

ALASKA LEGISLATURE COMMITTEE FILES 1981-1982 00/2

1639 HJ SB 266 - SB 392

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266

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 26, 1982

SUBJECT: HCS CSSB 266 (Judiciary)

TO: Representative Ramona L. Barnes
Chairman, House Judiciary Committee

FROM: David T. Walker *DTW*
Co-Revisor of Statutes

Publishers deadlines for receipt of changes to titles of the Alaska Statutes reprinted this year span the time period of March 10, 1982 - June 30, 1982. Mr. Berrier advises that drafting staff cannot be spared to perform this task during the legislative session, but could be used during the interim.

I have attached a proposed committee substitute (and accompanying fiscal note) which postpones work on reprinted titles until this interim. Mr. Berrier has advised that if this bill passes he will require the drafting attorneys of the division of legal services to draft these changes during the interims for review by the revisor and submission to the publisher for inclusion in the 1983 and succeeding reprints. Based upon that premise no additional funding would be required to accomplish the responsibility assigned by this bill.

If the legislature wants to eliminate personal pronouns from the statutes then we (the revisors and the director of the division of legal services) strongly recommend and prefer the time sequencing established by the proposed House Judiciary committee substitute. Using the experienced drafting attorneys of the division of legal services to do this work will be more efficient and will result in a more acceptable work product than will contracting with an outside consultant on a rushed basis.

DTW:ljb

Enclosure

FISCAL NOTE

I. REQUEST

Bill/Resolution No. HCS CSSB 266 (Judiciary)
 Title Establishing official policy of using neutral pronouns...Alaska Statutes
 Requested by House Judiciary Committee Date March 24, 1982

II. FISCAL DETAIL

Agency Affected Legislative Affairs Agency
 Program Category Affected General Government
 BRJ, Program, Or Subprogram(s) Affected Division of 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 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

Mr. Berrier, director of the division of legal services, has advised that if this bill passes he will require the drafting attorneys of the division of legal services to draft these changes during the interim for review and submission to the publisher. Based upon that premise no additional funding would be required to accomplish the responsibility assigned by this bill.

IV. DATE March 25, 1982 PREPARED BY David T. Walker
 AGENCY Legislative Affairs Agency
 Original: Legislative Finance PHONE 465-2450
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)
 33-001 (Rev. 12/81)

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 26, 1982

SUBJECT: Fiscal note for CSSB 266 (Judiciary).
TO: Representative Ramona L. Barnes
Chairman, House Judiciary Committee
FROM: David T. Walker *DTW*
Co-Revisor of Statutes

Publishers deadlines for receipt of changes to titles reprinted this year span the time period of March 10, 1982 - June 30, 1982. Mr. Berrier advises that drafting staff cannot be spared to perform this task during the legislative session, but could be used during the interims to draft the changes for the 1983 and succeeding reprints. Without assistance, the revisor's will not be able to accomplish this effort on the 1982 reprints within the required time frame.

I have attached a fiscal note that is based upon one-half the amount of the base salary (no benefits included) which would be paid to legislative administrative assistant between now and June 30, 1982. It assumes we would find a contractor to start work immediately. I do not know whether my assumptions are correct -- my experience in contracting for outside services and preparing fiscal notes has been nil.

Since the money would be expended this fiscal year it cannot be reached by the fiscal note process but will need to be attached to the Legislative Affairs Agency budget by the Free Conference Committee as a supplemental.

If the legislature wants to eliminate personal pronouns from the statutes then we (the revisors and the director of the division of legal services) strongly recommend and prefer the time sequencing established by the proposed House Judiciary committee substitute over the timing of the work established by this bill.

DTW:ljb

Enclosure

FISCAL NOTE

I. REQUEST
 Bill/Resolution No. CSSB 266 (Judiciary)
 Title Establishing official policy of using neutral pronouns...Alaska Statutes
 Requested by House Judiciary Committee Date March 24, 1982

II. FISCAL DETAIL
 Agency Affected Legislative Affairs Agency
 Program Category Affected General Government
 BRU, Program, Or Subprogram(s) Affected Division of 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 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL	4.25					
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	4.25	-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND	4.25					
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
FULL TIME						
PART TIME						
TEMPORARY						

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

The fiscal note is based upon one-half the amount of the base salary (no benefits included) which would be paid to a legislative administrative assistant between now and June 30, 1982. It assumes we would find a contractor to start work immediately.

IV. DATE March 25, 1982 PREPARED BY David T. Walker
 AGENCY Legislative Affairs Agency
 Original: Legislative Finance PHONE 465-2450
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)
 33-001 (Rev. 12/81)



Official Business

Alaska State Legislature

Senate Committee on State Affairs

Vic Fischer, Chairman • Pouch V • Juneau, Alaska 99811 • (907) 465-4954

MEMORANDUM

TO: Rep. Ramona Barnes, Chair
House Judiciary Committee

FROM: Sen. Vic Fischer *Vic*

DATE: March 24, 1982

RE: SB 266, the use of language in the law

Language is the most powerful weapon that we work with daily as legislators. How we write our bills, how we communicate with each other and how others perceive what we say; these are the tools with which we shape the future of Alaska. That is why I believe that as Alaskans, as the state that really believes in the freedom of each individual, we must use the language as accurately as possible so that future generations of Alaskans also respect individual freedoms and are willing to protect them.

Because existing law requires the use of male pronouns, this bill reflects my concern that the laws that we write represent both male and female equality. We must start now to see that drafting language is clear and succinct with regard to the use of pronouns in all the work that we do. We must start now, so that future Alaska law reflects our feeling. Here, I will quote from one of my constituents because it is the essence of some of my feeling: "Language that speaks clearly and fairly of both sexes helps promote equality on every other level."

AMERICAN ASSOCIATION
ALASKA



OF UNIVERSITY WOMEN

DIVISION

Susan R. Clark
Legislative Chair
1109 C Street
Juneau, Ak. 99801

9 June 1981

Dear Members of House Judiciary,

CS SB 266 concerning neutral pronouns, can be an important step toward eliminating sexism from the language of the Alaska statutes. Currently, drafters of legislation are directed to use exclusively the pronoun "he" whenever a third person singular pronoun is necessary. Under the original bill SB 266 and under this amended version this exclusive use of the masculine pronoun would not change, if a pronoun is unavoidable.

Therefore A.A.U.W. would ask that either one or two amendments be added to this bill.

1) Some policy statement should be reinserted into the bill to make clear the intent of this legislation:

"The constitution and laws of Alaska prohibit discrimination because of sex. In keeping with the spirit of those laws, the legislature establishes in this Act the official policy of eliminating, whenever possible, the use of gender-specific pronouns; and of avoiding the use of masculine gender words [or pronouns] to include the feminine gender."

We feel that a statement to this effect is important, because by commonly using exclusively masculine pronouns to include the feminine, we have developed a system of language that effectively has made women invisible in our language, an invisibility that spills over into our thoughts of what women should be or do. Currently the Alaska statutes contain 3,374 masculine pronouns and 14 female pronouns.

2) We would support the language in the original bill that deleted the words "third person, and singular number" in Sec. 2. By omitting those two specifications, the drafters are then freer to use language that would eliminate the required "he" and use an alternate substitute. We would prefer to see the language of the original bill reinstated in Sec. 2.

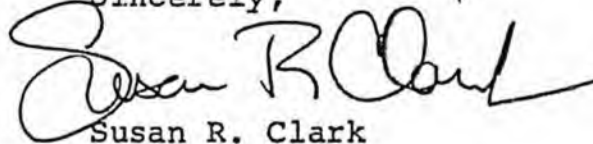
3) If Sec. 2 is to retain Sen. Parr's language concerning situations where "the use of personal pronouns cannot be avoided" we would ask that language be inserted that would permit the drafters the use of both masculine and feminine pronouns:

"and if the use of personal pronouns cannot be avoided in a section, language may contain both masculine and feminine third person singular references, or any other...."

The use of "he or she", "his or her", etc... is becoming an important part of our language, beginning in school where teachers almost never send home notes about "Your child, he...", any more. Precedents can be found in the new Uniform rules (Rule 34, Voting Procedure: "...shall state a desire to change his or her vote;") and even in "Federal Veterans' Preference Act of 1944: "...time spent in the military...shall be credited in a veteran's rating where his or her actual employment...was interrupted." According to that bible of English grammar, Harbrace College Handbook, permission is given to use both masculine and feminine when clarity is required, although the Harbrace authors would prefer to have the sentence recast when possible to eliminate the pronouns or to use plural pronouns.

Thank you for your consideration of these changes.

Sincerely,

A handwritten signature in cursive script that reads "Susan R. Clark". The signature is written in dark ink and is positioned above the printed name.

Susan R. Clark



Alaska State Legislature

Senate Committee on State Affairs

Vic Fischer, Chairman • Pouch V • Juneau, Alaska 99811 • (907) 465-4954

Official Business

M E M O R A N D U M

TO: Sen. Pat Rodey

FROM: Sen. Vic Fischer *Vic*

DATE: May 4, 1981

RE: SB 266 entitled "An Act establishing an official policy of using neutral pronouns in Alaska Statutes; and providing for an effective date."

Language is the most powerful weapon that we work with daily as legislators. How we write our bills, how we communicate with each other and how others perceive what we say; these are the tools with which we shape the future of Alaska. That is why I believe that as Alaskans, as the state that really believes in the freedom of each individual, we must use the language as accurately as possible so that the future generations of Alaskans also respect individual freedoms and are willing to protect them.

Because existing law requires the use of male pronouns, this bill reflects my concern that the laws that we write represent both male and female equality. We must start now to see that drafting language is clear and succinct in regard to the use of pronouns in all the work that we do. We must start now, so that future Alaska law reflects our feeling. Here, I will quote from one of my constituents because it is the essence of some of my feeling: "Language that speaks clearly and fairly of both sexes helps promote equality on every other level."

I hope that you will give SB 266 favorable consideration.

STATE OF ALASKA
THE LEGISLATURE

ANCHORAGE - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

May 5, 1981

SUBJECT: SB 266

TO: Senator Patrick M. Rodey
Chairman, Senate Judiciary Committee

FROM: David T. Walker *DTW*
Co-Revisor of Statutes

I believe the language of this bill can be improved upon. When I drafted this bill "sexually explicit pronouns" seemed okay -- now I believe it a little lurid. If you agree, I believe the phrase "pronouns denoting masculine or feminine gender" should be substituted for "sexually explicit pronouns" in the bill. The substitutions should be made at page 1, line 18; page 1, line 27; and page 2, line 5.

In case the committee wishes to report the bill with amendments rather than a committee substitute, I have attached amendments to effect the change.

DTW:ljb

Enclosure

A M E N D M E N T

Offered in the SENATE

By the Judiciary Committee

TO: SB 266

Page 1, line 18:

Delete "sexually explicit pronouns" and insert the following in its place: "pronouns denoting masculine or feminine gender"

Page 1, line 27:

Delete "sexually explicit pronouns" and insert the following in its place: "pronouns denoting masculine or feminine gender"

Page 2, line 5:

Delete "sexually explicit pronouns" and insert the following in its place: "pronouns denoting masculine or feminine gender"



Alaska State Legislature

Official Business

Senate

Judiciary Committee

Pouch V
State Capitol
Juneau, Alaska 99811

April 21, 1981

Ms. Barbara Schuhmann
Chairperson
Alaska Commission on the
Status of Women
338 Denali Street, Suite 850
Anchorage, Alaska 99501

Dear Ms. Schuhmann:

Thank you for your letter of support for SB 266.

Although the committee is extremely backlogged with legislation to hear before adjournment, I will make every effort to schedule SB 266 this year.

I appreciate your concerns in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Pat".

Senator Patrick M. Rodey
Chairman

PMR/ods



STATE OF ALASKA
OFFICE OF THE GOVERNOR

ALASKA COMMISSION ON THE STATUS OF WOMEN
338 DENALI STREET, SUITE 850
ANCHORAGE, ALASKA 99501

RECEIVED

APR 20 1981

April 15, 1981

Senator Pat Rodey, Chair
Senate Judiciary Committee
Pouch V
Juneau, Alaska 99811

Dear Sen. Rodey:

On March 21, 1981 the Alaska Commission on the Status of Women voted to support SB 266, an act which would establish an official policy of using neutral pronouns in all statutory language. While the Commission fully supports this bill and concept, it also voted to urge the legislature to eliminate the use of all sexist terminology in statutory language.

We believe that our language not only embodies our values, but also communicates and fosters certain attitudes. Eliminating sexist language from state law which sets the norm for acceptable behavior, is a major step in changing those attitudes which would discourage women and men from achieving their fullest potential.

Sincerely yours,

A handwritten signature in cursive script that reads "Barbara Schuhmann".

Barbara Schuhmann
Chairperson

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Alaska State Legislature

Senate

Official Business

Judiciary Committee

Pouch V
State Capitol
Juneau, Alaska 99811

SUMMARY OF SENATE JUDICIARY COMMITTEE HEARING
OF
MARCH 27, 1981

Butrovich Committee Room, State Capitol - Juneau, Alaska

Legislation Before Committee:

SB 7 "An Act relating to accretion, reliction, and erosion; and providing for an effective date."

SB 283 "An Act relating to offers of judgment."

SJR 25 Relating to the Klondike Gold Rush National Historical Park.

