

455

HJ

HB

8

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100

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1977-1978

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HOUSE

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1977-78

HB

8

# Terry Gardiner

Box 6092, Ketchikan, Alaska 99901    P.O. Box V, Juneau, Alaska 99811

Minutes of the Committee Meeting of 3/1<sup>14</sup>7777

The meeting was called to order by Chairman Gardiner at 7:00p.m.

Present were: Chairman Gardiner

Vice - Chairman Miles

Rep. Brown

Rep. Specking

Rep. Dankworth

Absent were:

Rep. Eliason

Rep. Rudd

The Committee first took up the salary commission report and heard testimony from Kay Deeble of the Salary Commission. Ms. Deeble briefly went over parts of the report, dealing with the executive and judicial categories and discussed the three major aspects of legislative provisions dealing with salary, per diem, and vouchers. Ms. Deeble was questioned by the Committee and other Legislators and observes at the meeting regarding specific methods by which they arrived at the per diem recommendation and the vouchery recommendations.

The Committee then heard from LAA Attorney, Dick Bradley, regarding a request that had been made by Chairman Gardiner for a legal opinion dealing with aspects of the Salary Commission report. A three page memo was handed out to the Committee members prior to the meeting in the full report had not been typed as of the time of the meeting but Mr. Bradley gave an oral presentation.

Rep. Swanson testified briefly on HB 8 which would repeal the salary commission and the salary commission recommendations.

Speaker Malone testified on HB 8 and HB 274, 275, 276, 277, 278 & 279. Malone testified in favor of repealing the salary commission report with respect to legislative compensation or taking the legislative compensation out of the preview of the salary commission.

Rep. Parr testified in favor of amending the existing law governing the salary commission but basically letting it continue in its work. He also testified that the legislative recommendations of the report should be ignored and the legislature enact its own salary and benefit levels.'

The Committee discussed the various proposals brought up through the testimony but did not reach a conclusion on how to treat the salary commission report nor the other items of legislation pending a presentation of the issue to the full Committee.

The meeting adjourned at 10:00 pm.

HB

17

10 members of the Judiciary Committee

Capitol Room 122

## League of Women Voters of Alaska

The League of Women Voters of Alaska wishes to go on record in support of HB 17 relating to security deposits and prepaid rent. The League has been a strong backer of fair housing laws and has established a statewide position after careful study.

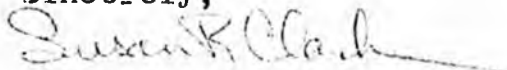
Basically the League supports programs and policies to provide equal opportunity for access to housing without discrimination based on race, color, religion, or national origins. In addition, League members agree that work to promote fair housing and an adequate supply of housing for low income families must proceed hand-in-hand. Tenants' Rights is one on our goals in the work of promoting fair housing with a uniform landlord-tenant act important in achieving this goal.

Specifically, House Bill No. 17 meets our criteria set out in our state position on Landlord-Tenant Relationships:

- it specifies the landlord's obligation in maintaining a fit and habitable dwelling;
- it specifies tenants' obligations in maintaining a fit and habitable dwelling; and
- it specifies the amount a landlord may collect as a security deposit.

We urge that consideration be given this bill so that passage may take place this session.

Sincerely,



Susan R. Clark  
Human Resources Lobbyist

1109 C Street  
Juneau, Ak. 99801  
586-6952

HB

43

# STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K - STATE CAPITOL  
JUNEAU 99811

February 9, 1977

Hon. Terry Gardiner, Chairman  
House Judiciary Committee  
Tenth State Legislature  
Pouch V  
Juneau, Alaska 99811

Re HB 43; HB 148

Dear Representative Gardiner:

The following are comments on behalf of the Attorney General's Office on the referenced bill.

1. As a general rule the Attorney General's Office will be in court, even on small claims matters should this bill pass, on the request of the judge. We do not foresee a major impact on the Attorney General's Office, either financially or in terms of the time required to cover matters that may be brought in the future as small claims.

2. It appears unlikely that monetary claims against the State of a contractual nature can be brought as small claims. AS 44.77 and the Administrative Procedures Act in conjunction with Appellate Rule 45 both require that claims of this type first be processed administratively, with the right of appeal being from the administrative determination to the superior court.

3. The court rules have worked substantial changes in the statutory small claims procedure. AS 22.15.040 states that the court "shall hear" the matter as a small claim unless there is an "important or unusual" rule of law involved, whereas the rule provides that the small claims procedure shall be followed when all parties elect, or there are "important or difficult questions of law or fact." The Attorney General's Office supports the rule in its present form.

4. The bill provides for service as usual on the Attorney General's Office. The Attorney General's Office strongly supports this provision of the bill. Please note that there is a typographical error in the bill: The reference in section 3 to Civil Rule 4(c)(7) and (8) should

Hon. Terry Gardiner, Chairman  
February 9, 1977  
Page 2

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refer to Civil Rule 4(d) (7) and (8).

5. Civil Rule 12(a) presently grants to the State 40 days within which to respond to a complaint. District Court Rule 13, which sets forth small claims procedure, allows 20 days. Since at present the small claims procedure does not apply to claims against the State, there is no provision in the small claims rules allowing 40 days to the State to answer a complaint. There are very sound reasons for allowing the State 40 days to answer, and the Attorney General's Office advocates continuation of the present allowance in the rules. The Attorney General's Office proposes that the bill incorporate the following additional provision:

District Court Civil Rule 13(a) is amended to read: The state or an officer or agency thereof shall serve an answer to the complaint or to a cross-claim within 40 days after the service upon the attorney general of the pleading in which the claim is asserted.

I am sure you are aware also of HB 148, which proposes to amend AS 22.15.040 so as to increase the jurisdictional amount for small claims from \$1,000 to \$2,000. The same comments above apply to this bill as well.

Very truly yours,

AVRUM M. GROSS  
ATTORNEY GENERAL

By: 

William T. Council  
Assistant Attorney General

WTC:chp

*House  
Jud.  
for members  
at request of  
Mrs. Brown*

HB43 by Brown, Gardiner  
& Miller

Jurisdiction of District  
Courts  
Do not pass as submitted.

Recommend:

Reason: It appears unfair and inconsistent to permit district judges and magistrates to hear only "small claims" against the State and not other cases within the jurisdiction of the District Court. It also seems unfair for the State to be able to file claims against individuals and corporations in the District Court but to prohibit individuals and corporations from filing claims in the District Court. We believe that it should be reciprocal - both sides should be permitted to file or both sides should be prohibited from filing any case where the State is a party.

Technical objection: It appears line 28 of the bill should be corrected to read, "Civil Rule 4 (d) (7) and (8)".

People who are involved in small claim cases may have problems with the rules of "service of process" on the State.

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HB46 by Rudd, Specking, Brown,  
Eliaison, Miles &  
Gardiner

Sale of Intoxicating  
Liquor

Recommend:

Do not pass.

Reason: This bill would decrease notice to interested parties who may desire to object or protest the issuance, renewal or transfer of a liquor license.

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SB11 by Orsini

Service of civil process  
by Alaska State Troopers

Recommend:

Do not pass!

Reason: We most strongly oppose the passage of this bill. It would make it extremely difficult to serve process in civil cases. The validity of service in many "bush cases" would be challenged and in many cases the cost of service would become prohibitive. Under the terms of the bill the state troopers are not even required to assist persons appointed to serve civil process when that person encounters physical resistance or obstruction, although they may do so.

HB

62

Introduced: 1/17/77  
Referred: Resources and  
Judiciary

1 IN THE HOUSE

BY THE RULES COMMITTEE BY  
REQUEST OF THE GOVERNOR

2 HOUSE BILL NO. 62

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the boards of fisheries and  
7 game."

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

9 \* Section 1. AS 16.05.221 is amended by adding a new subsection to  
10 read:

11 (c) Subject to AS 39.05.060(c)(6), regarding initial appoint-  
12 ments, terms of members of the boards of fisheries and game are four  
13 years.

14 \* Sec. 2. AS 16.05.260 is repealed and re-enacted to read:

15 Sec. 16.05.260. ADVISORY COMMITTEES. (a) The boards, in joint  
16 session, may adopt regulations they consider advisable in accordance  
17 with the Administrative Procedure Act (AS 44.62) establishing, at  
18 places in the state <sup>delegate</sup> designated by the boards, advisory committees to  
19 be composed of persons well informed as to the fish and game resources  
20 of the locality. The boards shall set the number and terms of each of  
21 the members of the advisory committees, designate one member of each  
22 committee as chairman, and give him authority to hold public hearings  
23 on fish and game matters.

24 (b) Recommendations from the advisory committees shall be for-  
25 warded to the appropriate board for its consideration, but if the  
26 Board of Fisheries or the Board of Game chooses not to follow the  
27 recommendations of the local advisory committee, it shall insure that  
28 the ~~formal record~~ <sup>Minutes</sup> of the meeting reflect the reasons for that decision  
29 and shall provide ~~the~~ <sup>Minutes</sup> minutes of the meeting to the advisory committee.

*No  
changes*

*Use  
Minutes  
to  
Records*

phone poll Board for Advisory committee request

1 (c) Advisory committees may make emergency closures during  
2 established seasons if advance approval is obtained from the appro-  
3 priate board. Exercise of this authority is contingent upon the  
4 adoption of regulations by joint action of the Board of Fisheries and  
5 the Board of Game establishing areas of advisory committee jurisdiction,  
6 procedures governing emergency closures by a committee, and other  
7 necessary limitations.

8 \* Sec. 3. AS 16.05.315 is amended to read:

9 Sec. 16.05.315. JOINT BOARD MEETINGS. The boards of fisheries  
10 and game shall [MAY] hold a joint meeting upon the call of the com-  
11 missioner or a board and shall [TO] resolve any conflicts in regula-  
12 tions of the boards or any other matters [AND TO CONSIDER MATTERS], as  
13 determined by the commissioner or a board, which require the action  
14 [CONSIDERATION] of both boards.

