

ALASKA LEGISLATURE COMMITTEE FILES 1981-1982 86/2

1463 SHESS SB 90 - SB 94 1463

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. SB 90
 Title "An Act relating to privacy and public information; and changing Rule 6
 Requested by Sen. Fischer Date _____
of the Alaska Supreme Court Rules of Civil Procedure."

II. FISCAL DETAIL

Agency Affected Department of Law
 Program Category Affected General Government
 BRU, Program, or Subprogram(s) Affected Legal Services
 (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 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	0	0	0	0	0	0

FUNDING (Thousands of Dollars)

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

POSITIONS

FULL TIME	0	0	0	0	0	0
PART TIME						
TEMPORARY						

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

None of the Department of Law's BRU's, Legal Services, Prosecution and Consumer Protection, expect that any significant fiscal impact would result from the passage and implementation of SB 90.

IV. DATE January 21, 1981 PREPARED BY Richard I. Pegues
 AGENCY Department of Law
 PHONE 465-3695
 Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)



ombudsman

Frank Flavin

State of Alaska

January 28, 1981

Senator Victor Fischer
and Members
Senate State Affairs Committee
Pouch V
Juneau, AK. 99811

Reply to:

- 840 K Street, Room 203
Anchorage, Alaska 99501
(907) 276-4011
- Pouch W0
Juneau, Alaska 99811
(907) 465-4970
- P.O. Box 74358
Fairbanks, Alaska 99707
(907) 452-4001

Subject: SB 90

Dear Senator Fischer:

In his Third, and again in his Sixth Annual Report to the Hawaii Legislature, Ombudsman Doi has noted increased interest and involvement of people in their government. Citizens have encountered two primary areas of difficulty in their attempts to learn about the workings of government through the inspection of records and files: 1. access to some records is denied, and 2. excessive delays occur before the records are released. The experience of the Alaska Ombudsman office has been similar.

Mr. Doi points out that "the less information is shared, the more power those that possess such information retain for themselves." He takes the position, as does the Policy section of SB 90, that "democratic institutions are founded on the premise that information should be shared among the citizenry and their representatives for decision-making purposes." In arguing for freedom of information legislation, Ombudsman Doi urges

- that governmental records and materials be open to the fullest extent possible,
- that exclusions be limited, be specifically listed and strictly defined, and be legislatively authorized,
- that strict time limits be established within which agencies either provide requested records or formally deny a request,
- that prompt and convenient appeal procedures be available,
- and that fair and uniform fees for reproduction of written documents be charged.

We agree with these guidelines and support SB 90 in its attempt to strengthen the people's right to information about their government.

Freedom of information complaints to the Alaska Ombudsman office include:

- Veterans Affairs' denial of the request of a son, with his father's general power of attorney, to inspect the father's loan payment history
- Motor Vehicles' charging of \$2 for the name and address of the registered owner of a vehicle, when the complainant didn't want a copy of any document
- Administration Personnel's denial of copies of preliminary studies leading to a position reclassification
- ASHA's refusal to give a resident a copy of an incident report concerning an altercation she had been involved in
- Division of Social Services' refusal to permit prospective foster parents viewing of personal references written about them
- DOT's refusal to provide a citizen with a copy of the tape of a public meeting for use on a radio broadcast (they would provide a transcript)

Although some of these complaints have been found to be justified, and others unsupported, they serve to exemplify the spectrum of types of information sought and the number of different agencies involved.

With regard to SB 90, the following specific suggestions and questions are offered for your consideration:

page 2 line 25

(1) those exempted from disclosure by state statute (;), federal law or regulation

This language is closer to the current AS 09.25.120 (4) and should preclude conflicts between federal and state laws.

page 4 lines 5 and 6

Who decides what are "trade secrets, privileged information, and confidential commercial, financial, geological or geophysical data?"

page 4 lines 9 and 10

The current drivers manual contains sample questions which are, in some cases, actual questions on drivers license tests.

page 8 lines 25 through 29 and page 9 lines 1 through 7

Who is the "head" of a governmental unit? What is an "agency?" If an agency is a department, the commissioner would be the "head;" if agency means a division, the director would be its "head."

Who is the "head" of, for example, the Human Rights Commission -- the Executive Director or the Chair?

Should it be required that there be "designees" in each office location, or will, for example, an employee in the Fairbanks Natural Resources

office need to contact a designated custodian in Anchorage before releasing a record?

In the definition of "governmental unit" perhaps "governmental instrumentality," "public corporation," and "REAA" should be specifically included.

page 9 line 24

What is a "public body?" Would, for example, this section apply in a meeting between several state agencies and the U.S. Army?

More generally, you may wish to include an administrative appeal prior to filing an action in court to compel the release of records. Such an appeal would require a different decision maker and strict adherence to reasonable time frames.

Also, the legislative adoption of a uniform fee schedule similar to that proposed by the Governor might be advisable. This proposed regulation provides for the copying of 20 pages free within a 24 hour period, and a fee of 10¢ for each additional page.

Our most pressing concern, however, is the repeated use of "right to privacy" in this proposed legislation. Absent any attempt at definition or case law clarifying this Constitutional protection, we are left only with case by case interpretation. The diversity of opinion is particularly evident in responses from the Attorney General's Office on cases arising from Ombudsman complaints.

In opinions issued on April 1, 1979 (concerning release of mailing lists of those receiving senior citizen property tax exemptions to a senior citizen organization) and on February 21, 1980 (concerning the release to Legislators of the names of those receiving Longevity Bonus payments) an Assistant Attorney General advised that the former be denied, while there was no privacy issue in the latter. He argued that there would be no anxiety or embarrassment caused to Longevity Bonus recipients if their names were to be released to members of the Legislature, whereas it would violate the privacy of senior citizens claiming property tax exemptions if a list of their names and address were released. When in doubt, this opinion states, it is better to err on the side of non-disclosure. A factor in the senior citizen decision was the possible use of the list by vendors.

On a similar issue, and on the basis of the same legal advice, the Division of Retirement and Benefits has refused to release a list of TRS retirees to a retired teacher organization. The division explains that although this group might not "misuse" the list, it if were released to one organization, how could the division refuse to provide it to another which might put it to questionable use.

In another opinion issued July 31, 1978 on the release of the name and address of the registered owner of a motor vehicle (attached), the

January 28, 1981

same Assistant Attorney General argues that despite the absence of current statutory language allowing the keeper of a record to inquire as to its possible use, the Attorney General's office has taken the position that right of privacy takes precedence over freedom of information. "When the two come in conflict, the keeper of the records can facilitate or cause a person's privacy to be invaded only to the extent that a legitimate public interest requires it." He concludes that the release of motor vehicle registration information is generally "harmless," since "persons requesting the information will have an interest sufficient to justify the information's release..." Absent "any pattern of misuse of information or any serious or persistent problem," the opinion finds that "the statute controls" and the information is public. "We do not believe that...administrators have the authority to carve out their own exceptions from the statutory dictates of AS 09.25.110." Yet this is exactly what he has advised the Department of Community and Regional Affairs and the Division of Retirement and Benefits to do in the previously cited opinions.

We expect ultimate resolution of these differing interpretations to come through litigation, perhaps to be facilitated by the simplified civil procedures in SB 90. They are brought to your attention as a reminder of just how gray the "right to privacy" area is and, therefore, how subject to individual interpretation the sections in SB 90 which use this language will be.

Sincerely,


for Frank Flavin
Ombudsman

Attachment

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K - STATE CAPITOL
JUNEAU 99511

July 31, 1978

Mr. Francis M. Flavin, Ombudsman
340 'K' Street, Suite 203
Anchorage, Alaska 99501

Re: Ombudsman Complaint
#A78-0655 (license
plate information)
Our File: J-66-787-78

Dear Mr. Flavin:

Your letter to the Attorney General on this matter has been referred to me for reply. The issue presented is whether the adoption of the Privacy Amendment to the Alaska Constitution, art. I, § 22, impliedly amended AS 09.25.110. */

Often called the Alaska Freedom of Information Act, AS 09.25.110 **/ provides generally that, absent a "specific" dictate to the contrary, all public records are open to public inspection and copying. Nothing in the section requires (or

*/ A threshold question is whether AS 44.23.020 allows the Attorney General to provide the Ombudsman with legal advice. We believe that, as an agency of the legislature, AS 24.55.110, the Office of Ombudsman is entitled to a written legal opinion under AS 44.33.020(b)(4). Even in the absence of that statute, the Attorney General's common law powers would appear to authorize the opinion. *Public Defender Agency v. Super. Ct., 1st Jud. Dist.*, 534 P.2d 947 (Alaska 1975).

*/ The section reads as follows:

Sec. 09.25.110. INSPECTION AND COPIES OF PUBLIC RECORDS. Unless specifically provided otherwise the books, records, papers, files, accounts, writings, and transactions of all agencies and departments are public records and are open to inspection by the public under reasonable rules during regular office hours. The public officer having the custody of public records shall give on request and payment of costs a certified copy of the public record.

Francis M. Flavin, Ombudsman
Anchorage, Alaska

July 31, 1978

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even authorizes) the keeper of the records to inquire into the bona fides of the request for a record or other information. Nothing in the section allows the keeper of the records to reject a request simply because he doubts that it is legitimate or even if he is convinced on the basis of the information available to him that the request is illegitimate. The statute is Kantian in its dictate. If a rapist asks for a girl's name and address, under the statute's plain language, the keeper of the records must reveal them.

This office has, however, consistently rejected the Kantian formulation and taken the position that the constitutional right of privacy takes precedence over the Freedom of Information Act. When the two come in conflict, the keeper of the records (the state) can facilitate or cause a person's privacy to be invaded only to the extent that a legitimate public interest requires it. Falcon v. A.P.O.C., 570 P.2d 469 (Alaska 1977). Hence, if a public release of information would result in a disclosure which would stigmatize one or subject one to opprobrium or otherwise disclose matters which an ordinary, reasonable person would prefer remain private, then there must be a legitimate public interest in releasing the information sufficient to justify the invasion of privacy before the information can be released. Falcon v. A.P.O.C., supra; cf., Ravin v. State, 537 P.2d 494 (Alaska 1975) (balancing of interests).

With respect to motor vehicle registration, as a general rule, the release of the information is in itself harmless. The probability of serious misuse does not appear to be great. The likelihood of potentially obnoxious use (e.g., an unsolicited offer to purchase) does not appear much greater. As a general rule, persons requesting the information will have an interest sufficient to justify the information's release, i.e., hit-and-run victims, seekers of witnesses to accidents, junkyard dealers, auto towers, and creditors. Even a would-be, albeit unsolicited, purchaser has a legitimate interest. ^{*/} No one has suggested that there is any pattern of misuse of

^{*/} We cannot agree with your assumption that the only legitimate use of registration information is to further its major purpose, i.e., revenue and law enforcement. It is, for instance, used to establish ownership. AS 28.10.560; State Farm Mut. Auto Ins. Co. v. Clark, 397 F.Supp. 745 (D. Alaska 1975).

Francis M. Flavin, Ombudsman
Anchorage, Alaska

July 31, 1978

- 3 -

information or any serious or persistent problem in the misuse of information which would support an imposition of administrative restrictions on the release of information under AS 09.25.100 and 110. If such a pattern or problem existed, then the protections of the Privacy Amendment could be invoked. But absent both, the statute controls.

It would certainly be possible, if it chooses to do so, for the legislature to amend title 28 to provide for the administrators to devise regulations or forms for protecting motor vehicle registrants (and others) from constitutionally permissible but nevertheless unwanted intrusions into their privacy. We do not believe that, absent a change in the law or the existence of an actual and serious problem involving someone's privacy, the administrators have the authority to carve out their own exceptions from the statutory dictates of AS 09.25.110. That would be a real abuse of discretion, an abuse which you would, undoubtedly, soon be called upon to examine.

Sincerely yours,

AVRUM M. GROSS
ATTORNEY GENERAL

By: 

Rodger W. Pegues

Assistant Attorney General

RWP:md

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PROPOSED AMENDMENTS TO SENATE BILL NO. 90

January 29, 1981

Proposed by:
Bruce Horowitz, Supervising Attorney
Alaska Legal Services Corporation
419 6th Street, Suite 322
Juneau, Alaska 99801
(907) 586-6425

* § 40.25.015(d) should be amended, as follows: [p. 2]

(d) The commissioner of administration shall prescribe a uniform schedule of fees to be limited to reasonable standard charges for document duplication, and provide for recovery of [ONLY] the direct cost of the duplication only when more than one hundred copies per request are made. The commissioner of administration shall by regulation, provide a method by which indigent persons may secure information with payment of fees.

