JAY S. HAMMOND
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

April 20, 1978

The Honorable Terry Gardiner
Chairman, House Judiciary Committee
Alaska House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Representative Gardiner:

The attached fiscal notes are furnished in support of the Administration's position on HB 909.

The position we have adopted is that should additional judges and related positions be funded through special appropriation to the Court System, resources will be required for Executive agencies as well in addition to those planned for in the Governor's FY 79 budget submission. More judges will decrease case calendaring flexibility and require additional attorneys to cover the added courtrooms. Because the appointment process for new judges may take several months, a phase in funding approach is proposed which will authorize some of the resources beginning July 1, 1978 and the rest later in the year.

Sincerely,

Michael C. Harper
Administrative Assistant
to the Governor

bcc:
Avrum Gross, Attorney General
Helen Bierne, Commissioner, Health & Social Services
Richard Burton, Commissioner, Public Safety
Brian Shortell, Public Defender

41% increase in number of law enforcement officers for FY79

8 to 3 judges

Why more state troopers in ANC

219
304

$$\begin{array}{r} 41 \\ 28 \end{array}$$

$$\begin{array}{r} 28 \\ 305\overline{)85.000} \\ 610 \\ \hline 2400 \end{array}$$

$$\begin{array}{r} 305\overline{)220.00} \\ 220 \\ \hline \end{array}$$

Startup time needed → to appoint everybody

Cut funding therefore 3 months to Appoint judges

HB
912

HB 912

Alaska Trucking Association, Inc.

3443 Minnesota Drive
Anchorage, Alaska 99503
(907) 276-1149

TESTIMONY

CONCERNING

CIVIL PENALTIES FOR DISCHARGE OF OIL

FOR THE RECORD, I AM BEN BENEDIKTSSON, MANAGING DIRECTOR OF THE ALASKA TRUCKING ASSOCIATION. MY ASSOCIATION IS MADE UP OF SOME 17,000 EMPLOYEES WORKING FOR MY 600 MEMBER FIRMS WHO DELIVER VIRTUALLY ALL OF YOUR FOOD, HOUSEHOLD NECESSITIES, AND FUEL.

WE ARE VERY CONCERNED WITH THE ENTIRE SUBJECT OF OIL SPILLS. VERY FEW OF MY MEMBERS ARE PURE CARRIERS IN THE SENSE THAT A YELLOW FREIGHT OR CONSOLIDATED FREIGHTWAY EXISTS IN THE LOWER 48. ALMOST ALL OF MY MEMBER CARRIERS ARE INVOLVED IN A VARIETY OF TYPES OF AUTHORITIES. FOR EXAMPLE, MY TYPICAL MEMBER WILL HAVE AUTHORITY TO MOVE GENERAL COMMODITIES, HOUSEHOLD GOODS, AND FUEL. A LARGER NUMBER OF RELATIVELY SMALL CARRIERS ARE INVOLVED IN FUEL DELIVERIES THAN IS THE CASE IN THE TYPICAL LOWER 48 AREA.

THE HANDLING OF FUEL BY TRUCK IS AN ABSOLUTE NECESSITY TO THE SURVIVAL OF MOST OF THE COMMUNITIES AND CITIES IN ALASKA. WITHOUT THE REQUISITE TANK TRUCKER DELIVERING YOUR HOME HEATING OIL, MANY OF MY MEMBERS AND YOUR CONSTITUENTS COULD NOT SURVIVE.

THE SUBJECT OF THIS HEARING IS HB 912, CONCERNING MANDATORY OIL SPILL PENALTIES. IN THE LAST HALF SESSION, THE LEGISLATURE PASSED HB 137 WHICH, WHILE APPARENTLY BASED ON GOOD INTENTION, WAS BAD LAW. THE APPARENT INTENT WAS TWO FOLD - (1) TO PROVIDE AN

INCENTIVE TO ENSURE SAFER HANDLING OF LARGE QUANTITIES OF OIL AND (2) TO PLACE DOLLARS INTO THE GENERAL FUND TO OFFSET ENVIRONMENTAL REPAIR COSTS, FOR DAMAGE RESULTING FROM LARGE SCALE OIL SPILLS. UNFORTUNATELY, WHAT HAS HAPPENED AS A RESULT OF THE PASSAGE OF AS 46.03.758 IS THAT THE SMALL OIL CARRIER IS PLACED IN A POSITION IN WHICH HE CAN BE SERVED WITH AN ARBITRARY FINE FOR AN OIL SPILL, REGARDLESS OF ACTUAL ENVIRONMENTAL DAMAGE. THAT FINE CAN BE VERY SIGNIFICANT AND, IN FACT, PROBABLY WOULD PUT A LARGE MAJORITY OF MY MEMBERS OUT OF BUSINESS IF THE FULL PENALTIES WERE TO BE ENFORCED IN A RELATIVELY SMALL SPILL.

ATTACHED ARE WORK SHEETS FOR POTENTIAL OIL SPILLS IN TWO TYPICAL CASES OF TRUCK ACCIDENTS.

HB 912 WAS PROPOSED TO ELIMINATE THE SMALL OIL SPILL FROM PENALTIES AGAINST WHICH THE OPERATOR CANNOT EVEN BE INSURED. THERE IS A COMPANION BILL (SB 557) PRESENTLY BEING PROCESSED THROUGH THE SENATE WHICH PROPOSES ESSENTIALLY THE SAME SOLUTION TO THE CIVIL PENALTY PROBLEM AS HB 912. IT IS OUR RECOMMENDATION THAT THE TWO BILLS BE COMBINED. WE THINK THAT THE RATIONALE SUPPLIED BY HB912 AND THE GALLONAGE FIGURE SUPPLIED WOULD PROVIDE THE PROTECTION NECESSARY TO CARRY OUT THE INTENT OF THE ORIGINAL LEGISLATION. OUR TANK TRUCKER NOW RUNNING THE HIGHWAYS CARRY A MAXIMUM LOAD OF ABOUT 11,500 GALLONS OF PETROLEUM PRODUCTS. SINCE THE TREND HAS BEEN TOWARD LARGER EQUIPMENT WE SUGGESTED THAT

A FACTOR OF 12,500 GALLONS BE USED TO AFFECT THE LOWER LIMIT OF CIVIL PENALTIES. THIS WILL PROVIDE PROTECTION NECESSARY FOR THE NEXT SEVERAL YEARS. IN EARLIER HEARINGS OF THIS BILL THE 12,500 GALLON FIGURE WAS REDUCED TO 12,000. THAT IS FINE BY US.

THE ATA STRONGLY RECOMMENDS THE ADOPTION OF HB 912 IN ITS ENTIRETY.

WORK SHEET

FOR

AS 46.03.758/ TITLE 18 CHAPTER 75 ARTICLE 5

POTENTIAL LOSS TO OPERATORS-

1. LOSS #1

GIVEN: 5000 GALLON SPILL IN FRESHWATER CRITICAL ENVIRONMENT (SALMON SPAWNING STREAM).

PRODUCT SPILLED- HOUSE HEATING FUEL

CHARACTERISTICS	FACTORS
HIGHLY TOXIC	1.00
HIGH DEGRADABILITY	.25
HIGH DISBURSIBILITY	.15
	1.40/3=.466

FRESHWATER CRITICAL = $10.00/GAL.

COMPUTATION :-

MAXIMUM STANDARD PENALTY

.466 @ 10 @ 5000 = $23,300

WITH GROSS NEGLIGENCE

$23,000 @ 5 = 116,500

2. LOSS # 2

GIVEN: 2000 GALLON SPILL IN MARINE CRITICAL ENVIRONMENT (WITHIN ONE MILE OF A SALMON SPAWNING STREAM).

PRODUCT SPILLED: MARINE DIESEL

CHARACTERISTICS:	FACTOR
HIGHLY TOXIC	1.00
HIGH DEGRADABILITY	.25
HIGH DISBURSABILITY	.15
	1.40/3=.466

MARINE CRITICAL = $ 2.50/GAL.

COMPUTATION:

MAXIMUM STANDARD PENALTY

.466 @ 2.50 @ 2000 = $2,330

WITH GROSS NEGLIGENCE

2,330 @ 5 = 11,650

HB 912

March 30, 1978

ALASKA LEGISLATION - 1978
S.B. 557
OIL SPILL PENALTIES

This bill, which amends H.B. 137, Chapter 129 of the 1977 Session, should be further amended as follows:

1. Section 46.03.758(a)(2) is amended to read:

> "~~the exact nature and extent of oil pollution can be neither documented with certainty nor precisely quantified on a spill-by-spill basis; however,~~ in light of the magnitude of harm which may be caused by oil discharges, and the vital importance of commercial, sport and subsistence fishing, tourism, and Alaska's natural abur lance and beauty to the economic future of the state, and its quality of life, it is the judgment of the legislature that substantial civil penalties should be imposed for the discharge of oil, in order to provide a meaningful incentive for the safe handling of oil and to insure that the public does not bear substantial losses from oil pollution for which, ~~because of its subtle, long-term or unquantifiable nature,~~ compensation would not otherwise be received; and however, it is not the intent of this section to impose a civil penalty for discharge of oil where there is no demonstrable damage to the environment; and"

This amendment is the most important of the four. It deletes the reference to unquantifiable damage, a thoroughly illogical concept which no one has ever been able to explain, and it adds language to require a demonstration that environmental damage has occurred before penalties under this law can be imposed.

The existing law, which does not require evidence of environmental damage before imposing penalties, must be considered punitive. Yet, subsection (a)(3) states this should not be the case.* Thus, this amendment would render the penalty remedial rather than punitive.

2. Section 46.03.758(b)(1) is amended to read:

> "Subject to subsection (a)(2) and to ~~(3)~~ (2) of this subsection, the penalties for the following categories of receiving environments may not exceed"

Making the penalties subject to subsection (a)(2) is a precaution to ensure that penalties will not be imposed unless it is demonstrated that environmental damage occurred.

*46.03.758 (a)(3) "in order to provide an incentive which is effective, but not punitive."

The change from (3) to (2) is a technical change. There is no (3) in subsection (b).

3. Section 46.03.758(d) is amended to read:

> "The schedule shall vary according to the toxicity, degradability and dispersal characteristics of the oil. The schedule shall also vary according to the sensitivity and productivity of the receiving environment. And, the schedule shall take into account seasonal changes. Variations under this subsection may be by subcategories of receiving environments, specific receiving environments, or both. The maximum penalties established in (b) of this section shall apply to discharges in the most sensitive and productive of receiving environments within each category of receiving environment, and the penalty shall decrease for less productive or less sensitive receiving environments."