The meeting of the Senate Judiciary Committee was called to order by Chairman Rodey at 1:35 p.m. Committee members present were: Senators Bennett, Hohman, Parr, Ray, and Rodey.

Testifying in favor of SB 7 was Mike Holmes, attorney representing Theodore J. Smith and Fred S. Honsinger in a case involving waterfront property in Juneau. Mr. Holmes gave an overview of those events leading up to the promulgation of the proposed resolution.

Thomas Koester, Assistant Attorney General, spoke before the Committee as to the opinion of the Attorney General's office. His written comments are being made a part of the committee's permanent file.

Chairman Rodey deferred action on SB 7 at this hearing, pending further research.

Chairman Rodey provided background information on SB 283, and legislation passed last session which was intended to provide that a party making an offer of settlement would, if the offer was rejected and he prevailed, receive an interest rate of 2%. Chairman Rodey stated that the intent was to encourage an offer of settlement, particularly if in good faith and a reasonable one was rejected, that the party acting unreasonably would bear a 2% loss, or the reasonable party would incur a 2% benefit.

Senator Parr moved that SB 283 be moved from the committee with individual recommendations. The motion was passed with the following votes:

Do Pass: Senators Parr and Rodey
No Recommendation: Senators Hohman and Ray

With respect to SJR 25, Senator Ray provided an overview of events leading up to its introduction. Senator Ray expressed his concern that only one person testified before the Resource Committee, and it was his grievance against the Park Service which precipitated the resolution.

Language changes to SJR 25 proposed by committee members are shown on a copy of the Senate Amendment form attached to and made a part of his hearing summary.

Senator Ray moved that SJR 25 as amended be moved from Committee with individual recommendations. The resolution was moved from committee with the following votes:

Do Pass: Senators Ray & Hohman
Do Pass as amended: Senator Parr
No Recommendation: Senator Rodey

Hearing no objections, Chairman Rodey adjourned the meeting of the Senate Judiciary Committee at 2:30 p.m.

LAW OFFICES

ABBOTT, LYNCH AND FARNEY

1200 AIRPORT HEIGHTS DRIVE, SUITE 520
ANCHORAGE, ALASKA 99504
(907) 279-437

A PROFESSIONAL CORPORATION
8TH FLOOR
ALASKA MUTUAL BANK BLDG.
601 WEST FIFTH AVENUE
ANCHORAGE, ALASKA 99501
(907) 276-3222

751 OLD RICHARDSON HWY., SUITE 325
FAIRBANKS, ALASKA 99701
(907) 451-4487

PLEASE REPLY TO:
FIFTH AVENUE OFFICE

*Kevin
Lee
about*

*as
2/9/81*

RECEIVED

January 30, 1981

FEB 02 1981

The Honorable Patrick M. Rodey
Alaska Senate
Pouch V
Juneau, Alaska 99811

Dear ^{*Patrick*} Senator Rodey:

Brian Farney has asked that I write to you regarding the introduction of a bill which would clarify the offer of judgment interest adjustments contained in AS 09.30.055. The section was enacted during the last legislative session and was intended to act as an incentive for the settlement of civil cases without trial. As presently drafted, however, that section actually provides a disincentive to the settlement of cases since it does not operate unless the judgment is "more favorable to the offeree than the offer." In order to effectively operate as an incentive the statute should come into play when the judgment is not more favorable to the offeree than the offer. Enclosed is a copy of AS 09.30.055 with my suggested changes to make it effective for its intended purpose.

I. ank you for your assistance.

Very truly yours,

ABBOTT, LYNCH and FARNEY


Kenneth M. Rosenstein

KMR/mlc
Enclosure

Sec. 09.30.055. Offers of judgment. On or before the 60th day following the filing of an answer in a civil action, and on the fifth day following the day discovery closes as ordered by the court, either the party making a claim or the party defending against a claim may serve upon the adverse party an offer to allow judgment to be entered in complete satisfaction of the claim for the money or property or to the effect specified in his offer, with cost then accrued. If within 10 days after the service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service, and the clerk shall enter judgment. An offer not accepted within 10 days is considered withdrawn and evidence of that offer is not admissible except in a proceeding to determine the form of judgment after verdict. If the judgment finally entered on the claim as to which an offer has been made under this section is more favorable to the offeree than the offer, the interest awarded under AS 45.45.010(a) and accrued up to the date judgment is entered shall be adjusted as follows:

not

reduced

- (1) if the offeree is the party making the claim, the interest rate shall be increased by two percent a year;
- (2) if the offeree is the party defending against the claim, the interest rate shall be reduced by two percent a year. (§ 3 ch 107 SLA 1980)

increased

PATRICK RODEY
ANCHORAGE

601 W. 5TH AVE. SUITE 820
ANCHORAGE, ALASKA 99501

DURING SESSION

POUCH V
JUNEAU, ALASKA 99811

Alaska State Senate

JUNEAU, ALASKA 99811

February 9, 1981

Kenneth M. Rosenstein
Abbott, Lynch and Farney
601 West 5th Avenue
Anchorage, AK 99501

Dear Mr. Rosenstein:

Thank you for your letter concerning Offers of Judgement
(AS.09.30.055).

I agree that the law currently is a disincentive to settle-
ment of cases in this area, and have submitted your suggested
amendments to the legal department for preparation of a
draft bill.

Your time spent to express your interest in, and comments on
this legislation, is greatly appreciated.

Sincerely,

Patrick M. Rodey
Senator

PMR/ds

S

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27

FISCAL NOTE

I. REQUEST

Bill/Resolution No. House CS for CS for Senate Bill 327 (Judiciary)
 Title An Act Relating to Parole of Offenders: Continuing the Parole Board
 Requested by Senator Parr Date April 16, 1982

II. FISCAL DETAIL

Agency Affected Department of Health & Social Services
 Program Category Affected Offender Confinement Reformation & Supervision
 BFU, Program, Or Subprogram(s) Affected Parole Board
 (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 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL		6.5	4.1	8.4	5.1	10.0
300 CONTRACTUAL		1.3	-0-	1.5	-0-	1.7
400 COMMODITIES		-0-	-0-	-0-	-0-	-0-
500 EQUIPMENT		-0-	-0-	-0-	-0-	-0-
600 LAND & STRUCTURES		-0-	-0-	-0-	-0-	-0-
700 GRANTS, CLAIMS, ETC.						
800 COMPENSATION		49.0	48.4	49.0	48.4	49.0
TOTAL		56.8	52.5	58.9	53.5	60.7

FUNDING (Thousands of Dollars)

GENERAL FUND		56.8	52.5	58.9	53.5	60.7
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

NO NEW POSITIONS

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

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

See Attached Sheet

IV. DATE April 16, 1982

PREPARED BY Samuel H. Trivette

AGENCY H & S.S. Parole Board

PHONE 465-3384

Original: Legislative Finance
 cc: Budget and Management

Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/81)

JCC

A. Section .050, Compensation

The bill would provide payment to the Board members for any day they are conducting business, including the reading of files, handling Board business by phone, as well as hearings.

- a) Reading reports-assume 225 cases/year x 3/4 hours per file = 23 "member days". Guess 23 days x 2.5 members x \$100 = 5.8
- b) Phone log shows average of 30 calls/quarter to the office x 4 quarters/year = 120 calls for handling appeals, requests for special hearings, mandatory release conditions, etc. x \$100 = 12.0
- c) Pay full days compensation for those days holding preliminary hearings, 1/2 day parole hearings, etc., now being paid @ \$50 per day. Guess 35 member days x \$50 = $\frac{1.8}{19.6}$

Also, the bill increases the compensation for Board members from \$100 to \$150 per day. Current budget shows 257 per diem days x \$50 increase = 12.8

Increase a), b), & c) to \$150 per day x 213 days = $\frac{10.7}{\text{Total } 43.1}$

B. Section .080, Responsibilities

Funds for teleconferencing of hearings to adopt regulation, advertise hearings, have staff travel to hearings to establish regulations in the Alaska Administrative Code. Budget every other year. Four member days compensation @ \$150 per day.

Contractual	1.3
Transportation	1.0
Per Diem	1.0
Compensation	.6
Total	<u>3.9</u>

C. Section .180, Change in Conditions

Anticipate 5 parolees will request a hearing pursuant to this Section resulting in 5 teleconference hearings by three Board members @ \$150.

Transportation	1.6
Per Diem	1.3
Compensation	2.3
Total	<u>5.2</u>

D. Section .280, Revocation Hearings

The "clear and convincing evidence" test will result in a representative from the District Attorney's office presenting some of the cases for the Division of Corrections, as is done in many probation revocation cases now. Assume District Attorneys will be present in 1/4 of the cases (7) which will result in a doubling in the length of the hearing time in those cases resulting in 4 additional "board days per year" x 5 members x \$150.

Per Diem	1.6
Compensation	3.0
Total	<u>4.6</u>

E. Assumption for FY-84 Through FY-87

- a) Travel = 15% in FY-84 and FY-85; 10% thereafter.
- b) Contractual = 8%

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. House CS for CS for Senate Bill No. 327 (Judiciary)

Title "An Act relating to parole of offenders"

Requested by Senator Parr Date March 8, 1982

II. FISCAL DETAIL

Agency Affected Health and Social Services

Program Category Affected Offender Confinement, Reformation & Supervision

BRU, Program, Or Subprogram(s) Affected Adult Confinement - Probation

(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 82	FY 83	FY 84	FY 85	FY 86	FY 87
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)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
FULL TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART TIME						
TEMPORARY						

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

The changes incorporated into Committee Substitute for Senate Bill No. 327 (HESS) have removed the fiscal impact which would have been experienced with enactment of the original bill.

It has been assumed that all parolees will cooperate with the probation officers and waive a formal hearing when a change of parole condition is considered necessary by Department staff. The alternative for a parolee is to be incarcerated for the period until the hearing could be scheduled.

IV. DATE March 9, 1982

PREPARED BY Roger C. Lange

AGENCY Division of Adult Corrections

PHONE 465-3376

Original: Legislative Finance
cc: Budget and Management

Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/81)

Roger C. Lange
fcc

Original sponsor: Parr

1 IN THE SENATE

Proposed amendments

BY THE JUDICIARY COMMITTEE

2

HOUSE CS FOR CS FOR SENATE BILL NO. 327 (Judiciary)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

TWELFTH LEGISLATURE - SECOND SESSION

5

A BILL

6

For an Act entitled: "An Act relating to parole of offenders; continuing the
7 existence of the Board of Parole; and providing for an
8 effective date."

9

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

10

* Section 1. AS 33 is amended by adding a new chapter to read:

11

CHAPTER 16. PAROLE ADMINISTRATION.

12

Sec. 33.16.010. BOARD OF PAROLE. (a) There is in the Department
13 of Health and Social Services a Board of Parole consisting of five
14 members appointed by the governor subject to confirmation by a majority
15 of the members of the legislature in joint session.

16

(b) Members of the board serve for staggered terms of five years
17 and until their successors are appointed and qualified. A vacancy on
18 the board shall be filled for the unexpired term within 30 days of the
19 vacancy.

20

(c) The board shall choose its presiding officer from among its
21 membership.

22

Sec. 33.16.020. NOMINATIONS. The governor shall seek nominations
23 for board members from civic, professional, and ethnic organizations in
24 the state and shall make appointments to the board with due regard for
25 representation on the board of the sexual, ethnic, racial, and cultural
26 populations of the state.

27

Sec. 33.16.030. SELECTION CRITERIA FOR BOARD MEMBERS. (a) The
28 governor shall appoint board members on the basis of their qualifica-
29 tions to make decisions that are compatible with the welfare of the

1 community and of individual offenders. The governor shall appoint board
2 members who are able to consider the character and background of offen-
3 ders and the circumstances under which offenses were committed.

4 (b) At least one person appointed to the board shall have ex-
5 perience in the field of criminal justice, psychology, or human rela-
6 tions.

7 (c) Officers or employees of the department may not be appointed
8 to the board.

9 Sec. 33.16.040. REMOVAL OF MEMBERS. (a) The governor may remove
10 a board member only for disability, nonfeasance, neglect of duty, mal-
11 feasance in office, or conviction of ^{any misdemeanor} ~~a crime~~ involving moral turpitude,
12 ^{OR BY BELONG}

13 (b) Removal of a board member is initiated by delivering to the
14 board member a written statement of the charges against the board member
15 and by giving the board member an opportunity to be heard in person or
16 through counsel at a public hearing in defense of the charges. The
17 hearing shall be before the governor or a designee of the governor. The
18 time fixed for the hearing may not be less than 10 days after the state-
19 ment is delivered to the board member. At the hearing the board member
20 has the right of confrontation and cross-examination of the witnesses
21 who testify.

22 (c) The removal of a board member is effective 15 days after a
23 statement of the charges made against the board member and the findings
24 on those charges are filed by the governor in the main office of the
25 board. The board member may appeal the findings of the governor to the
26 superior court. The court shall limit its review to a determination of
27 whether the findings of the governor are substantiated by the evidence
28 presented. The removal of the board member is suspended while an appeal
29 from the findings of the governor is pending.

30 Sec. 33.16.050. COMPENSATION AND EXPENSES. A board member is

1 entitled to compensation of \$150 per day for each day the board member
2 is ~~concerned with~~ ^{conducting} the business of the board and is also entitled to the
3 per diem and travel allowances provided by law for other boards and
4 commissions.

