

ALASKA LEGISLATURE COMMITTEE FILES 1901-1902

1672 SJ SB 79 - SB 90

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAP.TOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 28, 1981

SUBJECT: Disposition of community property rights
at death (SB 79)

TO: Senate Judiciary Committee

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

At the committee meeting held Monday, January 26th, to consider SB 79, Senator Parr inquired about the differences in language in Sec. 13.41.010(1) and (2) describing property affected. I stated that it appeared the difference was designed to follow the rules of the state of domicile concerning ownership between spouses. Senator Parr requested this be checked.

This assumption is supported by the official comment by the National Conference of Commissioners on Uniform State Laws published with the Act in 1971. A copy of this comment is enclosed. Sec. 2 of the proposed act is identical with Sec. 13.41.010.

BGB:ljb

Enclosure

varying approaches which could be taken, depending upon the state, suggest that the matter simply be left to court decision as to what portion would, under applicable choice of law rules, be treated as community property. The principle suggested is that at least a portion should be treated as community, if the appropriate law so treated it. Ordinarily, such questions should not arise if the problem is foreseen and effective planning takes place prior to death of a spouse.

1 SECTION 2. [*Rebuttable Presumptions.*] In determining whether
2 this Act applies to specific property the following rebuttable pre-
3 sumptions apply:

4 (1) property acquired during marriage by a spouse of that
5 marriage while domiciled in a jurisdiction under whose laws
6 property could then be acquired as community property; is pre-
7 sumed to have been acquired as or to have become, and re-
8 mained, property to which this Act applies; and

9 (2) real property situated in this State and personal property
10 wherever situated acquired by a married person while domiciled
11 in a jurisdiction under whose laws property could not then be
12 acquired as community property, title to which was taken in a
13 form which created rights of survivorship, is presumed not to be
14 property to which this Act applies.

COMMENT

The purposes of the rebuttable presumptions are simply to assist a court in applying the definitions in Section 1, through a process of tracing the property to a community property origin.

Subsection (1)

Subsection (1) of Section 2 deals with property acquired by the spouses while domiciled in a community property state. It thus provides that if one of the spouses acquired property while so domiciled, such property is "presumed" (a rebuttable presumption) to have been and remained community. It may be shown, of course, that such property was the separate property of the spouse and the law of the state of domicile may furnish the rule. For example the law of community domicile may provide the rule that property acquired in the name of the wife shall be deemed to be her separate property or that a particular subsequent act effectively severed the community property interests.

Example 1. H, married to W and domiciled in California, acquired stock; later H and W became domiciled in Michigan. Such property, if retained, is presumed to be property subject to this Act. By operation of Section 1 the proceeds of sale or exchange of such stock, and property acquired with the proceeds or income of such stock, would be deemed subject to the Act. If, however, upon the death of H, H's personal representative rebutted the presumption by evidence that the stock was acquired by H with his separate property (or by inheritance) neither the stock nor property acquired with that property or the income therefrom (unless the income itself would be subject to the Act because, under the applicable law, income from separate property is deemed to be community property) would be subject to this Act. Similarly the presumption may be rebutted by showing that such property, though originally community property, was effectively severed by an act of the spouses. It should be emphasized that the

presumption is simply one of procedural convenience and neither changes the nature of the property interests nor prevents an interested person from showing the separate nature of the property.

Subsection (2)

Subsection (2) sets up a rebuttable presumption that where a domiciliary of a common law state acquired property in such form as to indicate that title was in joint tenancy, tenancy by the entireties, or some other form of joint ownership with right of survivorship, it will be presumed that the property is not subject to the Act. This presumption was deemed appropriate as expressing the normal expectations of the spouses and to facilitate ascertainment of title to real property located in the enacting state, as well as personal property wherever located.

Example 2. John and Mary Jones, formerly domiciled in California, became domiciled in Illinois and purchased a residence, taking title in the names of "John and Mary Jones as joint tenants, and not as tenants in common, with right of survivorship." Regardless of the source of the funds, the Illinois residence would be presumed to be held in joint tenancy and not subject to this Act.

1 SECTION 3. [*Disposition upon Death.*] Upon death of a mar-
2 ried person, one-half of the property to which this Act applies is
3 the property of the surviving spouse and is not subject to testa-
4 mentary disposition by the decedent or distribution under the laws
5 of succession of this State. One-half of that property is the prop-
6 erty of the decedent and is subject to testamentary disposition
7 or distribution under the laws of succession of this State. With
8 respect to property to which this Act applies, the one-half of the
9 property which is the property of the decedent is not subject to the
10 surviving spouse's right to elect against the will [and no estate of
11 dower or curtesy exists in the property of the decedent].

COMMENT

This section deals with the dispositive rights, at death, of (1) a married person domiciled in the enacting state as to personal property and (2) of any married person, including a nondomiciliary of the enacting state, as to real property located in the enacting state; it also sets forth rules for intestate succession to property subject to this Act.

Testate Disposition

The dispositive pattern is the usual one encountered in the community property states; the deceased spouse may dispose of his one-half of the community property, subject to the provisions of Section 9.

Example. H and W were formerly domiciled in California and are now domiciled in Michigan. All of their property was community property prior to the move from California to Michigan. At H's death he held title to a home in Michigan which had been purchased with the proceeds of the sale of a home in California which had been community property. Stock acquired as community property in California was held in his name in safety deposit boxes located in Illinois and Michigan. H and W had acquired a cottage in California as community property, held in H's name, and it was so held at the time of his death. H and W acquired a Michigan resort condominium, taking title as tenants by the

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COMMITTEE REPORT
SENATE

1/14/81

FURTHER: None

Date: February 7 1981

Mr. President:

The Committee on JUDICIARY has had SB 80
relating to oath, affirmation, acknowledgment, notarization and verifia-
tion and adopting the Uniform Recognition of Acknowledgments Act

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

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for _____ same title
 new title
- and recommends _____
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

[Signature]

MEMBERS HAVING
OTHER RECOMMENDATIONS:

[Signature]

[Signature]
CHAIRMAN

SENATE JUDICIARY COMMITTEE

Bill Number SB-80 Original Sponser(s) RULES FOR LEGISLATIVE COUNCIL

Title RELATING TO OATH, AFFIRMATION, ACKNOWLEDGEMENT, NOTARIZATION AND VERIFICATION AND ADOPTING THE UNIFORM RECOGNITION OF ACKNOWLEDGEMENTS
Originally Recieved From _____

Contact ABBOTT / WALSH #4878 Date 1-14-81

Committee Recommendation (MAJORITY) _____

Report Attached yes no) Supporters _____

MINORITY _____

Report Attached yes no) Supporters _____

Object of Bill _____

Committee Amendments _____

Fiscal Impact _____

LAA Legal/Research Contact _____

Research/Information _____

Concerned Parties:

Supporting

Opposing

Code Revision Commission

DICK REGAN - CONTRACTOR TO COMMISSION

CODE REVISION COMMISSION



COMMISSIONERS
JOHN W. ABBOTT - CHAIRMAN
SUSAN A. BURKE - VICE CHAIRMAN
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FRED E. BROWN
L.S. KURTZ, JR.
WM. GRANT CALLOW

ALASKA STATE LEGISLATURE
POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-4878

EXECUTIVE SECRETARY
BILLY G. BERRIER

January 19, 1981

The Honorable Patrick M. Rodey
Chairman, Judiciary Committee
Alaska State Senate
Pouch V, State Capitol
Juneau, Alaska 99811

Re: SB 80--Oath, affirmation, acknowledgment,
notarization and verification

Dear Chairman Rodey:

The Alaska Code Revision Commission has submitted SB 80 regarding oath, affirmation, acknowledgment, notarization and verification. The commission is extremely interested in securing passage of the bill during this legislative session, if possible. Further, a member of the commission will be available to present testimony on behalf of the bill upon notification.

In an effort to be of assistance, I am enclosing a copy of the commission's transmittal memorandum which briefly sets out the need for this revision along with a copy of the commentary outlining the differences between existing law and proposed changes.

Commission secretary, Catherine Walsh, can be contacted at extension 4878 in order to coordinate testimony in the event hearings are scheduled in the near future.

We appreciate your attention to this matter and any assistance you can provide in securing SB 80's passage.

Very truly yours,

John W. Abbott
by: chw

John W. Abbott, Chairman
Alaska Code Revision Commission

JWA:chw

Enclosures

COMMISSIONERS
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FRED E. BROWN
L. S. KURTZ, JR.
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ALASKA STATE LEGISLATURE
FOURTH FLOOR, STATE CAPITOL
JUNEAU, ALASKA 99811
1987 466-4573

EXECUTIVE SECRETARY
BILLY G. BERRIE

MEMORANDUM

TO: Chairman, Alaska Legislative Council

FROM: John W. Abbott, Chairman *John W. Abbott*
Alaska Code Revision Commission

DATE: January 9, 1981

RE: Bill on oath, affirmation, acknowledgment,
notarization and verification

Pursuant to the authority granted in AS 24.20.075(c), the Alaska Code Revision Commission has prepared the attached bill on oath, affirmation, acknowledgment, notarization and verification and asks that it be introduced in the legislature.

The need for statutory treatment of these subjects became apparent during the commission's consideration of the state's recording law. The terms are frequently encountered in Alaska Statutes, but neither a clear definition nor recommended forms are provided. The enclosed bill would take care of the deficiency.

Much of the attached bill is the Uniform Recognition of Acknowledgments Act, drafted by the National Conference of Commissioners on Uniform State Laws. The history of this Act and the Uniform Acknowledgments Act is set out in the attached comments. The last Alaska uniform legislation in this general area was enacted in 1915.

This bill was submitted to the council on February 21, 1980.

JWA:dr:chw

cc: Hon. Jay S. Hammond, Governor
Hon. Jay A. Rabinowitz, Chief Justice
Myrton R. Charney, Executive Director
Legislative Affairs Agency

Enclosures

Uniform Recog. of Acknowledgments Act SENATE BILL NO. 80, by the Rules Committee by request of the Legislative Council (for the Code Revision Commission). Relates to oaths, affirmations, acknowledgments, notarization, and verification. Adopts the Uniform Recognition of Acknowledgments Act.

Adds new chapter to AS 09 entitled "Oath, Acknowledgment and Other Proof." Outlines who may take an oath, affirmation, and acknowledgment in Alaska; the procedure for certification of documents; procedures for notarizing documents; verification of documents (person has read it and believes it to be true); recognition of notarial acts performed outside the state; authentication of the authority of an officer to perform a notarial act; what is to be certified by a person taking acknowledgment; recognition of the cert. of acknowledgment; the contents and meaning of a cert. of acknowledgment; and acceptable forms for notarizing, verifying and making acknowledgments. Defines "notarial acts" as "acts which the laws of regulations of the state authorize notaries public of the state to perform, including the administering of oaths and affirmations, taking proof of execution and acknowledgment of instruments, and attesting documents." Chapter to be cited as the Uniform Recog. of Acknowledgments Act.

Amends AS 34.15.150(a), 34.15.160, and 34.15.180 relating to the executing of conveyances to require that conveyances be acknowledged under the provisions of the Uniform Recognition of Acknowledgments Act. Repeals: AS 09.65.010-020 (Foreign Commissioners for Acknowledgment); AS 34.15.170 (Cert. of Acknowledgment); 34.15.190-200 (relating to acknowledgments); AS 40.10 (Uniform Foreign Acknowledgment Act); and AS 44.53 (Foreign Commissioners for Acknowledgment). Does not provide for effective date.

COMMISSIONERS
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(907) 465-4678

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Enclosures

COMMENTARY TO ACCOMPANY
BILL ON
OATH, AFFIRMATION, ACKNOWLEDGMENT,
NOTARIZATION AND VERIFICATION

For general background, following is a brief history of uniform laws on acknowledgment. It is followed by a section analysis of the attached bill.