* § 40.25.015(e) (7) should be amended, as follows: [p. 3]

Definitive

(7) personal information in files maintained on applicants for, or recipients of, social services or public benefits, except that access may not be denied to the person who is the subject of the records, or his designee;

* § 40.25.020(h) should be amended by adding to the last sentence, as follows: [p. 6, beginning line 27]

*Responsible
Practitioner
Domicile*

... Upon a determination by a governmental unit to comply with a request for records, the records shall be made (PROMPTLY) available to the person making the request within ten days of the receipt of the request.

If takes time to determine if rights of privacy is violated

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* § 40.25.020(c), should be amended, as follows: [p.7]

(c) When the lawful custodian of the record determines that contents of a record exempt it under the provisions of AS 42.05.015, he shall delete the exempt contents and release the remaining contents of the record [ALSO DETERMINE WHETHER A DELETION OF THE EXEMPT PARTS OF THE RECORD WILL MAKE THE RECORD SUITABLE FOR RELEASE, AND, IF SO, THE DELETION SHALL BE MADE AND THE RECORD RELEASED], with the notation that exempt material has been removed. If the custodian determines that the record, or a portion of the record, is not open to inspection, he shall, in a certified writing, inform the person requesting the records of his determination, of the statutory basis for this decision, and that under AS 40.25.025 a suit may be brought to compel production of records that are improperly withheld.

* § 40.25.025 (b) should be amended in its last sentence, as follows: [p. 7, beginning line 26]

Deleted

... If the applicant is granted the injunction, he shall be entitled to recover costs and {REASONABLE} actual attorney fees from the governmental unit.

* § 40.25.025 (d) should be amended in part, as follows: [p. 8, beginning line 7]

... In such a case the court, as a priority matter, shall determine the matter de novo, and may examine the contents of any records in camera to determine whether any of the exceptions set out in AS 40.25.015, and the burden is on the agency to sustain its action

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* § 40.25.035(a) should be amended, as follows: [p. 8]

(a) A person who has been wrongfully denied access to a record under this chapter has a civil cause of action against the person responsible for the violation and is entitled to recover actual damages and [REASONABLE] attorney fees, and other reasonable litigation costs.

Need: Definition of Privacy.

Introduced: 1/15/81
Referred: State Affairs and
Judiciary

1 IN THE SENATE

BY PARR, FISCHER, STIMSON
AND RODEY

2 SENATE BILL NO. 90

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to privacy and public information;
7 and changing Rule 65 of the Alaska Supreme Court Rules
8 of Civil Procedure."

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

10 * Section 1. AS 40 is amended by adding a new chapter to read:

11 CHAPTER 25. PRIVACY AND PUBLIC INFORMATION.

12 Sec. 40.25.010. STATE POLICY. It is the policy of the state that

13 (1) all governmental units exist to aid in the conduct of
14 the people's business;

15 (2) the people of this state do not yield their sovereignty
16 to the agencies which serve them;

17 (3) the people, in delegating authority, do not give their
18 public servants the right to decide what is best for the people to know
19 and what is best for them not to know;

20 (4) the people's right to remain informed shall be protected
so that they may retain control over the instruments they have created;

(5) the people's right to privacy as provided by the consti-
tution is recognized and shall not be infringed;

(6) the records of governmental units shall be open for
public inspection unless the inspection infringes on a person's right
to privacy or is otherwise prohibited by statute.

Sec. 40.25.015. RECORDS TO BE OPEN TO INSPECTION: EXCEPTIONS

(a) Except as otherwise specifically provided by statute, all records
are open to inspection and copying by any person during the regular

*Privacy
Only in
Personal
Records
Is a person's
privacy violated
by this bill?*

*17 exceptions
(EXCEPTIONS) (see
many)
1/18
-Exemptions-
(Exemption) that
are about not open*

1 office hours of the lawful custodian of the records or his designee,
2 unless the inspection infringes on a person's right to privacy. The
3 custodian of the records shall take all necessary precautions for their
4 preservation and safekeeping.

5 (b) Every custodian of records shall make them available for
6 public inspection and shall give a copy of the record on request and
7 payment of fees, if any. A custodian shall permit memoranda, trans-
8 cripts, and copies of the public writings and records in his office to
9 be reproduced in any reasonable manner. In addition, a custodian shall
10 furnish proper and reasonably accessible facilities for inspection of
11 records, subject to reasonable restrictions, as are necessary for the
12 protection of the writings and records and to prevent interference with
13 the regular discharge of the duties of the custodian and his employees.
14 If a certified copy is requested, that copy is in all cases evidence of
15 the original.

16 (c) Copies of records may be requested by telephone, electronic
17 communication, or by mail. These requests shall be treated in accor-
18 dance with the provisions of (a) and (b) of this section.

19 (d) The commissioner of administration shall prescribe a uniform
20 schedule of fees to be limited to reasonable standard charges for docu-
21 ment duplication, and provide for recovery of only the direct cost of
22 the duplication.

23 (e) The following records are excluded from the provisions of
24 this section:

- 25 (1) those exempted from disclosure by state statute;
- 26 (2) any tax or information return, or record or report re-
27 lating to that return, which is required to be filed in accordance with
28 the provisions of AS 43 or municipal ordinance, except that access may
29 not be denied to the person who is the subject of the records, or that

1 person's designee;

2 (3) subject to (1) of this section personal information in
3 files maintained on public employees, except that access may not be
4 denied to the person who is the subject of the records, or that person's
5 designee;

6 (4) personal information in files maintained on students in
7 public schools, except that access may not be denied to the student, a
8 parent or guardian of the student, a person responsible for supervising
9 the student, or his designee;

10 (5) personal information in files maintained on students at
11 the University of Alaska, except that access may not be denied to the
12 student or his designee;

13 (6) personal information in medical, psychological, and
14 sociological files maintained on individual persons, exclusive of
15 autopsy reports, except that access may not be denied to the person who
16 is the subject of the record, or his designee, or to the parent or
17 guardian of a minor who is the subject of the record except where this
18 access would violate the physician-patient privilege;

19 (7) personal information in files maintained on recipients
20 of social services, ^{as public benefits} except that access may not be denied to the person
21 who is the subject of the records, or his designee;

22 (8) personal information similar to personal information in
23 files under (3) - (7) of this subsection, except that access may not be
24 denied to the person who is the subject of the records, or that person's
25 designee;

26 (9) archival materials donated by natural persons to the
27 extent of any written limitations placed on them as a condition of the
28 contribution; however, all archival materials become public information
29 after not more than 50 years and any statement of limitations must be

1 produced upon denial of access;

2 (10) circulation records maintained by public libraries,
3 public school libraries, and University of Alaska libraries showing
4 personal transactions by those borrowing from them;

5 (11) trade secrets, privileged information and confidential
6 commercial, financial, geological or geophysical data furnished in com-
7 pliance with state statute or regulation, or in compliance with a
8 municipal ordinance;

9 (12) test questions and answers to be used in a future li-
10 cense, employment or academic examination;

11 (13) intelligence, investigatory and original entry records,
12 maintained by state or municipal law enforcement agencies, or any other
13 governmental unit, but only to the extent that the production of the
14 records would

15 (A) interfere with enforcement proceedings;

16 (B) deprive a person of a right to a fair trial or an
17 impartial adjudication;

18 (C) constitute an unjustifiable intrusion into a per-
19 son's right of privacy;

20 (D) disclose the identity of a confidential source and,
21 in case of a record compiled by a criminal law enforcement author-
22 ity in the course of a criminal investigation, confidential infor-
23 mation furnished only by the confidential source;

24 (E) disclose investigative techniques and procedures;

25 (F) endanger the life, property, or physical safety of
26 a person;

27 (G) identify a victim of a criminal sexual assault;

28 (H) disclose any information otherwise exempt under
29 this chapter or state statute;

1 (14) records of security systems and procedures established
2 for the purpose of the protection of persons or property, or securing a
3 penal institution or place of detention of persons accused or convicted
4 of a crime or persons under the jurisdiction of the court under AS 47.-
5 10, but only to the extent that disclosure would compromise the effec-
6 tiveness of the system;

7 (15) attorney work product in the possession of a governmental
8 unit, until the matter occasioning the preparation of the work product
9 is closed;

10 (16) any notes, memoranda, draft decisions, opinions, or
11 other similar documents prepared by a justice or a judge, or a person
12 working under his supervision, in the process of deciding any legal
13 issue; however, once the legal issue has been decided all notes, mem-
14 oranda, draft decisions, opinions, or similar documents become public
15 records under rules established by the supreme court;

16 (17) records related solely to the internal practices of a
17 governmental unit where the effect of disclosure would be to enable law
18 violators to escape detection.

19 (f) Unless specifically exempted from disclosure by statute, all
20 records become public after they are 20 years old.

21 (g) Information contained in records exempted from disclosure
22 under (e) of this section may be released for valid statistical or
23 other information-gathering purposes if

24 (1) any information which would tend to identify the person
25 to whom the record pertains is deleted; and

26 (2) disclosure is made in a manner which would not compromise
27 or defeat the purposes of any statute designed to maintain the confi-
28 dentiality of the information.

29 (h) The exceptions provided in this section do not preclude the

1 release or production of subpoenaed records or information to a state
2 or municipal agency during the course of an investigation;

3 (i) All personnel records showing salary or compensation or that
4 concern the employee's current performance or ability to perform the
5 duties and responsibilities of his job shall be open for public inspec-
6 tion. This public access is not an infringement of a person's right to
7 privacy.

8 (j) The fact that a crime has been committed, the name of the
9 crime, the time of commission and location, the name of any victim
10 (unless the victim of a criminal sexual assault) and the name of any
11 person who is charged with the crime is a matter of public information
12 and record, except as provided in AS 47.10.090.

13 Sec. 40.25.020. REQUESTS FOR RECORDS. (a) Each governmental
14 unit, upon any request for records made under this section, shall

15 (1) produce the record immediately; or

16 (2) if the record is in active use or storage and not avail-
17 able at the time a request to examine it is made, the custodian shall
18 at that time state this fact in writing to the applicant and the appli-
19 cant may set a date and hour at which the record may be examined.

20 (b) A person making a request to a governmental unit for records
21 under this section is considered to have exhausted his administrative
22 remedies with respect to the request if the governmental unit fails to
23 comply with this section. If the governmental unit can show that
24 exceptional circumstances exist and that it is exercising due diligence
25 in responding to the request, the court may retain jurisdiction and
26 allow the governmental unit additional time to complete its review of
27 the records. Upon a determination by a governmental unit to comply
28 with a request for records, the records shall be made promptly available
29 to the person making the request.

1 (c) When the lawful custodian of a record determines that contents
2 of a record exempt it under the provisions of AS 42.05.015, he shall
3 also determine whether a deletion of the exempt parts of the record
4 will make the record suitable for release, and, if so, the deletion
5 shall be made and the record released, with the notation that exempt
6 material has been removed. If the custodian determines that the record,
7 or a portion of the record, is not open to inspection, he shall, in a
8 certified writing, inform the person requesting the records of his
9 determination, of the statutory basis for this decision, and that under
10 AS 40.25.025 a suit may be brought to compel production of records that
11 are improperly withheld.

12 (d) A notification of denial of a request for records under this
13 section shall set out the names and titles or positions of each person
14 responsible for the denial of the request.

15 Sec. 40.25.025. ENFORCEMENT: INJUNCTIVE RELIEF. (a) A person
16 having custody or control of a record who obstructs or attempts to
17 obstruct, or a person not having custody or control who aids or abets
18 another person in obstructing or attempting to obstruct, the inspection
19 of a record subject to inspection under AS 40.25.015 may be enjoined by
20 the superior court from obstructing, or attempting to obstruct, the
21 inspection of records subject to inspection under AS 40.25.015.

22 (b) The court may charge no filing fee, and the Department of
23 Public Safety may charge no fee for service of process, from an appli-
24 cant seeking an injunction under this section. No security may be
25 required by the court from an applicant seeking an injunction under
26 this section. If the applicant is granted the injunction, he shall be
27 entitled to recover costs and reasonable attorney fees from the govern-
28 mental unit.

