

ALPHA INSTITUTE FOR COLLEGE STUDENTS
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177 SJ - HB 2
61 SJ - HB 2

(1) Add new Section 2 as follows:

* Sec. 2. Article IX, section 7, Constitution of the State of Alaska is amended to read:

SECTION 7. DEDICATED FUNDS. The proceeds of any state tax or license shall not be dedicated to any special purpose, except as provided in sections [SECTION] 15 and 17 of this article or when required by the federal government for state participation in federal programs. This provision shall not prohibit the continuance of any dedication for special purposes existing upon the date of ratification of this section by the people of Alaska.

(2) Renumber remaining sections accordingly.

(3) Revise language in new Section 4 adding new Section 27 to Article XV, Constitution of the State of Alaska to read:

SECTION 27. EFFECTIVE DATE OF AMENDMENTS. The 1982 amendments to article IX of this constitution adding sections 16 and 17, relating to appropriations and the Alaska resource fund, amending section 7, relating to dedicated funds, and amending section 15, relating to the payment fund, take effect July 1, 1983.

Arch Jones 4/22 Fund plan needs work, Senate group says

by R/E White
Times Juneau Bureau

Juneau — Despite its high-powered backers, a proposal to create a multibillion-dollar fund for building dams, ports and other costly projects needs work before going to voters for approval, a Senate committee was told Monday.

Rep. Hugh Malone, D-Kenai, said the proposal could give the governor or the state Revenue Department power to use funds for the large projects rather than getting the Legislature to appropriate money.

"I would not want to give the appropriation authority to the executive," he said.

Malone said the proposal, despite popular belief, is not a spending limit. "It's an allocation of a stream of state revenues to particular pur-

poses." The proposal puts into two funds most of the state's non-tax revenues, or about one-third of all state income.

Half of the state's oil royalties, bonuses and rentals would go to fund the state's permanent fund, a nest-egg savings account for future Alaskans. The permanent fund gets about a fourth of that income now.

The other half would be placed into a new Alaska Resource Fund, which would be the vehicle for building expensive projects. It could pay for the costs of moving the capital to Willow if voters approve that action in November.

If approved by the Legislature, the proposal would appear on that same ballot with the capital-move proposal. It's aimed at replacing a

fund would go into the general state spending pot. Every two years one-fifth of the fund could be spent on voter-approved construction projects that make a market-rate return to the state.

But as the bill is being discussed now in the Senate Judiciary Committee, the one-fifth share may be invested in any voter-approved project, whether or not it makes money. Money remaining in the fund must be invested at market rates, under the proposal.

Malone and Miller said liquidity of investments could pose a problem. If one-fifth of the fund can't be converted into cash fast, money from the fund couldn't be used for building large projects.

Malone also said the state should

(See FUND, page A-5)

Fund

(Continued from page A-1)

look into a long-term oil leasing policy in considering this proposal. The state could seek more money for the fund by leasing areas of the state potentially rich in oil.

Another problem is that any project built now that doesn't make a return to the state above its costs might have to be maintained in the face of falling future revenues, he said.

Dankworth calls the proposal "the most important piece of legislation this Legislature will act on this year." Dankworth is architect of a \$5 billion to \$10 billion plan for building dams around the state to provide cheap hydroelectric power to most Alaskans. This bill would provide funds for that without straining the state budget, he said.

Sen. Bill Ray, D-Juneau, in a Judiciary Committee meeting Monday questioned a section of the proposal stating that voters needn't approve appropriations to move the capital if they agree in November to move it.

That section doesn't belong in the proposal or the constitution, he said.

STATE OF ALASKA

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

JAY S. HAMMOND, GOVERNOR

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

March 9, 1982

The Honorable Don Bennett
The Honorable M. E. Dankworth
Co-Chairmen
Senate Finance Committee
Room 525 - Capitol Building
Juneau, Alaska

Dear Senators Bennett and Dankworth:

Re: Sponsor Substitute for Senate
Joint Resolution No. 61

Sponsor Substitute for Senate Joint Resolution No. 61, proposing amendments to the Constitution of the State of Alaska relating to appropriations and creating an investment fund, was introduced in the Senate on January 29, 1982 and was referred to the Senate Finance and Judiciary Committees.

For the consideration of the Senate Finance Committee, I am enclosing copies of Fiscal Notes prepared by Mr. Anselm C. Staack, Treasury Comptroller and Mr. Robert W. Elliott, Research Analyst, Department of Revenue concerning the subject Resolution.