General Background

Although acknowledgments have long been recognized as an ideal subject for uniformity among the states, Alaska has lagged far behind in this area.

In 1892 the Conference of Commissioners on Uniform State Laws adopted an Act for the acknowledgment and execution of written instruments, the Uniform Acknowledgment Act. It was generally revised in 1939 and was further revised in 1942, 1949 and 1960. Alaska has never adopted it.

In 1914 the Conference adopted an Act for the acknowledgment of written instruments taken outside the United States, the Uniform Foreign Acknowledgments Act, which was enacted in Alaska as ch. 66, SLA 1915 and now is codified as AS 40.10. Although the Uniform Foreign Acknowledgments Act was withdrawn by the Conference in 1943, it still is retained in Alaska law.

In 1968 the conference brought out a new act called the "Uniform Recognition of Acknowledgments Act". The act covers most of the same ground as the "Uniform Acknowledgment Act", dealing both with in-state and out-of-state acknowledgments.

When the conference put out its most recent "Summaries of Uniform Acts Currently Recommended for Adoption", it listed the "Recognition" Act for adoption but categorized the "Uniform Acknowledgment Act" as "being revised or considered for revision at this time".

There is reason to believe the two uniform acts will merge into one, using the general format of the 1968 "Recognition" Act.

Organization of the bill

In this bill the overlapping subject matter of the two uniform acts is covered by a section on who can acknowledge in the state (see Sec. 010) coupled with adoption of the entire "Recognition" Act (see Sec. 050 - 130).

The sections between 020 - 040 extend the subject matter of the bill beyond acknowledgments, serve to perpetuate existing "under penalty of perjury" certification of certain documents and clarify what is an acceptable form of "notarization" and "verification", terms that are used throughout Alaska Statutes.

Section analysis

Sec. 010 lists who can acknowledge in Alaska. To the persons who can take an acknowledgment in Alaska is added a commissioned officer. This category is not in the "Uniform Acknowledgment Act" but is in the "Recognition" Act.

Sec. 020 is an existing section (AS 09.65.020) which permits substitution of a signature "under penalty of perjury" for an oath given before a notary in some limited circumstances.

Sections 030 and 040 are definitions of notarization and verification based upon the common meanings of the terms.

Sections 050 - 130 are the Uniform Recognition of Acknowledgments Act. Sec. 050 recognizes foreign acknowledgments and covers the general area covered by the 1914 Uniform Foreign Acknowledgments Act, AS 40.10, which would be superceded by this uniform act section.

Sec. 060(a), (b) and (c) provide what will suffice to prove the authority of a designated office holder to take an acknowledgment. A final sentence in (a) reading "Further proof of his authority is not required" is omitted in this bill because it is surplusage. No substantive effect is intended by the omission. (d) of the subsection distinguishes proof of the authority of the holder of the office from proof of the genuineness of the signature and the genuineness of the claim that the person is an officer.

Form requirements, which are generally minimal, are covered by sections 070 and 080.

Sec. 090 defines what is meant by the short-form phrase, "acknowledged before me". The general treatment is the same as the treatment of statutory short forms of deeds under AS 34.15.040.

Sec. 100 provides the statutory short form for acknowledgments made by persons acting in various capacities.

Sections 110 - 130 are the savings clause, uniformity, and

title sections expected in uniform acts.

Bill sections 2, 3 and 4 near the end of the bill are technical amendments to correct references and avoid duplication in the real property title.

The repeal of AS 09.65.010 - 09.65.020 at the end of the draft is needed to remove the subject matter of oaths to this new chapter.

Repeal of AS 34.15.170 is to avoid duplication with AS 09.63.060 in section 1 of the bill. (The section being repealed is erroneously titled; it covers authentication, not acknowledgment.) Repeal of AS 34.15.190 is to avoid retention of a section on acknowledgment by married persons that is no longer necessary. Repeal of AS 34.15.200 is to avoid duplication with AS 09.63.070 in section 1 of the bill; for notaries the section is also duplicated by existing AS 44.50.070. In a separate bill on recording the commission is proposing more far reaching amendments and repeals in these and other sections of AS 34.15. However, the treatment of AS 34.15 here is minimal, encompassing only what is necessary in order to make this bill a complete unit not dependant upon passage of any other bill.

The repeal of AS 40.10 is a repeal of the 1914 version of the Uniform Foreign Acknowledgments Act which is superceded by this bill.

AS 44.53 also is repealed. It is a chapter permitting the governor to appoint commissioners to serve as Alaska notaries in other states. The chapter is not necessary when foreign acknowledgments are recognized, as they are under existing AS 40.10 and would be under this bill. The governor's office can find no record of commissioners having been appointed under AS 44.53.

S.B. 80 (notes from tape)

"Acknowledgment is the statement under oath that ^{the signing} a person ~~signed~~ the document before ~~the~~ person making the certification, and is a form of approving a document."

"What is the difference between authentication and bonding(?). Why did you repeal this?"

- An authentication ~~might be, well, it~~ is just one of the various terms in the Alaska Statutes and it can be a certificate of authenticity or it doesn't have as defined, a meaning as most of the other terms that are used here.

In your paper, it says it repeals a section on acknowledgment by married persons is no longer necessary--that's the second one you repeal--the only reason I'm interested in repeal, is that that is when we get in serious trouble is by repealing something.

--As to the acknowledgment of a married woman, although it is now a year ago that we worked up this bill, the acknowledgment of a married woman is now, in our judgment, superseded by general law on equality of sexes, and the section simply says that acknowledgment of a married woman is good without any participation of her husband in the acknowledgment.

Where does the penalty for false notarization-----.

knowledge
"Officers ~~must know~~ of grantor's identity; no acknowledgment of an executed conveyance may be taken by an officer unless he knows or has satisfactory evidence that the person making the acknowledgment

Repeal of Married Act.

unless he knows or has satisfactory evidence that the person making the acknowledgment is the individual described in the executed conveyance--?

--The reason that is repealed is that it is covered in the existing bill. Where is it covered in the existing bill? --"Acknowledged before me-- 09630702--the person acknowledging is known to the person taking the acknowledgment-----

Senator Rodey: Background of Bill

This was discussed Monday in my absence and I appreciate Senator Bennett conducting the meeting in my absence and appreciate the work the Judiciary Committee while I was gone. This is, Senate Bill 80, is relating to oath, affirmation, and acknowledgment, notarization, verification-----The reason for this, essentially, is to ensure that the State of Alaska, for purposes of commerce, is uniform with other states throughout the Union. It has been a problem _____ the Federation of States, essentially, and there have been a variety of different forms of oaths and acknowledgments and notarizations throughout the United States and the Act that is presented here seeks to remedy a significant number of those problems and that is the policy reason behind it and the reason the Code Commission has considered it. There was testimony on it, Mr. _____ I believe you testified Monday. Are there any additional comments you can make about it? Quite frankly,, it is a dry topic and not very exciting but it is important in terms of having uniformity in authenticity of documents, particularly for the purposes of commerce; it is much like the UCC in that regard.

Senator Parr: If a notary public does not personally know a person, what actually happens? Driver's license or some form of identification?

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SENATE AMENDMENT

By Judiciary Committee

To: _____ SENATE BILL No. 83 (am)

To: _____ HOUSE BILL No. _____

PAGE: 1 LINE: 24 and 24

Line 23. Page 1 :

insert the word "unreasonably" before the word "restrict"

Line 24 , Page 1 :

insert the word "legal" between "the" and "taking"

COMMITTEE REPORT
SENATE

FURTHER: None

3/12/81

Date: May 8 1981

Mr. President:

The Committee on JUDICIARY has had SB 83

restricting the authority of the Dept. of Natural Resources to regulate certain activities in state recreation areas

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

- do pass do not pass
- do pass with attached amendments(s) same title
- replace with CS for _____ new title
- and recommends _____
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

[Signature]

[Signature]

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

SENATE AMENDMENT #1

By Resources Committee

To: _____ SENATE BILL No. 83

To: _____ HOUSE BILL No. _____

PAGE: 1

LINE: 21-22

Line 21: Delete "or"

Line 22: Delete "restrict"

SENATE AMENDMENT #2

By Resources Committee

To: _____ SENATE BILL No. 83

To: _____ HOUSE BILL No. _____

PAGE: 1 LINE: 27-28

Line 27: After the word "area" insert a semi-colon (;)

Line 27-28: Insert a additional sub-section (D)

"(D) the cutting of dead and down or burnt timber."

CHP DENVERDEN

- (AREA ONLY)

Introduced: 1/15/81
Referred: Resources and
Judiciary

1 IN THE SENATE BY BENNETT, PARR AND FAHRENKAMP

2 SENATE BILL NO. 83

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act restricting the authority of the Department of
7 Natural Resources to regulate certain activities in
8 state recreation areas; and providing for an effective
9 date."

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

11 * Section 1. AS 41.20.020(6) is amended to read:

12 (6) adopt [ESTABLISH], in accordance with the Administrative
13 Procedure Act [,] (AS 44.62), [RULES AND] regulations governing the use
14 and designating incompatible uses within the boundaries of state parks
15 [PARK AND RECREATIONAL AREAS] to protect the property and to preserve
16 the peace;

17 * Sec. 2. AS 41.20.020 is amended by adding a new paragraph to read:

18 (12) adopt, in accordance with the Administrative Procedure
19 Act (AS 44.62), regulations for the use of state recreation areas which
20 also designate incompatible uses within the boundaries of state recrea-
21 tion areas except that regulations may not be adopted which prohibit

~~OR UNREASONABLY~~ RESTRICT

23 (A) work on valid mineral leases or mining claims;

24 (B) the ^{LEGAL} taking of fur-bearing animals; or

25 (C) the traditional use of roads and trails in existence

26 before the effective date of the Act establishing the recreation
27 area.

28 * Sec. 3. AS 41.20.047 is amended by adding a new paragraph to read:

29 (5) "traditional use" means the ~~use~~ by any means of

NATURE
LEVEL
OF USE

THE ESTABLISHMENT OF USE WHICH EXISTED AT THE TIME OF THE RECREATION AREA

1 transportation, including a ^{SOME} vehicle propelled by machinery, if the use
2 occurred regularly ~~in the area of a state recreation area~~ ^{AND AT THE HEAVEN} before the
3 effective date of the Act establishing the state recreation area.

4 * Sec. 4. AS 41.20.150 is amended to read:

5 Sec. 41.20.150. INCOMPATIBLE USE PROHIBITED. The commissioner of
6 natural resources shall designate by regulation incompatible uses within
7 the boundaries of the Captain Cook State Recreation Area in accordance
8 with AS 41.20.020(12) and 41.20.130, and those incompatible uses desig-
9 nated shall be prohibited or restricted, as provided by regulation.

10 * Sec. 5. AS 41.20.340 is amended to read:

11 Sec. 41.20.340. INCOMPATIBLE USE PROHIBITED. The commissioner of
12 natural resources shall designate by regulation incompatible uses within
13 the boundaries of the Gaius Head State Recreation Area in accordance
14 with AS 41.20.020(12) and 41.20.335, and those incompatible uses desig-
15 nated are prohibited or restricted, as provided by regulation.

16 * Sec. 6. AS 41.20.495 is amended to read:

17 Sec. 41.20.495. INCOMPATIBLE USES PROHIBITED. The commissioner of
18 natural resources shall designate by regulation incompatible uses within
19 the boundaries of the Nancy Lake State Recreation Area in accordance
20 with the requirements of AS 41.20.020(12) and 41.20.491, and those
21 incompatible uses designated shall be prohibited or restricted, as
22 provided by regulation.

