THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. Senate Bill No. 88
Title An Act relating to truant children.
Requested by _____ Date _____

II. FISCAL DETAIL
Agency Affected Health and Social Services
Program Category Affected Social Services
BRU, Program, or Subprogram(s) Affected Social Services BRU
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

		FY 79	FY 80	FY 81	FY 82	FY 83	FY 84
100	PERSONAL SERVICES		$1894.6	$1989.3	$2088.8	$2193.2	$2302.9
200	TRAVEL		4.6	4.8	5.1	5.3	5.6
300	CONTRACTUAL		6.1	6.4	6.7	7.1	7.4
400	COMMODITIES		15.3	16.1	16.9	17.7	18.6
500	EQUIPMENT		25.5				
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS, ETC.						
	TOTAL		$1946.1	$2016.6	$2117.3	$2223.3	$2334.5

FUNDING (Thousands of Dollars)

GENERAL FUND		$1946.1	$2016.6	$2117.3	$2223.3	$2334.5
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME		51	51	51	51	51
PART TIME						
TEMPORARY						

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

Enactment of this bill would essentially remove the responsibility for truancy investigation from the various school districts throughout the state. It is difficult, at this time, to determine exactly how many social workers would be required to meet this obligation. In all, districts would require part of one social worker's time, larger districts more than one worker. We have taken, therefore, an average of one per district, with the exception of Anchorage, where we have established six. The salary costs are based on current salary schedules, plus the additional FY 79 4% increase and an estimated 5% salary increase for FY 80. Reimbursement of mileage at $.25 a mile x an average of 30 miles a month x 51 workers would minimally be required. Telephone rental would be necessary at an average of $10 a month for each worker; general office supplies at an average of $300 a year each; and a desk and chair, at an average of $500 each.

IV. DATE 2/20/79 PREPARED BY Art Holmberg, Director
AGENCY Division of Social Services
PHONE 465-3170

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

33-001 (Rev. 12/78)

(4) "committee" means the Catastrophic Illness Committee, created under § 20 of this chapter;

(5) "elective medical or surgical procedures" means treatment which is not essential to the life or health of a person;

(6) "family" means two or more persons related by blood or marriage or adoption living as one economic unit;

(7) "liquid assets" means assets which can be readily converted to cash;

(8) "medical expense" means any financial obligation incurred in the course of treatment of illness as prescribed by a physician, including bills for ancillary services, patient transportation, transportation of a medical or family escort when reasonably necessary, or living expenses while receiving outpatient treatment in a community to which the applicant is not reasonably able to commute from his permanent place of abode;

(9) "nonliquid assets" means all assets which are not liquid assets;

(10) "permanent place of abode" means a dwelling, or a dwelling unit in a multiple dwelling, including lots and outbuildings or an appropriate portion of these, which are necessary to convenient use of the dwelling unit;

(11) "provider" means a licensed physician, pharmacist, dentist, or other health service worker or a licensed hospital, clinic, skilled nursing home, intermediate care facility or health maintenance organization which has provided services not excluded by § 50 of this chapter to an applicant as a result of a catastrophic illness;

(12) "third-party payments" means payments of medical expenses related to a catastrophic illness by sources other than the applicant or the committee, including but not limited to state and federal medical assistance programs, private health insurance, employment-related health insurance, military health insurance, workmen's compensation, violent crimes compensation, Indian Health Service of the United States Department of Health, Education and Welfare, and awards in legal actions. (§ 1 ch 107 SLA 1978)

Chapter 10. Delinquents and Wards of the Court.

Article 1. Juvenile Courts.

Section

Sec. 47.10.010. Jurisdiction. (a) Proceedings relating to a minor under 18 years of age residing or found in the state are governed by this chapter, except as otherwise provided in this chapter, when the court finds the minor

(1) to be a delinquent minor as a result of violating a criminal law of the state or of a municipality of the state; or

(2) to be a child in need of aid as a result of

(A) the child being habitually absent from his home or refusing to accept available care, or having no parent, guardian, custodian or relative caring or willing to care for him, including physical abandonment by

(i) both parents,

(ii) the surviving parent, or

(iii) one parent if the other parent's rights and responsibilities have been terminated under § 80 of this chapter or voluntarily relinquished;

(B) the child being in need of medical treatment to cure, alleviate, or prevent his suffering substantial physical harm, or mental harm as evidenced by failure to thrive, severe anxiety, depression, withdrawal, or untoward aggressive behavior or hostility toward others, and his parents are unwilling to provide the medical treatment;

(C) the child having suffered substantial physical harm or if there is an imminent and substantial risk that the child will suffer such harm as a result of the actions done by or conditions created by his parent, guardian or custodian or the failure of his parent, guardian or custodian adequately to supervise him;

(D) the child having been sexually abused either by his parent, guardian or custodian, or as a result of conditions created by his parent, guardian or custodian, or by the failure of his parent, guardian or custodian adequately to supervise him;

(E) the child committing delinquent acts as a result of pressure, guidance, or approval from his parents, guardian or custodian.

(b) When a minor is accused of violating a traffic statute or regulation, a traffic ordinance or regulation of an incorporated municipality, a fish and game statute or regulation under AS 16 or a parks and recreational facilities statute or regulation under AS 41.20, excepting a statute the violation of which is a felony, the procedure prescribed in §§ 20 — 90 of this chapter may not be followed, except that a parent, guardian or legal custodian shall be present at all proceedings. The minor accused of a traffic offense, a fish and game statute or regulation violation under AS 16 or parks and recreational facilities violation under AS 41.20 shall be charged, prosecuted, and sentenced in the district court in the same manner as an adult.

(am §§ 7, 8 ch 63 SLA 1977)

Effect of amendments.

The 1977 amendment rewrote subsection (a), and in subsection (b), deleted "or" following "traffic statute or regulation" and inserted the language beginning "a fish and game statute" and ending "AS

Alaska State Legislature

Senate

Committee on

Health, Education & Social Services

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

Glenn Hackney, Chairman
Frank Ferguson, Vice Chairman
Mike Colletta
Bettye Fahrenkamp
Arliss Sturgulewski

LETTER OF INTENT FOR SB 88

It is the intent of the Senate Health, Education and Social Services Committee that those rare cases of need with which the School District cannot cope would be addressed by SB 88. It is not the intent that this would remove from the School Districts their present role in enforcing attendance.

Glenn Hackney
Chairman

Date: March 14, 1979

INTRODUCTION OF BILLS (Senate) (Cont'd)

Truant Children

SENATE BILL NO. 88, by Senator Meland. Amends AS 47.10.010(a)(2)(A), under Art. I "Jurisdiction of the Juvenile Courts," to add "habitually truant from school" to conditions which bring a minor under the jurisdiction of the Juvenile Courts. (1977 amendment re-wrote (a) and omitted this condition.) Does not provide for effective date.

Introduced January 31 and referred to HESS, then to Judiciary.

POSITION PAPER/Department of Health & Social Services

POSITION PAPER

SENATE BILL NO. 88

"An Act relating to truant children."

This Bill would amend AS 47.10.010(a)(2)(A) to include habitual truancy from school as a reason for adjudication of a child as a "child in need of aid."

The Governor's Children's Code Task Force, after considerable study and deliberation, recommended that truancy be eliminated as a reason justifying adjudication of a child as a child in need of aid. The Department supported this recommendation which was accepted by the Legislature and became law in 1977.

The Department does not conside truancy alone as sufficient justification for it to intervene in a family and to initiate court action. If the Department is required to assume this additional responsibility it would be very costly, requiring the hiring of staff to deal with this problem area.

In addition, if a child protection situation such as abuse, neglect, or abandonment exists in addition to habitual truancy, the Department can intervene and initiate court action under AS 47.10.010(a) as it presently reads. Under AS 47.17.020, schools are required to report child abuse and neglect situations to the Department of Health and Social Services.

RECOMMENDED BY: Art Holmberg DATE: 3/5/79
Art Holmberg, Director
Division of Social Services

APPROVED BY: Helen D Beirne DATE:
Helen D. Beirne, Commissioner
Department of Health and Social Services

Title An Act relating to truant children.

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IV. DATE 2/20/79 PREPARED BY Art Holmberg, Director

AGENCY Division of Social Services

PHONE 465-3170

Original: Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named)

ACCREDITED BY THE NORTHWEST ASSOCIATION OF SECONDARY SCHOOLS & COLLEGES

P. O. BOX 179 SITKA, ALASKA 99835

NELAND J. HAAVIG
SUPERINTENDENT

February 1, 1979

Senator Glenn Hackney, Chairman
Health Education and Social Services Committee
Pouch V
Juneau, AK 99811

Dear Senator Hackney,

I am writing in support of Senate Bill number 88 relating to truant children.

The juvenile statutes which were adopted a couple of years ago took out any specific wording regarding truancy. Thus no one wants to touch the problem. What we have in effect is a compulsory attendance law with no effective way to enforce it. I have been advised by both our school attorney, Mr. Randy Weddle of Juneau, and the Assistant District Attorney, Mr. Jim Hanley, that it is virtually impossible to use the compulsory attendance law as one must prove "willful intent" on the part of the parent.

These are not situations where we wish to see anyone punished and I never saw anyone punished under the old statute unless other things were brought into the case besides truancy. It seems to be sufficient to have a couple or three cases a year brought before a judge and have him lay out the alternatives to discourage further truancy. This also acts as a deterrent to others who might be tempted to be truant from school. In some of my past cases the judge determined that it was not the fault of the child but that of the parents. In either case it brings the situation to the attention of someone who has the power to do something about it.

It has been my experience that when students are habitually truant from school they end up getting into other trouble with the law when they should have been in school.

I urge passage of Senate Bill 88 so that schools again have an effective tool to see that children are in school attendance as they should be to become productive citizens.

Sincerely,

Daniel D. Dunsing

Daniel D. Dunsing, Principal
Blatchley Junior High School

DDD/ll

cc: Senator Meland

Box 1732
Sitka, Alaska
February 15, 1979

Senator Hackney:

I would like to express my concern over the too frequent situation of children under the age of 16 years who attend school only sporadically and whose education is then severely limited. Many of these children begin having serious attendance problems in fifth or sixth grade - sometimes earlier. At this time the Courts has been unwilling to give attention to this problem, even after unsuccessful efforts to work with the family.

I hope that Senate Bill #88, presently in committee, will help by providing one more alternative in working with these students and their parents. Please support this bill.

Thank you

Susan White

Gateway Borough School District

SCHOENBAR JUNIOR HIGH SCHOOL
217 Schoenbar Road
KETCHIKAN, ALASKA
99901

CHARLES MARKSHEFFEL, Principal

February 27, 1979

Senator Glen Hackney, chairman
Health Education and Social Services Committee
Pouch V
Juneau Alaska 99811

Dear Senator Hackney:

This is to ask your support of Senate Bill 88.

Without teeth in a truancy law we will continue to lose students who at 13 and 14 years of age make their own decisions as to school attendance.

Thank you.