5 Sec. 33.16.060. MEETINGS OF THE BOARD. (a) The board may meet as
6 often as it ~~considers~~ necessary to consider its responsibilities. The
7 board shall meet no less than four times a year.

8 (b) Three members of the board constitute a quorum for the conduct
9 of business.

10 (c) Decisions and orders of the board require the votes of a
11 majority of the members present and in no case less than the votes of
12 two members.

13 (d) Except in the consideration of matters involving the release
14 of a prisoner on parole or parole revocation, the board may conduct a
15 meeting over the telephone or by the use of teleconference facilities.

16 Sec. 33.16.070. PROCESS. The board or a member of the board may
17 issue subpoenas and subpoenas duces tecum.

18 Sec. 33.16.080. RESPONSIBILITIES OF THE BOARD. (a) The board
19 shall

20 (1) serve as the parole authority for the state;

21 (2) consider the suitability for parole of all prisoners
22 serving sentences who are eligible for consideration for parole, unless
23 a prisoner waives consideration of parole;

24 (3) discharge a person from parole when supervision is no
25 longer required;

26 (4) maintain records of the meetings and proceedings of the
27 board;

28 (5) adopt standards that shall apply fairly to all prisoners
29 for determining when a prisoner should be considered for and receive

1 parole;

2 (6) recommend to the legislature changes in the laws ad-
3 ministered by the board;

4 (7) recommend to the commissioner changes in the practices of
5 the department and of other departments of the executive branch;

6 (8) execute other responsibilities prescribed by law.

7 (b) The board shall adopt regulations under the Administrative
8 Procedure Act (AS 44.62)

9 (1) establishing the standards, which shall apply fairly to
10 all prisoners, under which the suitability of a prisoner for parole will
11 be decided;

12 (2) providing for the supervision of parolees and for recom-
13 mitment of parolees; and

14 (3) governing procedures of the board.

15 Sec. 33.16.090. EXECUTIVE DIRECTOR. The board shall hire an
16 executive director who has training and experience in the field of
17 probation and parole. The executive director serves as the executive
18 officer for the board in the accomplishment of its functions. The
19 executive director serves at the pleasure of the ^{GOVERNOR} ~~board~~. The executive
20 director shall employ the staff of the board.

21 Sec. 33.16.100. ELIGIBILITY FOR DISCRETIONARY PAROLE. (a) A
22 state prisoner other than a juvenile delinquent, wherever confined, who
23 is serving a ~~[definite]~~ term of ^{at least 181 days} ~~[over 180 days or a term the minimum of~~
24 ~~which is at least 181 days]~~ and who is not imprisoned in accordance with
25 AS 12.55.125(c)(1), (c)(2), (c)(3), (d)(1), (d)(2), (e)(1), or (e)(2),
26 may, in the discretion of the board, be released on discretionary parole
27 subject to AS 12.55.086(b), AS 33.16.110, and 33.16.120(b).

28 (b) A state prisoner imprisoned in accordance with AS 12.55.125(a)
29 or (b) may not be released on discretionary parole until at least the

1 prescribed minimum term of imprisonment has been served.

2 (c) A state prisoner imprisoned in accordance with AS 12.55.-
3 125(c)(1), (c)(2), (c)(3), (d)(1), (d)(2), (e)(1), or (e)(2), who is
4 released under AS 33.20.030, shall be placed on mandatory parole for the
5 period specified in the certificate of deduction, less 180 days, subject
6 to written conditions imposed by the board. 1) leave as is ↑
2) eliminate completely } policy
3) "less 90 days" } options

7 Sec. 33.16.110. FIXING ELIGIBILITY FOR PAROLE AT TIME OF SEN-
8 TENCING. When in its opinion justice and the best interests of the
9 public require that a defendant be sentenced to imprisonment for a term
10 exceeding one year, the court having jurisdiction to impose sentence,
11 upon entering a judgment of conviction, may designate in the sentence of
12 imprisonment a term at the expiration of which the prisoner is eligible
13 for discretionary parole. The term shall be at least one-third of the
14 period of confinement imposed by the court or the minimum term pre-
15 scribed in AS 12.25.125, whichever is greater.

16 Sec. 33.16.120. GRANTING OF DISCRETIONARY PAROLE. (a) The board
17 may authorize the release of a prisoner on discretionary parole if it
18 determines that

19 (1) the prisoner eligible for discretionary parole will, in
20 reasonable probability, live and remain at liberty without violating the
21 laws or without violating the conditions imposed by the board; and

22 (2) the release of the prisoner on discretionary parole is
23 ~~not~~ incompatible with the welfare of society and would not depreciate
24 the seriousness of the crime.

25 (b) A prisoner may not be released on discretionary parole until
26 the prisoner has served at least one-third of the period of confinement
27 to which the prisoner was sentenced or the minimum term prescribed in
28 AS 12.55.125, whichever is greater.

29 Sec. 33.16.130. SUITABILITY FOR DISCRETIONARY PAROLE. In deter-

1 mining whether a prisoner is suitable for discretionary parole, the
2 board shall consider

3 (1) the pre-sentence report made to the sentencing court;

4 (2) the recommendations made by the sentencing court, by the
5 prosecuting attorney, by the defense attorney, and any statement made by
6 the prisoner at sentencing;

7 (3) the prisoner's history at the correctional facility to
8 which assigned by the department;

9 (4) a recommendation made by an officer responsible for the
10 correctional facility to which the prisoner was assigned;

11 (5) official reports of earlier crimes and earlier probation
12 and parole experiences;

13 (6) physical, mental, and psychiatric examinations of the
14 prisoner;

15 (7) information submitted by the prisoner, the attorney of
16 the prisoner, a victim of the crime, or other persons; and

17 (8) other useful information that may be reasonably avail-
18 able.

19 Sec. 33.16.140. LACK OF TREATMENT. The board may not deny parole
20 to a prisoner otherwise suitable for parole on the ground that the
21 prisoner did not obtain necessary or desirable treatment while confined
22 if the treatment was not available to the prisoner at the correctional
23 facility to which the prisoner was assigned by the department. This
24 section does not abrogate the authority of the board to deny a prisoner
25 parole if, as a result of the lack of treatment, a prisoner is deter-
26 mined unsuitable for parole under AS 33.16.120(a).

27 Sec. 33.16.150. HEARING ON APPLICATION FOR DISCRETIONARY PAROLE.

28 (a) A prisoner has the right to a preliminary hearing before a single
29 member of the board or a person authorized by the board to act as a

1 hearing officer to determine the suitability of a prisoner for parole or
2 for the setting, posting, or rescinding of parole dates. The prisoner
3 shall be provided reasonable notice of the hearing. The preliminary
4 hearing shall be electronically recorded. The recording of the prelimi-
5 nary hearing shall be reviewed by the full board within 60 days of the
6 preliminary hearing.

7 (b) The prisoner shall be permitted to have a copy of the pre-
8 parole report and records that will be considered by the board no less
9 than 10 days before the hearing. The prisoner has a right to enter
10 written responses to all reports and records that will be considered by
11 the board.

12 (c) The prisoner has a right to be present at the hearing, to
13 present evidence, and to cross-examine witnesses.

14 (d) On review of the recording of the preliminary hearing or after
15 a hearing by the full board, the board shall issue its decision in
16 writing and provide reasons for the decision. The prisoner is entitled
17 to a copy of the decision at the time it is issued.

18 Sec. 33.16.160. ORDER FOR PAROLE. The board shall furnish to each
19 person released under its supervision an order for parole. The order
20 for parole shall contain the conditions imposed by the board for parole
21 and the date that the parole supervision expires. The order for parole
22 does not take effect until it is accepted and signed by the parolee.

23 Sec. 33.16.170. CONDITIONS OF PAROLE. (a) The board shall re-
24 quire that a prisoner released on parole refrain from violation of state
25 or federal law or a municipal ordinance as a condition of parole.

26 (b) Depending on the nature and circumstances of the crime for
27 which the prisoner was convicted and the background of the prisoner, the
28 board may require as a condition of parole under AS 33.16.160 that a
29 prisoner released on parole agree to:

- 1 (1) meet family obligations;
- 2 (2) pursue employment, education, training, or subsistence;
- 3 (3) remain within stated geographic limits unless the parole
4 officer grants the parolee written permission to depart from the stated
5 limits;
- 6 (4) report on release to the parole officer of the parolee;
- 7 (5) report at regular intervals to the parole officer of the
8 parolee;
- 9 (6) reside at a stated place and notify the parole officer of
10 a change in place of residence;
- 11 (7) have in possession no dangerous firearm or dangerous
12 weapon unless the board grants written permission for the possession;
- 13 (8) refrain from consuming alcoholic beverages;
- 14 (9) submit to searches and seizures conducted reasonably by a
15 parole officer or by a peace officer acting under direction of a parole
16 officer;
- 17 (10) submit to necessary medical, psychiatric, or other exami-
18 nation or treatment if available or to an examination or treatment for
19 the use of alcohol or drugs if available;
- 20 (11) refrain from entering into an agreement or other arrange-
21 ment with a law enforcement agency that will place the parolee in the
22 position of violating a state or federal law or ^{a municipal ordinance or} a condition of parole;
- 23 (12) refrain from opening, maintaining, or using a checking
24 account;
- 25 (13) refrain from entering into a contract, other than a
26 prenuptial contract or a contract of marriage, without permission in
27 writing from the parole officer of the parolee;
- 28 (14) refrain from operating a motor vehicle;
- 29 (15) refrain from entering a liquor store, bar, pub, tavern,

1 or night club designated by the board.

2 (c) The board may by regulation adopt additional conditions that
3 are consistent with (b) of this section.

4 Sec. 33.16.180. HEARING ON APPLICATION FOR CHANGE IN PAROLE CON-
5 DITIONS. (a) A parolee is entitled to reasonable notice of and may
6 request a hearing on a proposal to change a parole condition or to add
7 new parole conditions. The board shall provide the parolee with the
8 reasons for the proposal.

9 (b) The parolee shall be permitted to have a copy of the infor-
10 mation and records that will be considered by the board no less than
11 seven days before the hearing. The parolee has a right to enter written
12 responses to the information and records that will be considered by the
13 board.

14 (c) The parolee has the right to be present at the hearing, to
15 present evidence, to cross-examine witnesses, and to remain silent.

16 (d) The board shall issue its decision in writing and provide
17 reasons for the decision. The parolee is entitled to a copy of the
18 decision on its issuance.

19 Sec. 33.16.190. WAIVER OF HEARING. A prisoner or parolee may
20 waive a hearing provided under AS 33.16.180 or 33.16.180 by submitting a
21 written waiver to the board.

22 Sec. 33.16.200. CONFIDENTIALITY OF RECORDS AND INFORMATION. The
23 pre-parole reports submitted to the board are confidential and may not
24 be disclosed to anyone other than the board, the sentencing judge, the
25 prosecuting and defense attorneys, the prisoner and the prisoner's
26 attorney, or others granted the right under this chapter to receive the
27 information.

28 Sec. 33.16.210 APPEALS. A prisoner or a parolee may appeal a
29 decision or order of the board to the superior court on the ground of

1 arbitrariness or abuse of discretion.

2 Sec. 33.16.220. DUTIES OF THE COMMISSIONER. The commissioner
3 shall

4 (1) conduct investigations of prisoners eligible for parole
5 as the board requests;

6 (2) supervise the conduct of parolees and institute programs
7 for reform and rehabilitation of parolees as the board requests;

8 (3) appoint and assign parole officers and personnel to the
9 judicial districts in the state and to train and supervise parole offi-
10 cers and personnel;

11 (4) provide the board within 30 days after sentencing with
12 information on sentenced prisoners;

13 (5) keep records, files and accounts as the board requests.

14 Sec. 33.16.230. ACCESS TO LAW BY PRISONERS. The commissioner
15 shall make available at each correctional facility in the state and at
16 each correctional facility outside the state at which a prisoner of the
17 state is maintained a current edition of Alaska Statutes, of the Alaska
18 Administrative Code, and of the Alaska Rules of Court.

19 Sec. 33.16.240. PAROLE OFFICERS. The commissioner may assign the
20 duties of probation officers under AS 33.05 to parole officers appointed
21 under AS 33.16.220(3).

22 Sec. 33.16.250. DISCHARGE OF PAROLEE. (a) The board retains
23 legal custody of a discretionary parolee until the expiration of the
24 maximum term or terms to which the parolee is sentenced less 180 days.
25 The board retains legal custody of a mandatory parolee released in
26 accordance with AS 33.16.100(c) and AS 33.20.040 until the expiration of
27 the maximum term or terms to which the prisoner was sentenced less 180
28 days.

29 (b) A disability imposed by AS 33.30.310 - 33.30.320 applies to a

1 parolee as long as the parolee is in the legal custody of the board but
2 the disability does not deny a parolee access to the courts to protect
3 rights the parolee may have.

4 (c) A parolee who has been on parole for six years shall be
5 discharged from parole and from the custody of the board unless the
6 board finds after a hearing that continued supervision is necessary for
7 the protection of society.

8 Sec. 33.16.260. DISCRETIONARY DISCHARGE OF PAROLEE. The board
9 may discharge a parolee from supervision and the custody of the board
10 and from further liability under his sentence after the parolee has
11 completed two years of parole. After a parolee has been under super-
12 vision for two years the board shall review his record biennially for
13 discharge.