23 * Sec. 7. AS 41.20.505 is amended to read:

24 Sec. 41.20.505. INCOMPATIBLE USES PROHIBITED. The commissioner of
25 natural resources shall designate by regulation incompatible uses within
26 the boundaries of the Chenai River Recreation Area in accordance with the
27 requirements of AS 41.20.020(12) and 41.20.497, and those incompatible
28 uses designated shall be prohibited or restricted, as provided by regu-
29 lation.

1 * Sec. 8. This Act takes effect immediately in accordance with AS 01.10.-
2 070(c).

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MEMORANDUM

State of Alaska

TO Kevin Bruce

DATE

FILE NO

TELEPHONE NO

FROM Chip Dennerlein

SUBJECT SB 83.

In reference to your questions concerning SB 83, I testified on the bill when it was heard in Senate Resources. During the committee process, several amendments were made which make the bill far more acceptable than in its original form. However, one major problem remains outstanding which I did not have time to adequately address when the bill was before the resource committee. That is the question of motorized access and use.

As is indicated by the attached committee report, I was to look into the matter further and report back to the committee. Unfortunately, due to the schedule of those in the AG's office, I was unable to receive a response to my questions prior to the time when the resources committee had to act. I have since discussed the matter with the Attorney General and would suggest the following.

There is a serious potential problem with the existing language. The problem stems primarily from the ambiguous manner in which motorized use is addressed. The bill would prohibit the Division of Parks from making any regulations which would prohibit motorized use where it occurred previously in the recreation areas. Several points should be clarified, and as I have not seen the amended version of the bill (I was told it was not printed) please excuse me if these have already been adequately addressed.

1. The bill should clearly explain that the motorized use which is being authorized is that which occurred on roads and trails within the areas. The division should not be required to permit ORV use on other than old trails. Such use, in fact, could be in violation of the division's other responsibilities if it seriously damaged terrain.

2. It should be made clear that the use which is being guaranteed is "the level of use which existed at the time of the establishment of the recreation area". Certainly greater use can (and in many cases will) be permitted or even encouraged. However, there is a great difference between guaranteeing use for fifteen vehicles and mandating the division to allow five hundred vehicles to use a given area. For example, the terrain may physically be unable to support a particular use beyond a given level. It is almost impossible to "grandfather in" a select specific group of people. The only fair way to guarantee certain rights of use and not discriminate among users is to focus on a level of use which will have to be accepted by everyone.

Finally, I should note that the only problems which have ever occurred have been in Chena Recreation Area. There have never been problems in any other State Recreation of the type this bill seeks to remedy.

Alaska State Legislature

BETTYE FAHRENKAMP, CHAIRMAN
VIC FISCHER, VICE-CHAIRMAN
BRAD BRADLEY
DICK ELIASON
DON GILMAN
BOB MULCAHY
ARLISS STURGULEWSKI



POUCH V
STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-3834
(907) 465-3835

Senate

Committee on Resources

March 6, 1981
1:30 p.m.

Beltz Room
211 - Capitol

MEMBERS PRESENT

SENATOR FAHRENKAMP
SENATOR FISCHER
SENATOR BRADLEY
SENATOR STURGULEWSKI
SENATOR MULCAHY
SENATOR ELIASON
SENATOR GILMAN

Division of Parks

MAR 24 1981

HEARING:

SB 83 "An Act restricting the authority of the Department of Natural Resources to regulate certain activities in state recreation areas."

John Adams, representing the Fairbanks Environmental Center, said that his organization supports mining access, trapping and motorized vehicle use in State Recreation Areas. He said that his group's greatest concern with SB 83, is the language which states that the Director of Parks may not "prohibit or restrict" certain activities which may be incompatible with public recreation and safety. He suggested that the Committee consider omitting the words "or restrict" on Page 1, Section 2. He also, suggested the addition of the phrase "to protect the property and preserve the peace" in Section 2, line 20. He also suggested the addition of the phrase "on roads or trails" on Page 2, line 2, between the words "regularly in". He stated that his group supports the principle of allowing the harvest of dead timber in recreation areas, particularly in view of the current firewood shortage in Fairbanks. He said he would like to see the use of the phrase "dead and down" in order to prevent people from inadvertently cutting live trees.

Chip Dennerlein, Director, State Parks, Department of Natural Resources, said there have been a few problems in the Chena Recreation Area; It is a park but, is managed as a recreation area because of size. He said the word "restrict" in SB 83 is a difficult word to administer. He said he would like to see the use of the phrase "dead and down" timber because there are three

types of trees which look dead in the winter and someone might inadvertently take live trees.

in response to the question, how can you legally grandfather in a traditional use on public land and not allow another person that same use of the public land? Mr. Dennerlein, said that traditional use is a use that was employed up until a certain time, but if that same use is extended to other people after that date it is really expanded use, not true traditional use. But, he said he was not an attorney and would look into the matter and report back to the Committee.

Senator Don Bennett, said he had no problems with striking the word "restrict" and he would like to see the words "dead and down or burnt trees" added to SB 83. He said he would like to see the rights outlined in the bill maintained.

Senator Gilman asked that staff prepare appropriate amendments for the next committee meeting.

The Committee adjourned at 2:30 p.m.

Alaska State Legislature

BETTYE FAHRENKAMP, CHAIRMAN
VIC FISCHER, VICE-CHAIRMAN
BRIAN BRADLEY
DICK ELIASON
DON GILMAN
BOB MULCAHY
ARLISS STURGULEWSKI



POUCH V
STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-3834
(907) 465-3835

Senate Committee on Resources

RECEIVED

MAR 24 1981

March 23, 1981

Byron W. Haley,
Vice President
T.V.S.A.
1002 Pioneer Road
Fairbanks, Alaska 99701

Dear Byron:

I appreciate receiving a copy of your note in support of SB 83. The Senate Resources Committee passed SB 83 out of Committee on March 11th and it is now in the Senate Judiciary Committee. I am forwarding a copy of your note to Senator Rodey, who is Chairman of the Judiciary Committee.

Again, thank you for keeping me informed on your thoughts.

Best regards.

Sincerely,

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

Bettye Fahrenkamp,
Chairman

cc: Senator Rodey

BF:rk

50-9 MAR 13 1981 (V)

MSG 81-00007849 PRTY 1 03/11/81 16:29:36 ORIG: LF00 IN= 0018 OUT= 0102
FROM: MAXINE TO: JUNO INFO
TARGET: LJH2 SUBJ: POM PAGE 0001

TO: SEN FAHRENKAMP, CHAIRMAN RESOURCES COMMITTEE

FR: BYRON W HALEY, VICE PRES. T.V.S.A.
1002 PIONEER RD, FAIRBANKS 99701 NO PHONE LISTED

THE T.V.S.A. BACKS SB83 BUT ON RIVER CROSSING WE SUPPORT THE NEED
OF A PERMIT FROM THE F & G HABITAT SECTION. IN THE CHENA REC
AREA MAYBE THE ST. COULD HELP OUT THE SMALL MINER BY PUTTING A BRIDGE
IN THE WINTER AND TAKING IT OUT IN THE SPRING.

Alaska State Legislature

BETTYE FAHRENKAMP, CHAIRMAN
VIC FISCHER, VICE-CHAIRMAN
BRAD BRADLEY
DICK ELIASON
DON GILMAN
BOB MULCAHY
ARLISS STURGULEWSKI



POUCH V
STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-3834
(907) 465-3835

Senate

Committee on Resources

March 23, 1981

RECEIVED

MAR 24 1981

Jon R. Gleason,
President
Interior Alaska Trappers Assoc.
P. O. Box 60418
Fairbanks, Alaska 99706

Dear Jon:

I appreciate receiving a copy of your testimony in support of SB 83. The Senate Resources Committee passed SB 83 out of Committee on March 11th and it is now in the Senate Judiciary Committee. I am forwarding a copy of your resolution to Senator Rodey, who is Chairman of the Judiciary Committee.

Again, thank you for keeping me informed on your thoughts.

Best regards.

Sincerely,

Bettye Fahrenkamp,
Chairman

*Had Jan
at the time
when I may
not?*

cc: Senator Rodey

BF:rk



49-10

INTERIOR ALASKA TRAPPERS ASSOCIATION

MAR 16 1981

P.O. BOX 60418
FAIRBANKS, ALASKA 99706 ...

Senator Bettye Fahrenkamp, Chairman
Senate Resources Committee
Pouch V
Juneau, Alaska 99811

March 12, 1981

Dear Bettye,

I had meant to present our oral testimony at the teleconference hearing on SB 83 in Fairbanks yesterday, but due to a sudden commitment at work, I just couldn't attend. Please relate our thoughts to other members of your committee, for this is a very important issue to us and we have pursued it diligently for several years.

As you know, our group now numbers around 700 members. With almost no dissention within our ranks, we are pleased to say that we wholeheartedly support SB 83.

Several trappers, most of whom are members of IATA were displaced when the Division of Parks first closed the Chena Rec Area to motorized vehicle use. On part of the area, the closure was subsequently lifted, but several trappers are still affected. The fact is that almost half of the Chena Rec Area remains closed, including some pretty good marten habitat. From the time of the first closure, we considered the action unreasonable. The trappers were not hurting the land or the fur resource.

The Division of Parks, in concert with local environmentalist extremists, claimed that the noise, sight and in fact, even the tracks of snowmachines were too disturbing to skiers in the Granite Tors area. The fact is that few skiers used the area during the four coldest months of the year, the time of use by trappers. It is a fact that once the trappers were displaced, the area saw even less use by skiers, since now the trails were not broken out by the machines.

We pointed out this situation to the Division of Parks, but they argued that the level of use by skiers justified continued closure. They ignored our requests for data on use by skiers that might justify their actions. They also ignored our offer to take their personnel into the area by dogsled to prove to them that no skiers were using the area, as was our contention.

It has long been our opinion that Division park planners were inappropriately applying solutions and plans that apparently have worked well in the Chugach State Park, to the Chena Rec Area. We pointed out many differences in

MAR 16 1981

Sen. Fahrenkamp, P.2

the two areas and urged them to look objectively at this case. We even suggested that the area be open during the cold months and then closed to snow-machines during March and April when what little skiing use had occurred. We never suggested that the skiers ever be excluded from any portion of the Chena Rec Area, as we have been. Our last letters were simply ignored, but they are a matter of record, for we always carbon-copied Bob Bettisworth and Don Bennett.

Our final comment does not address the merits of SB 83, but reflects our continued frustration in dealing with the Division of Parks. Our past-president, Pete Buist, has been accused of "conflict of interest" for his involvement in trying to get a fair shake for the trapper. This because he works for a different division in the Department of Natural Resources. We question then, the appropriateness of Steve Cook's personal testimony to your committee, since he is not only an employee of the Division of Parks, he is the employee directly responsible for management of the Chena Recreation Area. While we acknowledge that Mr. Cook is very knowledgeable about the area and water quality problems associated with mining, his criticism of mining and trapping activity in and around the area he is charged with managing, appears to be highly improper to us.

We support SB 83 as written and urge you to support it in committee and on the floor. Again, I apologize for not being able to attend the hearing in Fairbanks myself; it was not from lack of concern. Thanks for accepting our written testimony.

Sincerely,


Jon R. Gleason, President

Alaska State Legislature

BETTYE FAHRENKAMP, CHAIRMAN
VIC FISCHER, VICE-CHAIRMAN
BRAD BRADLEY
DICK ELIASON
DON GILMAN
BOB MULCAHY
ARLISS STURGULEWSKI



POUCH V
STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-3834
(907) 465-3835

Senate

Committee on Resources

March 23, 1981

RECEIVED

Ron Davis
Ralph Seekins
Greater Fairbanks
Chamber of Commerce
550 First Avenue
Fairbanks, Alaska 99701

Dear Ron and Ralph:

I appreciate receiving a copy of the Chamber of Commerce's resolution supporting SB 83. The Senate Resources Committee passed SB 83 out of Committee on March 11th and it is now in the Senate Judiciary Committee. I am forwarding a copy of your resolution to Senator Rodey, who is Chairman of the Judiciary Committee.