15 \* Sec. 4. AS 16.05.320 is amended to read:

16 Sec. 16.05.320. QUORUM. (a) A majority of the members of a  
17 board constitutes a quorum for the transaction of any business, for  
18 the performance of any duty, and for the exercise of any power.  
19 However, a majority of the full board membership is required to carry  
20 all motions, regulations, [AND] resolutions, and delegations of  
21 authority.


22 (b) A majority of the members of each of the boards of fisheries  
23 and game constitutes a quorum for the transaction of any business, for  
24 the performance of any duty, and for the exercise of any power in a  
25 joint board meeting. A majority of the full board membership of each  
26 of the boards is required to carry all joint motions, regulations,  
27 [AND] resolutions and delegations of authority of the boards.

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## MEMORANDUM

TO:  Rep. Keith Specking  
Alaska State Legislature

DATE : 2/23

FROM:   
Jeff Haynes  
Department of Law

SUBJECT: Proposed CSHB 62

Thank you for the opportunity to review your proposed CSHB 62 relating to the Boards of Fisheries and Game and to fish and game advisory committees. I would offer the following comments.

1. The proposed bill would require that at least one committee be established in each game management unit (GMU). First, it may be difficult to obtain a sufficient number of interested persons in some units to form an advisory committee. Second, orienting fish and game advisory committees and their establishment to GMUs may appear to some to deemphasize their responsibility to advise on fisheries matters.
2. The system you propose for creation of advisory committees may have some drawbacks if the intent is to make the committees more representative of the overall public interest. With new members elected at an open meeting of residents of the area, membership would tend to reflect only the largest interest groups capable of insuring a large turnout at election meetings. In remote areas, the makeup of the committee might depend on the vagaries of sparse attendance or a collection of voters which did not represent the range of interest groups in the area. Subsection (b) would provide some opportunity for representation of groups which were excluded from the one required committee if the election of members was by some other means; however, by a general vote of attending area residents, the same large interest groups which could control membership on the required committee could stack the petitioned committee with their representatives as well.
3. Under the present system, the boards select the first five members of each committee; those five may then elect up to ten more, all of which must be confirmed by the boards. There are advantages to board approval of members; for example, the boards will not confirm or select members who have committed a serious fish and game violation in the recent past. It is also within the power of the boards to provide for advisory committee membership which represents a broad range of interests; however, there is not much in the way of a statutory directive to this effect at the present time. Consequently, you may wish to consider this approach rather than to attempt to obtain more democratic representation through a process.

Representative Keith Specking

February 23, 1977

-2-

4. In subsection (a), all regulations (including procedural) should be under the APA process.

5. Subsection (c) does not pick up the amendment approved in the Judiciary Committee relating to the submission of board meeting minutes to advisory committees.

3690

§ 16.05.300

FISH AND GAME

§ 16.05.315

Effect of amendment. — The 1975 amendment, effective July 1, 1975, substituted "a board" for "the board" twice, inserted "\$100," and deleted "allowed by law" following "per diem."

① limit testimony  
② Policy makers  
not reqs

**Sec. 16.05.300. Board meetings.** (a) Each board shall hold at least one meeting a year and as many other meetings as it considers necessary. Each board shall select the time and place in the state for the transaction of business. Each board shall maintain its office at the principal office of the department. *full*

(b) In addition, the Board of Fisheries shall hold at least one meeting ~~or hearing~~ a year in each of the following general areas *To consider Regulations that all demand changes to the Board business only effect that area*

- (1) Upper Yukon — Kuskokwim — Arctic
- (2) Western Alaska (including Kodiak)
- (3) Southcentral *Prince William Sound*
- (4) ~~Prince William Sound (including Yakutat)~~
- (5) Southeast. (§ 9 art I ch 94 SLA 1959; am § 1 ch 82 SLA 1968; am § 7 ch 206 SLA 1975)

Effect of amendment. — The 1975 amendment, effective July 1, 1975, designated the provisions of this section as subsection (a), substituted "Each board" for "The board" at the beginning of the first, second and third sentences of that subsection, and added subsection (b).

**Sec. 16.05.305. Clerical assistance for boards.** The Board of Fisheries and the Board of Game are authorized to hire and set the compensation for one clerical assistant for each board. (§ 8 ch 206 SLA 1975)

Effective date. — Section 42, ch. 206, SLA 1975, provides: "This Act takes effect July 1, 1975."

**Sec. 16.05.310. Special board meetings.** A board may meet at any time upon the call of the commissioner or upon the request of two board members. (§ 6 art I ch 94 SLA 1959; am § 9 ch 206 SLA 1975)

Effect of amendment. — The 1975 amendment, effective July 1, 1975, substituted "A board" for "The board" at the beginning of the section.

**Sec. 16.05.315. Joint board meetings.** The boards of fisheries and game may hold a joint meeting upon the call of the commissioner or a board to resolve any conflicts in regulations of the boards and to consider matters, as determined by the commissioner or a board, which require the consideration of both boards. (§ 10 ch 206 SLA 1975)

Effective date. — Section 42, ch. 206, SLA 1975, provides: "This Act takes effect July 1, 1975."

Original sponsor: Rules Committee by request  
of the Governor

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 62

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the boards of fisheries and game."

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

8 \* Section 1. It is the intent of sec. 3 of this Act to create a system of  
9 statewide advisory committees that reflects, to the maximum extent possible,  
10 the views of residents knowledgeable about the resources of a particular  
11 locality. By receiving meaningful public contributions from those often  
12 closest to the problems of an area, the boards of fisheries and game will be  
13 better equipped to manage all fish and wildlife resources which are of in-  
14 estimable value to the state and its citizens.

15 \* Sec. 2. AS 16.05.221 is amended by adding a new subsection to read:

16 (c) Subject to AS 39.05.060(c)(6), regarding initial appointments,  
17 terms of members of the boards of fisheries and game are four years.

18 \* Sec. 3. AS 16.05.260 is repealed and re-enacted to read:

19 Sec. 16.05.260. ADVISORY COMMITTEES. (a) The boards, in joint  
20 session, shall adopt regulations they consider advisable in accordance  
21 with the Administrative Procedure Act (AS 44.62) establishing at least  
22 one advisory committee for each game management unit in the state and  
23 other advisory committees considered appropriate, at specific locations  
24 designated by the boards. Advisory committees shall be composed of  
25 persons well informed as to the fish and game resources of the locality.  
26 After the effective date of this Act, new advisory committee members  
27 shall be elected from interested persons present at a meeting convened  
28 for that purpose, by a majority vote of non-advisory committee members  
29 present at the meeting who are residents of the game management unit in

1 which the committee is established. Terms of members shall be estab-  
2 lished in the same manner, by majority vote. The boards, jointly, shall  
3 adopt necessary procedural regulations to implement this subsection.

4 (b) Additional advisory committees may be established for a game  
5 management unit under (c) of this section upon the signed petition to a  
6 board of 25 or more persons residing in a game management unit. The  
7 petition shall specify the location for committee establishment. The  
8 terms and election of members of advisory committees formed by petition  
9 shall be established by interested residents of the game management unit  
10 in which the committee is to be established, at an initial formation  
11 meeting, according to procedures established by board regulation.  
12 Advisory committees are authorized to hold public hearings on fish and  
13 game matters.

14 (c) Recommendations from the advisory committees shall be for-  
15 warded to the appropriate board for its consideration, but if the Board  
16 of Fisheries or the Board of Game chooses not to follow the recommen-  
17 dations of the local advisory committee, it shall insure that the formal  
18 record of the meeting reflects the reasons for that decision and shall  
19 provide minutes of the meeting to the advisory committee.

20 (d) Advisory committees may make emergency closures during estab-  
21 lished seasons if advance approval is obtained from the appropriate  
22 board. Exercise of this authority is contingent upon the adoption of  
23 regulations by joint action of the Board of Fisheries and the Board of  
24 Game establishing areas of advisory committee jurisdiction, procedu-  
25 governing emergency closures by a committee, and other necessary limi-  
26 tations.

27 \* Sec. 4. AS 16.05.315 is amended to read:

28 Sec. 16.05.315. JOINT BOARD MEETINGS. The boards of fisheries and  
29 game shall [MAY] hold a joint meeting upon the call of the commissioner

1 or a board and shall [TO] resolve any conflicts in regulations of the  
2 boards or any other matters [AND TO CONSIDER MATTERS], as determined by  
3 the commissioner or a board, which require the action [CONSIDERATION] of  
4 both boards.

5 \* Sec. 5. AS 16.05.320 is amended to read:

6 Sec. 16.05.320. QUORUM. (a) A majority of the members of a  
7 board constitutes a quorum for the transaction of any business, for the  
8 performance of any duty, and for the exercise of any power. However, a  
9 majority of the full board membership is required to carry all motions,  
10 regulations, [AND] resolutions, and delegations of authority.

11 (b) A majority of the members of each of the boards of fisheries  
12 and game constitutes a quorum for the transaction of any business, for  
13 the performance of any duty, and for the exercise of any power in a  
14 joint board meeting. A majority of the full board membership of each  
15 of the boards is required to carry all joint motions, regulations, [AND]  
16 resolutions and delegations of authority of the boards.

David Namlook - Toqiaks  
Game Unit 17

Walrus - Marine Mammal Act

Walrus Is Any studies on Walrus Ecosystem

No Open season in 17

Other Regions have open seasons

1974 - hunting party to Walrus Is

Nuchagak Advisory Board

March 29, - Game Board Meeting

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# Phil Smith - Rural Cap

Support Speckin's effort generally

1. Abolish Advisory Bd
2. Establish Regional Ecl - Powers + Duties  
A. here + fire staff
3. Escape Clause - to over-rule Regional Bd
4. New Boundaries + REAA + Boroughs
5. Advisory Committees that might be  
joint between 2 Reg Boards
6. Funding of Boards
7. Make-up of Boards  
Elect Members by Public

---

Frank's Woods - New Stuyahok

- ① No funding for local Advisory Committee  
To meet in rural areas
- ② Village representatives
- ③ Making regulations based on  
People Moving in as opposed to People  
Living here

Reintroduced

HB 67...