This is consistent with past arguments that seasonality is an important factor in determining potential enviromental damage. Also, it reinforces our first amendment. "Less" is added before "sensitive" in the interest of good construction.

4. Section 46.03.758(g) is amended to read:

> "Except as provided in (f) and (j) of this section, the entire penalty specified in the regulations shall be imposed, except that a person who discharges oil into a receiving environment may demonstrate, by a preponderance of evidence, that mitigating circumstances relating to the effects of the discharge would make imposition of the full penalty inappropriate. ~~In determining whether mitigating circumstances exist, the court shall recognize that scientific knowledge pertaining to oil spills is very limited and if there is insufficient knowledge either to predict a base case or to show mitigating circumstances varying from that base case, the administratively established schedule of penalties shall apply.~~ Only when no such mitigating circumstances exist shall the schedule of full penalties apply."

The language deleted describes the body of scientific knowledge pertaining to oil spills as "very limited." This is simply not true. The scientific community, academicians, government, and industry have produced volumes of data on the fate and effects of oil spills (an abbreviated bibliography is attached), and their work is continuing. Therefore, the deleted sentence cannot be justified.

HB
949

Introduced: 4/26/78
Referred: Judiciary

IN THE HOUSE BY THE JUDICIARY COMMITTEE

HOUSE BILL NO. 949

IN THE LEGISLATURE OF THE STATE OF ALASKA

TENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the treatment of persons found not guilty on the ground of mental disease or defect."

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

* Section 1. AS 12.45.090 is amended to read:

Sec. 12.45.090. COMMITMENT AFTER JUDGMENT OF NOT GUILTY. (a) If the court or jury finds the defendant not guilty on the ground of mental disease or defect and the court considers his being at large dangerous to the health and [PUBLIC PEACE OR] safety of others, the court shall order him to be committed to an institution authorized by the commissioner of health and social services to receive that person, and held in custody until the disease is cured or the defect corrected or until he is judged to be no longer dangerous to others or he is otherwise discharged from the institution by authority of law. The commissioner of health and social services shall provide the court with reports detailing the status, progress, and prognosis of persons committed under this subsection at least once every six months.

* Sec. 2. AS 12.45.090 is amended by adding new subsections to read:

(b) If the court or jury finds the defendant not guilty on the ground of mental disease or defect and the court does not consider his being at large dangerous to the health and safety of others, the court shall order his discharge.

(c) If the court or jury finds the defendant not guilty on the ground of mental disease or defect and the court considers his being at large dangerous to the health and safety of others but determines that

- Burden of Proof
- Jury trial

the defendant can be controlled in the community with proper supervision, the court may commit him to the custody of the commissioner of health and social services and may order his conditional release under supervision, subject to such conditions as the court may impose, for a period of no more than three years in accordance with sec. 92 of this chapter.

* Sec. 3. AS 12.45 is amended by adding a new section to read:

Sec. 12.45.092. CONDITIONAL RELEASE AFTER JUDGMENT OF NOT GUILTY. (a) A defendant committed under sec. 90(a) of this chapter may be released by court order and placed under supervision in a non-institutional setting for a period of no more than three years, subject to such conditions as the court may impose. The court may, upon application by the defendant, his attorney, the medical director of the institution, or other interested party, conduct a hearing to determine if conditional release under supervision is appropriate.

(b) A defendant released under sec. 90(c) of this chapter or (a) of this section may be returned to custody if the court finds, after a hearing, that he is not in substantial compliance with the conditions of his release or that he is a danger to the health and safety of others and can no longer be controlled in the community under supervision.

(c) A defendant released under sec. 90(c) of this chapter or under (a) of this section may petition the court at any time for a discharge hearing.

(d) The commissioner of health and social services shall provide the court with progress reports detailing the mental status, treatment plan, progress, and prognosis of persons released under sec. 90(c) of this chapter or under (a) of this section at least every six months.

(e) A defendant released under sec. 90(c) of this chapter or (a) of this section shall be discharged from supervision at the expiration

of three years from the date of release unless the court finds, after a hearing, that the defendant continues to pose a danger to the health and safety of others and cannot be controlled in the community without continued supervision, in which case the defendant shall be continued under supervision subject to such conditions as the court may impose.

(f) When a defendant is not discharged from supervision after three years under (e) of this section, the court shall conduct a hearing not less frequently than once each year to determine whether the defendant should be discharged or continued under supervision.

(g) At any time during the period of supervision the court may revoke or modify the conditions of supervision or order of release.

(h) A defendant committed under sec. 90(a) of this chapter or released under sec. 90(c) of this chapter or (a) of this section is not liable for the expenses of hospitalization or transportation incurred as a result of his commitment or release.

POSITION PAPER/Department of Health and Social Services

HOUSE BILL 949

"An Act relating to the treatment of persons found not guilty on the ground of mental disease or defect."

The Department of Health and Social Services supports House Bill 949. It is our position that A.S. 12.45.090 is inadequate as written as it falls far short of providing the necessary statutory provisions and flexibility in the treatment and management of these persons.

Presently, treatment for persons committed under A.S. 12.45.090. Commitment After Judgment of Not Guilty is limited to inpatient psychiatric treatment in a secure facility until the disease is cured or the defect corrected. When released from the institution these persons are discharged unconditionally and without any form of supervision. This may result in persons remaining institutionalized for a longer period than may be necessary and/or being released as free citizens when court imposed conditions and supervision upon release would be desirable.

Typically, persons committed under A.S. 12.45.090 are those who have committed serious felony offenses such as murder, rape, assault with a dangerous weapon, or other violent crimes. Those persons declared innocent by reason of mental disease or defect of less serious misdemeanors are generally either committed under A.S. 47.30 (civil commitment) to the Alaska Psychiatric Institute or released by the court.

House Bill 949 would seem to remedy the either/or situation described above by offering an alternative of conditional release with the court retaining jurisdistion. In the event the person was unable to maintain himself in a less secure setting or to comply with the court ordered conditions of his release he could be returned to court for further proceedings and perhaps returned to the secure psychiatric institution if necessary. On the other hand, those persons that demonstrate to the courts satisfaction that they have made a satisfactory recovery and further supervision is not necessary could be discharged.

Examples of alternatives to the inpatient psychiatric treatment would include outpatient clinic services, partial hospitalization, nursing home care, halfway houses, chemotherapy, and alcoholism and drug abuse programs.

Persons conditionally released under this bill could be supervised by staff of the Department of Health & Social Services.

For persons committed to an institution under A.S. 12.45.090(a) it is requested that on line 14 the word "psychiatric" should be inserted prior to the word "institution". The addition of the word "psychiatric" to Section 12.45.090(a) will assure that the institution to which persons are committed under that section is clearly defined.

Recommended by:

Thomas R. Brandon for 5/8/78

Jerry L. Schrader, M.D. Date
Director, Div. of Mental Health & Developmental Disabilities

Approved by:

Helen D Beirne 5/9/78

Helen D. Beirne, Commissioner Date
Dept. of Health & Social Services

THE LEGISLATURE OF THE STATE OF ALASKA
TENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. House Bill 949

Title Treatment of persons found not guilty on the ground of mental health or defect.

Requested by Judiciary Committee Date 4/26/78

II. FISCAL DETAIL

Agency Affected Department of Health and Social Services

Program Category Affected Mental Health and Developmental Disabilities

Budget Request Unit(s) Affected

EXPENDITURES (Thousands of Dollars)

	FY 78	FY 79	FY 80	FY 81	FY 82	FY 83
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	0	0				

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

Based on present numbers of commitments under AS 12.45.090, an increased expenditure to implement House Bill 949 is not anticipated by the Department of Health & Social Services. As there are only 13 persons currently hospitalized under AS 12.45.090, and many of these are long term patients, the immediate impact on caseloads is expected to be minimal. However, it is possible that more defendants may rely on an insanity defense if House Bill 949 passes as it will allow a community treatment program as an alternative to inpatient treatment or possible incarceration if found guilty.

IV. DATE May 4, 1978 PREPARED BY James L. Scoles

AGENCY Department of Health & Social Services

PHONE 465-3370

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

33-001 (Rev. 12/77)

Clarify that judge has the authority to institutionalize dangerous defendant if found insane

reflects existing practices ⇒ statutory clarification

Introduced: 4/26/78
Referred: Judiciary

IN THE HOUSE BY THE JUDICIARY COMMITTEE

HOUSE BILL NO. 949

IN THE LEGISLATURE OF THE STATE OF ALASKA

TENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the treatment of persons found not guilty on the ground of mental disease or defect."

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

* Section 1. AS 12.45.090 is amended to read:

Sec. 12.45.090. COMMITMENT AFTER JUDGMENT OF NOT GUILTY. (a) If the court or jury finds the defendant not guilty on the ground of mental disease or defect and the court considers his being at large dangerous to the health and [PUBLIC PEACE OR] safety of others, the court shall order him to be committed to a psychiatric institution authorized by the commissioner of health and social services to receive that person, and held in custody until the disease is cured or the defect corrected or until he is judged to be no longer dangerous to others or he is otherwise discharged from the institution by authority of law. The commissioner of health and social services shall provide the court with reports detailing the status, progress, and prognosis of persons committed under this subsection at least once every six months.

* Sec. 2. AS 12.45.090 is amended by adding new subsections to read:

(b) If the court or jury finds the defendant not guilty on the ground of mental disease or defect and the court does not consider his being at large dangerous to the health and safety of others, the court shall order his discharge.

(c) If the court or jury finds the defendant not guilty on the ground of mental disease or defect and the court considers his being at large dangerous to the health and safety of others but determines that

(1) Should never exceed maximum for offense
(2) What is burden of proof

the defendant can be controlled in the community with proper supervision, the court may commit him to the custody of the commissioner of health and social services and may order his conditional release under supervision, subject to such conditions as the court may impose, for a period of no more than three years in accordance with sec. 92 of this chapter.

* Sec. 3. AS 12.45 is amended by adding a new section to read:

Sec. 12.45.092. CONDITIONAL RELEASE AFTER JUDGMENT OF NOT GUILTY. (a) A defendant committed under sec. 90(a) of this chapter may be released by court order and placed under supervision in a non-institutional setting for a period of no more than three years, subject to such conditions as the court may impose. The court may, upon application by the defendant, his attorney, the medical director of the institution, or other interested party, conduct a hearing to determine if conditional release under supervision is appropriate.