Again, thank you for keeping me informed of your thoughts.

Best regards.

Sincerely,

Bettye
Bettye Fahrenkamp,
Chairman

cc: Senator Rodey

BF:rk

*I'll be
home 3/24
☺*



Greater Fairbanks

CHAMBER OF COMMERCE

550 First Avenue

FAIRBANKS
ALASKA 99701

Member

U. S. Chamber of Commerce
Alaska State Chamber of Commerce
Pacific Northwest Trade Ass'n.
National Better Business Bureau

MAR 16 1981

A RESOLUTION SUPPORTING SB 83

WHEREAS, the Fairbanks Chamber of Commerce has studied the provisions of Senate Bill No. 83; and

WHEREAS, this legislation will clarify the scope of regulations that may be adopted regarding activities within state recreation areas; and

WHEREAS, SB 83 allows traditional uses within state recreation areas to continue, provided those uses were in existence prior to the creation of the recreation area;

NOW THEREFORE BE IT RESOLVED by the Board of Directors of the Greater Fairbanks Chamber of Commerce that the Alaska Legislature is encouraged to adopt SB 83.

Signed this 10 day of March, 1981.

Attest

Ron Davis
President

Signed

Ralph Seekins
Chairman of the Board





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

March 30, 1981

RECEIVED

MAR 31 1981

Ron Davis, President
Greater Fairbanks Chamber of Commerce
550 First Avenue
Fairbanks, AK 99701

Dear Mr. Davis: *Ron*

Thank you for your letter concerning Senate Bill 83. Your comments are presented well and I appreciate the time you have taken to express your position on how you feel the Chena Recreation Area should be administered.

Senate Bill 83 is in Senate Judiciary, and a copy of your letter has been forwarded to Judiciary Chair, Senator Patrick Rodey for his review. If you have further comments, I urge you to contact Senator Rodey at Pouch V, Juneau 99811.

Your comments have been noted and will be brought to my attention when this bill is considered. Rest assured, that I will consider all ramifications of this bill before making a decision.

Again, thank you for taking the time to express your concerns on this bill.

Sincerely,

Handwritten signature of Sally Smith in cursive.

Sally Smith
Alaska State Representative

cc: Sen. Patrick Rodey

jg

ALASKA STATE LEGISLATURE



HOUSE OF REPRESENTATIVES

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

March 30, 1981

RECEIVED

MAR 31 1981

Joanne E. Groves
Box 81199
College, AK 99708

Dear Ms. Groves:

Thank you for your letter concerning Senate Bill 83. Your comments are presented well and I appreciate the time you have taken to express your position on how you feel the Chena Recreation Area should be administered.

Senate Bill 83 is in Senate Judiciary, and a copy of your letter has been forwarded to Judiciary Chair Senator Patrick Rodey for his review. If you have further comments, I urge you to contact Senator Rodey at Pouch V, Juneau 99811.

Your comments have been noted and will be brought to my attention when this bill is considered. Rest assured, that I will consider all ramifications of this bill before making a decision.

Again, thank you for taking the time to express your concerns on this bill.

Sincerely,

A handwritten signature in cursive script, appearing to read "Sally Smith".

Sally Smith
Alaska State Representative

cc: Sen. Patrick Rodey

Jg

MEMORANDUM


State of Alaska

TO: Kevin Bruce

DATE:

FILE NO:

TELEPHONE NO:

FROM: Chip Dennerlein 

SUBJECT: SB 83.

In reference to your questions concerning SB 83, I testified on the bill when it was heard in Senate Resources. During the committee process, several amendments were made which make the bill far more acceptable than in its original form. However, one major problem remains outstanding which I did not have time to adequately address when the bill was before the resource committee. That is the question of motorized access and use.

As is indicated by the attached committee report, I was to look into the matter further and report back to the committee. Unfortunately, due to the schedule of those in the AG's office, I was unable to receive a response to my questions prior to the time when the resources committee had to act. I have since discussed the matter with the Attorney General and would suggest the following.

There is a serious potential problem with the existing language. The problem stems primarily from the ambiguous manner in which motorized use is addressed. The bill would prohibit the Division of Parks from making any regulations which would prohibit motorized use where it occurred previously in the recreation areas. Several points should be clarified, and as I have not seen the amended version of the bill (I was told it was not printed) please excuse me if these have already been adequately addressed.

1. The bill should clearly explain that the motorized use which is being authorized is that which occurred on roads and trails within the areas. The division should not be required to permit ORV use on other than old trails. Such use, in fact, could be in violation of the division's other responsibilities if it seriously damaged terrain.

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Finally, I should note that the only problems which have ever occurred have been in Chena Recreation Area. There have never been problems in any other State Recreation of the type this bill seeks to remedy.

Alaska State Legislature

BETTYE FAHRENKAMP, CHAIRMAN
VIC FISCHER, VICE-CHAIRMAN
BRAD BRADLEY
DICK ELIASON
DON GILMAN
BOB MULCAHY
ARLISS STURGULEWSKI



POUCH V
STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-3834
(907) 465-3635

Senate

Committee on Resources

March 6, 1981
1:30 p.m.

Beltz Room
211 - Capitol

MEMBERS PRESENT

SENATOR FAHRENKAMP
SENATOR FISCHER
SENATOR BRADLEY
SENATOR STURGULEWSKI
SENATOR MULCAHY
SENATOR ELIASON
SENATOR GILMAN

Division of Parks

MAR 24 1981

HEARING:

SB 83 "An Act restricting the authority of the Department of Natural Resources to regulate certain activities in state recreation areas."

John Adams, representing the Fairbanks Environmental Center, said that his organization supports mining access, trapping and motorized vehicle use in State Recreation Areas. He said that his group's greatest concern with SB 83, is the language which states that the Director of Parks may not "prohibit or restrict" certain activities which may be incompatible with public recreation and safety. He suggested that the Committee consider omitting the words "or restrict" on Page 1, Section 2. He also, suggested the addition of the phrase "to protect the property and preserve the peace" in Section 2, line 20. He also suggested the addition of the phrase "on roads or trails" on Page 2, line 2, between the words "regularly in". He stated that his group supports the principle of allowing the harvest of dead timber in recreation areas, particularly in view of the current firewood shortage in Fairbanks. He said he would like to see the use of the phrase "dead and down" in order to prevent people from inadvertently cutting live trees.

Chip Dennerlein, Director, State Parks, Department of Natural Resources, said there have been a few problems in the Chena Recreation Area; it is a park but, is managed as a recreation area because of size. He said the word "restrict" in SB 83 is a difficult word to administer. He said he would like to see the use of the phrase "dead and down" timber because there are three

SENATE RESOURCES COMMITTEE

March 6, 1981

Page: 2

types of trees which look dead in the winter and someone might inadvertently take live trees.

In response to the question, how can you legally grandfather in a traditional use on public land and not allow another person that same use of the public land? Mr. Dennerlein, said that traditional use is a use that was employed up until a certain time, but if that same use is extended to other people after that date it is really expanded use, not true traditional use. But, he said he was not an attorney and would look into the matter and report back to the Committee.

Senator Don Bennett, said he had no problems with striking the word "restrict" and he would like to see the words "dead and down or burnt trees" added to SB 83. He said he would like to see the rights outlined in the bill maintained.

Senator Gilman asked that staff prepare appropriate amendments for the next committee meeting.

The Committee adjourned at 2:30 p.m.



MAR 10 1981

Greater Fairbanks

CHAMBER OF COMMERCE

350 First Avenue

FAIRBANKS
ALASKA 99701

Member
U. S. Chamber of Commerce
Alaska State Chamber of Commerce
Pacific Northwest Trade Ass'n
National Better Business Bureau

A RESOLUTION SUPPORTING SB 83

WHEREAS, the Fairbanks Chamber of Commerce has studied the provisions of Senate Bill No. 83; and

WHEREAS, this legislation will clarify the scope of regulations that may be adopted regarding activities within state recreation areas; and

WHEREAS, SB 83 allows traditional uses within state recreation areas to continue, provided those uses were in existence prior to the creation of the recreation area;

NOW THEREFORE BE IT RESOLVED by the Board of Directors of the Greater Fairbanks Chamber of Commerce that the Alaska Legislature is encouraged to adopt SB 83.

Signed this 10 day of March, 1981.

Attest

Ron Davis
President

Signed

Ralph Seekins
Chairman of the Board



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COMMITTEE REPORT

SENATE

FURTHER: None

3/6/81

Date: May 13, 1981

Mr. President:

The Committee on JUDICIARY has had SB 90

privacy and public information; changing Rule 65 of the Alaska Supreme Court Rules of Civil Procedure

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

- do pass INDIVIDUAL RECOMMENDATIONS do not pass
- do pass with attached amendments(s)
- replace with CS for (JUD) same title new title
- and recommends _____
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

[Signature]

MEMBERS HAVING
OTHER RECOMMENDATIONS:

[Signature]

CHAIRMAN



Official Business

Alaska State Legislature

Senate

Judiciary Committee

Pouch V
State Capitol
Juneau, Alaska 99811

April 24, 1981

Alaska State Troopers
Department of Public Safety
1979 Peger Road
Fairbanks, Alaska 99701

Attention: Those personnel on attached list

Dear Sir or Madam:

Thank you for your comments on SB 90, an act relating to freedom of information.

I agree that certain portions of a public employee's personnel file should be confidential, specifically those sections which deal with employee performance evaluations.

As a co-sponsor, I intend to see that we get the best freedom of information bill possible. For your information and review, I have attached a copy of a committee substitute work draft paper. I have highlighted the portions of the bill which we propose to change, and would appreciate any comments you care to make.

Sincerely,

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

Senator Patrick M. Rodey
Chairman

PMR/ods
Enclosure

ALASKA STATE TROOPERS PERSONNEL

John E. Daugherty
Kristine L. Waggoner
John F. Adams
Arlon W. Schrank
Mattie Flanagan
Ronald P. Dalby
Howard S. Burger
Scott L. Waggoner
James M. McCann
Geoffrey T. Engleman
Kristine E. Kairis
Michael J. Corkill
Ellis W. Armstrong
Melanie Norris
Vern L. Long
James V. Grimes
Tim Litera
Betty Zabek
David M. Drvenkar
Robert L. Barnes, Jr.
Rose M. Bastien
Karen M. Standstrom
John W. Malone
Patricia E. Harmening
Carol Dunlap
Donald Marx, Sr.
John R. Murphy
Deanna M. Jossis
Gary Nabielski

George Sepelak
Bobby L. Swint
Terry C. Jordan
Rita Greenway
Marsha Penker
Kristi Birmingham
Robert A. Sanders
Lawrence G. Fleetwood
Dennis J. Ponder
Donald Wilson
Margaret A. Swisher
Roland E. Chevalier
Judith A. Carpenter
Lynn Behan
Kenneth Woldstad
Helen McGhan
John P. Addis
Ted L. Ruddell
Thomas R. Bowman
Bundance L. Turner
Charlotte Lasage
Paul E. Bartlett
Charles Lamica
Richard A. Hemmen
Roderick Harvey
William Peterson
Susan K. Thomas
Charles E. Lovejoy

4/24/81

LA21 1697 11.42 JA01 0004 11.42 04/22/81

TO JUNG INFO FOM

Roddy, Bennett, Hohmann, Parr, Ray

Brown, Clocksin, Anderson, Chueclark, Miller, O'Connell, Phillips

TO ALL MEMBERS OF THE SENATE JUDICIARY COMMITTEE (SB 90) & MEMBERS OF THE HOUSE JUDICIARY COMMITTEE (HB 7)....