January 14, 1977

The Honorable Hugh Malone  
Speaker of the House  
Alaska State Legislature  
Juneau, Alaska 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 18 of the Alaska Constitution, and in accordance with AS 24.30.060(b) and the Uniform Rules of the Alaska State Legislature, I am transmitting a bill to make corrections to AS 16 which are necessary because of defects or oversights in ch. 206 SLA 1975, which split the Board of Fish and Game into separate Boards of Fisheries and Game. Failure to adopt these changes will very seriously jeopardize the future viability of the split-board arrangement, with the likelihood of concurrent adverse consequences on conservation and management of fish and game resources of Alaska.

Section 1. Section 36, ch. 206 SLA 1975 (the split-board Act), which added AS 39.05.060(c)(6), provided for initial staggered terms for members of the Boards of Fisheries and Game. However, sec. 40 of that Act repealed AS 16.05.230, which set the term of members of the Board of Fish and Game at four years. Unless a correction is made, there will be no statutory specification of the length of terms for members of the Boards of Fisheries and Game after the initial staggered-term period has concluded. The amendment contained in sec. 1 of this bill would reinstitute the previous system of four-year terms for board members.

Section 2. This section of the bill would make alterations to AS 16.05.260, as amended by the split-board Act, which pertains to advisory committees.

Subsection (a) would clarify an ambiguity in sec. 260 as to whether there will be independent advisory committees dealing with fish or game (but not both) and reporting only to one of the boards, or whether the previous system of combined fish and game advisory committees is to be retained. This amendment would insure that the prior system is continued.

Subsection (b) would alter the manner in which advisory committees interact with the boards. Before enactment of the split-board law, advisory committees were only required to make their recommendations to the Board of Fish and Game, and the board itself was under no duty to respond to those recommendations. Under the split-board law, however, if a board chooses not to follow the recommendation of the local advisory committee, the appropriate board must inform the appropriate advisory committee of this action and state the reasons for not following the recommendations. Such a requirement must be realistic and practical in terms of the customary operating procedures and capabilities of the boards. At the present time, there are over 50 local advisory committees, any one of which may make dozens of recommendations at any given board meeting. In areas where advisory committees are concentrated, more than one advisory committee may venture an opinion on a particular proposal. Declaring that a board must "inform" each committee of the nature of its actions creates a monumental clerical task which the boards and the department are ill equipped to handle.

An equally troublesome aspect of the 1975 law is the requirement that the board "state the reasons for not following the recommendations." On a seven-member board, individual members may have differing reasons for rejecting a position taken by an advisory committee.

Therefore, the alteration proposed in this bill would simply require that the formal record of the board meeting reflect the reasons for rejecting an advisory committee recommendation.

Subsection (c) addresses the question of advisory committee closures of established seasons. This power existed under the pre-1975 AS 16.05.260. However, the split-board Act removed the commissioner's ability to override a closure order issued by an advisory committee. By eliminating this safeguard, the current provision is probably an unconstitutional delegation of the regulatory powers of the legislature to what amounts to a private party. Although there are many constitutional questions surrounding delegations of power and the law is not often clear on the subject, the courts of many states have frowned upon delegations to a nongovernmental body of the power to impose regulations carrying criminal penalties for violations

*have already done  
Formalizer*

where there is no ability by a governmental agency to review and, if necessary, reject the action of the private entity. The proposed amendment would more-or-less return to the approach contained in the original sec. 260 except that the appropriate board (rather than the commissioner) would be empowered to disapprove an emergency closure. An additional change would insure that both boards, in joint session, would make the rules governing the closures, so as to be consistent with the clarification presented in subsection (a) of this section in the bill that advisory committees will continue to be combined fish and game committees.

Section 3. It is anticipated that there will be a number of situations in which the boards should hold joint meetings, including conflicts between regulations, differences in policy, differences in direction to the department, and situations where AS 16 requires that action be taken by both boards. Unfortunately, AS 16.05.315, as enacted by the split-board Act, places the boards under no statutory obligation to resolve their differences. Moreover, when the boards are not in session, it places the department in the position of having to absorb the criticism for non-action when the department has no legal authority to take action. If the boards are to be vested with the rulemaking authority over fish and game resources, then the law should clearly place upon them the burden to resolve matters which require their joint consideration. Section 3 of the attached bill would help solve these problems by requiring joint meetings and resolution of conflicts. Since the number of occasions where joint meetings will be necessary is expected to increase rather than decrease, it is important that this change be effected immediately.

*Joint Meetings*

Section 4. A further problem in the split-board Act concerns quorums necessary for action at joint board meetings. AS 16.05.320, as amended in 1975, refers only to a "majority of the membership of the boards" as being required for a joint board decision. It provides no clue as to whether this means any eight board members (regardless of which board they belong to) or whether it demands concurrence from the majority of the membership of each board (four from one and four from the other). Since joint board meetings are for the purpose of providing for joint board action on matters of concern to both boards, it would appear necessary and proper to require that a majority of both boards concur in any decision reached, and the proposed

*Sanctions  
existing  
Procedure*

amendment so provides. In addition, the amendment includes specific reference in the quorum section to delegations of authority (regarding the procedure authorized in AS 16.05.270) in order to make certain that a majority of the full membership of a board is required to make a delegation.

Sincerely,

Jay S. Hammond  
Governor

In addition, the Board of Fisheries shall hold at least one meeting annually in each of the following general areas:

- 1) Upper Yukon - Kuskokwim - Arctic
- 2) Western Alaska (including Kodiak)
- 3) Southcentral and Prince William Sound
- 4) Southeast.

At least a majority of the full membership of the board shall be present at each meeting. Consideration of regulations pertaining specifically to any of the above areas shall be undertaken at the meeting held in that area.

Effect of amendment. — The 1975 amendment, effective July 1, 1975, substituted "a board" for "the board" twice, inserted "\$100," and deleted "allowed by law" following "per diem."

Sec. 16.05.300. Board meetings. (a) Each board shall hold at least one meeting a year and as many other meetings as it considers necessary. Each board shall select the time and place in the state for the transaction of business. Each board shall maintain its office at the principal office of the department.

(b) In addition, the Board of Fisheries shall hold at least one meeting or hearing a year in each of the following general areas:

- (1) Upper Yukon — Kuskokwim — Arctic
- (2) Western Alaska (including Kodiak)
- (3) Southcentral
- (4) Prince William Sound (including Yakutat)
- (5) Southeast. (§ 9 art I ch 94 SLA 1959; am § 1 ch 82 SLA 1968; am § 7 ch 206 SLA 1975)

Effect of amendment. — The 1975 amendment, effective July 1, 1975, designated the provisions of this section as subsection (a), substituted "Each board" for "The board" at the beginning of the first, second and third sentences of that subsection, and added subsection (b).

Sec. 16.05.305. Clerical assistance for boards. The Board of Fisheries and the Board of Game are authorized to hire and set the compensation for one clerical assistant for each board. (§ 8 ch 206 SLA 1975)

Effective date. — Section 42, ch. 206, SLA 1975, provides: "This Act takes effect July 1, 1975."

Sec. 16.05.310. Special board meetings. A board may meet at any time upon the call of the commissioner or upon the request of two board members. (§ 6 art I ch 94 SLA 1959; am § 9 ch 206 SLA 1975)

Effect of amendment. — The 1975 amendment, effective July 1, 1975, substituted "A board" for "The board" at the beginning of the section.

Sec. 16.05.315. Joint board meetings. The boards of fisheries and game may hold a joint meeting upon the call of the commissioner or a board to resolve any conflicts in regulations of the boards and to consider matters, as determined by the commissioner or a board, which require the consideration of both boards. (§ 10 ch 206 SLA 1975)

Effective date. — Section 42, ch. 206, SLA 1975, provides: "This Act takes effect July 1, 1975."

House Judiciary  
February 23, 1977

The meeting was called to order at 7 p.m. by Chairman, Gardiner. Members present were Gardiner, Dankworth, Miles, Specking, Rudd and Brown. Mr. Elaison was absent.

HB 67 Uniform Land Sale Act

HB  
67

Mr. Dankworth mentioned that he had heard from the Anchorage realtors that they don't necessarily go along with the offered amendments #1 and #2. In protecting them, these amendments don't really change the bill. There was some discussion about this, after which the two amendments were adopted by the committee. (Amendments proposed by the Dept. of Commerce and Econ.Dev.)

Mr. Specking moved that the bill be moved out of committee. There was one objection, but the motion carried and the bill was moved out of committee

HB 187 Liens for towing and storage of motor vehicles

HB  
187

Larry Veneble, from the Alaska Carriers Association, was here to testify in favor of the bill. He suggested that the committee amend the bill to illiminate the fixed charge of \$1.50 per day. He also suggested that section 2 be deleted.

Following a brief discussion, Mrs. Rudd moved that sections 2 and 3 be deleted. The motion carried.

Mr. Brown moved that the bill be moved out of committee. The bill will be moved out after the committee substitute has been drafted.

HB 112 Appropriation for capital improvements within  
the court system

HB  
112

Mr. Brown suggested that the amount on line 14 be reduced to \$60,000. He felt that the Finance Committee would then reduce this figure even further. There was a motion made to this effect.

Mrs. Rudd requested that the bill include a committee report to explain that it is the committee's intent that the site selection committee's funds come out of the \$60,000.