Sincerely,

C Marksheffel

C. Marksheffel

CC: Pete Meland

P. O. BOX 179 SITKA, ALASKA 99835

KELAND J. HAAVIG
SUPERINTENDENT

Etolin Street School
February 7, 1979

Senator Glenn Hackney
Chairman
Health, Education, and Social Services Commission
Pouch V
Juneau, Alaska 99811

Dear Senator Hackney:

Ever since the "child in need of supervision" category was wiped off the books several years ago, there have been no teeth in the compulsory school attendance laws of this state. As an elementary school principal in Sitka, I have observed numerous occurrences of habitual absence from school on the part of young school-age children. In all of these cases there was neglect on the part of the parents of these children, in my opinion, and the state is doing nothing to correct this bad situation.

I go to a lot of effort to document cases, then turn the information over to Division of Family Services or to the State Division of Corrections. They try, in many cases, to help, by contacting the parents and talking to them. But there seems to be little they can do based on poor attendance at school, alone.

It is not my wish that the schools take over the affairs of parents. But when those parents violate the laws of the state by not seeing to it that their children get to school regularly, or when a parent cannot handle a child and the child will not go to school or do anything else his or her parents tell him to do, that child needs some kind of supervision.

I therefore support Senate Bill 88 and urge that your committee recommend it to the full Senate.

Very truly yours,

Ronald A. Rhodes

Ronald A. Rhodes
(Principal)

RAR:dem
Encolsure
Copy to Senator Pete Meland

STATE OF ALASKA

JAY S. HAMMOND
GOVERNOR

DEPARTMENT OF EDUCATION

OFFICE OF THE COMMISSIONER

POUCH F-ALASKA OFFICE BUILDING
JUNEAU 99811

March 7, 1979

Senator H.D. Meland
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator Meland:

Re: Our Telephone Conversation
Concerning SB-88

After discussing your bill with some attorneys, it appears that enactment of the legislation proposed in the above referenced bill could facilitate the remediation of habitual truancy problems.

I would be willing to testify in favor of the bill should it come up for hearing in a legislative committee.

Sincerely,

Steve Hole
Education Administrator

P. O. BOX 179 SITKA, ALASKA 99835

HAROLD J. HAVIG
SUPERINTENDENT

December 15, 1978

Senator Pete Meland
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Pete,

Time is rolling by and I wanted to make contact with you on the truancy matter one more time before the 1979 Legislature gets under way.

I asked Robert Schell, Baranof Elementary Principal, to bring the truancy subject up at the Alaska Elementary Principals' meeting this year. He reported back to me that he didn't have to as others had the same concern and trought up the subject. He assures me that there will be a letter coming from the Elementary Principals' Association supporting our proposed legislation. Perhaps you can advise us as to where such a letter should be directed and what other kinds of support would be helpful.

Also, enclosed is a letter from the school attorney outlining an interesting problem due to the new statutes.

Have a pleasant Holiday.

Sincerely,

Daniel D. Dunsing, Principal
Blatchley Junior High School

DDD/ll

Enclosure

LAW OFFICES OF
FAULKNER, BANFIELD, DOOGAN & HOLMES
SUITE 201, 311 FRANKLIN STREET
JUNEAU, ALASKA 99801
(907) 586-2210
TELEX 090-45-335

ANCHORAGE OFFICE
810 FIRST NATIONAL BANK BLDG
425 G STREET
ANCHORAGE, ALASKA 99501
(907) 274-0666
TELEX 090 25-425

NORMAN C. BANFIELD
MICHAEL M. HOLMES
RANDALL J. WEDDLE
WILLIAM B. ROSELL
LAWRENCE T. FEENEY
CHARLES N. BRENNAN
TOM BATCHELOR
ANTHONY M. SMOLTY
JAMES R. WEBB
*JAMES N. REEVES
HERBERT L. FAULKNER (1882-1972)
FRANK M. DOOGAN (1923-1977)
*ANCHORAGE OFFICE

November 29, 1978

Neil Haavig Superintendent
Greater Sitka Borough School District
P. O. Box 179
Sitka, Alaska 99835

Dear Neil:

The California Supreme Court has recently handed down a decision of some importance to school districts. Since there is no Alaska case law directly on this point and since the Alaska Supreme Court often looks to the California Supreme Court as new law develops, this decision could have an impact on the potential liability of school districts in this state.

In Hoyem v. Manhattan Beach City School District, the ten year old plaintiff had left the school grounds, apparently without the knowledge of the administration, while classes were still in session. He was thereafter struck by a motorcycle at a public intersection and was seriously injured.

He sued the school district on the grounds that the accident was a proximate result of the school district's negligent supervision of him in failure to keep him on the school premises. The school district moved to dismiss the Complaint on the grounds that they could not be liable for his leaving the school premises contrary to regulations and a resulting accident which occurred off the school grounds.

The California Supreme Court ruled that the Complaint did state a claim against the district and that it was a jury question as to whether the district had been negligent in failing to properly supervise the plaintiff and whether the accident was a proximate result of that failure. The case has now been sent back for a jury trial on these issues.

Although this was a decision by a narrowly divided Court (4-3), it poses a potential expansion of district liability if it is to be followed in this state. It is particularly troubling since, given the recent amendments to the Children's Code which make truancy prosecutions exceedingly difficult if not impossible, districts will have their truancy procedures strictly scrutinized if they ever find themselves in a case such as this one. Although there may well be cause for frustration as to the effectiveness of procedures to restrict truancy problems, it would appear that just from the potential liability standpoint it is important that district personnel continue to advise parents of truancy problems and follow the other procedures which the district may specify in this regard.

Yours very truly,

Lawrence T. Feeney

LTF:am

Superior Court
State of Alaska
FIRST JUDICIAL DISTRICT
JUNEAU COURT and OFFICE BUILDING
POUCH U
JUNEAU, ALASKA
99811

CHAMBERS OF
THOMAS B. STEWART, JUDGE

May 9, 1978

The Honorable H. D. "Pete" Meland
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Dear Pete:

This is in response to your letter of May 3, 1978, asking my comments on Senate Bill 490, concerning truant children. At the outset I should note that whatever is said in this letter constitutes only my own views and does not in any way reflect the views of any other judges or of the court system at large. I cannot speak officially on behalf of the court system concerning any legislation.

Among the materials you forwarded was a memorandum from Joseph A. Guthrie of the Legislative Affairs Agency which purports to state that I have refused to exercise any jurisdiction at all over truants. This is not a correct statement, and I do not know where Mr. Guthrie may have obtained it. In fact, no one has sought to charge a minor before me as a delinquent because of truancy, and accordingly I have never had any occasion to rule on the question judicially. It is possible his comment came at second or third hand because of some discussions in which I and other judges informally raised questions about the meaning of various provisions of the children's code as substantially amended in 1977.

It seems apparent from those revisions of last year that the major effort at revision of the juvenile code, which was largely sponsored by an active group in Anchorage, included an intent to take truant children, and others who were not delinquent in the sense

of violating criminal laws, completely out of treatment by the juvenile justice system. In other words the intent appeared to be to have problems such as truancy, alcoholism and other matters handled by agencies not connected with the police, district attorneys, or courts. This is a view that has affected the juvenile laws in many states throughout the nation in recent years. Without commenting on the overall merits of this view, I would at least express concern that this removal of so-called "status offenders" from the justice system leaves a void, unless some other societal agencies are prepared to address the problems and needs of these minors in some meaningful way. Many hold the view, for example, that truancy is a matter that should be handled within the confines of the school system and their relationships with parents, and this view seemed to be reflected in the amendments to the juvenile code that were adopted last year. You may be able to confirm this in more detail, if you wish, by contacting Andrew Brown, the attorney who prepared the language at the behest of the group which sponsored the amendments. Another person knowledgeable in this area would be Betsy McGuire, who was executive director of the office of child advocacy (since abolished) that coordinated the efforts.

Senate Bill 490 as drafted would of course make clear that truancy is a matter that should be handled through the courts, and the language proposed would seem to be fully sufficient for that purpose.

With respect to the amendment that suggests some changes in AS 14.30.045 and .030, it appears that this language would broaden the utility of the compulsory school attendance law to enable prosecution, or the threat of prosecution, of parents who are not responding when their children are truant. I am in general inclined to view that this statute is addressed to parents and is not a suitable vehicle for finding a child delinquent. Again, however, this is a view not determined from any case brought against a child to find him or her delinquent as a result of truancy. Accordingly, I would not want any statements made here to suggest the position I might take in a case where that issue is appropriately argued and submitted for judicial treatment. I am generally in accord with the views expressed to you by others that intent to violate the statute must be found before a conviction could occur, and this complicates the enforcement of these provisions of the law. The language offered would appear to be suitable to accomplish the purpose apparently intended.

Please let me know if I can be of any further assistance on this subject, which I would be glad to discuss with you informally if you wish to call.

With personal regards,

Very truly yours,

Thomas B. Stewart
Presiding Judge

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

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

M E M O R A N D U M February 3, 1978

SUBJECT: Court Jurisdiction over Truant Children (W.O. 4818)

TO: Senator H.D. Meland

FROM: Joseph A. Guthrie, Legislative Counsel

Mr. Dunsing's problem arises from a legal dispute over the coverage of AS 47.10.010(a), following its amendment last year by sec. 32, ch. 63, SLA 1977. AS 47.10.010(a) lists those acts committed by children, or situations in which children may find themselves, which if established by proof, give the court "jurisdiction" over a minor child. In this context, jurisdiction refers to a legal relationship between the court and the child whereby the court has the power to impose any of the number of dispositions (e.g. institutionalization, probation, termination of parental rights) on a child found to be under the court's jurisdiction.

Prior to last year's amendment, AS 47.10.010 provided that a court could exercise jurisdiction where a child was proven to be "habitually truant." That phrase was removed by sec. 32, ch. 63, SLA 1977.

The legal dispute is over whether a court can still exercise jurisdiction over a truant. The district attorneys and Judge Craske say that jurisdiction can still be exercised by finding a child to have violated AS 14.30.010 and AS 14.30.020 (the compulsory school law) and thus by virtue of those violations of laws, a delinquent under AS 47.10.010(a)(1). Judge Stewart, on the other hand, argues that the intent of the legislature in enacting sec. 32, ch. 63, SLA 1977 would be violated in finding a truant delinquent and therefore refuses to exercise any jurisdiction at all over truants.

This ambiguity could be solved by adding the words "habitually truant from school" to AS 47.10.010(a)(2)(A), thereby making it read:

> Sec. 47.10.010. JURISDICTION. (a) Proceedings relating to a minor under 18 years of age residing or found in the state are governed by this chapter, except as otherwise provided in this chapter, when the court finds the minor
>
> (2) to be a child in need of aid as a result of
>
> (A) the child being habitually absent from his home, habitually truant from his school, or refusing to accept available care, or having no parent, guardian, custodian, or relative caring or willing to care for him, including physical abandonment by...

Please let me know what you want to do.

JAG:hjd

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

CRIMINAL DIVISION

POUCH KC – STATE CAPITOL
JUNEAU, ALASKA 99811

June 5, 1978

The Honorable H. D. "Pete" Meland
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Re: Senate Bill 490

Dear Senator Meland:

Your letter of May 3, 1978, to Juneau District Attorney Larry Weeks concerning the problem of children truant from school has been referred to my office for response. Please accept my apologies for the delay but we have been tied up until just the other day in work with Senate Judiciary on the proposed revision to the criminal code.