"WE STRONGLY PROTEST HOUSE BILL 7 AND SENATE BILL 90. THE UNITED STATES CONSTITUTION GRANTS EACH INDIVIDUAL THE RIGHT TO PRIVACY. OUR PERSONEL FILES ARE NOT WRITTEN FOR THE PUBLIC. PLEASE DON'T TAKE AWAY OUR CONSTITUTIONAL RIGHTS. QUASH HOUSE BILL 7 AND SENATE BILL 90."

JOHN E MAUGHERTY
KRISTINE L WAGGONER
JOHN F ADAMS
ARLON W SCHRAMK
NATJIE FLANAGAN
RONALD P DALBY
HOWARD S BURGER
SCOTT L WAGGONER
JAMES M MCCANN
GEOFFREY T ENGLEMAN
KRISTINE F KAIRIS
MICHAEL J CORKILL
ELLIS W ARMSTRONG
MELANIE MORRIS
VERR I LORG

GEORGE SEPELAK
BOBBY L SWINT
TERRY C JORDAN
RITA GREENWAY
MARSHA PERKER
KRISTI BIRMINGHAM
ROBERT A SANDERS
LAWRENCE S FLEETWOOD
DERRIS J PORDER
DONALD WILSON
MARGARET A SWISHER
ROLAND E CHEVALIER
JUDITH A CARPENTER
LYNN BEHAN
KERRETH WOLDSTAD

JAMES V GRIMES
TIM LITKA
BETTY ZAPK
DAVID M DRVENKAR
ROBERT C BARNES JR
ROSE M BASTIER
KAREN E STANDSTROM
JOHN W MALONE
PATRICIA E HARMENING
LAKOL DURLAP
DONALD MARK SR
JOHN R MURPHY
DEANNA M JOSSIS
GARY KAPITLSKI

HELEN MCGHAN
JOHN P ADAMS
TED L RUDDELL
THOMAS R BOWMAN
BURDARCE L TURNER
CHARLOTTE LASAGE
PAUL E BARTLETT
CHARLES LAMICA
RICHARD A HEMMER
RODERICK HARVEY
WILLIAM PETERSON
SUSAN K THOMAS
CHARLES E LOVEJOY

*Public Safety
AK State Department*

ALL OF THE PERSONNEL LISTED ON PAGE 1 AND 2 CAN BE VERIFIED THRU MAILING ADDRESS OF 1979 PEGER ROAD FAIRBANKS, AK 99701

SP25/ELR
(IF THERE IS ANY PROBLEM WITH ANY OF THIS PLEASE LET ME KNOW)

FBX/LTO/MW



Alaska State Legislature

Senate

Judiciary Committee

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

May 11, 1981

Mr. Mike McMahon
2301 Peger Road
Fairbanks, Alaska 99707

Dear Mr. McMahon:

I have received your petition and understand the concern you have expressed with Senate Bill 90.

The Judiciary Committee has spent a considerable amount of time reviewing this legislation in an attempt to pass the best freedom of information bill possible. The result of that effort is a committee substitute to SB 90, which I expect to pass out of the committee soon.

The committee substitute does provide confidentiality for certain portions of a public employee's personnel file, specifically those sections which deal with employee performance evaluations.

Thank you for expressing your views on this proposed legislation.

Sincerely,

Senator Patrick M. Rodey
Chairman

PMR/ods

*Sample - individual letters mailed
to all those on attached list.*

TO ALL MEMBERS OF THE SENATE JUDICIARY COMMITTEE (SB 90) & MEMBERS OF THE HOUSE JUDICIARY COMMITTEE (HB 7)...

"WE STRONGLY PROTEST HOUSE BILL 7 AND SENATE BILL 90. THE UNITED STATES CONSTITUTION GRANTS EACH INDIVIDUAL THE RIGHT TO PRIVACY. OUR PERSONNEL FILES ARE NOT WRITTEN FOR THE PUBLIC. PLEASE DON'T TAKE AWAY OUR CONSTITUTIONAL RIGHTS. QUASH HOUSE BILL 7 AND SENATE BILL 90."

NAME	ADDRESS
RAY BROOKS <i>Ray Brooks</i>	2301 Peger Road, Fairbanks, Alaska
TERPY GATCHELL <i>Terpy Gatchell</i>	2301 Peger Road, " "
WILLIAM M. DELONG <i>William M. DeLong</i>	2301 PEGER RD " "
GLENN O'NEAL <i>G. O'Neal</i>	2301 Peger Rd " "
JAMES E. TOMPKINS <i>James E. Tompkins</i>	2301 " " " "
JACK J. ECKERT <i>Jack J. Eckert</i>	2301 Peger Rd, " "
DAVID L. LAMBERT <i>David Lambert</i>	2301 Peger Rd Fairbanks Ak.
ARTHUR W. CLARK <i>Arthur W. Clark</i>	2301 Peger Rd. Fairbanks Ak.
CHARLES TVERBERG <i>Charles Tverberg</i>	2301 Peger Rd. Fairbanks Ak.
TERRY COCHRANE <i>Terry Cochrane</i>	2301 Peger Rd Fairbanks Ak
ROBIN RUSHING <i>Robin Rushing</i>	2301 Peger Rd. Fairbanks Ak
WILLIAM BOVEE <i>William C. Bovee</i>	4921 DARTMOUTH #8 FAIRBANKS, AK.
SHERRY LEIGHTON <i>Sherry Leighton</i>	2301 Peger Road Fairbanks, AK
MICHAEL L. ROBINSON <i>Michael L. Robinson</i>	2301 Peger Road Fairbanks Ak.
MICHAEL T. SULLIVAN <i>Michael T. Sullivan</i>	2301 Peger Road Fairbanks AK.
WILLIAM R. COLVIN <i>William R. Colvin</i>	2301 Peger Rd Fairbanks AK
CLYDE NIEMI <i>Clyde Niemi</i>	2301 Peger Rd. Fairbanks Ak.
BEN STEWART <i>Ben Stewart</i>	2301 Peger Rd Fairbanks, AK 99707
JACK PHIPPS <i>Jack Phipps</i>	2301 Peger Rd Fairbanks, AK 99707
MICHAEL A. ISAACSON <i>Michael A. Isaacson</i>	2301 Peger Rd. Fairbanks AK 99707
NORMAN S. MILLER <i>Norman S. Miller</i>	2301 Peger Rd Fairbanks Ak
F. A. CHACE <i>F. A. Chace</i>	2301 Peger Rd Fairbanks Ak
DONALD A. KOLLER <i>Donald A. Koller</i>	2301 Peger Rd Fairbanks AK
DAVID D. ENSLEY <i>David D. Ensley</i>	" " " "
LEA L. LEHMAN <i>Lea L. Lehman</i>	2301 Peger Rd. Fairbanks, Ak. 99701
SAYOKO NIVER <i>Sayoko Niver</i>	" " " "
MICHAEL M. BLANNING <i>Michael M. Blanning</i>	2301 Peger Rd. Fairbanks AK 99701

NAME

ADDRESS

RICHARD RIBEIRO

Richard Ribeiro

EVOLYN MELVILLE

Evolyn Melville

STEVE C. BURLISON

Steve C. Burlison

DONALD K. SPARKS

Donald K. Sparks

RUSSELL TALVI

Russell Talvi

JUDITH A. BRASHIER

Judith A. Brashier

ANSGAR E. CLAUSEN

Ansgar E. Clausen

LOREN LINDSOE

Loren Lindsoe

LAWRENCE E. BUCK

Lawrence E. Buck

BENEDICT JONES

Benedict Jones

ALFRED E. SYNOGROUND

Alfred E. Synoground

JOHNNY WRIGHT

Johnny Wright

RICHARD A. ISAACSON

Richard A. Isaacson

GARY D. BRAKEFIELD

Gary D. Brakefield

DENNIS J. MOEN

Dennis J. Moen

R. N. SHOUP

R. N. Shoup

DANIEL R. SWORDS

Daniel R. Swords

STEVEN D. CLARKSON

Steven D. Clarkson

RUDY L. TERREY

Rudy L. Terrey

JAMES ELIFF

James Eliff

WILLIAM VESPER

William Vesper

JOAN D. TREGILGAS

Joan D. Tregilgas

JAMES R. LYLE

James R. Lyle

CAROL S. PEDERSON

Carol S. Pederson

MICHAEL McQUARY

Michael McQuary

THOMAS A. JOHNSON

Thomas A. Johnson

ART JOSEPH

Art Joseph

2301 Peger RD FBKRS AK.

2301 Peger Rd, Hls

2301 PEGER RDO FBKS

2301 PEGER RD. FBKS AK.

2301 PEGER RD. FBKS AK.

2301 Peger Rd Jba ak

2301 Peger Rd. Jbba Ak.

2301 Peger Rd FBKS AK,

S.R. Box 51065 FBKS, AK.

2301 Peger Road FBKS AK. 99701

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2301 PEGER RD FBKS AK.

2301 PEGER RD. FBKS. AK.

2301 Peger Rd FBKS, AK.

2301 PEGER RD F.B.K.S AK.

2301 Peger Road FBKS, AK.

2301 Peger Road FBKS AK

2301 Peger Rd Jbba. AK 99701

2301 Peger Road FBKS AK 99701

2301 Peger Road FBKS AK 99701

2301 Peger Rd FBKS AK

2301 Peger Rd FBKS AK

2301 Peger Rd. FBK's AK

NAME

ADDRESS

JAN L. LINDH

LLOYD J. WEBB

THOMAS A. VICTORINO

DWIGHT STULLER

ROLAND FLANIGAN

DAVID M. HERNDON

RONALD C. DANE

JAMES A. MANN

LOUIS STOCKWELL

WILLIAM H. SANDERSON

VERN NELSON

GERALD R. LOWE

RICHARD BERNHARDT

MIKE McMAHON

2301 Peger Rd. Fbx

2301 Peger Rd FBKS AK.

2301 Peger Rd FBKS AK

2301 Peger Rd. FBKS AK.

2301 Peger Rd. Fairbanks Ak.

2301 Peger Rd. FBKS AK.

2301 Peger Rd FBKS AK

2301 Peger Rd. Fairbanks Ak.

2301 PEGER RD. FBKS AK

P.O. Box 55935 N. Pole AK.

[REDACTED]

[REDACTED]

413 [REDACTED] FBKS AK.

2301 Peger Rd FBKS AK.

2301 Peger Rd Fairbanks Ak.

2301 " " " "



Official Business

Alaska State Legislature

Senate

Judiciary Committee

Pouch V
State Capitol
Juneau, Alaska 99811

April 22, 1981

Mr. Dean M. Gottehrer, Chairman
Alaska Freedom of Information Task
Force
Society of Professional Journalists
Farthest North Chapter
Box 74573
Fairbanks Alaska 99707

Dear Mr. Gottehrer:

Thank you for your extensive comments on CSSB 90.

I am committed to a workable freedom of information bill this year and believe it can be attained.

I am glad to see that you recognize the importance of the constitutional right to privacy in Alaska. Any additional exemptions included in the bill will be directly related to this right.

The committee will be holding hearings on this bill on April 27th at 1:30 p.m. in the Butrovich Room. I hope you can attend. In the meantime, I will include your letter in each committee member's file for their information.

Thank you for expressing your concerns in this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Pat".

Patrick M. Rodey
Chairman

PMR/ods

Society of Professional Journalists

Furthest North Chapter
Box 74573
Fairbanks, AK. 99707

Sigma Delta Chi

April 8, 1981

RECEIVED

APR 15 1981

Sen. Pat Rodey
Senate Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. Chairman:

Thank you for the invitation to provide testimony on CSSB 90. Unfortunately I am unable to personally be in attendance at the committee hearing and would like to take the opportunity to present written comments.