Mr. Brown moved that the bill be moved out of committee. The motion did not carry. Mr. Dankworth was especially highly opposed to the bill. A somewhat heated discussion followed. The bill was tabled until further notice.

House Judiciary  
February 23, 1977 (con't)

HB 62 Boards of fisheries and game

HB  
62

Phil Smith, Executive Director of the Rural Alaska Community Action Program (Rural CAP), was here to testify. He endorsed the CS for HB 62. He suggested that perhaps the powers of the advisory boards should be separate:

1. Boards should continue with responsibility; advisory board structure abolished and have regional boards.
2. Make up of board should be that the members are elected and in some areas they should be an at large election. Suggested a publically conducted election- present system doesn't work.

Frank Woods, of the Subsistence Resource Council, was here to testify. He indicated that the present advisory board system has not worked. He would like to see someone from a village in each district on the board to rightfully represent and understand the problems.

David Nanalook, from the village of Togiak in the Bristol Bay area was here also representing the Subsistence Resource Council. He backed up Wood's testimony that rural Alaska is being overlooked.

George Allen, from Rural CAP spoke indicated that it should be considered what authority to give the advisory committees, keeping the rural individuals in mind.

This bill will be considered further at a later date.

The meeting was adjourned at 9:00 p.m.

HB

63

GENERAL ANALYSIS OF

HOUSE BILL NO. 63

House Bill No. 63 would amend AS 13.26 relating to Guardians of Incapacitated Persons, to institute a new concept in guardianship law. Alaska's Title 13, is based upon the Uniform Probate Code, and both contain express provisions for only the appointment of a guardian for incapacitated persons who is given complete control of his ward's care and living arrangements, and total authority to act in the ward's place in matters of law where incapacity is a problem.

However, the latest thinking on the handling of persons who may because of certain handicaps require assistance in their maintenance and performance of actions having legal effect, is that there are many degrees of incapacity and not all of them require total guardianship. At the same time, they see a benefit in permitting such a handicapped individual to exercise as much responsibility as he is capable of in ordering his affairs.

The authors of the Uniform Probate Code, believe that it, and state statutes based upon it, contain implicit authority for the appointment and service of "partial" as well as "plenary" or full guardians. As far as can be ascertained no partial guardians have ever been used in this state, so those advocating their appointment, where appropriate, have urged that express language be inserted in the Alaska statute to encourage the adoption of this concept by creating a greater awareness of its possibilities.

(Sections 1 and 2)

The amendment proposed in these two sections does not address the partial guardian concept directly, but would merely include in the chapters definition of

"incapacitated person" one who is impaired by reason of a developmental disability as well as mental illness, deficiency or retardation. Still retained would be impairment from "physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, or other cause (except minority)". Section 2 then defines "developmental disability". Since AS 13.26.005(1) uses the language "or other cause (except minority)" there is no real expansion of scope, but the condition of "developmental disability" is given equal emphasis with the other named causes.

Section 2 is also where the terms "partial" and "plenary" as applied to guardians, are defined. A "partial guardian" would have less than all of the legal rights and powers of a plenary guardian — just which ones would be specified by the court order appointing him.

(Section 3)

This would insert a purpose section restricting guardianship to only "the extent necessitated by the individual's actual mental and adaptive limitations."

(Section 4)

Because AS 13.26 treats of guardians appointed by will as well as those named by the courts, provision is made here for reconciling the partial guardianship with that set up in a will when the condition of the ward at the time of the testator's death could not be known. This section would provide that a guardian named by a will would have "plenary guardian" powers until the court determines whether the powers of a "partial guardian" would be adequate, or whether no guardian is required at all.

(Section 5)

This section rewrites AS 13.26.105, but mainly to set out in great detail and chronological order the steps in the procedure for appointment of a guardian. About the only substantive change is to require a recommendation proposing the "type and scope" of guardianship services needed.

(Section 6)

This section expands AS 13.25.110 by inserting a more detailed description of the hearing procedure, but in a new provision requires the court to consider the feasibility of a partial guardian, before a plenary guardian is appointed.

(Section 7)

This is a new section requiring the court order establishing partial guardianship to contain the findings of fact that indicate its desirability; define the powers and the duties of the guardian that will be most beneficial to the ward, and set out the specific legal disabilities to which the ward is subject. It also contains a provision formerly in AS 13.26.105, for examining the proposed living arrangements for the ward. A new requirement would be for all guardians to inform the court when they have placed their wards outside of the ward's home, whether or not the placement has resulted from a court order. This will let the court know of the location of all placements, so that they cannot be hidden away.

(Section 8)

AS 13.35.120 would be amended to provide that a guardianship would end at the expiration of the period set in the court order, in addition to the other termination triggers now in that section such as the death of the ward, or the death or incapacity of the guardian or his removal or resignation.

(Section 9)

This amendment would permit the court to reduce or increase the authority of the guardian, as well as to remove or replace him, in response to a petition by the guardian as well as the present provision for the ward or other persons interested in the ward's welfare. This section would also eliminate a one year

period which had to elapse if the court did not grant special leave to petition for an adjudication that the ward was no longer incapacitated. The petition would not be able to be filed at any time, and could ask that more if not total responsibility could be given to the ward.

(Section 10)

This adds to the persons who must be notified of an appointment or modification proceeding. The present law calls for only notice to the guardian, ward, and ward's immediate family, while the amendment would expand the notice provision to the petitioner, anyone who made an evaluation for the petition's report, the director of a facility where the ward is living, and the ward's guardian ad litem if one has been appointed for him.

(Section 11)

A new subsection in AS 13.26.135 would require the court to try to make the ward understand that he could petition later for the reduction or elimination of guardianship, and for the ward to be given written information concerning the petition procedure.

(Section 12)

As temporary guardians are also treated in AS 13.26, this section provides that their powers and duties shall be specified in a court order, instead of being set out in AS 13.26.140 as they are now. This language was eliminated to comport with the partial guardian approach where the powers are contained in the court order.

(Section 13)

This change would add qualified guardianship agencies to the list of potential guardians, but would not permit the court to appoint the agency having director care, to also be guardian because of a possible conflict of interest.

(Section 14)

This section would require a report annually on the condition of the ward and his estate, and provides that it evaluate the ward's condition comprehensively, describe his current living arrangements, indicate the need if any for continued guardianship services, and any other information the court requests or the guardian thinks is pertinent.

(Section 15)

Would amend AS 13.26.170 to permit the consolidation of guardianship and protective proceedings required for the same person. Protective proceedings refers to the appointment of a conservator to manage the property of an incapacitated person.

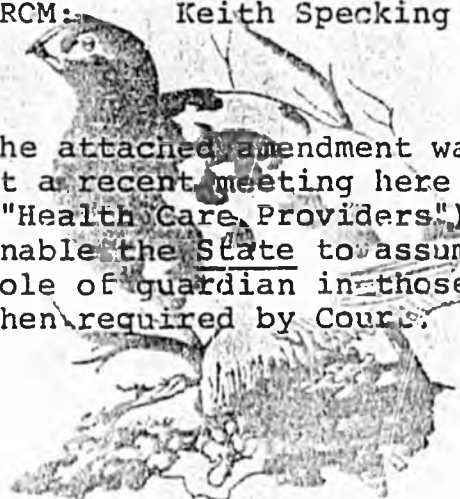
SUMMARY

This measure would not change any rules of court because there are no rules at this time on the subject of guardians, as the probate forms for this procedure cite the statutes in AS 13.26 rather than a court rule, and the probate rules are extremely brief because they rely largely on the civil rules. Thus a two-thirds majority vote of each house is not needed, and a simple plurality will suffice.

# from the desk of . . .

Representative Keith Specking

MEMO TO: Terry Gardiner  
FROM: Keith Specking



The attached amendment was adopted at a recent meeting here in Juneau ("Health Care Providers") to enable the State to assume the role of guardian in those instances when required by Court.

Compliments of Alaska Legislative Report  
four fifteen "L" Street Anchorage, Alaska 99501 (907)279-4531

Offered to:  
HOUSE BILL NO. 63

Page 8 , line 15

change period to comma and add

"except as provided in sec. 158 of this chapter."

Page 9, between lines 11 and 12:

insert the following:

# Sec. 15. AS 13.26 is amended by adding new sections to read:

AS 13.26.158. PUBLIC GUARDIAN. There is created the Office of Public Guardian which is located for administrative purposes only in the Department of Health and Social Services. It is completely independent of, and has no functional relationship with any other agency of that department which has the custody of minors or other incapacitated persons who may require guardians. When appointed guardian by the court, the public guardian has the same powers and duties as private guardians under this chapter.

AS 13.26.160. WHEN PUBLIC GUARDIAN MAY BE APPOINTED. The court may appoint the public guardian as a last priority under sec. 145 (b)(6) of this chapter when there is no person or private institution or agency willing or qualified to act as guardian, including those listed in sec. 145(b)(1) - (6) of this chapter.

AS 13.26.162. REIMBURSEMENT FOR PUBLIC GUARDIAN'S FEES. An incapacitated person for whom the public guardian is appointed is liable for the costs of service rendered by the public guardian according to ability to provide payment. Unpaid fees for the services rendered by the public guardian constitute a debt to the state and are a preferred claim against the estate of the ward after death.

Page 9, line 12:

Change "Sec.15" to read "Sec. 16".

# STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

*Committee files*

JAY S. HAMMOND, GOVERNOR

POUCH H 01 - JUNEAU 95311

Document# HJC #3

May 10, 1977

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

Dear Mr. Gardiner;

Enclosed is an amendment to HB 63. Guardians for Incapacitated Persons.  
Although I am to understand that this bill will carry-over until the Second  
Session, I wanted your committee to be in receipt of the amendment.

Sincerely,

*Sue Harris*

*for* David W. Freer  
Special Assistant to  
the Commissioner

Enclosure as noted.