Simplify Sec #3

(b) A defendant released under sec. 90(c) of this chapter or (a) of this section may be returned to custody if the court finds, after a hearing, that he is not in substantial compliance with the conditions of his release or that he is a danger to the health and safety of others and can no longer be controlled in the community under supervision.

(c) A defendant released under sec. 90(c) of this chapter or under (a) of this section may petition the court at any time for a discharge hearing.

(d) The commissioner of health and social services shall provide the court with progress reports detailing the mental status, treatment plan, progress, and prognosis of persons released under sec. 90(c) of this chapter or under (a) of this section at least every six months.

(e) A defendant released under sec. 90(c) of this chapter or (a) of this section shall be discharged from supervision at the expiration

of three years from the date of release unless the court finds, after a hearing, that the defendant continues to pose a danger to the health and safety of others and cannot be controlled in the community without continued supervision, in which case the defendant shall be continued under supervision subject to such conditions as the court may impose.

(f) When a defendant is not discharged from supervision after three years under (e) of this section, the court shall conduct a hearing not less frequently than once each year to determine whether the defendant should be discharged or continued under supervision.

(g) At any time during the period of supervision the court may revoke or modify the conditions of supervision or order of release.

(h) A defendant committed under sec. 90(a) of this chapter or released under sec. 90(c) of this chapter or (a) of this section is not liable for the expenses of hospitalization or transportation incurred as a result of his commitment or release.

HB
975

HB 975

Alaskan Youth Village

Lavon Kindell

licensed by H&SS
private, non-profit residential
child care agency.

concerned about accreditation
problems which could result
if had to deal with Dept of Educ.

accreditation would requirement
would probably prohibit

Dale Sies
will testify

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM May 18, 1978

SUBJECT: Amendment to HCS SB 428

TO: House Judiciary Committee

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

You have asked whether HCS SB 428 could be amended by adding the material contained in HB 975. In my opinion it could.

Both bills deal with the subject of permits and licenses under limited entry. The material currently in HCS SB 428 deals with transfer and revocation of limited entry permits and the material in HB 975 allows entry permits for educational purposes.

It would appear that combining these acts would not create a violation of the single subject rule contained in Art. II, sec. 13 of the Constitution of Alaska which reads in relevant part:

> "Every bill shall be confined to one subject unless it is an appropriation bill or one codifying, revising, or rearranging existing laws."

There is some doubt as to the precise parameters of the single subject rule in Alaska. In a case construing this clause of the constitution in relation to a general obligation bond bill, Gellert v. State, 522 P2d 1120 (Alaska 1974), our court stated

> "Ultimately the decision in cases of this kind must be made on a basis of practicality and reasonableness. In determining whether a bill is confined to one subject, we agree with the statement: 'All that is necessary is that act should embrace some one general subject; and

> by this is meant, merely, that all matters treated of should fall under some one general idea, be so connected with or related to each other, either logically or in popular understanding, as to be parts of, or germane to, one general subject'."

The common thread of the matters dealt with in both bills in entitlement to Limited Entry Permits. This would appear to include obtaining, transferring and revoking permits. The subject matter appears to be connected with and related to each other logically so as to be parts of one general subject.

I have, therefore, prepared a committee substitute for SB 428 incorporating the provisions of HB 975.

BGB:jpd

Enclosure

Alaska State Legislature

House of Representatives

Committee on Judiciary

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

MEMO: May 29, 1978

TO: Terry Gardiner, chairman

RE: HB 975, educational ltd. entry permits

Terry --

I talked to Dave George of the Limited Entry Commission the other day about this bill. He has drafted a proposed committee substitute for our consideration and someone from the commission, proabably Adasiak, will be here for consideration, to testify and/or answer questions.

They have some good points, I believe. There are five basic points:

1. page 1, line 17: "private agency" should be defined more specifically. Should it be private non-profit, or what? From the language, it could be day-care centers or the Cub Scouts from my reading of the bill. Also, the provision "private agencies involved in the training or rehabilitation of or care for minors" appears to exclude Sheldon Jackson College, since college students are very often not minors.

2. page 2, line 3: ADF&G is normally given authority over limiting the amount of fish caught; D. George says the Limited Entry Commission has no authority, and this provision should be delegated to Fish and Game.

3. page 2, line 5: accounting for profits is also outside the normal authority of the entry commission, and perhaps ADF&G or the Department of Revenue would be more appropriate.

4. There is no provision in the bill for transferability. Normally entry permits are transferable and the entry commission believes these should not be. They should be non-transferable and/or renewable each year by application; and should revert to the state if they are not used.

5. The general concern has been expressed that the way the bill is currently written someone might be able to take advantage of an association with some "private agency" and use a permit for their own benefit. The above changes seem to limit that possibility.

The Judiciary CS for SB 428 does not resolve these issues.

Proposed by Limited Entry Commission

Introduced: 5/17/78
Referred: Judiciary

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 975

IN THE LEGISLATURE OF THE STATE OF ALASKA

TENTH LEGISLATURE -- SECOND SESSION

A BILL

For an Act entitled: "An Act relating to entry into Alaska commercial fisheries for educational purposes; and providing for an effective date."

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

* Section 1. As 16.43.100 is amended by adding a new paragraph to read:

(14) issue educational entry permits to applicants who qualify under the provisions of secs. 350 - 375 of this chapter.

* Section 2. As 16.43 is amended by adding new sections to read:

ARTICLE 6. EDUCATIONAL ENTRY PERMITS.

Sec. 16.43.350. EDUCATIONAL ENTRY PERMITS. (a) In addition to entry permits and interim-use permits, the commission may issue educational entry permits to public, private or denominational educational institutions accredited by the State of Alaska Department of Education or accredited institutions, career or vocational programs approved by the State of Alaska Post-Secondary Education Commission, which are located within the state, if

(1) the program is offered to students at the high school level or above;

(2) the issuance of an educational permit is reasonably necessary to the instruction of students under courses offered by the applicant for the educational entry permit;

(3) the program is offered by an institution which has been in operation for at least two years; and

(4) the institution offering the program is not a correspondence institution.

(b) An educational entry permit may only be used in a program conducted by the recipient thereof for the purpose of training students in the methods of commercial fishing.

(c) The commission may issue educational entry permits notwithstanding the establishment of maximum or optimum numbers under secs. 240 and 290 of this chapter, respectively.

Sec. 16.43.355. TERM AND CONDITIONS OF EDUCATIONAL ENTRY PERMIT.

(a) Educational entry permits may be applied for annually and shall be issued for a term of one year and are non-transferrable.

(b) A recipient may be issued an educational entry permit for each fishery in the administrative area the commission determines to be appropriate, considering the nature of the educational program and the location of the educational or vocational institution. The recipient of an educational entry permit shall not be issued educational entry permits in more than one administrative area except as issued by the commission in its discretion upon good cause shown.

(c) Consistent with the provisions of sec. 350 of this chapter, an educational entry permit may be used by any agent or employee authorized by the recipient of the educational entry permit.

(d) Annual fees for educational entry permit shall be as specified by commission regulation under the authority of sec. 160 of this chapter.

Sec. 16.43.360. DISPOSITION OF FISH. Fish caught under the authority of an educational entry permit are the property of the recipient of the permit; which may sell the fish and use the proceeds to pay for the costs of the training program.

Sec. 16.43.365. ACCOUNTING OF HARVEST. The recipient of an educational entry permit shall report to the commission costs and earnings, amount of harvest and such other information the commission requires to monitor fishing operations of recipients of educational entry permit.

Sec. 16.43.370. ADOPTION OF REGULATIONS. (a) Use privileges granted under secs. 350 -375 of this chapter shall be subject to the regulations of the Board of Fisheries which may adopt regulations exclusively applicable to the use of educational entry permits.

(b) The commission shall promulgate regulations relating to the issuance of educational entry permits, establishing eligibility criteria for recipents thereof,

and such other matters as are reasonably necessary to implement secs. 350 - 375 of this chapter.

Sec. 16.43.375. DEFINITIONS. For the purposes of secs. 350 - 375 of this chapter, the term

(1) "recipient" means the entity to which an educational entry permit is issued;

(2) "administrative area" means those areas as defined by commission regulation.

* Section 3. This Act takes effect immediately in accordance with AS 01.10.070(c).

Alaska State Legislature

House of Representatives

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

Official Business

MEMO: May 18, 1978

TO: Legal Services, Bill Berrier

FROM: House Judiciary, Bob Speed, A.A.

RE: HB 975 Entry permits for educational purposes
SB 428am Interim Use permits, entry permits and vessel licenses

The Judiciary Committee currently has the above-mentioned bills under consideration. Chairman Gardiner has requested a legal opinion on combining the two bills by amending HB 975 onto SB 428am.

We request a written opinion on the above amendment; if Legal Services sees no problem, the Committee will request a CS incorporating the intent of both bills.

It is also requested that the attorney handling the above matter be available in the event he is needed during committee consideration of the bill, which will probably be early next week.

HCR

7

House Judiciary Committee
February 7, 1977

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

HB 27 Removing the exemption of banks from anti-trust law HB 27

The committee had considered and heard testimony on this bill at a previous meeting. Mrs. Rudd moved that HB 27 be moved out of committee. The motion carried 3-2, so the bill was moved out.

HB 60 Compulsory School Attendance HB 60

The committee reviewed the committee substitute that had been submitted for this bill. After a minor amendment in wording, Mr. Specking moved that the committee substitute for the bill be moved out of committee. There being no objection, this was done.

HB 127 Penalties for Driving While Intoxicated HB 127

Mr. Meekins was here to testify on this bill, for which he is a sponsor. Questions were asked of Mr. Meeking and a general discussion followed.

Bill Huston, Director of the Division of Corrections, was here to present a position paper on this bill.

Mr. Specking moved that the bill be amended to specify that the imprisonment had to occur on consecutive days, so that offenders couldn't be imprisoned at their convenience, i.e. on weekends. The motion carried.

Mrs. Rudd moved that HB 127 be moved out of committee. The motion carried and this was done.

HCR 7 Requesting the Judicial Council to investigate the prison system HCR 7

Mr. Bradley was here to testify on this resolution, for which he is a sponsor.

Mr. Huston, Director of the Division of Corrections, was here to present a position paper on the bill.

After some discussion, the committee decided that Mr. Bradley, the Division of Corrections, and the Judicial Council should all get togeher to talk this over and determine how the study would be done.

HCR 7 was set aside for the time being.

HCR 17 Conducting business of district courts in the evening HCR 17

Mr. Bradley testified on this resolution, for which he is a sponsor.

