commission; the reporting and confidentiality of carrier financial and technical information; the filing of applications and tariffs; the institution of investigations and hearings; and the rules to be followed by the commission when hearings are held.

This endeavor was formally initiated by the Commission in February of 1975 when the Attorney General's Office granted permission for the commission to seek outside counsel due to the complex nature of the regulations. In June of 1975, a legal consultant was retained and by August 4 a tentative draft of the regulations was completed and submitted to the Department of Law for its review. Following some minor technical changes, the Department of Law completed its review of the regulations and they were finally noticed to the public on September 23, 1975, as required by the Administrative Procedure Act.

On September 29, 1975, the commission again submitted its version of these regulations to the Department of Law so it could further review and comment on them before they were forwarded to the lieutenant governor. On December 19, the regulations were finally filed with the Lieutenant Governor's Office and became effective on January 18, 1976.

Ex Parte No. 308, Valuation of Common Carrier Pipelines

Relative to federal regulatory practices, the Pipeline Commission had been watching closely during 1974 the progress of a protest proceeding before the Interstate Commerce Commission with respect to the tentative valuation of Williams Brothers Pipe Line Company filed by a group entitled the Mid-Continent Petroleum Shippers.

Although this is an extremely controversial and complicated proceeding involving a change in ownership of a pipeline, the details of which will not be dealt with in

this report, the early encounters between the parties culminated in the administrative law judge broadening the scope of issues involved in the case and thus a separate proceeding in August 1974 designated Ex Parte No. 308, Valuation of Common Carrier Pipelines, came into being. Ex Parte 308 deals expressly with the issue of valuation methodologies employed by the ICC and may have important long-term ramifications for all federally regulated pipelines.

This is an historic proceeding in that it is the first time since Ajax Pipe Line Corporation (Valuation Docket No. 1284, December 14, 1949), almost three decades ago, that the ICC has been forced to re-examine its valuation methodologies and manner which it employs in establishing a carrier's final elements of value.

Realizing the importance to Alaska of this landmark proceeding, the Pipeline Commission chose to petition the ICC for leave to intervene and became a party in the proceeding in June 1975.

In this endeavor, the commission sought out and employed what it thought to be one of the most competent and experienced legal counsels available. Donelan, Cleary and Caldwell of Washington, D.C., was retained on June 2, 1975, to provide legal service to the commission in regard to its intervention in Ex Parte 308.

This particular law firm has considerable experience in practicing before the ICC. In addition, they represent the MidContinent Petroleum Shippers group in their protest action against Williams Brothers Pipe Line Company and have accumulated considerable knowledge of regulatory practices employed by the ICC. Further, the commission chose this firm also because it was possible to share the costs of participation in Ex Parte 308 with the Mid-Continent Petroleum Shippers group.

While it must be recognized, of course, that state participation in Ex Parte 308 is by no means an assurance that ICC valuation methodologies will be altered, the commission believes its intervention and continued efforts in this regard will assist in precipitating a comprehensive review of the pipeline industry. If this endeavor is successful, Alaska, as well as the ICC, will be able to ascertain whether or not there needs to be a change, as viewed from a public policy standpoint, regarding valuation upon which rates of return are applied to arrive at allowble earnings.

In this regard, Ex Parte 308 seeks to ask if there is extensive prorationing within the industry (an indication of insufficient capacity); if pipelines are being prematurely

and perhaps unnecessarily abandoned; and if new construction is lagging. Answers to these questions may suggest the need for upward adjustments in the valuation base sufficient to attract capital and encourage an appropriate level of investment.

Conversely, if it is found that most pipeline traffic consists of shipper-owner commodites (particularly in light of various accounting and tax treatments allowing substantial benefits from the affiliate to accrue to the parent company), it may be appropriate to reduce the valuation base (and thereby earnings) to encourage access by non-owner shippers at reasonable rates.

A further benefit from Ex Parte No. 308 would be the simple clarification, and in some cases interpretation, of the valuation process which would eliminate present ambiguities and prevent arbitrary determinations currently employed in arriving at final value.

Kenai Pipe Line Tariff Protests

On August 4, 1975, a protest and petition for suspension was filed with the ICC by the Alaska Pipeline Commission (APC) through its Washington, D.C., legal counsel. The protest claimed that proposed tariff charges filed with the ICC by Kenai Pipe Line Company (Kenai) to become effective August 15, 1975, were unlawful and not justified. Kenai operates a crude petroleum system for transporting crude oil production from Swanson River Oil Field and Middle Ground Shoal (from onshore treating facilities near Nikishka) to storage and delivery facilities located at Nikiski, Kenai Peninsula Borough, for delivery to marine tankers and to connections with nearby refineries.

The protest action was initiated because Kenai failed to provide APC with justification for an increase in line-haul charges from 5.3¢ to 6.0¢ per barrel (a 13.2% increase) for delivery to pipelines of others; an increase from 8¢ to 10¢ per barrel (a 25% increase) for delivery to ship's rail; and for establishment of a new 10¢ per barrel terminal service charge for receiving, storing and deliveriing crude oil to pipelines of others.

After extensive deliberation, the APC decided to utilize the federal forum (as authorized by AS 42.06.140(7)) at that time in lieu of assering its own statutory powers for two specific reasons. First, time was absolutely of the essence. By the time the commission was made aware of the proposed tariff changes, it only had a day or so to act or

forego its option to protest. Once the new tariff became effective (a nearly automatic process) the burden of proof as to whether the new rates were reasonable or not would then have shifted to the state. Preparing and proving a case under these circumstances is a difficult and time-consuming endeavor, and one which could be avoided by a timely protest on the state's behalf. Second, the APC felt that while it had the statutory authority to bring a proceeding on its own behalf to challenge the tariffs in question, it needed an established procedure, consistent with due process of law, to effectively handle the matter. This course of action was precluded at that time because the commission's practice and procedure regulations were only in their formative drafting stages and in the hands of the Department of Law for its review.