The Alaska Freedom of Information Task Force, which I chair, originally came into existence to seek the passage of Freedom of Information legislation that would be an improvement over the current public records statute. Tom Snapp of the All-Alaska Weekly and reporters and editors at other newspapers experienced difficulties obtaining what had previously been open public records from the State Troopers. Snapp and Joe LaRocca worked closely with Charlie Parr, then a Fairbanks representative, to develop such legislation. The original version of SB 90 is the embodiment of their efforts.

The Task Force drafted its own version of a Model Bill and that with minor modifications was introduced by Rep. Brian Rogers this year in the House as HB 7. With a few important exceptions which I will speak to in a moment, CSSB 90 is a giant step backward--both from the years of work that culminated in SB 90 and from the current statute. The Task Force is strongly and adamantly opposed to CSSB 90 and firmly committed to seek its defeat if that is the version that emerges.

The central dilemma of the Alaskan public records situation is that any legislation to regulate access to public records must take into account the Alaskan constitutional provision protecting the right of privacy. The U.S. Constitution, the federal Freedom of Information Statutes and our current state law on public records place public access to government records above personal privacy interests in all but a few, well-defined, important instances.

SB 90, HB 7 and the Task Force's Model Bill all have the virtue of specifically defining the instances when privacy surmounts access, thus limiting administrative and judicial discretion to the minimum. CSSB 90, on the other hand, eliminates all the work that developed these specific exemptions, many of them modelled on the federal statute, and replaces them with a vague, undefined exception that would exempt records the disclosure of which would constitute an unjustifiable invasion of personal privacy.

Any exception to placing the right of public access to governmental records above privacy interests must specifically and clearly defined. Governmental units must not be allowed great discretion in determining what records are open and what are closed because the result is that a great many more records would be closed than is now the case.

Our recommendation is to return to work to refine the original version of SB 90. The effect of the inclusion of most sections of the Department of Law's proposed substitute into CSSB 90 was to delay access to public records, provide for the potential supremacy of personal privacy interests above public interest in access, perhaps remove autopsy records from public disclosure, probably provide for the notification of all persons named in any records before the records are disclosed, eliminate the name of a crime victim as a public record until the matter reaches court, and generally remove many records that are now public from disclosure or access by the public. Current statutes are far better than CSSB 90 in all those respects.

A number of sections in CSSB 90 are worthy of inclusion in SB 90 and would improve it. Sections 40.25.040 on access to records by record subject and 40.25.060 on correction and amendment of records improve the legislation and should be included. Section 40.25.015 (d) on fees, waivers and copies without charge is also an improvement we endorse. On page 7, we endorse the new definition of what would be open in personnel records of public employees found in lines 23-28. We oppose the language on applications for public employment because it only pertains to finalists. All applications should be open because the public cannot judge how the selection process is working if it does not know the entire pool of applicants. We recommend for your consideration the process developed by the University of Alaska. All job announcements and advertisements carry a notice that applications are subject to possible disclosure. When a request for disclosure is made, applicants are notified and given 10 days to withdraw their applications. At the end of that period, all who have not withdrawn are disclosed.

There are a number of other improvements we would also like to see in SB 90. The most important is a definition of privacy. I strongly believe this is a legislative and not a judicial responsibility. A number of legislators have shrugged off the responsibility by saying that a good definition is hard to find and let the Supreme Court do it. We have suggested the definition from Restatement of Torts which we find acceptable and are willing to respond to other definitions that might be suggested. But we strongly believe that it is better for 60 members of the Legislature to devise the definition rather than far fewer members of the Supreme Court--perhaps as few as one who might tip the balance either way.

Other changes we recommend in the original SB 90 include: striking 40.25.015(e)(8) which is too general a exclusion and leaves too much discretionary power in an agency, eliminating 40.25.015(13) where original entry police records are included and striking subsection (C) of that section which speaks of an unjustifiable intrusion into a person's right of privacy, placing the burden of proof in a suit for disclosure on the governmental unit to prove it was required not to release requested information, requiring each governmental unit to keep a file of letters of denial of information requests that itself should be public, include information stored in a computer system and independent contractors paid with public money in whole or in part and under the supervision of a governmental unit in areas covered by the law.

Finally, I wish to urge you to resist efforts to add more exemptions or exclusions and to continue to cover all parts of government in the state, including the municipalities.

Sen. Pat Rodey

-3-

April 8, 1981

I want to thank you and the committee for early expedient consideration of the bill. We strongly endorse and our more than 40 newspapers, magazines, broadcast stations and media organizations favor free and easy access to government records. The public's business is done best when conducted in the open and legislation that facilitates that access is needed. Bills such as CSSB 90 which close more than is open now, delay the access, and prevent the people from knowing what actions are being taken should be defeated.

We will be watching the results of what emerges from the committee and stand ready at any time to help in any way possible to assist. Please don't hesitate to call me at 479-7761 if I can be of any further assistance.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Dean M. Gottehrer". The signature is written in dark ink and is positioned above the typed name.

Dean M. Gottehrer
Chairman
Alaska Freedom of Information Task Force



Alaska State Legislature

Senate

Judiciary Committee

Pouch V
State Capitol
Juneau, Alaska 99811

Official Business

April 29, 1981

Mr. Charles H. Gallagher
General Delivery
Ester, Alaska 99725

Dear Charlie:

Thank you for your letter on SB 90. The bill is currently in the Senate Judiciary Committee, and we have heard extensive testimony.

I agree that certain portions of a public employee's personnel file should be confidential, specifically those sections which deal with employee performance evaluations.

As a co-sponsor, I intend to see that we get the best freedom of information bill possible. I have offered an amendment to protect the privacy due public servants. A copy of that proposed amendment is enclosed for your information and review.

Your comments are appreciated and will be provided to each committee member for his review of this legislation.

Sincerely,

A handwritten signature in cursive that reads "Pat".

Senator Patrick M. Rodey
Chairman

PMR/ods
Enclosure

How have you been?
Hope to see you when
I'm in Fairbanks this
Summer!

2 other information-gathering purposes if

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

5 (2) disclosure is made in a manner which would not compromise
6 or defeat the purposes of a state statute designed to maintain the
7 confidentiality of the information.

8 (e) The exemptions from public disclosure provided in this sec-
9 tion, or by other state law pertaining to the confidentiality of
10 records, do not preclude the release or production of subpoenaed
11 records or information to a state or municipal agency during the course
12 of an investigation;

13 (f) All information in personnel records of public employees
14 showing salary or compensation, job description, education and training
15 background, and previous work experience shall be open for public
16 inspection. Applications for public employment submitted by finalists
17 for employment are also open to public inspection, but potential
18 finalists shall be notified of this fact and of their right to withdraw
19 their application before public inspection. As used in this section,
20 "finalists" means the final three applicants under consideration for
21 employment or those applicants who remain under consideration for
22 employment after 90 percent of the original applicants have been
23 eliminated from consideration by the governmental unit, whichever is
24 greater.

25 (g) The fact that a crime has been committed, the name of the
26 crime, the time of commission and location, and the name of any person
27 who is charged with a crime is a matter of public information and
28 record, except as provided in AS 47.10.090.

29 Sec. 40.25.040. ACCESS TO RECORDS BY RECORD SUBJECT. (a) Except

RECEIVED

APR 27 1981

Charles H. Gallagher
General Delivery
Ester, Alaska 99725
April 22, 1981

*Dear Pat, I would like you to look this over
as apparently this bill is coming before your
committee. Thanks Charlie.*

Dear Representative Rogers and Senator Parr:

Thank you for recent letters regarding my objection to House Bill 7 and Senate Bill 90.

It appears that the purpose of your bills is to submit a freedom of information action regarding what is and what is not public information. Your concerns are genuine and well respected in my opinion.

In regards to the exposing of Public Employess evaluations:

While you are elected individuals and naturally, fully open to the criticisms of "public life", I am not. I am a public servant and I am responsible to those who are my supervisors, the laws that I am required in my job to follow, and to the people who I serve. In such a capacity I am frequently the point of criticisms, investigation, and charges due to the determinations that I make regarding individuals eligibility for Unemployment Benefits. Often an individual believes decisions are bias in favor of their employer, often they believe the determinations to be a personal opinion, and frequently one thinks that they are a victim of injustice. All determinations are based upon available evidence at the time the determination is required to be made. Unfortunately, the ins and outs of Law, Regulation and Bureaucracy are not known and bitter feelings develope.

The result of these feelings is that a complaint is often filed of a personal nature. I have even been verbally attacked on the streets. I regard the right of complaint as sacrosanct, and I regard complaints as being positive as well as a part of any job. The system as developed offers an annual review of an employee by an agency as occurs in most organizations. This look-see each year is made by ones supervisor with attention going to various positive and negative attributes of that employee. This is in one's personnel file.

It appears you are proposing to leave myself and all other employess of the State open to the type of public scruntiny, which I am afraid would be abused. There are agency's set up for that purpose, such as the Omsbudman. We only know him too well.

While I realize that it is not your intentions to embarrass public employess, a recent publication of the salaries of State employees salaries over \$50,000.00 was a perfect example of abuse as some of those salaries came from professional grants. This is a minor example of how these bills can go awry. It is best to go without than possibly abridge the rights of any citizen (public or private) with well intentioned, but somewhat constitutionally questionable, "rights to know" Law.

I feel it is a privilege to be a State employee, and sometimes the Laws that you gentlemen write are not regarded by your constituents in the most favorable

light. I and my fellow employees frequently take personal blame for that and your bills would a vehicle of abuse.

Your attention is appreciated,

Sincerely, yours,

Charles H. Gallagher

cc: Senator Rodey
cc: Representative Brown

**STATE OF ALASKA
PERFORMANCE EVALUATION REPORT**

NAME	SOCIAL SECURITY NO.	DEPARTMENT	DIVISION
Charles H. Gallagher	002 34 0832	Labor	Employment Security

PCN	JOB CLASSIFICATION & TITLE	REPORT COVERAGE					
		FROM	TO	FROM	TO		
075764	Employment Sec. Spec. IB	10	16	79	10	15	80

REASON FOR REPORT

ANNUAL RESIGNATION COMPLETION OF PROBATION

OTHER (SPECIFY) _____

POSITION DESCRIPTION REVIEWED BY RATER

YES NO If no, explain: _____

NARRATIVE SECTION

Overall Effectiveness of the Job

U Acceptable O

(Overall Effectiveness MUST be explained. Other performance consideration, such as strong points and areas needing improvement, should be included.)

Mr. Gallagher has been working as a Non Monetary Adjudicator since 5/16/77. He attended and successfully completed a week of training in Juneau from 9/8/80 to 9/12/80 dealing with the new law changes effective October 1, 1980. These changes coupled with a system already in a continual change mode, due to the single-by-pass system that came into effect 4/21/80 and the Automated Benefit Payment system effective 10/1/80 created a few problems in the overall operation of the unit. Mr. Gallagher was instrumental in dealing with these problems and initiating solutions quickly and accurately.

Mr. Gallaghers duties include interviewing, both for non mon issues, and the new Eligibility Review Program, formal decision making, inputting issues and resolutions into the computer, taking pre-appeal statements and appeal requests and attending appeal hearings on behalf of the department. He also attends union call and prepares Reports of Union Validation, form 1202. His accuracy rate remains a 97%, a high in his unit. He is issuing 80% of his determinations in a timely manner, which is in keeping with the expectations of the unit. Mr. Gallaghers standards of work continue

Rater's Recommended Action: Recommended for Step Increase.