14 Sec. 33.16.270. RELEASE OF PRISONER TO ANSWER PROCESS. If a
15 court of this state, another state, or the United States, or other
16 authority issues a warrant charging a prisoner with a crime, the board
17 may release the prisoner on parole to answer the warrant.

18 Sec. 33.16.280. REVOCATION OF PAROLE. (a) The board may revoke
19 the parole granted to a parolee for violation of a state or federal law
20 or a municipal ordinance or a condition imposed by the board under
21 AS 33.16.170(b).

22 (b) A parolee has the right to a preliminary hearing before a
23 single member of the board or a person authorized by the board to act
24 as a hearing officer to determine whether probable cause exists to
25 revoke parole. The preliminary hearing shall be held within 14 days of
26 the arrest of the parolee on the charge of violation of a state or
27 federal law or violation of a condition of parole. The single member
28 of the board or the hearing officer who holds the hearing may release
29 the parolee pending the hearing under (c) of this section.

1 (c) The parolee is entitled to a hearing before the board at the
2 first meeting of the board held after the preliminary hearing held
3 under (b) of this section. The parolee has the rights of a parolee
4 under AS 33.16.150 and 33.16.180 at the hearing. The board shall issue
5 its decision in writing and provide reasons for the decision. The
6 parolee is entitled to a copy of the decision on its issuance.

7 (d) At a hearing under this section, the commissioner has the
8 burden to show that parole should be revoked by clear and convincing
9 evidence.

10 (e) If after the hearing the board determines that a violation of
11 a condition of parole has occurred, it may revoke a portion of the
12 parole granted or change the conditions of parole. If the board does
13 not revoke a portion of the parole granted, the parolee shall be re-
14 leased from confinement and continued on parole under terms and condi-
15 tions established by the board.

16 (f) If after the hearing the board determines that a parolee has
17 violated a state or federal law or a municipal ordinance, the board may
18 require the parolee to serve all or a part of the remainder of the term
19 to which the parolee was sentenced.

20 (g) If the board revokes parole for a reason other than a viola-
21 tion of a state or federal law or a municipal ordinance, the board may
22 not return the parolee to confinement for a period in excess of six
23 months.

24 (h) A parolee may waive a hearing under (b) or (c) of this section
25 by submitting a written waiver to the board.

26 Sec. 33.16.290. ARREST OF PAROLE VIOLATOR. (a) A parolee charged
27 with violation of a condition of parole may be arrested only on a
28 warrant for arrest issued by the board or a member of the board based on
29 probable cause to believe that a violation of the condition of parole

1 has occurred.

2 (b) A parolee may be arrested without a warrant for a violation
3 of a condition of parole only under exigent conditions which require
4 immediate arrest.

5 Sec. 33.16.300. EXECUTION OF WARRANT FOR ARREST OF PAROLEE. (a)
6 A parole officer or a peace officer acting at the request of a parole
7 officer shall execute the warrant issued under AS 33.16.290 by arresting
8 the parolee and confining the parolee in a correctional facility desig-
9 nated by the commissioner.

10 (b) The parole officer shall immediately notify the board or a
11 member of the board of an arrest under (a) of this section. If the
12 arrest was without warrant, the parole officer shall immediately provide
13 the board or a member of the board with a report in writing indicating
14 in what manner the parolee violated a condition of his parole.

15 Sec. 33.16.310. APPLICABILITY TO PERSONS ON PAROLE OR INCARCERATED.

16 (a) This chapter applies to all persons convicted and sentenced in the
17 superior court and the district courts of the state.

18 (b) If the appropriate officers of the United States agree, the
19 legislature intends that this chapter also apply to persons convicted
20 before Alaska statehood of a crime punishable under the laws of a state
21 notwithstanding the fact that the prosecution may have been brought by
22 the United States and the prisoners were convicted and sentenced in
23 courts of the United States before Alaska became a state or before the
24 Alaska state court system was in operation.

25 Sec. 33.16.320. DEFINITIONS. In this chapter

26 (1) "board" means the Board of Parole;

27 (2) "commissioner" means the commissioner of health and
28 social services;

29 (3) "department" means the Department of Health and Social

1 Services;

2 (4) "discretionary parole" means the release of a prisoner
3 to the community by the board before the expiration of a term or terms,
4 subject to conditions imposed by the board and subject to its super-
5 vision;

6 (5) "mandatory parole" means the release of a prisoner to the
7 community by operation of law before the expiration of a term or terms,
8 subject to conditions imposed by the board and subject to its super-
9 vision;

10 (6) "parolee" means a prisoner released to the community by
11 the board or by operation of law.

12 * Sec. 2. AS 33.20.040(a) is amended to read:

13 (a) A prisoner serving the term or terms for which the prisoner
14 [HE] was sentenced less good time deductions shall be released uncondi-
15 tionally if there remains less than 180 days to serve under the [HIS]
16 sentence. If there remains more than 180 days to serve under the [HIS]
17 sentence a prisoner shall be released on parole under AS 33.16.100(c) [,
18 UPON RELEASE, SHALL BE CONSIDERED AS IF RELEASED ON PAROLE UNTIL THE
19 EXPIRATION OF THE MAXIMUM TERM OR TERMS FOR WHICH HE WAS SENTENCED LESS
20 180 DAYS].

21 * Sec. 3. AS 44.66.010(a)(3) is amended to read:

22 (3) [STATE] Board of Parole (AS 33.16.010) [(AS 33.15.010)] -
23 June 30, 1986 [1982];

24 * Sec. 4. AS 33.15 is repealed.

25 * Sec. 5. AS 33.16 enacted in sec. 1 of this Act applies to persons on
26 parole or being considered for parole on the effective date of this Act.

27 * Sec. 6. The terms of the members of the Board of Parole appointed
28 under AS 33.15.010 terminate on the effective date of this Act. The governor
29 shall appoint members to the Board of Parole established under AS 33.16.010

1 enacted in this Act for the following initial terms: one member for a five-
2 year term; one member for a four-year term; one member for a three-year
3 term; one member for a two-year term; and one member for a one-year term.

4 * Sec. 7. This Act takes effect January 1, 1983.
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FISCAL NOTE

I. REQUEST

Bill/Resolution No. CS for Senate Bill 327 (Judiciary)

Title An Act Relating to Parole of Offenders: Continuing the Parole Board

Requested by Senator Parr

Date April 5, 1982

II. FISCAL DETAIL

Agency Affected Department of Health & Social Services

Program Category Affected Offender Confinement Reformation & Supervision

BRU, Program, Or Subprogram(s) Affected Parole Board

(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 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL		6.5	4.1	8.4	5.1	10.0
300 CONTRACTUAL		1.3	-0-	1.5	-0-	1.7
400 COMMODITIES		-0-	-0-	-0-	-0-	-0-
500 EQUIPMENT		-0-	-0-	-0-	-0-	-0-
600 LAND & STRUCTURES		-0-	-0-	-0-	-0-	-0-
700 GRANTS, CLAIMS, ETC.						
800 COMPENSATION		43.8	43.2	43.8	43.2	43.8
TOTAL		51.6	47.3	53.7	48.3	55.5

FUNDING (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND		51.6	47.3	53.7	48.3	55.5
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

NO NEW POSITIONS

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
FULL TIME		-0-	-0-			
PART TIME		-0-	-0-			
TEMPORARY		-0-	-0-			

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

See Attached Sheet

IV. DATE April 6, 1982

PREPARED BY Samuel H. Trivette

AGENCY H & S.S. Parole Board

Original: Legislative Finance

PHONE 465-3384

about 35 warrants per year x \$150 =

15.21
Total (5.2)

acc

F. Assumption for FY-84 Through FY-87

a) Travel = 15% in FY-84 and FY-85; 10% thereafter.

b) Contractual = 8%

- a) Reading reports—assume 225 cases/year x 3/4 hours per file = 23 "member days". Guess 23 days x 2.5 members x \$100 = 5.8
- b) Phone log shows average of 30 calls/quarter to the office x 4 quarters/year = 120 calls for handling appeals, requests for special hearings, mandatory release conditions, etc. x \$100 = 12.0
- c) Pay full days compensation for those days holding preliminary hearings, 1/2 day parole hearings, etc., now being paid @ \$50 per day. Guess 35 member days x \$50 =
- | |
|-------------|
| 1.8 |
| <u>19.6</u> |

Also, the bill increases the compensation of Board members from \$100 to \$150 per day. Current budget shows 257 per diem days x \$50 increase = 12.8

Increase a), b), & c) alone to \$150 per day x 213 days =

10.7
Total <u>43.1</u>

B. Section .080, Responsibilities

Funds for teleconferencing of hearings to adopt regulation, advertise hearings, have staff travel to hearings to establish regulations in the Alaska Administrative Code. Budget every other year. Fair member days compensation @ \$150 per day.

Contractual	1.3
Transportation	1.0
Per Diem	1.0
Compensation	<u>.6</u>
Total	3.9

C. Section .180, Change in Conditions

Anticipate 5 parolees will request a hearing pursuant to this Section resulting in 5 teleconference hearings by three Board members @ \$150.

Transportation	1.6
Per Diem	1.3
Compensation	<u>2.3</u>
Total	5.2

D. Section .280, Revocation Hearings

The "clear and convincing evidence" test will result in a representative from the District Attorney's office presenting some of the cases for the Division of Corrections, as is done in many probation revocation cases now. Assume District Attorneys will be present in 1/4 of the cases (7) which will result in a doubling in the length of the hearing time in those cases resulting in 4 additional "board days per year" x 5 members x \$150.

Per Diem	1.6
Compensation	<u>3.0</u>
Total	4.6

E. Section .290, Parole Warrants

This section shifts the responsibility of issuing parole warrants from the Board members to the judiciary. Although it will impact the workload of the court system and the Division of Adult Corrections parole officers, it will reduce the workload of the Board members. Board issues about 35 warrants per year x \$150 =

(5.2)
Total <u>(5.2)</u>

F. Assumption for FY-84 Through FY-87

- a) Travel = 15% in FY-84 and FY-85; 10% thereafter.
- b) Contractual = 8%

I. REQUEST

Bill/Resolution No. CSSB 327 (HESS)

Title "An Act relating to parole of offenders."

Requested by Senator Parr

Date March 8, 1982

II. FISCAL DETAIL

Agency Affected Health and Social Services

Program Category Affected Offender Confinement, Reformation & Supervision

BRU, Program, Or Subprogram(s) Affected Adult Confinement - Probation

(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 82	FY 83	FY 84	FY 85	FY 86	FY 87
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)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
FULL TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART TIME						
TEMPORARY						

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

The changes incorporated into Committee Substitute for Senate Bill No. 327 (HESS) have removed the fiscal impact which would have been experienced with enactment of the original bill.

It has been assumed that all parolees will cooperate with the probation officers and waive a formal hearing when a change of parole condition is considered necessary by Department staff. The alternative for a parolee is to be incarcerated for the period until the hearing could be scheduled.

IV. DATE March 9, 1982

PREPARED BY Roger C. Lange

AGENCY Division of Adult Corrections

Original: Legislative Finance

PHONE 465-3376

Original: Legislative Finance

PHONE _____

F. Assumption for FY-84 Through FY-87

a) Travel = 15% in FY-84 and FY-85; 10% thereafter.

b) Contractual = 8%

FBI NOTES ATTACHED - SS# 15 - 3/11/82 + SS# 26 - 4/17/82

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MEMORANDUM

DATE: May 25, 1981

TO: Rep. Mike Miller, Subcommittee Chairman
House Judiciary Committee

Rep. Fred Brown, Chairman
House Judiciary Committee

FROM: Michael Ford, Counsel *MF*
House Judiciary Committee

SUBJ: SB 392 am and HB 371 (Continuing existence of the Alaska Bar Association)

* * * * *

Both the Senate and House versions extend the existence of the Alaska Bar Association, the Senate version until June 30, 1984, and the House version until June 30, 1983. Both versions provide for three lay persons to sit on the Board of Governors, these individuals to be appointed by the Governor and confirmed by the Legislature.

These bills additionally require that meetings of the Board of Governors be open public meetings pursuant to the APA, and that the meetings be held in state after thirty days public notice.

The House version, specifies that the Alaska Bar Association is subject to various statutory requirements imposed on all state agencies and makes the Bar Association subject to review by Legislative Audit, the Ombudsman, the Administrative Procedures Act, and makes specific reference to the state statutory "sunset" provisions. The House version also adds several sections not in the Senate version beginning primarily on page 5, sec. 12. Sec. 12 of the House version specifically amends that statutory provision dealing with the Administrative Procedures Act to provide that bylaws and regulations adopted by the board of the Bar are subject to the APEA.

The other sections of the House version, not in the Senate bill, are as follows:

Sec. 13 sets out a definition of the practice of law, and in subsecs. b, c, and d sets out certain exemptions to this prohibition. After reading this sections I have some doubts as to its clarity, and I believe there would some difficulty in applying it.

Sec. 15.) deals with the administration of the Bar examination, I believe that most of the provisions are already provided for by Bar rules; this would simply make those rules statutory. Secs. 15 and 16 simply are amendments eliminating any reference to Alaska Bar rules.

Page two
Rep. Mike Miller
May 25, 1981

Sec. 17. is an amendment to make that section of the statute consistent with the definition of the practice of law in sec. 13.