Upon learning of the protest, Kenai then postponed the effective date of the line haul tariffs, filed a new tariff for the proposed terminaling service, and furnished data to the APC purporting to justify the proposed charges. After reviewing the Kenai material, the APC concluded that the justification did not properly reflect the current economic environment, particularly as it related to Kenai's claimed depreciation on its delivery facilities in respect to the new proposed service. This allegation was based on an examination of Kenai's depreciation schedule on file with the ICC at that time which had not been revised to reflect current conditions.

Specifically, the APC contended that the new service proposed by Kenai constituted a substantial change in the company's overall services and sources of revenue. The APC further contended that the service life and volume of future business for Kenai's delivery facilities would be directly linked to the potential economic life of refineries served by Kenai and other developments and growth in the State of Alaska. The APC felt that it would no longer be appropriate to relate the depreciable life of the delivery facilities to the life of producing fields served by Kenai as reflected in Kenai's depreciation schedule.

On this basis, it was concluded by the APC to pursue the protest but not to seek suspension by the ICC of the proposed tariffs (especially the new terminaling service), as this might have cut off movement of crude petroleum from tankers to the refineries served by Kenai.

Therefore, on September 3, 1975, a supplemental protest on behalf of the APC was filed. It withdrew the request for suspension but sought an investigation by the

ICC of the lawfulness of the proposed charges under Section 15(7) of the Interstate Commerce Act (49 U.S.C. Section 15(7)). The protest detailed the inadequacies of Kenai's justification for the proposed charges, particularly in the area of depreciation expenses.

On September 10, 1975, the ICC's Suspension and Fourth Section Board declined to place the protested terminal charge under investigation. This action on an informal record by the Board was appealed by the APC to Appellate Division 2 of the ICC on September 11, 1975. On September 12, 1975, Division 2, which consists of a panel of three of the eleven Commissioners, placed the terminal charges tariff under investigation in Docket No. 36244. Subsequently, on September 19, 1975, the Board placed the tariffs increasing the line-haul charges (which had a later effective date) under investigation in Docket No. 36244 (Sub No. 1).

On October 3, 1975, pursuant to the ICC's orders providing for handling the two proceedings on modified procedure (Under Rules 4554 of the ICC's General Rules of Practice, 49 C.F.R. Section 1100.4554), Kenai submitted its opening statement. After reviewing Kenai's latest depreciation study submitted to the ICC, the APC prepared a Statement of Facts and Argument and filed it with the ICC on November 12, 1975. The Statement, which included a Verified Statement (Affidavit) by Chairman John Werner of the APC and Argument prepared by counsel, pointed out the deficiencies in Kenai's case-in-chief. On November 28, 1975, Kenai filed its Reply Statement. Because this statement appeared to include material and facts not part of a proper reply, the APC on December 24, 1975, filed a motion to strike the reply statement, to which Kenai responded on January 9, 1976.

These two proceedings now stand submitted to the ICC for decision.

The Alaska Pipeline Commission's objective in respect to these actions against Kenai is to compel the carrier to recast its depreciation schedule to reflect the long-term realities of the new service they wish to provide.

Watching Service

In light of lag time between the date a tariff is formally filed with the ICC and the time such filing is noticed to the state, the Pipeline Commission retained a private watching service in Washington, D.C. (William B. Edwards), who is capable of notifying the commission by

telephone or telegram of all tariff filings on pipelines within Alaska.

This is important because effective dates of tariffs are 30 days following the filing date for tariff revisions and 10 days for new service.

Application of Nikiski Alaska Pipeline Company

On November 7, 1975, Nikiski Alaska Pipeline Company (Nikiski) submitted an application for a certificate of public convenience and necessity for the construction, operation, and maintenance of a refined petroleum products pipeline from Nikishka, Kenai Peninsula Borough, to the vicinity of the Port of Anchorage.

Nikiski is a wholly-owned subsidiary of Gulf Interstate Company, a Houston, Texas, based corporation specializing in investments and engineering of transportation and storage systems for distribution of a variety of forms of energy and related materials.

The proposed 10-3/4 inch pipeline will have the initial capacity to transport 40,000 barrels per day (bpd) of refined products. The majority of its anticipated initial throughput of 21,850 bpd will originate from the Tesoro refinery at North Kenai. Additional shipments will be accepted from the Socal refinery in the same vicinity during periods of heavy icing in the Upper Cook Inlet.

The pipeline will follow a relatively straight line from Nikiski to Point Possession, and will cross approximately 17 miles of water at Turnagain Arm, coming ashore at Point Campbell. After passing under the proposed North-South Runway at Anchorage International Airport, it will roughly parallel Northern Lights Boulevard and the Alaska Railroad right-of-way to the Port of Anchorage.

Because the APC was convinced that time was of the essence in acting upon the Nikiski application so that Nikiski would be able to commence and finish the proposed project during 1976, the APC issued an order on December 12, 1975, scheduling a public hearing and shortening the time for holding that hearing.

The hearing was conducted on December 30, 1975, to solicit public opinion in favor of or in opposition to the granting of authority to the applicant to operate as a common carrier pipeline.

Under the Alaska Pipeline Commission Act, a mandatory 30-day waiting period is required between the time of a hearing on an application and the time a certificate is issued.

To assist the commission in its analysis of the economic and technical feasibility of the project, the consulting firm of Van Scoyoc and Wiskup, Public Utility Consultants, Washington, D.C., was retained.

This firm was chosen primarily because of Mr. Wiskup's extensive and special knowledge of pipeline regulation at the federal level. In addition, the firm has previously performed work in Alaska, has an excellent reputation, and as a matter of policy has consistently represented the public interest.

A comprehensive study of project feasibility, markets, shippers, and safety was conducted by the APC with the assistance of its consultant. This in-depth analysis revealed the project to be feasible but that certain terms and conditions attached to the certificate were appropriate to protect the public interest.