As I understand it, what you wish to accomplish through the referenced legislation is to permit the superior court to become involved in serious truancy matters without the necessity of proving that a crime under AS 14.30.090-.040 (the compulsory education provisions) has been committed.

Your question is whether the bill as originally introduced or the proposed amendment attached to your letter would adequately address the issue. It is our opinion that the better approach is embodied in the original version of SB 490.

The original version of the bill directly and concisely clarifies the jurisdictional question concerning habitual truants and would clearly permit court intervention without resorting to criminal proceedings and attaching the stigma of delinquency to the child. An habitually truant child would be deemed as a "child in need of aid" under AS 47.10.010(1)(2) and would be treated in a similar manner as the other statutory categories of runaway and abandoned children.

The proposed amendment attached to your letter would accomplish two things unrelated to the goal of the original version of the bill. First, section 1 of the amendment would permit an habitually truant child to be suspended from school. It is our imprsssion from the supporting materials attached to your letter that the desired result is to require children to attend school and not to prohibit them from doing so. Second, section 2 of the amendment merely makes specific what has always been apparent from the face of the statute, that parents and guardians may be criminally charged with a violation of the compulsory education law.

I trust that we have been responsive to your inquiry. If you have any further questions, please do not hesitate to let us know.

Very truly yours,

AVRUM M. GROSS
ATTORNEY GENERAL

By: Daniel W. Hickey
Daniel W. Hickey
Chief Prosecutor

D.WH/mt

SB

96

COMMITTEE REPORT

SENATE

FURTHER:

3/7/79

Date: 3/13/79

Mr. President:

The Committee on JUDICIARY has had SB 96

relating to registration fees for special request, personalized license plates

under conside ation and ~~(a majority of the committee)~~ (the committee) reports it back with the following recommendations:

[X] do pass [ ] do not pass

~~[X]~~ do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

S 60 (Rev. 12/78)

April 11, 1979

Penelope J. Cornelius
Box 2668
Fairbanks, Alaska 99707

Dear Mrs. Cornelius:

Senate Bill 90 left the Senate Judiciary committee several weeks ago and is now in Senate Rules. Senate Bill 105 is in the Senate State Affairs committee still; it has a further referral to Senate Finance, but not to Judiciary. I can think of no reason at this time why I would not vote for any or all of these bills if they come to the Senate floor.

It is not clear from the material you sent me whether you received a reply to your November 27th letter to the Division of Motor Vehicles. THedirector of that division, Mr. Vern Roberts, is a very competent individual and if he could not grant you any relief, then your only recourse would be passage of legislation.

Regards,

Robert H. ZIgêêr, Sr.

RHZ/pkz

Penelope J. Cornelius
P. O. Box 2668
Fairbanks, Alaska 99707
(907) 488-2912

April 4, 1979

The Honorable Robert Ziegler
Alaska State Senate
Juneau, Alaska 99801

Dear Senator Ziegler:

As you can see by the enclosed correspondence, I am writing in regards to Senate Bill 105, Senate Bill 96, and House Bill 105 dealing with the special license plate fees.

I have been corresponding with Representative Sally Smith about this issue and I am enclosing my first letter, as well as the last letter I have received from Sally.

I am extremely upset about this whole business, not because of the money amount involved, but the principle of the entire issue. I understand that Sally sent a copy of my last letter to her which dealt with the Galena resident's issue, which according to the news paper here in Fairbanks, is suppose to be holding up the passage of the resoluation to change the special license plates. You should have a copy of that letter.

I have often felt that "getting on my soap box" and complaining about legislative actions does no good. This time I refuse to give up and am rattling your chain to see what good it might do. Your efforts to pass this bill are extremely important to me, as well as many others who are in the same boat at this time. May 31st is comi g up quickly and I do not intend to pay the $20.00 special fee, but without your help it looks like I may well have to because of the vehicle registration deadline.

Please let me know what your stand is on this issue and what your intentions are.

Sincerely yours,

Penelope J. Cornelius

Penelope J. Cornelius

PJC

Penelope J. Cornelius
P. O. Box 2668
Fairbanks, Alaska 99707
(907) 488-2912

November 27, 1978

State of Alaska
Department of Public Safety
Division of Motor Vehicles
Special Programs Unit
P. O. Box 960
Anchorage, Alaska 99510

ATTENTION: Jean

Gentlemen:

On March 17, 1978 I contacted your department because I had recently purchased a new vehicle which I intended to transfer my personalized license plates to. I discovered that my plates were damaged beyond repair and requested a new set of plates for my new vehicle. I sent you a check in the amount of $4.00 and you promptly sent me the replacement plates.

Recently I received your form letter stating that I would be required to pay an additional $20.00 per year for special handling of my license plates, in addition to the $30.00 renewal fees previously established. When I began using my personalized plates, four years ago, I was told that there would be a one-time charge of $20.00 for the original plates and the reoccuring charge of $30.00 per year. This has been true for the last four years. In your form letter you explained that if I did not desire to pay the additional $20.00 per year to retain my personalized plates that I could sign a "release of interest authorization" which was enclosed with the letter. If I did so, you would send me a new set of regular license plates and I would have to relinquish my personalized plates.

Although your explaination for the additional $20.00 per year charge was for "special handling", I still don't quite understand this reasoning. If a new set of plates cost me $4.00 in March, and the special handling charge for the first set of new plates is $20.00, what is the extra $16.00 per year additional charge for? Not only are my plates EASIER to handle for the state -- because I don't have to wait in lines, etc. and I would get a small plastic renewal sticker just like everyone else, but when new plates are issued -- the cost is only a mere $4.00 for my plates.

I would appreciate a full explaination of the actual reason for this governmental rip-off, with a copy of such a letter sent to the below mentioned so they may also be enlightened as to the additional costs.

Although I realize that personalized plates are not required by the State of Alaska and that they are the choice of the owner of the vehicle -- I don't believe that this additional $20.00 per year is justified. Just what is the so called special handling, when new plates are issued only once every three years? The $20.00 additional charges results in $36.00 every three years overcharges and FOR WHAT? I computed the $36.00 as follows:

$20.00 --	previous charge for personalized plates, first year
30.00 --	Renewal fee, first year
20.00 --	Additional special handling charge, second year
30.00 --	Renewal fee, second year
20.00 --	Additional special handling charge, third year
30.00 --	Renewal fee, third year
$150.00	TOTAL
90.00	Regular renewal fees
20.00	Previous charge for personalized plates
4.00	Actual cost of plates
$ 36.00	"SPECIAL HANDLING CHARGES"

Does it cost the state of Alaska $36.00 to send me a smal. plastic sticker each year it does not produce new license plates? What is this $36.00 for? What special handling does the state have to exert toward personalized license plate owners other than the usual expenses incurred toward REGULAR license plate holders?

Thank you for your expedient reply to this request. I will await your reply.

Sincerely yours,

Penelope J. (Kaiser) Cornelius

cc: Jay S. Hammond, Governor

Fairbanks Daily News Miner
ATTEN: Letters to the Editor

ALASKA STATE LEGISLATURE HOUSE OF REPRESENTATIVES

REPRESENTATIVE SALLY SMITH • 321 CHURCH STREET • FAIRBANKS, ALASKA 99701 • IN JUNEAU: POUCH V • JUNEAU, ALASKA 99811

March 22, 1979

Penelope J. Cornelius
P.O. Box 2668
Fairbanks, Alaska 99707

Dear Ms. Cornelius:

We have looked into some of the questions you have expressed about special license plate fees and were able to find out just where the bills are sitting right now. We have taken the liberty of forwarding your letter to the Senate State Affairs Committee which is chaired by Senator Bob Mulcahy. They requested a copy of the letter because they were unaware of some of the problems you outlined.

Other members of the committee, should you wish to write to them individually are: Senator Tim Kelly, Senator Brad Bradley, Senator Pat Rodey, Senator Bob Ziegler.

That committee presently has before it HB 147 and SB 105, both of which deal with this issue. Another bill in which you may be interested, SB 96, is presently in the Senate Judiciary Committee, which is chaired by Senator Ziegler. Other members are: Senator Ed Dankworth, Senator Don Bennett, Senator Pete Meland and Senator Bill Ray.

I hope you don't feel that you're getting the runaround on this issue. We are trying to direct your comments where they will do the most good. Thanks for taking the time and effort to communicate your opinions on this issue.

Sincerely,

Sally

Sally Smith
Alaska State Representative

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF PUBLIC SAFETY

DIVISION OF MOTOR VEHICLES AND DRIVERS SERVICES

P. O. BOX 960
ANCHORAGE, ALASKA 99510

March 9, 1979

Senator Bob Ziegler, Chairman
Senate Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Subject: Senate Bill #96

Dear Senator Ziegler:

This will confirm the telephone conversation between Guy Van Doren of your staff and myself on March 9, 1979 regarding Senate Bill 96, as amended by the Senate Finance Committee.

The language contained in this piece of legislation provides for the payment of twenty dollars upon the issuance and subsequent re-issuance of personalized license plates to the citizens of Alaska. This fee will, in most instances, cover the cost of the State operating the program of personalized plates. The language which was added to Senate Bill 96, previously contained in Senate Bill #117, was language suggested by the Division of Motor Vehicles in response to inquiry from the Senate, as language required to correct deficiencies or oversights in Chapter 178, SLA 1978.

You will recall that Chapter 178, SLA 1978 was the re-writing of Title 28 of Alaska Statutes and moved very rapidly at the close of the 1978 session of the Alaska State Legislature. The speed with which that piece of legislation moved inhibited the legislators' ability to give it the review that it deserved. The result of this hasty review was that certain oversights were left in that Bill which are now causing problems for Alaska citizens. Senate Bill #117 was designed to address and correct some of those problems.

12-L10LH

It is the position of the Alaska Division of Motor Vehicles that Senate Bill #96 as amended by the Senate Finance Committee should be passed and become law as it will result in reducing the inconvenience and excessive fees that are currently being paid by many of Alaska's citizens. If I can be of further assistance to you in your deliberations on this area of legislation, please do not hesitate to contact me.

Sincerely,

Vern Roberts
Director

cc: William Nix, Commissioner
Department of Public Safety

SB 96 and CSSB 96 RELATING TO REGISTRATION FEES FOR SPECIAL REQUEST, PERSONALIZED LICENSE PLATES.

The origional bill sponsored by Senator Bradley changed existing law which required annual*payment of $20.00 in addition to the regular license plate fee for personalized license plates, to state that the person need pay the additional $20.00 only if the license has been replaced by the department, i.e. new issue of plates, damaged plates, or lost plates.

The committee substitute was origionally SB 117 by Senator Dankworth amending the motor vehicle code. The two bills have been combined in CSSB 96.

SECTION 1. Changes the requirement that every evhicle in the state must be registered. This requirement causes hardship in the rural areas of the state and for persons who use off-the-road vehicles (trail bikes, dune buggies etc.). Under the new language, only vehicles used on the highway system or other public parking places need to be registered.

SECTION 2. Provides that the department may issue a special license* for occasional users of the highways.

Section 3. Provides that...(a) the department may register a vehicle even if it it is not satisfied as to the ownership of the vehicle, but shall either

(1) withhold issuance of a certificate of title until the applicant proves;
  (A) Ownership and,
  (B) proves there is no undisclosed security interest or,
(2) require applicant to file with the department wither;
  (A) a bond prescribed by the department or,
  (B) a deposit of cash.