Sincerely,

R. D. Stevenson
Special Assistant

Enclosures

cc: The Honorable Patrick M. Rodey
Chairman
Senate Judiciary Committee

Joseph K. Donohue
Deputy Commissioner
Department of Revenue

Anselm C. Staack
Treasury Comptroller
Department of Revenue

Robert W. Elliott, Research Analyst
Research Section
Department of Revenue

FISCAL NOTE

I. REQUEST

Bill/Resolution No. SSSJR 61 (1/29/82)
 Title Constitutional Amendment relating to appropriations/investment fund
 Requested by Senate State Affairs Committee Date 3/9/82

II. FISCAL DETAIL

Agency Affected Department of Revenue
 Program Category Affected Revenue Collection & Management
 BRU, Program, Or Subprogram(s) Affected Treasury Management
 (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) SEE ANALYSIS SECTION

	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						

FUNDING (Thousands of Dollars) SEE ANALYSIS SECTION

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

POSITIONS

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

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

Legislation provides for investment of an "Investment Fund" as provided for by subsequent law.

Because fund management will be provided for by subsequent law fiscal impact as to administrative costs at this time is indeterminate as final form or organization/integration with our funds management, etc., will determine nature and extent of staff and other costs necessary.

Administrative costs, however, should be charged to fund income to establish proper cost allocation.

IV. DATE March 9, 1982

PREPARED BY Anselm C. Staack, Treasury Comptroller
 AGENCY Dept. of Revenue/Treasury Division

Original: Legislative Finance
 cc: Budget and Management

PHONE 465-2350

Prime Sponsor (First Legislator Named)

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
 Bill/Resolution No. SSSJR 61
 Title Constitutional Amendment relating to appropriations/investment fund
 Requested by Senate State Affairs Committee Date 2/3/82

II. FISCAL DETAIL
 Agency Affected _____
 Program Category Affected _____
 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						

FUNDING (Thousands of Dollars)
Millions

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND		(1.345)	(1.630)			
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

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

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

The projected figures represent the subsequent loss of General Fund revenues, based on the Department of Revenue's January 1982 estimates, which would be placed in the investment fund. It should be noted that royalty sale proceeds are not included in the estimates since bids are impossible to anticipate prior to sales.

IV. DATE 2/3/82 PREPARED BY Robert W. Elliott
 AGENCY Department of Revenue
 Original: Legislative Finance PHONE 465-2173
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)
 33-001 (Rev. 12/81)

SJR

68



Official Business

Alaska State Legislature

Senate

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

MINUTES OF THE SENATE JUDICIARY COMMITTEE

OF

MAY 13, 1982

Butrovich Committee Room, State Capitol Juneau, Alaska

Legislation Before Committee:

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.

Amendment to SB 898 - "An Act relating to the insanity defense; and providing for an effective date."

The meeting of the Senate Judiciary Committee was called to order by Chairman Rodey at 1:30 P.M. Committee members present were: Senators Rodey, Ray, and Anderson. Senators Bennett and Parr were absent.

002 - Call to order.

005 - Senator Rodey - The issue before us today is insanity. Let me address Mr. Stern's remarks, because of some recent events there has been a concern about the insanity plea. The House has talked about the issue. Mr. Stern and I have talked at some length about changes in the issue. I have talked previously to the committee about it. I have held a bill on the floor we can use that as a vehicle and it will be the most efficient way of handling it and rather than do it on an individual level, I wanted the committee to do because I value the advice of council of committee and it is appropriately a committee matter. The question is whether or not to change the present law regarding the plea of insanity and as you know the definition of insanity is rather broad in the existing law. In addition, the plea is raised only by the defendant and the prosecution must prove that the defendant is not insane. It's a double disadvantage. The proposal that will be discussed today is whether to do away with the insanity plea completely and have a question of only innocence or guilt of the crime and then have a hearing after the insanity plea rather than after the trial to determine whether the individual is insane or sane, but require the same amount of imprisonment whether it be in an institution or prison. After

that in order to retain a limited portion of the insanity plea which would be the narrowest possible device under the law.

023 - Senator Ray - Do you understand what he is saying?

025 - Senator Rodey - Did I lose everybody? In that case, I'll let Mr. Stern spin the rubick's cube.

027 - Senator Anderson - One word of caution for the witness here so that he doesn't make the same mistake, that he speak in ...

029 - Senator Rodey - You have the floor Mr. Stern.