In an analysis of this nature, the commission determined it essential to ascertain (AS 42.06.270) that the project was a viable one from an engineering and economic standpoint, that the applicant and its affiliated interest (Gulf Interstate) were fit and able to undertake the project (technically and financially), and that the project would be now and in the future in the public convenience and necessity.

On February 11, 1976, by order of the commission, a certificate was issued and it was formally accepted by Nikiski on February 19.

The significance of this event lies in the fact that the Nikiski project underwent comprehensive public scrutiny prior to the granting of authority to operate. Further, appropriate and reasonable terms and conditions reflecting proper regulation were imposed which, in the long run, the commission believes will protect the public interest and yet preserve an economic environment conducive to the construction and operation of pipelines in this state.

TAPS Audit

At the beginning of 1976, the commission forwarded a letter to Chairman Stafford of the ICC in regard to an audit of Alyeska Pipeline Service Company. Mr. Stafford

directed the ICC's regional auditor from San Francisco to meet with the commission in mid-January. The purpose of the auditor's visit to Alaska was to determine the scope of a financial audit of Alyeska to ensure conformance and compliance with ICC reporting requirements.

This audit is to be conducted in several stages with completion scheduled prior to mid-1977. The Pipeline Commission requested access to reports and information developed from this audit and determinations in this regard are pending from the ICC.

### Acquisition of Information

The commission has acquired the complete records of all pipeline carriers currently operating within the state and they are on file with the commission's office. This includes carrier valuations, annual reports, and tariff filings for each year that a carrier operated in the state. In addition, the commission has attempted to accumulate as much literature, legal documents, textbooks, and research studies as is available concerning the history, economics, and operation of pipelines in this country.

## 1976 FORECAST

### Regulations

Special priority in 1976 will be placed on the adoption of substantive regulations. These regulations will address themselves to matters generally dealing with the scheme of economic regulation to be employed by the commission. For rate purposes, this will include the commission's valuation methodology, depreciation guidelines for various classes of property, and treatment of income tax deferrals and credits.

Pursuant to valuation, criteria will be established in respect to property dedicated to common carrier use (including land and rights-of-way) and measures dealing with property out of service or classified by the commission as excess capacity.

These regulations will also stipulate appropriate treatment of carrying charges for property under construction and for interest incurred during construction. Working capital requirements and restrictions will be defined as well as such traditional additions to carrier valuation as administrative and engineering overhead incurred prior to and during construction and before placement of carrier property into service.

As work on this aspect of the regulations progresses, attention will be devoted to additional substantive matters dealing with operating safety, prorationing, retirement, abandonment, connections, and plant extensions and additions.

The emphasis on adoption of these regulations is necessary because the governing statutes do not clearly define how the commission must regulate, but they provide the basic framework within which regulatory policy can evolve wisely over time.

With the existence of common carrier pipelines operating in the state or under construction, and especially those certificated under the "grandfather" provisions of AS 42.06.240, it is imperative and prudent to establish commission regulatory policy as rapidly and comprehensively as possible in a manner conducive to thorough public scrutiny.

This includes public hearings and adequate opportunity for the public and industry to provide comments, criticism, and recommendations. It is the commission's belief that nebulous and arbitrary regulatory practices such as those engendered and perpetuated at the federal level are undesirable and not in the public interest. The commission seeks to avoid any performance where the rules of the game are not known in advance.

Contracts and Studies

To carry out the job of developing regulations and to assist the commission in its difficult task of proper regulation, consulting contracts will be sought to study certain aspects of the economics of pipeline regulation.

These studies will center around various valuation methodologies, financing, accounting treatments, and the effects that functional and physical depreciation play on component service life and on system life in general.

The information derived from these studies will provide valuable insight and perspective in the complex task of ascertaining fair and reasonable rates of pipeline carriers.

Additional study concerning the activities of carriers operating within the state and interstate pipelines in other states will provide necessary background information and data on which to formulate policy of the commission.

Staffing

In terms of staffing requirements, three positions have been identified and recruiting efforts will take place shortly.

The positions are: accountant, economist, and engineer, all of which will be placed in service on a contractual basis initially. The economist position requires a well-rounded person with experience in transportation and marketing. The engineer position will require someone with expertise in the area of mechanical or, preferably, petroleum engineering.

The purpose of retaining permanent staff is that there needs to be a continuing body of knowledge and expertise built up within the commission to accomplish tasks in-house as directed by commission members. It is somewhat inconvenient and expensive to retain special outside expertise for relatively routine undertakings.

Nikiski Pipeline

In November 1976, the Commission anticipates a rate hearing following completion of the Nikiski Alaska Pipeline project. Although the rate setting process involved with Nikiski may not be extensive, the project itself will be closely monitored during and after construction. This is an excellent opportunity for the commission to familiarize itself with the actual construction process, particularly from a cost standpoint. Further, operating safety requirements will consume a portion of the commission's time this year in regard to Nikiski.

Trans-Alaska Pipeline

Public concern has been voiced about the rapidly escallating construction cost on the Trans-Alaska Pipeline.

Because of the enormous investment in this project, there is a legitimate basis for concern insofar as it relates to unwarranted and unreasonable expenditures on behalf of the builders of the pipeline. Unwarranted and unreasonable does not apply to requirements imposed on the builders over which they have no control (i.e., inflation, logistical problems, weather, governmental restrictions, and so on). However, it is logical to assume that owners of the pipeline will wish to recover total system costs through their proposed rates.

Therefore, it is incumbent on this commission to ascertain the proper total system cost for rate purposes, which may or may not coincide with costs presented by owners of the pipeline.

A massive financial audit of Alyeska Pipeline Service Company could reveal items of an excludable cost nature (e.g., fraud, waste, collusion, errors in reporting). However, it is doubtful that the benefits derived would justify the expense and effort necessary to uncover such items.

Rather, an audit undertaken by the commission would be more appropriately oriented toward management. In essence, questions may be raised in reference to costs incurred due to lack of or imprudent management decisions. This could involve failure to initiate cost reduction incentive programs, lack of proper security, improper design, and so forth.