29 (c) The superior court shall make available to an applicant, free

1 of charge, a simplified form for proceeding without counsel under this
2 section. The form shall require only identification of the applicant
3 and the name of the custodian alleged to be improperly withholding
4 records, and a simple explanation of the records sought.

5 (d) In a suit brought under this section the court may enjoin
6 withholding of the records and order the production to the complainant
7 of records improperly withheld. In such a case the court shall de-
8 termine the matter de novo, and may examine the contents of any records
9 in camera to determine whether the records or any portion of them may
10 be withheld under any of the exceptions set out in AS 40.25.015, and
11 the burden is on the agency to sustain its action.

12 Sec. 40.25.035. CIVIL ACTION FOR OBSTRUCTION OF ACCESS TO RECORDS.

13 (a) A person who has been wrongfully denied access to a record under
14 this chapter has a civil cause of action against the person responsible
15 for the violation and is entitled to recover actual damages and reason-
16 able attorney fees and other reasonable litigation costs.

17 (b) A good faith reliance upon the provisions of this chapter or
18 of applicable law governing the confidentiality of public records is a
19 defense to a civil action brought under this section.

20 Sec. 40.25.040. DEFINITIONS. In this chapter, unless the context
21 otherwise requires,

22 (1) "attorney work product" means documents and tangible
23 things prepared by or for a governmental unit in anticipation of or
24 during litigation;

25 (2) "custodian" means the head of any governmental unit or
26 his designee;

27 (3) "governmental unit" means an agency, political subdivi-
28 sion, legislative body, board of regents, or an administrative body,
29 board, commission, committee, subcommittee, authority, council, agency,

1 or other organization, including subordinate units of the above groups,
2 of the state or any of its political subdivisions, including but not
3 limited to municipalities, boroughs, school boards, and all other
4 boards, agencies, assemblies, councils, departments, divisions, bureaus,
5 commissions or organizations, advisory or otherwise, of the state or
6 local government supported in whole or in part by public money or
7 authorized to spend public money;

8 (4) "personal information" means information about an indi-
9 vidual person, the disclosure of which would constitute an unjustifiable
10 intrusion into a person's right of privacy;

11 (5) "record" means any document, paper, memoranda, book,
12 letter, drawing, map, plat, photo, photographic file, motion picture,
13 film, microfilm, microphotograph, exhibit, magnetic or paper tape,
14 punched card, or other document of any other material, regardless of
15 physical form or characteristic, developed or received under law or in
16 connection with the transaction of official business and preserved or
17 appropriate for preservation by a governmental unit as evidence of the
18 organization, function, policies, decisions, procedures, operations or
19 other activities of the state or political subdivision or because of
20 the informational value in them; it also includes staff manuals and
21 instructions to staff that directly or indirectly affect the public.

22 * Sec. 2. AS 44.62.310 is amended by adding a new subsection to read:

23 (g) Nothing in this section may be construed to prevent the hold-
24 ing of conferences between two or more public bodies, or their repre-
25 sentatives, but these conferences are subject to the same regulations
26 for holding executive or closed sessions as are applicable to any other
27 public body.

28 * Sec. 3. AS 44.62.310(c)(3) is amended to read:

29 (3) matters which by state statute (LAW, MUNICIPAL CHARTER,

1 OR ORDINANCE] are required to be confidential.

2 * Sec. 4. AS 11.56.820 is amended by adding a new subsection to read:

3 (c) It is an affirmative defense to a prosecution under this
4 section that the defendant relied in good faith upon the provisions of
5 AS 4 .25 or of other law governing the confidentiality of public
6 records.

7 * Sec. 5. In sec. 1 of this Act, AS 40.25.025(b) has the effect of
8 changing Rule 65 of the Alaska Supreme Court Rules of Civil Procedure re-
9 lating to security deposits required in civil actions.

10 * Sec. 6. AS 09.25.110, 09.25.120, and 09.25.125 are repealed.
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MEMORANDUM

TO: Sen. Vic Fischer, Chairman
Senate State Affairs Committee

FROM: Joe La Rocca

SUBJECT: Written Testimony on SB 93 (Relating to privacy and public information).

This is primarily to note my strong disagreement with what was the virtually unanimous opposition among my fellow journalists to Section 1, sub-section 13 (Page 4, line 11) dealing with intelligence, investigatory and original entry records. Firstly, the section is lifted almost verbatim from the federal Freedom of Information Act of 1966, as amended and has, in general, withstood the test of time and experience in that context. Secondly, I believe that opponents of this section either have not read it in tandem with, or fail to apprehend its connection with sub-section (1) (Page 5, line 6). Thirdly, it's incomprehensible to me that anyone, even news journalists, could object to the withholding of information which, if disclosed, would (1) interfere with enforcement proceedings; (2) deprive a person of a right to a fair trial or an impartial adjudication; (3) constitute an unjustifiable intrusion into a person's right of privacy (here I prefer the federal act's language "an unwarranted invasion of the right to privacy" largely because it's a term of art for which judicial standards have already been established in case law); (4) disclose the identity of a confidential source (Mark how journalists themselves squawk when ordered to disclose the identity of a confidential source); (5) disclose investigative techniques and procedure (On-the-job training for budding investigative journalists?); endanger the life, property or physical safety of a person (let it be the life, property or physical safety of a news journalist, and watch the opposition shrivel), or identify a victim of a criminal sexual assault. (If it were their wife, sister or mother, would they be so anxious to turn it into mistle? particularly when these highly sensitive withholdings are subject to prompt and costless judicial review. I hope the committee will resist pressures to remove or substantially alter sub-section 13.


Joe La Rocca

1. Closing of entry account
2. Give of letter of demand of info.
3. Computer maintenance records should be included.
4. 20 pp w/in 21/10 period w/o charge.
5. Research should not be copied out.
6. Foreigners may be confusing & ambiguous. Good more definitions by terminology.
7. Cost of copying should be included in bill.
8. Note: "justified interest"



ALASKA PUBLIC INTEREST RESEARCH GROUP
Post Office Box 1093/Anchorage, Alaska 99510/(907) 278-3661

February 6, 1981

Sen. Vic Fischer, Chair
Senate State Affairs Committee
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Senator Fischer:

We would like to reiterate and expand upon our comments at the teleconference hearing of February 5, 1981 on SB 90, "Freedom of Information Act."

As an impressive array of witnesses has illustrated, there is a strong need for a Freedom of Information Act. SB 90, with a few relatively minor improvements, will fill that need.

Public access to information compiled by and for its government is a basic requirement of the democratic process of government. This is not special interest legislation for the press. Rather, this is legislation which ensures that the public, including the press, can hold its government accountable.

Our specific suggestions follow:

Sec. 40.25.010(d) does not contain a fee waiver for requests in the public interest by those unable to pay, such as non-profit groups or individuals. We support a change along the lines of the federal FOIA, which contains the following language: "Documents shall be furnished without charge or at reduced charge where the agency determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public."

We support the goal of releasing non-exempt portions of records to which some exemption otherwise applies (Sec. 40.25.020(c)). The proposed standard (that the lawful custodian of the record determine whether deletion of the exempt part will make release "suitable") is vague and possibly too discretionary as a standard. We support a change along the lines of the federal FOIA's use of the standard of "reasonable segregability" to govern provision of records after an exemption has been determined to apply.

We support the existing provisions which allow requesters whose request has been denied easy and cheap access to the courts: filing and service fees are waived and the court provides a simple form which instructs complaining parties how to proceed without a lawyer. The governmental unit has the burden of proof to show the exemption applies. We suggest that any notice by the governmental unit that it is applying an exemption be required to include a packet of instructions, including the form drawn up by the superior court, on how to proceed in court without counsel to challenge the exemption. In this way we can ensure that citizens are fully aware of their rights under the law without the need to turn to legal specialists. In the interest of speedy processing of the court case, we suggest that the legislature consider requiring that the court hear the case within a specified short period (e.g. 10-30 days). Otherwise, backlogs in the court can hamper the speed with which the citizen can gain access to the information.

Another legal issue is whether someone who would be adversely affected by the disclosure of an arguably exempt record should be allowed to intervene in a case involving the application of an exemption. If this standing to intervene is not otherwise provided by the Alaska Administrative Procedures Act, it should be provided in the bill. The interests of fairness require that one who is affected by disclosure be given a voice in the process, especially since the government may not pursue the case with the same vigor as the affected party. This change should not cause delay or make access more difficult as long as the burden of proof remains solidly on those who would apply the exemption.

Sec. 40.25.115(c) should allow copies to be requested in person. When the requestor's needs are urgent enough to merit an in person request, he or she should be able to get immediate action by making the request in person.

We support several changes from previous versions of the bill:

- *Exclusion of search costs in the charges to the requesting party (Sec. 40.25.015).
- *Exemption for attorney work product in possession of the governmental unit only until the matter is closed (Sec. 40.25.015(e)(15)).
- *Broad definition of governmental unit to which the Act applies. We urge the Committee to resist any change which would exclude local governmental units from coverage under the bill (Sec. 40.25.040 (3)).

The inclusion of these changes in SB 90 strengthens the bill.

Letter to Sen. Fischer
SB 90
Page three

We close with the strong recommendation that the Senate pass a
Freedom of Information Act substantially similar to SB 90.

Sincerely,

ALASKA PUBLIC INTEREST RESEARCH GROUP

Matthew Zencey
Matthew Zencey

Society of Professional Journalists

Farthest North Chapter
Box 74573
Fairbanks, Ak. 99707

Sigma Delta Chi

February 1, 1981

Sen. Vic Fischer
State Legislature
Pouch Y
Juneau, AK 99811

Dear Sen. Fischer:

I understand that my written testimony arrived via telecopier barely legible. If I knew who to blame I would get you an apology. Lacking that, I apologize that there wasn't more time to mail it down in time for the hearing. I hope this arrives in advance of the teleconference on Thursday. If not, I plan to be present in Fairbanks for the hearing and will present this testimony orally if you have not received it and any additional comments if you have.

If there is anything I or the Task Force can do to help pass this important legislation we stand ready to help. Please don't hesitate to call on us.

Again, my apologies.

Sincerely yours,



Dean H. Gottehrer
Chairman
Alaska Freedom of Information Task Force

Society of Professional Journalists

Farthest North Chapter
Box 74573
Fairbanks, Ak. 99707

Sigma Delta Chi

January 26, 1981

Members

Senate State Affairs Committee
Alaska State Legislature
Juneau, Alaska

Dear Committee Members:

On behalf of the Alaska Freedom of Information Task Force, I thank you for the opportunity to submit written testimony on Senate Bill 90. The FOI Task Force was organized by the Farthest North Chapter of the Society of Professional Journalists and numbers nearly 40 members, among them most of the state's daily newspapers, many weekly papers, broadcast stations, magazines and other media organizations. The Task Force is dedicated to seeking the passage of a Freedom of Information bill that will bring government out of the shade where the people's business is being hidden and keep it in the sunshine where that is presently the case.

I have urged our members to judge any proposed legislation against the current law. On that standard I believe SB 90 rates high. It includes all branches of state government, covers municipal and borough governments and provides for speedy access to inspect government documents. Generally, it sides with free and open government so that the people may know what is being done in their name. For the most part the exclusions listed in the bill are rational and legitimate and balance the sometimes conflicting rights of freedom of information and the right to privacy of the individual.

There are, however, some areas of the bill we would like to see changed. Presently the bill contains no definition of the right of privacy. We believe the Legislature, following the constitutional mandate should define that right. We suggest the following definition from the Restatement of Torts: Privacy is that right of an individual to be protected against publicity of a matter concerning that individual's private life when the matter publicized is of a kind that (a) would be highly offensive to a reasonable person and (b) is not of legitimate concern to the public.

We believe the exclusion listed in Sec. 40.25.015 (e)(8) should be stricken from the bill. It is of such a general nature that many records the Legislature would probably want public could be withheld under that exclusion. Sec. 40.25.015 (13) concerns us for two reasons. First, it potentially excludes original entry police records--those documents completed when a suspect is taken into custody. One of the roles of the press historically has been to see that no individual is held by the police unjustly and closing original entry records makes that a much greater potential hazard. Second, (C) of (13) speaks of an unjustifiable intrusion into a person's right of privacy. If that language is to remain here and in other sections of the bill we believe a definition is needed of what is a justifiable intrusion. Since that seems almost impossible, we would prefer to see

— Dedicated to Professionalism in Journalism —

January 26, 1981

that language removed. We don't want to see the police or other governmental unit employees left with the impression that anything unflattering is private.