(See Instructions over)

Rating was discussed with employee Yes No If no, explain: _____

Signature of Rater: [Signature] Title: Non Mon Supv Date: 11/10/80

Employee: Concur with Rating Disagree (Employee comments on back)

Signature: Charles H. Gallagher Date: 11/7/80

REVIEWED AND APPROVED BY: [Signature] Date: 11/7/80

Division: For Director: [Signature] Title: Regional Manager Date: 11/17/80

Department: [Signature] Title: Personnel Asst Date: 11-19-80

EMPLOYING DIVISION

SPECIFIC RATING AREAS

PERFORMANCE U A O

(As shown by: quantity, quality, accuracy, and completeness of work; knowledge of job fundamentals; judgment shown on the job; willingness and ability to carry out new assignments; independence of performance; attitude towards job.)

WORK HABITS

(As shown by: attendance; punctuality; appearance and grooming; safety.)

INTERPERSONAL RELATIONSHIPS

(As shown by: consideration of public and co-workers; acceptance of supervision.)

SUPERVISORY (for Supervisory Employees Only)

(As shown by: training and directing subordinates; evaluating subordinates; planning and organizing work, including delegation; problem solving and decision-making ability; affirmative action achievement; cost effectiveness; and, Labor Contract Administration).

* U = Unacceptable, A = Acceptable

O = Outstanding

NOV 25 1980

STATE OF ALASKA
PERFORMANCE EVALUATION REPORT

Charles H. Gallagher SSA #002-34-0832

to be highly professional. He has a congenial personality and gets along well with his co-workers as well as the general public. He accepts assignments cheerfully and completes them with a minimum of supervision. He is a valuable asset to the department.

Mr. Gallagher has used a total of 83 hours sick leave since his last evaluation and has always given proper notice. This is considered average usage and shows no signs of abuse.

Mr. Gallagher is highly recommended for step increase.

BY: Charles Hayden Gallagher Nov 7, 1980
Employee Date

BY: Margaret [Signature] 11/7/80
Rater Date



Official Business

Alaska State Legislature

Senate

Judiciary Committee

Pouch V
State Capitol
Juneau, Alaska 99811

May 7, 1981

Mr. Lew M. Williams, Jr.
Publisher
Pioneer Printing Company
Box 7900
Ketchikan, Alaska 99901

Dear Lew:

Thank you for your letter of April 21 and your comments on SB 90.

I agree with you that some time limitations are needed in the bill, and I have directed my staff to prepare the necessary amendments.

A problem exists with using the restatement of torts definition of privacy invasion. The restatement addresses the common law definition, while Alaskans have a constitutional right to privacy, a higher standard.

Apart from this, your suggestions are well taken, and I will attempt to incorporate them into the bill.

I appreciate your continued efforts on this legislation.

Sincerely,

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

Senator Patrick M. Rodey
Chairman

PMR/ods



Pioneer Printing Co.

BOX 7900

KETCHIKAN, ALASKA 99901

TELEPHONE 225-3157

21 April 1981

RECEIVED

APR 27 1981

Senator Pat Rodey
Senate Judiciary Committee
Alaska Legislature
Pouch V
Juneau, Alaska 99981

Dear Pat:

We have a copy of CSSB 90 which is before your committee. It is a revision of legislation we commented on to Sen. Vic Fischer and his State Affairs Committee in February. Some of the changes we recommended then have been made. Some new features in the legislation present problems. Generally, our concern is that the bill is too vague in some parts.

On page 3, lines 11-14, it requires that the government unit notify of a denial of records in writing but it doesn't say how soon. To avoid misunderstanding and vagueness, we suggest that you add after "denial" in line 13: "within two working days." Or make it three or five working days, whatever you find reasonable, but make it something.

On line 29 of page 3, we recommend that after the word "fails" you add "within seven working days" or some reasonable length of time. If more time is needed, this section already allows for an extension. The idea is to set a deadline so people know where they stand and so it's known when an extension is needed.

On page 5, lines 7 and 8, we suggest this complete rewording: "(5) trade secrets and commercial, financial, geological or geophysical data furnished to the government unit with the understanding it will be treated confidentially." This limits the word "confidential" to just those situations wherein there is a commitment. Otherwise, there is no basis for judgment as to what makes any of the data confidential. More vagueness.

We are concerned about the term "original entry records" in line 12 on page 5. Does this mean that the police can withhold the arrest docket so that no one can

see who has been arrested? Can't we just leave it with "investigatory and intelligence records?" I imagine in some cases that police officials could classify "original entry records" as "investigatory." It would encourage police departments to keep highly sensitive data out of original entry records. We want to at least be able to see a record that someone was arrested, that an incident occurred. This paragraph seems vague enough to conflict with section (g) page 8 which does say arrest records are public.

On line 15, page 5, what's an "enforcement proceedings;"? Do law enforcement officers or the general public know? It's not in definitions and I don't know.

On the next line down, you can strike the words "a right to." The right to a fair trial always exists. Whether a person gets one or not, he always has the right.

Maybe you can reword line 16 to read: "(B) Destroy an accused person's presumption of innocence."

We hate to see lines 18 and 19 on page 5 written as they are with no backup with a definition in the bill as to what constitutes a right of privacy, or an invasion of privacy. There is an invasion of privacy definition in the restatement of torts, with which you are more familiar than I. Without a definition of the right of privacy, CSSB 90 is vague in several areas.

On page 6, lines 7-9, it appears that no attorney work product will be available for practical purposes. Everything except litigation strategy or opinions of the attorney becomes a court record and public. We suggest using the wording in this section that was in SB90 or starting in line 7 strike: "that does not involve litigation strategy, or mental impressions or opinions of any attorney, or a person working under the attorney's direction."

On page 6, lines 20-24, we have something so vague that public officials, and their legal advisors will take the easy way out and deny everything.

This is supposed to be legislation to assure public records are public.

This section defeats that purpose because, again, a right of privacy is not defined in the bill. And the bill leaves it up to a political body to judge public interest vs. private interest. Is being a judge so easy that any public official can be one?

We suggest that everything in this paragraph after "unjustifiable invasion of personal privacy;" be dropped. And that somewhere in the bill a definition of right of privacy be inserted.

If a right of privacy is defined, section (b) beginning on line 25 of page 6 is unnecessary.

On page 7, line 29, we suggest that after "public employment" you add the words "for positions not covered by collective bargaining agreements." This indicates that the public interest is in the top administrative jobs—the policy setters and administrators. It's doubtful that anyone wants to examine applications for clerk typists, garbage collectors, etc.

Any reference to finalists should be eliminated. Arbitrarily decreeing that a public agency release the names of the final three applicants or the top ten percent of those who applied is against the practices of some local governments. It is against the best interests of the public.

Our school board gave us the list of 51 applicants for the position of school superintendent (see attached). You can imagine the interest among the 130 teachers in the system, the other employees and the parents of youngsters when they saw the list. Some have friends on that list who they want to be among the finalists. They want to tell the school board.

How else can the public be sure that women, minorities and Alaskans are considered in hiring for top administrative positions?

We agree that applicants for such positions should be told that their names are public information when they apply for a public office. Therefore we suggest that starting at line 28 the sentence covering applications for public employment read like this: "Applications for public employment for supervisor positions (as defined by state labor law, if you wish) are open to public inspection but applicants for these positions shall be notified that such applications are public record when the positions are advertised."

No one is helped by keeping all but the finalists confidential. The purpose of affirmative action is defeated.

Only one person is helped by keeping the names of all applicants except the finalist confidential—the job jumper. There are people who apply for every position they see on speculation. Making all of the applications public discourages that. The public gets qualified, serious applicants for the top jobs.

We hope your committee gives the section covering applications for employment serious thought. In the past few years there have been too many instances where an unqualified applicant might have been placed in a top position if the public hadn't access to the names under consideration. We are all serving the public, trying to promote local hire, minority and women hire. Let's have a law that encourages it, not discourages it.

We want to emphasize that some definition of a right of privacy should be included in the legislation. It will avoid years of costly litigation while the courts devise a definition.

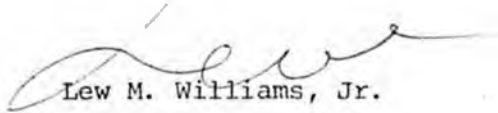
That is what happened in Washington State. The supreme court there finally defined an invasion of privacy by taking it from the restatement of torts.

I'm far from being a legislative or legal expert but I'll hazard an attempt at defining a right of privacy. You people can take it from there.

Right of privacy: A person is entitled to have records concerning him or her protected from public disclosure if such disclosure is of no legitimate concern to the public and if such disclosure would subject the person to criticism or ridicule. (Both situations must exist.)

Have fun,

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Lew", is written over the typed name.

Lew M. Williams, Jr.
Publisher

cag

Enclosures



Official Business

Alaska State Legislature

Senate

Judiciary Committee

Pouch V
State Capitol
Juneau, Alaska 99811

MEMORANDUM

TO: Senator Bennett
Senator Hohman
Senator Parr
Senator Ray

FROM: Senator Rodey *PMR*

DATE: May 7, 1981

SUBJECT: SB 90 "An Act relating to privacy and public information; changing Rule 65 of the Alaska Supreme Court Rules of Civil Procedure; and providing for an effective date."

Please find attached a committee substitute draft of SB 90.

The draft incorporates the ideas discussed at the committee meetings and those submitted by you upon the circulation of the first draft.

I would like to move this bill out if the committee is satisfied with its form.

PMR/ods
Attachment



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Alaska State Legislature

Senate

Judiciary Committee

Pouch V
State Capitol
Juneau, Alaska 99811

May 11, 1981

Mr. Grant Callow
Alaska Court System
303 K Street
Anchorage, Alaska 99503

Dear Grant:

Enclosed please find a draft of SB 90 for your information and comments.

Sincerely,

Kevin K. Bruce
Committee Aide

KKB/ods
Enclosure



Official Business

Alaska State Legislature

Senate

Judiciary Committee

Pouch V
State Capitol
Juneau, Alaska 99811

May 7, 1981

Mr. Al M. Camosso
Administrator
Providence Hospital
3200 Providence Drive
Pouch 6604
Anchorage, Alaska 99502

Dear Mr. ^{Al} Camosso:

Thank you for your letter regarding CSSB 90.

I agree with your concern for the privacy of medical records, and have included the following language in the section which exempts records disclosure:

"personal information in medical, psychological, and sociological files maintained on individual persons, exclusive of autopsy reports, except that access may not be denied to the person who is the subject of the record, or his designee;"

I appreciate your taking the time to inform me of your concerns.

Sincerely,

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

Senator Patrick M. Rodey
Chairman

PMK/ods

PROVIDENCE
HOSPITAL

3200 PROVIDENCE DRIVE - POUCH 6604
ANCHORAGE, ALASKA 99502
PHONE: (907) 276-4511



MAY 06 1981

April 30, 1981

Honorable Patrick M. Rodey
Pouch V
Juneau, Alaska 99811

Position Paper: CS SB 90 - "An act relating to privacy and public information; changing Rule 65 of the Alaska Supreme Court Rules of Civil Procedure; and providing for an effective date."

Dear Senator Rodey:

We have reviewed the Committee Substitute to SB 90 relating to privacy and public information and would appreciate your consideration of our comments.

1. According to Section 40.25.090. DEFINITIONS (3) it reads, in part, that a governmental unit includes "any organization supported in whole or in part by public money or authorized to spend public money."

a) If we receive revenue-sharing money would we be considered a governmental unit?

b) There are hospitals in Alaska which are owned by municipalities or boroughs. Are these hospitals considered "governmental units?" Would the medical records in these hospitals be subject to inspection?

According to the Federal Privacy Act of 1974 (PL 93-579) and the Privacy Commission's Report of 1977, medical records are and should be kept confidential and should not be included in freedom of information laws.