Secs. 18 and 19 are technical cleanups of the existing Bar rules.

Sec. 20 contains a series of repealers, the first repealer deals with the present "sunset" provision for the Alaska Bar Association, the second repealer affects the power of the Bar to repeal or amend the bylaws and regulations, the third repealer eliminates the requirement that Department of Law employees be required to pass a bar examination within ten months of employment, and the third repealer deals with the disciplinary procedures set out by the Board of Governors.

Secs. 21 and 22 are transition sections regarding the new rules governing the Board of Governors.

Secs. 23, 24, and 25 are repealers and amendments to the Bar rules consistent with the prior changes in the Board of Governors and the provisions regarding administration of the Bar examination.

MF/cra

ATTORNEYS AND THE GOVERNMENTAL SYSTEM

A key feature of American government is the distribution of power among three branches, with each branch having certain checks on the other. We have enshrined this principle in our Constitution.

The Constitution is basic law and establishes a general framework of government. Going to the ultimate sovereign (the people) with amendments to the Constitution should be done only after very careful consideration, and only when statutory changes cannot do the job.

The Judicial Branch, in my mind, is the court system, and does not include attorneys (testimony from attorneys on their status as "officers of the court" indicates only that a judge can require them to defend cases).

What concerns me is the absence of any very effective way for the people, through their elective representatives, to govern the activities of the Bar. At present attorneys enjoy a privileged status given to no other profession. Judges must be attorneys, judges and attorneys control admissions, discipline, and exclusion from the profession. Judges and attorneys determine whom the Governor may consider for judgeships.

I see no reason for the privileged status. It seems that the appropriate thing to do would be to create a Board of Legal Practice (similar to the Medical Board, Dental Board, and Board of Engineers and Architects) to regulate the profession. Such a board should have a sizeable lay presence as other professional boards do.

Appointments to such a board would be made by an elected representative (the Governor), and would be confirmed by elected representatives (the Legislature). The people would then have at least an indirect way of influencing the legal profession.

Absent such a solution, we should at least reduce the power of this closed corporation by taking away the requirement that an attorney belong to the Alaska Bar Association in order to practice his profession in this State.

Original sponsor: Rodey

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 HOUSE CS FOR SENATE BILL NO. 392 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act continuing the existence of the Board of
7 Governors of the Alaska Bar Association and amending
8 the statutes relating to the practice of law in the
9 state; amending Alaska State Supreme Court Bar Rule 2;
10 repealing section 3 of Alaska State Supreme Court Bar
11 Rule 2 and section 7 of Alaska State Supreme Court Bar
12 Rule 3; and providing for an effective date."

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

14 * Section 1. AS 08.03.010(c) is amended by adding a new paragraph to
15 read:

16 (19) Board of Governors of the Alaska Bar Association (AS 08.-
17 08.040) -- June 30, 1985.

18 * Sec. 2. AS 08.08.040 is amended to read:

19 Sec. 08.08.040. BOARD OF GOVERNORS OF THE ALASKA BAR. (a) There
20 is created [HEREBY CONSTITUTED] a Board of Governors of the Alaska Bar
21 to be elected under bylaws and regulations adopted [PROMULGATED] by the
22 board.

23 (b) The board consists of nine active members elected by the
24 active members of the Alaska Bar and one person who is appointed by the
25 governor and who is not an attorney.

26 * Sec. 3. AS 08.08.050(a) is amended to read:

27 Sec. 08.08.050. SELECTION [ELECTION] OF THE BOARD. (a) Two
28 members of the board shall be elected by and from among the members of
29 the association resident in the first judicial district; four members

1 of the board shall be elected by and from among the members of the
2 association resident in the third judicial district; two members by and
3 from among the members of the association resident in the combined area
4 of the second and fourth judicial districts; and one member at large
5 from the entire state. One member who is not an attorney shall be
6 appointed by the governor and is subject to confirmation by the legis-
7 lature in joint session.

8 * Sec. 4. AS 08.08.050(b) is amended to read:

9 (b) Members of the Board of Governors shall hold office for three
10 years and until their successors are elected or appointed and qualified.

11 * Sec. 5. AS 08.08.050(c) is repealed and reenacted to read:

12 (c) Board members shall be selected on the following triennial
13 rotation:

14 (1) in the first year, one member from the first judicial
15 district, one member from the combined area of the second and fourth
16 judicial districts, one member from the third judicial district, and an
17 appointed member;

18 (2) in the second year, one member at large and two members
19 from the third judicial district; and

20 (3) in the third year, one member from the combined area of
21 the second and fourth judicial districts, one member from the third
22 judicial district, and one member from the first judicial district.

23 * Sec. 6. AS 08.08.070 is repealed and reenacted to read:

24 Sec. 08.08.070. VACANCIES ON THE BOARD. (a) The board shall
25 fill a vacancy in the elected membership of the board until the next
26 annual election.

27 (b) The governor shall appoint a member to fill a vacancy in the
28 appointed membership of the board for the unexpired term.

29 * Sec. 7. AS 08.08 is amended by adding a new section to read:

1 Sec. 08.08.075. MEETINGS OF THE BOARD. AS 44.62.310 and 44.62.312
2 apply to the meetings of the board. Members of the Alaska Bar and the
3 public shall be given 30 days notice of meetings of the board except
4 for emergency meetings. Meetings of the board shall take place in the
5 state.

6 * Sec. 8. AS 08.08.080 is repealed and reenacted to read:

7 Sec. 08.08.080. POWERS OF BOARD. (a) Except as may be otherwise
8 provided in this chapter or the Alaska Bar Rules, the board may approve
9 and recommend to the state supreme court rules

10 (1) concerning admission, discipline, licensing, and con-
11 tinuing legal education, and defining the practice of law;

12 (2) providing for continuing legal education and for certifi-
13 cation of a continuing legal education program;

14 (3) establishing a program for the certification of attorneys
15 as specialists.

16 (b) The board may adopt bylaws and regulations consistent with
17 this chapter and the Alaska Bar Rules

18 (1) concerning membership and the classification of member-
19 ship in the Alaska Bar;

20 (2) fixing the annual membership fees;

21 (3) concerning annual and special meetings.

22 (c) The board may *consult with the judges*

23 (1) provide for employees of the Alaska Bar, the time, place
24 and method of their selection, and their respective powers, duties,
25 terms of office, and compensation;

26 (2) establish, collect, deposit, invest, and disburse member-
27 ship and admission fees, penalties, and other funds;

28 (3) sue in the name of the Alaska Bar in a court of competent
29 jurisdiction to enjoin a person from doing an act constituting a vio-

1 lation of this chapter.

2 (4) provide for all other matters affecting in any way the
3 organization and functioning of the Alaska Bar.

4 * Sec. 9. AS 08.08.085 is amended by adding new subsections to read:

5 (b) The report of the Board of Governors shall note

6 (1) each addition, modification, or repeal of a bylaw or
7 regulation of the Alaska Bar;

8 (2) each addition, modification, or repeal of the Alaska Bar
9 Rules proposed to or adopted by the state supreme court.

10 (c) The report of the Board of Governors may recommend to the
11 legislature changes to this chapter and to the provisions of state law
12 generally.

13 * Sec. 10. AS 08.08 is amended by adding a new section to read:

14 Sec. 08.08.201. ADMINISTRATION OF BAR EXAMINATION. (a) The
15 Board of Governors shall administer the bar examination under the
16 Alaska Bar Rules.

17 (b) The Board of Governors may contract with another state or a
18 testing organization for the preparation and grading of a portion of
19 the Alaska Bar examination.

20 (c) The Board of Governors shall contract with persons experienced
21 in the administration of bar examinations for advice on the preparation
22 and grading of the portion of the bar examination prepared under the
23 direction of the board.

24 (d) The Board of Governors shall establish and maintain standards
25 for experience and training of persons who administer the portion of
26 the bar examination prepared under the direction of the board.

27 * Sec. 11. AS 08.08.230(a) is amended to read:

28 (a) Any person not an active member of the Alaska Bar and not
29 licensed to practice law in Alaska who engages in the practice of law

1 under this chapter or represents that he is [HIMSELF AS] entitled to
2 engage in the practice of law as that term is defined in the Alaska Bar
3 Rules, or an active member of the Alaska Bar who wilfully employs such
4 a person knowing that the [SUCH] person is engaging in the practice of
5 law or representing himself to be entitled to so engage is guilty of a
6 class A misdemeanor [AND UPON CONVICTION IS PUNISHABLE BY A FINE OF NOT
7 MORE THAN \$5,000, OR BY IMPRISONMENT FOR NOT MORE THAN ONE YEAR, OR BY
8 BOTH].

9 * Sec. 12. Alaska State Supreme Court Bar Rule 2, Section 1(b), is
10 amended to read:

11 (b) Be a graduate of a law school which was accredited or approved
12 by the council of legal education of the American Bar Association or
13 the Association of American Law Schools when the applicant entered or
14 graduated or submit proof that the law course required for graduation
15 from such a law school will be completed and that a degree will be
16 received as a matter of course before the date of examination. An ap-
17 plicant who has not graduated from a law school accredited under this
18 section who has been licensed to practice law in one or more jurisdic-
19 tions in the United States for five years since his admission is eli-
20 gible to take the bar examination. Graduates of law schools in which
21 the principles of English common law are taught but which are located
22 outside the United States and beyond the jurisdiction of the American
23 Bar Association and the Association of American Law Schools, may
24 qualify for examination upon proof that the foreign law school from
25 which they graduated meets the American Bar Association Council of
26 Legal Education Standards for approval;

27 * Sec. 13. AS 08.03.010(b)(11) and AS ~~08.08.220~~ are repealed.

28 * Sec. 14. The governor shall appoint a non-attorney member to the Board
29 of Governors for a three-year term.

1 * Sec. 15. Section 3 of Alaska Supreme Court Bar Rule 2 is repealed.
2 Section 7 of Alaska Supreme Court Bar Rule 3 is repealed.

3 * Sec. 16. Section 12 of this Act amends Alaska Supreme Court Bar
4 Rule 2.

5 * Sec. 17. This Act takes effect immediately in accordance with AS 01.-
6 10.070(c).

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Senator Parr offered the following amendment No. 2:

Page 4, line 17: insert new *Sec. 10:

*Sec. 10. AS 08.08.100 is repealed and reenacted to read:

AS 08.08.100 Administrative Procedures Act. The bylaws and regulations adopted by the board or the members of the Alaska Bar under this Chapter that only relate to internal management of the Bar shall be posted for 30 days before their adoption. Regulations that concern matters of public policy shall be adopted under the Administrative Procedures Act (AS 44.62).

Senator Parr offered the following amendment No. 3:

Page 4, line 22: insert new Sections 12 and 13:

*Sec. 12. AS 08.08.020 is repealed.

*Sec. 13. AS 08.08.210(a) is amended to read:

(a) No person may engage in the practice of law in the state unless he is licensed to practice law in Alaska [AND IS AN ACTIVE MEMBER OF THE ALASKA BAR]. A member of the bar in good standing in another jurisdiction may appear in the courts of the state under the rules the supreme court may prescribe.

Introduced: 4/6/81
Referred: Judiciary and
Finance

1 IN THE SENATE

BY RODEY

2 SENATE BILL NO. 392 am

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act continuing the existence of the Board of
7 Governors of the Alaska Bar Association and amending
8 the statutes relating to the practice of law in the
9 state; and providing for an effective date."

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

11 * Section 1. AS 08.03.010(c) is amended by adding a new paragraph to
12 read:

13 (19) Board of Governors of the Alaska Bar Association (AS 08.-
14 08.040) -- June 30, 1984. ^{1985 *}

15 * Sec. 2. AS 08.08.040 is amended to read: ^{10 members (10 members) *}

16 Sec. 08.08.040. BOARD OF GOVERNORS OF THE ALASKA BAR. (a) There
17 is created [HEREBY CONSTITUTED] a Board of Governors of the Alaska Bar
18 to be elected under bylaws and regulations adopted [PROMULGATED] by the
19 board.

20 (b) The board consists of nine active members elected by the
21 active members of the Alaska Bar and three persons who are appointed
22 by the governor and who are not attorneys.

23 * Sec. 3. AS 08.08.050(a) is amended to read:

24 Sec. 08.08.050. SELECTION [ELECTION] OF THE BOARD. (a) Two
25 members of the board shall be elected by and from among the members of
26 the association resident in the first judicial district; four members
27 of the board shall be elected by and from among the members of the
28 association resident in the third judicial district; two members by and
29 from among the members of the association resident in the combined area

House
1983
←

House
Section 2
←
almost identical

House 8 bar
3 lay members

House
Section 4
←
Identical

1 of the second and fourth judicial districts; and one member at large
2 from the entire state. Three members who are not attorneys shall be
3 appointed by the governor and are subject to confirmation by the legis-
4 lature in joint session.

House Section 4
Treaty 5 | * Sec. 4. AS 08.08.050(b) is amended to read:

6 (b) Members of the Board of Governors shall hold office for three
7 years and until their successors are elected or appointed and qualified.