In a suit for disclosure, the burden of proof should rest with the governmental unit to prove it was required not to release requested information. The courts should be instructed to presume in favor of disclosure.

Each governmental unit should be required to keep a file of letters of denial of information requests that should itself be public. This would allow easy monitoring of governmental units to determine whether they are complying with the law.

The bill does not clearly include computer maintained records as it should. The section defining records should be amended to include "information stored in a computer system." Independent contractors paid with government funds should also be included in the bill's coverage. The definition of governmental unit should include "independent contractor paid with public money in whole or in part and under the supervision of any of the above groups or units."

Whether the state should charge for document copies and how much is a question that has plagued us for some time. Some members believe the media should not be charged since they are doing the public's business when requesting documents while researching a story. Others are willing to pay. No one, however, believes a governmental unit should charge more than the actual copying cost. The method contained in the Governor's proposed regulations is a good compromise. Each requestor receives 20 pages free of charge in any 24 hour period. Above that the charge is 10 cents per page. Currently a great variety of charges exists among agencies. It would help all if the Legislature standardized these charges.

Finally, one last concern. Sec. 4 of the bill on page 10 makes a good faith reliance on AS 40.25 or other law governing confidentiality of public records a defense against the crime of tampering with public records. This defense should be clearly limited as applying only to impairing the availability of a public record and not to any of the other actions listed in AS 11.55.820.

The task you have before you is not an enviable one. You will be urged to exclude this or that branch of government, this or that agency, one or another of a multitude of types of records from coverage under the bill. As you address each of these requests, I ask that you recall that all of these governmental units exist because they are supported with public monies. The public has a right to know what is being done with these funds. Government in the sunshine is best for all people. Keeping government open primarily benefits the people--not the media. Remember that 75 percent of all requests under the federal freedom of information laws come from non-media sources and only 25 percent from the media.

Sincerely yours,



Dean M. Gottehrer
Chairman
Alaska Freedom of Information Task Force

February 13, 1981

To: Senate State Affairs Committee
Senator Vic Fischer, Chairman
All Members of the Committee

From: Ginny Chitwood, Executive Director
Alaska Municipal League

Re: S 90 - Privacy and Information Act

Municipalities realize the need for the public to have reasonable access to municipal records. However, the provisions in SB 90 go further than what the Alaska Municipal League considers reasonable. We can foresee many unfair burdens being placed on municipalities if this bill passes in its present form. Some are as follows:

Records produced "immediately" - This would place the request for a public document as first priority over all other conduct of the government's business. A more reasonable approach would be to allow ten days as provided by the federal government. This, at least would allow determination as to whether or not the document being requested would fall under the list of exemptions and therefore not be required to be produced or whether or not it was in the public's interest to be produced. If illegal releasing of information is done by a municipal employee, the municipality would be open to a fine which means the municipal attorney would have to review all requests.

"Direct cost" - Some documents are readily available. However, it is possible and likely that to produce other documents would involve a great deal of time; searching thru archives, records of years past in storage, etc. Most of our communities do not have sophisticated retrieval systems and the amount of time needed to locate said document could take up a good portion of the employees time. The League feels the word "direct" should be deleted from page 2, line 21, or at least defined to include labor involved by the municipal employee in the search for the document that has been requested.

Subjects for executive session - The League feels the municipality is the best judge of what should be considered confidential and objects to the deletion of the right to establish these subjects by charter or ordinance (page 9, lines 28 and 29.) Procedures for charter ratification and ordinance adoption afford adequate safeguards ensuring that local actions reflect local opinion.

Senator Vic Fischer
Page 2
February 11, 1981

Secs. 140 and 150 establish the requirements of financial disclosure. Note that financial disclosure is by "category" rather than by dollar amount. Sec. 150(a).

Sec. 160 details prohibitions on activity considered a conflict of interest. Special conflict of interest provisions for legislators appear at Sec. 170. Government contracting is regulated as Sec. 180. Conflicts of interest in employment are covered in Sec. 190. A state official or state employee other than legislator who has a personal situation that presents ethical problems is directed to a course of conduct under Sec. 210.

Sec. 220 deals with similar problems for a legislator.

Disclosure of confidential information is regulated under Sec. 240.

Sec. 250 regulates the conduct of former state officials or state employees for two years after termination of state service. Penalties are established in Sec. 260. Commission remedies for violations are established under Sec. 270, including civil penalties. Direct citizen action is authorized under Sec. 280.

The definitions section, Sec. 400 is a mix of the familiar and the new. Essentially no change was made in the list of public officials for whom financial disclosure is required. The term "candidate" is defined.

The term "gift" excludes campaign contributions reported under AS 15.13.

Secs. 3 - 19 of the bill respond to the implications of the repeal of AS 39.50 and portions of AS 15.13 and 24.45.

The Act takes effect July 1, 1981.

RAB:ljb



February 11, 1981

State Affairs Committee
Pouch V (MS 3100)
Juneau, AK 99811

The City of Kodiak would like to voice our strong objection to both the passage of SB 90 - Privacy and Public Information Act, and also to consider including municipalities under this act.

Of first concern would be the requirement to immediately produce records, specifically the personnel records. Most employees with municipal government have assigned responsibilities for eight hours, and occasionally ten or 12 hours a day. If this standard were approved there would be an immediate requirement for additional help to retrieve and produce records. Plus, the direct cost would be unrealistic due to the need for additional employees; an additional tax burden to the taxpayer.

Next would be to take away the Councils right to executive session. This would leave every municipal government wide open for a law suit, or prevent them from transacting business. Executive sessions were established for the protection of an individuals character, their tax dollars or legal matters. The general public, and most importantly the press, should be knowledgeable of why executive sessions are held. The failure to transact business because a municipality could be held liable for a "defamation of character" or "misappropriation of funds" law suit would be ever present.

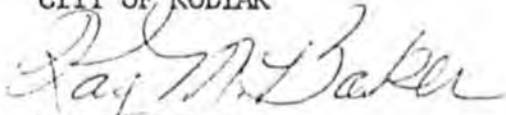
Another very important item would be the disclosure of an applicants resume for municipal positions. We strive to employ the highest caliber of personnel, but just to reveal their names could prevent a well qualified individual from applying due to reprisal with a present employer. If the legislature allows this bill to become law they will deny an individual his or her right to privacy. When reviewing personnel records "that" individual should be the one to approve such action.

State Affairs Committee
SB 90
Page 2

Historically the City Clerk's office has been open to the public, supplying all information with the exception of documents that would injure an individuals character, harm the municipality financially, or matters that are pending litigation. We see no valid justification for this procedure to change.

Sincerely,

CITY OF KODIAK



Kay M. Baker
City Clerk

KMB/d

cc: Alaska Municipal League



Kodiak Public Broadcasting Corporation

P. O. Box 484, Kodiak, Alaska 99615 (907) 486-3181

February 12, 1981

Senate Affairs and Judiciary Committee
Pouch V (MS 3100)
Juneau, Alaska 99811

Honorable Chairperson:

I would like to submit this as written testimony in addition to the oral testimony I presented during the teleconference on Senate Bill 90.

Overall, I am in favor of the bill. I am the News Director at KMXT radio, and former News Director at KFSK radio in Petersburg. Both KMXT and KFSK are members of the Freedom of Information Task Force.

On page four of the bill (40.25.015 (c) 13 (a,b,c)) I am concerned about who is going to determine what will "interfer with enforcement proceedings," as well as the other conditions listed. Many of the requests for information in this area will be made to the Police Chief. If he/she is the final word on the meaning of these conditions, this could lead to abuse. A system for appeal should be given in the bill. The appeal process would probably end in the courts.

40.25.015 17 I and J, on page 6, may clear up the above concerns. Both of these sections are very good!

On pages 7 and 8 (40.25.025) the section offers a Superior Court injunction as enforcement. In Anchorage, Fairbanks, and Juneau this would work well. However, in smaller communities this is difficult. Kodiak does have a Superior Court, but the judge also covers the Dillingham area, which means he is out of town frequently. In Petersburg the Superior Court judge comes to town once a month for two days.

This section of the bill would require a Petersburg resident to travel to Juneau, or to hire an attorney. I would recommend a procedure that would allow the Magistrates office to do the initial paperwork. The burden would then be on the court system to contact the Superior Court. This does, unfortunately, place the extra work on an already overworked court system.

An alternative would be to make violations of the bill a misdemeanor offense. A complaint could be sworn at the District Court level and the normal justice system would take over. The question of an injunction is not addressed in this plan, however.

My major concern with this section is that small town citizens have the same opportunity for enforcement as do their city counterparts.



Kodiak Public Broadcasting Corporation

P. O. Box 484, Kodiak, Alaska 99615 (907) 486-3181

On pages 9 and 10 I think section 3 44.62.310 (c) (3) is a very good change to the current statute. This would still allow executive sessions but eliminate the chance for easy abuse. This would reduce the number of unnecessary executive sessions.

Throughout the bill I would recommend the pronouns "he", "him" and "his" be changed to "he/she", "him/her" and "his/hers". Often it is a City Clerk who is the custodian of records. Traditionally women are in this position.

The area of "administrative fees" needs to be addressed. A women in Kodiak recently told me she was charge a \$20 "administrative fee". She explained that she copied the information she needed by hand, but was still charged. this was justified by the agency as payment for the time of the employee who watched her. This is, I hope, a violation of the spirit of this bill.

I would also like to recommend a poster be prepared that would simply outline: 1) How to request information/copies. 2) Costs per page. 3) The public's right to know. 4) And what to do for enforcement.

This poster could be up in all state offices that have records, City and Borough Clerks offices, and courts. This would be an easy way to inform the public of its rights.

In conclusion I will quote from the bill and AS 44.62.312 (5) "THE PEOPLES RIGHT TO REMAIN INFORMED SHALL BE PROTECTED SO THAT THEY MAY RETAIN CONTROL OVER THE INSTRUMENTS THEY HAVE CREATED."

Thank You.

Sincerely,


Jon Newstrom
News Director

cc: Freedom of Information Task Force
Kodiak Daily Mirror
KFSK Radio, Petersburg



CENTRAL ALASKA
BROADCASTING, INC.

February 9, 1981

Duane L. Triplett
President and
General Manager

Senator Vic Fischer
Senate State Affairs Committee
Alaska State Legislature
Juneau, Alaska 99811

Dear Senator Fischer,

Let me take a few moments of your time to comment on Senate Bill 90 as it was introduced on January 15, 1981.

On behalf of KIMO-TV and its President, Duane L. Triplett and its News Director, John Vallentine, I would like to express our support for SB-90 with the following exceptions:

- 1) Most "exceptions" to the act are based on the right of privacy and guarantees no unjustifiable intrusions. A clear definition of this right should be included and used as the basis for the legislated exceptions.
- 2) On page 3 at line 22, Sec. 40.25, 015(e)(8) is much too broad and should be stricken.
- 3) On page 4 at line 11, Sec. 40.25, 015(13) appears to exclude those records prepared by a police officer at the time the action is taken. This implies that only "filtered" versions, if any would be available. Our free society depends on free press having the information on the activities of our government especially our law enforcement agencies.

The Society of Professional Journalists, Sigma Delta Chi, Fairbanks Chapter, has recommended to you that independent contractors paid with government funds should be included in the definition of governmental unit. I could support that position only to the extent that those records pertinent to a government contract might need to be available but certainly those nongovernment contract related activities of independent contractors should not be included.

... continued

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KIMO T.V. —
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BROADCASTING, INC.
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Seattle Recording Studios
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Phone (206) 762-2369



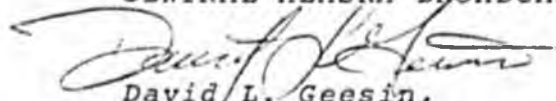
Senator Vic Fischer
February 9, 1981
Page Two

In conclusion, please consider that the "business of the people" (our government) is the peoples business. We, they, have a right to know. Do not confuse this issue as one only for the rights of reporters. The mass media happens only to be the most visible of petitioners.

Thank you for this opportunity for input.

Sincerely yours,

CENTRAL ALASKA BROADCASTING, INC.



David L. Geesin,
Director of Community Affairs

DLG:bke

D R A F T

COMMENTARY TO PROPOSED
COMMITTEE SUBSTITUTE FOR
SB 90

February 6, 1981

D R A F T

COMMENTARY TO PROPOSED
COMMITTEE SUBSTITUTE FOR
SB 90

Sec. 40.25.010. State Policy.