Admittedly, this is a difficult task and perhaps one which would be unproductive. Nevertheless, the commission is considering the prospect of such an audit in cooperation with selected state agencies.

## Jurisdiction

One extremely important question which was not fully resolved by the express terms of the Alaska Pipeline Commission Act, or later amendments to it during the special legislative session of 1973, was what are the exact bounds on the commission's legal jurisdiction, if any. From what the commission has been able to ascertain from the legislative proceeding in regard to this matter, it appears that in light of the fact that all aspects of the jurisdictional issue could not be definitively determined (because of the complexity of legal questions involved) at the time of passage of the Act, such questions would be decided later on a case-by-case basis as they arose.

No one, of course, can foresee at this time when, or even if, the commission's jurisdiction will be questioned, nor can anyone presently envision the nature or extent of such a challenge. Even with this situation in existence, which can at best be classified as one of speculation, the commission feels it is essential that it be prepared to defend the state's interest to the utmost in the event such a confrontation is forthcoming.

In an effort to take a strong position in this regard, and one the commission feels was intended by the legislature in 1972 and 1973, the commission has already

taken various preliminary steps to either reduce the likelihood of a challenge to its jurisdiction or to put itself in a posture of readiness in case such a confrontation arises. Some of the preliminary actions taken by the commission include preparing practice and procedural regulations (after affording ample public and industry input) which are as unburdensome to parties dealing with the commission as possible and which it feels are consistent with due process of law. Also, the commission has done some preliminary research into the legal question of jurisdiction on its own and requested an in-depth analysis of the question from the Department of Law. The Department of Law has been working on this project for some time and has assured the commission that its findings would be forthcoming in the immediate future.

Although some progress has been made toward understanding and resolving questions of jurisdiction, the commission nevertheless plans to place more emphasis on this matter in 1976. This is especially true because the commission feels that with the knowledge and experience it has acquired during the previous year, it is now in a far better position to look into and make intelligent decisions with regard to this issue. While the commission cannot presently foresee all the circumstances relative to this problem, it nevertheless plans to take an active role in asserting its jurisdiction when necessary and be prepared to defend its actions to the ultimate degree at any time such a determination is required. Further, the commission strongly believes that it must continue to strive for a more complete knowledge of the jurisdictional question; and in order to accomplish this end, it plans to make an all-out effort to acquire any information and expertise available which would be helpful to the commission and the state in resolving this issue.

Proceedings Before the Federal Government

Since circumstances are continually changing when proceedings are before the ICC (as a result of actions of other parties and decisions issued by federal administrative law judges and appellate opinions emerging from various boards and similar bodies within the ICC decision making structure), it is extremely difficult for the commission to outline, at this point, exactly how, when, and to what extent it will be involved in actions before the ICC. It may be generally stated, however, that the commission intends to keep constant surveillance on any pipeline matters coming before the ICC. This effort will be undertaken by the members of the commission (through their personal contacts

with ICC staff and policy makers), the continued utilization of the ICC watching service, and the continued relationship with the commission's legal counsel for ICC matters located in Washington, D.C.

Looking at the commission's future activities before the ICC on a more specific level, it intends to continue its efforts with regard to Ex Parte No. 308, Valuation of Common Carrier Pipelines, and ICC Docket No. 36244, Charge for Terminalling and Storage, Kenai Pipe Line and No. 36244 (Sub No. 1), Increased Rates on Crude Petroleum, Kenai Pipe Line, until they are resolved.

In summary, the commission will initiate complaints, protests, and other formal actions with the ICC, FPC and any other such agency whenever carriers or their activities are in violation of federal statutes, orders, decrees or, in the judgement of the commission, whenever the activities or rates of such carriers clearly have an adverse impact on or are detrimental to the interests of Alaska.

## CONCLUSION

The members of the Alaska Pipeline Commission believe they have taken an agressive and positive stance in carrying out the intent of the Alaska Pipeline Commission Act.

It is firmly believed that the commission can achieve its objectives if given the necessary resources, cooperation, and time. Determinations and policy of the commission are elements which cannot evolve overnight if it is expected that the commission is to continue to maintain credibility and effectiveness. This is particularly true when interfacing with federal agencies, which are notoriously slow and frequently unaware of local concerns.

STEPHEN J. PEARSON
ATTORNEY

ELY, GUESS & RUDD
SUITE A
MENDENHALL BUILDING
JUNEAU, ALASKA 99801

TELEPHONE
(907) 586-3210

Stephen Pearson 2/15/77

Re HB 705

Came in to copy minutes from committee mtg. and to get copies of some info in files re this bill.

file HB205

# STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

**DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT**

ALASKA PIPELINE COMMISSION

338 DENALI ST./12TH FLOOR
ANCHORAGE 99501

March 26, 1976

The Honorable Terry Gardiner
Chairman, House Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Terry:

Thank you for your letter of March 23. I wish to convey to you our appreciation for your continued interest in the Alaska Pipeline Commission, and to emphasize my strong belief in the commission concept and the potential benefit it can render the state and its people.

In answer to your questions regarding the Commission's budget, I will briefly summarize what has happened to date.

For FY-76, the Legislature appropriated $375,100 to the Commission. In September of 1975, the Department of Commerce and Economic Development unilaterally cut $102,600. Following my appointment in October of that year, a portion of those funds presumedly were restored to cover my salary, but we have no documentation to that effect.

In October of 1975, Chairman Werner presented a proposed budget of $376,800 to the Governor's Budget Review Committee. The committee reduced this request to $330,400, and this amount is presently before the legislative finance committees.

Since appearing before your committee and discussing the matter with legislators generally, the Commission feels it essential that its budget request be updated to reflect present and future concerns of both the legislature and administration. For example, if HB 705 and HB 706 are enacted (as well as other pending legislation; i.e., HB 728 or HB 851), and if another full-time commissioner is appointed, various adjustments will have to be made. We have already begun this reassement and will have the figures to you and your colleagues as quickly as possible. We also are working on a statement of goals that the Commission believes are attainable in FY-77 and a plan of action which will both be forth-coming in the immediate future.