House Section #6
8 * Sec. 5. AS 08.08.050(c) is repealed and reenacted to read:

9 (c) Three board members shall be selected annually, on the fol-
10 lowing triennial rotation:

11 (1) in the first year, one member from the first judicial
12 district, one member from the combined area of the second and fourth
13 judicial districts, one member from the third judicial district, and
14 one appointed member;

15 (2) in the second year, one member at large, two members
16 from the third judicial district, and ~~one appointed member~~ *;

17 (3) in the third year, one member from the combined area
18 of the second and fourth judicial districts, one member from the
19 third judicial district, one member from the first judicial district,
20 and one appointed member. *

House Section #9
Treaty 21 | *Sec. 6. AS 08.08.070 is repealed and reenacted to read:

22 Sec. 08.08.070. VACANCIES ON THE BOARD. (a) The board shall
23 fill a vacancy in the elected membership of the board until the next
24 annual election.

25 (b) The governor shall appoint a member to fill a vacancy in the
26 appointed membership of the board for the unexpired term.

House Section #9
Treaty 27 | * Sec. 7. AS 08.08 is amended by adding a new section to read:

28 Sec. 08.08.075. MEETINGS OF THE BOARD. AS 44.62.310 and 44.62.312
29 apply to the meetings of the board. Members of the Alaska Bar and the

1 public shall be given 30 days notice of meetings of the board except
2 for emergency meetings. Meetings of the board shall take place in the
3 state.

4 * Sec. 8. AS 08.08.080 is amended to read:

5 Sec. 08.08.080. POWERS OF BOARD. (a) Except as may be otherwise
6 provided in this chapter or the Alaska Bar Rules, the board may adopt
7 ~~reasonable~~ provisions

8 § (1) concerning membership and the classification of member-
9 ship in the Alaska Bar;

10 § (2) providing for employees of the Alaska Bar, the time,
11 place and method of their selection, and their respective powers,
12 duties, terms of office, and compensation;

13 § (3) concerning annual and special meetings;

14 § (4) concerning the establishment, collection, deposit, in-
15 vestment, and disbursement of membership and admission fees, penalties,
16 and all other funds;

17 § [(5) PROVIDING FOR THE ORGANIZATION AND GOVERNMENT OF LOCAL
18 SUBDIVISIONS OF THE ALASKA BAR;]

19 § (6) providing for all other matters affecting in any way the
20 organization and functioning of the Alaska Bar.

21 (b) The board may

22 A (1) approve and recommend to the state supreme court [ADDI-
23 TIONAL RULES FOR PROMULGATION BY THE COURT INCLUDING] rules concerning
24 admission, [AND] discipline, licensing and continuing legal education
25 [AND DEFINING THE PRACTICE OF LAW];

26 (2) adopt reasonable bylaws and regulations consistent with
27 this chapter and the Alaska Bar Rules;

28 (3) sue in the name of the Alaska Bar in a court of competent
29 jurisdiction to enjoin a person from doing an act constituting a vio-

1 lation of this chapter;

2 (4) establish classifications of membership and fix the
3 annual membership fees; [FEE FOR ACTIVE AND INACTIVE MEMBERS]

4 (5) provide for continuing legal education and for certifi-
5 cation of a continuing legal education program;

6 (6) establish a program for the certification of attorneys
7 as specialists.

8 * Sec. 9. AS 08.08.085 is amended by adding new subsections to read:

9 (b) The report of the Board of Governors shall note

10 (1) each addition, modification, or repeal of a bylaw or
11 regulation of the Alaska Bar;

12 (2) each addition, modification, or repeal of the Alaska Bar
13 Rules proposed to or adopted by the state supreme court.

14 (c) The report of the Board of Governors may recommend to the
15 legislature changes to this chapter and to the provisions of state law
16 generally.

17 * Sec. 10. AS 08.03.010(b)(11) is repealed.

18 * Sec. 11. The governor shall appoint the initial non-attorney members
19 to the Board of Governors for the following terms: one member for a three-
20 year term; one member for a two-year term; and one member for a one-year
21 term.

22 * Sec. 12. This Act takes effect immediately in accordance with AS 01.-
23 10.070(c).

Introduced: 3/23/81
Referred: Judiciary

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 HOUSE BILL NO. 371

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act continuing the existence of the Board of
7 Governors of the Alaska Bar Association and amending
8 the statutes relating to the practice of law in the
9 state; amending Alaska State Supreme Court Bar Rules
10 2, 7, and 62; and providing for an effective date."

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

12 * Section 1. AS 08.03.010(c) is amended by adding a new paragraph to
13 read:

14 (19) Board of Governors of the Alaska Bar Association (AS 08.-
15 08.040) - June 30, 1983.

16 * Sec. 2. AS 08.08.010 is amended to read:

17 Sec. 08.08.010. CREATION OF ALASKA BAR ASSOCIATION. (a) There
18 is created an agency [INSTRUMENTALITY] of the state known as the Alaska
19 Bar Association, referred to in this chapter as the Alaska Bar. The
20 Alaska Bar shall have a common seal, may sue and be sued, and may, for
21 the purpose of carrying into effect and promoting the objects of the
22 Alaska Bar, enter into contracts and acquire, hold, encumber and dispose
of real and personal property.

24 (b) Except as otherwise provided by this chapter, the Alaska Bar
25 is subject to statutory requirements imposed on state agencies includ-
26 ing but not limited to AS 08.03, AS 24.20.271, AS 24.55, AS 44.62.310,
27 44.62.312 and AS 44.66.

28 * Sec. 3. AS 08.08.040 is amended to read:

29 Sec. 08.08.040. BOARD OF GOVERNORS OF THE ALASKA BAR. (a) There

1 is [HEREBY] constituted a Board of Governors of the Alaska Bar to be
2 elected under bylaws and regulations adopted [PROMULGATED] by the
3 board.

4 (b) The board consists of eight (NINE) active members elected
5 by the active members of the Alaska Bar and three persons who are
6 appointed by the governor and who are not attorneys. *Leave it
Unaltered*

7 * Sec. 4. AS 08.08.050(a) is amended to read:

8 Sec. 08.08.050. SELECTION [ELECTION] OF THE BOARD. (a) Two
9 members of the board shall be elected by and from among the members of
10 the association resident in the first judicial district; four members
11 of the board shall be elected by and from among the members of the
12 association resident in the third judicial district; two members by and
13 from among the members of the association resident in the combined area
14 of the second and fourth judicial districts. Three members who are not
15 attorneys shall be appointed by the governor and are subject to confir-
16 mation by the legislature in joint session [; AND ONE MEMBER AT LARGE
17 FROM THE ENTIRE STATE].

18 * Sec. 5. AS 08.08.050(b) is amended to read:

19 (b) Members of the Board of Governors shall hold office for three
20 years and until their successors are elected or appointed and qualified.

21 * Sec. 6. AS 08.08.050(c) is repealed and reenacted to read:

22 (c) Board members shall be selected annually, on the following
23 triennial rotation:

24 (1) in the first year, one member shall be appointed; one
25 member shall be elected from the first judicial district, one member
26 from the combined second and fourth judicial district, and one member
27 from the third judicial district;

28 (2) in the second year, one member shall be appointed; one
29 member shall be elected from the first judicial district, one member

1 from the combined second and fourth judicial district, and one member
2 from the third judicial district;

3 (3) in the third year, one member shall be appointed and two
4 members shall be elected from the third judicial district.

5 * Sec. 7. AS 08.08.060 is amended to read:

6 Sec. 08.08.060. ELECTION OF OFFICERS. The active members of the
7 Alaska Bar [WHO ARE IN ACTUAL ATTENDANCE AT THE ASSOCIATION'S ANNUAL
8 CONVENTION] shall elect by a majority vote [DURING THE CONVENTION] the
9 association's officers from the membership of the Board of Governors.

10 * Sec. 8. AS 08.08.070 is repealed and reenacted to read:

11 Sec. 08.08.070. VACANCIES ON THE BOARD. (a) The board shall
12 fill a vacancy in the elected membership of the board until the next
13 annual election.

14 (b) The governor shall appoint a member to fill a vacancy in the
15 appointed membership of the board for the unexpired term.

16 * Sec. 9. AS 08.08 is amended by adding a new section to read:

17 Sec. 08.08.075. MEETINGS OF THE BOARD. AS 44.62.310 and 44.62.312
18 apply to the meetings of the board. Members of the Alaska Bar and the
19 public shall be given 30 days notice of meetings of the board except
20 for emergency meetings dealing with the executive administrator of the
21 bar examination. Meetings of the board shall take place in the state.

22 * Sec. 10. AS 08.08.080 is amended to read:

23 Sec. 08.08.080. POWERS OF BOARD. (a) Except as may be otherwise
24 provided in this chapter or the Alaska Bar Rules, the board may adopt
25 reasonable provisions

26 (1) concerning membership and the classification of member-
27 ship in the Alaska Bar;

28 (2) providing for employees of the Alaska Bar, the time,
29 place and method of their selection, and their respective powers,

Changes
Statutes
(Seems good)

1 duties, terms of office, and compensation;

2 (3) concerning annual and special meetings;

3 (4) concerning the establishment, collection, deposit, in-
4 vestment, and disbursement of membership and admission fees, penalties,
5 and all other funds;

6 [(5) PROVIDING FOR THE ORGANIZATION AND GOVERNMENT OF LOCAL
7 SUBDIVISIONS OF THE ALASKA BAR;]

8 (6) providing for all other matters affecting in any way the
9 organization and functioning of the Alaska Bar;

10 (7) providing for continuing legal education and for certi-
11 fication of a continuing legal education program;

12 (8) establishing and maintaining a program for the certifi-
13 cation of attorneys as specialists.

14 (b) The board may

15 (1) approve and recommend to the state supreme court [ADDI-
16 TIONAL] rules for promulgation by the court including rules concerning
17 admission, [AND] discipline, licensing and continuing legal education
18 [AND DEFINING THE PRACTICE OF LAW];

19 (2) adopt reasonable bylaws and regulations consistent with
20 this chapter and the Alaska Bar Rules;

21 (3) sue in the name of the Alaska Bar in a court of competent
22 jurisdiction to enjoin a person from doing an act constituting a vio-
23 lation of this chapter;

24 (4) fix the annual membership fee for active, [AND] inactive,
25 and judicial members;

26 (5) recommend to the legislature changes to this chapter and
27 to the provisions of state law generally.

28 * Sec. 11. AS 08.08.085 is amended to read:

29 Sec. 08.08.085. ANNUAL REPORT TO LEGISLATURE. (a) The Board of

1 Governors shall report annually to the judiciary committees of the
2 legislature on all matters concerning admissions, discipline of members,
3 and disbarment proceedings, except for those matters defined as con-
4 fidential by court rule.

5 (b) The report of the Board of Governors shall note

6 (1) each addition, modification, or repeal of a bylaw or
7 regulation of the Alaska Bar;

8 (2) each addition, modification, or repeal of the Alaska Bar
9 Rules proposed to or adopted by the state supreme court.

10 * Sec. 12. AS 08.08.100 is amended to read:

11 Sec. 08.08.100. ADMINISTRATIVE PROCEDURE ACT. The bylaws and
12 regulations adopted by the board or the members of the Alaska Bar under
13 this chapter are [NOT] subject to the Administrative Procedure Act
14 (AS 44.62).

15 * Sec. 13. AS 08.08 is amended by adding a new section to read:

16 Sec. 08.08.105. THE PRACTICE OF LAW. (a) A person who is an
17 attorney, or who is not an attorney but who represents himself to be an
18 attorney, and who performs any of the following acts on behalf of
19 another person, with or without compensation, is engaged in the practice
20 of law;

21 (1) appearance in or conduct of litigation or performance of
22 an act in connection with proceedings, pending or prospective, before a
23 court in the state unless otherwise provided by court rule;

24 (2) appearance in or conduct of litigation or performance of
25 an act in connection with proceedings pending or prospective before
26 another body constituted by law to settle controversies;

27 (3) giving counsel as to a person's legal rights or obliga-
28 tions;

29 (4) preparation or procurement of instruments or other

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Version

New Section

E. Lively

1 papers creating, limiting, claiming, granting, terminating, or otherwise
2 securing legal rights; or

3 (5) engaging in an act or other practice determined by the
4 supreme court to constitute the practice of law.

5 (b) A person who is not an attorney and who does not represent
6 himself to be an attorney and who for compensation performs an act
7 described in (a) of this section is engaged in the practice of law
8 unless he performs an act set out in (a)(2) - (5) of this section and
9 the act is performed as part of the regular conduct of business the
10 primary purpose of which is other than the performance of an act set
11 out in (a) of this section and if the act does not consume a majority
12 of the person's work time.

13 (c) The provisions of (b) of this section do not apply to a
14 person working under the direct supervision of an attorney in the
15 course of that employment or to a government employee in the course of
16 his employment.

17 (d) The provisions of (b) of this section do not apply to a
18 person employed by a nonprofit corporation that is engaged in public
19 interest activities during the course of his employment by the nonprofit
20 corporation. A nonprofit corporation may be represented in court by an
21 officer or director who is not an attorney, notwithstanding AS 22.20.-
22 040, on a showing to the court that

23 (1) the nonprofit corporation cannot afford the expense of
24 hiring an attorney for the proceeding; and

25 (2) the officer or director is competent to represent the
26 nonprofit corporation before the court.

27 * Sec. 14, AS 08.08 is amended by adding a new section to read:

28 Sec. 08.08.201. ADMINISTRATION OF BAR EXAMINATION. (a) The
29 Board of Governors shall administer the bar examination under the

New Section

16

1 Alaska Bar Rules.

2 (b) The Board of Governors may contract with another state or a
3 testing organization for the preparation and grading of a portion of
4 the Alaska Bar examination.