No change from SB 90.

Sec. 40.25.015. Records To Be Open To Inspection.

The reference to "exceptions" in the title has been eliminated since a separate exemption section now appears in sec. 40.25.030. The reference to inspections that infringe on a person's right to privacy has been deleted from subsection (a) since a separate exemption on this subject appears in sec. 40.25.030. Subsection (d) has been amended to allow a person to receive 20 pages of a record copied without charge during any 24-hour period and to permit the waiver of fees in the public interest.

Sec. 40.25.020. Duties Of Governmental Unit.

This new section takes the place of Sec. 40.25.020, Requests For Records, in SB 90. It provides a reasonable time frame for an agency to search for, locate and determine whether a record is subject to disclosure. It also allows sufficient time for the agency to determine whether a specific exemption to disclosure applies and, in particular, whether disclosure would constitute an unwarranted invasion of personal privacy. The time frame specified is consistent with the administration's recently proposed procedural regulations on public information as well as CSMB 131

(Judiciary, 1977) and SCS CSHB 75 (1980). It does, however, add a fourth circumstance justifying extension of the ordinary 10-day period in which to respond to a public request: the need to notify a person and provide him with an opportunity to be heard when his privacy interests may be invaded through disclosure of the record. See sec. 40.25.030(c).

Sec. 40.25.030. Exemptions.

This section lists 12 exemptions from the duty to make records public.

Exemption (1) now includes records exempt from disclosure by federal law and regulation (which are currently exempt from disclosure under existing law) as well as records exempt from disclosure by court rule.

Exemption (2) (tax returns) remains identical to former exemption (2), but the clause pertaining to subject access has been deleted as the issue of subject access is covered generally under sec. 41.25.040.

Former exemptions (3)-(8) are now covered under the general privacy exemption in exemption (12) and are discussed under the commentary pertaining to that exemption.

Former exemption (9) (archival records) now appears without change as exemption (3).

Former exemption (10) (library records) now appears without change as exemption (7).

Former exemption (11) (trade secrets) now appears as exemption (5). The exemption has been redrafted to conform more closely with the companion federal provision

and to protect trade secrets and other confidential business information developed by government. The term "trade secrets" is intended to include any formula, pattern, device or compilation of information which is used in a commercial setting which gives the owner an opportunity to obtain an advantage over competitors who do not know or use it.

The definition of the term confidential has been clarified by several major cases arising under the federal exemption, and those cases should serve as persuasive authority in interpreting the Alaska provision. Material has been held to be confidential if: (1) it would not customarily be released to the public by the person from whom it was obtained, Sterling Drug, Inc. v. FTC, 450 F.2d 698, 709 (D.C. Cir. 1971); (2) disclosure would impair an agency's ability to obtain similar information in the future, National Parks & Conservation Association v. Morton, 498 F.2d 765, 770 (D.C. Cir. 1974); or (3) disclosure would cause substantial harm to the competitive position of the person from whom the information was obtained, National Parks & Conservation Association v. Klepoe, 547 F.2d 673, 679 (D.C. Cir. 1976).

Former exemption (12) (test questions) now appears as exemption (6) and has been narrowed to provide that the exemption only applies if disclosure would compromise the objectivity of the examination process.

Former exemption (13) (law enforcement files) now appears as exemption (7). The introductory section has been modified slightly to more closely parallel the corresponding

section in the federal act with the general reference to "other governmental unit" eliminated. Former subsection (H) has been deleted as unnecessary as the exemption is already covered by exemption (1).

Paragraph (G) of former exemption (13) (crime victims) has been deleted as it implies that the names of victims of crimes other than sexual assault are subject to public disclosure. In the proposed committee substitute the names of all crime victims would be protected from disclosure under both exemption (12) and subsection (h) of this section, until open court proceedings were initiated where the victim was identified. The right of the public to know other basic information about a crime (original entry records) is emphasized in subsection (h) of this section, and reference is made to the commentary accompanying that subsection.

The attorney work product exemption (former exemption (15)) now appears as exemption (9). The limitation in SB 90 requiring disclosure of attorney work product after the litigation has ended has been eliminated. Materials prepared by an attorney in preparation of possible litigation have been exempt from discovery since the landmark decision in Hickman v. Taylor, 329 U.S. 495 (1947). In that opinion the court noted the general policy against invading the privacy of an attorney's preparation of a case is essential to the orderly working of our legal system. Additionally, the attorney work product exemption has been held to apply to discovery of attorney work product in cases that have already been terminated, In Re Murphy, 560 F.2d 326 (8th Cir. 1977).

Consequently, in permitting discovery of attorney work product once the litigation has ended, SB 90 may be in contradiction to the Alaska Court Rules of Civil Procedure.

Former exemption (16) (judge's opinions) now appears as exemption (10), but the prior limitation in the exemption (once the case has been decided, prior draft opinions become public) has been eliminated for the same reasons as discussed under the attorney work product exemption above.

Former exemption (17) (internal security procedures) appears without change as exemption (11).

Exemption (12) exempts from disclosure records that would constitute an unwarranted invasion of personal privacy. This exemption is broad enough to take the place of the general "infringes on a person's right to privacy" exemption specified in sec. 40.25.015(a) of SB 90, and the specific exemptions in former subsections (a)(3)-(8). In using the term "unwarranted invasion of privacy" the proposed committee substitute emphasizes that even in instances where disclosure would constitute an invasion of privacy, disclosure is required if the public interest in disclosure outweighs the privacy interest.

The deletion of the specific exemptions previously found sec. 40.25.015(a)(3)-(8) of SB 90 does not make any substantive change in the bill. While SB 90 appears to provide that all information referred to in exemptions (3)-(8) are exempt from disclosure, each exemption requires that the information constitute "personal information" for it to be exempt from disclosure. That term was defined in former

sec. 40.25.040(4) as "information about an individual person, the disclosure of which would constitute an unjustifiable invasion into a person's right to privacy". Consequently, rather than blanketly exempt from disclosure the categories of records listed in exemptions (3)-(8), SB 90 requires the agency to first balance the two competing interests involved (the public's right to access to information concerning the conduct of governmental affairs and a person's privacy interests) in making a determination whether to disclose a particular record. The specific exemptions in (3)-(8) are therefore unnecessary under both SB 90, which exempts from disclosure in sec. 40.25.015(a) records that would infringe on a person's right to privacy and, under exemption (12) of the proposed committee substitute, which exempts from disclosure records that would constitute an unwarranted invasion of privacy.

Subsection (b) is new to SB 90. It is intended to: (1) state the general test to be used by a governmental unit in determining whether disclosure would constitute an unwarranted invasion of privacy; and (2) provide guidelines to be used in applying that test. Subsection (b) does not, however, define the right to privacy. Because of the wide ranging circumstances where the right to privacy can be asserted, and the competing public interests involved, the term is not susceptible to a single and uniform definition. However, in the context of disclosure of public records, specified guidelines can be provided to governmental units, and ultimately the courts, as an aid in determining whether

disclosure of a particular record would constitute an unwarranted invasion of personal privacy. The proposed committee substitute adopts this approach.

The guidelines listed in paragraphs (1)-(9) are not necessarily listed in order of importance nor are they to be viewed as having equal weight in arriving at a decision regarding disclosure. For example, if the information was of a personal nature under paragraph (1), but the individual was notified, or reasonably could have concluded, that the information would be subject to public review at the time he provided the information, the guideline in paragraph (7) would clearly take precedence and require disclosure.

The factors listed in guideline (1) are taken from AS 39.26.010, which prohibits the government from inquiring into certain personal matters concerning state employees except as directly related to the performance of their official duties. Subparagraph (E) is based on former sec. 40.25.015(e)(6).

The most important consideration in guideline (2) is whether the person could reasonably assert an option to withhold embarrassing information from the public. A critical factor in arriving at the determination would be the relationship between the information and the person's ability to perform in the governmental capacity he may hold. In such a case, the information, though embarrassing, could not be withheld. Again, as with the other guidelines, each must be considered in relationship to other considerations. For example, embarrassing information about an individual that was merely rumor or conjecture would result in a much more substantial

privacy claim pursuant to guideline (8).

As is apparent from guideline (3), in many instances it is relevant to consider the standing of the person who has requested the information. It will sometimes be impossible to determine if a given disclosure will produce an unwarranted invasion of privacy without considering what the requesting party intends to do with the information. For example, a compilation of the home addresses of all state employees listing their salaries would not be exempt from a newspaper reporter doing a story on the "average" state employee, while the compilation should be exempt from release to an advertising agency intending to use the list for purposes of commercial solicitation.

Guideline (4) is largely self-explanatory. The fact that the information was voluntarily furnished by an individual reduces his privacy claim while the fact that he may have been compelled to furnish the information increases his privacy claim.

The guideline in paragraph (5) is intended to emphasize that personal information supplied by applicants or recipients of basic social service programs, such as public assistance, are entitled to substantial privacy protection as the information was submitted in order to obtain minimum social benefits, and the individual had little choice but to submit the required information. This compares, however, with the privacy claim of individuals who supply information to government in an effort to obtain substantial government benefits or subsidies. Their privacy

claim is significantly reduced since the decision to apply and supply the information was a voluntary one on the part of the individual. Additionally, there is a significant public interest in monitoring governmental programs that distribute substantial amounts of state wealth to relatively few individuals.

The fact that the information requested was readily available from non-governmental sources reduces an individual's privacy claim pursuant to guideline (6), as does notification to the person at the time he supplies the information that the record will be subject to public disclosure pursuant to guideline (7).

An individual's privacy claim will be substantially greater under guideline (8) when the requested personal information consists of unverified information or rumor. The substantial damage that uncorroborated information about an individual can do to personal reputation weighs heavily against disclosure.

Guideline (9) is self-explanatory.

Subsection (c) is also new to SB 90. It establishes notice procedures to protect individual privacy interests. The duty under subsection (c) arises whenever the governmental unit has decided to disclose material that may come within exemption (a)(7)(C) or (a)(12) and there is a substantial probability that the person identified in the record will object to disclosure. The "substantial probability" language emphasizes that the notice requirement does not apply every time there is a possibility that a privacy exemption may be

applicable. If the governmental unit applies the guidelines specified in subsection (b), notification should only be required in a small minority of cases. However, in cases, for example, where there is significant disagreement in the governmental unit itself as to whether the public interests in disclosure outweigh any applicable privacy interests, the agency should be fully apprised of all considerations favoring non-disclosure before declining to assert an applicable exemption.

Subsection (d) (all records became public after 20 years) is identical to Sec. 40.25.015(f) in SB 90.

Subsection (e) (research) is identical to Sec. 40.25.015(g) in SB 90 but in paragraph (2), reference has been made to federal law or regulation and court rule, consistent with exemption (1).

Subsection (f) (subpoenaed records) is similar to sec. 40.25.015(b) in SB 90 but emphasizes that other state laws pertaining to the confidentiality of public records cannot be raised to prevent disclosure once a subpoena has been issued.

Subsection (j), pertaining to employee personnel records, is based on sec. 40.25.015(i) but more clearly defines the types of employment personnel records subject to disclosure and exempts from disclosure personnel performance evaluations. While there is substantial disagreement on this issue, the proposed committee substitute reflects the view that the disclosure of such information constitutes an unwarranted invasion of the employee's right to privacy and

unnecessarily hampers the ability of government to use the performance evaluation as an effective supervisory tool to insure adequate job performance.

Subsection (h), pertaining to crime information, is identical to sec. 40.25.015(j), but does not provide that the name of the victim of a crime is a matter of public information. The proposed committee substitute adopts the approach that until open court proceedings commence where the victim is identified, the release of the victim's name would constitute an unwarranted invasion of privacy.

Sec. 40.25.040. Access To Records By Record Subject.

This section, which is new to SB 90, gives the individual or his duly authorized representative the right of access to any accessible record pertaining to him. "Accessible record" is defined in sec. 40.25.090(1) as a record that refers to a particular individual that can be retrieved as a result: (1) of the governmental unit's use of a retrieval scheme or index based on the identity of the individual; or (2) of the requester providing sufficiently detailed information to enable the governmental unit to locate the record without an unreasonable expenditure of time, effort, money or other resources. The compliance timetable and procedures of secs. 40.25.015--40.25.020 are incorporated by reference. Consequently, the same procedures apply if the individual is requesting access to any record whether or not his own.

