

ALASKA LEGISLATURE COMMITTEE FILES 1901-1902

1706 SJ SB 861 - SB 864

1 withholding of the records and order the production to the complainant
2 of records improperly withheld or order that the correction or amend-
3 ment be made. The court shall determine the matter de novo, and may
4 examine the contents of any records in camera to determine whether the
5 records or any portion of them may be withheld under any of the exemp-
6 tions specified in AS 40.25.030 or not corrected or amended under
7 AS 40.25.060. The burden is on the agency to sustain its action.

8 Sec. 40.25.080. CIVIL ACTION FOR OBSTRUCTION OF ACCESS TO
9 RECORDS. (a) A person who has been wrongfully denied access to a
10 record under this chapter has a civil cause of action against the
11 person responsible for the violation and is entitled to recover actual
12 damages and reasonable attorney fees and other reasonable litigation
13 costs.

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

17 Sec. 40.25.090. DEFINITIONS. In this chapter, unless the context
18 otherwise requires,

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

22 (2) "custodian" means the head of any governmental unit or
23 the designee of the head of a governmental unit;

24 (3) "governmental unit" means an agency, political subdivi-
25 sion, legislative body, board of regents, or an administrative body,
26 board, commission, committee, subcommittee, authority, council, agency,
27 or other organization, including subordinate units of these groups, of
28 the state, or any of its political subdivisions, including but not
29 limited to municipalities, boroughs, school boards, and all other

1 boards, agencies, assemblies, councils, departments, divisions,
2 bureaus, commissions or organizations, advisory or otherwise, of the
3 state or local government, or any organization supported in whole or in
4 part by public money or authorized to spend public money;

5 (4) "individual" means a natural person;

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

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

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

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

25 (3) matters which by state statute [LAW, MUNICIPAL CHARTER,
26 OR ORDINANCE] are required to be confidential.

27 * Sec. 4. In sec. 1 of this Act, AS 40.25.070(b) has the effect of
28 changing Rule 65 of the Alaska Supreme Court Rules of Civil Procedure re-
29 lating to security deposits required in civil actions.

Committee File

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. SB 861
Title "An Act relating to rights of persons who report violations of law; and
Requested by Senate Judiciary Committee Date April 29, 1982
providing for an effective date."

II. FISCAL DETAIL

Agency Affected Department of Law
Program Category Affected General Government
BRU, Program, Or Subprogram(s) Affected Legal Services
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	0	0	0	0	0	0

FUNDING (Thousands of Dollars)

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

POSITIONS

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

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

This bill will not have a fiscal impact on the department's operations.

IV. DATE May 3, 1982

PREPARED BY

Richard I. Pegues Director, Admin. Svcs.

AGENCY

Department of Law

PHONE

465-3672

Original: Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/81)



Alaska State Legislature

Senate

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

MINUTES OF THE SENATE JUDICIARY COMMITTEE

OF

APRIL 14, 1982

Butrovich Committee Room, State Capitol Juneau, Alaska

Legislation Before Committee:

- SB 863 - "An Act providing for the award of costs and attorney fees incurred by defendants acquitted of offenses and by individuals who prevail in certain state administrative proceedings; changing Rules 79 and 82, Rules of Civil Procedure; and providing for an effective date."
- HB 194 - "An Act relating to prisoner employment and correctional industries; and providing for an effective date."
- SB 861 - "An Act relating to rights of persons who report violations of law; and providing for an effective date."
- SB 175 - "An Act relating to standards of conduct for public officials and employees; establishing a State Ethics Commission; and providing for an effective date."
- SJR 68 - Proposing an amendment to the Constitution of the State of Alaska providing that a legislator who is convicted of a felony forfeits legislative office.

The meeting of the Senate Judiciary Committee was called to order by Chairman Rodey at 1:05 P.M. Committee members present were: Senators Rodey, Ray, and Parr. Senators Bennett and Anderson were absent.

002 - Call to order.

009 - Chairman Rodey brought HB 194 before the committee.

042 - Mr. Stark, Department of Law, testified in favor of HB 194.

167 - Senator Anderson entered the meeting.

385 - Senator Parr moved to add "or labor force" on Page 1, Line 28. There was no objection.

441 - Senator Ray moved that on Page 5, Line 8, "on a basis that is competitive with other sources" be added after the word "service".

There was no objection. He also objected to the commission having all discretion in pay plans. He wanted some limit on the amount.

455 - Chairman Rodey directed the staff to prepare language to meet Senator Rays concerns. This language reads: On page 6, Line 4, A wage established under the pay plan may not exceed 50 percent of the minimum wage established under AS 23.10.065.

460 - HB 194 was returned to file for the language to be drafted.

465 - Chairman Rodey brought SB 861 before the committee.

478 - Jack Chenoweth, Ombudsman, testified stating that this bill should be included in Title 29.

695 - Senator Fischer testified in favor of his bill.

765 - SB 861 returned to file.

780 - Chairman Rodey adjourned due to the joint session.



Official Business

Alaska State Legislature

Senate

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

MINUTES OF THE SENATE JUDICIARY COMMITTEE

OF

APRIL 23, 1982

Butrovich Committee Room, State Capitol Juneau, Alaska

Legislation Before Committee:

- SB 437 - "An Act relating to the confidential communications between students and teachers."
- HB 409 - "An Act relating to hunting; and providing for an effective date."
- SB 861 - "An Act relating to rights of persons who report violations of law; and providing for an effective date."
- SJR 61 - Proposing amendments to the Constitution of the State of Alaska relating to appropriations and the retention, investment and expenditure of certain state revenues; and superseding the amendments proposed by Legislative Resolve No. 1, First Special Session of the Twelfth Legislature (FSS FCCS SJR 4).

The meeting of the Senate Judiciary Committee was called to order by Chairman Rodey at 1:05 P.M. Committee members present were: Senators Rodey, Ray, Parr, and Anderson. Senator Bennett was absent.

003 - Call to order.

009 - Chairman Rodey brought SJR 61 before the committee.

013 - Mr. Bruce explains the changes in the committee substitute.

088 - Representative Malone testified stating that the language in the committee substitute was somewhat limiting and offered attached amendments.

120 - Tom Williams, Commissioner of Revenue, testified, answering questions by the committee.

560 - Senator Parr asked for opinions from the Attorney General's office and Legislative Affairs regarding the need for Sec. 26 of Sec. 4.

SIDE TWO

235 - Senator Ray moved the Representative Malone's amendment #1 be adopted. There was no objection. (see attached amendments.)

245 - Senator Ray reconsidered his motion. There was no objection. Senator Rodey moved that on Page 2, Line 3, "or appropriations are" be inserted between the words "appropriation" and the word "approved". The word "is" is to be struck. There was no objection and it was adopted.

673 - The committee discussed the other amendments at length, but took no further action.

678 - SJR 61 returned to file for committee review.

687 - Chairman Rodey brought SB 437 before the committee.

736 - Bob Cooksey, NEA, testified in favor of SB 437.

TAPE #2

106 - Mr. Kirk, Ak. Statewide Student Assoc., testified in favor of the bill and submitted written testimony.

180 - Senator Anderson states that this legislation would be a threat to parents. Senator Ray objected to the confidentiality privilege being extended to teachers.

210 - Senator Anderson requested that SB 437 be tabled at this time. There was no objection.

244 - SB 437 laid on the table.

252 - Chairman Rodey next brought HB 206 before the committee.

268 - Senator Ray moved that HB 206 be passed from committee with individual recommendations. There was no objection.

277 - Chairman Rodey brought HB 409 before the committee.

323 - Senator Ray moved that on Pg. 1, Line 8, the word "alien" be inserted after "non-resident". There was no objection.

362 - Mr. Zibel, Department of Public Safety testified in favor of HB 409, and requested that the words "Class A" be inserted between the words "or" and "guide" on Line 13, Page 1. Senator Ray moved the amendment. There was no objection.

383 - Senator Anderson moved to include Sec. 2 of the House Rules Committee substitute. There was no objection and it was adopted. Senator Anderson moved to pass the Judiciary committee substitute as amended. There was no objection.

491 - The last item on the calendar was SB 861.

512 - After brief discussion, it was moved to return SB 861 to State Affairs committee.

532 - Adjourned at 3:00 P.M.

Resource Fund SEC 17 CONSTITUTION

P2 L3

DELETE [IF THE APPROPRIATION IS

(MAKES IT CLEAR THAT SEVERAL APPROPRIATIONS ARE POSSIBLE)

L6-7 DELETE [WHICH ARE OWNED BY STATE]
L13 " [OWNED BY STATE]

(MAY WANT TO INSERT PUBLICLY OWNED INSTEAD)

— PROVIDES MORE FLEXIBILITY

P2 L8

DELETE [AMOUNT]
INSERT VALUE

(MAKES SURE VALUE OF INVESTMENT IS REPAYED IN DOLLARS THAT ARE OF EQUAL VALUE — THAT IS, ADJUSTED FOR INFLATION)

P17, AFTER THE WORD "FUND"
INSERT: IN EXCESS OF THE AMOUNT
NECESSARY TO PRESERVE THE VALUE OF THE FUND
AGAINST THE EFFECTS OF INFLATION AND
REALIZED LOSSES

SEC 16

GENERAL FUND

[INSERT 1] PAGE 7
LINE 26

ADD A NEW SENTENCE
TO READ:

ALL REVENUES IN EXCESS
OF APPROPRIATIONS UNDER THIS
SECTION SHALL BE INVESTED
AT NATIONALLY COMPETITIVE
MARKET RATES.

PERMANENT FUND
SEC 15

PAGE 3
LINE 16

AFTER THE WORD "FUND"

ADD: , IN EXCESS OF THE AMOUNT
NECESSARY TO PRESERVE THE
VALUE OF THE FUND AGAINST
THE EFFECTS OF INFLATION
AND REALIZED LOSSES,

DILAPIDATION

state of decay, or the pulling down of the building or any part of it. *Wall Estate Co. v. Standard Box Co.*, 20 Cal.App. 311, 128 P. 1020, 1021.

Dilationes in lege sunt odiosæ. Delays in law are odious. *Branch, Princ.*

DILATORY. Tending or intended to cause delay or to gain time or to put off a decision.

DILATORY DEFENSE. In chancery practice. One the object of which is to dismiss, suspend, or obstruct the suit, without touching the merits, until the impediment or obstacle insisted on shall be removed. 3 Bl.Comm. 301, 302.

DILATORY EXCEPTIONS are such as do not tend to defeat the action, but only to retard its progress.

DILATORY PLEAS. A class of defenses at common law, founded on some matter of fact not connected with the merits of the case, but such as might exist without impeaching the right of action itself. They were either pleas to the *jurisdiction*, showing that, by reason of some matter therein stated, the case was not within the jurisdiction of the court; or pleas in *suspension*, showing some matter of temporary incapacity to proceed with the suit; or pleas in *abatement*, showing some matter for abatement or quashing the declaration. 3 Steph.Comm. 576. *Parks v. McClellan*, 44 N.J. Law, 513, 558; *Shaw v. Southern Ry. Co.*, 17 Ga. App. 73, 86 S.E. 95.

DILIGENCE. Prudence; vigilant activity; attentiveness; or care, of which there are infinite shades, from the slightest momentary thought to the most vigilant anxiety. *People v. Hewitt*, 78 Cal.App. 426, 248 P. 1021, 1024. The law recognizes only three degrees of diligence: (1) Common or ordinary, which men, in general, exert in respect of their own concerns; the standard is necessarily variable with respect to the facts, although it may be uniform with respect to the principle. (2) High or great, which is extraordinary diligence, or that which very prudent persons take of their own concerns. (3) Low or slight, which is that which persons of less than common prudence, or indeed of no prudence at all, take of their own concerns. *Brown & Flowers v. Central of Georgia Ry. Co.*, 197 Ala. 71, 72 So. 366, 367.

The civil law is in perfect conformity with the common law. It lays down three degrees of diligence,—ordinary, (*diligentia*;) extraordinary, (*exactissima diligentia*;) slight, (*levissima diligentia*.) *Story, Bailm.* 19.