5 (c) The Board of Governors shall contract with persons experienced
6 in the administration of bar examinations for advice on the preparation
7 and grading of the portion of the bar examination prepared under the
8 direction of the board.

9 (d) The Board of Governors shall establish and maintain standards
10 for experience and training of persons who administer the portion of
11 the bar examination prepared under the direction of the board.

12 * Sec. 15. AS 08.08.210(c)(3) is amended to read:

13 (3) is employed by or under contract to the legislature and
14 whose activities would constitute the practice of law under this chapter
15 [AND UNDER ALASKA BAR RULES], until the results are released of the
16 third Alaska Bar examination following that person's employment

17 * Sec. 16. AS 08.08.210(d) is amended to read:

18 (d) Employees of the Department of Law whose activities would
19 constitute the practice of law under this chapter [AND UNDER ALASKA BAR
20 RULES] are required to obtain a license to practice law in Alaska, no
21 later than 10 months following the commencement of their employment.

22 * Sec. 17. AS 08.08.230(a) is amended to read:

23 (a) Any person not an active member of the Alaska Bar and not
24 licensed to practice law in Alaska who engages in the practice of law
25 under this chapter or [REPRESENTS HIMSELF AS ENTITLED TO ENGAGE IN THE
26 PRACTICE OF LAW AS THAT TERM IS DEFINED IN THE ALASKA BAR RULES, OR] an
27 active member of the Alaska Bar who wilfully employs such a person
28 knowing that the [SUCH] person is engaging in the practice of law or
29 representing himself to be entitled to so engage is guilty of a class A

New
Section
#15, 16
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1 misdemeanor [AND UPON CONVICTION IS PUNISHABLE BY A FINE OF NOT MORE
2 THAN \$5,000, OR BY IMPRISONMENT FOR NOT MORE THAN ONE YEAR, OR BY
3 BOTH].

4 * Sec. 18. Alaska State Supreme Court Bar Rule 2, Section 1(b), is
5 amended to read:

6 (b) Be a graduate of a law school which was accredited or approved
7 by the council of legal education of the American Bar Association or
8 the Association of American Law Schools when the applicant entered or
9 graduated or submit proof that the law course required for graduation
10 from such a law school will be completed and that a degree will be
11 received as a matter of course before the date of examination. An ap-
12 plicant who has not graduated from a law school accredited under this
13 section who has been licensed to practice law in one or more jurisdic-
14 tions in the United States for five years since his admission is eli-
15 gible to take the bar examination. Graduates of law schools in which
16 the principles of English common law are taught but which are located
17 outside the United States and beyond the jurisdiction of the American
18 Bar Association and the Association of American Law Schools, may qualify
19 for examination upon proof that the foreign law school from which they
20 graduated meets the American Bar Association Council of Legal Education
21 Standards for approval;

22 * Sec. 19. Alaska State Supreme Court Bar Rule 7, Section 1, is amended
23 to read:

24 Section 1. An applicant who has been denied an examination permit
25 or who has been denied certification to the Supreme Court for admission
26 to practice shall have the right within thirty days after notice of
27 such denial to file with the Board a written verified statement of
28 appeal. Failure timely to file an appeal statement shall constitute
29 waiver of appeal rights. In his statement an applicant shall state all

1 grounds upon which he intends to rely and may:

2 (a) object to the form of notice from which such appeal is taken
3 on the ground that it is so indefinite or uncertain that he cannot
4 reasonably prepare his statement;

5 (b) present new matter on which he relies to establish his eli-
6 gibility for admission to practice.

7 An applicant who is denied an examination permit or who is denied
8 certification shall allege facts which, if true, would establish an
9 abuse of discretion or improper conduct on the part of the Board, the
10 Executive Director, the Committee or a master. If the allegation in
11 the verified statement is [ARE] found to be sufficient by the Board, a
12 hearing shall be granted. A hearing shall be granted to an applicant
13 denied certification if his score on the bar examination is within five
14 points of the passing grade of the bar examination.

15 * Sec. 20. AS 08.03.010(b)(11), AS 08.08.090, 08.08.210(b), and 08.08.220
16 are repealed.

17 * Sec. 21. The provisions of AS 08.08.050 as amended by secs. 4 - 6 of
18 this Act that relate to the election of the members of the Board of Governors
19 of the Alaska Bar take effect at the first regular election of members of
20 the Board of Governors held after January 1, 1982. The term of the member
21 of the Board of Governors elected at large at the election held during 1980
22 terminates on the appointment by the governor and qualification of the three
23 non-attorney members of the Board of Governors under AS 08.08.050(a) as
24 enacted in sec. 4 of this Act.

25 * Sec. 22. The governor shall appoint non-attorney members to the Board
26 of Governors for the following initial terms: one member for a three-year
27 term; one member for a two-year term; and one member for a one-year term.

28 * Sec. 23. Section 3 c. Alaska Supreme Court Bar Rule 2 is repealed.
29 Section 7 of Alaska Supreme Court Bar Rule 3 is repealed.

*Roselle
Preamble
Mishkin
have...*

(Handwritten mark)

*Section
Version*

*Roselle
Preamble
Mishkin
have...*

1 * Sec. 24. Section 18 of this Act amends Alaska Supreme Court Bar Rule
2 2. ~~Section 19 of this Act amends Alaska Supreme Court Bar Rule 7.~~

3 * Sec. 25. ~~Section 12~~ of this Act has the effect of changing Alaska
4 Supreme Court Bar Rule 62 by requiring the Board of Governors of the Alaska
5 Bar to adopt bylaws and regulations under the Administrative Procedures Act
6 (AS 44.62) and not under Bar Rule 62.

7 * Sec. 26. This Act takes effect June 30, 1981.
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Senator Parr offered the following amendment No. 2:

Page 4, line 17: insert new *Sec. 10:

*Sec. 10. AS 08.08.100 is repealed and reenacted to read:

AS 08.08.100 Administrative Procedures Act. The bylaws and regulations adopted by the board or the members of the Alaska Bar under this Chapter that only relate to internal management of the Bar shall be posted for 30 days before their adoption. Regulations that concern matters of public policy shall be adopted under the Administrative Procedures Act (AS 44.62).

Senator Parr offered the following amendment No. 3:

Page 4, line 22: insert new Sections 12 and 13:

*Sec. 12. AS 08.08.020 is repealed.

*Sec. 13. AS 08.08.210(a) is amended to read:

(a) No person may engage in the practice of law in the state unless he is licensed to practice law in Alaska [AND IS AN ACTIVE MEMBER OF THE ALASKA BAR]. A member of the bar in good standing in another jurisdiction may appear in the courts of the state under the rules the supreme court may prescribe.

BOARD OF GOVERNORS

ALASKA BAR ASSOCIATION

P O BOX 279
ANCHORAGE, ALASKA 99510
AREA CODE 907/272-7469

RANDALL P. BURNS EXECUTIVE DIRECTOR

MARVIN S FRANKEL DISCIPLINARY ADMINISTRATOR AND BAR COUNSEL



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TREASURER
ANCHORAGE

TO: William B. Rozell, Esq.
President
Alaska Bar Association
FROM: Randall P. Burns *RPB*
Executive Director
Alaska Bar Association

DATE: June 1, 1981

SUBJECT: Number of Alaska Bar Examination Applicant
Re-reads from the Past Four (4) Exams

Per your request of May 26, 1981, for information concerning the impact on the Board of Section 19 of House Bill 371, please note the following statistics on the last four (4) bar examinations administered by the Board of Governors of the Alaska Bar Association:

<u>Date of Bar Exam</u>	<u>Total No. of Applicants</u>	<u>No. of Applicants Scoring Between 65.0 & 69.94 on the Exam</u>
July, 1979	102 General Applicants 13 Attorney Applicants	24 (with 3 passing after re-read)
February, 1980	69 General Applicants 10 Attorney Applicants	22 (with 5 passing after re-read)
July, 1980	93 General Applicants 13 Attorney Applicants	25 (with 3 passing after re-read)
February, 1981	84 General Applicants 10 Attorney Applicants	28 (with 8 passing after re-read)

347 Inuvik Street
Juneau, Alaska 99801
May 14, 1981

Fred Brown, Legislator
House- Judiciary Committee
Pouch v
Juneau, Alaska 99801

MAY 15 1981


Dear Mr Brown;

It has come to my attention that there are hearings concerning the funding of the Alaska Bar Association- The Sunset Clause.

I would like it be known that recently I had to call a member of the Bar Association to help with a complaint I had about an attorney. I found the member most interested in helping me. The Bar counsel responded quickly and effectively with my problem. The attorney himself responded positively and professionally to the letter the Bar Counsel had sent to him: Thus my problem was quickly solved.

As I member of the medical profession (and also was married 10 years to a physician,), I must add that I only wish that the public could have such help from The American Medical Association. I strongly advise that the Alaska Bar Association be continued and supported as a means to help those of us who have no recourse against unethical attorneys. Thank you for your consideration.

Yours truly,


Judith Propst

La Courville



Alaska State Legislature

House of Representatives

Committee on Judiciary

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

March 12, 1980

The Honorable Terry Gardiner
Speaker of the House
Alaska State Legislature
Pouch Y, State Capitol
Juneau, Alaska 99811

Dear Mr. Speaker:

In compliance with AS 44.66.010 - 060 and referral by the Speaker of the House on January 15, 1980, the House Judiciary Committee has conducted a review of the Alaska Bar Association. By letter of July 31, 1979, the Speaker had notified the Committee of the forthcoming referral, thereby permitting advance work to be done during the interim between legislative sessions.

→ The Alaska Bar Association has taken the position "that it is not a State agency, and that it is not subject to the Sunset review process." The Association refused the Legislative Auditor access to some of its records; therefore, no performance audit has been conducted.

On November 7, 1979 the Committee requested information on 87 points; by letter of January 30, 1980 and a 71-page booklet, The Alaska Bar Association, February 1980, the Association answered completely 73 of the 87 points. Another 13 points were addressed by the Alaska Bar Association, but were not answered completely because of stated lack of adequate or feasibly retrievable information. On one point, a request for a copy of the card index on discipline, the Alaska Bar Association refused to reply, stating that it could not release this confidential information to the House Judiciary Committee.

In addition to receiving testimony during interim hearings, the Committee held 2 hearings to receive public testimony in Juneau. Also, 2 teleconference hearings were held to obtain testimony from Anchorage, Fairbanks, Kodiak, Valdez, Ketchikan, Sitka and Nome. Written testimony was received from 6 persons and the Kenai Peninsula

Bar Association. Oral testimony was received from about 15 persons. Witnesses included the president, president-elect, two former presidents, and three members of the present Board of Governors of the Association; the Ombudsman, and a number of attorneys.

The Alaska Supreme Court has delegated to the Association the responsibility for admissions and discipline, and by statute the Association may propose court rules or rule changes. All attorneys practicing in Alaska are required to be members of the Association, and to pay dues (now \$180.00 per year). Statutory authority is AS 08.08.01J - 250, commonly called the Integrated Bar Act, and some members of the Bar seem to feel that authority also resides in the inherent power of the Alaska Supreme Court.

The Committee found that the Association is conducting a number of worthwhile activities. Unfortunately, it is not clear that most of these are benefiting the general public, as opposed to Association members. (If, as it claims, the Association is not a State agency, it would be under no obligation to benefit the general public.)

In some ways one of the most disturbing revelations was the extent to which attorneys form a closed corporation. The Association comprises all attorneys in the State, only its members may practice law, it is in charge of admissions to the Bar and of discipline of its members, it nominates the three attorneys who sit on the Judicial Council, which in turn sends judgeship nominees to the Governor, judges must themselves be attorneys, and the Association furnishes nine members of the Board of Directors of Alaska Legal Services Corporation. Only in the disciplinary hearing and attorney fee review committees is there any lay presence. There seems to be at present no provision for the exercise of supervisory responsibility by the elected representatives of the people. The position of the Court System on the Alaska Bar Association sunset is included as an appendix to this report.

The Committee received more complaints and more testimony on the subject of Bar examinations than on any other subject related to the Alaska Bar Association. A major defect in the administration of the Alaska examination is that it is prepared and graded by persons who, while skilled attorneys, are amateurs in testing. Professionalism is needed in both the preparation and grading of the

examination to ensure that the examination will score persons only on relevant factors. The training of the preparers and graders should be financed by the income derived each year from the administration of the bar examination (about \$16,000 anticipated in 1980, not including the costs of any litigation which may arise from the examination).

There appears to be no discrimination against women in the Alaska Bar Association. Alaska has one of the highest percentages of women lawyers in the United States and, specifically, the highest percentage of women on its Board of Governors. In fact, the president of the Alaska Bar Association is a woman.

Although no apparent preference for non-minorities is shown, there is a disparity in the numbers of minorities versus non-minorities in the Alaska Bar Association. Ethnic minorities are poorly represented in the Alaska Bar Association. Present membership from these ethnic groups is as follows:

Alaska Native	5.
Black	<u>4</u>
Asian-American	<u>2</u>
Hispanic	<u>1</u>

To the best of our knowledge, 12 Native people have been admitted to the Alaska Bar since Statehood. The only reliable statistics available are those reflecting current membership. Because the problem of low representation of minorities in the Alaska Bar Association has not been addressed adequately in the past, reasons for this situation cannot be determined at this time.