Mr. Rudd moved that the wording "in the evening" be replaced with "after normal working hours" (lines 6,17,19). The motion carried.

It was moved that lines 13 and 14 be deleted. The motion carried.

It was suggested that the wording on line 18 "direct the district courts"be perhaps changed after a fiscal note for this resolution had been received, and after the committee was further aware of what the courts would be "directed" to do.

HCR 17 was set aside until the receipt of a fiscal note.

The meeting was adjourned at 4:15 p.m.

POSITION PAPER
HCR NO. 7

"Requesting the Judicial Council to investigate the prison system."

The Department of Health and Social Services recognizes that a positive answer to significantly reduce the high incidence and growth of crime in our society continues to elude the finest minds in the field of penalogy. Almost every conceivable preventative and rehabilitative program has been tried, tested, abandoned, modified and tried again without significant results. The rise in crime rates is not peculiar to Alaska; it is a national phenomonen.

The small population of Alaska and its geography offers some particular advantages for crime control. However, an overwhelming disadvantage is the lack of sufficient funds to conduct broad crime prevention, and rehabilitation, such as inmate industries programs where meaningful employment and job skills can be developed. The present Division of Corrections' administrators goals are to provide,

1. protection of the public;
2. humane treatment;
3. mandatory services required by law, and
4. necessary and constructive services, within budgetary and facility limitations, to prisoners who need and request them.

The Division of Corrections can, by simple comparison, show positive results, particularly, in the area of a number one concern - protection of the public. The incidents of escapes have been dramatically reduced during the past year.

The high number of escapes, as well as serious crimes, committed by some of the escapees in 1975 prompted the Governor's Task Force investigation into the Division of Corrections. A special Technical Assistance Team, who were selected for their expertise in the corrections field from the Law Enforcement Assistance Administration, were hired to assist the Task Force.

The recommendations resulting from the investigation are in the process of being implemented; many are already completed.

There will always be conflicting opinions on what should be the major role and purpose of the prison system. The state constitution spells it out as, "reformation and the need to protect the public."

No other segment of the Criminal Justice System comes under more public scrutiny or investigation than that of corrections. Public confidence will continue to be at its lowest ebb unless the system is given the opportunity

between investigations to make some accomplishments mandated by law, and those assigned executively as the result of previous special investigative recommendations.

Recommended: _____ 1/29/76

William H. Huston, Director
Division of Corrections

Date

Concurrence: _____

Commissioner, Dept. of
Health & Social Services

Date

THE LEGISLATURE OF THE STATE OF ALASKA
TENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. HCR No. 7
Title Requesting the Judicial Council to Investigate The Prison System
Requested by Bradley, Cotton, and Miller Date 1/17/77

II. FISCAL DETAIL
Agency Affected HEALTH & SOCIAL SERVICES
Program Category Affected JUSTICE
Budget Request Unit(s) Affected ADULT CONFINEMENT

EXPENDITURES (Thousands of Dollars)

	FY 77	FY 78	FY 79	FY 80	FY 81	FY 82
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	0	0	0	0	0	0

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

There would be no fiscal impact other than staff time which would necessarily be devoted to responding to study inquiries.

IV. DATE 1/21/77 PREPARED BY Leland T. Dalby, Administrative Officer
AGENCY Division of Corrections
PHONE 465-3375

Original: Legislative Finance

Introduced: 1/17/77
Referred: Health, Education & Social Services and Judiciary

BY BRADLEY, COTTEN AND MILLER

IN THE HOUSE

HOUSE CONCURRENT RESOLUTION NO. 7

IN THE LEGISLATURE OF THE STATE OF ALASKA

TENTH LEGISLATURE - FIRST SESSION

Requesting the Judicial Council to investigate the prison system.

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

WHEREAS the incidence of crime in our society continues to grow even though a high percentage of the criminals have served some time in jail or prison on a previous offense; and

WHEREAS conflicting opinions exist as to what should be the major role and purpose of the prison system in our state, and as to how well our prison system reflects and accomplishes that purpose; and

WHEREAS public confidence has been shaken by the apparently high number of escapes from our penal institutions and by a lack of understanding of the functioning and goals of our prison system;

BE IT RESOLVED that the Alaska State Legislature respectfully requests the Judicial Council to investigate prison systems and their effect upon crime in society and to recommend to the Tenth State Legislature - Second Session the goals to which our prison system should be directed and the measures which should be undertaken to implement those goals.

In Co-ordination with Leg's Council + Dept of HESS

Justice Commission — Master Plan 1st phase

40,000

175,000 in LEAA available for more funding

SB

12

My SB 12 file

MEMO April 7, 1977

FROM SENATOR ZIEGLER

TO REPRESENTATIVE FREEMAN
REPRESENTATIVE GARDINER

RE HJR 13, HB 106, HB 173

I talked to the Chamber types on April 6th. I was advised that their legislative committee has endorsed the captioned legislation. I told them that as far as I knew these three items were either dead or moribund but, in any event, they didn't show much hope for posterity.

RHZ/pkz

P.S. Enclosed is the tentative schedule for the visit next week.

Terry:

Paula tells me you would like to talk about SB 12. Although I originally put it in to get somebody's attention, I have concluded that it is an idea whose time has come and that we should do everything we can, notwithstanding the protestations of the court system, to push it through. My neck is bowed!

3

MEMO April 5, 1977

FROM SENATOR ZIEGLER

TO REPRESENTATIVE FREEMAN
REPRESENTATIVE GARDINER

RE SB 12

SB 12, the bill by which we would acquire an additional Superior Court judge in Ketchikan, passed the Senate on March 31st. The bill is opposed by the court system, which takes the view that there isn't enough business at home to keep one Superior judge busy, much less two.

What the court system fails to grasp is that the work load of a Superior Court judge is not as important to litigants and the local bar as the availability of a Superior Court judge. Based on information furnished me by Judge Schulz's secretary, Judge Schulz was off the bench more than he was on it between August 1st and December 31st of last year. It is very frustrating for lawyers and their clients who have a firm trial date set to be advised that Judge Schulz, for whatever reason, was out of town and would be gone for several days or, in some instances, several weeks.

This bill is very important to our community, because with two Superior Court judges, one of whom would be in town on each of the 365 days in a year, we would no longer have the aforementioned problem.

Concommitant with the obtaining of another Superior Court judge would be the phasing out of the District Court judge. Judge Keene is not at all perturbed about this possibility.

The Senate Finance committee estimated that the increased cost would be $26,000, but as I recollect, the cost figure in connection with the Kodiak, Bethel and Sitka situations is somewhere around $7500.

I am in the process of letting the Chief Justice know that if he perseveres in thwarting our efforts, it is quite likely that his presumptive sentencing bill will have a difficult time making it through the legislature.

RHZ/pkz

Alaska State Legislature

SENATOR
ROBERT H. ZIEGLER, SR.
307 BAWDEN STREET
KETCHIKAN, ALASKA 99901

POUCH V
JUNEAU, ALASKA 99811

Senate

CHAIRMAN
RULES

VICE CHAIRMAN
JUDICIARY
LEGISLATIVE COUNCIL
COMMITTEE ON COMMITTEES

January 11, 1978

Representative Terry Gardiner
Chairman
House Judiciary Committee

Dear Terry:

You'll recollect the House Judiciary committee very courteously afforded me the opportunity last year to address it on the subject of Senate Bill 12, a bill which would authorize the creation of an additional Superior Court judgeship in Ketchikan. At the time the bill was introduced, it was my intention to get the attention of the court system, for I felt that the one Superior Court judge we do have, Tom Schulz, an excellent judge, was being assigned to trials elsewhere in the state more than he should have been. I believe I furnished the committee with some statistics which substantiated that assertion.

Please bear in mind that nobody has ever complained or said a harsh word about the caliber of our judiciary; the thrust was directed toward the unavailability of justice at times when many members of the Ketchikan Bar Association were complaining, not to mention the litigants involved in pending court actions.

I am pleased to report that the situation has to a large extent been cured. The court system hasn't deprived us of our Superior Court judge nearly so much as it did in the past; there are few, if any, complaints about the lack of a Superior Court judge. Furthermore, Judge Compton and occasionally Judge Stewart have filled in for Judge Schulz on those currently infrequent occasions when he is not on the bench in Ketchikan.

Ergo, it would seem that as a result of the changed circumstances, Senate Bill 12 is not necessary at this time. Accordingly, I am requesting you to hold it in abeyance. Should it be needed in the future, I'll be in touch with you.

Incidentally, Judge Schulz has expressed satisfaction with the situation and advised me unofficially that as a result of his curtailed travel, he has been in a better position to handle his Ketchikan docket efficaciously.

Regards,

RH Ziegler

Robert H. Ziegler, Sr.

cc - House Judiciary Committee Members

SB 12 files

Superior Court

State of Alaska

FIRST JUDICIAL DISTRICT
415 MAIN STREET, ROOM 402
KETCHIKAN, ALASKA 99901

Chambers of
THOMAS E. SCHULZ, Judge

May 6, 1977

Lew Williams, Jr.
Editor
Ketchikan Daily News
P. O. Box 7900
Ketchikan, Alaska 99901

Dear Editor:

There has been a considerable amount of publicity in the past few weeks concerning the level of judicial services being provided in Ketchikan. The publicity has, to a large extent been generated by S. B. 12, a Bill introduced by Senator Ziegler, that would, if passed, abolish the District Court position in Ketchikan and add a second Superior Court position. The rationale behind the Bill was apparently the belief that the court system has been derelict in providing adequate personnel for the Ketchikan area.

As the incumbent Superior Court Judge for this area, I must take exception.

To begin with, I had a long conference with Senator Ziegler, Mr. Cloudy and Mr. Brown on a Saturday afternoon last fall during which the caseload in Ketchikan and my assignment to other Districts in the State were discussed. These items have been the subject of discussion, not only between the persons already mentioned, but between myself and other members of the Ketchikan Bar Association on other occasions and I had also discussed the matters with the Presiding Judge of this District and the Administrative Director of the Alaska Court System. When I arrived in Ketchikan there was a substantial backlog of cases that had been ready for trial for some time and that backlog was still with us to some extent as late as last fall. However, the backlog in Ketchikan was miniscule compared to the backlog in the Third District and the Fourth District. I told the Ketchikan Bar Association, the Presiding Judge for this District and the Administrative Director that I would accept assignments to the Third and Fourth Districts whenever I could to help out with larger backlogs in those areas. I did that.