(b) The cash deposit or bond shall be equal to one and on-half times the value of the vehicle.

(c) The cash deposit or bond shall be returned at the end of three years or when the vehicle is no longer registered in the state.

Sec. 28.10.493- Provides that if the owner of the vehicle fails to comply, he is guilty of a misdemeanor.

SECTION 4. Relates to special license plates (origional SB 96)

SECTION 5. Sets the fee for occasional use license

SECTION 6. Makes it a felony to make a false statement regarding a vehicle title, title transfer, or certificate.

SECTION 7. Provides that law enforcement officers and employees of the department designated by the commissioner (i.e. workers who are responsible for title transfers and registration) may enforce this title and the regulations promulgated thereunder.

* Emphasis added

Bob: I requested a definition of Hwy So we won't have any problem. As you can see by the enclosed Memo "highway" as used in this bill is O K.
I have Not copied the memo but will keep it in our files.

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

March 9, 1979

SUBJECT: Definition of the term "highway" in CSSB 96

TO: Senator Robert H. Ziegler, Sr.
Chairman, Senate Judiciary Committee

FROM: Richard A. Bradley
Legislative Counsel

Guy van Doren asked that I offer a meaning for the term "highway" as it is used in CSSB 96. His concern derived from the term's use in §1 of the bill.

The term "highway" is defined in AS 28; AS 28.35.260(a)(6) provides:

> (6) "highway" means the entire width between the boundary lines of every way that is publicly maintained when a part of it is open to the public for purposes of vehicular traffic, including but not limited to every street and the Alaska state marine highway system but not vehicular ways or areas;

The term "vehicular way or area" is defined by AS 28.35.260(a)(18) as

> (18) "vehicular way or area" means a way, path or area, other than a highway or private property, which is designated by official traffic control devices or customary usage and which is open to the public for purposes of pedestrian or vehicular travel, and which way or area may be restricted in use to pedestrians, bicycles, or other specific types of vehicles as determined by the depar ment or other agency having jurisdiction over the way, path, or area.

Since the definitions in AS 28.35.260 apply generally to AS 28, they would be used in construing any amendments to the law within AS 28.

Reading the two definitions together, I conclude that the term "highways" comprehends a "way" that is publicly maintained for vehicular traffic. On the other hand, a "vehicular way or area" will comprehend a "way" that is neither a "highway" nor private property; what a "vehicular way or area" will include, therefore, are those "ways" that are dedicated to a public use [thus excluding private property] but which are not publicly maintained.

Dedication is the process typically occurring when a subdivisional plat is accepted; the roadways that exist on the plat are "dedicated" by the acceptance of the plat to a public use. They cease by that act to be private property even though the subdivided lots may not have been disposed of; if they are not maintained by a public authority, then they have not become "highways."

If I can assist further, please advise.

RAB:jdn

13-AAC 10.115 Dpt Hgy

Section 28.10.181 (c) is amended to read Special Request Plates. Upon application and payment of $20.00 by the owner of a passenger vehicle, non-commercial van or pick-up truck, or motor home the Department may design and issue registration plates containing a series of not more than six letters or numbers or combination of letters and numbers as requested by the owner. The Department may in its discretion, disapprove the issuance of registration plates under this sub-section when the requested symbols are a duplication of an existing registration or when the symbo's are considered uracceptable by the Department. An additional payment of $20.00 shall be paid for each replacement of such plates.

Section 28.10.421 (d)(2) is repealed.

REASON

Existing law for an annual payment of $20.00 in addition to regular registration fees for specialized plates is repugnent to the general public and has been mandated that it be repealed. The new law will now state, if passed, that the individual applicant for a specialized plate shall pay $20.00 initially for the application and privilege of using the personalized plate, the same as in prior years, and will pay $20.00 every time the plate is replaced due to loss, damage or replacement for a new license plate year.

Section 28.10.011 is amended to read VEHICLES SUBJECT TO REGISTRATION. Every vehicle [in the State] when driven or moved or parked upon a highway or in a public parking place in the State shall be registered under this chapter except when the vehicle is

(1) driven or moved on a highway only for the purpose of crossing the highway from one private property to another, including an implement of husbandry as defined by regulations;

(2) driven or moved on a highway under a dealer's plate or temporary permit as provided in Sec. 31 and 181 (k) of this chapter;

(3) special mobile equipment as defined by regulation;

(4) owned by the United States;

(5) moved by human or animal power;

(6) exempt under the Soldiers and Sailers Civil Release Act (50 U.S.C.A. Appr. 501 et seq.);

(7) driven or parked only on private property;

(8) a vehicle of a nonresident as provided under Section 121 of this chapter;

(9) a commercial inter-state vehicle under Sec. 141 of this chapter; or

(10) transported under a special permit under Sec. 151 of this chapter.

REASON

Existing statute states that with certain specific exceptions, every vehicle in this State is subject to registration and thus would be subject to title requirements. Under this law the way it currently reads places u. hardship upon a certain percentage of vehicle owners in the State, that is, owners of vehicles that have not been subject to vehicle registration in the past. Example: trail bikes, dune buggies, and other off highway type vehicles, etc. Also, vehicles owned or possessed by people in the bush and non-urban areas who have come by their vehicles in the past through methods that are neither legal or illegal but have no way to prove their ownership to the vehicles in a manner prescribed by law. When these people become subject to registration, that is, subject to title requirements, they will be forced by statute to provide the same documentation as any other vehicle owner in order for them to comply to the law. They will be unable to do so. They will also in most cases be unable to provide proper bonding procedures because of lack of insurance agencies in these areas.

AS 28.10 is amended by adding a new section to read:
WHEN NO SUPPORTING EVIDENCE OF OWNERSHIP.

(a) In addition to the other requirements of this chapter, an applicant for title and registration who has no supporting evidence of ownership, as stipulated in this chapter must:

(1) submit an affidavit affirming that he is the owner of the vehicle and that no liens or encumbrances exist on it;

(2) submit a surety bond, executed by a corporate surety, approved by the Department, posted with the State and held by it for at least two years, in the amount of the retail value of the vehicle as determined from a departmental listing, and

(3) submit a statement signed by the applicant holding the State harmless in all suits concerning questions of title and ownership to the vehicle and promising to indemnify the State for all judgements against it arising out of these actions.

(b) The applicant, in lieu of a surety bond, may file suit in district or magistrate court to mandate the Department to issue title in his name. The court may accept evidence including but not limited to affidavits, bills of sale, and oral testimony. The court, when satisfied that

the applicant is the rightful possessor and that there are no liens or encumbrances on the vehicle, may order the Department to issue title showing that the applicant is the registered and legal owner of vehicle title.

Section 28.10.491 (a) is amended by adding a new sub-section

(9) makes a false statement or who otherwise conceals or withholds a material fact in an application for registration or certificate of title or who affirms falsely with respect to a matter required to be sworn to, affirmed or furnished under this chapter, or regulations adopted under this chapter.

Section 28.10 is amended by adding a new section Failure to Deliver Title.

(a) A seller of a vehicle who fails to comply to Secs. 271 and 291 of this chapter is guilty of a misdemeanor.

(b) A seller of a vehicle who with intent to defraud fails to comply to Secs. 271 and 291 of this chapter is guilty of a felony, and upon conviction is punishable by imprisonment of not less than 1 year nor more than 2 years or by a fine of not more than $2,000 or both.

Section 28.10 is amended by adding a new section, Unlawful To Park or Operate Unregistered Vehicle. No person may

drive or move or park upon a highway or in a public parking place, nor may an owner permit to be driven or parked, upon a highway or in a public parking place a vehicle which has not been registered under this chapter.

Section 28.05 is amended by adding a new section. Enforcement of Title. Peace officers and employees of the Department designated by the Commissioner shall enforce this title.

Section 28.10 is amended by adding the new section LICENSES FOR OCCASIONAL USERS OF HIGHWAYS.

(a) Upon application by the owner and under regulations adopted by the Commissioner of Public Safety, the Department shall issue a license to the owner of a vehicle used in relation to the operation of commercial fishing, mining, hunting, or farming operations and used only occasionally on the highway.

(b) In addition to the other requirements in this chapter, an applicant for occcasional use registration must submit an affidavit affirming that the vehicle is used in relation to commercial fishing, mining, hunting or farming operations and travels upon the State highways are less than 5% of its total hours of operation.

(c) No person may transfer an occasional use registration license plate to another vehicle. Upon tranfer or assignment of title to an occasional use vehicle, the registration plates remain with the vehicle if it continues to be an occasional use vehicle or must otherwise be returned to the Department by the new owner.

(d) The license shall be valid for 12 months.

(e) No person or company may possess more than 2 licenses at one time.

(f) The Department shall charge the owner an annual registration fee of $15.00.

FISCAL NOTE

I. REQUEST

Bill/Resolution No. CSSB 96

Title An Act amending the Motor Vehicle Code and providing for an effective date

Requested by Senate Finance Date

II. FISCAL DETAIL

Agency Affected Division of Motor Vehicles - Department of Public Safety

Program Category Affected Public Protection

BRU, Program, or Subprogram(s) Affected N/A - Revenue to General Fund only

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 79	FY 80	FY 81	FY 82	FY 83	FY 84
100 PERSONAL SERVICES	-0-					
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	-0-					

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Fund Source)						
	-0-					

POSITIONS

FULL TIME	-0-					
PART TIME						
TEMPORARY						

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

The passage of CSSB 96 will result in a reduction in revenue to the general fund based on the following assumptions:

4000 personalized plates x $20 reduction : $80,000
350 occasional use plates x $20 reduction : $ 7,000
$87,000

These estimates use the class of pickup trucks as being the primary vehicles to obtain occasional use plates.

IV. DATE 3/5/79 PREPARED BY Vern Roberts, Director

AGENCY Division of Motor Vehicles

PHONE 264-5551

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

33-001 (Rev. 12/78)

SB 96 and CSSB 96 RELATING TO REGISTRATION FEES FOR SPECIAL REQUEST, PERSONALIZED LICENSE PLATES.

The origional bill sponsored by Senator Bradley changed existing law which required annual*payment of $20.00 in addition to the regular license plate fee for personalized license plates, to state that the person need pay the additional $20.00 only if the license has been replaced by the department, i.e. new issue of plates, damaged plates, or lost plates.

The committee substitute was origionally SB 117 by Senator Dankworth amending the motor vehicle code. The two bills have been combined in CSSB 96.

SECTION 1. Changes the requirement that every evhicle in the state must be registered. This requirement causes hardship in the rural areas of the state and for persons who use off-the-road vehicles (trail bikes, dune buggies etc.). Under the new language, only vehicles used on the highway system or other public parki _ places need to be registered.

SECTION 2. Provides that the department may issue a special license* for occasional users of the highways.

Section 3. Provides that...(a) the department may register a vehicle even if it it is not satisfied as to the ownership of the vehicle, but shall either

(1) withhold issuance of a certificate of title until the applicant proves;
  (A) Ownership and,
  (B) proves there is no undisclosed security interest or,
(2) require applicant to file with the department wither;
  (A) a bond prescribed by the department or,
  (B) a deposit of cash.

(b) The cash deposit or bond shall be equal to one and on-half times the value of the vehicle.