There may be a high degree of diligence, a common degree of diligence, and a slight degree of diligence, with their corresponding degrees of negligence, and these can be clearly enough defined for all practical purposes, and, with a view to the business of life, seem to be all that are really necessary. Common or ordinary diligence is that degree of diligence which men in general exercise in respect to their own concerns; high or great diligence is of course extraordinary diligence, or that which very prudent persons take of their own concerns; and low or slight diligence is that which persons of less than common prudence, or indeed of any prudence at all, take of their own concerns.

Ordinary negligence is the want of ordinary diligence; slight, or less than ordinary, negligence is the want of great diligence; and gross or more than ordinary negligence is the want of slight diligence. *Railroad Co. v. Huggins*, 5 Kan. 180.

In Scotch Law and Practice

Process of law, by which persons, lands, or effects are seized in execution or in security for debt. *Ersk. Inst.* 2, 11, 1. *Brande.* Process for enforcing the attendance of witnesses, or the production of writings. *Ersk. Inst.* 4, 1, 71.

Other Classifications and Compound Terms

—**Due diligence.** Such a measure of prudence, activity, or assiduity, as is properly to be expected from, and ordinarily exercised by, a reasonable and prudent man under the particular circumstances; not measured by any absolute standard, but depending on the relative facts of the special case. *Perry v. Cedar Falls*, 87 Iowa, 315, 54 N.W. 225.

—**Extraordinary diligence.** That extreme measure of care and caution which persons of unusual prudence and circumspection use for securing and preserving their own property or rights. *Railroad Co. v. Huggins*, 89 Ga. 494, 15 S.E. 848; *Railroad Co. v. White*, 88 Ga. 805, 15 S.E. 802.

—**Great diligence.** Such a measure of care, prudence, and assiduity as persons of unusual prudence and discretion exercise in regard to any and all of their own affairs, or such as persons of ordinary prudence exercise in regard to very important affairs of their own. *Litchfield v. White*, 7 N.Y. 438, 57 Am.Dec. 534.

—**High diligence.** The same as great diligence.

—**Low diligence.** The same as slight diligence.

—**Necessary diligence.** That degree of diligence which a person placed in a particular situation must exercise in order to entitle him to the protection of the law in respect to rights or claims growing out of that situation, or to avoid being left without redress on account of his own culpable carelessness or negligence. *Garahy v. Breley*, 25 Tex.Supp. 302; *Sanderson v. Brown*, 5 Me. 312.

—**Ordinary diligence** is that degree of care which men of common prudence generally exercise in their affairs, in the country and the age in which they live. *Zell v. Dunkle*, 156 Pa. 353, 27 A. 24.

—**Reasonable diligence.** A fair, proper and due degree of care and activity, measured with reference to the particular circumstances; such diligence, care, or attention as might be expected from a man of ordinary prudence and activity. *Ford v. Engleman*, 118 Va. 89, 86 S.E. 852, 853.

—**Special diligence.** The measure of diligence and skill exercised by a good business man in his particular specialty, which must be commensurate with the duty to be performed and the individual circumstances of the case; not merely the



Alaska State Legislature

Senate Committee on State Affairs

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

Official Business

MEMORANDUM

TO: Senator Pat Rodey, Chair
Senate Judiciary Committee

FROM: Senator Vic Fischer, Chair
Senate State Affairs Committee

A handwritten signature in dark ink, appearing to read "Vic Fischer", with a long horizontal line extending to the right.

DATE: April 14, 1982

RE: SB 861 entitled "An Act relating to rights of persons who report violations of law; and providing for an effective date."

It is an unfortunate fact of life that employees who "blow the whistle" on abuse in government and in the private sector often pay a penalty. Employees who are not afraid to report a supervisor or colleague for violating the law often lose their jobs or are otherwise economically punished for their concern.

SB 861 prohibits all employers from firing or punishing workers who truthfully report violations of the law and allows injured employees to seek redress in court. This bill also protects private consumers who report public officials for violating laws from being denied rights or benefits from the state to which the consumer is entitled, such as receiving land or bidding on contracts.

This bill also makes it a class A misdemeanor for any person employed by the state to violate the rights of state employees.

This bill, if adopted, could save the state and general public money. Law breaking too often goes unreported for fear of on-the-job reprisals.

I urge your favorable consideration and support of this bill.

TELEGRAM

ELASCOM, INC.
PHONE: 825-5442
JUNEAU, AK 99802

#

02001 NL ANCHORAGE AK 86 03-24 0001 AST

PMS SEN VIC FISHER

~~1941~~
JUNEAU

RECENTLY I BELIEVE I SENT YOU A TELEGRAM REFERENCE IN PRODUCT
OF 8 YEARS OF WHISTLE BLOWING. HOWEVER, YOUR BILL IS EXACTLY
WHAT PUBLIC WORKERS NEED TO SAVE GOVERNMENT AND TAX PAYERS
MONEY AND THEMSELVES A CAREER. POSSIBLE WOULD GO TO JUNEAU AT
OWN EXPENSE TO TESTIFY IN BEHALF OF YOUR MUCH NEEDED BILL.
PLEASE CONTACT ME IN THE AM OR PM AS MY CAREER IS QUESTIONABLE
WHEN I WILL RETURN TO WORK SOON AFTER A MAJOR LEG OPERATION.

CORRECTION OFFICER II 333-8494

PO BOX 2427

ANCHORAGE AK 99510

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION

POUCH C - JUNEAU 2311

April 5, 1982

The Honorable Vic Fischer
Chairman
Senate State Affairs Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99802

Dear Senator Fischer:

We have reviewed Senate Bill 861, introduced at the request of your Committee. The Department supports this legislation and is willing to provide any support you request.

As we have stated before, this bill is patterned after proposals in other states for "whistleblowers' protection acts." It will serve two primary functions. The bill will give a measure of protection to workers who observe violations of worker safety laws, environmental laws, and other statutes of public concern, when the worker may believe that reporting the violation could jeopardize his employment. And it will serve to promote honesty and efficiency in government, since it extends the same protections to public employees who "blow the whistle" on illegal conduct.

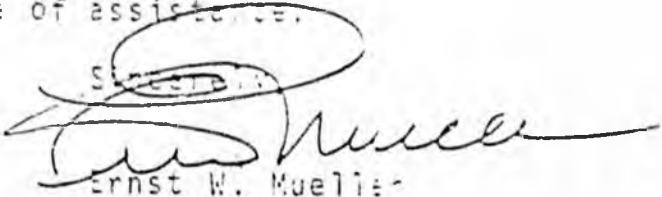
The bill provides for a civil penalty for a person who discriminates in any way (including threats, coercion, or discharge) against an employee who reports a violation of state, federal or local law, or who is asked to participate in an investigation or hearing. An employee who has been unlawfully discriminated against will also be allowed to bring a court action to halt the discrimination and to recover damages.

It is my hope that through this law we can offer a fuller measure of protection to citizens who put their own interests on the line by "blowing the whistle" on violations of the law.

As you know, our work on this issue followed from public testimony at the hearings on potential petrochemical development in Alaska.

Please let us know if we can be of assistance.

Sincerely,


Ernst W. Muelier
Commissioner

S

B

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COMMITTEE REPORT

SENATE

3/17/81

Finance

FURTHER:

Date: April 19, 1981

Mr. President:

The Committee on JUDICIARY has had SB 863 providing for the award of costs and attorney fees incurred by defendants acquitted of offenses

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 SB 863 same title
 new title
- and recommends the committee should not pass SB 863
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECO'MENDATIONS:

John Perry AD REP

John D. Anderson & M. King

CHAIRMAN

Asper
4/7/82

DRIVE
UCFA

Original sponsor: Finance Committee

1 IN THE SENATE BY THE JUDICIARY COMMITTEE

2 CS FOR SENATE BILL NO. 563 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act providing for the award of costs and attorney
7 fees incurred by certain defendants in criminal and
8 civil actions brought by the state and by persons who
9 prevail in certain state administrative proceedings;
10 changing Rules 79 and 82, Rules of Civil Procedure, and
11 Rule 508, Rules of Appellate Procedure; and providing
12 for an effective date."

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

14 * Section 1. AS 12.45 is amended by adding a new section to read:

15 Sec. 12.45.145. COSTS AND ATTORNEY FEES FOR DEFENDANT IN A CRIMINAL
16 ACTION. (a) If a judgment of acquittal is entered in favor of a defen-
17 dant charged with committing an offense under state law, the court may
18 allow the defendant to recover the reasonable costs of defending the
19 action, including reasonable attorney fees, from the state. The court
20 shall enter on the record the amount of costs awarded to an acquitted
21 defendant.

22 (b) If a defendant is charged in the same action with more than
23 one offense, he ~~may~~ not receive an award under this section if a judgment
24 of guilty is entered against him on any (offense or) lesser included
25 offense in that action.

26 (c) If a judgment of conviction entered against a defendant charged
27 with committing an offense under state law is reversed on appeal, the
28 court that considers the appeal may allow the appellant to recover the
29 reasonable costs of the appeal and of proceedings in lower courts.

CAN BE INSERTED BEFORE
THINK

RM

1 including reasonable attorney fees, from the state.

2 (d) This section does not apply to a defendant represented by
3 counsel at public expense.

4 * Sec. 2. AS 09.50 is amended by adding new sections to read:

5 ARTICLE 7. COSTS AND ATTORNEY FEES IN ADMINISTRATIVE
6 PROCEEDINGS AND COURT ACTIONS.

7 Sec. 09.50.410. AWARD OF COSTS AND ATTORNEY FEES TO RESPONDENT IN
8 ADMINISTRATIVE PROCEEDING. (a) If an administrative proceeding is
9 commenced by a state agency against a person to impose a civil penalty
10 or to revoke, suspend, limit, or condition a right, authority, license,
11 or privilege and the proceedings terminate without the imposition of a
12 civil penalty or without the revocation, suspension, limitation, or
13 conditioning of a right, authority, license, or privilege, the hearing
14 officer or other official who presides over the proceeding may allow the
15 respondent to recover from the state the reasonable costs of defense,
16 including reasonable attorney fees.

17 (b) Subsection (a) of this section does not apply to an adminis-
18 trative proceeding that terminates without the imposition of a civil
19 penalty or without the revocation, suspension, limitation, or condition-
20 ing of a right, authority, license, or privilege because the respondent
21 has ^{voluntarily} complied with state law or regulation in the matter that is the
22 subject of the administrative proceeding. *“PRIOR TO HEARING”*
PROCEEDING

23 (c) If a civil penalty is imposed on a person in an administrative
24 proceeding or the proceeding results in the revocation, suspension,
25 limitation, or conditioning of a right, authority, license, or privilege
26 and the decision made in the administrative proceeding is reversed on
27 the merits in a subsequent court proceeding, the court may allow the
28 person who was the subject of that decision to recover reasonable costs
29 of the appeal and of the administrative proceeding, including reasonable

*COULD BE REPEATED IF DISCRETION IS
ATTORNEY AND EXPENSIVE*

INCLUDE ALL AGENCIES

1 attorney fees, from the state.

2 (d) In this section "state agency" means a department, office,
3 agency or other instrumentality of the state. spell out D.A.A.?

4 Sec. 09.50.420. AWARD OF COSTS AND ATTORNEY FEES TO DEFENDANT IN
5 CIVIL ACTION BROUGHT BY THE STATE. (a) If an individual defendant
6 prevails in a civil action brought by the state against that defendant,
7 the court may allow the defendant to recover the reasonable costs of
8 defending the action, including reasonable attorney fees, from the
9 state.

10 (b) If an individual defendant does not prevail in a civil action
11 brought by the state against that defendant, but does prevail on the
12 merits of an appeal of the judgment entered in that action, the court
13 that considers the appeal may allow the appellant to recover the reason-
14 able costs of defending the action and of appealing the decision of the
15 lower court, including reasonable attorney fees, from the state.

16 (c) This section does not apply to a defendant represented by
17 counsel at public expense.

18 * Sec. 3. This Act applies only to actions in which a judgment of acquit-
19 tal is entered, or to administrative proceedings or civil actions that are
20 terminated on or after the effective date of this Act.