Subsection (b) imposes limits on the individual's right of access to his personal records. Paragraph (1)

incorporates the relevant freedom of information exemptions of secs. 40.25.030(a)(1)--40.25.030(a)(11). Additionally, paragraph (1) allows disclosure of information that would otherwise be exempt under AS 40.25.030(a)(1)--40.25.030(a)(11) if the information was originally submitted to the governmental unit by the requester.

Paragraph (2) limits an individual's access to his personal records to the extent necessary to prevent an unwarranted invasion of another individual's personal privacy. The agency should, of course, balance the public interest in disclosure against the privacy interest of the individual to whom the records pertains. See sec. 40.25.030(b).

Paragraph (3) protects the anonymity of individuals who write letters of recommendation or provide character and fitness evaluations. A record requester is entitled to access, however, provided that the identity of the source of the evaluation is not revealed. This section also confirms that an individual shall have access to his own test questions and answers in any examination used for licensing or public employment. This applies to examinations that the individual must take and pass in order to practice a trade or profession such as bar and real estate examinations. This right is limited to access and does not include copying. This limitation enables government agencies to protect the integrity of test questions that may be used for future examinations.

Subsection (c) is intended to be consistent with protections existing for the confidentiality of records of minors who may seek counselling for or treatment of conditions

such as venereal disease, pregnancy, or alcohol or other drug abuse. The purpose of these provisions is to remove the fear of parental discovery and thus encourage minors to seek appropriate aid. This provision prevents parents and guardians from circumventing these statutes by asserting, in a representative legal capacity, the access rights of their children.

Subsection (d) is similar in intent to sec. 40.25.020(c).

Sec. 40.25.060. Correction and Amendment of Records.

This section, which is new to SB 90, provides an individual with the right to correct or amend any incomplete or inaccurate information contained in a record accessible to him under sec. 40.25.040.

Subsection (b) specifies that a request to correct or amend must be in writing and requires a governmental unit to respond within twenty days after receipt of the request. If the governmental unit makes the correction or amendment or does not maintain the record, the matter comes to an end. If the agency refuses to correct or amend as requested, it must inform the individual in writing of its decision and state the reasons.

If the governmental unit refuses to order the correction or amendment, subparagraphs (b) (3) (A)-(B) permit the individual to file a statement of disagreement with his record and requires the governmental unit to notify the individual of his right to bring a judicial action pursuant to sec. 40.25.070. Whenever a governmental unit discloses

disputed information to a third party, subsection (c) compels it to: (1) identify the disputed information; (2) provide a copy of the individual's statement of disagreement or pending request for amendment or correction; and (3) provide a statement of the agency's current position concerning the requested amendment or correction, including final action if any has been taken. The agency must also transmit a copy of the statement of its current position to the last known address of the individual whose record is released.

Sec. 40.25.070. Enforcement: Injunctive Relief.

This section remains largely unchanged from sec. 40.25.025 in SB 90, but reflects the ability of an individual to require a governmental unit to correct or amend incomplete or inaccurate information pertaining to him.

Sec. 40.25.080. Civil Action For Obstruction Of Access To Records.

No change from SB 90.

Sec. 40.25.090. Definitions.

A definition of "accessible records" appears in paragraph (1). That term is used in sec. 40.25.040 and is discussed in the commentary under that section.

The definition of "governmental unit" remains identical to the definition in SB 90 and specifically includes municipalities.

The definition of "personal information" has been eliminated as that term is not used in the proposed committee substitute.

A new definition of "individual" is provided. That term is used in the section on individual access to records concerning themselves, and is intended to exclude organizations, such as corporations and partnerships.

Sections 2 - 5.

The amendments in sections 2-5 of SB 90 appear without modification in the committee substitute with the exception of former section 4, providing an affirmative defense to the crime of Tampering With Public Records. In view of the requirement in the definition in the crime that the public servant "know" that conduct is improper, the affirmative defense has been eliminated.

Section 6. Effective Date.

A delayed effective date is provided to allow sufficient time to identify and propose amendments to the Act as a result of oversights in coverage.

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FISCAL NOTE

I. REQUEST

Bill/Resolution No. SB93
 Title An Act relating to the decentralization of the executive branch of state government
 Requested by Nancy Groszcek (4954) Date 1/22/81

II. FISCAL DETAIL

Agency Affected All agencies
 Program Category Affected All categories
 BRU, Program, or Subprogram(s) Affected _____

(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 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES						
200 TRAVEL		1445.0	220.0	270.0		
300 CONTRACTUAL		162.0	35.9	35.9		
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		1607.0	305.9	305.9		

FUNDING (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
GENERAL FUND		1607.0	305.9	305.9		
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
FULL TIME						
PART TIME						
TEMPORARY						

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

FY 82 Fiscal impact should be appropriated to the Office of the Governor, where it will be redistributed to state agencies by reducing appropriations in the Governor's Office and increasing appropriations in other state agencies. The amount requested on this fiscal note is based on consolidating all responses received from agencies to date. As additional analysis is completed or additional information received, this fiscal note may need to be revised. Agency responses are attached.

IV. DATE 3/16/81 PREPARED BY Jeff Morrison
 AGENCY Division of Budget and Management
 PHONE 465-3587
 Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

FISCAL NOTE TO SB93

FISCAL SUMMARY OF AGENCY RESPONSES

	<u>FY 82</u>	<u>FY 83</u>	<u>FY 84</u>
Governor's Office	0	0	0
Administration	0	0	0
Law	0	0	0
Revenue	*	*	*
Education	*	*	*
Health & Social Services	*	*	*
(1) Labor	1,582.0	0	0
Commerce	25.0	305.9	305.9
Military Affairs	0	0	0
Natural Resources	0	0	0
Fish & Game	0	0	0
Public Safety	*	*	*
Environmental Conservation	*	*	*
Community & Regional Affairs	*	*	*
Transportation & Public Facilities	*	*	*
	<hr/>	<hr/>	<hr/>
TOTAL	1,607.0	305.9	305.9

* No response received. Impact is assumed to be zero until additional information is provided.

(1) Impact of indemnification act was included in Labor response but is not included in the consolidated fiscal note.

MEMORANDUM


State of Alaska

TO: All Administrative Officers

DATE: January 23, 1981

FILE NO:

TELEPHONE NO: ...

FROM: Ronald D. Lehr, Director 
Division of Budget & Management
Office of the Governor

SUBJECT: Fiscal Note to SB93

We have been asked to prepare a fiscal note to SB93, relating to the decentralization of the executive branch of state government. Since the fiscal impact of this legislation would affect all agencies, the Division of Budget and Management will coordinate the preparation of a single fiscal note. Please prepare a fiscal note for your agency and send it to Budget and Management no later than February 9.

cc: Keith Specking
Nancy Groszeck

MEMORANDUM

State of Alaska

TO: Ron Lehr, Director
Division of Budget & Management
Office of the Governor

DATE: February 4, 1981 RECEIVED

FILE NO:

FEB 5 1981

TELEPHONE NO:

BUDGET AND MANAGEMENT

FROM: Tom Bergstrom, Director
Administration & Management
Dept. of Natural Resources

SUBJECT: Fiscal Note to SB93

DNR anticipates no fiscal impact should SB93 become law. DNR is already decentralized to a greater degree than contemplated by SB93 and DNR has a delegation of authorities manual which we believe would satisfy 44.18.030(2) and (3).

MEMORANDUM

State of Alaska

TO: Ronald D. Lehr, Director
Division of Budget and Management
Office of the Governor

DATE: February 17, 1981

FILE NO:

TELEPHONE NO: 465-4120

FROM: Russell H. Clark, Director
Division of Administration
Department of Fish and Game

SUBJECT: Senate Bill 93

In response to your request for fiscal notes regarding the above :
referenced Senate Bill, I have reviewed this item and find it will have
little or no impact on the Department of Fish and Game.

This Department is currently divided into six regional areas, with five
regional offices, more than twenty area offices, and twenty hatcheries
located around the state. The majority of the personnel, full-time and
seasonal, are not associated with our headquarter's function. Even our
Division of Administration has 25% of its staff decentralized at the
present time.

One final comment, this piece of legislation could have a tremendous
impact on the Department of Administration. I hope they are requesting
major technology improvement dollars in their fiscal note to decen-
tralize, or they should request a modification of the proposed legislation
for Administrative functions.

cc: Mary Jablonski

RECEIVED

FEB 20 1981

BUDGET AND MANAGEMENT

MEMORANDUM

State of Alaska RECEIVED
FEB 9 1981
BUDGET AND MANAGEMENT

TO: Ron Lehr
Director of Budget & Management
Office of the Governor

DATE: February 5, 1981

FILE NO:

TELEPHONE NO: 2277

FROM: Judy Crondahl
Director
Division of Administrative Services
Department of Administration

SUBJECT: Fiscal Note SB 93

In response to your request for a fiscal note for Senate Bill 93, the following information is provided.

The FY 82 level of authorized positions for the Department of Administration is anticipated to be 393, of which 393 (39.9%) would be in central offices in the state capital. By division, the breakdown is as follows:

Commissioner's Office	7
Office of Information Management	6
Risk Management	11
Administrative Services	43
Equal Employment Opportunity	7
Personnel	58
Finance	55
General Services	66
Data Processing	54
Pioneer Benefits	7
Retirement	53
Labor Relations	12
Public Broadcasting Commission	4
Telecommunications	10
Total	393

In order to reduce this to the mandated 15% would require the transfer of 240 positions. It is noted that the restriction of 15% is applied to the total number of state employees and is not necessarily meant to be applied equally to every department. One could assume that it would be more reasonable for Departments which have primary program responsibilities outside the state capital to have fewer than 15% in the capital, and that a central administrative agency such as the Department of Administration might have more. For that reason, no assumptions are made here as to which divisions would be transferred outside the capital. Neither have any assumptions been made as to the number of employees in the Department beyond FY 82.

I hope this provides you with a basis for calculating the costs of the fiscal note. If you have any questions, please call me.

JC/ke

MEMORANDUM

State of Alaska

TO: Ron Lehr, Director
Division of Budget and
Management

DATE: February 23, 1981

FILE NO:

TELEPHONE NO: 465-3500

FROM: Rod Mourant, Director
Administrative Services

SUBJECT: Fiscal Note SB. 93

I apologize for the tardiness of this memorandum. This is to confirm our telephone conversation of a couple of weeks ago during which I indicated the Office of the Governor currently operates its offices in as decentralized an organizational plan as is possible. Consequently, Senate Bill 93 would have no fiscal impact upon this office.

RECEIVED
FEB 24 1981
BUDGET AND MANAGEMENT

TO: [Ron Lehr, Director
Division of Budget & Management
Office of the Governor

DATE: 02 Feb 1981

FILE NO:

TELEPHONE NO: 465-4600

FROM: Lois L. Richardson, Director *LR*
Administrative Services Division
Department of Military Affairs

SUBJECT: Fiscal Note to SB 93

The fiscal note for SB 93 for the Department of Military Affairs will be -0-. The Department currently has 12 positions in the state capital which is less than 12% of the total department employee of 101. If the capital were to move to another location only 8 or possibly 10 employees would possibly move with the capital as 2 of the current employees in the capital are regional employees. Also, if the capital were moved to the Willow/Anchorage area, these 8 or 10 employees would probably move to the Office of the Adjutant General when they construct their office building at the Fort Richardson complex.

LLR:sl

RECEIVED

FEB 5 1981

BUDGET AND MANAGEMENT

FISCAL NOTE

RECEIVED
FEB 3 1981
BUDGET AND MANAGEMENT

I. REQUEST

Bill/Resolution No. SB 93
Title "An Act relating to the decentralization of the executive branch of the state government; and providing for an effective date."
Requested by Budget & Management Date 1/30/81

II. FISCAL DETAIL

Agency Affected Department of Law
Program Category Affected General Government, Admin of Justice, Public Protection
BRU, Program, or Subprogram(s) Affected Legal Services, Prosecution, Consumer Protection, C.J. Planning
(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 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	0	0	0	0	0	0

FUNDING (Thousands of Dollars)

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

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

No fiscal impact for the Department of Law, would occur as a result of the enactment of SB 93. State capital employees of the department, assigned headquarters duties, currently number far less than 15 percent of the department's total workforce. The Legal Services BRU employs 124 persons. Of this number, 14 employees are assigned to headquarters activities. This BRU has regional and district employees at the following locations: Anchorage (52); Fairbanks (14); Juneau (41); Bethel (1), and; Nome (2).