(c) The cash deposit or bond shall be returned at the end of three years or when the vehicle is no longer registered in the state.

Sec. 28.10.493- Provides that if the owner of the vehicle fails to comply, he is guilty of a misdemeanor.

SECTION 4. Relates to special license plates (origional SB 96)

SECTION 5. Sets the fee for occasional use license

SECTION 6. Makes it a felony to make a false statement regarding a vehicle title, title transfer, or certificate.

SECTION 7. Provides that law enforcement officers and employees of the department designated by the commissioner (i.e. workers who are responsible for title transfers and registration) may enforce this title and the regulations promulgated thereunder.

* Emphasis added

PROPOSED AMENDMENTS

* Section 3. AS 28.10.216 should be changed by adding a new subsection (d).

(d) the department shall place security deposited with it in the custody of the Department of Revenue.

* Section 3. AS 28.10.216 should be changed by adding (e).

(e) the applicant, in lieu of a cash deposit or bond, may file suit in district or magistrate court to mandate the department to issue title in his name. The court may accept evidence including, but not limited to affidavits, bills of sale, and oral testimony. The court, when satisfied that there are no liens or encumbrances on the vehicle may order the department to issue title showing the plaintif as the legal owner of vehicle title.

SB

101

COMMITTEE REPORT

SENATE

FURTHER: None

2/1/79

Date: 2-15-79

Mr. President:

The Committee on JUDICIARY has had SB 101
discipling of a licensed guide

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[X] replace with CS for SB101 [X] same title [ ] new title

and recommends CSSB101 DO PASS

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

S 60 (Rev. 12/78)

RON HAYES
ALASKAN GUIDE
Box 1711, Anchorage, Alaska 99510
Phone: (907) 272-0051

Dear Sir:

I am a guide, concerned with what I foresee happening to our profession, and I am writing you this letter to ask your opinion.

The Guide Law set up the Guide Board to perform two primary functions, that is, (1) to serve as an impartial, independent arbitrator regulating guides, and (2) to allocate guiding area permits.

I think any guide who attended the last disciplinary session of the Guide Board came away less than satisfied with its performance. The Attorney General's office seems to have so taken over the proceedings that the Board doesn't function as an independent body exercising a judgment separate from the desires of the enforcement officers. Succumbing to the Department pressure to punish a guide even though the guide has been acquitted by a jury after a full trial goes beyond fairness and due process. These disciplinary functions might better be left with the court system which is set up to handle such things.

It is obvious to me that the results under this Board system are unfair, and that our livelihood exists at the whim of the prosecutor so long as the Guide Board has these powers. Don't think it can't happen to you, especially in view of all of the restrictive, technical and over detailed regulation which cover guiding like a double blanket.

Repealing the guide law will put license proceedings back in court where a jury stands between you and the power of the State.

Furthermore, in allocating guide areas, some guides got nothing, some not enough to make a living, and some appear to have done well. While I was one of the more fortunate ones, the land withdrawals by the Federal government have made the Guide Board allocations obsolete and the whole system of area allocation no longer appears feasible.

Besides, almost no Native guides were able to qualify for areas under the regulations established by the Board, and the Native groups rightfully feel they got a raw deal. As a result, they are mounting an effort to repeal the guide law, and for the reasons set forth in this letter I urge you to join with them.

Although the few guides who still have adequate areas may favor retaining the whole guide law, I think they may be taking a short sighted position. First of all, the Native groups will shortly be controlling much of the land and access to it, and secondly, the State is transferring greater powers to the local regional game boards which will be controlled by the Native groups. So whether you presently have a guide area or not, you will not be able to guide without cooperating with the Native organizations directly involved.

Do you want to fight with them over the guide laws, and antagonize the people we will have to work with in the future? Suppose in retaliation they set up subsistance hunting provisions that virtually eliminate guiding? Suppose a local game board adopts a regulation prohibiting the removal of meat, antlers, skins and capes from the game management unit where the animal was taken? This has already been proposed in one unit! What good will a guiding area be then?

We must cooperate and work with these groups if we expect them to cooperate with us in the future for the best conservation and utilization of these resources.

I therefore urge you to join with the Native effort to repeal the guide law, and I'm enclosing herein a ballot for a straw poll among the guides, asking you to let me know your opinion.

Joining the Native effort to repeal the guide law will abolish the Guide Board, returning to the courts the license revocation and suspension questions, and will also show the Native groups that we are ready, and willing to join with them in the management of these wild game resources.

Thank you for reading through this, and double thanks for marking the ballot and mailing it back to me.

Very truly yours,

Ron Hayes

RON HAYES

02-0018 (Rev. 10/78)

STATE
of ALASKA

MEMORANDUM

TO: Mark Jensen
Guide Licensing and Control Board
Box 2220
Juneau 99803

DATE: February 7, 1979

FILE NO:

TELEPHONE NO:

FROM: Sarah Elizabeth Fussner Liza
Assistant Attorney General
AGO - Anchorage

SUBJECT: Guide Board Disciplinary Actions: Senate Committee Review

The House Judiciary Committee just cancelled a hearing that I had intended to be present at on Tuesday, February 6; I therefore am not going to be able to make it to Juneau until the 13th of February. However, I am sending a brief outline of some of the arguments for keeping guide disciplinary hearings as they presently exist under AS 08.54.200(a). I also include a list of those guide board cases that resulted in revocation or suspension of licenses, although this list is probably incomplete.

The Guide Licensing and Control Board is presently required to hold a hearing to determine whether disciplinary action shall be taken against a guide whenever a guide is charged with or convicted of a state or federal sport fish, game or guide statute or regulation, or if the board receives complaints concerning the licensee from three or more clients of separate parties. AS 08.54.200(a). The "charge" may be made by the board or Department of Commerce, based on an administrative investigation.

The Guide Board's duty as an administrative body is to determine whether a person is morally fit to be a guide and to continue to engage in lawful guiding. Alaska Board of Fish & Game v. Loesche, 537 P.2d 1122, 1125 (Alaska 1975). "Morally" is used in the broad sense of the word - whether the guide is ethically competent. The board does not determine criminality, and its disciplinary function is primarily remedial. Hence the board is not bound by a criminal burden of proof, criminal rules, or the results of criminal prosecutions. Agency action is civil, remedial and bound by administrative procedures.

If the guide board were limited to disciplining only guides convicted of criminal conduct, the board would be placed in the implausible and indefensible position at times, of licensing a guide, and holding him out to the world as qualified to guide, even though he may have engaged

in the most egregious kind of unethical conduct imaginable. For example, a guide could have hunted and harrassed game with airplanes, wasted game meat, and taken an over-limit of species; because of a technical or procedural error in obtaining evidence resulting in a suppression order in the criminal case, or because out-of-state witnesses refuse to or are unable to testify against the guide in a criminal action, or simply because of the vagaries of a jury, the guide may not be convicted. The board would be bound to allow a guide to continue to be licensed, even though it knew, by a preponderance of evidence, that the guide was not fit for the profession. Game violation cases are difficult to establish; they often occur in remote areas where they are difficult to detect. They also often do not receive the same attention of prosecuting attorneys that is given to robbery, murder and other cases.

Limiting the guide board to hearing only cases based on criminal convictions is also inconsistent with the guide chapter as a whole. The guide board is charged, in AS 08.54.040 with establishing guide performance standards and with prohibiting unsportsmanlike, unethical or unsafe guiding activities, and activities against conservation principles or degrading to the guiding profession. The board is authorized to revoke or suspend a guide's license for unethical or unsafe conduct or conduct that adversely affects natural resources. AS 08.54.200. In order to accomplish these ends the board must be able to hear a case even absent a criminal conviction.

Other licensing boards and agencies are not limited to cases involving a criminal conviction before they can inquire as to the fitness of the individual to be licensed for that profession. For example, disciplinary action may be taken against a lawyer even though he may have not been convicted of any crime. Ex parte Wall, 107 U.S. 265 (1883). A guide must be accorded due process in a discplinary hearing, since his guide license has some proprietary value (Herscher v. State, Department of Commerce, 568 P.2d 996 (Alaska 1977)); however disciplinary action against a guide regardless of criminal conviction is not only appropriate but is the only way realistically to maintain the high standards of professional conduct that are demanded of guides in the State of Alaska.

The Guide Board has taken disciplinary action against several guides, sometimes based on unethical conduct and other times based on criminal convictions.

In Re Richard Herscher - Resulted in revocation of Mr. Herscher's guide license based on two criminal convictions. The board also heard evidence of unethical conduct, wherein Mr. Herscher had endangered the life of an Alaska State Trooper, but the consideration of this unethical activity was stricken in the Supreme Court of Alaska because at the time the board did not have any regulations defining the term "unethical activity" and the Alaska Supreme Court ruled that without such regulations the unethical activity language of the statute was too broad. The board has, subsequent to the Herscher case, adopted substantive regulations defining unethical conduct. 12 AAC 38.180.

In Re John Pangborn - Mr. Pangborn's license was revoked in 1978, the revocation being based in part on convictions of taking a cub bear, and burying the carcass on a guided hunt, while he was already on probation for an earlier violation.

In Re Martin Kasser - Mr. Kasser's guide license was revoked in 1978 based on two criminal convictions.

In Re Erickson - A 1974 case in which Mr. Erickson lost his guide license as a result of an illegal moose hunt with Garner Ted Armstrong.

In Re Edward L. Stevenson - Resulted in a suspended suspension i.e. probation, as a result of improper bear hide sealing (1977).

In Re Richard L. Lusk (1977) - Resulted in a two year denial or renewal of his license for taking big game same day as airborne.

In Re Harry Morton - The board decided to deny renewal of Mr. Morton's assistant guide license based on non-residencey (1978).

In Re Eugene Kempf - This case resulted in a one year suspension for illegal sport fishing (1977).

In Re Phillip Esai - The board put Mr. Esai on probation for one year upon a finding that he had failed to be present when his assistant guide was guiding (1977).

In Re Blankenship - License revocation based on two convictions (1977).

In Re Warren - Resulted in a one year probation for Mr. Warren upon a finding that he had guided in a district for which he was not certified (1977).

In Re Wilder Rice - Two years suspended license in 1978 for one state game regulation violation and unethical conduct.

In Re Loesche - License revoked by Fish and Game Board, predecessor of the Guide Board, for criminal and unethical conduct.

In Re Ramstad - License revoked for criminal violations.

I do recommend that the statute be changed in one regard: delete the requirement that the board revoke a license when a guide has been convicted of two fish and game or guiding statutes or regulations. I do not believe that this provision of the statute is legally defensible, because it takes any discretionary authority out of the board, and would require it, technically, to revoke a guide's license for two minor sport fishing violations that may have occurred at any time in the guide's career. I believe that this statute should be amended in this regard only.

SEF:ln
cc: Bill Bellingar
Fred Wolstad

Sec. 08.54.190. Expiration and renewal. (a) A master guide, registered guide, class-A assistant guide, assistant guide or transporter license expires on December 31, following issuance.

(b) No license may be issued to a class-A assistant guide or assistant guide who has failed to renew his license for two consecutive years unless he again meets the qualifications for initial issuance of the license.