21 * Sec. 4. Section 2 of this Act has the effect of changing Rules 79 and
22 82, Rules of Civil Procedure, and secs. 1 and 2 of this Act have the effect
23 of changing Rule 508, Rules of Appellate Procedure, to provide for the award
24 of costs and attorney fees to defendants and appellants who prevail in civil
25 actions brought by the state and in appeals of criminal, civil, and adminis-
26 trative actions brought by the state.

27 * Sec. 5. This Act takes effect immediately in accordance with AS 01.10.-
28 070(c).



Official Business

Alaska State Legislature

Senate

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

MINUTES OF THE SENATE JUDICIARY COMMITTEE

OF

APRIL 19, 1982

Butrovic Committee Room, State Capitol Juneau, Alaska

Legislation Before Committee:

- HB 206 - "An Act relating to the termination of rental agreements of mobile home park dwellers and tenants."
- SB 863 - "An Act providing for the award of costs and attorney fees incurred by defendants acquitted of offenses and by individuals who prevail in certain state administrative proceedings; changing Rules 79 and 82, Rules of Civil Procedure; and providing for an effective date."
- HB 194 - "An Act relating to prisoner employment and correctional industries; and providing for an effective date."
- SJR 61 - Proposing amendments to the Constitution of the State of Alaska relating to appropriations and the retention, investment and expenditure of certain state revenues; and superseding the amendments proposed by Legislative Resolve No. 1, First Special Session of the Twelfth Legislature (FSS FCCS SJR 4).

The meeting of the Senate Judiciary Committee was called to order by Chairman Rodey at 1:35 P.M. Committee members present were: Senators Rodey, Parr, and Fay. Senators Anderson and Bennett were absent.

003 - Call to order.

008 - Chairman Rodey brought HB 206 before the committee.

027 - Rep. Mitch Hood, prime sponsor of HB 206, testified, addressing the need of trailer park owners to be able to evict trailer space renters that don't abide by court rules.

065 - Senator Fay asked for the bill in subcommittee, and promised to report back with the bill in several days.

084 - Ben Marsh, representing himself, testified in favor of the bill and gave the legislative history of legislation dealing with evicting trailer space renters.

268 - Ira Walker, representing himself, testified in favor of HB 206, stating that it is difficult to keep a cleanly court under current law. If there is junk present, AHFC will not finance trailers in junk courts.

334 - Paul Fry, representing himself, testified in favor of the bill also. He expressed his concern of having the word "reasonable" in the present language.

363 - Kathy Cruichshank, representing herself, testified in favor of the bill, stating that unsanitary conditions under current law are not controllable by park owners which brings the value of the parks down.

405 - Anita Thompson, representing herself, expressed the problems she was having collecting her rent. She was in favor of HB 206.

445 - Chairman Rodey directed that the bill be put in a subcommittee of one with Senator Ray.

454 - Chairman Rodey next brought HB 194 before the committee.

460 - Mr. Bruce explains the changes in committee substitute.

520 - Senator Parr moved the committee substitute to be adopted. There was no objection.

526 - Senator Anderson moved to pass CSHB 194 with individual recommendations. There was no objection.

535 - Chairman Rodey next brought SJR 61 before the committee.

537 - Lt. Governor, Terry Miller, testified in favor of SJR 61, expressing his support for this bill in place of SJR 4 which was passed last year. He stated three areas which should be addressed by the committee:

- 1.) Phasing in amendment.
- 2.) Issue of liquidity.
- 3.) Catastrophic drop in revenues.

620 - Senator Ray questions need for Section 26. He felt it cluttered up the Constitution.

635 - Lt. Gov. Miller stated that maybe it should be a transitional clause.

856 - Senator Dankworth, prime sponsor of the bill, testified in favor of the resolution, stating that it is far superior to SJR 4. He had no feeling on the Governor's amendment and left it up to the committee.

268 - Rep. Hugh Malone testified, agreeing with Senator Dankworth that SJR 4 is a bad idea. He addressed the questions of having "money" or "the balance" on Line 4, Page 2. He also asked what role the Legislature would play in determining the market rate.

286 - Rep. Malone stated that the Legislature should develop projections on liquidity of fund. re: 20% of fund may be appropriated.

534 - Ron Lear, Budget and Audit, answered questions from the committee members.

575 - Senator Ray asked what "capital projects" are, stating that this language is fairly restrictive. Suggested possibly using "capital improvements".

596 - SJR 61 returned to file until Wednesday's meeting.

713 - Chairman Rodey brought SB 863 before the committee.

715 - Senator Ray moved SB 863 be passed with individual recommendations. There was no objection.

719 - The meeting was adjourned at 2:55 P.M.



Alaska State Legislature

Senate

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

MINUTES OF THE SENATE JUDICIARY COMMITTEE

OF

APRIL 14, 1982

Butrovich Committee Room, State Capitol Juneau, Alaska

Legislation Before Committee:

- SB 863 - "An Act providing for the award of costs and attorney fees incurred by defendants acquitted of offenses and by individuals who prevail in certain state administrative proceedings; changing Rules 79 and 82, Rules of Civil Procedure; and providing for an effective date."
- HB 194 - "An Act relating to prisoner employment and correctional industries; and providing for an effective date."
- SB 861 - "An Act relating to rights of persons who report violations of law; and providing for an effective date."
- SB 175 - "An Act relating to standards of conduct for public officials and employees; establishing a State Ethics Commission; and providing for an effective date."
- SJR 68 - Proposing an amendment to the Constitution of the State of Alaska providing that a legislator who is convicted of a felony forfeits legislative office.

The meeting of the Senate Judiciary Committee was called to order by Chairman Rodey at 1:05 P.M. Committee members present were: Senators Rodey, Ray, and Parr. Senators Bennett and Anderson were absent.

002 - Call to order.

009 - Chairman Rodey brought HB 194 before the committee.

042 - Mr. Stark, Department of Law, testified in favor of HB 194.

167 - Senator Anderson entered the meeting.

385 - Senator Parr moved to add "or labor force" on page 1, Line 28. There was no objection.

441 - Senator Ray moved that on Page 5, Line 8, "on a basis that is competitive with other sources" be added after the word "service".

There was no objection. He also objected to the commission having all discretion in pay plans. He wanted some limit on the amount.

455 - Chairman Rodey directed the staff to prepare language to meet Senator Rays concerns. This language reads: On page 6, Line 4, A wage established under the pay plan may not exceed 50 percent of the minimum wage established under AS 23.10.065.

460 - HB 194 was returned to file for the language to be drafted.

465 - Chairman Rodey brought SB 861 before the committee.

478 - Jack Chenoweth, Ombudsman, testified stating that this bill should be included in Title 29.

695 - Senator Fischer testified in favor of his bill.

765 - SB 861 returned to file.

780 - Chairman Rodey adjourned due to the joint session.



Official Business

Alaska State Legislature

Senate

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

MINUTES OF THE SENATE JUDICIARY COMMITTEE

OF

APRIL 12, 1982

Butrovich Committee Room, State Capitol Juneau, Alaska

Legislation Before Committee:

SB 473 - "An Act relating to municipal powers; and providing for an effective date."

SB 863 - "An Act providing for the award of costs and attorney fees incurred by defendants acquitted of offenses and by individuals who prevail in certain state administrative proceedings; changing Rules 79 and 82, Rules of Civil Procedure; and providing for an effective date."

HB 194 - "An Act relating to prisoner employment and correctional industries; and providing for an effective date."

The meeting of the Senate Judiciary Committee was called to order by Chairman Rodey at 1:05 P.M. Committee members present were: Senators Rodey, Ray, and Anderson. Senators Bennett and Parr were absent.

002 - Call to order.

005 - Chairman Rodey brought SB 473 before the committee.

030 - Bill Cummings, Assistant Attorney General, testified against amendment number one by Senator Zeigler, stating it would cause hardships to person's whose property was claimed.

341 - Mr. Sharp, representing the city and municipality of Juneau, also testified against Senator Zeigler's amendments.

490 - Chairman Rodey laid SB 473 on the table.

550 - Chairman Rodey brought HB 194 before the committee.

564 - Mr. Campbell, and Mr. Roman, of the Division of Corrections, testified in favor of HB 194.

630 - Senator Ray objected to the language on Page 2, Line 24.

832 - Senator Rodey offered language change to Page 2, Line 24 and directed staff to prepare language. There was no objection.

845 - HB 194 was laid on the table.

SIDE TWO

012 - Chairman Rodey brought SB 863 before the committee.

022 - After brief discussion, Chairman Rodey returned SB 863 to the file until Wednesday's meeting.

Adjourned at 2:00 P.M. for Senate Session.



Official Business

Alaska State Legislature

Senate

Committee on Judiciary

Pench V
State Capitol
Juneau, Alaska 99811

MINUTES OF THE SENATE JUDICIARY COMMITTEE

OF

APRIL 7, 1982

Butrovich Committee Room, State Capitol Juneau, Alaska

Legislation Before Committee:

SB 686 - "An Act relating to the return of property received or seized by law enforcement agencies or acquired as evidence in a criminal proceeding."

SB 863 - "An Act providing for the award of costs and attorney fees incurred by defendants acquitted of offenses and by individuals who prevail in certain state administrative proceedings; changing Rules 79 and 82, Rules of Civil Procedure; and providing for an effective date."

HB 194 - "An Act relating to prisoner employment and correctional industries; and providing for an effective date."

The meeting of the Senate Judiciary Committee was called to order by Chairman Rodey at 1:35 P.M. Committee members present were: Senators Rodey, Ray, Parr, and Anderson. Senator Bennett was absent.

002 - Call to order.

005 - Chairman Rodey brought SB 686 before the committee.

179 - Senator Ray moved that on Page 2, Line 22 delete [six months] and insert 60 days. There was no objection.

202 - Senator Parr moved to pass SB 686 with individual recommendations. There was no objection.

228 - Chairman Rodey brought SB 863 before the committee.

245 - Ron Lorenson, Department of Law, testified that the committee substitute was superior to the original bill and that the fiscal impact would be considerably smaller.

771 - Gary Jenkins, National Federation of Independent Business' testified in favor of this bill, but asked the committee to adopt language which would allow individuals that file against the state in tax cases be covered for attorney fees.

820 - Chairman Rodey directed Mr. Bruce to work with Mr. Asper to prepare language to include all state agencies within the bill, including the University of Alaska. Staff was directed to delete [offense or] on Line 24, Page 1, and to draft language to meet Mr. Jenkins concerns.

845 - SB 863 returned to file.

SIDE TWO

284 - Chairman Rodey brought HB 194 before the committee.

295 - Mr. Stark, Department of Law, testified in favor of HB 194.

635 - Mr. Charles Campbell and Mr. Roman, Department of HESS, Division of Corrections, testified in favor of this bill.

684 - HB 194 returned to file.

756 - Adjourned 3:05 P.M.

FISCAL NOTE

I. REQUEST

Bill/Resolution No. CSSB 863 (Judiciary)

Title "An Act providing for the award of costs and attorney fees...

Requested by _____ Date _____

in civil actions brought by the state...and providing for an effective date."

II. FISCAL DETAIL

Agency Affected Department of Law

Program Category Affected General Government/Administration or Justice

BRU, Program, Or Subprogram(s) Affected Legal Services/Prosecution

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

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.		1,000.0	1,080.0	1,166.4	1,259.7	1,347.9
TOTAL		1,000.0	1,080.0	1,166.4	1,259.7	1,347.9

FUNDING (Thousands of Dollars)

GENERAL FUND		1,000.0	1,080.0	1,166.4	1,259.7	1,347.9
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

1. Defendants Acquitted of Offenses:

As Deputy Attorney General Ron Lorensen stated, in testimony before the Senate Judiciary Committee, the committee's substitute for SB 863 has satisfied many of the department's concerns regarding the original version of the bill. There is, however, a remaining conflict between public policy considerations which the department believes should be carefully weighed before the bill is passed from the committee.