The Judiciary Committee recognizes that the percentage of minorities failing the Alaska bar examination, compared with the percentage of non-minority persons failing, is disproportionately high. The Committee believes that this disparity may be caused in part by cultural factors.

The Committee does not believe that the Alaska Bar Association intends to discriminate against minorities. The Committee commends the Board of Governors' Legal Educational Opportunities Committee for its work in gathering statistics regarding minorities in the Alaska Bar Association. The Committee urges the Board of Governors to

continue this work so that accurate minority pass rates may be established.

The Committee urges the Board of Governors to develop a program which will speak to the statistics reflecting minority representation in the Alaska Bar Association and the apparently low percentage of minority and non-minority individuals who pass the bar examination.

The Committee urges the Board of Governors to be aware of the disparity in minority participation in the bar and to direct its Committee of Bar Examiners to continually scrutinize the preparation and grading of the examination for possible cultural biases.

The Committee urges the Board of Governors to look into establishing some other criteria for evaluating an individual's competency to practice law in the State.

When, after completion of testimony, the Committee began its deliberations, the diversity of opinion was clearly evident. Apparently no one believed that the Alaska Bar Association should be extended for the maximum four years. Some members wanted to treat attorneys like other professionals, with a board to handle admissions and discipline; others preferred to make the Supreme Court directly responsible for those functions; and a third group preferred a short extension together with appropriate statute changes. The last viewpoint was finally adopted.

Findings required by AS 44.66.050(d) follow:

(1) an identification of the problems or the needs that the programs and activities of the board, commission or agency are intended to address;

Finding: The Alaska Bar Association is intended to address the need for admission and discipline of attorneys in the State.

(2) a statement, to the extent practicable, of the objectives of the program of the board, commission, or agency program, and its anticipated accomplishments;

Finding: The objectives are to upgrade the Bar in terms of education, competence, and

professionalism of its members, and to perform some services for the general public.

(3) an identification of any other programs having similar, conflicting or duplicate objectives;

Finding: There are no other programs having similar or conflicting objectives.

(4) an assessment of alternative methods of achieving the purposes of the program;

Finding: The responsibilities could be turned over to the Supreme Court or to a professional board in the Division of Occupational Licensing. The Committee has considered these alternatives but believes that they are not feasible at this time.

(5) an assessment of the consequences of eliminating the board, commission or program and consolidating its activities with another program, or of funding it at a lower level;

Finding: The Association could not be eliminated unless some other agency were responsible for the functions.

(6) a justification for the recommended continuation or extension of the board, commission or program, and an explanation of the manner in which it avoids duplication of or conflict with other efforts;

Finding: The extension of the Association for one year will permit time for a more thorough review and there is no duplication of other efforts.

(7) any other information which, in the opinion of the committee, would improve the performance of the board, commission or agency with respect to its representation of and responsiveness to the public interest;

Finding: Information which would improve the performance of the Association is included in

other portions of this report or in legislation to be introduced by the House Judiciary Committee.

The House Judiciary Committee finds that:

- (1) The Alaska Bar Association should be extended until June 30, 1981.
- (2) Statutory changes are needed in the public interest. The Committee will propose a bill incorporating these changes.

Charles H. Parr, Chairman

Nels A. Anderson, Jr.

Ramona L. Barnes

Fred E. Brown

Thelma Buchholdt

Hugh Malone

Terry Martin

Patrick M. O'Connell

Randy Phillips



Alaska Court System

State of Alaska

303 "K" STREET
ANCHORAGE, ALASKA
99501

ARTHUR H. SNOWDEN II
ADMINISTRATIVE DIRECTOR

(907) 274-8611

March 4, 1980

Representative Charles H. Parr
Pouch V
Juneau, Alaska 99811

Dear Representative Parr:

You have asked that I comment on behalf of the Court System concerning the sunset legislation of the Alaska Bar Association currently pending before your committee.

I have conferred with the Supreme Court with regard to your request and they asked me to comment as follows.

The Court strongly supports continued existence of the Alaska Bar Association as an integrated bar. The Court further suggests that the Bar Association and the Legislative Audit Committee reach a reasonable accommodation of the current dispute.

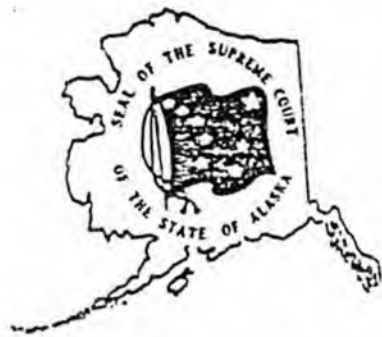
The Court has not given me brief to comment further on the subject. I hope these comments will help the committee.

Cordially,

Arthur H. Snowden, II
Administrative Director

AHS:cm

cc: Donna Willard, Esq.
President, Alaska Bar Association



Alaska Court System

State of Alaska

303 "K" STREET
ANCHORAGE, ALASKA
99501

ARTHUR H. SNOWDEN II
ADMINISTRATIVE DIRECTOR

(907) 274-8611

March 12, 1980

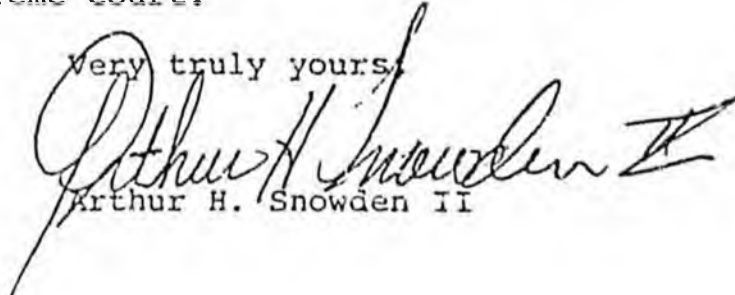
The Hon. Charles Parr, Chairman
House Judiciary Committee
Room 126, State Capitol Building
Juneau, Alaska 99811

Dear Representative Parr:

In my letter of March 4, 1980, with reference to the sunset of the Alaska Bar Association, I stated in the last sentence that the Court hopes that the Bar Association and the Legislative Budget and Audit Committee can reach a reasonable accommodation of their present dispute.

I wish to make it clear that in commenting on this subject, in no way did I intend to comment or convey any information on the merits of the controversy between the Legislative Budget and Audit Committee and the Alaska Bar Association before the Supreme Court.

Very truly yours,



Arthur H. Snowden II

REPORT OF EXAMINATION OF COURT DECISIONS

1. "If the legislature intended that arresting officers advise citizens of their statutory rights, an amendment to the law is required." p. 32.

Concerns AS 28.35.033(e). Question presented was whether "any provision of law obliges an arresting officer to advise a motorist required to submit to a breath test for sobriety of his right to obtain an independent blood-alcohol test." (emphasis added)

Supreme Court indicated that the law as written did not require officers to inform citizens of this option. (Palmer v. State, 604 P.2d 1106)

2. Page 69 presents a case on tuition grant program and private education institutions.

Aren't you co-sponsoring a bill to allow private educational institutions to qualify under loan programs? I don't know if this information would be interesting but it does deal with private educational institutions, and constitutional questions surrounding that issue.

3. Page 71 concerns judges disqualifying themselves from cases when they feel incompetent to act. Review of laws was recommended.
4. Pages 74-5 concerns the use of internal memoranda in court cases -- whether or not, in this case, they were admissible, which the Court rules they were. Review is desirable (AS 28.35.120) but not particular action was recommended.
5. Pages 76-77. Alaska Uniform Contributions Among Tort Feasors Act. Review of the laws and "interaction" is recommended in the joint and several liability areas.
6. Page 79-80, AS 47.40.010(a)(3), AS 47.40.040, child care services. Review was recommended because of unclear legislative intent.
7. Page 84. AS 29.48.320, AS 29.53.415(a). Ability of borough to establish real property lien under its authority to collect sales tax. Review recommended.
8. Page 85. AS 08.08.100, AS 44.62.310, AS 44.62.312. Alaska Bar Association Board of Governors power to conduct meetings in opposition to open meeting laws. Court held on 3-2 that AS 08.08.100 exempts the Alaska Bar from the Administrative Procedures Act. Review is recommended.

*Randy: Would be interested in review of Bar Assoc. concerning open
judiciary HE might be
of interest to you*

9. Page 86. AS 09.55.580(A) - Alaska's Wrongful Death Act. Definition of "other dependents". Court noted ambiguities in law. Review of definition is recommended.
10. Page 89. AS 11.15.295, AS 12.55.080 are in conflict and should be clarified if the Legislature is not comfortable with results of Gilbert v. State regarding minimum sentences.
11. Page 90. Article I, Section 3, Constitution; AS 11.40.210, AS 11.40.230. State prostitution laws which are gender specific and violate state constitution. Court concluded that statute as written is unconstitutional because it is gender specific. Review is recommended.
12. Page 93. AS 09.50.250, AS 22.10.020(a). Contractor's right to appeal adverse decision of Department of Highways. Legislative review of AS 09 is recommended.
13. Pages 94-95, AS 33.20.030, AS 33.20.040, AS 33.15.190. Mandatory release of an incarcerated prisoner under AS 33.20.030 - 33.20.040 revoked by Board of Parole question. Supreme Court held that it could be revoked. Court "characterized the laws, as noted, as being 'almost hopelessly in conflict'." Review is recommended.
14. Page 96. AS 23.20.380. Unemployment compensation when employee voluntarily quits job and moves to area which has no employment opportunities. Because of the justices' diverse opinions, review is recommended.

In all cases, when "review is recommended", such review has been recommended by the Legislative Affairs Agency.



STATE OF ALASKA

Legislative Affairs Agency

A
REPORT TO THE
ELEVENTH STATE LEGISLATURE

REPORT OF EXAMINATION OF COURT DECISIONS
CONSTRUING ALASKA STATUTES RENDERED BY
THE SUPREME COURT OF ALASKA

November 1980

*Prepared
by the*

LEGISLATIVE AFFAIRS AGENCY
Pouch V, State Capitol
Juneau, Alaska 99811

NOVEMBER

1980

FOREWORD

AS 24.20.065(a) requires that the Legislative Council annually examine administrative regulations, published opinions of state and federal courts and of the Department of Law that rely on state statutes, and final decisions adopted under the Administrative Procedures Act (AS 44.62) to determine whether or not

- (1) the courts and agencies are properly implementing legislative purposes;
- (2) there are court or agency expressions of dissatisfaction with state statutes;
- (3) the opinions or regulations indicate unclear or ambiguous statutes.

Under AS 24.40.065(b) the Council is to make a comprehensive report of its findings and recommendations to the members of the Legislature at the start of each regular session.

This edition of the review by the attorneys of the Legislative Affairs Agency is limited to an examination of court opinions; the review includes not only all of the opinions of the Alaska Supreme Court that fall under the three headings described above, but also opinions of other courts that fit within the three headings.

The review of administrative regulations is accomplished by the Agency at the direction of the Administrative Regulation Review Committee under AS 24.20.460 and is not included within this review.

This review of court decisions was prepared by Richard A. Bradley, Legislative Counsel under the general direction of Billy G. Berrier, Director of Legal Services, Legislative Affairs Agency.

The Agency welcomes comments from members of the Legislature on ways in which this review may become of more assistance to members.

Myrton R. Charney
Executive Director
Legislative Affairs Agency

November, 1980

The Publication Examines Cases
Construing Alaska Statutes Which Were Decided Between
July 27, 1979 and September 12, 1980

INTRODUCTION

The decisions examined in this publication are divided into three parts, according to the nature of the court's treatment of the subject matter of the case.

The format of the three parts is derived from the subsections of AS 24.20.065.

Part One will analyze those decisions where it was determined that "the courts . . . are properly implementing legislative purposes." AS 24.-20.065(1).

Part Two will analyze those decisions where it was determined that there are "court . . . expressions of dissatisfactions with state statutes." AS 24.20.065(2).

Part Three will analyze those decisions where it was determined that the "opinions . . . indicate unclear or ambiguous statutes." AS 24.20.065(3).

The index provided will list all cases published by the Alaska Supreme Court together with other decisions which construe statutes in force in the state.

The review will index the analyzed cases by Alaska Statute number and case name, as in the past. This review also includes an index of the descriptive words under which the analyses will fall.

PART I

Question presented: Whether the joyriding statute denies a defendant the equal protection of the laws because it permits the prosecutor the discretion to charge a felony or a misdemeanor based on identical criminal conduct.

Laws considered: AS 28.35.010(a).

Analysis: The Supreme Court determined that even if it were the rule in Alaska that the equal protection clause is violated when a statute prescribes different punishments for the same act committed under the same circumstances by persons in like circumstances, the statute before the court did not fall within that framework. The prosecutor did not have the unlimited discretion to charge a felony or a misdemeanor. To charge a felony and to get a felony conviction, the state must charge and prove that the defendant has been at least twice convicted of misdemeanor joyriding.

Discretion on the part of the prosecutor to bring either a felony or misdemeanor charge against the third offender does not violate equal protection. If a felony is charged, the prosecutor must prove that the offender is deserving of more severe punishment because of his multiple offenses.

Recommendation: The Supreme Court construed the law according to the apparent legislative intent. No legislative action is recommended.

Bell v. State, 598 P.2d 908.