The Honorable Terry Gardiner
Page 2
March 26, 1976

Additionally, the Commission would like to receive a transcript of the committee meeting you held on HB 705. I don't know the procedure to follow in this regard, but we hereby authorize Carol Elliott of Action Secretarial Service, 128 Seward St., Juneau (586-1715) to act as our agent for the purpose of having these tapes transcribed. I hope this meets with your approval.

Thank you again, Terry, for your continued interest and concern. I hope we will be able to provide you with further information in the next week or so.

Best regards,

Russell E. Mulder
Commissioner

cc: Carol Elliot

file with members

# STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

**DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT**

ALASKA PIPELINE COMMISSION

338 DENALI ST./12TH FLOOR
ANCHORAGE 99501

February 23, 1976

Representative Terry Gardiner
Chairman, House Judiciary Committee
Pouch V
Juneau, AK 99811

Dear Mr. Chairman:

Recently two proposed pieces of legislation (HB 705 and HB 706) were introduced which taken either separately or together would have a tremendous impact upon the proper functioning of the Alaska Pipeline Commission and further could have a severe effect upon the ability of this commission to represent the best interests of the state.

As you are well aware, HB 705 has been referred to your committee for consideration. First, the members of this commission would like to impress upon you and your colleagues on the committee that they believe HB 705 (especially when considered in conjunction with HB 706 which was referred to the House committee on commerce and finance) is not only unnecessary proposed legislation but also has the potential of being extremely dangerous to the entire concept embraced in the Alaska Pipeline Commission Act (Ch. 139 SLA 1972 as amended). Enclosed is a brief summary of our comments which hopefully will give you some idea of our thinking. If you would like us to go into further detail, we would be more than happy to do so.

Second, the commission would like to have the opportunity to appear before you and your committee when HB 705 is brought up for consideration in order that the members of the commission could personally give you their views on the bill and adequately answer any questions you might have. If you could offer us this opportunity, we would appreciate it very much.

Sincerely,

Russell E. Mulder
Commissioner

REM:alk

Enclosure

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

TO: APC DATE: 2/10

(~~SENATE~~ - HOUSE) BILL 705 and 706

RE: powers of APC

Check One:

1. TOP PRIORITY - in favor of ______
2. FAVOR - in favor of, but not top priority ______
3. OK - no definite stand ______
4. NOT IN FAVOR ______
5. TOP PRIORITY - "Strongly Opposed" X
6. BILL DOES NOT PERTAIN TO DIVISION ______
7. Bill does not directly pertain to division, but I am interested in its progress. Keep me informed. ______

COMMENTS: (Justification must be stated for #1 - #6 above. Continue on another page if needed).

While HB Nos. 705 and 706 must be considered together when weighing the ultimate effect they could have on the state, it is perhaps more helpful if each piece of legislation were discussed separately.

First, HB 705 is considered by the Commission to be a very real threat to the overall concept of having one governmental body (The Alaska Pipeline Commission) responsible for and instrumental in protecting the state's interests in matters of oil and gas pipeline regulation. This legislative intent in enacting the Alaska Pipeline Commission Act (Ch. 139 SLA 1972), which is supported by considerable authoritative testimony on the subject, is readily detected when one considers the broad latitude the legislature gave the Commission for dealing with matters of oil and gas pipeline regulation. Besides being vested with the general responsibility of regulating pipelines, the Commission is also directed to promote and oversee the development of an oil and gas pipeline transportation

(Continued)

Writer's Signature: [signature]
Writer's Title: Chairman
(DEADLINE 24 hours)

(Note: Please return to Information Officer/Leg. Asst Office of the Commissioner)

system in the state (see AS 42.06.010 and 42.06.020). Further, and more specifically, the Act claims very extensive jurisdiction for the Commission and also vests in the Commission wide authority to pass upon the validity of tariffs filed by pipeline carriers. These aspects of the Alaska Pipeline Commission Act reveal the obvious intent to keep the various segments of oil and gas pipeline regulation contained in one governmental unit and not distributed among many.

In addition, one can observe from the statutory provisions relating to the makeup of the Commission (AS 42.06.060) and the authority and tools it is given to carry out its duties (AS 42.06.120) that the Commission is presently structured in such a way as to maintain continuity and to gain the knowledge and expertise necessary to function properly in the public interest.

With this background in mind, it is apparent to the Commission that splitting up of functions between the Commission and the Department of Law would only add confusion, interfere with the Commission's policy making functions, make pipeline regulation (including promotion of them) subject to political pressure and manipulation from the executive branch, and weaken the state's credibility and posture before the federal courts and regulatory bodies.

Funds appropriated through HB 706 would be needlessly expended, since much of what is sought through the appropriation has already been accomplished by the Commission, including contracts for the services indicated.

In conclusion, the Commission cannot comprehend the net benefits to be gained by the state in splitting up its legislatively mandated functions with the Department of Law. Under AS 42.06.110, the Department of Law is the Commission's counsel in legal matters arising from the discharge of the Commission's duties and in actions to which it is a party. This is consistent with the process employed by the ATC and PUC.

*Terry Gardiner*

Box 1092, Ketchikan, Alaska 99901 Pouch V, Juneau, Alaska 99811

March 23, 1976

Russell Mulder
Alaska Pipeline Commission
338 Denali Street/12th Floor
Anchorage, Alaska 99501

Dear Russ,

Although the Judiciary Committee did pass out HB 705 this does mean that we do not have any further interest in the Alaska Pipeline Commission. On the contrary, I think the interest of the Legislature and the Administration in HB 705 is indicative of the concern to see the Commission function as originally envisioned at the time of the passage of the legislation in 1972 and subsequent revisions in 1973.

We are still interested in receiving the budgetary information that we requested. We intend to make some recommendations to the House Finance Committee to insure that there is adequate funding to allow the Alaska Pipeline Commission to function properly. Any additional information that you may have at this time in terms of budgetary requests that were not submitted to the Governor's budget review committee would also be appreciated.