Section 1. of this bill, while adopting the reasonable cost standard and allowing awards at the discretion of the court, now provides that if a defendant is acquitted of a charge in the same action in which he is convicted of another charge, the court may

IV. DATE Revised April 19, 1982 PREPARED BY Richard I. Pegues, Director, Admin. Svcs.

AGENCY Department of Law
PHONE 465-3672

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)
33-001 (Rev. 12/81)

award the defendant reasonable costs attributable to defending the charge of which the defendant was acquitted, unless the charge of which the defendant is convicted is a lesser included offense of the charge of which the defendant is acquitted. The original version of the bill provided that when a defendant is charged in the same action with more than one offense, he may not receive an award if a judgment of guilty is entered against him on any offense or lesser included offense in that action.

The department believes that its prosecutors need the tactical flexibility to use multiple charges because, in difficult cases, the theory which is eventually upheld in obtaining a guilty verdict often depends upon the actual development of evidence throughout a trial. To the extent that a prosecutor's charging determinations may be unduly constrained by this new provision, it may be impossible to bring any charges, particularly in cases involving complex legal theory. The department therefore urges that a defendant not receive an award of costs and fees in any action in which the defendant is charged with more than one offense if a judgment of guilty is entered against him on any offense or lesser included offense in that action. As stated in our original fiscal note of March 29, the department feels strongly that the state not pay the attorney's fees of persons who could be found to have committed a crime under the civil standard of a preponderance of the evidence, but were nevertheless found not guilty under the strict reasonable doubt test, because a verdict of acquittal can seldom be equated with a determination of innocence.

The cost for the current version of this section, which can only be estimated due to the absence of any historic data, will probably be reduced from our original estimate to a new level of approximately \$750,000. This new amount could be reduced somewhat further if the provision allowing costs for acquittals in actions with multiple charges is changed as the department has recommended.

2. Individuals who Prevail in State Administrative Proceedings:

The substitute version of the bill has adopted the changes the department recommended and the cost estimate should now be reduced from \$700,000 to \$250,000.

3. Award of costs and Attorney's Fees to Defendants in Civil Actions Brought by the State:

The changes incorporated by the Judiciary Committee in this section of the bill preserves the current system whereby the state pays and collects costs and fees, and therefore, the amounts representing additional costs and fees, \$150,000, and lost revenues, \$300,000 will no longer be needed. Additional amounts required by this section = 0.

FISCAL NOTE

I. REQUEST
 Bill/Resolution No. SB 863
 Title "An Act providing for the award of costs and attorney fees incurred by defendant.....and providing for an effective date."
 Requested by The Office of the Governor Date March 22, 1982

II. FISCAL DETAIL
 Agency Affected Department of Law
 Program Category Affected General Government/Administration of Justice
 BRU, Program, Or Subprogram(s) Affected Legal Services/Prosecution
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.		2,302.5	2,486.7	2,685.6	2,900.4	3,132.4
TOTAL		2,302.5	2,486.7	2,685.6	2,900.4	3,132.4

FUNDING (Thousands of Dollars)

GENERAL FUND		2,302.5	2,486.7	2,685.6	2,900.4	3,132.4
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

Enactment of this bill will cause a significant fiscal impact on the state and it will also cause substantial and serious changes to long established public policy.

The bill provides for the award of actual costs and attorney's fees incurred by defendants acquitted of offenses, by individuals who prevail in certain administrative proceedings, and by individuals who prevail in civil actions brought by the state. Since each of these classes of litigation is addressed separately in the bill, and since each class of litigation involves different public policy considerations, they are discussed separately below.

Richard I. Peques

IV. DATE March 29, 1982 PREPARED BY Richard I. Peques, Director, Admin. Svcs
 AGENCY Department of Law

Original: Legislative Finance PHONE 465-3672

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

1. Defendants Acquitted of Offenses:

A finding of not guilty in a criminal trial does not necessarily mean that the defendant did not commit the crime out, rather, that the jury had a reasonable doubt as to the defendant's guilt. If the bill is enacted, the state would be paying the attorney's fees of persons who could be found to have committed a crime under the civil standard of preponderance of the evidence but were nevertheless found not guilty under the strict reasonable doubt test. It is seldom that an acquittal can be equated with a determination of innocence. A not guilty verdict usually means that the state has failed to prove beyond a reasonable doubt the guilt of the defendant.

In many cases where the defendant is found not guilty, critical evidence against the defendant has been suppressed because of the application of the exclusionary rule. This legislation could very well have the unintended effect of rewarding criminals for technically inadmissible evidence or the reluctance of key witnesses to come forward. By awarding costs and attorney fees to acquitted defendants, the bill will usually be making payment to individuals who have in fact committed a crime for which they should have been prosecuted.

The state's prosecutors have legal and ethical obligations not only to prosecute violations of the law but also to protect the factually or legally innocent. The state's standards governing case screening provide, in part, that: "Charges shall be initiated only if at the time of filing, a case presented for prosecution contains, on its face, sufficient legally admissible evidence to warrant a trier of fact to conclude that the defendant committed the offense charged beyond a reasonable doubt."

The fact that attorney's fees will be awarded in cases where a not guilty verdict is returned may cause a prosecutor to be even more selective than the state's already strict guidelines in deciding what cases to accept for prosecution. The public, on the other hand, often complains that the prosecutor dismisses too many cases. Enactment of this bill will almost certainly lead to more dismissals with more public complaints.

Although we do not believe the bill to be in the public interest, any proposal to pay costs and attorney's fees in criminal cases should provide that such payment be appropriated to and administered by a department other than the Department of Law, such as the Department of Administration, to ensure that a prosecutor's charging determinations are not improperly influenced by the monetary provisions of the bill.

The bill's fiscal impact is substantial. Not guilty verdicts are returned in approximately 25% of criminal trials. In FY81, 206 misdemeanor and 51 felony cases resulted in not guilty verdicts. At an approximate cost of \$2,500 for a misdemeanor trial and \$12,500 for a felony case, the cost of assuming the defendant's attorney fees in these cases would be \$1,152,500.

2. Individuals who prevail in state administrative proceedings:

The state does not have a mechanism or policy which allows for the award of attorney's fees and costs to individuals who prevail in certain administrative proceedings brought against those individuals by the state. As a matter of simple equity, the public interest might be better served if some limited allowance for costs and attorney's fees was provided in these matters. Any such provision, however, should treat all litigants equally, insofar as the setting of costs is concerned.

The reasonable cost method, used by the court system, provides the fairest means whereby costs and fees can be awarded to a prevailing party. This method respects the good faith of each of the parties to a dispute, weighs the relative gain and loss between the winner and the loser, and discourages claims for unnecessary or extravagant legal expenses. As a practical matter, the courts rarely award more than one half of actual costs, their purpose being to partially compensate a prevailing party for the costs and fees incurred where such compensation is justified and not to penalize a party for litigating a good faith claim. Actual costs are usually not awarded unless there is a clear showing that that action was brought frivolously or was otherwise devoid of merit. The bill provides that actual costs may be paid to the respondent whenever an administrative proceeding is terminated without taking the action sought by the state. The result of this latter standard will be to unjustly enrich, at the state's expense, respondents in instances where the proceeding is terminated due to a defect in the hearing process or where the respondent, through his own actions, corrects the situation sought in the state's claim, making further proceedings unnecessary. The department supports payment of "reasonable costs" to prevailing respondents in those administrative proceedings covered by the bill; however, it strongly urges that actual costs be allowed only in those cases where a hearing officer or other official makes a clear finding that the state's claim was without merit.

The department carefully screens agency complaints before deciding to initiate proceedings or advising some other agency to initiate proceedings. Consequently the state prevails in approximately 85% of the administrative proceedings that it brings. The costs involved in these actions range from a few hundred dollars to several hundred thousand dollars. It is our best estimate that this section of the bill, as presently written, could cost \$700,000 annually. Substitution of "reasonable costs" for actual costs would probably reduce this amount to about \$250,000.

3. Award of costs and attorney's fees to defendant in civil action brought by the state.

The state is currently subject to paying costs and attorney's fees to prevailing parties in actions it brings, and in actions that are brought against it, as provided by Rule 82 of the Civil Rules of Procedure. Such costs are, of course, limited to the Rule 82 fee schedule or, in the absence of an easily determinable monetary valuation, the "reasonable cost" method. The state may also seek costs and fees, under the current rule, when it is the prevailing party.

The use of the "reasonable cost" standard under Rule 82 represents the fairest method of apportioning litigation expenses where the parties in a dispute have litigated on a good faith basis. Rule 82 recognizes that a party doesn't usually prevail totally, it requires a justification of the expenses being claimed, and it considers the good faith nature of an unsuccessful party's claim or defense. Using this standard, a prevailing party is typically awarded about one half of its justified actual expenses. Absent a showing of good faith on the part of the unsuccessful party, the prevailing party may be awarded all of its justified expenses. The purpose of Rule 82 is to compensate a prevailing party for the costs of litigation without placing such a heavy burden on the unsuccessful party as to discourage access to the courts. The department does not believe this rule should be disturbed, especially in a manner that treats the state less equal than other parties to civil litigation.

It is our belief that this section of the bill will not only subject the state to unjustly inflated claims for costs and fees, but that it will have the effect of establishing a special, disadvantaged class of litigant, of which the state will be the only member. The bill will more than likely be read as a signal that the state now lives on a oneway street where it must pay, but need not be paid. Excepting public interest suits, the state often seeks costs and fees where it is a defendant and prevails. The bill, however, appears to remove the state as an equal party in Rule 82 matters, making it doubtful the state, as the prevailing party, would be allowed to collect costs and fees whether as plaintiff or defendant. The upshot may be the inadvertent setting up of the state as a "deep pocket" for litigators and litigants who are not otherwise gainfully employed. Certainly, the number of suits the state defends will increase without access to Rule 82 and the protection it affords against frivolous actions.

The department collects more than \$300,000 each year, in costs, fees and judgment settlements, as a result of civil actions in which it prevails. Much, if not all of this amount, will be lost if the state is no longer given full access to Rule 82 proceedings. Costs, fees and judgment settlements paid by the state vary greatly between fiscal years. However, they have averaged \$150,000 over the past several years.

Substitution of actual costs for "reasonable costs" would likely double the amount the state has been paying, or an approximate annual increase of \$150,000. The amount which it will cost to defend against frivolous actions, if Rule 82 protection is not available to the state, is speculative. In terms of wasted attorney time, this cost could be considerable within just a few years, probably equaling the time of one or more attorneys.

Summary of Costs:

Criminal Actions	\$ 1,152,500	
Administrative Proceedings	700,000	
Civil Actions	150,000	
	300,000	(Lost Revenues)
TOTAL	<u>\$ 2,302,500</u>	

Costs beyond FY83 have been shown using an 8% inflation factor.

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. SB-863

Title An Act For The Award Of Costs And Attorney Fees Incurred

Requested by _____ Date _____

II. FISCAL DETAIL

Agency Affected Department of Public Safety

Program Category Affected Life and Property Protection

BRU, Program, Or Subprogram(s) Affected Driver/Vehicle Services

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

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES				75.0	81.0	87.4
200 TRAVEL				6.3	6.8	7.3
300 CONTRACTUAL				24.8	26.3	28.9
400 COMMODITIES				1.3	1.4	1.5
500 EQUIPMENT				10.0		
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.	-0-	69.0	75.9	83.5	91.9	101.1
TOTAL	-0-	69.0	75.9	200.9	207.9	226.2

FUNDING (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND	-0-	69.0	75.9	200.9	207.9	226.2
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
FULL TIME				2	2	2
PART TIME						
TEMPORARY						

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

Last year the Division of Motor Vehicles held approximately 200 driver's license suspension-revocation hearings, 360 financial responsibility hearings, and 120 motor vehicle title, registration or license revocation or determination hearings. About 25% of all these hearings were found in favor of the citizen. This is the figure used to determine costs, although a few of those who lose the hearing later appeal in district court. Attorney time on driver's license and FR hearings is estimated at 4 hours, and 6 hours for vehicle hearings.

(Continued on Page 2)

IV. DATE March 23, 1982

PREPARED BY Robert J. Rowan

AGENCY DPS-Division of Motor Vehicles

Original: Legislative Finance

PHONE 269-5551

cc: Budget and Management

Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/81)

The number of hearings conducted each year is increasing and a 10% annual increase factor was used to estimate costs for claims to be paid under this legislation.