030 - Mr. Stern - Thank you.

031 - Senator Rodey - Let me pose one question first. Is an insanity plea required by constitution law?

032 - Mr. Stern - The answer to that question is that we think it is. The question is how far can you go in terms of limiting the plea and that is what we attempt to do in this legislation. Let me begin by saying that

034 - Senator Ray - Mr. Chairman.. You're saying that in your judgement.

036 - Mr. Stern - Yes, that is the issue. Governor Hammond, tomorrow, should be introducing legislation in the Senate which will substantially restrict the insanity defense in Alaska. I don't have that bill in final form for you at all at this time, but it should be ready later on this afternoon, maybe in a couple of hours. This committee has already taken, what we consider, substantial action on the subject by changing the burden of proof on the insanity defense. As Senator Rodey stated, currently, once a defendant claims the defense of insanity and raises a reasonable doubt as to whether he was sane or not, just merely raising a reasonable doubt is sufficient to justify a finding of not guilty by reason of insanity. What happens to that person is that the person is found not guilty by reason of insanity, committed to the department,

047 - Senator Ray - Do we have a _____?

048 - Senator Rodey - No we do not.

049 - Senator Ray - What is this kind of a lecture, symposium, or what?

050 - Senator Rodey - No we will have the Governor's bill tomorrow, we have the bill on the floor that can be amended. It is a House bill and the reason we are here is to get sense of the committee on this topic.

052 - Senator Ray - Well, we don't need to listen to him. Why don't we just ask him questions rather than for him to give a speech. That would be easier.

054 - Senator Rodey - Fine, if that's preferable.

055 - Senator Ray - Is that all right with you?

056 - Mr. Stern - That's fine.

057 - Senator Rodey - You have the floor Senator Ray.

058 - Senator Ray - It is my opinion , and it's one of long standing that the insanity plea, if the man is insane then he should be put into an institute and kept there and when he becomes sane, then he should have a trial. He should serve time. Not be just dismissed because of reason of insanity.

060 - Senator Rodey - You don't mean have a trial, you mean just serve time. I raise that point because if you were committed in an insane asylum for five years and then were required to have a trial five years later, there is the stale evidence problem.

063 - Senator Ray - Well in the majority of the cases, the evidence isn't that stale, you know, the guy cut somebody up in little pieces and said gee I was crazy at the time.

067 - Senator Rodey - I think the later trial date raises significant problems for the prosecution. Mr. Stern.

068 - Mr. Stern - Well, if the defendant had a mental condition that he didn't understand the nature of the trial, we couldn't try him anyway. We would have to wait until the person recovered, if he ever did. So the kind of person you're talking about, Senator, we can't try him today until he understands what is occurring at the trial.

071 - Senator Ray - I understand that, that's why the trial would have to come after he is released and declared sane. _____ take my chance at that time that the evidence would still be, if it was a violence crime, there would still be enough evidence left to make a legitimate judgement as to whether he should serve time or not.

077 - Mr. Stern - We are not going to propose that that be changed, Senator. If the person is incompetent to stand trial under the Governor's bill, that will not be changed, he won't stand trial until he becomes competent. The question is what happens once the person is competent to stand trial.

080 - Senator Ray - I think. Could we just have a dialogue here a little bit?

081 - Senator Rodey - Sure.

082 - Senator Ray - I think that alot of it, at least I don't appreciate, is when a person, like the occasion that happened in Anchorage, just to use that as a reference point, but it has happened many, many times over, when a person is sane enough so that he can be let out unescorted, then he is sane enough to stand trial for something.

083 - For the record, Senator Parr entered the meeting.

086 - Mr. Stern - We don't take issue with that, infact what happens in a situation where the person basically understood what he was doing when he committed the act, we, under the bill that will be _____ tomorrow, the person will be found guilty of the charge and sentenced like any other criminal defendant. He will receive mental treatment while he is in the custody of the Commissioner of Health and Social Services if the problem is cured, at that point, he will serve the rest of the sentence in prison.

092 - Senator Ray - But then if the sentence is 10 years and he spends 9 years in the mental institute that means he goes 1 year into prison?

096 - Mr. Stern - The answer to your question is yes, if it is a 10 year sentence, but there is a distinction between what happens under existing law and what happens under the bill we will be proposing. Under existing law, that person is never sentenced. He is found not guilty by reason of insanity. Under this bill, a person who commits, say 1st degree murder, it is a mandatory minimum sentence of 20 years. What will happen to that person, say we have a sentence imposed of 20 years. He will be sentenced, found guilty and that person will receive treatment while in prison or say at API. Once the illness is cured, if it is cured, that person will be required to serve the rest of his sentence like any other offender.