The problem all over the State has been largely the result of sloppy calendar practices on the part of the judges and while I can not speak for other areas in the State, I can say that I and my staff in Ketchikan have resolved those problems here and our Civil and Criminal calendar is current, and, in my opinion, in better shape than anywhere else in the State.

At the time of the conversation last fall, there were several things in the wind that indicated that Ketchikan might experience a substantial growth in a relatively short period of time. Because we were still dealing with a large number of old cases, the calendar here was already crowded. It generally takes far too long to get additional judicial personnel when they are needed. I had firsthand experience with that in Fairbanks last year and the reaction of the Legislature and the Judiciary to a demonstrated need for an additional judge of general jurisdiction was, in my opinion, too damn slow. With those factors in mind I agreed with Senator Ziegler and others that they would probably need to introduce legislation providing for an additional Superior Court Judge in this area. The thought was that it would take two or three years to get the judge and that by that time, the need would be crystal clear. I do not believe that anyone at the meeting contemplated that the Bill would pass this year nor do I believe that anyone at the meeting believed that the judge was needed this year.

Shortly after that, I changed venue in a case from Ketchikan to Juneau. The case was ready for trial and time had been set aside in Ketchikan to try it, so I went to Juneau and tried the case for for two weeks. I had scheduled in J neau a complicated contract case to follow, but that case was not ready for trial and so I faced the prospect of a month with a very light calendar. Rather than sit around here, I agreed to go to Fairbanks and try criminal cases. That kept me out of Ketchikan for six weeks, but it also kept me busy. Shortly after I returned from Fairbanks, I went to Anchorage for the Judges' Conference and stayed there to clear up remaining matters in cases that had been assigned to me in that area. Then came a short vacation after which, I returned to Juneau and tried the contract case that I mentioned earlier and a serious felony case on which the judges in Juneau had been disqualified.

I have been back in Ketchikan since February and I have told the Administrative Director that I do not want assignments out of the District for the remainder of this year for the very simple reason that I am sick and tired of traveling and I want to stay home for awhile.

However, we have to my knowledge no Civil cases that are ready for trial that are not now set for a trail date certain nor do we have any pending Criminal cases not now scheduled for trial. In other words, the calendar in Ketchikan, is current and I have every reason to believe that it will remain so in the future. Because I and the other persons in the Court System in Ketchikan have worked

to get the calendar in the shape that it is presently in. I take strong exception to any implication that the Judicial System or myself have slighted the needs in Ketchikan in any way.

If the condition of the calendar in Ketchikan remains as it is now, I can not support an additional judge for this area this year or next. It would simply mean that one of us would have to travel all the time.

Very truly yours,

Thomas E. Schulz
Superior Court Judge

TES:ri

cc: Hon. Robert H. Ziegler, Sr.
Hon. Terry Gardiner
Hon. Oral Freeman
Hon. Robert Boochever
Hon. Thomas B. Stewart
Mr. Arthur H. Snowden, II

House Judiciary
May 3, 1977

The meeting was called to order at 3:55 p.m. by Chairman, Gardiner. Members present were Gardiner, Miles, Brown and Rudd. Mr. Dankworth, Mr. Eliason and Mr. Carpenter came late.

SB 12 Number of superior court and district court judges SB 12

Senator Ziegler was here to speak in support of SB 12 for which he is a sponsor. He explained the existing problem as being that Ketchikan's Judge Schultz is frequently called to Anchorage leaving Ketchikan without a judge. Sen. Ziegler would like to see a superior court judge in Ketchikan at all times.

Senator Ziegler requested that the committee put this bill in the drawer for now. He said that he will carefully monitor the superior court position in Ketchikan between now and next year, and may ask that the bill be reconsidered next year if he senses the need.

The committee agreed to set the bill aside for now.

SB 151 Tort claims against the State of Alaska SB 151

Gardiner briefly explained why he hade brought this bill up before the committee.

Tom Koester from the Attorney General's office was here to support the bill, which is an administration bill.

Brown moved that consideration of SB 151 be postponed indefinately. Gardiner explained that a committee could not do this, as it would kill the bill for this year. Brown changed his motion to table the bill. The motion to table the bill failed.

There was a very legthy, involved discussion after which the committee decided not to do anything with the bill at this time.

The meeting was adjourned at 5:00 p.m.

District Court

State of Alaska

FIRST JUDICIAL DISTRICT
415 MAIN STREET, ROOM 400
KETCHIKAN, ALASKA
99901

CHAMBERS OF
H. C. KEENE, Jr., JUDGE

April 5, 1977

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

Senate Bill 12.

Dear Terry:

I understand that your committee has at present a Bill that would eliminate the position of District Court judge in Ketchikan. In order to clarify the picture, the abolition of my position would leave me in a very peculiar position. I have no intention of retiring in the foreseeable future.

This past month marked the termination of ten years on the Bench in Ketchikan during which period I feel I have gained a wealth of knowledge and experience. Whether this could be converted to a possible position on the Superior Court Bench is something that is at best risky and problematical.

In brief, I would appreciate your opposition to this Bill as there is no requirement for two Superior Court judges in Ketchikan. Such action would result in a completely unnecessary expenditure of money that is not justified by the workload, and is opposed by the Court System.

If there is anything further I can add on this subject, please let me know and I will respond forthwith.

Sincerely,

Henry C. Keene, Jr.
District Court Judge

HCK:ri

House Judiciary
May 2, 1977

The meeting was called to order at 3:45 p.m. by Chairman, Gardiner. Members present were Gardiner, Rudd, Dankworth and Carpenter. Brown came late. Miles and Eliason were absent.

Mr. Dankworth welcomed Mr. Carpenter as the new member of the committee.

HB 278 Geographic cost of living differentials for judicial officers HB 278

Gardiner reminded the committee that they had already agreed to delete section 4 of this bill when it had been considered previously.

Art Snowden and Susan Burke from the Court System were here to answer questions about the bill.

Brown recommended that if this bill were to leave committee, that a committee report accompany it so that this bill is not considered to be a repealer of the salary commission recommendations. The salary commission has set a base pay and this deals only with a cost of living differential, but Brown still thought that a committee report would be wise to attach to the bill.

Mr. Dankworth moved that HB 278 be moved out of committee. The motion carried and this was done.

SB 12 Number of superior court judges and district court judges SB 12

Art Snowden from the Court System was here to speak against the bill. The Court System doesn't feel that another judge is needed in Ketchikan. They feel that there is ample personnel to handle the work load in Ketchikan now. Mr. Snowden indicated that if anything is done on this, the original version of the bill would be more desirable in that it would give the Court System another judge who could be placed in an area where there appears to be a need, but they really do not sense a need in Ketchikan at this time.

The meeting was adjourned at 4:10 p.m.

Memorandum

Alaska Court System

TO: Arthur H. Snowden, II
Administrative Director

DATE : February 23, 1977

FROM: Merle Martin MPM
Manager of Technical Operations

SUBJECT: Replacing a District Court Judge in Ketchikan with a Superior Court Judge

Attached is the analysis you requested. I do not recommend proposed replacement.

cc: James D. Babb, Jr.
Leanne Culp

Adm. F-1
Rev. 2-73

Replacing a District Court Judge in Ketchikan With an Additional Superior Court Judge

Methodology: We used a case weighting model for this analysis. Case weighting has been used extensively in California, Washington, and in the Alaska Court System to evaluate judicial requirements. The model computes judges required by applying the following formula.

$$\text{Judges Required} = \frac{\text{Bench Minutes Required per Year to Dispose of all Cases}}{\text{Bench Minutes Available Per Judge Per Year}}$$

In computing Bench Minutes Available Per Year, we have used data gathered in Anchorage that compiled bench time by type of case by where the case was disposed of (e.g., trial). We have added 15 percent to the Anchorage figures to reflect economics of scale in the larger courts in Anchorage that do not exist in the smaller courts of Ketchikan.

In computing Bench Minutes Available Per Year, we used the same computations as done in the National Center for State Court study of the King County District Courts. We departed from this study for the following variables specific to Alaska.

1. We deducted an additional five days per year for judicial conferences, continuing education outside the state, etc.

2. We included an allowance for travel to reflect the "circuit riding" nature of our judges. Judge Keene's travel to other First Judicial Districts courts is necessitated when trials occur at magistrate's posts and when Judge Williams is challenged in Juneau. Judge Schultz's travel is more extensive and more outside his district.

3. The King County Study used a figure of five hours per day on the bench. However, the administrative structure supporting those judges was extensive. We have used 4 1/2 hours in the District Court and 4 hours in the Superior Court. The lower Superior Court figure reflects the greater complexity of cases in that court. The American Bar Association standards are 20 hours per week or four hours per day.

Results: 81 percent of a District Court judge's time and 72 percent of a Superior Court judge's time are required in Ketchikan. These figures are conservatively low in that the assumption of a six percent calendaring slack (calendaring inefficiency) is ideally low. If calendaring slack is higher, then more judge time will be needed. However, for the purpose of this analysis it is important to note that, in any case, a greater proportion of a District Court judge's time is needed than for a Superior Court judge.

Conclusion: It would not seem advisable to replace the District Court judge at Ketchikan with a Superior Court judge because:

1. The new Superior Court judge would have to spend more than 80 percent of his time on District Court matters; and

2. The current Superior Court judge position requires not even three-quarters of a Superior Court judge's time.

Recommendations: If it has been determined that a Superior Court judge in Ketchikan is not optimally available to hear all matters, then Judge Schultz's travel time to other courts should be decreased.

Section A. District Court Judges Required

Judge Minutes Available: Table A-1 provides this computation. There are 49,140 District Court bench minutes available per year in Ketchikan.

Bench Minutes per Case: Table A-2 shows the result of the Anchorage Bench Time study. The last column increases average time by 15 percent to reflect the processing economies expected in larger courts but not present in smaller courts.

Maximum Dispositions: In the long run, we cannot expect a court to dispose of more cases than are filed. Table A-3 shows filings by case type in the Ketchikan District Court in 1976. The maximum disposition we can expect, then, is the numbers of cases filed (3598).

Bench Minutes Required: Tables A-4 through A-7 compute bench minutes required for the four types of District Court cases. Each table comprises the same format which includes:

Column (1) - The particular stages at which a case can terminate. The more advanced the stage of disposition (e.g., trial), the more bench time that can be expected to be expended.

Column (2) - Percent of 1976 dispositions that were terminated at each stage.