Currently, various department and AG personnel serve as hearing officers on an as-required, as-available basis. By FY85 it is expected that the administrative hearing workload will have increased such that it cannot be adequately handled by existing staff, especially in light of the possibility of reimbursement of attorney fees. A hearing officer (Range 16) and a Clerk IV (Range 9) will be required to augment the present staff. FY85 operating costs are based on FY82 estimates using an 8% annual inflation factor. Included are the costs of additional office and hearing room space, rental of equipment to access AJIS, and the acquisition of normal office supplies and equipment as well as recording/transcription equipment.

Formulas are as follows:

$(200 \text{ DL and } 360 \text{ FR Hearings}) \times 25\% \times 4 \text{ hours} = 560 \text{ hours attorney time}$

$120 \text{ vehicle hearings} \times 25\% \times 6 \text{ hours} = 180 \text{ hours attorney time}$

FY 82 Total = 740 hours attorney time

Average hourly attorney fees = \$85

FY 83 Formula:

$740 \times 1.1 \text{ (10\% increase)} \times \$85 = \$69,190$

We dropped the \$190 to make a round figure of \$69.0

FY 84 Formula:

$\$69.0 \times 1.1 = \75.9

STATE OF ALASKA

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

JAY S. HAMMOND, GOVERNOR

POUCH 5
JUNEAU, ALASKA 99811
PHONE: (907) 465-2300

March 31, 1982

The Honorable Patrick M. Rodey
Chairman
Senate Judiciary Committee
Room 125 - Capitol Building
Juneau, Alaska

Re: Senate Bill No. 863

Dear Senator Rodey:

Senate Bill No. 863, an Act providing for the award of costs and attorney fees incurred by defendants acquitted of offenses and by individuals who prevail in certain state administrative proceedings; changing Rules 79 and 82, Rules of Civil Procedure, was introduced in the Senate on March 17, 1982 and was referred to the Senate Judiciary and Finance Committees.

For the consideration of the Senate Judiciary Committee, I am enclosing copies of Fiscal Notes prepared by Mr. Robert R. Kessel, Director, Audit Division, Department of Revenue concerning the proposed legislation.

Sincerely,



R. D. Stevenson
Special Assistant

Enclosures

cc: The Honorable Don Bennett
The Honorable M. E. Dankworth
Co-Chairmen
Senate Finance Committee

Joseph K. Donohue
Deputy Commissioner
Department of Revenue

Robert R. Kessel, Director
Audit Division
Department of Revenue

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution Number: SB 863

Title: An Act providing for the award of costs and attorney fees.

Requested by: Finance Committee

Date: March 26, 1982

II. FISCAL DETAIL

Agency Affected: Department of Revenue

Program Category Affected: Revenue Collection and Management

BRU, Program, or Subprogram(s) Affected: Audit Division

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

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES	-	500	500	500	500	500
200 TRAVEL	-	-	-	-	-	-
300 CONTRACTUAL	-	-	-	-	-	-
400 COMMODITIES	-	-	-	-	-	-
500 EQUIPMENT	-	-	-	-	-	-
600 LAND & STRUCTURES	-	-	-	-	-	-
700 GRANTS, CLAIMS, ETC	-	-	-	-	-	-
800 MISCELLANEOUS	-	-	-	-	-	-
TOTAL	-	500	500	500	500	500

FUNDING (Thousands of Dollars)

GENERAL FUND	-	500	500	500	500	500
FEDERAL FUNDS	-	-	-	-	-	-
OTHER (Specify Source)	-	-	-	-	-	-

POSITIONS

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

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

See attached memo to R. D. Stevenson dated March 26, 1982.

IV. DATE: March 26, 1982

PREPARED BY: Robert R. Kessel

AGENCY: Audit Division

PHONE: 465-2320

Original: Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/81)

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution Number: SB 863

Title: An Act providing for the award of costs and attorney fees.

Requested by: Finance Committee

Date: March 26, 1982

II. FISCAL DETAIL

Agency Affected: Department of Revenue

Program Category Affected: Revenue Collection and Management

BRU, Program, or Subprogram(s) Affected: Audit Division

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

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES	-	23.2	25.5	27.1	29.8	32.7
200 TRAVEL	-	5.0	5.5	6.0	6.5	7.0
300 CONTRACTUAL	-	-	-	-	-	-
400 COMMODITIES	-	.3	-	-	-	-
500 EQUIPMENT	-	-	-	-	-	-
600 LAND & STRUCTURES	-	-	-	-	-	-
700 GRANTS, CLAIMS, ETC	-	-	-	-	-	-
800 MISCELLANEOUS	-	-	-	-	-	-
TOTAL	-	28.5	31.0	33.1	36.3	39.0

FUNDING (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND	-	28.5	31.0	33.1	36.3	39.0
FEDERAL FUNDS	-	-	-	-	-	-
OTHER (Specify Source)	-	-	-	-	-	-

POSITIONS

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
FULL TIME	-	1	1	1	1	1
PART TIME	-	-	-	-	-	-
TEMPORARY	-	-	-	-	-	-

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

See attached memo to R. D. Stevenson dated March 26, 1982.

IV. DATE: March 26, 1982

PREPARED BY: Robert R. Kessel

AGENCY: Audit Division

PHONE: 465-2320

Original: Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/81)

Robert R. Kessel

M E M O R A N D U M

TO: R. D. Stevenson
Special Assistant

FROM: Robert R. Kessel
Director, Audit Division *RC*

DATE: March 26, 1982

RE: SB 863

Analysis

Section 1 of SB 863 refers to a judgement of acquittal when an offense has been committed under State law. Apparently, in matters relating to taxation, this section would only impact those cases dealing with criminal penalties as included in Section 43.05.290 of Title 43, Alaska Statute. There have been relatively few actions of this nature brought by the Revenue Department and therefore the fiscal impact would be minimal.

Section 2 of SB 863 would have a dramatic fiscal impact since this section substantially affects the Revenue Department because of the many cases involving civil penalties and revoking of licenses.

Section 3 of SB 863 would also have a substantial fiscal impact for the Revenue Department activities since administrative actions often advance to the courts and become civil action cases.

Comments

SB 863 leaves many unanswered questions. For example, the bill does not define the term "actual costs." Does the term include travel costs of the taxpayer? Does the term include loss of taxpayer wages resulting from litigation preparation?

If the civil penalty is only a small part of the total action and the taxpayer prevails on the civil penalty but loses on the more substantial monetary issues, would all attorney fees be recoverable?

Unless adequate funding was provided to the Department of Revenue, the Department might have to forego court cases because of large potential costs. This would be a tragedy if substantial tax dollars were involved in a particular case.

The Department would need additional conference officers. The bill would encourage more litigation.

Incidentally, a taxpayer, for Federal Income Tax purposes, can write off under current law the total expenses incurred to prepare an appeal of a tax issue. Already, part of litigation costs are borne by a government agency.

Fiscal Impact

Scientific development of a fiscal note is impossible. However, the costs to the State as a whole would be magnanimous. The cost attributable to tax appeals would be only a small part of the overall fiscal impact.

In 1981, HB 227, a bill similar to SB 863 but relating only to taxes, was introduced. The previous Audit Director, Gary Jenkins, estimated losses to the General Fund of \$500,000 per year. I see no reason to change that estimate. The \$500,000 relates to tax appeals only.

RRK/gb

1 IN THE SENATE

BY THE FINANCE COMMITTEE

2 SENATE BILL NO. 863

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act providing for the award of costs and attorney
7 fees incurred by defendants acquitted of offenses and
8 by individuals who prevail in certain state administra-
9 tive proceedings, changing Rules 79 and 82, Rules of
10 Civil Procedure; and providing for an effective date."

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

12 * Section 1. AS 12.45 is amended by adding a new section to read:

13 Sec. 12.45.145. COSTS AND ATTORNEY FEES FOR ACQUITTED DEFENDANT.

14 (a) If a judgment of acquittal is entered in favor of a defendant
15 charged with committing an offense under state law, the court may allow
16 the defendant to recover the actual costs of defending the action,
17 including actual attorney fees, from the state. The court shall enter
18 on the record the amount of costs awarded to an acquitted defendant.

19 (b) If a defendant is charged in the same action with more than
20 one offense, he may not receive an award under this section if a judgment
21 of guilty is entered against him on any offense or lesser included
22 offense in that action.

23 (c) This section does not apply to a defendant represented by
24 counsel at public expense.

25 * Sec. 2. AS 09.50 is amended by adding new sections to read:

26 ARTICLE 7. COSTS AND ATTORNEY FEES IN ADMINISTRATIVE
27 PROCEEDINGS AND COURT ACTIONS.

28 Sec. 09.50.410. AWARD OF COSTS AND ATTORNEY FEES TO RESPONDENT IN
29 ADMINISTRATIVE PROCEEDING. (a) If an administrative proceeding is

1 commenced by a state agency against a person to impose a civil penalty
2 or to revoke, suspend, limit, or condition a right, authority, license,
3 or privilege and the proceedings terminate without the imposition of a
4 civil penalty or the revocation, suspension, limitation, or conditioning
5 of a right, authority, license, or privilege, the hearing officer or
6 other official who presides over the proceeding may allow the respondent
7 to recover from the state his actual costs of defense, including actual
8 attorney fees.

9 (b) In this section "state agency" means a department, office,
10 agency or other instrumentality of the state.

11 Sec. C9.50.420. AWARD OF COSTS AND ATTORNEY FEES TO DEFENDANT IN
12 CIVIL ACTION BROUGHT BY THE STATE. (a) If an individual defendant
13 prevails in a civil action brought by the state against that defendant,
14 the court may allow the defendant to recover the actual costs of defend-
15 ing the action, including actual attorney fees, from the state.

16 (b) This section does not apply to a defendant represented by
17 counsel at public expense.

18 * Sec. 3. This Act applies only to actions in which a judgment of acquit-
19 tal is entered, or to administrative proceedings or civil actions that are
20 ^{Brown} terminated on or after the effective date of this Act.

21 * Sec. 4. Section 2 of this Act has the effect of changing Rules 79 and
22 82, Rules of Civil Procedure, to provide for the award of costs and attorney
23 fees to defendants who prevail in civil actions brought by the state.

24 * Sec. 5. This Act takes effect immediately in accordance with AS 01.10.-
25 070(c).

Rule 508. Costs.

(a) **Dismissal or Denial.** If an appeal is dismissed or petition denied by the appellate court, costs shall not be allowed to the appellee or respondent, unless otherwise ordered by the court.

(b) **Affirmance of Judgment.** In all cases of affirmance of a judgment or any order or decision of the superior court, costs shall be allowed to the appellee or respondent unless otherwise ordered by the court.

(c) **Reversal of Judgment or Order.** In cases of reversal of any judgment, order or decision of the superior court, costs shall be allowed the appellant or petitioner unless otherwise ordered by the court.

(d) **Costs to be Awarded.** When costs are awarded in the appellate court, they shall include, unless the court otherwise orders, the filing fee, the costs of preparing the original record and transcript, and the costs of duplicating and mailing briefs. Costs for duplicating briefs will not be awarded in excess of the rate generally charged by printers in the city in which counsel is located.

(e) **Attorney's Fees.** Where costs are allowed in the appellate court, attorney's fees may also be allowed in an amount to be determined by the court. If the court determines that an appeal or cross-appeal is frivolous or that it has been brought simply for purposes of delay, actual attorney's fees may be awarded to the appellee or cross-appellee.

(f) **Procedure Where Allowed.** Where costs are allowed in the appellate court, the clerk shall insert the amount thereof in the body of this mandate or other process sent to the court below, and annex to the same the bill of items taxed in detail. (Supreme Court Order 439 effective November 15, 1980)

88 863
March 24, 1982

The Honorable Pat Rodey
Alaska State Senate
Chairman, Judiciary Committee
Pouch V
Juneau, AK 99811

Re: Senate Bill 863

Dear Senator Rodey:

Section 2 of the referenced bill allows the award of "actual attorney fees" where an agency commences a proceeding to impose a civil penalty or to revoke, suspend, limit or condition a right, authority, license or privilege and the proceedings terminate without the imposition of the penalty. In my opinion, the bill does not go far enough.