107 - Senator Ray - I could see some people copping out insanity plea and doing soft time in API. You get led around by the hand and taught how to do bead work and all that good stuff.

111 - Mr. Stern - It is difficult for me to answer that concern.

112 - Senator Rodey - Let me see if I can answer that in saying that the way the laws are presently, there is certainly every reason for a defendant to plead insanity now and it is a fairly common plea. I doubt that you're are really going to see that change appreciably. Would you agree with that statement Mr. Stern?

115 - Mr. Stern - I think if anything, because of the consequences of raising the plea under this bill, you are probably going to see the number of cases where it is raised go down significantly and certainly the number of cases where it could be established. We estimate that it would only apply to 10 percent.

119 - Senator Ray - That comes to the point that I;m talking about is that after.. if he spends 10 years in a mental institute and he finally comes out of it, he should start serving his prison term and if its 10 years, it's 10 years on top of it because his incarceration in a mental institute does not compare to incarceration in a penal institute. He is being kept in there for his care and for his own care and that's the way it is.

126 - Mr. Stern - I understand precisely the point you're getting at. I don't think that under the approach of sentencing the person. In other words this person is found guilty and sentenced. I don't think we could do that consistent with do process. Constitutionally, I don't think we

can do it. The court would view forced confinement in a mental institution pursuant to a finding of guilty the same way that it would view...

131 - Senator Ray - I'm not so sure because a man isn't in his right mind and he isn't conscious incarcerated or being.... if he is insane he doesn't know the difference. He doesn't know the difference between right and wrong, he doesn't know the difference whether he is in jail or not. When he becomes sane and he knows he is in jail, then he can start serving his term.

136 - Senator Rodey - There is another problem to it is that you would never get anyone into prison because if a person became sane enough to go to prison, he would become sane enough to release he didn't want to go to prison and would remain in the institution.

138 - Senator Ray - So? Then the guy has the choice. If he is going to go for a possible 7 years for murder or manslaughter or whether he is going to go into a bug house for the rest of his life or until he admits that he is sane. If he is playing a game he will take that into consideration too, I'm sure. In other words, you give him no loophole, is what I'm getting at. But, with this one he would be doing soft time for 7 years and then all of a sudden he's okay, let's see one more year, okay I'll do that hard time out at Lemon Creek.

148 - Mr. Stern - Senator, there is no requirement under the bill that the person be transferred to that type of institution. The bill anticipates that in some of these cases, the treatment will occur in the prison.

152 - Senator Ray - You mean there will be a psycho ward within the prison?

153 - Mr. Stern - I don't know if I would care to refer to it as that, but I think we are getting at the same concept.

154 - Senator Rodey - He said yes.

155 - Senator Ray - Then I have no objection. If you are going to put them in prison and you have a psycho ward in there, and we will leave them in there, that's fine.

156 - Mr. Stern - Well it is certainly allowed under the bill and that is what we are anticipating the kind of cases.

157 - Senator Rodey - Could you explain the constitutional requirement for some insanity plea?

159 - Mr. Stern - Okay. The basic constitutional requirement is this: in order to be guilty of a crime, a person has to act with a criminal intent and a best example of a case where it probably would be unconstitutional to eliminate insanity defense is the situation where I believe I am squeezing a lemon, this is the example which is usually given in the literature, but it turns out that I am squeezing the neck

of someone, I am killing someone, I am having a hallucination that I'm am killing a ghost, but I am really killing a human being. Under those situations, the crime of murder requires that person intended to kill. If we were to say that person was criminally responsible for the act of intentionally squeezing a watermelon or shooting at a ghost, we think that would be unconstitutional to hold that person responsible, but let me just say that that is the most limited situation where the insanity defense would apply and that is why we believe that our redefinition of the insanity defense will probably limit it to no more than '9 percent of the cases where it is presently raised. The only time the defense could be successfully raised is if the person did not understand the nature and quality of his conduct.

177 - Senator Ray - How about temporary insanity?

178 - Mr. Stern - If it was the type of insanity that resulted in the person not knowing the nature and quality of conduct, it would be a defense, but let me point out that existing law simply allows a person...

181 - Senator Ray - The guy says he has no remembrance of the crime.

181 - Mr. Stern - That would not be a defense.