(c) A master or registered guide who fails to renew a license is not required to requalify under § 100(2) or § 110(8) of this chapter, respectively. (§ 1 ch 17 SLA 1973; am § 12 ch 127 SLA 1974; am § 4 ch 106 SLA 1976)

Effect of amendments. — The 1974 amendment substituted "class-A assistant guide" for "class-A guide" in subsection (b).

The 1976 amendment substituted "assistant guide or transporter license" for "assistant guide license" in subsection (b) and added "following issuance" to the end of that subsection.

Editor's note. — Section 10, ch. 106, SLA 1976, provides: "Nothing in this Act gives a person licensed as a transporter a right as an air carrier which he does not otherwise hold under law."

Legislative committee report. — For report on ch. 127, SLA 1974 (SCSHB 817 am S), see 1974 House Journal, p. 657.

Sec. 08.54.200. Grounds for disciplining a licensee. (a) The board shall hold a hearing to determine if disciplinary action is necessary if

(1) complaints concerning the licensee have been filed with the board from three or more clients of separate parties; or

(2) a licensee has been charged with a violation of federal or state sport fish, game or guide statutes or regulations; or

(3) a licensee has been convicted of a violation of federal or state sport fish, game or guide statute or regulation.

(b) After a hearing, the board may revoke, suspend, or deny renewal of a license if the board finds that the licensee

(1) engaged in unethical activity, unsafe activity, or activity which adversely affects the natural resources of the state when such activity is unrelated to the legal and legitimate purposes of the contract hunt; or

(2) violated a provision of a federal or state sport fish, game or guide statute or regulation.

(c) After a hearing, the board shall revoke a license if the board finds that the licensee

(1) does not meet the qualifications specified by statute or regulation for the class of license held;

(2) is incompetent as a master guide, registered guide, class-A assistant guide, or assistant guide;

(3) has been convicted of two violations of federal or state sport fish, game or guide statutes or regulations.

(d) No person who is disciplined under this section may engage in any guiding or transporting activity during the period of license revocation

SB

104

COMMITTEE REPORT

SENATE

FURTHER: None

2/2/79

Date: 2/2/79

Mr. President:

The Committee on JUDICIARY has had SB 104

establishing the court of appeals

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[X] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

_____

CHAIRMAN

S 60 (Rev. 12/78)

AMENDMENT

OFFERED IN THE SENATE: BY: Senate Judiciary Committee

TO: Amend SENATE BILL No. SB 104

HOUSE BILL No. _____

PAGE: 13 LINE: 3

(1) Page 13, line 3, insert new Sec. 23 to read:

*Sec 23. AS 39.50.200 (200) is amended to read:

"(2) "judicial officer" means a person appointed as a justice to the supreme court or as a judge to the court of appeals, superior court, district court, or magistrate court."

(2) Renumber subsequent sections accordingly.

EDITORIAL PAGE

The Anchorage Times

ROBERT B. ATWOOD
Editor and Publisher

WILLIAM J. TOBIN
Associate Editor
And General Manager

FRED DICKEY
Executive Editor

The new state court

IF ALL PLANS proceed as it now appears they will, a new three-member state Court of Appeals will be in operation in July.

There will be those who are upset by the soaring cost of government who will be unhappy by this expansion in the Alaska Court System. After all, $600,000 or $700,000 for initial annual operating costs is no small item — and that, sorry to say, is just the beginning. There soon will be need to construct a new courthouse. The staff will grow, support costs will increase, and almost as surely as night follows day, the three-member court eventually will grow to four or five.

But lay all of that aside. The establishment of the court has been approved by the House and Senate and Gov. Jay Hammond soon will sign the legislation. That will make the new court a fact. Already court system officials are busy with the behind-the-scenes details required to put the court in business. Within a matter of days the process of accepting applications for the new judgeships will be getting under way.

So for all practical purposes, the court is a reality. The time is past for any arguments about its merits or its initial costs.

For Alaskans to consider now is what the new court might do and what it might accomplish.

IT SHOULD BE kept in mind that the new court will hear only criminal appeals. All appeals from Superior Court decisions in civil cases will go directly to the Supreme Court, bypassing the new court.

At the same time, however, those involved in criminal cases are not barred from final review by the Supreme Court if there is a strong issue of constitutionality involved.

For example, a person convicted of a crime after a trial in Superior Court would have an automatic right to an appeal to be heard by the new appellate court. If the Court of Appeals sustains the conviction, the defendent then would have the right to petition to the Supreme Court for a further review. The Supreme Court could then grant or reject the petition. In other words, the high court hereafter will have discretionary authority whether or not to hear a criminal appeal.

HOWEVER, THE COURT of Appeals generally will be the final court of review for criminal cases. By assuming this function, the new court will reduce by perhaps as much as 40 percent the caseload now before the five justices of the Supreme Court. The caseload has been heavy because in the past the Supreme Court had been required to consider every criminal case which was appealed, regardless of whether any constitutional issues were at stake.

It's true the cost of the new court will be high. But if the ends of justice are better served — in both criminal and civil matters — then the expense surely is justified for a state that apparently has more than enough money to spend on projects the goals of which are far less noble.

MAJOR CHANGES IN SENATE BILL 104 House and Senate Versions

1. House version allows a defendent to choose whether to appeal to the Superior court or Court of Appeals.

2. House version allows a magistrate to become a district court judge after serving as a magistrate for seven years.

3. House version allows justices and judges to file as delegates to constitutional conventions.

4. Changes residency requirements for justices and judges from three (3) to five (5) years.

5. Allows Supreme Court to review cases, on application, of the superior court.

6. Senate version allowed the supreme court to review in its discretion, a final decision of the court of appeals on its own motion or upon application of a party.

House version : The supreme court may review a final decision of the court of appeals on application of a party.

The supreme court may take jurisdiction of a case pending before the court of appeals if the court of appeals certifies to the supreme court that the case involves a significant question of law under the Constitution of the U.S. or under the state constitution or involves an issue of substantial public interest that should be determined by the supreme court.

COMPARISON -SENATE AND HOUSE VERSIONS OF SB 104

SENATE VERSION	HOUSE VERSION
TITLE Establishing the Court of Appeals	adds: amending the jurisdiction of the supreme court, the superior court, and the district court, clarifying and amending the sentence appeal and other appellate jurisdiction of the superior court; changing the qualifications of justices and judges; providing that justices and judges may serve as delegates to constitutional conventions; amending the time period in which the judicial council is to provide information to the public concerning judicial officers standing for retention election; changing Rule 21 Rules of Appellate Procedure and Rule 7, District Court Criminal Rules
22.07.010	22.07.010 Makes the court of appeals a court of record. Left out: appeal to the superior court from a decision of an administrative agency.
22.07.020 (b) The court of appeals has appellate jurisdiction in all actions and proceedings commenced in the district court and may, in its discretion, remand a district court matter to the superior court for a trial de nova in whole or part.	22.07.020 (c) The court of appeals has jurisdiction to review (1) a final decision of the district court in an action or proceeding involving criminal prosecution, post conviction relief, extradition, probation and parole, habeas corpus or bail; and (2) the final decision of the district court on a sentence imposed by it. In this subsection "final decision" means a decision or order other than dismissal by consent of all parties, that closes a matter in the district court.
(e) An appeal to the court of appeals is a matter of right in all actions and proceedings within its jurisdiction except that, (1) there is no right of appeal to the court of appeals in a case for which direct review by the supreme court has beer provided by rule.	(d) The court of appeals may in its discretion (1) review a final decision of the superior court on an appeal from a district court in an action or proceeding involving criminal prosecution, post-conviction relief, extradition, probation and parol, habeas corpus or bail (2) review the final decision of the superior court on appeal of a sentence imposed by the district court. In this subsection final decision" means a decision or order other than a dismissal by consent of all parties, that closes a matter in the superior court. (g) A final decision of the court of appeals is binding on the superior court and and on the district court unless superseded by a decision of the supreme court.

SENATE VERSION	HOUSE VERSION
22.07.030 REVIEW BY SUPREME COURT ,	22.07.030 REVIEW BY SUPREME COURT Added: Review is in the discretion of the supreme court as set out in AS 22.05.010(c).
22.07.040 QUALIFICATIONS OF JUDGES	22.07.040 changed the residnecy requirements from three (3) to five (5) years.
22,07.050 OATH OF OFFICE	22.07.050 language change nothing substantial
22.07.060 APPROVAL OR REJECTION	22.07.060..House changed the time previous to the election the public must be informed of judicial council recommendations from 30 days to 60.
22.07.070 VACANCIES	NO CHANGES
22.07.080 RESTRICTIONS	22.07.080..Allows a judge to file for candidacy as a delegate to a constitutional convention.
22.07.090 COMPENSATION (a) Each judge of the court of appeals is entitled to receive annual compensation prescribed in accordance with AS 39.23	22.07.090 The monthly salary of a judge of the court of appeals is equal to Step E, Range 29 of the salary schedule in AS 39.27.011 (a) for Juneau, Alaska.
22.07.100 PROCESS	NO CHANGES
22.05.010 JURISDICTION (a) The supreme court has final appellate jurisdiction in all actions and proceedings. (b) Appeal to the supreme court is a matter of right only in those actions and proceedings from which there is no right of appeal to the court of appeals under AS 22.07.020. (c) The supreme court may in its discretion review a final decision of the court of appeals on its own motion or on application of a party under AS 22.07.030.	22.05.010 JURISDICTION (a)The supreme court has final appellate jurisdiction in all actions and proceedings. However, a party has only one appeal as a matter of right from an action or proceeding commenced in either the district court or the superior court. (b)adds to the senate language after AS 22.07.020: "or to the superior court under AS 22.10.020 or AS 22.15.240." (c) adds a new subsection: a decision of the superior court on an appeal from administrative agency decision may be appealed to the supreme court as a matter of right. (d) Changes subsection (c) in the Senate version to read: "The supreme court may in its discretion review a final decision of the court of appeals on application of a party under AS 22.07.030. The supreme court may in its discretion review a final decision of the superior court on an appeal of a civil case commenced in the district court. In this subsection "final decision" means a decision or order other than dismissal by consent of all parties, that closes a matter in the court of appeals.

SENATE	HOUSE
22.05.015 TRANSFER OF APPELLATE CASES	22.05.015 TRANSFER OF APPELLATE CASES
(a)	(a) NO CHANGES
(b) (1) (2) (c) (d)	(b) (1) NO CHANGES (2) House deleted "the transfer will further the efficient administration of justice". (c) House deleted "The supreme court may provide by rule that review of an appeal to the superior court from an administrative agency be by the supreme court rather than by the court of appeals under AS 22.07.020 (8). (d) NO CHANGE
22.05.060 SEALS OF THE COURT	22.05.060 SEALS OF THE COURT NO CHANGES
22.05.070 QUALIFICATIONS OF JUSTICES	22.05.070 QUALIFICATIONS OF JUSTICES
The Senate does not address this	The House changed the residency requirements from "three" to"five " years.
22.05.100 APPROVAL OR REJECTION	22.05.100 APPROVAL OR REJECTION
Senate version...." he shall not be appointed to fill any vacancy in the supreme court, court of appeals....."	House changed the time period for recommendations of the Judicial Council to be made public from 30 days prior to an election, to 60 days. House changed this section as compared to the Senate version as follows. "....he shall not be appointed to fill any vacancy in the supreme court, court of appeals, [OR] superior court, or district courts [COURTS] of the state....."
22.05.130 RESTRICTIONS	22.05.130 RESTRICTIONS
Senate does not address this	The House inserted language which allows a justice to file for a delegate to a state or national Constitutional Convention.
22.10.020 (a)	22.10.020 (a)
The Senate version repealed the language which stated that an appeal from a subordinate court is not allowed after a plea of guilty except in cases of excessive sentencing, and no appeal by the state except to test the sufficiency of an indictment or information. It also repealed the language which allowed an appeal to the superior court on the ground that a sentence of imprisonmnet of 180 days or more was excessive	The House version left most of the existing language in tact, inserted "the state has no right to appeal in criminal cases except to test the sufficiency of an indictment or information or to appeal a sentence on the ground it is too lenient." They also reduced the number of days an excessive appeal my be made from "180" days to "90", and gives the superior court under this jurisdiction the ability to reduce rather than [MODIFY] the sentence.