First, the decision to award attorney's fees rests with the hearing officer who presided over the proceeding. Because, in most cases, the hearing officer serves at the pleasure of the agency, and hence is not financially independent of it, he or she may be reluctant to award attorney's fees against his or her supervisors.

Secondly, the award of "actual" attorney's fees may be unnecessary. In civil litigation, a successful litigant receives only partial attorney's fees unless the case involves the public interest, or bad faith on the part of the losing party can be shown. I see no reason why the same rule should not apply in administrative proceedings.

Most importantly, this bill awards attorney's fees only where the agency decides not to impose the penalty. In the first place, this provides some incentive for the agency, in a close case, to rule against the individual. Secondly, it does not provide for attorney's fees where the agency decides against the individual, the individual appeals the case to the Superior Court and the the Superior Court reverses the agency's decision. Since the award of attorney's fees in administrative appeals is usually nominal (around \$750) and since a successful appellant has no opportunity to receive compensation for all the money he paid attorneys who represented him at the hearing (except in workmen's compensation cases), a person can spend a great deal of money on the administrative proceedings, and the appeal, for which he receives next to no compensation, even though the Court

The Honorable Pat Rodey
March 24, 1982
Page Two

determines that the agency was wrong.

In short, I would favor a provision allowing a court to award attorney's fees incurred in the administrative process if the individual obtains a reversal of the agency's decision. This would not only compensate the individuals for part of their losses due to attorney's fees but would in addition discourage agencies from making legally or factually unsound decisions.

Thank you for your attention.

Sincerely,

Pamela Finley

Pamela Finley

820 6th Street

Quincy 99801

PLF/jka

S

B

8

6

7

COMMITTEE REPORT

SENATE

3/18/82

FURTHER: Finance

Date: 3/18/82

Mr. President:

The Committee on JUDICIARY has had SB 864

continuing the existence of the Alaska Code Revision Commission and amending statutes relating to its responsibilities

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 11/10/81 same title
- and recommends 11/10/81 new title
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

[Signature]

[Signature]

CHAIRMAN

ALASKA CODE REVISION COMMISSION



COMMISSIONERS
JOHN W. ABBOTT - CHAIRMAN
JAMES L. BALDWIN - VICE CHAIRMAN
PATRICK M. RODEY
CHARLES G. ANDERSON
L. S. KURTZ, JR.
JUDGE (RET.) THOMAS B. STEWART

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

EXECUTIVE SECRETARY
BILLY G. BERRIER

MEMORANDUM

TO: David Rogers, Spec. Counsel
Senate Finance Committee

FROM: Dickerson Regan, Consultant
Alaska Code Revision Commission

DATE: April 22, 1982

RE: CSSB 864 (Jud) continuing of the
Alaska Code Revision Commission

As you requested, following is a sectional analysis of CSSB 864 (Jud):

Section 1. This section extends until June 30, 1985, the life of the Alaska Code Revision Commission. Unless the date of June 30, 1982 is extended, the commission "expires" on that date and continues in existence only one more year "for the purposes of concluding its affairs." Reference AS 44.66.010.

Section 2. By this section the membership of the commission is increased by the addition of two public members who are not employees of the state. Like the present public member, the additional members would be appointed by the governor for six year terms.

If the bill becomes law this year without an effective date clause or a transitional section, it is possible that the additional public members' terms would not begin until July 1, 1983.

Although the bill is workable as it is, a transition section could be added in a form like one of the following:

ALTERNATIVE 1.

TRANSITION. Notwithstanding the provisions of AS 24.20.075(b), the term of the additional public members appointed by the governor after the effective date of this Act begins on the date of appointment and ends June 30 1988.

ALTERNATIVE 2.

TRANSITION. Notwithstanding the provisions of AS 24.20.075(b), the term of the additional public members appointed by the governor after the effective date of this Act begins on the date of appointment; the term of one ends June 30, 1984 and the term of the other ends June 30, 1986, as designated by the governor.

The term of the existing public member expires June 30, 1982. The second alternative above would stagger the six year terms of the three public members.

Section 3. The change on page 2, line 14, corrects an error in the name of the American Law Institute as it appears in AS 24.20.275(c)(2).

The change on page 2, line 16, makes it specific that the Alaska Legislative Council is one of the committees of the legislature whose recommendations for changes in law will be reviewed and considered by the commission. This is existing practice.

Section 4. This section requires the commission to continue its present practice of preparing a sectional analysis of its draft legislation. It is specified that the analysis be in "language that is understandable to a layman."

The committee hearing, if it is held April 23, 1982, coincides with a meeting of the commission in Juneau. Therefore, the commission members will be available to answer your committee's questions.

DR:chw

MEMORANDUM

TO: Senator Don Bennett and Senator Ed Dankworth
Co-Chairmen, Senate Finance Committee

FROM: Dickerson Regan, Consultant
Alaska Code Revision Commission

DATE: April 13, 1982

RE: CSSB 864--Continuing the Alaska Code
Revision Commission

This is to review the history of CSSB 864 and to point out the time pressure on the bill. It was referred to your committee very recently on April 7, 1982.

Existing law, AS 44.66.010(a)(8), terminates the Alaska Code Revision Commission June 30, 1982, subject to its continuing another year "for the purpose of concluding its affairs."

After a joint hearing of House Judiciary and Senate State Affairs on March 9th, both committees intended to introduce continuation bills (see Senate Journal for March 15th at pages 572-574; House Journal for March 12th at page 777).

As it happened, the House Judiciary Committee did not introduce a bill because time for introduction of bills ran out. For reasons unrelated to the merits, the committee chose to rely on the Senate bill rather than to ask for suspension of the rules to introduce its bill in the House. I am informed the bill in the form your committee has it is the bill the House Judiciary Committee would have introduced. These things can be checked with House Judiciary staff.

The result is that the House is not doing committee work on its version of a continuation bill.

I do not know how much work the House will do on the bill, but it seems an early arrival of the bill in the House would help assure it will have time for passage.

Senator Don Bennett and Senator Ed Dankworth
April 13, 1982
Page 2

I will be glad to answer any questions or to try
to get answers for you to any questions I cannot answer.

DR:chw

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. SENATE BILL NO. 864
 Title An Act continuing the existence of the Alaska Code Revision Com-
mission and amending the statutes, etc Date 4-12-82
 Requested by: Senate Finance Committee

II. FISCAL DETAIL

Agency Affected Legislative Affairs Agency
 Program Category Affected General Government
 BRU, Program, Or Subprogram(s) Affected _____
 (Note: If more than one budget component is affected, separate line-item
 amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES		101.1	111.2	122.3		
200 TRAVEL		35.4	39.0	42.9		
300 CONTRACTUAL		96.6	106.3	116.9		
400 COMMODITIES		5.2	5.7	6.3		
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
Total		238.3	262.2	288.4		

FUNDING (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND		238.3	262.2	288.4		
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
FULL TIME		2	2	2		
PART TIME						
TEMPORARY						

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

Fiscal Year 1983: (Fiscal Years 1984 and 1985 - add 10% per year)

Personal Services ----- 101.1
 Secretary - Range 12K - for 12 months @\$2,379 per month
 Research Director - Range 23C - for 12 mo @\$4,251 per mo.
 Plus benefits at 27%

Travel ----- 35.4
 12 monthly hearings ----- \$29,278
 1 hearing rural Alaska ---- 6,136

Contractual Services ----- 96.6
 Telephone @\$294 per month - \$3,528 Rents/Leases - \$2,943
 Printing/advertising ----- 2,354 Consultants --- 87,800

Supplies and Materials ----- 5.2
 Printing supplies/materials - @\$196 per month - \$2,352
 Stationery and office supplies ----- \$2,825

IV. DATE 4-12-82 PREPARED BY Wally Harrison, Director
 AGENCY Legislative Affairs Agency
 PHONE 465-3850

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

ALASKA CODE REVISION COMMISSION



COMMISSIONERS
JOHN W. ABBOTT - CHAIRMAN
JAMES L. BALDWIN - VICE CHAIRMAN
PATRICK M. RODEY
CHARLES G. ANDERSON
L. S. KURTZ, JR.
JUDGE (RET.) THOMAS B. STEWART

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

EXECUTIVE SECRETARY
BILLY G. BERRIER

MEMORANDUM

TO: Senator Patrick M. Rodey
Alaska State Legislature

FROM: Dickerson Regan, Consultant *DR*
Alaska Code Revision Commission

DATE: April 30, 1982

RE: CSSB 864 (Fin) (continuing the code
revision commission)

I walked up Seward Street with you this noon, and we talked about CSSB 864 (Fin) to continue the code revision commission.

Soon thereafter I had a telephone call from Tom Stewart. He had talked with Speaker Joe Hayes during the noon hour about this bill and said Hayes was "very cooperative" about moving it along.

I attach material I had left with Judge Stewart (for your information).

DR:chw

Attachments

4:30 PM Friday, April 30: Second call today from Tom Stewart. He saw Hayes again, and Hayes agreed that he would refer the bill directly to Rules.

MEMORANDUM

TO: Commissioner Thomas B. Stewart
Alaska Code Revision Commission

FROM: Dickerson Regan, Consultant

DATE: April 30, 1982

RE: CSSB 864 (Fin) (continuing the ACRC)

I left a couple of messages concerning passage of CSSB 864 (Fin). It passed the Senate with a 20-0 vote April 29.

At the commission meeting, I believe you said you would ask Joe Hayes to refer the bill directly to Rules when it came to the House.

That referral would be fine, and by this note I just pass along what information I have.

Before trying to call you about Senate passage of the bill, I stopped by to see the House Judiciary staff asking the question on the attached penciled note. I ran into Ramona Barnes who said she would not be offended if her committee were by-passed.

I then stopped to see Linda Wilde in Rules (other penciled note and attachments). Linda informed me the bill would have to have a hearing in Rules if it had not had a hearing in any other House committee. She also said the legislature would not be adjourning for ten days. Linda did not see what would be gained by a referral directly to Rules. You know the legislative process better than any of us, and I just pass along the comments without any judgment about them.

There was a joint meeting of House Judiciary and Senate State Affairs concerning sunseting the commission on March 9th, before SB 864 was introduced. I neglected to mention that to Linda, and don't know whether it affects the rule that a Senate bill must have a hearing in the House.

Commissioner Thomas B. Stewart
April 30, 1982
Page 2

As you probably know, the Speaker has not been referring bills to committees this week and the House is recessed until 10:00 a.m., Monday, May 3rd.

(The zero fiscal note replaces one that included the entire commission budget.)

DR:chw

Attachments

April 29, 1982

To Julia Koster
+ Bill Cook

Re SB 864 (Fin)
(continuing the
code revision comm'n)

When the code revision
commission met here
April 23, 1982, it was
concerned about the
time element for passage of
SB 864 extending the life
of the commission.

In its present form
(CS SB 864 (Fin)) it is just
as Julia drafted it and
coordinated it with Kevin
Bruce, except for the
addition of a Section 5 that
staggeres the terms of the
public members. For all

practical purposes, the bill that passed the Senate today is your bill. It carries a zero fiscal note.

I see by my notes from the commission's meeting that it was agreed that commission member Tom Stewart would ask Speaker Joe Hays if the bill could be referred directly to Rules when it came to the House. (Time, of course, is the consideration.) Would your committee be offended if the referral were directly to Rules?

A sectional analysis of the bill is attached. Dick Regan

Renoma Barnes
said OK to this on Apr. 29.
Dick Regan

SECTIONAL ANALYSIS OF CSSB 864 (FIN)

Section 1. This section extends until June 30, 1985, the life of the Alaska Code Revision Commission. Unless the date of June 30, 1982 is extended, the commission "expires" on that date and continues in existence only one more year "for the purposes of concluding its affairs." Reference AS 44.66.010.

Section 2. By this section the membership of the commission is increased by the addition of two public members who are not employees of the state. Like the present public member, the additional members would be appointed by the governor for six year terms.

Section 3. The change on page 2, line 14, corrects an error in the name of the American Law Institute as it appears in AS 24.20.075(c)(2).

The change on page 2, line 16, makes it specific that the Alaska Legislative Council is one of the committees of the legislature whose recommendations for changes in law will be reviewed and considered by the commission. This is existing practice.