The regional legal services employees assigned to Juneau are attorneys and legal secretarial support personnel who provide

Richard I. Pegues

IV. DATE February 2, 1981 PREPARED BY Richard I. Pegues, Dir., Admin. Sv
AGENCY Department of Law
PHONE 465-3695
Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

legal services to heads of other departments, the Governor's Office and, in some circumstances, the legislature. Of the total 55 state capital legal services employees, 35 are assigned to government programs which are directly related to state capital legal services activities. Six legal services employees are devoted to field level legal services for the Southeastern region of the state. It should be noted that the employees assigned to state capital activities, although mostly housed with the headquarters staff, are not involved in the department's management and they do not serve a headquarters function. The remaining 14 state capital employees are, as stated previously, headquarters personnel.

The Prosecution BRU has regional offices and employees at the following locations: Anchorage (58); Bethel (4); Fairbanks (19); Juneau (7); Kenai (7); Ketchikan (4); Kodiak (4), and; Nome (5). This BRU also has a headquarters office in Juneau with 7 employees.

The Consumer Protection BRU has its headquarters in Anchorage. Two employees operate the BRU's Southeast Regional Office in the state capital and these two employees are not involved in any headquarters activities. This BRU has a total workforce of 16 employees.

The Criminal Justice Planning BRU has 15 employees who are all based in the capital city. The mission of the agency is to provide planning, coordination, research and evaluation for components of the criminal justice system. Because these services are primarily provided for headquarters units of other departments, this agency is necessary based in the capital city. Of the agency's 15 employees, two serve a headquarters function.

Out of a total workforce of 270 employees, 23 headquarters employees, or 8.5 percent of the total workforce, are located in the capital city.

FISCAL NOTE

BUDGET AND MANAGEMENT

I. REQUEST
 Bill/Resolution No. SB 93
 Title Decentralization of executive branch
 Requested by Division of Budget & Management Date 2-9-81

II. FISCAL DETAIL
 Agency Affected Department of Commerce & Economic Development
 Program Category Affected Development & Protection
 BRU, Program, or Subprogram(s) Affected All
 (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 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES						
200 TRAVEL			270.0	270.0		
300 CONTRACTUAL		25.0	35.9	35.9		
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		25.0	305.9	305.9		

FUNDING (Thousands of Dollars)

GENERAL FUND		25.0	305.9	305.9		
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

SEE ATTACHED

IV. DATE February 9, 1981 PREPARED BY Lois Cook, Director
 AGENCY Department of Commerce & Economic Development
 PHONE 465-2505 Division of Administrative Services
 Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

Background:

	Juneau	Anchorage	Fairbanks
Current Positions	134	220	6
Percentage	37%	61%	2%

Number of positions that must be transferred from Juneau to meet 15% limit is 54.

Assumptions:

1. Per employee personal move cost \$10,000
 2. Per employee office move cost 1,000
 3. Per employee office set-up cost 200
 4. Office space per employee;
100 s.f. @ \$1.30 s.f. 130
- $\$11,330 \times 54 = \$611,820$
5. Assumed office space in Juneau would remain a cost to the State since all employees are in the S.O.B. and it would remain vacant.

FY '82 funds required to develop a plan for relocating the 54 employees.

The actual relocation of employees would occur during fiscal years 83 and 84.

FISCAL NOTE

I. REQUEST

Bill/Resolution No. SB 93
 Title "An Act relating to the decentralization and providing an effective "
 Requested by Parr and Stimson Date 2/9/81

II. FISCAL DETAIL

Agency Affected Labor
 Program Category Affected All Programs
 BRU, Program, or Subprogram(s) Affected All BRU's
 (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 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES						
200 TRAVEL	-0-	1,445.0				
300 CONTRACTUAL		137.0				
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.		4,845.0				
TOTAL	-0-	6,427.7	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND	-0-	6,427.7	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART TIME						
TEMPORARY						

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

The impact of Senate Bill 93, relating to the decentralization of the executive branch of the State government would have the following impact to our agency:

Based on the Department of Administration's PCN Listing Report of January 27, 1981, our agency has 598 filled positions statewide. A limitation of 15 percent to the number of State employees in the Capital would allow 90 positions in Juneau. Currently the Department has 292 employees in Juneau, of which 32 employees are local and regional employees. The limitation would require 170 employees to move.

In the computation of the estimated cost for this move the agency used the following assumptions:

-continued- *Nico Bus*

IV. DATE 2/11/81 PREPARED BY Nico Bus, Finance Officer
 AGENCY Labor
 PHONE 465-2720

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

Repeals: AS 09.25.110 (Inspection and Copies of Public Records); 09.25.120 (same title); and 09.25.125 (Enforcement: Injunctive Relief). Does not provide for effective date.

Introduced January 15 and referred to State Affairs and Judiciary.

Drug Paraphernalia

SENATE BILL NO. 91, by Senator Bradley. Outlaws use, possession, manufacture and delivery of drug paraphernalia to "plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of AS 17.10 or AS 17.12." Person who violates this is guilty of a misdemeanor. A person over 18 who delivers drug paraphernalia to a person under 18 who is at least three years his junior is guilty of a felony. Provides for forfeitures of drug paraphernalia to the state upon conviction for illegal use, etc. Defines "drug paraphernalia" and "paraphernalia" as "equipment, products, and materials of any kind which are used to intended for use in planting, propagating, cultivating, . . . a controlled substance in violation of AS 17.10 or AS 17.12." Does not provide for effective date.

Introduced January 16 and referred to Judiciary.

Veterans' Guardianship

SENATE BILL NO. 92, by Senator Bradley. Adopts the Uniform Veterans' Guardianship Act as new Ch. 17 in Title 26. "Application of Chapter" states: "Whenever, under a law of the United States or a regulation of the Veterans' Administration, the administrator requires, before payment of benefits, that a guardian be appointed for a ward, the appointment shall be made as provided in this chapter." Sections include: number of wards; appointment of guardian; evidence of necessity for guardian of minor; evidence of necessity for guardian of incompetent; notice; fitness of guardian; bond; accounts: notices and hearings; penalty for failure to account; compensation of guardian; investments; maintenance and support; copies of public records; commitment; regulations of the Veterans' Administration; transfer of persons from the Dept. of Heath & Soc. Services; and discharge of guardian. Does not provide for effective date.

Introduced January 16 and referred to State Affairs and Judiciary.

Executive Branch (decentralization of)

SENATE BILL NO. 93, by Senators Parr and Stimson. Findings state: ". . .The legislature finds it necessary and in the public interest to mandate a decentralization of decision-making authority to regional, district, and local offices and to limit the number of state officers and employees in the headquarters offices in the state capital." Requires that after June 30, 1985 no more than 15% of the total number of state employees may be employed in the headquarters offices of the principal executive departments in the state capital. Governor is required, within 180 days of the effective date of bill, to prescribe, for each department, the number of employees who may be employed in the capital. The Governor may from time to time amend this directive.

Requires each department to prepare a plan "for the phased decentralization of its activities to meet the ceiling imposed by the governor." Requires the Governor to submit a report of the progress on decentralization with his fiscal year 84 and 85 budgets. No budget for 1986 or succeeding fiscal years may propose to employ more than 15% of the total number of state employees in the principal executive departments in the state capital.

Bill specifically states that it does not prohibit the establishment of a regional, district, or local office of a principal department in the capital "if there is a clear functional division between it and the headquarters office." Employees in regional, district, or local office may not be counted against the Governor's ceiling number of employees.

Departments which on the effective date of bill have their headquarters offices located outside the capital are excluded from the computation of total number of state employees. Divisions which on the effective date of bill are not located in the capital shall be included in the departmental plans for phased decentralization. Those plans must be submitted to the First Session, 13th Legislature, no later than 10 days after it convenes. Provides Act effective July 1, 1981.

Introduced January 16 and referred to State Affairs.

What We Are Learning From JAPAN

Via decentralization
Charlie
↓

By William S. Anderson

ARNOLD TOYNBEE once described the rise and fall of nations in terms of challenge and response. A young nation, he said, is confronted with a challenge for which it finds a successful response. It then grows and prospers. But as time passes, the nature of the challenge changes. And if a nation continues to make the same, once-successful response to the new challenge, it inevitably suffers a decline and eventual failure.

As we begin the last two decades of the 20th century, the United States faces such a challenge. At stake is the industrial supremacy which this country has enjoyed for most of this century. And it is Japan, more than any other nation, which exemplifies the seriousness of the challenge to American industrial leadership.

Why have the Japanese been so successful?

In recent months the media have been flooded with attempts to explain the Japanese phenomenon. Everyone wants to know how the Japanese did it. There are, of course, scores of explanations. But it seems to me that Japan's postwar economic growth—the most spectacular the world has ever

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seen—is the direct result of two fundamental characteristics of the Japanese nation in the years following World War II.

The first of these is Japan's unerring sense of national purpose and its establishment of clear-cut, readily understandable goals reinforced by a willingness to do what is necessary to achieve those goals.

I believe the second major ingredient in the Japanese success formula is the personality of the Japanese people themselves.

Perhaps the greatest catalyst for Japan's remarkable economic achievements has been its near-obsession with finding new ways to increase personal and group productivity. Indeed, the

Japanese people come very close to worshipping productivity. We see this in virtually every industry in which they have chosen to compete. The most dramatic recent example is the phenomenal growth of the Japanese auto industry. Twenty years ago Japan produced fewer than 100,000 automobiles a year. Today the Japanese auto industry has accelerated past the European auto industry. And in 1980, for the first time, it produced more vehicles than the American auto industry as well.

In automobiles—as in steel-making, camera production or almost any other Japanese manufacturing operation—productivity is nothing short of amazing. The latest study I've seen shows that Toyota is producing 60 cars per man-year compared with fewer than 20 cars per man-year for any European manufacturer.

How have they done it? That's what the president of the Ford Motor Company wanted to find out. So he sent whole teams of people to study this latest Japanese miracle. They reported that it's largely a matter of productivity-oriented methods and management, plus an unusually high degree of automation.

At Toyo Kogyo, where Mazda cars are manufactured, there are only five organizational levels between the production-line employe and the vice president in charge of manufacturing. This compares with at least a dozen layers of management in a typical European

or American auto manufacturer.

The Ford study teams also found that the Japanese workers maintain their production equipment so carefully that machine breakdowns almost never occur. As a result, Toyo Kogyo can get by with carrying only one or two hours' supply of parts inventories to keep its production lines running. This compares with parts inventories for as much as three weeks in the plants of the company's American and European competitors.

In addition, suppliers are closely keyed into the production system. The supplier of ornamental trim, for example, drives his loaded truck right into the assembly plant and personally unloads it at the production line. Then he picks up the empty containers, puts them back on his truck and—believe it or not—actually tidies up the area before returning to his own plant for more parts.

This clocklike approach drastically reduces factory space requirements. It lowers overhead and material-handling costs and reduces the number of employees required to turn out a given number of cars. To quote the president of Ford Motor Company, where the concept of the production line was born:

"All the Japanese have really done is to take Henry Ford's basic principle—that is, keep the production line moving in a continuous, rhythmic, dedicated process—and go a few, admittedly brilliant, steps further."

INNOVATIVE USE of supplier capabilities is widespread in Japanese industry. Nippon Steel, with half as many employees as U.S. Steel, achieves approximately the same output. Part of this is due to Nippon's more modern plant, but the biggest factor is that the Japanese steel company makes extensive use of low-wage subcontractors. This holds down its own labor costs and results in more steel per dollar of wages.

In many industries, the Japanese go even further. In the electronics industry, for example, many small subcontractors farm out much of their work to even smaller firms or sometimes individual families. Approximately 180,000 Japanese are busy producing electronic components in their homes for these subcontractors, who in turn supply subassemblies to the major electronics manufacturing companies.

Small wonder, then, that the Sonys and the Matsushitas are able to keep their total labor costs low, even though

their pay scales are now comparable to those in this country and Western Europe. And in the process, millions of jobs are created for men and women who otherwise would probably be unemployed.

In the never-ending quest for greater productivity, the Japanese do not shy away from killing off dying products and industries. They are constantly asking themselves: "Is this the kind of product or industry in which we can be truly competitive? Or is this something we should get out of, so that we can use our capital and human resources more productively?"