Column (3) - The percentages in Column (2) applied to the total cases filed (maximum disposition) in 1976. Thus in Table A-4, Column (2) shows 63 percent of 1976 misdemeanors were terminated at the arraignment stage. Maximum disposition for misdemeanors was 896. 896 times 0.63 equals the 564 cases shown for arraignment in Column (3).

Column (4) - Average time for disposition taken from the right hand column of Table A-2.

Column (5) - Total Bench Minutes required computed by multiplying each row in Column (3) by its counterpart in Column (4).

Judges Required: Table A-8 sums the computed bench minutes required in Tables A-4 through A-7. A total of some forty thousand bench minutes are required. Referring to Table A-1, we see that there are 49,140 judge bench minutes available per year in the Ketchikan District Court. Dividing bench minutes required by bench minutes available, we see that 0.81 district court judges are required. Stated another way, 81 percent of a District Court judge's time is required to process District Court matters in Ketchikan.

Table A-1

Computation of Judge Minutes Available per Year Ketchikan District Court

1.	Court Days per Year		/250/ [1]
2.	Deductible Days		
	a. Annual Leave [2]	/30/	
	b. Sick Leave	/3/	
	c. Conferences, outside travel, etc.	/5/	
	d. Travel [3]	/15/	
	e. Allowance for calendaring [4]	/15/	
	f. Other	/ /	
	g. Total Deductible Days		/68/
3.	Judge Days Available		/182/
4.	Judge Minutes Available [5] (Item 3 times 270)		/49140/

1/ Reference "Administrative Analysis of the King County District Courts," NCSC, 8/28/75 pp. 144, 145.

2/ Judge Keene has 10 years service.

3/ Minimum travel 6 days; moderate travel 15 days; heavy travel 30 days.

4/ Case settings, continuances, etc.--6% as shown in the King County Study (see 1/ above).

5/ Assuming 4-1/2 bench hours, or 270 minutes per day.

Table A-2

Bench Minutes in the Anchorage District Court

Type Case	Termination Stage	% Cases At This Stage	Average Time (Min.)	15% Leeway
Misdemeanor	1. Prior to First Appearance	5%	3.8	4.4
	2. Arraignment	43%	4.6	5.3
	3. Prior to Completion of Trial	47%	15.2	17.5
	4. Trial	5%	251.8	289.6
	Total	100%	21.4	24.6
Civil	1. Prior to Answer	66%	0.3	0.3
	2. Prior to Completion of Trial	15%	0.9	1.0
	3. Trial	19%	33.8	38.9
	Total	100%	6.6	7.6
Traffic	1. Prior to First Appearance	43%	0.1	0.1
	2. Arraignment	53%	2.0	2.3
	3. Prior to Completion of Trial	2%	4.6	5.3
	4. Trial	2%	29.5	33.9
	Total	100%	1.9	2.2
Felony	1. Prior to First Appearance	7%	1.6	1.8
	2. Arraignment	3%	6.5	7.5
	3. Preliminary Hearing	12%	48.3	55.5
	4. Prehearing--Resolved in District Court	59%	15.2	17.5
	5. Prehearing--Superceded by Indictment	19%	9.7	11.2
	Total	100%	17.1	19.7

Table A-3

Maximum 1976 Dispositions
(Filings) for Ketchikan District
Court

Felony	64
Traffic	2,354
Misdemeanor	895
Civil	284
Total:	3,598

Table A-4

Misdemeanor Bench Minutes Required

(1) Termination Stage	(2) % of 1976 Dispositions at that Stage	(3) Projected 1976 Cases at that Stage	(4) Average Time for Disposition	(5) Total Bench Minutes Required
Prior to First Appearance	.04	36	4.4	158.4
Arraignment	.63	564	5.3	2,989.2
Prior to Completion of Trial	.28	251	17.5	4,392.5
Trial	.05	45	289.6	13,032.0
Total	1.00	896	-	20,572.1

Table A-5

Felony Bench Minutes Required

(1) Termination Stage	(2) % of 1976 Dispositions at that Stage	(3) Projected 1976 Cases at that Stage	(4) Average Time for Disposition	(5) Total Bench Minutes Required
Prior to First Appearance	.13	8	1.8	14.4
Arraignment	.02	1	7.5	7.5
Preliminary Hearing	.27	17	55.5	943.5
Prehearing--Resolved in District Court	.35	22	17.5	385.0
Prehearing--Superceded by Indictment	.23	16	11.2	179.2
Total	1.00	64	-	1,529.6

Table A-6

Traffic Bench Minutes Required

(1) Termination Stage	(2) % of 1976 Dispositions at that Stage	(3) Projected 1976 Cases at that Stage	(4) Average Time for Disposition	(5) Total Bench Minutes Required
Prior to First Appearance	.33	777	0.1	7.8
Arraignment	.44	1,036	2.3	2,382.8
Prior to Completion of Trial	.05	118	5.3	625.4
Trial	.18	423	33.9	14,339.7
Total	1.00	2,354	-	17,355.7

Table A-7

Civil Bench Minutes Required

(1) Termination Stage	(2) % of 1976 Dispositions at that Stage	(3) Projected 1976 Cases at that Stage	(4) Average Time for Disposition	(5) Total Bench Minutes Required
Prior to Answer	.79	224	0.3	67.2
Prior to Completion of Trial	.17	49	1.0	49.0
Trial	.04	11	38.9	427.9
Total	1.00	284	-	544.1

Table A-8

Ketchikan District Court
Judges Required

Type Case	Bench Minutes Required	Judges Required*
Misdemeanor	20,572.1	0.42
Felony	1,529.6	0.03
Traffic	17,355.7	0.35
Civil	544.1	0.01
Total	40,001.5	0.81

*Bench Minutes Required divided by 49,140 Judge Minutes Available (Table A-1).

Section B. Superior Court
Judges Required

Judge Minutes Available: Table B-1 provides this computation. The criterion of only four hours a day on the bench for a Superior Court judge is consistent with ABA standards of 20 hours per week. More hours off the bench are required for Superior Court judges because of the greater complexity of cases handled. This greater complexity leads to more extensive and complex motion practice and review. There are 40,080 Superior Court bench minutes available per judge per year in Ketchikan.

Bench Minutes per Case: Table B-2 shows the result of the Anchorage Bench Time Study. The last column increases Anchorage time by 15 percent to reflect processing economies expected in larger courts but not present in smaller courts.

Maximum Disposition: Table B-3 shows that, had all 1976 cases filed been disposed of, we would have had a maximum of 550 Superior Court dispositions at Ketchikan in 1976.

Bench Minutes Required: Tables B-4 through B-8 provide the same computations as explained for Tables A-4 through A-7. The only difference is in Probate cases and Children's Matters which are unique in nature. In these cases, times vary more by type of case than by the stage where the case is terminated.

Judges Required: Table B-9 shows computed bench minutes required in Tables B-4 through B8. Some 30,000 bench minutes are required. This represents 72 percent of a Superior Court judge's time.

Table B-1

Computation of Judge
Minutes Available per Year
Ketchikan Superior Court

1.	Court Days per Year		/250/ [1]
2.	Deductible Days		
	a. Annual Leave [2]	/30/	
	b. Sick Leave	/3/	
	c. Conferences, outside travel, etc.	/5/	
	d. Travel [3]	/30/	
	e. Allowance for calendaring [4]	/15/	
	f. Other	/ /	
	g. Total Deductible Days		/83/
3.	Judge Days Available		/167/
4.	Judge Minutes Available [5] (Item 3 times 240)		/40080/

1/ Reference "Administrative Analysis of the King County District Courts," 8/28/75 pp. 144, 145.

2/ 30 for Superior Court judges.

3/ Minimum travel 6 days; moderate travel 15 days; heavy travel 30 days.

4/ Case settings, continuances, etc.--6% as shown in the King County Study (see 1/ above).

5/ Assuming 4 bench hours, or 240 minutes per day.

Table B-2

Bench Minutes in the Anchorage Superior Court

Type Case	Termination Stage	% Cases At This Stage	Average Time (Min.)	15% Leeway (Min.)
Felony	1. Arraignment	5%	108.9	125.2
	2. Pretrial	83%	79.3	91.2
	3. Trial	8%	787.8	906.0
	4. Other	4%	43.5	50.0
	Total	100%	136.0	-
Domestic Relations	1. Trial	57%	39.5	45.4
	2. Other	43%	5.7	6.6
	Total	100%	25.0	-
Probate	1. Adoption	34%	11.4	13.1
	2. Estates	30%	13.2	15.2
	3. Guardianships	1%	30.5	35.1
	4. Conservatorships	19%	15.3	17.6
	5. Sanity	16%	39.7	45.7
	Total	100%	17.4	-
Other Civil	1. Before Answer	65%	4.1	4.7
	2. Pretrial	27%	7.3	8.4
	3. Trial	8%	528.3	607.5
	Total	100%	47.0	-
Children's Matters	1. Dependency	14%	55.9	64.3
	2. Delinquency	86%	60.8	69.9
	Total	100%	60.1	-

Table B-3

Maximum 1976 Dispositions
(Filings) for Ketchikan Superior
Court

Felony	33
Domestic Relations	249
Probate	76
Other Civil	80
Children's Matters	112
Total:	550

Table B-4

Felony Bench Minutes Required

(1) Termination Stage	(2) % of 1976 Dispositions at that Stage	(3) Projected 1976 Cases at that Stage	(4) Average Time for Disposition	(5) Total Bench Minutes Required
Arraignment	.23	7	125.2	876.4
Pretrial	.48	16	91.2	1,459.2
Trial	.20	7	906.0	6,342.0
Other	.09	3	50.0	150.0
Total	1.00	33	-	8,827.6

Table B-5

Domestic Relations Bench Minutes Required

(1) Termination Stage	(2) % of 1976 Dispositions at that Stage	(3) Projected 1976 Cases at that Stage	(4) Average Time for Disposition	(5) Total Bench Minutes Required
Trial	.48	120	45.4	5,448.0
Other	.52	129	6.6	851.4
Total	1.00	249	-	6,299.4

Table B-6

Probate Bench Minutes Required

(1) Type Case	(2) % of 1976 Dispositions at that Stage	(3) Projected 1976 Cases at that Stage	(4) Average Time for Disposition	(5) Total Bench Minutes Required
Adoption	.37	28	13.1	366.8
Estates	.41	31	15.2	471.2
Guardianship	.01	1	35.1	35.1
Conservatorship	.11	8	17.6	140.8
Sanity	.10	8	45.7	365.6
Total	1.00	76	-	1,379.5

Table B-7

Other Civil Bench Minutes Required

(1) Termination Stage	(2) % of 1976 Dispositions at that Stage	(3) Projected 1976 Cases at that Stage	(4) Average Time for Disposition	(5) Total Bench Minutes Required
Before Answer	.73	58	4.7	272.6
Pretrial	.18	15	8.4	126.0
Trial	.09	7	607.5	4,252.5
Total	1.00	80	-	4,651.1

Table B-8

Children's Matters Bench Minutes Required

(1) Type Case	(2) % of 1976 Dispositions at that Stage	(3) Projected 1976 Cases at that Stage	(4) Average Time for Disposition	(5) Total Bench Minutes Required
Dependency	.06	7	64.3	450.1
Delinquency	.94	105	69.9	7,339.5
Total	1.00	112	-	7,789.6

Table B-9

Ketchikan Superior Court
Judges Required

Type Case	Bench Minutes Required	Judges Required*
Felony	8,827.6	0.22
Domestic Relations	6,299.4	0.16
Probate	1,379.5	0.03
Other Civil	4,651.1	0.12
Children's Matters	7,789.6	0.19
Total	28,947.2	0.72

*Bench Minutes Required divided by 40,080 Judge Minutes Available (Table B-1).