Section 4. This section requires the commission to continue its present practice of preparing a sectional analysis of its draft legislation. It is specified that the analysis be in "language that is understandable to a layman."

Section 5. This transitional section is the only change (addition) made to the bill by the Finance CS. Since the term of the existing public member expires June 30, 1982, Section 5 staggers the six year terms of the three public members.

April 29, 1982
To Linda Wilde, H. Rules

Re: CSSB 864 (Fin)
(continuing the Alaska
Code Revision Comm)

This bill may come
directly to Rules
when it comes over
to the House. Roma
Barnes has no
problem with it

bypassing Judiciary,
since the present
form of the bill is
what Julia Koster
of House Judiciary put
together.

Attached is
my memorandum to
Senate Finance. Also
attached is a section
analysis. Dick Regan 465-4878

SECTIONAL ANALYSIS OF CSSB 864 (FIN)

Section 1. This section extends until June 30, 1985, the life of the Alaska Code Revision Commission. Unless the date of June 30, 1982 is extended, the commission "expires" on that date and continues in existence only one more year "for the purposes of concluding its affairs." Reference AS 44.66.010.

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MEMORANDUM

TO: Senator Don Bennett and Senator Ed Dankworth
Co-Chairmen, Senate Finance Committee

FROM: Dickerson Regan, Consultant
Alaska Code Revision Commission

DATE: April 13, 1982

RE: CSSB 864--Continuing the Alaska Code
Revision Commission

This is to review the history of CSSB 864 and to point out the time pressure on the bill. It was referred to your committee very recently on April 7, 1982.

Existing law, AS 44.66.010(a)(8), terminates the Alaska Code Revision Commission June 30, 1982, subject to its continuing another year "for the purpose of concluding its affairs."

After a joint hearing of House Judiciary and Senate State Affairs on March 9th, both committees intended to introduce continuation bills (see Senate Journal for March 15th at pages 572-574; House Journal for March 12th at page 77;).

As it happened, the House Judiciary Committee did not introduce a bill because time for introduction of bills ran out. For reasons unrelated to the merits, the committee chose to rely on the Senate bill rather than to ask for suspension of the rules to introduce its bill in the House. I am informed the bill in the form your committee has it is the bill the House Judiciary Committee would have introduced. These things can be checked with House Judiciary staff.

The result is that the House is not doing committee work on its version of a continuation bill.

I do not know how much work the House will do on the bill, but its seems an early arrival of the bill in the House would help assure it will have time for passage.

Senator Don Bennett and Senator Ed Dankworth
April 13, 1982
Page 2

I will be glad to answer any questions or to try
to get answers for you to any questions I cannot answer.

DR:chw

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
 Bill/Resolution No. CSSB 864 (Jud)
 Title Alaska Code Revision Commission
 Requested by Finance Committee Date 4-12-82

II. FISCAL DETAIL
 Agency Affected Legislative Affairs
 Program Category Affected General Government
 BRU, Program, Or Subprogram(s) Affected _____
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		-0-				

FUNDING (Thousands of Dollars)

-0-

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

POSITIONS

-0-

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

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

The funds for this committee are contained in the General Appropriations Act and no additional funds are requested.

IV. DATE 4/27/82 PREPARED BY Wally Harrison, Director
 AGENCY Legislative Affairs Agency
 Original: Legislative Finance PHONE 465-3850
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)
 33-1 (Rev. 12/81)

A PERFORMANCE REVIEW
OF THE
ALASKA CODE REVISION COMMISSION

conducted by
R. W. Pavitt and Associates, Inc.

Members of the Alaska
Code Revision Commission

John W. Abbott, Chairman

Sen. Patrick M. Rodey

Rep. Charles G. Anderson

L.S. (Jerry) Kurtz, Jr., Esq.

James L. Baldwin

Hon. Thomas B. Stewart

Billy G. Berrier, Executive Secretary

STATE OF ALASKA

AUDIT DIVISION
POUCH W—ALASKA OFFICE BUILDING

THE LEGISLATURE

FINANCE DIVISION
POUCH WF—STATE CAPITOL

BUDGET AND AUDIT COMMITTEE

JUNEAU, ALASKA 99811

November 6, 1981

Members of the
Legislative Budget and Audit Committee:

In accordance with the intent of Title 24 and Title 44 of the Alaska Statutes, the Division of Legislative Audit was mandated to perform a "Sunset" review of the Alaska Code Revision Commission.

Since this Division is part of the Legislative Branch as is the Commission, we lack the apparent independence necessary to perform the review.

The Division contracted with Mr. R. W. Pavitt of R.W. Pavitt and Associates, Inc. to perform this review. This firm is a reputable planning and management consultant business that has been in operation for several years and is located in Juneau.

We feel this report discharges our responsibility, mandated under Title 24 and Title 44. The report is submitted for your review.



Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit

R. W. PAVITT AND ASSOCIATES, INC.

PLANNING CONSULTANTS

October 28, 1981

Legislative Audit Division
State of Alaska
Pouch W
Juneau, Alaska 99811

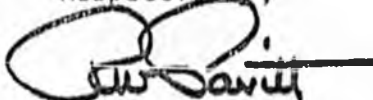
Att: Merle R. Jenson, Deputy Legislative Auditor

Dear Mr. Jenson:

In accordance with the Contract for Services between the Legislative Audit Division and our firm, we have completed a performance review of the Alaska Code Revision Commission using guidelines and standards established in Alaska Statutes for such "sunset" reviews.

The report, entitled A PERFORMANCE REVIEW OF THE ALASKA CODE REVISION COMMISSION, is hereby submitted.

Respectfully,



R. W. Pavitt, AICP
President

RWP/bp

A PERFORMANCE REVIEW OF THE ALASKA CODE REVISION COMMISSION

Table of Contents

PURPOSE AND SCOPE OF THE REVIEW	- 1-
ORGANIZATION AND FUNCTION	- 3-
REPORT CONCLUSION	- 6-
FINDINGS AND RECOMMENDATIONS	- 9-
ANALYSIS OF PUBLIC NEED	-11-

Appendices

APPENDIX A - Table summarizing subject matter studied by the Commission, 1975 - 1981	-13-
APPENDIX B - Alaska Statutes regarding law revision	-17-
APPENDIX C - Table indicating how other states deal with code revision	-20-
APPENDIX D - Alaska Code Revision Commission Budgets, FY 77 - FY 82	-22-

Responses

• Letter from Alaska Code Revision Commission; 11/30/81	-24-
• Letter transmitting response from ACRC; 1/25/82	-25-
• <u>Response to Performance Review of Alaska Code Revision Commission; 1/25, 82</u>	-26-
• Letter from R. W. Pavitt and Associates, Inc; 2/5/82	-32-
• <u>Rebuttal to Response to Performance Review of Alaska Code Revision Commission; 2/5/82</u>	-33-

PURPOSE AND SCOPE OF THE REVIEW

Purpose

In accordance with AS 24.20.271(1) and AS 44.66 (Sunset Legislation), a review of the Alaska Code Revision Commission was conducted to examine the commission's activities, operation, policies and accomplishments. The purpose of the review is to determine if the commission has operated in a fair, effective, efficient and economical manner in the performance of its statutory functions, duties and responsibilities.

As required by AS 44.66.050, this report shall be considered during the legislative oversight procedure in determining whether the Alaska Code Revision Commission should be continued or reestablished. AS 44.66.010(a) currently specifies that this commission will terminate on June 30, 1982, but will continue until June 30, 1983 for the purpose of concluding its affairs.

Scope

The major areas studied were the commission's operations, policies, administration, procedures; and the effectiveness of its recommendations in accomplishing its mandated objective of bringing "the law into harmony with current needs and conditions" (AS 24.20.075(c)(4)). The review consisted of examination, research, analysis and evaluation of the following:

- (1) Applicable Alaska Statutes and amendments thereto;
- (2) Minutes of the commission from its inception to the present;
- (3) Annual Reports of the Alaska Code Revision Commission dated February 1979, February 1980, February 1981;
- (4) Records and documents of the commission;
- (5) Contracts with consultants;
- (6) Commission budgets for FY 77, 78, 79, 80, 81 and 82;
- (7) Code revision procedures in other states;
- (8) Interviews conducted with:
 - ° an Alaskan representative to the National Conference of Commissioners on Uniform State Laws (NCCUSL)

- Legislative Affairs Agency personnel:
 - . Co-Revisors of Statutes
 - . Director of Legal Services
 - . Director of Administrative Services
 - Legislative Finance Division personnel
 - present members of the commission
 - former members of the commission
 - a consultant to the commission
 - the secretary to the commission
- (9) Observation of the Alaska Code Revision Commission during its October 12, 1981 meeting in Juneau.

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ORGANIZATION AND FUNCTION

The Code Revision Commission was established as a permanent commission of the legislature by an act of that body (ch 114 SLA 1976). The act creating the commission established its membership as consisting of two legislators (one from each house appointed by the presiding officer); a public member appointed by the governor; a designee of the chief justice of the supreme court, and a designee of the board of governors of the Alaska Bar Association. The director of legal services for the Legislative Affairs Agency or his designee serves as executive secretary for the commission.

The commission was created to:

- (1) examine the statutes of the state and judicial decisions to discover defects and anachronisms in the law;
- (2) review and consider proposed changes in the law recommended by the National Law Institute, the National Conference of Commissioners on Uniform State Laws, the Alaska Judicial Council, the Supreme Court, the state or local bar associations, principal departments, agencies, boards and commissions of the executive or judicial branch, and committees of the legislative branch;
- (3) receive and consider suggestions from the Alaska bench and bar, public officials, organizations and individuals as to areas of the law needing revision and remedy;
- (4) recommend changes in law needed to eliminate antiquated and inadequate rules of law and to bring the law into harmony with current needs and conditions.

The commission was empowered to:

- (1) hold public hearings and other meetings as necessary throughout the state, and to determine an appropriate quorum for conducting business;
- (2) establish one or more subcommissions to assist it in the performance of its duties.

The staff of the Legislative Affairs Agency serves as staff for the commission, and (subject to appropriations for the purpose) contracts with other agencies or persons for the performance of necessary services for the commission.

Funds considered necessary for the commission (per diem, travel, contract expenses) are to be sought in a formal budget request to the legislative council. (Appropriated funds are dispersed and accounted for under procedures required by the Legislative Affairs Agency).

All branches of state government are directed to provide information and documents required by the commission necessary to the accomplishment of its work.

The commission is directed to submit its reports and recommendations, and draft legislation as to revision of law, to the Legislative Council, and shall distribute them to the governor, members of the legislature, and the chief justice of the supreme court.

In 1977, membership on the commission was broadened to include a "designee of the governor who is an attorney employed by the executive branch of the state government." (ch 57 SLA 1977).

The enabling legislation was further amended in 1980 to:

- (1) clarify the name of the commission as the Alaska Code Revision Commission;
- (2) establish 6 year terms for the public member and the designee of the Alaska Bar Association board of governors, and prescribe the manner in which vacancies are filled;
- (3) clarify the per diem and travel allowances provided members of the commission; and,
- (4) prescribe the manner in which the public member and the designee of the board of governors shall determine the length of their respective terms of office.

The amending act (ch 44 SLA 1980) also brings the Alaska Code Revision Commission (AS 24.20.075) within the purview of the sunset law, (AS 44.66.010), and adds the name of the commission to the list of boards and commissions scheduled to expire on June 30, 1982.

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REPORT CONCLUSION

Policy Issues

This review discusses issues raised as a result of our analysis and evaluation of the commission's responsibilities, structure, operations and procedures. Resolution of these policy matters will require legislative action. In debating these issues, the legislative oversight committees should consider the findings and alternatives presented in this report in reaching their decision.

Report Conclusion

In our opinion, the Alaska Code Revision Commission should not be continued in its present form.