Once dominant in transistor radios, the Japanese have happily forfeited that market to lower-labor-cost countries. They have replaced it with the higher-technology market of color television sets and, more recently, videotape recorders.

Such periodic product transitions are possible only because of the high educational level of the Japanese peo-

Zeal for Learning

Millions of Japanese are fluent not only in English but even in third and fourth languages; how many Americans speak Japanese? Japan, with half the population of the United States, graduates almost twice as many engineers; that's a per capita ratio of 4 to 1. And in international testing programs, young Japanese run rings around their American counterparts, not only in math and science subjects but in many other subjects as well.

It's no exaggeration to say that Japan is today the most literate, best-educated nation in the world.

ple. They transplant more easily into higher-technology jobs.

The shape-up-or-ship-out attitude with which national planners view declining industries is reinforced by Japan's financial structure. Commercial banks, which are the principal source of capital, simply refuse to finance a dying industry or company. Thus, the industry or company must either phase into more productive endeavors or eventually go out of business.

The quest for productivity is almost a national game. Far-out concepts are encouraged. Akio Morita, president of Sony, has said that he "loves to hear

crazy ideas." And employees at Honda use their free time, plus company grants and facilities, to turn their dream inventions into reality—even the ones which Honda says are only good for a laugh.

Consider the Choo-Choo Cycle. It's a giant tricycle on which the rider peddles furiously to generate electricity. This heats a boiler, which produces steam, which in turn powers what Honda describes as "the world's most inefficient vehicle."

TO MANY WESTERNERS, all this may seem rather silly. But for the Japanese, it obviously works. In addition to the industries I've already mentioned, the Japanese zeal for innovation and productivity works in audio equipment, musical instruments, bicycles, sports equipment, machine tools, photocopy machines and many other products not commonly associated with Japanese culture or capabilities.

In only a few short years, Japan has become a competitor the likes of which the world has not seen before. If we compare the competition for international markets with a football game, we must acknowledge that the Japanese have fielded quite a team. In fact, at this point the score is Japan 35 and the Western nations maybe 14.

Many years ago, the historian Edward Gibbon explained the decline and fall of the ancient city of Athens in a few chilling words. He said:

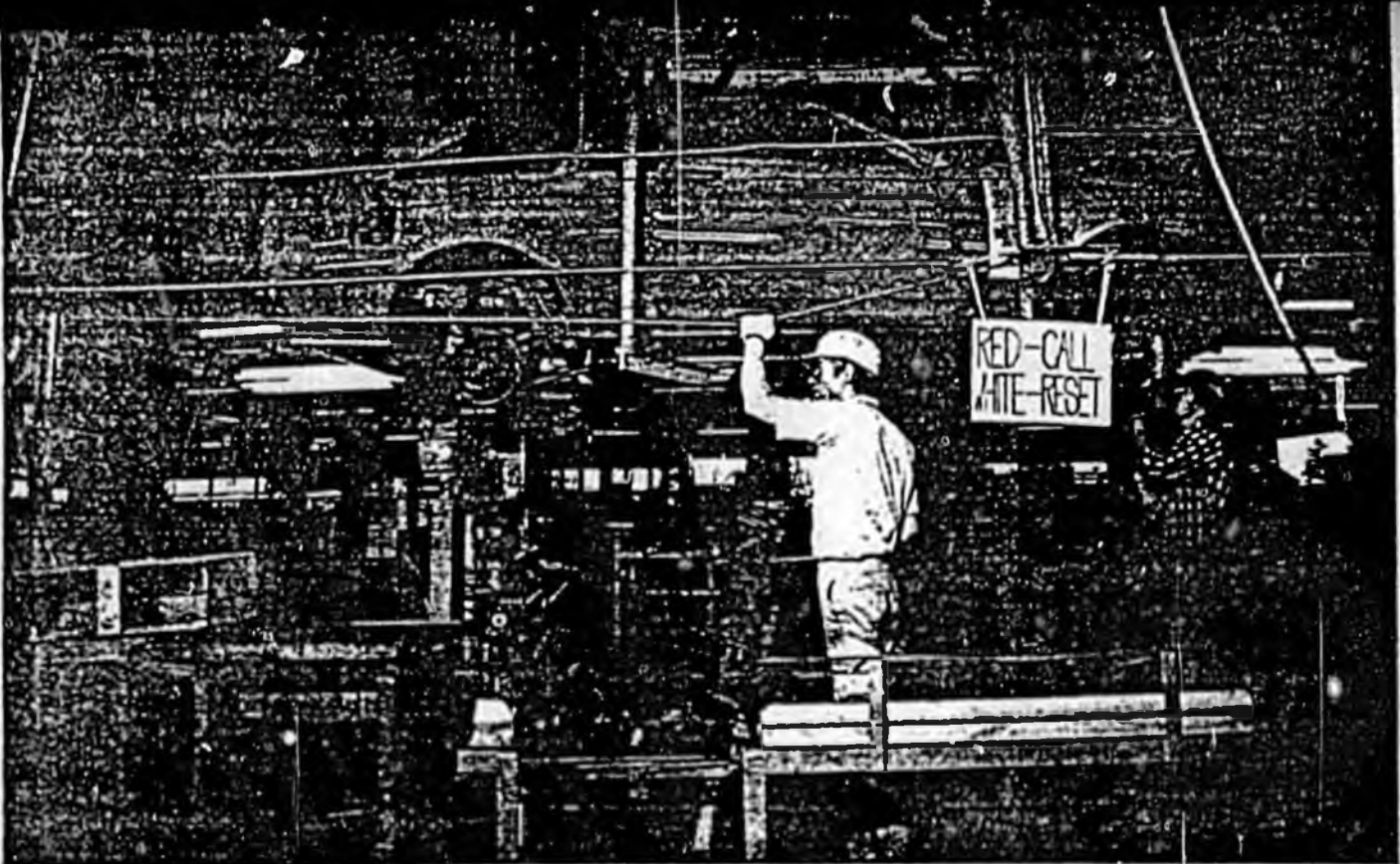
"In the end, more than they wanted freedom, they wanted security. They wanted a comfortable life. And in their quest for it all—security, comfort and freedom—they lost it all.

"When the Athenians wanted finally not to give to society, but for society to give to them; when the freedom they wished for most was the freedom from responsibility, then Athens ceased to be free."

Can the United States escape a similar fate?

I believe that depends, in large measure, on whether this country can regain the competitive edge it has lost in recent years.

Not long ago, a Japanese trade delegation flew to Detroit, ostensibly to buy auto parts from U.S. manufacturers, but also to pour oil on the troubled waters caused by record exports of Japanese-made cars to this country. The delegation brought along a statement from the managing director of Japan's largest auto manufacturer. It warned the American parts suppliers that they



So many American business people are touring Japanese plants these days that the Japanese sometimes feel impelled to put up explanatory signs in English.



To make better use of capital and skilled workers such as those at left, Japan has shifted from making transistor radios to production in higher-technology fields.

had better improve the quality of their products or face the loss of any future business from Japan.

The fact that this could and did happen—in what Americans have always regarded as the auto capital of the world—points up the magnitude of the task confronting American management and labor in the 1980s. It was a classic case of role reversal, with the once-vaunted U.S. auto industry and its suppliers reduced to the status one might give a fledgling industry in some banana republic.

I find it difficult to believe that either American management or American labor will be willing to accept that kind of secondary economic role in the world economy of the 1980s. I don't think anyone in government wants it, either.

Yet there is a clear and present danger that this could happen in many other industries as well.

It seems to me that is the real essence of the economic challenge facing this country. □

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SB 132

Call Gary
Fenkins
2320

Dick Armstrong 266-1580

SB 94

DOT-PF
3900

Bill Miles
Arch. School
District

479-6252

Bob Venusti
Hugel Venusti

3 million
at Nome 25 meters

50 meters = $\frac{1}{2}$ size
football field

Juneau pool @ 35 meters

Funding Information
General Fund
Other Funds

\$5,800,000
-0-
\$5,800,000

Introduced: 1/19/81
Referred: Health, Education &
Social Services, Community &
Regional Affairs and Finance

1 IN THE SENATE

BY KELLY

2 SENATE BILL NO. 94

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6
7 For an Act entitled: "An Act making a special appropriation for a swimming
8 pool at Bartlett High School; and providing for an
9 effective date."

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

11 * Section 1. The sum of \$5,800,000 is appropriated from the general fund
12 for payment as a grant to the Municipality of Anchorage for a 50 meter
13 indoor swimming pool at Bartlett High School.

14 * Sec. 2. This Act takes effect immediately in accordance with AS 01.-
15 10.070(c).

16 *this amount sounds OK*
17 *DOT-PF*

18
19
20 *Land?*

21
22
23 *50 meters is real big!*

3-3-81

Charlie --

I called Steve Hole at the Department of Education and he gave me the following information re Bartlett School:

The Federal Government owns the portion of the land which the Junior High School sits on and the District owns the land which the High School sits on. The District is now in the process of requesting title to the land that the Federal Government has.

He then called me back and stated that he had just talked to the District in Anchorage and found out that the pool will be a separate facility and it is proposed to be built on the land which the District owns (High School property).

copies members

TELEGRAM

ALASCOM, INC.
PHONE: 686-6442
JUNEAU, AK 99803

1981 MAR 1 PM 7 04

02023 POM TDA FAIRBANKS AK 15 03-01 1625 AET
PMS SENATOR CHARLIE PARR

JUNEAU AK

I AM IN SUPPORT OF SB94 FOR 50 METER BARTLETT HIGH SCHOOL
SWIMMING POOL ANCHORAGE.

EUNICE FOWLER, FAIRBANKS ARCTIC SWIM TEAM

435 IDIDAROD

FAIRBANKS AK 99701

TELEGRAM

ALASKA, INC.
PHONE: 560-662
JUNEAU, AK 99802

#

02 205 POM ANCHORAGE AK 15 02-28 1755A AST

PMS SEN CHARLES PAPP

JUNEAU

WE SUPPORT 50 METER POOL AT BOTTLETT BILL 94.

MEYNE LEWIS FAMILY

SPA BOY PMS

ANCHORAGE AK 99502

11:01 AM 15:

TELEGRAM

ALASCORP, INC.
PHONE: 535-442
JUNEAU, AK 99802

02010 POM TDA FAIRBANKS AK 15 03-01 34PP AET

PMS SEN CHARLES PARR

JUNEAU

I WOULD LIKE TO SUPPORT SBAK FOR 50 METERS POOL AT BARTLETT
HIGH SCHOOL ANCHORAGE

BARRY FOWLER FAIRBANKS ARCTIC SWIM TEAM

11 5 45

TELEGRAM

RECEIVED
JUN 15 1961
U.S. AIR FORCE

02011 POM TDA FAIRBANKS AK 15 03-01 340P AST

PWS SENATOR CHARLES PAPP

JUNEAU

I SUPPORT SENATE BILL NUMBER 9A

ARLINE WARD S BOX 24633 FAIRBANKS AK 99701

JUN 15 1961

TELEGRAM

ALASCOM, INC.
PHONE: 536-6442
JUNEAU, AK 99802

#

02014 PGM TDA FAIRBANKS AK 15 02-28 1545P AST

PMS SEN CHARLIE PARR

JUNEAU

I SUPPORT SB94.

DEBBIE FENDERSON

SR 70206

FAIRBANKS AK 99701

RECEIVED 02 28 1984

TELEGRAM

MUSKOGEE, INC.
PHONE: 938-6642
JULIAN, AK 99902

21 FEB 20 11 0 13

02013 POW TDA FAIRBANKS AK 15 03-2P 1500P AST

PWS SEN CHARLIE PARR

JUNEAU

I SUPPORT SPOA, 50 METER POOL FOR BATTLEST VIEW.

SCOTT LEWISY COACH WEST VALLEY VIEW SPOON.

SE 1035R-5

FAIRBANKS AY 99701

TELEGRAM

ALASCO, INC.
PHONE 526-6442
JUNEAU, AK 99802

02012 PM TDA FAIRBANKS AK 15 02-28 1430P AST

PMS SFN CHARLIE PARR

JUNEAU

I FULLY SUPPORT SENATE BILL 94, 50 METER PGM., BAPTLETT HIGH
SCHOL., ANCHORAGE.

MORRIS CHANEY, PRESIDENT

STIRRAY SWIM TEAM

1628 BRIDGEWATER DRIVE

FAIRBANKS AK 99701

FEB 28 11 0 13