SENATE	HOUSE
22.10.020 (a) Continued from last page	22.10.020 (a) Continued from previous page. House inserted the following language: "When a sentence is appealed by the state on the ground it is too lenient, the court may not increase the sentence but may express its approval or disapproval of the sentence and its reasons in a written opinion.
22.10.090 QUALIFICATIONS OF JUDGES The Senate does not address this question.	22.10.090 QUALIFICATIONS OF JUDGES The House changed the residency requirements from three (3) to "five" (5) years, and inserts "The active practice of law shall be as defined for justices of the the supreme court in AS 22.05.070.
22.10.150 APPROVAL OR REJECTION	22.10.150 APPROVAL OR REJECTION House version requires the judicial council recommendations to be made public 60 days prior to election rather than 30 days.
22.10.180 RESTRICTIONS The Senate does not address this question	22.10.180 RESTRICTIONS The House version allows judges to file for a delegate to a state or U.S. Constitutional Convention.
22.15.160 (a) The Senate does not address this question	22.15.160 (a) House version changes the residency requirements for district judge from "three" (3) to "five" (5) years and, inserts: (1) have been engaged in the active practice of law for not less than three years immediately preceeding his appointment.....or (2) have served for at least seven years as a magistrate in the state.
22.15.195 APPROVAL OR REJECTION	22.15.195 APPROVAL OR REJECTION House version requires the jucicial council recommendations to be made public 60 days prior to election rather than 30 days.
22.15.210 The Senate does not address this question	22.15.210 House version allows a district judge to file as a delegate to a state or U.S. Constitutional Convention.

SENATE	HOUSE
22.15.240 APPEAL	22.15.240 APPEAL
(a)	(a) House version gives either party the right to appeal a judgement of the district court in a civil case regardless of the sum involved.
(b) changes the amount of days a person may appeal an sentence on the basis of excessiveness from [180] to 45.	(b) changes the excessive sentence days from [180] to 90 and makes the same changes in the District Court appeal section as it did in the Superior Court section. (AS 22.10. 020)
(c) (d)	(c) and (d) NO CHANGES
22.20.010 JUCICIAL OFFICER DEFINED.	22.20.010 JUDICIAL OFFICER DEFINED
	NO CHANGES
22.20.110 DUTY OF THE COMMISSIONER IN THE COURT OF APPEALS, THE SUPERIOR COURT AND DISTRICT COURTS	22.20.110 DUTY OF THE COMMISSIONER IN THE COURT OF APPEALS, THE SUPERIOR COURT AND DISTRICT COURTS.
	NO CHANGES
22.25.010 (g) and 22.30.080 (2) 15.56.900 (2) ; 15.15.030 (10)	22.25.010 (g) and 22.30.080 (2) , 15.56.900 (2), 15.15.030 (10) NO CHANGES
15.35.140 APPROVAL OR REJECTION OF A JUDGE OF THE COURT OF APPEALS.	15. 35.140 APPROVAL OR REJECTION OF A JUDGE OF THE COURT OF APPEALS.
	NO CHANGES
15.35.150, 15.35.160, 15.35.170, 15.57.025, 15.57.040 (2), 24.55.330 (2), 39.20.310 (1),	NO CHANGES
39.23.130 (2) Senate inserted: "Judiciary" means justic of the supreme court and judges of t court of appeals, the superior court and th district court , and de eted: [THE SUPERIOR AND DISTRICT COURTS]	39.23.130 (2) The House did not address this matter.
39.35.680 (21) (c)(vi) and 39.50.200(2)	NO CHANGES
12.55.120(a) A sentence of imprisonment lawfully imposed by the superior for a term or for aggregate terms of 45 days or more [EXCEEDING ONE YEAR] may be appealed to the court of appeals [SUPREME COURT]	12.55.120(a)..A sentence of imprisonment lawfully imposed by the superior court for a term or or for aggregate terms of [EXCEEDING] one year or more may be appealed to the court of appeals. [SUPREME COURT]
(b)	(b) NO CHANGES

SENATE	HOUSE
12.55.120 (d)	12.55.120 (d)
The Senate does not address this question	The House added a new subsection (d): A sentence of imprisonment lawfully imposed by the district court for a term or for aggregate terms exceeding 90 days may be appealed to the superior court by the defendant on the ground that the sentence is excessive. By appealing a sentence under this section, the defendent waives the right to plead that by a revision of the sentence resulting from the appeal he has been twice placed in jeopardy for the same offense. A sentence of imprisonment lawfully imposed by the district court may be appealed to the superior court by the state on the ground that the sentence is too lenient; however, when a sentence is appealed by the state, the court may not increase the sentence but may express its approval or disapproval of the sentence and its reasons in a written opinion.
A judge of the court of appeals is entitled to receive annual compensation equal to 95 per cent of the annual compensation of a supreme court justice, payable in equal monthly installments, from the date upon which he takes office until superseded by payment of compensation resulting from the first salary recommendations made under AS 39.23 for judges of the court of appeals.	The House does not address this question.
The Senate does not address this question.	A judge of the court of appeals is not required to contribute to the retirement system under AS 22.25.011 if, at the time of his appointment to the court of appeals, he holds a judicial office to which the retirement benefits of AS 22.25 apply and to which he was appointed before July 1,1978.
Notwithstanding the effective date of this Act, operations of the court of appeals shall commence on a date determined by the supreme court after all judges of the court of appeals have taken office.	NO CHANGES
The superior court has concurrent appellate jurisdiction with the court of appeals in actions and proceedings commenced in the district court and filed in the superior court before the date on which operations of the court of appeals commence. The supreme court may transfer to the court of appeals an appellate matter involving an action or proceeding commenced in the district court which is pending in the superior court on the date on which	Cases pending in the supreme court on the date on which operations of the court of appeals begin which have been heard by or submitted to the supreme court on briefs shall be retained by the supreme court for decision. The supreme court may transfer to the court of appeals all other pending cases within the jurisdiction of the court of appeals

SENATE	HOUSE
operations of the court of appeals commence, including a matter filed before the effective date of this Act. An appellate matter not so transferred shall be decided by the superior court. Before commencement of operations in the court of appeals, a decision of the superior court under this section may be appealed to the supreme court and thereafter to the court of appeals. The supreme court may transfer to the court of appeals any matter within the jurisdiction of the court of appeals which is pending in the supreme court on the date on which operations of the court of appeals commence, including matters filed in the supreme court before the effective date of this Act.	
It is the intent of the legislature that the court of appeals commence operations as soon as possible after the effective date of this Act. The administrative director of courts shall immediately take necessary action to provide suitable facilities for the court of appeals. When advised by the supreme court, the judicial council shall meet and submit nominations to the governor for all initial vacancies for judge of the court of appeals.	NO CHANGES
Not addressed by the Senate	The amends enacted in secs. 5,9,and 12 of this Act apply only to justices and judges appointed on or after the effective date of this Act.
Not addressed by the Senate	Secs. 8 15 and 31 of this Act have the effect of changing Rule 21, Rules of Appellate Procedure and Rule 7, District Court Criminal Rules by amending AS 22.10.020(a), AS 22.15.240, and AS 12.55 to provide that a sentence of 90 days or more imposed by the district court may be appealed.
Not addressed by the Senate	Section 29 of this Act has the effect of changing Rule 21, Rules of Appellate Procedure by enacting and amending AS 12.55.120(a) to provide that a sentence of one year or more may be appealed.

SUPREME COURT WORKLOAD:
Analysis of Proposed Solutions

Prepared by:
Office of Staff Counsel
Office of Administrative Director
September 16, 1977

TABLE OF CONTENTS

INTRODUCTION

The caseload of the Alaska Supreme Court has increased sharply over the past three years. While the Court has also increased its disposition of cases over this period, the increase in dispositions has not kept pace with the increase in filings.

In a memorandum dated May 24, 1977, the Chief Justice requested that the Administrative Director obtain data from other states relating to the workload of the supreme court. This same memorandum mentioned three possible methods of dealing with increased caseloads: (1) handling some cases by panels, (2) increasing the size of the court and (3) establishing an intermediate appellate court.

In response to this request the Administrative Office has undertaken a preliminary study of the supreme court workload. This report will present comparative data on the Alaska Supreme Court and the supreme courts in other comparable states. The report will also review several possible methods of dealing with increased caseloads and will discuss the advantages and disadvantages of the various possibilities.

Unfortunately, the report must begin with three caveats. First, it is very difficult to compare the data from various states as there is no widely-used standard method of defining and stating the pertinent information. Every effort has been made to compare only those figures which are truly comparable,

but, at best, the comparative figures in this report are a "good approximation" of the facts. Secondly, the discussions of the various possible methods of dealing with increasing caseloads are not intended to be exhaustive and conclusive. It would require a much more extended study in order to determine the likely effect in Alaska of adopting any one solution, and even the conclusions of such an extended study would necessarily be less than absolutely reliable. This report then attempts to present the alternatives and some of the more likely effects of each possible solution. Finally, although statistics can be gathered from other states and compared with Alaska, this report cannot answer the fundamental question of whether the Alaska Supreme Court is approaching or has reached its limit in terms of the number of cases it can handle without adopting one or more of the alternatives discussed here. There are no standards by which to measure overwork, and the answer ultimately must be the Court's judgment as to whether it can handle more cases without sacrificing quality.

I. STATISTICAL COMPARISON OF ALASKA WITH OTHER STATES

The memo which initiated this study expressed some concern about the relationship of the size and number of appellate courts to the population of the state and information on this relationship provides an interesting backdrop to the other statistical comparisons which follow.

The Court Administrator in Louisiana recently surveyed 52 jurisdictions (50 states plus Puerto Rico and the District of Columbia) to obtain data on the number of appellate judges in relation to population.[1] The corrected[2] data on Alaska is as follows:

Trial judges per 100,000 population 4.46

Appellate judges per 100,000 population . . . 1.24

Appellate judges per 100 trial judges 27.77

These ratios are based on the following figures:

Trial court judges (general jurisdiction in 1975) 18

Intermediate appellate court judges 0

Supreme court justices. 5

Population (estimated 1975) 403,000

Of the 46 jurisdictions for which data is available, Alaska ranks tenth from the highest for trial judges per 100,000 population.[3] Alaska is in a three-way tie for second place for appellate judges per 100,000 population.[4] Alaska ranks sixth,

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1/ See Appendix I for charts prepared by Louisiana.