Therefore, we recommend that a section be included in CS SB 90 which would specifically exempt a patient's medical record from this change in Rule 65 of the Alaska Supreme Court rules of Civil Procedure.

Honorable Patrick M. Rodey
Page 2
April 30, 1981

2. Additionally, I would like to point out that if Section 40.25.015. on pages 1 and 2 regarding records to be open to inspection is passed, it would certainly add to the already high cost of health care. Hospitals would probably have to add personnel to their staff just to research files, copy them and answer requests. These additional labor costs, whether justified or not, would be passed on to patients.

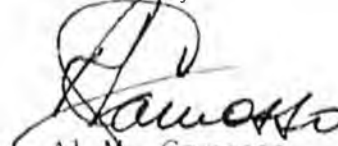
Also, offering 20 pages of a record copied free of charge would be another unnecessary expense adding to the high cost of health care.

Part (c) of that section refers to the fact that people can make a request for a record by phone or in writing. It would seem appropriate that some safeguard be built-in that would require some identification of the person, especially someone who might want access to a business office bill or record of a person who is not the requester. In fact, why should anyone have access to someone else's bill?

3. It is our recommendation that hospitals should be exempt from this law, with the possible exception of those hospitals (operating, capital expenses and balance sheet statistics only) owned and operated by municipal, state or federal governments.

Thank you for your consideration of our comments. We look forward to your reply.

Sincerely,



Al M. Camosso
Administrator

cc: Dennis DeWitt
William Dann
William Faulkner, O.D.
Ron Hammett
Donald DeMers
Don Brennan
Alaska Hospital Administrators
Advisory Board



Alaska State Legislature

Senate

Judiciary Committee

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

April 8, 1981

Ms. Kim Francisco
Box 7812
Ketchikan, Alaska 99901

Dear Ms. Francisco:

Thank you for your letter concerning SB 90. I will be certain to include a copy of your correspondence in each member's file for consideration of this proposed legislation.

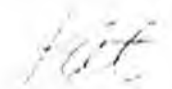
I agree that certain portions of a public employee's personnel file should be confidential, specifically those sections which deal with employee performance evaluations.

As a co-sponsor, I intend to see that we get the best freedom of information bill possible, and will offer an amendment to protect the privacy due public servants.

For your information, the Judiciary Committee will be conducting further hearings on SB 90 on Friday, April 10, at 1:30 p.m. in the Butrovich Committee Room. Please feel free to contact my staff should you wish to testify.

Again, I appreciate your comments on this very important legislation.

Sincerely,


Patrick M. Rodey
Chairman

PMR/ods

Tom Amundson

Thank you for your time.

of the information.

that protects the employe from misuse
order or through some formal procedure
not be available except by court

information but personnel records should
public should have access to salary

to no longer make criticisms. The
of context would cause supervisors

state. constructive criticism taken out
evaluation system now in use by the

will undermine and destroy the job
privacy. I also believe that the bill

infringes on state employer's right to
at S.B. #90. I believe that the bill

Judiciary Committee look very closely
I'm writing to request that the

Dear Mr. Chairman

4/4/81

Juneau Alaska 99811

Pouch U

Chairman Senate Judiciary Committee

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APR 07 1981

Senator Patrick Rodey

CHARLIE PARR

ALASKA LEGISLATURE

S.R. Box 50599
Fairbanks, Alaska 99701
(907) 456-5029

Pouch V
Fairbanks, Alaska 99811
907 455-4907
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MAR 19 1981

March 18, 1981

M E M O R A N D U M

TO: Senator Pat Rodey, Chairman
Senate Judiciary Committee

FROM: Senator Charles H. Parr *CHP*

SUBJECT: CSSB 90 (Privacy and Public Information)

This bill, in one form or another, has been in the Legislature since the end of the 1976 Session and has been subjected to a great deal of scrutiny. I thought it might be helpful to the Judiciary Committee to know which matters in the past have been almost universally agreed to, and which ones have been the subject of continuing controversy.

There has been little or no opposition to any of the following:

- 1 - The bill delineates those items which the State agencies may hold confidential and says that everything else is open.
- 2 - Items may be made confidential to comply with the Alaska Constitution's guarantee of privacy (legislative and judicial determination) and where there is an overriding public interest (by legislative determination only).
- 3 - Only the legislature by statute can approve confidentiality -- executive agencies may not do this by regulation.
- 4 - A person wanting access to information in the hands of a governmental agency should have easy, free access to the courts if the information is not released.
- 5 - A file or document which contains both confidential and open information is to have the confidential information deleted and the remainder released.
- 6 - Records maintained on an individual must be open to inspection by that individual.

The following subjects have been controversial:

- 1 - Whether court system records should be included. The bill now contains a compromise which says that they shall be released under rules established by the Supreme Court.
- 2 - Whether municipalities should be included. They are included in this bill and testimony this session was strongly in favor of such inclusion.
- 3 - Whether information must be produced immediately upon request. News agency representatives have pushed for this, but State agencies have pointed out that immediate release may not always be practicable. The bill presently strikes a balance between immediate production and the delays permitted Federal agencies in responding to FOI requests.
- 4 - State agencies are not willing to release any "attorney work product". The opposing view is that failure to make such materials open could result in a lockup of large amounts of information. The bill presently makes attorney work product open after any litigation it pertains to has been settled.
- 5 - Personnel records of public employees (to include teachers) is a thorny question. No one has objected to the release of salary information, and no one has proposed releasing personal information (such as family matters). Between these two extremes there has been much discussion as to what should be open in view of the fact that the public pays the employee's salary, and at the same time the employee has certain rights of privacy. It is my view that at least the information concerning the employee's qualifications for the job should be open.
- 6 - The bill takes away the right of a municipal agency to have executive sessions by authority of an ordinance. Unfortunately, school boards and city councils view this as an infringement on their rights.

CHP:vc



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Alaska State Legislature

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State Capitol
Juneau, Alaska 99811

March 30, 1981

The Judiciary Committee will be holding public hearings on CSSB 90 on April 10, 1981, at 1:30 p.m. in the Butrovich Room.

You have expressed an interest in the original bill (SB 90) and the committee would appreciate receiving any comments on the State Affairs substitute that you care to provide.

Thank you for your continued interest.

Sincerely,

Kevin K. Bruce
Committee Aide

KKB/ods

From Kodiak: Jon Newstrom
KMXT Radio
P. O. Box 484
Kodiak 99615

Deborah Nelson
Kodiak Daily Mirror
P. O. Box 1307
Kodiak 99615

From Homer: Annabel Lund
Managing Editor
Homer News
Box 254
Homer 99603

From Fairbanks: Scott Sterling
224 Nerland
Fairbanks 99701

Jamie Bryson
860B Yak Estates
Fairbanks 99701

From Sitka: Ray Medlin
Box 1339
Sitka 99835

From Skagway: Lucinda Hites
Box Three
Skagway 99840

From Soldotna: Steve Rinehart
The Peninsula Clarion
Box 1341
Kenai, Alaska 99611

From Anchorage: Bob Lohr
Rural Cap
327 Eagle St.
Anchorage

From Palmer/Wasila: Mark Harris

From Haines: Leo Land
Box 122
Haines 99827

From Nome: Stanley Summers
KICY AM/FM
Box 820
Nome, Alaska 99762

Feb. 5, 1981

Page 3

From Fairbanks: Kent Sturgis
Box 710
Fairbanks 99701

From Anchorage: Kay Fanning
Alaska Newspaper Assoc. & Daily News
Pouch 6616
Anchorage 99502

Ted Berns, Attorney
Mun. of Anchorage
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From Fairbanks: Tom Knapp
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Bruce Wannack
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From Anchorage: Matt Zencey
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Mark Beltz
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Anchorage 99502

From Ketchikan: Christine M
KINB Radio
Ketchikan 99901

From Fairbanks: Dean Gottehrer, Task Force for
Professional Journalists
Box 74573
Fairbanks 99701

Susan Fischer
Society of Professional Journalists
Box 710
Fairbanks 99701

From Anchorage: Howard Weaver
Daily News
Pouch 6616
Anchorage 99502

From Ketchikan: Lew Williams, Editor
Ketchikan Daily News
501 Dock Street
Ketchikan 99901

KAY M. BAKER, City Clerk
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IVAN WISDOM
CITY MANAGER
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ALASKA LEONE SERVICES
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ROLAND SITANKS
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278-3661

OMBUDSMAN'S OFFICE FRANK FLAVIN
840 K ST. Rm 203
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276-4011

CITY OF ~~SELDONIA~~ SELDONIA CARL HILLE
P.O. DRAWER B
SELDONIA, AK 99663

234-7643

PAYMONA MEDICAL
Box 1339
SITKA, AK 99835

HAINES BOROUGH R.E. HENDERSON
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HAINES, ALASKA 99827

766-2711

~~CITY OF ANCHORAGE~~
~~POUCH 6-650~~
~~ANCHORAGE, AK 99507~~

~~TEA BERNIS~~

264-4545

ANTHROPOLOGICAL ASSOCIATION
ARCHAEOLOGY
3310 E. 41ST, ANCHORAGE, AK.

JOAN LOBOELL

RONALD PAVELLAS
THE ALASKA HOSPITAL AND MEDICAL CENTER
2801 DEBATE RD
POUCH 8-AH
ANCHORAGE, AK 99508

276-1131



Alaska State Legislature

Senate

Judiciary Committee

Pouch V
State Capitol
Juneau, Alaska 99811

Official Business

April 20, 1981

Ms. Jolanda Cook
1919 Lathrop St.
Drawer 40
Fairbanks, Alaska 99701

Dear Ms. Cook:

Thank you for your comments concerning SB 90.

I agree that certain portions of a public employee's file should be exempted from disclosure and have amended SB 90 to reflect that.

I appreciate your thoughts on this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Pat".

Patrick M. Rodey
Chairman

PMR/ods

19
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APR 20 1981

MSG 81-00012989 PRTY 1 04/17/81 16:40:15 ORIG: LF00 IN= 0005 OUT= 0029
FROM: TAMMY TO: JUNEAU INFO
TARGET: LJH2 SUBJ: POM

PAGE 0004

TO: SEN. BENNETT, FAHRENKAMP, PARR, RODEY, HOHMAN, RAY
REP. BETTISWORTH, BROWN, FANNING, RANDOLPH, ROBERT SMITH
REP. CLOCKSIN, CHUCKWUK, MILLER, ANDERSON, O'CONNELL, PHILLIPS
FR: JOLANDA COOK, 1919 LATHROP ST, DRAWER 40, 99701 PH 452-1844
REP. DIV. OF ADULT AND AGING SER.

RE: HB 7, SB 90
HAVING HAD MY LIFE AND PERSONAL SAFETY (AS WELL AS MY CHILDS) THREATENED
ON SEVERAL OCCASIONS DURING THE PERFORMANCE OF MY DUTIES AS A SOCIAL
WORKER, I VEHEMENTLY OPPOSE DISCLOSURE OF MY PERSONNEL FILES TO
THE PUBLIC. I AM REQUIRED BY LAW TO PROTECT THE CONFIDENTIALITY OF MY
CLIENTS. I ALSO SHOULD BE AFFORDED BY PRIVACY AND ANONYMITY.



Official Business

Alaska State Legislature

Senate

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Pouch V
State Capitol
Juneau, Alaska 99811

April 20, 1981

Mr. C. Keith Campbell
Administrator
Seward General Hospital
P. O. Box 365
Seward, Alaska 99664

Dear Mr. Campbell:

Thank you for your comments on SB 90.

I agree with your request, and plan to offer an amendment which will exclude medical records from disclosure.

I appreciate your thoughts on this matter.

Sincerely,

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

Senator Patrick M. Rodey
Chairman

PMR/ods