SB

151

157

P7

February 11, 1977

The Honorable John L. Rader
President of the Senate
Alaska State Legislature
Juneau, Alaska 99811

Dear Mr. President:

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 tort claims against the state.

The bill would amend AS 09.50.250 dealing with actionable claims against the state. (Also see art. II, sec. 21 of the Alaska Constitution). Specifically, the bill would bar claims against the state arising out of motor vehicle accidents based upon the design of a state highway if the design conforms to applicable design standards. It also would bar claims arising out of motor vehicle accidents based upon the maintenance of a state highway unless the state had actual notice of a dangerous condition and had the capability to correct it. Finally, it would bar claims based on state inspection of (or failure to inspect) property not actually owned or controlled by the state for hazards or safety violations.

Specifically, this bill would bar suits arising out of a motor vehicle accident based on the design of a state highway (including the placement of warning or safety signs or markings on or along the highway) when that design conformed with the uniform design standards adopted by the Department of Highways pursuant to statutory authority and in effect at the time the design was prepared. It would also bar suits arising out of a motor vehicle accident based on the maintenance (or lack of it) of a state highway unless (1) an

employee of the state responsible for road maintenance at the place of the accident had actual notice of a dangerous road condition which required maintenance at the scene of the accident, (2) a reasonable man under similar circumstances would have taken steps to correct that dangerous condition, (3) there was adequate opportunity for the state to perform the required maintenance within the constraints of available time, personnel and equipment, and (4) the dangerous condition was a substantial contributing cause of the accident. The effect of these provisions would be the establishment of reasonable statutory standards of care to which the state must conform. State actions meeting the standards established would, by definition, be reasonable and would not give rise to state liability; state actions not meeting those standards would leave the state liable for resulting damages to the same extent it is so under existing case law.

The bill would also preclude state liability based on state inspection of (or failure to inspect) private property for violations of statutes, regulations or ordinances and/or health or safety hazards. This provision is prompted directly by the Alaska Supreme Court's decisions in Adams v. State, 555 P.2d 235 (Alaska 1976), in which the court held that the state was under a duty to abate fire hazards on private property discovered pursuant to an inspection, and Wallace v. State, ____ P.2d ____, (Alaska Sup. Ct. Op. No. 1352 - December 29, 1976), in which the court held that the state was under a duty to abate a hazardous working condition on an industrial job site.

The court specifically held that the conduct of such inspections, once the basic policy decision to inspect property has been made, requires no discretion, and therefore the state may be liable for injuries resulting from violations or hazards not discovered or not abated if discovered. The clear implication is that the choice of remedial measures, if violations or hazards on private property are discovered, is not a discretionary decision.

I firmly believe that the state must be given wide latitude in the measures it adopts to protect public health and safety. Particularly where the state's

ability to discover and abate health and safety violations and hazards on private property is limited by budgetary and other fiscal constraints, imposing liability when the state conducts an inspection places the state in an untenable position: the responsible state official must choose either not to inspect at all or to inspect and thereby expose the state to potential liability for any injuries resulting from violations or hazards, whether discovered or not.

The deployment of inspectors throughout the state, the selection of things to be inspected, the thoroughness with which inspections are conducted, and the remedial measures suggested or required if violations or hazards are discovered all involve discretionary decisions. These decisions involve a balancing of the available resources and manpower, the number of things to be inspected, the potential danger to the public health and welfare from undiscovered violations or hazards, and the potential economic and social consequences of invoking a wide variety of possible remedial measures. Subjecting the state to potential liability through judicial second-guessing any time injuries result from violations or hazards on private property which could have been discovered and/or abated is having the following consequences: either inspections of private property will not be made (except where a statute clearly requires it) or the most severe remedy available will be invoked even in marginal cases. Neither of these consequences is in the public interest; more significantly, the discretionary latitude necessary to create appropriate solutions to specific real problems is eliminated.

Normally I do not approve of legislation further limiting the state's tort liability since I strongly believe that the state must be as responsible for its actions as a private citizen when those actions result in personal injury or property damage. However, several recent court decisions at both the trial and appellate levels suggest that the judiciary is going beyond traditional negligence concepts when the state is a defendant, and is approaching the point where the state will be strictly liable for damages resulting from accidents in which the state has only minimal involvement. Both practical and policy considerations require that the legislature clarify and define the limits of state liability.

The most obvious practical effect of expanding state

liability has been a dramatic increase in the cost of the state's liability insurance, coupled with a decrease in actual coverage. While both inflation and the nationwide tendency toward jury verdicts exceeding $1,000,000 are also responsible for the increased cost of insurance, judicial expansion of state liability certainly is a substantial factor.

More fundamentally, I believe that the courts are assuming the legislature's responsibility to establish and define the limits of state liability. Art. II, sec. 21 of the Alaska Constitution provides that "[t]he legislature shall establish procedures for suits against the State." (Emphasis added.) Pursuant to this section, the legislature enacted AS 09.50.250 defining the limits of state liability, and exempting the state from liability for "discretionary acts." While I agree with the Supreme Court's recent statement that the current law of sovereign immunity in Alaska is that "liability is the rule, immunity the exception" (Adams v. State, 555 P.2d 235, 244 (Alaska 1976)), I fear that the legislative determination that one such exception should encompass discretionary acts by the state is slowly being undermined by judicial decisions giving the words "discretionary acts" an artificially narrow construction not intended by the legislature.

I am also disturbed by the fact that there are no established standards of care for those situations where the state should be liable if it is negligent. This permits a court to determine the reasonableness of state actions after the fact. It is imperative that the legislature reestablish its position as the branch of government responsible for determining what situations may give rise to state liability and the standard of care to which the state will be held in those situations.

I firmly believe that society rather than the injured individual should bear the cost of the state's negligence. However, this policy of risk-spreading should be confined to those situations in which the state is clearly under a duty to act and where its failure to perform its duty was a substantial contributing cause of the injury. The state cannot, and should not, bear the cost of every injury with which the state has some

connection. This bill would place reasonable statutory limits on state liability, permitting recovery where the state really is at fault but preventing recovery when the state is only minimally involved.

Sincerely,

Jay S. Hammond
Governor

SB 151 file

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL / POUCH K—STATE CAPITOL
JUNEAU 99811

May 12, 1977

The Honorable Terry Gardiner, Chairman
The Honorable Fred E. Brown
The Honorable Larry Carpenter
The Honorable Ed Dankworth
The Honorable Richard I. "Dick" Eliason
The Honorable Bill Miles
The Honorable Lisa Rudd, Members,
House Judiciary Committee
Tenth Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: SB 151
Tort Claims Against the State of Alaska
Our File: J-77-036-77

Dear Members of the House Judiciary Committee:

In my testimony on May 3, 1977 before the House Judiciary Committee regarding SB 151, Tort Claims Against the State of Alaska, I felt that there was some misunderstanding of the underlying intent and potential effect of this bill.

We believe the state should be liable at any time the state's negligent conduct causes a private injury, and SB 151 would not preclude state liability when the state's negligent conduct resulted in private injury. It would do the following: (1) establish a legislative standard of non-negligent "reasonable care" to be applied in actions based on the design or maintenance of a state highway; (2) preclude state liability based on state inspection of, or failure to inspect, private property for violations of statutes, regulations or ordinances and/or health or safety hazards; and, (if amended as I requested in my testimony) (3) preclude state liability when the basis of the cause of action is that the state licensed the private individual or private conduct which resulted in the injury.

We believe a statutory standard of reasonable care in highway cases is necessary because there is no such standard at present. In every case, the jury is required to determine -- after the fact -- if the design or maintenance of the highway was reasonable. The standard of reasonable care which would be established by SB 151 for highway design is conformance with applicable nationally recognized uniform standards in effect at the time the design was prepared. Regarding highway maintenance, the state would be liable if (1) it had notice of the hazardous condition requiring maintenance; (2) a reasonable man would take steps to correct that condition; (3) the state was able to correct the condition and did not, and (4) the condition was a substantial contributing cause of the accident. We believe these provisions would establish a fair standard of "reasonable care" in highway cases. As I suggested in my testimony, the lack of an objective standard leads to a floating standard of care. What one jury sees as "reasonable" another jury may see as not "reasonable," and the state's conduct is always subject to second-guessing.

The bill also would bar suits based on a failure of the state, where the state is neither owner nor tenant of the property involved, (1) to inspect for statutory violations or hazards; (2) to discover a statutory violation or hazard; or (3) to abate any such violation or hazard. In determining whether or not the state should be immune from these acts or omissions, we believe you must make a fundamental policy determination of precisely what the state's role is when it becomes involved in inspecting for hazards. One approach is that the state inspects for hazards to try to minimize the dangers that state citizens encounter in using private facilities which are subject to state inspection; that is, the state is attempting to ensure that the public is not exposed to an unreasonable risk of harm, recognizing that not all dangers can be totally eliminated. The other approach is that the state inspects for hazards to guarantee the safety of the property inspected. That is, if the property is inspected and violations are not discovered or not abated if discovered, the state is liable for post-inspection injuries much like an insurance company. We believe the state's safety inspection program is designed to minimize the dangers state citizens are exposed to. We do not believe that the state should be guaranteeing the safety of non-state, privately-owned property. The owner of the private property, the individual responsible for maintaining dangerous or hazardous premises and inviting the public to use them, is the one who should be liable for injuries resulting from those hazards or dangers. All of the people -- the citizens and taxpayers of the state -- should not have to pay for the wrongs of a few individuals.