2/ The ratios calculated by Louisiana were based on an incorrect number of trial court judges (37) and on an incorrect population figure (330,000).

3/ The states ranking higher than Alaska are Illinois (5.4), Indiana (4.6), Kansas (5.7), Michigan (5.6), Minnesota (5.5), Nevada (4.7), Oklahoma (5.3), Puerto Rico (6.3) and the District of Columbia (5.9).

4/ Alaska is tied with Delaware and the District of Columbia. Only Wyoming ranks higher (1.4).

along with Hawaii, for appellate judges per 100 trial judges.5/

These figures indicate that Alaska already ranks among those states with the highest number of appellate judges in relation to the population. If Alaska should increase the number of appellate judges, either by increasing the size of the supreme court or by creating a new intermediate appellate court, it, of course, would rank even higher. For example, if the size of the supreme court were increased to seven justices, the number of appellate judges per 100,000 population would be 1.73, rather than the current 1.24. Alaska would then have more appellate judges in relation to its population than any of the other 45 jurisdictions included in the chart in Appendix I. If the supreme court remained as it is with five justices and a three-judge intermediate appellate court were created, the ratio would be even higher--1.98 per 100,000 rather than the current 1.24.

It is obvious that the unusually small population of Alaska skews these ratios to some extent, but it is equally obvious that, by any standards, Alaska already has a high number of appellate judges in relation to the population.

5/ The states ranking higher than Alaska and Hawaii are Delaware (38.8), Maine (50), New Hampshire (38.4), North Carolina (29) and Wyoming (33.3).

Such a high ratio may not be inappropriate, however, if the number of appellate judges is not high in relation to the amount of litigation in the state. For example, in 1976 in Alaska, 364 new appeals were filed with the supreme court. This is a ratio of 90.32 appeals per 100,000 population. In Idaho, for the same period, 295 new appeals were filed, which is a ratio of only 38.26 appeals per 100,000 population.6/ The ratio of appeals in Alaska to the population is more than twice the ratio in Idaho. While the ratio of appellate judges in Alaska to population is about twice the ratio in Idaho, the disparity is offset by the higher ratio of appeals to population.

Some tentative conclusions may be drawn from these figures. First, although the number of appellate judges in Alaska when compared to other states appears to be extremely high in relation to the population, the number is not so high when the amount of litigation in the state is taken into consideration. Secondly, the amount of litigation in Alaska is relatively large in relation to the size of the population.

Without regard to population figures, the charts in Appendix II present comparative data on the workloads of the supreme court

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6/ Perhaps more interesting is the comparison of appeals to trial court filings. In Idaho for this period there were 262,419 trial court filings, and one appeal for every 889 trial court cases. In Alaska, there were 102,239 trial court filings, or one appeal for every 280 trial court cases. In other words, three times as many cases are appealed in Alaska as in Idaho.

in Alaska and in eight other states.[7] These particular states were selected for comparison because, like Alaska, they have no intermediate appeallate court, and each of them has a five-justice court except for Maine, which has six justices. Based on the data in Appendix II, the 1976 workload of the Alaska Supreme Court, in comparison with other relatively similar states, appears to be about average.

During 1976, 364 appeals were filed with the Alaska Supreme Court, and 133 opinions were issued. Of the eight other supreme courts reviewed, only Nevada and New Hampshire reported having issued significantly more opinions than did Alaska during 1976.[8] The Nevada court issued 252 opinions and had 607 appeals filed during 1976. New Hampshire reported having issued 205 opinions from July 1, 1974, through June 30, 1975.

Three of the eight courts appear to have workloads much lighter than Alaska's. Hawaii reported 253 appeals filed from July 1, 1975 to June 30, 1976, with opinions issued in 84 cases. North Dakota reported for calendar year 1975 that 128 appeals and original proceedings were filed, and 93 opinions were issued. The Wyoming court issued 75 opinions during 1976, with 138 appeals having been filed.

7/ Hawaii, Idaho, Maine, New Hampshire, Nevada, North Dakota, Vermont, and Wyoming.

8/ The New Hampshire statistics cover fiscal year 1975, the North Dakota statistics cover calendar year 1975, and the Hawaii statistics cover fiscal year 1976. All others cover calendar year 1976.

The three states having apparent caseloads and dispositions nearest to Alaska's were Idaho, Maine and Vermont. During 1976, 351 appeals were filed in the Vermont Supreme Court, and opinions were issued in 141 cases. Idaho reported 295 appeals filed during 1976, and 136 opinions issued. The Maine Supreme Court issued 168 opinions during 1976, but as the following chart indicates, the average number of opinions per justice in Maine was quite comparable to the Alaska average:

STATE	TOTAL OPINIONS	AVERAGE PER JUSTICE
Nevada	252	50.4
New Hampshire	205	41
Maine	168	28
Vermont	141	28.2
Idaho	136	27.2
Alaska	133	26.6
North Dakota	93	18.6
Hawaii	84	16.8
Wyoming	75	15

It is noteworthy, however, that for the first eight months of 1977, the Alaska Supreme Court published 128 opinions. If the court continues to publish opinions at this rate for the remainder of 1977, it could reach a total for the year of over 190 opinions.

Of the states included in this review, six of them have supreme courts which, like Alaska's, have both administrative and rule-making authority.[9] Of the remaining two, Nevada has no administrative responsibilities, but does have rule-making authority. The Vermont court, conversely, has administrative responsibilities, but no rule-making authority. The data in Appendix II shows that the Maine and New Hampshire courts, with both administrative and rule-making authority, issued more opinions than did the Vermont court, which lacks rule-making authority. While we know intuitively that a court which does not exercise either administrative or rule-making authority should be able to handle a higher number of cases than a court that does, this data does not tell us to what degree the absence of such responsibilities increases a court's capacity to handle cases.

Furthermore, the comparative data is insufficient to provide an answer to the question of whether the Alaska Supreme Court is approaching or has reached its limit in terms of the number of cases it can handle, or whether the Alaska court could be producing as many opinions as does the Nevada court, for example. Extensive research would be required to determine whether the Alaska Supreme Court is faced with a greater number of complex cases than are the courts that issue more opinions. Even more difficult to determine is the question of whether the quality of the opinions issued by these courts is up to the

present standard of the Alaska court, and whether our court would be willing to sacrifice some quality to increase substantially its rate of dispositions.

II. POSSIBLE SOLUTION TO THE CASELOAD PROBLEM

Although the workload of the Alaska Supreme Court has increased substantially over the last several years, neither the size of the court itself nor the number of law clerks has increased at all.[10/] During 1976, a total of 364 appeals were filed with the court, as compared to 249 in 1975. This represents an increase in appeal filings of 46% in one year. Because the increase in filings for petitions for review and original applications was not so high, the overall percentage increase in filings from 1975 to 1976 was 38%. Further, a recent statistical report by the Clerk of the Supreme Court showed that the number of pending cases in the "awaiting decision" category as of April 30, 1977, was nearly double the number in that category on the same date in 1976.[11/] It is therefore understandable that the staff and court are feeling burdened by the workload.

10/ Memo dated May 20, 1977, from Donna Spragg Pegues to Chief Justice Boochever.

11/ The number in that category on April 30, 1977 was 125, and on April 30, 1976, the number was 64. See, Memorandum to the Justices from Donna S. Pegues, 5/24/77.

The solutions which come most readily to mind and which have been used by other states to cope with increasing appellate caseloads are the following:

1. Increase the size of the supreme court.
2. Establish panels of the supreme court.
3. Limit appeals of right to the supreme court.
4. Establish central research and screening staff.
5. Establish intermediate court of appeals.

This report will review each of these solutions generally:

1. Increase the size of the supreme court. In many ways court expansion appears to be the simplest solution to the caseload problem. Increasing the number of justices on the court would obviously divide the workload among more people, so that the opinion writing burden on each person is reduced--and this is one of the important goals of any change in the appellate system. Court expansion is an attractive solution also in that it would not necessitate any change in appellate procedures.

The use of either a seven-justice or five-justice court would be compatible with the American Bar Association Standards relating to Court Organization, which state in part:

> A supreme court should be constituted of an odd number of judges, so the decisions can be reached by majority vote. The number most common and generally satisfactory is seven. This number facilitates the working relationships required to establish concurrence of opinion on difficult legal questions, while at the same time being large enough to provide breadth of viewpoint and the manpower to prepare the opinions that

are the principal work product of appellate courts. Nevertheless, some appellate courts have operated effectively with five judges . . . [EMPHASIS ADDED]12/

A change in the size of the court could be achieved by an amendment to A.S. 22.05.020, which establishes the composition of the court.13/ No constitutional amendment would be necessary, since article IV, section 2(a), of the Alaska Constitution, authorizes the legislature to increase the number of justices upon the request of the supreme court.14/

However, the efficacy of court expansion as a solution to the caseload problem may be illusory. As stated in the American Bar Association Standards on Court Organization, "Adding additional judges to a highest court may actually slow down its operation rather than speeding it up."15/ The additional justices

12/ American Bar Association Standards Relating to Court Organization, Standard 1.13, at 34 [hereinafter cited as ABA Standards on Court Organization].

13/ A.S. 22.05.020 provides: "Composition and general powers. The supreme court is a court of record and consists of three justices including the chief justice. On December 1, 1968, the total number of justices shall be increased to five The supreme court is vested with all power and authority necessary to carry into complete execution all its judgments, decrees and determinations in all matters within its jurisdiction, according to the constitution, the laws of the state, and the common law. It may prescribe by rule the fees to be charged by all courts for judicial justices."

14/ Alaska Constitution, article IV, section 2(a) provides: "The supreme court shall be the highest court of the State, with final appellate jurisdiction. It shall consist of three justices, one of whom is chief justice. The number of justices may be increased by law upon the request of the supreme court."

15/ ABA Standards on Court Organization at 35.

would certainly make it possible for the court to increase its outpout of opinions, but, at the same time, each case might take somewhat longer to decide because there would be additional points of view to be dealt with and more justices among whom draft opinions and memoranda would have to circulate. Additionally, each justice would still have to review each draft opinion. Assuming that seven justices would produce more opinions in a given year than would five, the workload on each justice with respect to the opinion review function would actually increase with seven justices. One commentator has described the situation as follows:

> [W]hatever added work can be done by the extra judges is dissipated by the increased consultation time, by the difficulties inherent in drafting opinions to accommodate multiple points of view, and by the administrative problems involved in increased personnel.16/

Increasing the size of the supreme court has not been a widely-used method of dealing with appellate caseload problems. In fact, the National Center for State Courts reported to the Idaho committee that no state judiciary had expanded the size of its supreme court in recent years.17/

16/ Hufstedler, Constitutional Revision and Appellate Court Decongestants, 44 Wash. L. Rev. 577, 594 (1969), quoted in Donaldson, A Crisis in the Idaho Court System: An "Appealing Remedy, 13 Idaho L. Rev. 1, 4 (1976).

17/ An Investigation into the Problems Created by the growing Appellate Caseloads in Idaho, Report of the Supreme Court Appellate Court Committee, August 1977, Draft Report of June 29, 1977, at 37. [Hereafter cited as Draft Idaho Appellate Court Report.]