AMENDMENT

1 Offered to:

2 HOUSE BILL NO. 63

3  
4 Page 9, between lines 11 and 12:

5 Insert:

6 \* Sec. 15. AS 13.26 is amended by adding a new section to read:

7 AS 13.26.158. PUBLIC GUARDIAN. There is created in the Depart-  
8 ment of Health and Social Services an Office of Public Guardian. When  
9 appointed guardian by the court, the public guardian has the same  
10 powers and duties as private guardians under this chapter.

11 \* Sec. 16. AS 13.26 is amended by adding a new section to read:

12 AS 13.26.160. WHEN PUBLIC GUARDIAN MAY BE APPOINTED. The court  
13 may appoint the public guardian as a last priority under sec. 145(b)(6)  
14 of this chapter when there is no person or private institution or  
15 agency willing or qualified to act as guardian, including those  
16 listed in sec. 145(b)(1) - (6) of this chapter.

17 \* Sec. 17. AS 13.26 is amended by adding a new section to read:

18 AS 13.26.162. REIMBURSEMENT FOR PUBLIC GUARDIAN'S FEES. An  
19 incapacitated person for whom the public guardian is appointed is  
20 liable for the costs of services rendered by the public guardian on a  
21 sliding-fee scale according to ability to provide payment. The  
22 sliding-fee scale shall be established by regulations adopted by the  
23 Department of Health and Social Services. Unpaid fees for the services  
24 rendered by the public guardian constitute a debt to the state and are  
25 a preferred claim against the estate of the patient after death.

26  
27 Page 9, line 12:

28 Change "Sec. 15" to read "sec. 18".

AMENDMENT

1 Offered to:

2 HOUSE BILL NO. 63

3

4 Page 9, between lines 11 and 12:

5 Insert:

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25 a preferred claim against the estate of the patient after death.

26

27 Page 9, line 12:

28 Change "Sec. 15" to read "sec. 18".

29

POSITION PAPER

HOUSE BJLL NO. 63

"An Act relating to guardianship of incapacitated persons."

House Bill No. 63 would assist long-term care facilities within the State of Alaska in promoting and protecting the well-being of a person found to be incapacitated. This bill would also aid long-term care facilities in correctly monitoring and accounting for patient monies. There are currently no adequate safeguards or guidelines, other than federally imposed regulations, governing this area.

The Department of Health and Social Services recommends amending House Bill 63 to further insure that long-term care patients are guaranteed protection of their personal monies, property and rights when their mental or physical condition does not allow them to act for themselves in a sound and wise manner. Public guardians are currently needed for at least 285 patients, or 42% of a total of 673 nursing home patients. The appointment of a public guardian would establish controls for the honest and forthright spending and accounting of patient monies for personal and medical needs. The proposed amendment, as attached, would add three new subsections to AS 13.26. The proposed language would: (1) establish a court appointed public guardian when there is no person, agency or private institution willing or qualified to otherwise act as guardian; (2) create an Office of Public Guardian within the Department of Health and Social Services to perform this function; and finally, (3) establish a procedure for reimbursing the Public Guardian's fees.

The Department of Health and Social Services strongly supports House Bill 63 with the inclusion of the attached proposed amendments.

Recommended by:

Richard R. Wilson  
Richard R. Wilson, Director  
Division of Public Assistance

2-24-78  
Date

Helen D. Beirne  
Helen D. Beirne, Commissioner  
Department of Health & Social Services

3-1-78  
Date

1 Offered to:

2 HOUSE BILL NO. 63

3  
4 Page 9, between lines 11 and 12:

5 Insert:

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7 AS 13.26.158. PUBLIC GUARDIAN. There is created in the Depart-  
8 ment of Health and Social Services an Office of Public Guardian. When  
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10 powers and duties as private guardians under this chapter.

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21 sliding-fee scale according to ability to provide payment. The  
22 sliding-fee scale shall be established by regulations adopted by the  
23 Department of Health and Social Services. Unpaid fees for the services  
24 rendered by the public guardian constitute a debt to the state and are  
25 a preferred claim against the estate of the patient after death.

26  
27 Page 9, line 12:

28 Change "Sec. 15" to read "sec. 18".

FISCAL NOTE

I. REQUEST

Bill/Resolution No. House Bill No. 63  
 Title "An Act Relating to Guardianship of Incapacitated Persons"  
 Requested by \_\_\_\_\_ Date January 10, 1978

II. FISCAL DETAIL

Agency Affected Department of Health and Social Services  
 Program Category Affected Social Services  
 Budget Request Unit(s) Affected Office of Internal Review

EXPENDITURES (Thousands of Dollars)

	FY 78	FY 79	FY 80	FY 81	FY 82	FY 83
100 PERSONAL SERVICES		53.3	56.5	59.9	63.5	67.3
200 TRAVEL		3.2	3.4	3.6	3.8	4.0
300 CONTRACTUAL		3.5	3.7	3.9	4.2	4.5
400 COMMODITIES		1.0	1.1	1.2	1.3	1.4
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		63.1	64.7	68.6	72.8	77.2

FUNDING (Thousands of Dollars)

	FY 78	FY 79	FY 80	FY 81	FY 82	FY 83
GENERAL FUND		63.1	64.7	68.6	72.8	77.2
FEDERAL FUNDS						
OTHER (Specify)						

POSITIONS

	FY 78	FY 79	FY 80	FY 81	FY 82	FY 83
FULL TIME		2	2	2	2	
PART TIME		0	0	0	0	
TEMPORARY		0	0	0	0	

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

A. Assumptions:

A constant 6% cost of living increase was used for fiscal years subsequent to FY 1978.

B. Program Summary:

New Positions. It is assumed two (2) positions will be required to carry out this new function as follows:

Class Title	Salary	Benefits	Equipment	Travel	Other Costs	Total
Guardianship Admin.	29.7	7.3	.8	3.2	2.7	43.7
Clerk Typist III	12.4	3.9	1.3	-0-	1.8	19.4

IV. DATE January 10, 1978 PREPARED BY Roger C. Lange  
 AGENCY Health and Social Services  
 PHONE 465-3331

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

*Rich Williams For*

# STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

*Judiciary got this*  
W. S. HAMMOND, GOVERNOR *pls*

POUCH H 01 - JUNEAU 99811

February 3, 1978

Legislature  
Document# General #15

The Honorable Charles Parr  
Alaska House of Representatives  
Capitol Building, Room 110  
Pouch V  
Juneau, Alaska 99811

Dear Mr. Parr:

Please find enclosed a copy of correspondence between a social worker in Fairbanks and this Office. The problem indicated therein is addressed in HB 63, "An Act relating to guardianship of incapacitated persons."

This Department is very much in favor of HB 63 and desires to see it become law. The legislation would establish adequate safeguards for the handling and accounting of patient monies. A January 1977 survey indicated 42% of nursing home patients are in need of such guardianship. While protecting the mental, physical, and financial rights of the mentally incompetent, this legislation will also protect the nursing care facilities from liabilities they would otherwise incur in attempting to handle large sums of patient monies.

House Bill 63 is currently in the House Judiciary Committee. If you feel, as we do, that this is an important and needed piece of legislation, please encourage your colleagues on the House Judiciary Committee to consider HB 63.

Thank you for your attention in this matter.

Sincerely,

*Helen D. Beirne*

Helen D. Beirne  
Commissioner

Enclosure

# STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

## DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

POUCH H 01 - JUNEAU 93811

January 17, 1978

Angie Hage  
Social Worker  
Careage North Convalescent Center  
P.O. Box 847  
Fairbanks, Alaska 99707

Dear Ms. Hage:

In response to your letter of December 21, 1977 regarding Tom Martin, Mr. Martin was placed in our custody on December 9, 1977 and we were ordered to place him in Careage North or other suitable facility. Arrangements were made for his admission to your facility and he was subsequently admitted.

While Mr. Martin has been placed in our custody I am hesitant to delegate anyone to manage his "belongings or financial affairs" as these are functions normally delegated to a guardian or conservator, and neither of these functions have been specifically delegated to this department.

Also, we are seeking clarification as to the duties, responsibilities and authorities incumbent upon the "custodian" of an adult. While these areas are relatively clear in cases involving minors there is ambiguity in similar situations involving adults.

Our social worker will continue to assist in helping Mr. Martin, or a responsible, concerned individual or organization, to manage his personal property and financial affairs until a more satisfactory solution can be worked out.

I appreciate your concern and hope that we can work together in developing a constructive arrangement for Mr. Martin.

Sincerely,

*Helen D. Beirne*  
Helen D. Beirne  
Commissioner

HDB/AH/gj

# CAREAGE NORTH CONVALESCENT CENTER

POST OFFICE BOX 1001 (ZIP CODE 99707)  
FAIRBANKS, ALASKA

(A Division of Ridgeview Care Corporation)  
1919 CHILAM WAY (ZIP CODE 99701)  
TELEPHONE (907) 452-1921

December 21, 1977



Commissioner Helen Beirnes  
Department of Health and Social Services  
Room 101  
Juneau, AK 99811

Dear Commissioner Beirnes:

I am the Social Worker at Careage North Health Care Center in Fairbanks where Mr. Tom Martin is currently a patient. Mr. Martin was committed to the custody of the Commissioner, Department of Health and Social Services, Division of Social Services for an indeterminate period of time and was placed at Careage North. I am assuming that as Commissioner you will be appointing someone to manage Mr. Martin's affairs. Currently, Everett Jackman, a State Social Worker here in Fairbanks is following Tom's case and arranged for his admission to our facility. Everett Jackman seems to be temporarily acting as a guardian until one is appointed.

I would appreciate your response regarding whom you would designate to be responsible for Mr. Martin's affairs. Mr. Martin had previously been a patient at Careage North about two years ago and caused many hassles regarding financial matters, personal belongings, etc. Careage North is unwilling to assume responsibility for his belongings, financial matters, etc. I am waiting for your immediate response to this matter.