Sincerely,

Terry Gardiner

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

**DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT**

*ALASKA PIPELINE COMMISSION*

338 DENALI ST./12TH FLOOR
ANCHORAGE 99501

March 17, 1976

The Honorable Terry Gardiner
Chairman, House Judiciary Committee
Alaska State Legislature
Pouch V, State Capital
Juneau, AK 99811

Dear Terry:

This morning I heard from Juneau that last night your committee acted on HB 705 with everyone recommending it "do pass" except Eliason and Specking who were not present. Also, as I understand it, AS 42.06.230 was amended by deleting "exclusively" in regard to the commission's jurisdiction (necessary for consistency).

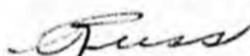
If I had not spent so many years working with the legislative process, I guess I would say I was surprised or even stunned by your committee's action last night. However, after going through my confirmation hearing before the joint House and Senate Resources Committee and discussing the entire matter with as many legislators as possible, I believe I understand the prevailing sentiment of both the legislature and the administration. In light of all this, my bewilderment has lessened substantially. It is naturally disappointing to know that our arguments against HB 705 and HB 706 were obviously not persuasive but nevertheless John Werner and I appreciate the fact that you and your committee at least gave us the opportunity to try.

In view of what transpired with your committee last night, do you still want us to compile the budgetary information you requested when we appeared before you? It seems to be a moot question now, but if you still desire it, please let us know.

Again, thank you for asking us down to testify and for taking the time to let us present our side of the story. Both Commissioner Werner and I wish to thank you for your courtesy.

Personally Terry, it was good seeing and talking with you again, and I hope you the best for the remainder of the session.

Best regards,



Russell E. Mulder
Commissioner

HB 705 – Pipeline Commission
HB 706 appropriates 100,000
Pipeline Tariff – subtracted from refining price to give wellhead value

1972 PASSED
1973
1974
1975
1976

Oil Companies will move profit margin 16¢ into pipeline

– Need Aggressive Action from Commission –

APC should represent us before ICC

| FY 1975 | FY 76 | FY 77 |
|---|---|---|
| 282,000 | 295,000 | 330,000 |
| Actual 94,200 | | |

Obtained contractual Monies
Annual Report submitted this year
1. Have requested ICC Audits
2. Considering Management "

Free Conference in 1975 – $100,000 for professional fees - legal counsel for rate hearings

Charles Parker – Payed on hourly basis
Dec 74 – Russ filled Marty Ferrella part time
Oct 75 became full time

Admin Ass
Contractual Services
Legal Counsel – Donald, Cleary, Caldwell D.C.
I.C.C. 2 proceeding before I.C.C.

Feb 15

When Warner Appointed? April 74
-Why only 94,200 spent?
~~Did you see~~
Are you satisfied with operations of APC?
If you're not what have you requested in changes?

(1) Need 3rd fulltime Commissioner

Delay of Regulations - Contract through Gov office
6 Mo.) to get Regulations approved

---

Operation Expenses }
Capital Expenses }

ICC will probably accept Alyeska figures on
Construction/Management Costs unless somebody protests

Receive Quarterly Reports from Alyeska Now

Get ~~ICC~~ Alyeska annual financial audit
ICC Audit will be completed in one year

Are going to let contract for pipeline Model

HB
713

"An Act relating to the student regent on the Board of Regents of the University of Alaska; effective date."

# COMMITTEE REPORT

2/27/76

## HOUSE

Mr. Speaker: Date March 30, 1976

The Committee on JUDICIARY has had HB 713 under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

(✓) recommends it BE REPLACED WITH CS FOR HB 713 AND THAT CS FOR HB 713 DO PASS

( ) "and" recommends it BE REFERRED TO THE ______ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

Parr

Cotten

Brown

Members NOT concurring in the Majority report:

Terry Gardiner recommends: No REC

recommends:

recommends:

recommends:

recommends:

Terry Gardiner Chairman

Introduced: 2/10/76
Referred: Select Committee on Education and Judiciary

IN THE HOUSE

BY PARR, MILLER, OSTROSKY AND SULLIVAN

HOUSE BILL NO. 713

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the student regent on the Board of Regents of the University of Alaska; and providing for an effective date."

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

* Section 1. AS 14.40.130 is amended by adding a new subsection to read:

(b) In addition to satisfying the requirements of (a) of this section, the student regent appointed under sec. 150(b) of this chapter must

(1) have attended the University of Alaska as a full-time student for at least one academic year before appointment; and

(2) be enrolled as a full-time student at the University of Alaska at the time of appointment.

(c) Failure of the student regent appointed under sec. 150(b) of this chapter to remain enrolled as a full-time student at the University of Alaska during his term results in forfeiture of that office. The forfeiture occurs upon certification by the registrar that the student regent is no longer a full-time student. The governor shall appoint a successor from among the list of nominees submitted to him under sec. 150(b) of this chapter at the time of original appointment.

(d) For purposes of this section, "full-time student" means

(1) a person who is enrolled in courses at the University of Alaska equal to 12 academic credit hours or the equivalent of 12 academic credit hours in career education, including but not limited to vocation l and technical programs, or

(2) a person who is enrolled in graduate courses at the University of Alaska equal to nine graduate academic credit hours.

* Sec. 2. AS 14.40.150(b) is repealed and re-enacted to read:

(b) At least one member of the Board of Regents must be a student. The student regent shall be appointed from a list of nominees submitted to the governor. The list shall consist of the names of two students from each campus of the University of Alaska after an election is held at each campus. Elections shall be conducted under rules established by the Governor's Commission on the Involvement of Young People in Government (AS 44.19.777 - 44.19.787). The term of office of a student regent is two years.

* Sec. 3. This Act takes effect immediately in accordance with AS 01.10.-070(c).