That conclusion is supported by the following rationale:

- In the 5 years since its establishment, the commission has met 45 times. In terms of substantive revisions adopted into law by the Alaska Legislature, the results of the commission's work have not been commensurate with the thousands of hours devoted to the effort (see Appendix A)
- The duties and responsibilities assigned to the commission by the enabling act (AS 24.20.075) are substantially similar to those mandated to the Legislative Council, the Legislative Affairs Agency and the Co-revisors of Statutes (AS 01.05.036; 24.20.060(4); 24.20.065(a); and 24.20.070(b)). Such duplication of responsibilities tends to create tensions and conflict among legislative agencies which is not in the best interests of state government (see Appendix B)
- The subject matter considered by the commission is frequently not consistent with legislative needs and priorities.

The creation of the code revision commission resulted from a bill (SB 665) submitted by Senators Rodey and Rader in 1976. The commission envisioned

in the bill was to be "within the Legislative Affairs Agency" and "staffed by the agency". Membership was to include four legislators, four public members, a designee of the Alaska Bar Association and a designee of the chief justice of the supreme court. Substantive changes were made to the Rodey-Rader bill, and when it emerged from the legislative process as chapter 114 SLA 1976, the new commission had a different lineup of membership, and quasi-independent status as a "permanent commission of the legislature." Although the "Director of Legal Services for the Legislative Affairs Agency serves as executive secretary for the commission", the relationship between the commission and the agency is not sharply defined; and the responsibilities assigned to the commission are, in part, duplicative of revision tasks already required of the Legislative Council, the Legislative Affairs Agency and the Revisors of Statutes.

A major difference between Alaska's code revision commission and the prestigious California Law Revision Commission (after which it was intended to be patterned) is the manner in which subjects come before the commission for consideration. In the California model, topics for commission study are restricted to those approved by concurrent resolution of the Legislature. This system assures legislative concern and interest in the recommendations of the commission, and provides certainty that the subjects considered are consistent with the Legislature's desires and priorities.

Of 35 states answering a 1979 inquiry by the commission as regarding code revision procedures, 10 responded that the legislature itself (through its judiciary committees, legislative council or special committees) accomplished needed revisions. Revisors of Statutes and legislative affairs agencies accomplished revision work in 14 other jurisdictions. 11 states reported permanent law revision commissions, but of these, four are empowered to deal only with non-substantive revisions (see Appendix C).

Substantive revision of politically-sensitive law in Alaska has been successfully accomplished in the past by legislatively-appointed special commissions (as in the case of the major Criminal Code revision), or by a special committee of the legislature such as the committee that revised Title 4 (Alcoholic Beverages). A special committee is currently working on a major overhaul of Title 29 (Municipal Government).

Despite perceived conflicts resulting from the present statutory structure of the code revision commission, its broad-based membership of legislative, executive and judicial branch representatives, as well as the public and Alaska Bar members, provide a breadth of legal knowledge, perception and experience that has much potential value as an advisory function to the lawmaking process. Particularly in areas of generally low legislative interest such as probate law, security law, real property conveyancing, bankruptcy law and the like, the commission has shown that it can provide necessary expertise in recommending statutory revision that "will bring the law into harmony with current needs and conditions." (AS 24.20.075(c)(4)).

While this report concludes that the Alaska Code Revision Commission should not be continued in its present form, we believe that if the legislature desires to continue the commission after June 30, 1982, AS 24.20.075 should be substantively amended to eliminate the perceived conflicts with other legislative agencies, as well as to clarify the duties and responsibilities of the commission and its relationship to the Legislative Council. The Findings and Recommendations section of this report is thus divided into two parts. If the oversight committee considering this performance review opts to recommend termination of the commission, Part 1 includes the recommended procedure. Part 2 recommends statutory changes that should be considered if the committee wishes to recommend continuation of the Alaska Code Revision Commission.

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FINDINGS AND RECOMMENDATIONS

PART 1

[TO TERMINATE THE ALASKA CODE REVISION COMMISSION - AS 44.66.010(a)(8)]

Recommendation No. 1

Repeal AS 24.20.075 effective June 30, 1983.

If the decision is made to terminate the commission, it will continue in existence until June 30 of 1983 for the purpose of concluding its affairs (AS 44.66.010(b)).

The FY 83 budget of the commission should contain sufficient funds for concluding its contractual obligations, submitting its final report, and transferring its records, files and office equipment to the Legislative Affairs Agency.

PART 2

[TO CONTINUE OR REESTABLISH THE ALASKA CODE REVISION COMMISSION -
AS 44.66.010(c)]

Recommendation No. 1

Amend AS 24.20.075 to require that the commission annually file a report to the Legislative Council which shall contain a calendar of topics selected by it for study, including a list of the studies in progress and a list of topics intended for future consideration. After the filing of the first report, the commission shall confine its studies to those topics set forth in the calendar contained in its last preceding report which are thereafter approved for its study by resolution of the Legislative Council. The commission shall also study any topic which the legislature, by concurrent resolution, refers to it for such study.

The purpose of this recommended amendment is two-fold:

- (1) to improve communication and understanding between the legislative council and the commission; and,
- (2) to avoid conflict between special committees of the legislature and the commission with regard to study topics.

Recommendation No. 2

Amend AS 24.20.075 to clarify the role of the commission as an advisory body.

Conflict has arisen from time to time with respect to the actual drafting of legislation by the commission...a task that is clearly assigned to the Legislative Affairs Agency division of legal services by the legislative council.

Recommendation No. 3

Amend AS 24.20.075 to delete (c)(1).

AS 24.20.075(c)(1) states that the commission shall examine the statutes of the state and judicial decisions to discover defects and anachronisms in the law. This duty is assigned to other legislative agencies in AS 01.05.036 and AS 24.20.065.

* * * *

ANALYSIS OF PUBLIC NEED

The following analysis of Commission activities relates to the public need factors defined in AS 44.66.050(c). Inasmuch as the Alaska Code Revision Commission is not a regulatory body, a number of the factors are not applicable to the performance review of the commission.

I. The extent to which the board, commission or agency has operated in the public interest.

1. The commission has recommended revisions to Alaska law which in its judgement were in the general public interest.

II. The extent to which the operation of the board, commission or agency program has been impeded or enhanced by existing statutes, procedures and practices which it has adopted, and any other matter, including budgetary, resource and personnel matters.

1. Lack of its own staff and the inability of the legal services division of the legislative affairs agency to provide continuing services to the commission (because of its own heavy work load) tended to impede the commission's work in its early years. More recently, consultants have been engaged to keep up with the continuing work of the commission.

III. The extent to which the board, commission or agency has recommended statutory changes which are generally of benefit to the public interest.

See response to I.

IV. The extent to which the board, commission or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service which it has provided.

Not applicable to this commission.

V. The extent to which the board, commission or agency has encouraged public participation in the making of its regulations and decisions.

1. The commission has consistently notified parties of interest in topics that it was studying and encouraged their participation in its meetings.
2. The commission has held meetings in a number of locations in Alaska for the purpose of encouraging public participation on specific topics under consideration.

VI. The efficiency with which public inquiries or complaints regarding the activities of the board, commission or agency filed with it, with the department to which the board or commission is administratively assigned, or with the office of the ombudsman have been processed and resolved.

1. This review has not identified any record of complaints with respect to commission activities with either the Legislative Affairs Agency or the Office of the Ombudsman.

VII. The extent to which a board or commission which regulates entry into an occupation or profession has presented qualified applicants to serve the public.

Not applicable to this commission.

VIII. The extent to which state personnel practices, including affirmative action requirements, have been complied with by the board, commission or agency to its own activities and the area of activity or interest.

Not applicable to this commission.

IX. The extent to which statutory, regulatory, budgeting or other changes are necessary to enable the agency, board or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

Please refer to the previous section, Findings and Recommendations, Part 2.

* * * * *

APPENDIX A

TABLE SUMMARIZING SUBJECT MATTER
STUDIED BY THE COMMISSION 1976-1981

LEGISLATION CONSIDERED	Referred by	Consultant	date first considered	ACRC ACTION	date of action	LEGISLATIVE ACTION
1. ALCOHOLIC BEVERAGES (Title 4)	Individual Legislator	Machyowsky	7/15/76	materials forwarded to Leg. Council for Leg. Committee use.	7/17/79	some materials used in ch 131 SLA 1980
2. INSURANCE (Title 21)	Individual Legislator	-----	-----	See No. 26	-----	-----
3. CLASS ACTION ACT	NCCUSL	-	9/1/76	postponed pending Court action	12/10/76	
4. UNIFORM LAND TRANSACTIONS ACT	NCCUSL	MacMurtray	9/1/76	divided into sections, see Nos. 11, 16, 17 and 22		
5. UNIFORM EXEMPTIONS ACT	NCCUSL	LAA staff Jim Baldwin	9/1/76	approved for submission to Leg. Council	9/21/78	HB 74 ('81) HB 56 ('79)
6. UNIFORM COMPARATIVE FAULT ACT	NCCUSL	-	3/17/78	-	-	
7. CORPORATIONS (Title 10)	-	Fessler	6/22/78	to Leg. Affairs for drafting bill	11/17/80	
8. UNIFORM COMMERCIAL CODE (Articles 8 and 9)	NCCUSL	LAA staff Ken Vassar	6/22/78	approved for submission to Leg. Council	1978 1980	HB 55 ('79) HB 77 ('81)
9. UNIFORM PROBATE CODE (Homicide)	NCCUSL	-	6/22/78	considered	10/26/78	SB 56 ('79) ch 36 SLA 1979

LEGISLATION CONSIDERED	Referred by	Consultant	date first considered	ACRC action	date of action	LEGISLATIVE ACTION
10. INTERNATIONAL WILLS (Probate Code)	NCCUSL	-	3/16/78	approved for submission to Leg. Council	10/26/78	SB 54 ('79)
11. REAL PROPERTY CONVEYANCING	see No. 4	Peterson Regan	2/9/79			
12. UNIFORM MARRIAGE & DIVORCE ACT	NCCUSL	-	4/18/79	no further action	11/10/80	
13. UNIFORM FEDERAL TAX LIEN REGISTRATION ACT	NCCUSL	LAA staff Ken Vassar	10/18/79	modified and approved for submission to Leg. Council	11/18/79	included in SB 78 ('81)
14. UNIFORM BRAIN DEATH ACT	NCCUSL	-	10/18/79	no further action	10/18/79	
15. UNIFORM LIMITED PARTNERSHIP ACT	NCCUSL	LAA staff Jack Chenoweth	10/18/79			
16. OATHS, AFFIRMATIONS, ACKNOWLEDGEMENTS, NOTARIZATION AND VERIFICATION	see No.4 (includes Unif. Recog. of Acknowl. Act - NCCUSL)	Regan	2/9/79	approved for submission to Leg. Council	2/21/80	SB 80 ('81) ch 37 SLA 1981
17. RECORDING AND RECORDED DOCUMENTS	see No.4 and No. 13	Regan	2/9/79	approved for submission to Leg. Council	10/18/79	SB 78 ('81)
18. GUARDIANS AND CONSERVATORS	Individual Legislator	-	2/21/80	no further action	5/8/80	

LEGISLATION CONSIDERED	Referred by	Consultant	date first considered	ACRC action	date of action	LEGISLATIVE ACTION
19. MODEL PRODUCT LIABILITY ACT	Individual Legislator	-	2/22/80	no further action	4/10/80	
20. ALASKA HIRE	Several Legislators		2/22/80			
21. ADMINISTRATIVE PROCEDURES ACT	NCCUSL		4/10/80			
22. REAL PROPERTY SECURITY INTERESTS	see No. 4	Regan	2/9/79	approved for submission to Leq. Council	2/23/81	HB 403 ('81)
23. DOMESTIC VIOLENCE	Several Legislators	-	2/22/80	no further action	5/8/80	
24. SMALL LOANS		Regan	5/8/80	bill drafted no further action	12/12/80	
25. VITAL STATISTICS		Regan	5/8/80	bill drafted no further action	8/18/80	
26. INSURANCE CODE			5/8/80			
27. ALASKA SECURITIES ACT			5/8/80			
28. OCCUPATIONS AND PROFESSIONS		Regan	7/2/80			
29. UNIFORM DISPOSITION OF COMMUNITY PROPERTY RIGHTS AT DEATH ACT	NCCUSL			no record of action		SB 79 ('81) SB 58 ('79)
30. NON-PROFIT CORPORATIONS		Fessler	11/17/80			