Sincerely,

Angie Hage  
Social Worker

CAREAGE NORTH HEALTH CARE CENTER

AH/tlg

14363

January 14, 1977

The Honorable Hugh Malone  
Speaker of the House  
Alaska State Legislature  
Juneau, Alaska 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 18, of the Alaska Constitution, and in accordance with AS 24.30.060(b) and the Uniform Rules of the Alaska State Legislature, I am transmitting a bill relating to the appointment of guardians for incapacitated persons. It combines several of the provisions of House Bills No. 645 and 734 of the Ninth Alaska Legislature.

The principal effect of this measure would be to provide specifically for two types of guardian for incapacitated persons. A plenary guardian with full responsibility could be appointed, as is done now, for totally incapacitated persons. This bill would also provide for a partial guardian with limited guardianship powers to be appointed for persons whose incapacity is less than total. That authority is implicit in the present statutes (see AS 13.26.110 and 13.26.150), but the bill would set it out explicitly because the courts seem reluctant to act in this way without further direction from the legislature.

It is hoped that the effect of such a change would be to encourage the appointment of guardians for those who are not totally incapacitated to provide assistance not now available, and to give the incapacitated person the opportunity to exercise legally all the functions of which he is capable. The bill would also permit the scope of the guardianship to be reduced or expanded in proportion to the changing capacity of the person. And it would assure that a guardian, whether plenary or partial, and whether court appointed or otherwise, gives notice to the court of his placement of the ward in any out-of-home living situation, if it has not been ordered by the court. This is intended to protect the

ward from simply being put away and forgotten.

These provisions on guardians apply to groups as well as to individuals. Under existing AS 13.26.105(a), a person interested in the welfare of an incapacitated person may petition the court for appointment of a guardian. Currently, AS 13.06.050(29) defines "person" to include an organization, and AS 13.06.050(27) defines "organization" to include "two or more persons having a joint or common interest." Nothing in our statutes prevents a group from petitioning the court or serving as a guardian. See AS 13.26.145. The amendments in sec. 13 of this bill further clarify this, and provide for public agencies to serve in this capacity; however, th's bill makes clear that a public or private agency providing direct care to the incapacitated person would not be permitted to serve as his or her guardian.

Sincerely,

Jay S. Hammond  
Governor

ALASKA STATE HOSPITAL ASSOCIATION

Keith Speckling  
789-9417

MARCH 16, 1977

Whereas The Alaska State Hospital Association represents hospitals & long term care facilities in the state of Alaska; and

Whereas Approximately 50% of residents living in long term care facilities are incapacitated\*; and

Whereas Approximately 98% of incapacitated residents have no legal guardians\*; and

Whereas Incapacitated long term care facility residents have personal needs and business affairs on a routine basis in the areas of health, finance, living arrangements & correspondence that require timely and immediate decisions & action; and

Whereas The health facility administrator currently and frequently acting in necessity without the protection of legal appointment must perform functions commonly reserved for guardians to protect the patient's best interest; and

Whereas It is not appropriate for a public or private agency providing direct care to act as or be appointed guardian;

Therefore Be it resolved that the Alaska State Hospital Association supports HB#63 in the tenth legislature of the state of Alaska first session "An Act Relating to Guardians of Incapacitated Persons;" However; because of the needs of incapacitated residents, be it further resolved that an amendment be requested of the legislature to encompass the following:

1. A guardian of last resort be established within the state government.
2. The guardian of last resort must be physically available within the areas of residence to have contact with patient's & meet recognized needs and assess possible problem areas.
3. That the court system be required to hear petitions of incapacitation within two weeks of receipt and appointment of a guardian to be made within an additional two weeks.
4. ~~Recommend~~ The effective date of legislation be as soon as passed.



# Alaska State Legislature

## House of Representatives

### Committee on Judiciary

Official Business

Pouch V  
State Capitol  
Juneau, Alaska 99811

To: Charlie Parr, Chairman, and Members of the House Judiciary  
Committee

From: Margaret W. Berck, Staff

Date: March 26, 1980

Re: Fiscal Information from court system relative to HB 572

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Mr. Rick Barrier of the Alaska Court System furnished the following fiscal information relative to HB 572 to me over the phone this date. Mr. Barrier stated that the information was his "best guess" at what this bill would cost the court system. A formal fiscal note from the court system is forthcoming.

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#### POSITIONS:

Anchorage -- two guardian/visitors at range 16.

-- one accounting clerk at range 10.

Fairbanks -- one guardian/visitor at range 16.

-- one accounting clerk at range 10.

Juneau -- one guardian/visitor at range 16.

--one accounting clerk at range 10.

Ketchikan -- one assistant guardian/visitor at range 14.

ANNUAL COSTS FOR NEW COURT SYSTEM PERSONNEL-----\$242,000.

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\$40,000 -- for contract guardians/visitors, experts, others.

\$50,000 -- for respondents' attorney costs.

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COMMODITIES AND EQUIPMENT FOR NEW EMPLOYEES:

\$12,000.

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TOTAL \$364,000.

AMENDMENT #1

OFFERED IN THE HOUSE:

By: Heck

To: \_\_\_\_\_ HOUSE BILL No. 63

SENATE BILL No. \_\_\_\_\_

PAGE: 1

LINE: 11 & 21

Line 11 - After word "deficiency" insert ", mental retardation" and change the word "development" to "developmental".

Line 21 - beginning of line should have "significant" inserted and the word "or" changed to "and".

# COMMITTEE REPORT

JUDICIARY

1-17-77

## HOUSE

1-31-77

Date

Mr. Speaker:

The Committee on HESS has had HB 63

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
- AND attaches a report of its intent
- (other) \_\_\_\_\_

MEMBERS SIGNING THE MAJORITY REPORT:

Charles H. P. Do Pass      Walter Do Pass  
Don Bennett Do Pass      Russell E. Bell Do Pass  
John D. ... Do Pass      Mike ...  
C. J. ... Do Pass

MEMBERS NOT CONCURRING IN THE MAJORITY REPORT:

Al ... recommends: \_\_\_\_\_  
 \_\_\_\_\_ recommends: \_\_\_\_\_  
 \_\_\_\_\_ recommends: \_\_\_\_\_

Charles H. P.  
 Chairman

AMENDMENT # 1

OFFERED IN THE HOUSE:

By: Heis

To: \_\_\_\_\_ HOUSE BILL No. 63

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PAGE: 1

LINE: 11 & 21

Line 11 - After word "deficiency" insert ", mental retardation" and change the word "development" to "developmental".

Line 21 - beginning of line should have "significant" inserted and the word "or" changed to "and".

becomes effective when, after having given seven days prior written notice of his intention to do so to the incapacitated person and to the person having his care or to his nearest adult relative, the guardian files acceptance of appointment in the court in which the will is informally or formally probated. An effective appointment by a spouse has priority over an appointment by a parent unless it is terminated by the denial of probate in formal proceedings.

(c) This state recognizes a testamentary appointment effected by filing acceptance under a will probated at the testator's domicile in another state.

(d) On the filing with the court in which the will was probated of written objection to the appointment by the person for whom a testamentary appointment of guardian has been made, the appointment is terminated. An objection does not prevent appointment by the court in a proper proceeding of the testamentary nominee or any other suitable person upon an adjudication of incapacity in proceedings under §§ 100—155 of this chapter. (§ 1 ch 78 SLA 1972)

Sec. 13.26.100. Venue. The venue for guardianship proceedings for an incapacitated person is in the place where the incapacitated person resides or is present. If the incapacitated person is admitted to an institution under order of a court of competent jurisdiction, venue is also in the judicial district in which that court sits. (§ 1 ch 78 SLA 1972)

Sec. 13.26.105. Procedure for court appointment of a guardian of an incapacitated person. (a) The incapacitated person or any person interested in his welfare may petition for a finding of incapacity and appointment of a guardian.

(b) Upon the filing of a petition, the court shall set a date for hearing on the issues of incapacity and unless the allegedly incapacitated person has counsel of his own choice, it shall appoint an appropriate official or attorney to represent him in the proceeding, who shall have the powers and duties of a guardian ad litem. The person alleged to be incapacitated shall be examined by a physician appointed by the court who shall submit his report in writing to the court and be interviewed by a visitor sent by the court. The visitor also shall interview the person seeking appointment as guardian, and visit the present place of abode of the person alleged to be incapacitated and the place it is proposed that he will be detained or reside if the requested appointment is made and submit his report in writing to the court. The person alleged to be incapacitated is entitled to be present at the hearing in person, and to see or hear all evidence bearing upon his condition. He is entitled to be present

SECTION  
C E D

SECTION  
E

SECTION  
F

by counsel, to present evidence, to cross-examine witnesses, including the court-appointed physician and the visitor, and to trial by jury. The issue may be determined at a closed hearing without a jury if the person alleged to be incapacitated or his counsel so requests. (§ 1 ch 78 SLA 1972)

Jurisdiction. — The jurisdiction of the court to appoint guardians for insane and incompetent persons is derived from the statute, and in order to obtain such jurisdiction it must affirmatively appear that the essential provisions of the statute are complied with. *Martin v. White*, 146 F. 461 (9th Cir. 1906).

The matter of the appointment of a guardian for the person and estate of an insane person is peculiarly within the equitable jurisdiction of the court; it is a proceeding for his benefit and for the protection of his estate. *White's Guardian v. Martin*, 2 Alaska 471 (1905).

Contestant of will has burden of showing lack of testamentary capacity. *Paskvan v. Mesich*, Sup. Ct. Op. No. 557 (File No. 913), 455 P.2d 229 (1969).