If inspection procedures are inadequate, they should be changes. If inspectors are incompetent, new ones should be hired. But making the state liable for private hazards simply because the state had the opportunity to inspect will not improve the quality of inspectors or inspections. If anything, it will have the opposite effect: the number of inspections will be minimized because liability may result. It may have a negative effect on public safety as well: private property owners will rely on the state to make their property safe and disclaim personal responsibility for their own wrongs. Finally, the impact on state finances is obvious: large dollar judgments against the state needlessly divert state resources which could be spent elsewhere with greater public benefit. I say "needlessly" because the whole concept of state liability based on inspections misses the basic point that the private property owner is the one who should bear the consequences of maintaining a hazardous condition and compensate innocent victims. They are not without a remedy.

Finally, we urge you to amend SB 151 to include a new paragraph to read:

> (6) is based on the grant, issuance, refusal, extension, delay, or denial of a license, permit, appeal, approval, exception, variance, or other entitlement, or a re-zoning.

This provision appears in the recent municipal immunity bill passed by both houses and currently awaiting the Governor's signature. While the state has not yet been held liable because it issued a license or permit, it is conceivable that it will be held liable in the future, particularly since municipalities may soon be immune from liability based on the issuing of a license or permit. Liability would not be automatic; however, the state would have to prove that its licensing and permit issuing procedures are "reasonable." The procedures used for licensing drivers, physicians, etc., and issuing permits for using high explosives, transporting extra-wide loads on state highways, etc., all are designed to provide a certain amount of oversight of activities which may endanger the public. They are not designed to guarantee that dangerous activities will not be dangerous; that is impossible without the expenditure of incredible sums of money, and even then, nothing is guaranteed. Decisions regarding the procedures to be used in issuing licenses and permits include the time and manpower available to evaluate applicants, the feasibility of evaluating applicants actually performing the tasks for which they will be licensed, the need for a permit and the consequences of not granting one, etc. In any jury trial, the jury will be required to make

an after-the-fact determination regarding the reasonableness of the procedures involved. Particularly where the plaintiff evokes a great deal of sympathy from the jury, it may be next to impossible to prove that the procedure employed was "reasonable," and that the state should not be liable for injuries caused by an individual licensed or permitted by the state to engage in the activity which led to the injury.

The legislature has already given immunity to municipalities in suits based on the inspection of private property and the issuing or denial of licenses and permits. If such immunity is not given to the state, principles of statutory construction almost certainly would lead to the conclusion that the legislature intended that the state could be found liable in such cases. If you would prefer to leave a floating standard of "reasonable care" in highway cases, the bill could be amended by removing that section. However, we urge passage of SB 151 with the amendment for causes of action based on licenses or permits. We believe that, by not passing SB 151 with the amendment, the legislature is saying that the state guarantees inspected property is not hazardous, licensed professionals are competent, and activities for which permits have been issued are safe, and the state will pay for resultant injuries when those statements are not true.

Sincerely,

AVRUM M. GROSS
ATTORNEY GENERAL

By: G. Thomas Koester
G. Thomas Koester
Assistant Attorney General

GTK:jec

cc: Fran Ulmer

THE LEGISLATURE OF THE STATE OF ALASKA
TENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. _____

Title An Act Relating to Tort Claims Against the State of Alaska

Requested by Governor Hammond Date 2/7/77

II. FISCAL DETAIL

Agency Affected All

Program Category Affected _____

Budget Request Unit(s) Affected _____

EXPENDITURES (Thousands of Dollars)

		FY 77	FY 78	FY 79	FY 80	FY 81	FY 82
100	PERSONAL SERVICES						
200	TRAVEL						
300	CONTRACTUAL						
400	COMMODITIES						
500	EQUIPMENT						
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS, ETC.						
	TOTAL	0	0	0	0	0	0

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

The State receives up to 25 suits per year pertaining to highway maintenance and design. Of those suits 15-20 would be defensable by virtue of the standards of negligence outlined in this bill. Hopefully the clear defense available to us will eliminate the need to defend these suits thus saving $300,000 to $500,000 in attorney costs. The State retains a significant amount of self insurance which applies to claims treated by this bill. Reestablishment of traditional liability standards could result in annual savings in excess of an estimated 1.5 million dollars.

IV. DATE February 8, 1977 PREPARED BY John George

AGENCY General Services & Supply

PHONE 465-2283

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

33-001 (Rev. 10/76)

Introduced: 2/11/77
Referred: Judiciary

THE SENATE

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

SENATE BILL NO. 151

IN THE LEGISLATURE OF THE STATE OF ALASKA

TENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to tort claims against the State of Alaska; and providing for an effective date."

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

* Section 1. AS 09.50.250 is amended by adding new paragraphs to read:

(4) arises out of a motor vehicle accident and is based upon

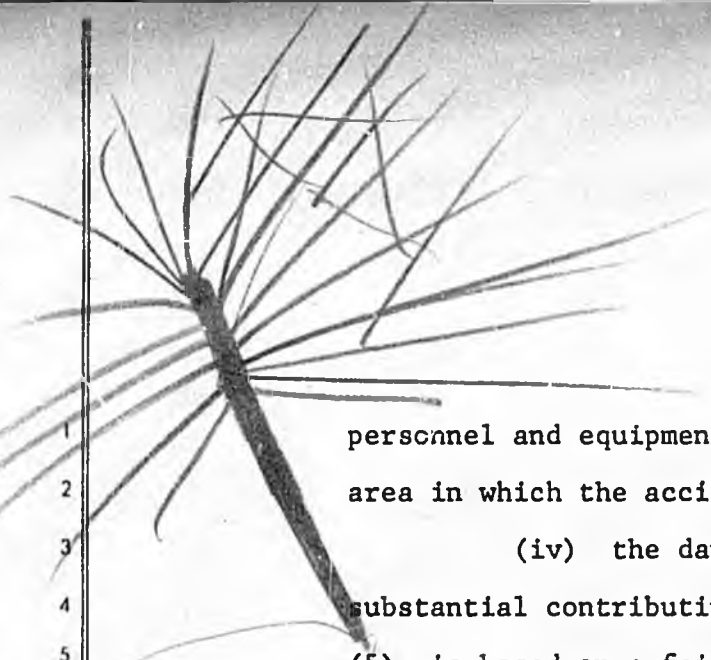
(A) design of a state highway, including the placement of warning or safety signs or markings on or along the highway, when the design conformed to nationally recognized uniform standards as adopted by the Department of Highways under AS 19.10.040, 19.10.050, or AS 19.10.160 for the system of which the highway involved is a part and in effect at the time the design was prepared; or

(B) maintenance of a highway unless

(i) an employee of the state who had the responsibility for road maintenance at the place of the accident had actual notice of a dangerous road condition which required maintenance at the scene of the accident;

(ii) a reasonable man under similar circumstances would have taken steps to correct the dangerous condition of the highway at the place of the accident;

(iii) there was adequate opportunity for the state to render the maintenance service, considering the length of time in which the state had actual notice, and the



An Act of God

personnel and equipment capabilities of the state for the area in which the accident occurred; and

(iv) the dangerous condition of the road was a substantial contributing cause of the accident;

(5) is based on a failure of the state, where the state is neither owner nor tenant of the property involved,

(A) to inspect property for a violation of any statute, regulation, or ordinance, or a hazard to health or safety;

(B) to discover a violation of any statute, regulation, or ordinance, or a hazard to health or safety if an inspection of property is made;

(C) to abate a violation of any statute, ordinance, or regulation, or a hazard to health or safety discovered on property inspected.

* Sec. 2. This Act takes effect immediately in accordance with AS 01.-10.070(c) and applies to all legal actions filed after the effective date of this Act.

1. gross negligence

Amend SB299 — gross negligence

John -

Carl
Gordon Hannon
- Hood Jeffries
II 5500

Chattin - SB 151 fib.
Sovereign Immunity

passed Senate in our committee

amendments will be sent to you from Gov. Office - copy for your file

House Judiciary
May 3, 1977

The meeting was called to order at 3:55 p.m. by Chairman, Gardiner. Members present were Gardiner, Miles, Brown and Rudd. Mr. Dankworth, Mr. Eliason and Mr. Carpenter came late.

SB 12 Number of superior court and district court judges SB 12

Senator Ziegler was here to speak in support of SB 12 for which he is a sponsor. He explained the existing problem as being that Ketchikan's Judge Schultz is frequently called to Anchorage leaving Ketchikan without a judge. Sen. Ziegler would like to see a superior court judge in Ketchikan at all times.

Senator Ziegler requested that the committee put this bill in the drawer for now. He said that he will carefully monitor the superior court position in Ketchikan between now and next year, and may ask that the bill be reconsidered next year if he senses the need.

The committee agreed to set the bill aside for now.

SB 151 Tort claims against the State of Alaska SB 151

Gardiner briefly explained why he hade brought this bill up before the committee.

Tom Koester from the Attorney General's office was here to support the bill, which is an administration bill.

Brown moved that consideration of SB 151 be postponed indefinately. Gardiner explained that a committee could not do this, as it would kill the bill for this year. Brown changed his motion to table the bill. The motion to table the bill failed.

There was a very legthy, involved discussion after which the committee decided not to do anything with the bill at this time.

The meeting was adjourned at 5:00 p.m.

JAY S. HAMMOND
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

April 12, 1977

MEMORANDUM

TO: Representative Terry Gardiner

FROM: Fran Ulmer

SUBJECT: Amendment to SB 151

It has come to our attention that Senate Bill 151 regarding limitation of tort claims against the State needs an additional provision to protect the State from claims arising out of the issuance of licenses and permits. This provision would be identical to the protection afforded municipalities in HB 354/SB 249. When the State licenses individuals (occupational licenses, drivers licenses, etc.), it does not assume the responsibility of ensuring that the licensee will perform adequately at all times. That is, the State does not stand behind every driver that holds a license to drive in Alaska or every doctor certified to practice medicine in the State. However, the Supreme Court's recent tort decisions could lead to such a conclusion. Furthermore, principles of statutory construction would almost certainly lead to that conclusion if municipalities are given such immunity and the State is not.

The addition on Page 2 should read "(6) is based on the grant, issuance, refusal, suspension, delay, or denial of a license, permit, appeal, approval, exception, variance, or other entitlement, or a rezoning;".

Thank you for considering this request.

~~SB 3945~~

Kept Hung
364-2121
ext 236

SB 151

James
Zakin —
please call when
this bill comes
before Committee.