HB
722

File with Members

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

**DEPARTMENT OF LAW**

OFFICE OF THE ATTORNEY GENERAL

POUCH K – STATE CAPITOL
JUNEAU 99811

February 19, 1976

Terry Gardiner, Chairman
House Judiciary Committee
Pouch V
Juneau, Alaska 99811

Re: House Bill No. 722, "An act relating to consumer protection."

Dear Terry:

I would like to express my very strong support for House Bill No. 722 which would amend AS 45.50.531(b) of the Unfair Trade Practices and Consumer Protection Act by deleting that language which requires the Attorney General's approval prior to the bringing of a class action suit by private plaintiffs. I have for some time been troubled by the implications of having such a reviewing function entrusted to this office, and I have concluded that the section as it presently reads raises a number of serious constitutional questions.

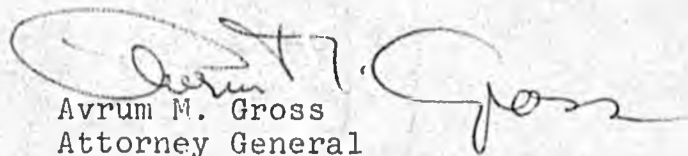
First, AS 45.50.531(b), in effect, amends Alaska Rule of Civil Procedure 23 which sets forth the factors to be considered by a court in determining the propriety of bringing a class action by giving the Attorney General the opportunity to make a nearly identical determination prior to the litigant's filing of the class action complaint in court. Article IV, § 15 of the Alaska Constitution grants the Supreme Court the exclusive power to promulgate rules "governing practice and procedure in civil and criminal cases in all courts," and the rules so promulgated may be changed by the legislature only "by two-thirds vote of the members elected to each house." To avoid the disruptive effect of inadvertent or unintentional changes by the legislature in the judiciary's rules of procedure, the Alaska Supreme Court has consistently interpreted this constitutional provision as requiring an express statement in the bill itself that it is the legislature's purpose to effect such a change. Leege v. Martin, 379 P.2d 447 (Alaska 1963); City of Valdez v. Valdez Development Company, 506 P.2d 1279 (Alaska 1973). In the case of AS 45.50.531(b), there was no such express declaration of legislative intent contained in either the bill itself nor can such a purpose be gleaned from its scant history. The "Judiciary Committee Report on HCSCS for Senate Bill No. 352," House Journal, Sixth Legislature, 2nd Sess. (Supp. No. 10 to March 31, 1970) contains the only

passage dealing directly with the class action limitation, and it makes no mention of an intent to alter an established rule of the court. Thus, I fear the portion of AS 45.50.531(b) which requires a litigant to obtain my approval to bring a class action may be in violation of Art. IV, § 15 of our State constitution.

In addition, there may well be certain separation of powers questions raised by the Act since the Attorney General's authority to disapprove of the institution of a particular class action would in effect supersede the court's authority to make its own determination on the validity of the class litigation. Interposing the Attorney General's discretion between a private litigant and his access to the court may also present due process difficulties especially in cases where the suit is brought against a state agency.

In view of my concerns relating to the constitutional soundness of the relevant portions of AS 45.50.531(b), I am in full agreement with those that seek their deletion. Furthermore, the loss of this approval authority in no way diminishes or affects the ability of the Attorney General to enforce the substantive provisions of the Unfair Trade Practices and Consumer Protection Act. Whether the named plaintiffs adequately represent the rights of the class or whether the nature of the injury suffered by the members of the class is appropriate for the invocation of the class action procedure are questions more properly left to the courts to determine in the light of the criteria set forth in Civil Rule 23.

Very truly yours,



Avrum M. Gross
Attorney General

AMG:chp

cc: Representative Bill Parker

LAW OFFICES OF

ALASKA LEGAL SERVICES CORPORATION

315 FIFTH STREET, SUITE 8

JUNEAU, ALASKA 99801

TELEPHONE 586-6425

MEMORANDUM

TO: Representative Terry Gardiner, House Judiciary Committee

FROM: Donald E. Clocksin

RE: House Bill 772, "An Act Relating to Consumer Protection"

DATE: February 19, 1976

---

This memorandum is to support House Bill 772.

1. Present Law.

Under the present law, a private citizen who is injured by a violation of the Unlawful Trade Practices and Consumer Protection Act (A.S. 45.50.471 et seq.) may bring a lawsuit to recover actual damages or $200, whichever is greater. However, if similar injury has been caused to a number of people by the same illegal act, the lawsuit may not be brought on behalf of all of them until a) the Attorney General has approved the suit, and b) a bond of $5,000 or more has been filed.

2. Effect of The Bill.

House Bill 772 would eliminate the two requirements (approval and the bond) and leave it to the courts under existing law and court rules whether the lawsuit may be brought.

3. Why the Bill Was Filed.

A. The requirements of a prior Attorney General approval and the mandatory minimum bond are probably unconstitutional.

The requirement that the Attorney General approve the class amends Civil Rule 23. That rule sets out the procedure for bringing class actions. However,

there is no evidence by vote or otherwise that the sixth Legislature intended to amend Civil Rule 23. See - Judiciary Committee Report on HCSCSSB 352, House Journal, March 31, 1970 (Supplement 10), Sixth Legislature, Second Session. Therefore, the requirement violates Article IV, Section 15 of the Alaska Constitution which requires a two-thirds vote to amend a court rule of practice or procedure. No such vote occurred. The Attorney General agrees that the requirement of approval is of questionable constitutionality.

The requirement of filing a minimum $5,000 bond is probably unconstitutional because it bars the right of many litigants to assert their rights in court. Boddie v. Connecticut, 401 U.S. 371 (1971) held that it was a denial of due process for a state to deprive an indigent from getting a divorce by imposing a prohibitively high filing fee. See also Bush v. Reid, 516 P.2d 1215 (Alaska 1973) where denying a parolee access to courts was ruled to be in violation of the state and federal constitutions. To deny people similarly injured the right to be a part of a class action by requiring an arbitrarily high bond is also probably unconstitutional.