Evidence as to testamentary capacity.—Incompetency to make a will is not necessarily established by the fact that one has been adjudged an incompetent in a guardianship proceeding. But this fact is evidence to be considered, along with other evidence, on the issue of testamentary capacity. *Paskvan v. Mesich*, Sup. Ct. Op. No. 557 (File No. 913), 455 P.2d 229 (1969).

A decision of the issue as to testamentary capacity depended largely, if not entirely, on oral testimony given by witnesses seen and heard by the trial judge. It was his province to judge their credibility and the supreme court may not reverse his decision unless it finds it to be clearly erroneous. *Paskvan v. Mesich*, Sup. Ct. Op. No. 557 (File No. 913), 455 P.2d 229 (1969).

Sec. 13.26.110. Findings; order of appointment. The court may appoint a guardian as requested if it is satisfied that the person for whom a guardian is sought is incapacitated and that the appointment is necessary or desirable as a means of providing continuing care and supervision of the person of the incapacitated per-

Prima facie case of testamentary capacity. — Where a witness stated under oath that the will was signed by decedent in her presence and the presence of one other subscribing witness, that decedent then declared that the instrument was his last will and testament and that at the time of execution of the will decedent was of sound and disposing mind and was not acting under duress, menace, fraud, undue influence or misrepresentation, there was evidence that established a prima facie case of testamentary capacity; the burden was then cast upon the contestants of the will to show that testamentary capacity was lacking. *Paskvan v. Mesich*, Sup. Ct. Op. No. 557 (File No. 913), 455 P.2d 229 (1969).

Determination of insufficient mental capacity.—It was the determination of the supreme court that decedent did not have sufficient mental capacity to understand the nature and extent of his property, the natural or proper objects of his bounty, and the nature of his testamentary act. *Paskvan v. Mesich*, Sup. Ct. Op. No. 557 (File No. 913), 455 P.2d 229 (1969).

Commitment of an insane person pursuant to AS 12.45.110 is a separate proceeding from the appointment of a guardian of an insane person under this section. 1963 Op. Att'y Gen., No. 21.

Am. Jur. and ALR references.—25 Am. Jur., Guardian and Ward, § 17 et seq.

Mental condition justifying appointment of guardian, 17 ALR 1066.

HB

83

*Members files*

Thomas Taggart  
Postal Box 1195  
Seward, Alaska 99664  
28 April, 1977

Representative Terry Gardiner  
Pouch V  
Juneau, Alaska 99811

Dear Mr. Gardiner:

I am writing this letter in reference to HB83 which may be before your Judiciary Committee now, and which is a very important piece of legislation for people in the Seward area.

You are probably somewhat aware of the recent attempts by the City of Seward to annex up to 56 square miles of state land in this area. The City did manage to annex an area of 10 square miles which had only 8 permanent residents, and has given notice that it intends to eventually annex the remaining areas contrary to the wishes of nearly everyone in those areas.

The people of the rural areas of Seward (approximately 1000) would benefit greatly by passage of this bill, because it would finally give them a voice concerning which direction their future takes. This voice has been denied them in the past due to totally unresponsive legislators (Specking & Kerttula) and to an insensitive City Administration. It should be duly noted that the citizens who reside within the present Seward City Limits also voted overwhelmingly not to annex the outlying areas.

I am hopeful that the House Judiciary Committee will look favorably upon House Bill 83, and pass it on with high recommendations. This is a sorely needed piece of legislation.

Sincerely,



Thomas Taggart

HB

8

7

A M E N D M E N T

Offered in the HOUSE

By Carpenter and Brown

TO: HOUSE BILL NO. 87

Page 1, line 14, following "service", through line 16:

Delete the remainder of the sentence and insert:

if the power to use areawide taxes or other areawide revenues to finance special services of a service area has been acquired by holding an areawide election on the question. The vote on the question shall be tabulated in two separate classifications. One shall consist of all votes cast in the home rule and first class cities of the borough. The other shall consist of all votes cast in the remaining borough area. If the majority of votes cast in each classification is favorable, the power is adopted. After enactment of an authorizing ordinance the borough may make appropriations for the purpose authorized.

Page 1, line 22:

Following the word "perform", delete ". Grants so made shall be authorized by borough ordinance." and insert:

if the power to use areawide taxes or other areawide revenues for grants to cities has been acquired by holding an areawide election on the question. The vote on the question shall be tabulated in two separate classifications. One shall consist of all votes cast in the home rule and first class cities of

the borough. The other shall consist of all votes cast in the remaining borough area. If the majority of votes cast in each classification is favorable, the power is adopted. After enactment of an authorizing ordinance the borough may make appropriations for the purpose authorized.

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y STATE CAPITOL  
JUNEAU, ALASKA 99811  
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

April 3, 1978

SUBJECT: HB 87 - Grants from boroughs to service areas  
and cities.

TO: House Judiciary Committee

FROM: Billy G. Berrier, Director  
Division of Legal Services *BGB*

You have requested our opinion on whether the authorization for boroughs to finance from areawide revenues all or part of the special services provided by service areas and to make grants to cities contained in HB 87 is constitutional. In my opinion the authority granted is constitutional.

There are a host of arguments that may be raised against a revenue sharing program. These center around taxing one area for the benefit of other areas. Revenue sharing has long existed on federal and state levels and I see no difference of constitutional significance.

It could be argued that the constitutional provision in Sec. 5 of Article X of the state constitution which provides:

"The assembly may authorize the levying of taxes, charges, or assessments within a service area to finance the special services."

by negative inference prohibits financing special services by other means.

The power to impose differential taxes based upon differential services had been normally held unconstitutional leading to creation of single purpose units of local government and other avoidance devices. The constitutional convention therefore deliberately gave this power in order to obviate the problem and implement the strong constitutional policy of a minimum of local government units. There appears no indication that this was intended as the exclusive method of financing special services.

House Judiciary Committee  
April 3, 1978  
Page 2

Sec. 13 of Art. X set out a strong policy of local government cooperation. This would support my view that the quoted language is expansive of the power of boroughs rather than restrictive.

BGB:hjd

*Palmer McAuliffe*  
*put 2/3's vote requirement*

Introduced: 1/21/77  
Referred: Community & Regional  
Affairs and Judiciary

1 IN THE HOUSE

BY MALONE

HOUSE BILL NO. 87

IN THE LEGISLATURE OF THE STATE OF ALASKA

TENTH LEGISLATURE - FIRST SESSION

A BILL

2 For an Act entitled: "An Act relating to appropriations and grants from  
3 boroughs to service areas and cities; and providing  
4 for an effective date."

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

6 \* Section 1. AS 29.63.090(b) is amended to read:

7 (b) The assembly may levy or authorize the levying of taxes,  
8 charges, or assessments in service areas to finance the special services  
9 or may by ordinance authorize appropriations from areawide taxes or other  
10 areawide revenues to finance all or part of the special service and,  
11 after enactment of an authorizing ordinance, may make appropriations for  
12 the purpose authorized.

13 \* Sec. 2. AS 29.73 is amended by adding a new section to read:

14 Sec. 29.73.070. REVENUE SHARING GRANTS BY BOROUGHES. A home rule  
15 or general law borough of any class may make grants from areawide taxes  
16 or other areawide revenues to cities within the borough or service areas  
17 of the borough for a function the city or service area is authorized to  
18 perform. Grants so made shall be authorized by borough ordinance.

19 \* Sec. 3. AS 29.13.100 is amended by adding a new subsection to read:

20 30 (37) AS 29.73.070 (revenue sharing by boroughs)

21 \* Sec. 4. AS 29.48.210 is amended to read:

22 Sec. 29.48.210. EXPENDITURE OF BOROUGH REVENUES. Borough revenues  
23 levied and collected on an areawide basis by a home rule or general law  
24 borough may be expended on general administrative costs, [AND] on area-  
25 wide functions, and as authorized in AS 29.63.090(b) and 29.73.070 only.

1 Revenues levied and collected in the area outside cities only may be  
2 expended on general administrative costs and functions which render  
3 service to the area outside cities only.

4 \* Sec. 5. AS 29.53.010 is amended to read:

5       Sec. 29.53.010. GENERAL PROPERTY TAX. Home rule and general law  
6 boroughs may levy (1) an areawide property tax for areawide functions,  
7 for appropriations authorized under AS 29.63.090(b), for grants autho-  
8 rized under AS 29.73.070; and (2) a property tax limited to the area  
9 outside cities for functions limited to the area outside cities. A  
10 property tax if levied must be assessed, levied and collected on real  
11 and personal property as provided in this chapter.

12 \* Sec. 6. This Act takes effect immediately in accordance with AS 01.10.-  
13 070(c).

HB

97

Introduced: 1/21/77  
Referred: Commerce and  
Judiciary

1 IN THE HOUSE

BY THE RULES COMMITTEE BY  
REQUEST OF THE GOVERNOR

2 HOUSE BILL NO. 97

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to termination of financing statements  
7 under the Uniform Commercial Code; and providing for  
8 an effective date."

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

10 \* Section 1. AS 45.05.774(a) is amended to read:

11 (a) If there is no outstanding secured obligation and no commit-  
12 ment to make advances, incur obligations, or otherwise give value, the  
13 secured party must terminate a filed financing statement by filing  
14 [, ON WRITTEN DEMAND BY THE DEBTOR, SEND THE DEBTOR] a termination  
15 statement that he no longer claims a security interest under the  
16 financing statement, which shall be identified by file number. A  
17 termination statement signed by a person other than the secured party  
18 of record must include or be accompanied by the assignment or a  
19 statement by the secured party of record that he has assigned the  
20 security interest to the signer of the termination statement. The  
21 uniform fee for filing and indexing such an assignment or statement is  
22 as prescribed by the administrative director of courts. If the affected  
23 secured party fails to file [SEND] the termination statement within 10  
24 days after the date of satisfaction of the obligation or commitment to  
25 make advances, incur obligations, or otherwise give value which is  
26 secured by the filed financing statement [AFTER PROPER DEMAND FOR IT],  
27 he is liable ~~to the debtor for \$100, and in addition,~~ for any loss  
28 caused to the debtor by this failure.

29 \* Sec. 2. This Act takes effect on July 1, 1977.

TESTIMONY OF JULIUS J. BRECHT, DIRECTOR  
DIVISION OF BANKING AND SECURITIES  
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

BEFORE  
HOUSE JUDICIARY COMMITTEE

April 3, 1978

Good afternoon, Mr. Chairman and members of the committee. My name is Julius J. Brecht, and I am Director of Banking and Securities within the Department of Commerce and Economic Development. I want to thank you for allowing me to appear before you on behalf of the administration to offer comments on HB 97.

The bill before you amends the Alaska Uniform Commercial Code found at AS 45.05. The code sets out numerous procedures affecting contracts and follows the Uniform Commercial Code which has been adopted by 49 states in one form or another.

Under the UCC, a creditor may perfect his interest in goods purchased by a debtor by filing a financing statement and tendering a filing fee. The filing is good for as much as five years. Very often the debtor will pay the debt in full before the five year period is up. However, the financing statement filing remains a matter of record until it is terminated under AS 45.05.774(a).

Section 1 of the bill proposes a mandatory termination of filings when the obligation is paid off. The burden of filing the termination would be on the secured party not on the debtor as required by the present law.

The result of this proposed amendment would be more current information on file in the UCC filing office. As the records are filed now, a record search may show an outstanding secured obligation when in fact the obligation has been satisfied but no termination statement has been filed. This eventuality would result in an incorrect reporting of the ownership of the goods involved and perhaps affect the debtor's credit standing.

The secured party is in a better position to assume the burden of terminating the filing because the date of the transaction and the awareness of the statutory requirements fall within their purview.

The effect of this proposed amendment on the UCC filing office would be dramatic. That is, the records of the office indicate between 1,200 and 1,600 new filings are processed per month and on the average about 400 termination notices are processed per month of which about 300 are terminated because they go the full maturity period of five years. The filings with the UCC office pertaining to goods on which secured parties no longer have secured interests could be culled from the active filings and thus reduce the volume of filings held by the office. With fewer files, record searches requested by the public may be accomplished more quickly and efficiently in the best interest of the requester and the Alaskan taxpayer.

The present law provides that the Department of Administration operate the UCC filing office. However, the UCC filing office more logically falls within the purview of the Division of Banking and Securities within the Department of Commerce and Economic Development. That is, the filing and office procedures and the nature of the filings are not dissimilar from the filing operations of the division's corporation section required under the Alaska Corporation Title, AS 10.

I therefore recommend that the statutory duty of maintaining the UCC filing office be transferred to the Department of Commerce and Economic Development. The attached amendments and changes are then respectfully submitted to this committee for inclusion in the bill.

Proposed amendments to HB 97

Change title of bill to read: "An Act relating to termination of financing statements and transferring administration of Uniform Commercial Code; and providing for an effective date."

Line 29, delete Sec. 2 and add the following sections:

\*Sec. 2. AS 45.05.768(a)(3) is amended to read:

(3) in all other cases, in the office of the Department of Commerce and Economic Development [ADMINISTRATION].

\*Sec. 3. AS 45.05.734(e) is amended to read:

(e) the requirements of secs. 768(a)(1) and (2), 772(b), (c) and (e) and 780 of this chapter do not apply to a security interest in personal property of any description created by a deed of trust or mortgage made by a corporation primarily engaged in the business of a common carrier by rail, the furnishing of telephone or telegraph service, the transmission of oil, gas or petroleum products by pipeline, or the production, transmission or distribution of electricity, steam, gas, or water, but this security interest may be perfected under secs. 690-794 of this chapter by filing the deed of trust or mortgage in the office of the commissioner of the Department of Commerce and Economic Development [ADMINISTRATION]. When filed, the instrument remains effective until terminated, without the need for filing a continuation statement. Assignments and releases of the instrument may also be filed in the office of the commissioner of the Department of Commerce and Economic Development [ADMINISTRATION]. The commissioner is a filing officer for the foregoing purposes, and the uniform fee for filing, indexing and furnishing filing data under this subsection is \$10.00.

\*Sec. 4. Sections 2 and 3 of this Act are effective immediately in accordance with AS 01.10.070(c).

\*Sec. 5. Section 1 of this Act takes effect July 1, 1978.

HB 99

January 21, 1977

Speaker of the House  
Alaska State Legislature  
Juneau, Alaska 99811

Dear Mr. Speaker:

Under authority of art. III, sec. 18 of the Alaska Constitution, and in accordance with AS 24.30.060(b) and the Uniform Rules of the Alaska State Legislature, I am transmitting a bill relating to the termination of financing statements under the Uniform Commercial Code, AS 45.05. This bill would shift, from the debtor to the secured party, the burden of clearing the records when an outstanding secured obligation no longer exists.

Currently there is no requirement that a secured party terminate a financing statement when the obligation it secures has been satisfied. As a result, many financing statements remain on file until they automatically lapse five years from the date of filing. In the meantime, a records search may result in the reporting of incorrect information concerning the ownership of property, information which would reflect unfavorably on the debtor's credit.

Under the existing statute, the debtor must request that the secured party send a termination statement to him, and then file the statement with the recorder. This bill would shift the filing requirement to the secured party, the party possessing a greater awareness of statutory provisions governing such secured interests.

Sincerely,

Jay S. Hammond  
Governor

HB

100

file on  
these if they come  
here

February 16, 1977

The Honorable Bob Bradley  
Chairman  
House State Affairs Committee  
Pouch V  
Juneau, Alaska 99811

Re: HB 100 and HB 181; filling of court-  
created vacancies in the legislature

Dear Representative Bradley:

The following are my comments on the referenced  
bills.

HB 100: Proposed AS 15.40.480 in the second  
sentence has the effect of creating a mandatory vacancy.  
This vacancy, pursuant to proposed AS 15.40.490, may exist  
for as long as 55 days, or possibly for more than one-half  
of the legislative session. This mandated vacancy raises  
serious constitutional problems in view of the directive of  
Alaska Constitution, Article II, Section 4, which provides:

A vacancy in the legislature shall be  
filled for the unexpired term as provided  
by law. If no provision is made, the  
governor shall fill the vacancy by  
appointment.

Although there are no cases in Alaska on point, it would  
appear clear that the intent of the constitutional provision  
set forth above is to avoid vacancies where possible.  
Proposed AS 15.40.480 would do just the contrary.

HB 181: The comments set forth above apply as  
well to proposed AS 15.40.351(b) and proposed AS 15.40.431.  
Their effect is also contrary to the apparent intent behind  
the constitutional provision set forth above.

A suggested solution to the problem is simply to  
amend the definition of "vacancy" found in the present AS  
15.60.010(19), thus effectuating the present statutory  
provisions for filling vacancies set forth in the present AS  
15.40. Additionally, in view of the fact that the practical

The Honorable Bob Bradley  
February 16, 1977  
Page 2

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effect of an election being overturned shortly before or at the very beginning of a legislative session is to create an empty seat for approximately one-half of the session, the legislature should promulgate statutes for filling that vacancy by appointment by the governor on an interim basis. The authority of the legislature to pass on that appointment could be set forth very clearly; see, for example, AS 15.40.330. This solution would carry out the intent behind Alaska Constitution, Article II, Section 4, set forth above, and have the additional important practical benefit of providing representation for a district that might be otherwise unrepresented for one-half of the legislative session.

Sincerely yours,

AVRUM M. GROSS  
ATTORNEY GENERAL

By:  
William T. Council  
Assistant Attorney General

WTC:cp

cc: The Honorable Bill Miles  
The Honorable Tim Kelly  
The Honorable Hugh Malone  
Art Peterson

House Judiciary  
April 6, 1977

The meeting was called to order at 3:10 p.m. by Chairman, Gardiner. Members present were Gardiner, Miles, Eliason, Rudd and Dankworth. Mr. Specking came late. Mr. Brown was absent.

HB 100 Procedure when an election to the state legislature is set aside by court

HB  
100

HB 181 Vacancies in the Legislature

HB  
181

Bill Miles, sponsor for HB 181, explained HB 100 and HB 181 so that the committee would be aware of the differences.

Tim Kelly here to testify on HB 100, for which he is a sponsor. He indicated that he does not see a problem with appointments under certain conditions.

Bill Miles explained that his bill would give "power to the people" by calling for a special election to fill vacancies in the Legislature. The committee agreed to work with Mile's bill. A committee substitute will be drafted so that after April 1, the Governor would make an appointment to fill any vacancies.

HB 341 Liability of health care providers

HB  
341

This started off as a discussion of HB 414, which also has to do with liability of health care providers. It was brought to the attention of the committee that Gardiner's HB 414 and Mile's HB 341 are basically the same. Rudd moved that HB 341 be moved out of committee. There was no objection, so this was done.

HB 208 Child custody jurisdiction

HB  
208

Liz Arnold from the Attorney General's Office was here to testify on the amendments that were proposed to HB 208 by the A.G.'s office. Mr. Dankworth moved to adopt the amendments suggested by the A.G.'s office. There was no objection, so the amendments were adopted. Miles moved that HB 208 be moved out of committee. The motion was carried so CSHB 208 was moved out.

HB 143 Compulsion of testimony or other evidence in judicial proceedings

HB  
143

HB 393 Immunity and protection of witnesses

HB  
393

The amendments that had been adopted for HB 393 were looked at. Miles moved that the sale of heroin amendment by the A.G.'s office be taken out. The motion carried. There was a motion to pass out CSHB 143. (CSHB 143 will incorporate HB143 and HB 393.) The motion carried.

The meeting was adjourned at 4:25.