B. Whether or not the conditions are unconstitutional, they are unfair. Many people who have been injured by unfair and deceptive practices will not have a remedy unless class actions are allowed. Such actions will not be filed if the person or persons representing the class must get approval and file a bond of at least $5,000. That bond will usually exceed the amount those representatives will eventually recover and will discourage them before they begin.

cc: Representative Parker
pp

HB
723

LAW OFFICES OF
ALASKA LEGAL SERVICES CORPORATION
315 FIFTH STREET, SUITE 8
JUNEAU, ALASKA 99801
TELEPHONE 586 ~~XXXX~~ 6425

MEMORANDUM

TO: Representative Gardiner
House Judiciary Committee

FROM: Donald E. Clocksin DEC

RE: House Bill 723 - "Residential Homestead Exemption"

DATE: February 19, 1976

---

1. Present Law.

Presently, if a family gets a court judgment against them, there are procedures for the one winning the judgment for taking some of the loser's property and wages to pay off the judgment. However, there are certain exemptions for property which cannot be taken to pay a debt. One exemption, in A.S. 09.35.090, exempts the homestead of the debtor, defined as the "actual abode" of the debtor.

However, the exemption is only $12,000 for a house and $8,000 for a mobile home. If the actual value exceeds that amount, the home can be sold to pay the debt. The excess over $12,000 or $8,000 goes to the creditor.

2. What the Bill Would Do.

House Bill 723 would increase the exemptions to $25,000 and $15,000, respectively. Only if the house or mobile home exceeded those values could it be sold to pay a creditor.

3. Why the Bill.

The amounts presently in A.S. 09.35.090 are ridiculously low. The statute was adopted 14 years ago and amended four years ago to increase the exemption for homes from $8,000 to $12,000 and to create the separate exemption for mobile homes. According to the 1970 census data, owner-occupied homes in Alaska with all plumbing facilities had a median value of $28,200. 1970 Census of Housing, Volume 1, Part 3 (Alaska), page 10, U.S. Department of Commerce (June, 1972).

The result of having a low exemption is obvious. Even

though the intent of the law is to avoid having a family put out of their home, debt could force a sale of any home exceeding $12,000 in value. According to six-year-old census figures, 86% of all owner-occupied homes could be sold to pay debts, despite the statutory exemption. With the bill, 41% could be sold.

The census data does not reveal the median value of mobile homes. However, the $8,000 exemption is surely inadequate.

4. Amendments.

Even the new $25,000 and $15,000 values are likely inadequate for 1976 and beyond. If the committee agrees, I recommend amending the bill to increase them to $30,000 and $20,000 respectively.

cc: Representative Parker
pp

HB
738

"An Act making a supplemental appropriation to the Department of Law for miscellaneous court awards; and providing for an effective date."

# COMMITTEE REPORT

2/11/76 HOUS FINANCE

Mr. Speaker: Date Feb 19 1976

The Committee on JUDICIARY has had HB 738

under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

( ) recommends it BE REPLACED WITH CS FOR ____________ AND THAT

CS FOR ____________ DO PASS

( ) "and" recommends it BE REFERRED TO THE ____________

COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

Terry Gardiner Do Pass
[illegible] [illegible]
[illegible] [illegible]

Members NOT concurring in the Majority report:

____________ recommends:

____________ recommends:

____________ recommends:

____________ recommends:

____________ recommends:

Terry Gardiner Chairman

House Judiciary Committee
February 19, 1976

The meeting was called to order by Chairman Gardiner at 7:00 p.m. Members present were Brown, Cotten, Bradley, Parr, Gardiner and Specking.

HJR 45 GUN CONTROL HJR 45

Mr. Swanson stated that Alaska is different from other states. We need guns for survival, not quite like Chicago.

Mr. Brown moved that Mr. Swanson's amendment changing the Be It Resolved clause be changed somewhat. It was agreed upon. Mr. Cotten moved that the amendment be adopted. There being no objection, it was adopted and will be incorporated in a CS.

Mr. Brown moved CS HJR 45 out of committee. There being no objection, it was done.

HB 738 MISCELLANEOUS COURT AWARDS HB 738

Rick Counsel of the AG's office was here to explain that this appropriation was to pay back court costs arising out of attorney's fees, judgments against the state and interest on these for six cases.

Mr. Cotten moved HB 738 out of committee. There being no objection, it was done.

SB 296 am INTEGRATED BAR ACT SB 296 am

Mr. Bill Barrier of LAA.

This bill is detrimental to the agency and the Legislature. We are here dealing with a highly specialized kind of law. The work done here gets plenty of scrutiny, and we have only one client, the Legislature. Therefore this bill accomplished no public purpose. If imposed it would cause serious career problems for those working for the agency as they are not defined as practicing law. It would also cut down on the caliber of people the agency will be able to attract.

Mr. Allen Compton, Counsel for the Alaska Bar Association.

Page 3, line 24: It should be clear to whom in the Legislature these reports should be directed.

Page 3, line 25: Some matters are confidential by court rule, therefore cannot be included in above report.

02-001B (REV. 08-73)

AP

# MEMORANDUM State of Alaska

TO: Frances Ulmer
Legislative Assistant
Governor's Office

DATE: February 13, 1976

FILE NO:

TELEPHONE NO:

FROM: Avrum M. Gross
Attorney General

SUBJECT: HB 738 (supplemental appropriation to Department of Law

As you requested, here are some quick comments on this bill. It is quite important that it be enacted very soon — like within a week.

One of the cases for which this bill would appropriate money for court costs and attorney fees is one in which we are being threatened with litigation on the issue of interest on this kind of award. Typically, when this kind of award is made and there is some delay in paying it due to lack of appropriated funds, we are able to dissuade the attorneys on the other side from pressing the interest matter. However, we are now confronted with one who says he will litigate it if he is not paid almost immediately. If he should win on the point, then a precedent would be established and other attorneys would be encouraged to press for interest on awards of court costs and attorney fees. Over the years this would amount to many thousands of dollars.

AMG:md:AHP

mt 9 30 070