182 - Senator Ray - I was temporarily insane and I don't remember choking this watermelon that turned out to be the neck of somebody?

184 - Senator Anderson - Let me ask you a question, Mr. Chairman. Is it your intent, if we can come to some kind of consensus here, to amend the bill which you were referring to earlier?

186 - Senator Rodey - It is indeed. It would be the most efficient way of dealing with the matter. The topic is the important thing. That will take less committee time and since we did have a little time today, I wanted to delve in the topic, because every member here is familiar with it from the work we have done previously and from our discussions.

192 - Senator Ray - I think, Mr. Chairman, that at least in my thoughts, and I think that it probably has a similar basis in other peoples minds, that too many people get off on an insanity plea and they are not really insane and then too many people are let out of institutions that are insane and they claim that they're not, but they really are. How do you like that?

199 - Senator Rodey - I'm inclined to agree with you. The first duty of society is to protect the public and that is the primary question that we are raising here is how can the public be protected.

202 - Senator Ray - They can't be protected because, I have the situation now, I just got a call in my office over the lunch hour, there is a person in this town that was picked up in one of the local establishments carrying a gun. a woman carrying a gun, and making threats. They took her and put her in jail for four or five days and now she's out and still making the same threats. Drawing pictures of

blood dripping off of knives, somebody's head rolling off and all of that stuff. Under our laws and under each individuals freedom there is nothing that you can do to that person until they finally do kill someone or makes an attack. Can they?

213 - Mr. Stern - As far as I know, we had charged her, if this is the same case.

214 - Senator Ray - Well she is out again.

215 - Mr. Stern - She's out on bail?

215 - Senator Ray - She's making the same threats. This is serious, with picture drawings now with the knives and blood dripping off and everything. Now what is going to happen?

219 - Mr. Stern - Well, I don't know enough about the conditions of bail in that case, but she have violated a condition of bail. It is difficult to discuss that case, it is a pending case here.

221 - Senator Ray - If she did violate the bail, I would suggest that they go and pick her up and put her back in.

223 - Senator Rodey - Perhaps this is a matter which is better discussed outside the committee..

223 - Senator Ray - I hardly ever see him.

229 - Senator Rodey - _____ constitutional requirement and you talked about _____. I think it is a close question because of course there are crimes which do not require specific intent and the statute has many of them in fact we just amended the law, at your suggestion, to allow for people recklessly endanger or do other things and I think the committee very much agreed again, the question was public safety. The fact that somebody is killed or hurt, it is important whether they negligently allowed it to happen or they intentionally did it. I think the same arguement can be raised on a constitutional requirement, that a person actually had the intent to commit a murder. The fact is if they do commit a murder regardless of their mental state, society has a strong interest in preventing that kind of conduct in at least hopefully preventing it, but if nothing else is reasoning that individual so that that can't happen again so that the lemon can't be squeezed a second time.

243 - Mr. Stern - Actually, the way I used the word intent, I would include the four types of mental states in the code, so the lemon squeezer may not even have acted recklessly because that requires that he be aware of a substantial and unjustifiable risk. He may not have been. I want to make this clear, this isn't something that we started working on just because of the incident in Anchorage, we had given substantial thought to this approach when we put in 535, restricting defense, but we had attempted previously to have that changed, we weren't too successful so we didn't think we could put in this, but we have discussed this with people in mental health fields, psychiatrists,

we have discussed it with our people in Anchorage who tried these cases and I think it is pretty unanimous support of the approach. It doesn't go as far as we possibly we could try to go. I think we concluded that going that far kind of presented more problems than it was worth considering how narrowly we have defined the defense.

261 - Senator Rodey - Do you think there would be a constitutional challenge to the legislation?

262 - Mr. Stern - To this legislation?

263 - Senator Rodey - Yes.

264 - Mr. Stern - I am sure there will be. On this legislation which we are going to introduce, I am confident that we will be successful as to legislation similar to like Idaho, or Montana, it is my feeling that we would probably lose.

266 - Senator Rodey - That is where there is no defense of insanity?

267 - Mr. Stern - That is correct.

268 - Senator Rodey - Senator Parr.

268 - Senator Parr - One of the midwestern states last year had changed its law on this subject, I'm not talking about Idaho or Montana, this was back Michigan, Wisconsin, Illinois. I think it was Michigan. In their's, instead of having a verdict of not guilty for reasons of insanity, they found guilty, but insane, I'm not sure how they handled it after the verdict was in, what did they do then.

274 - Mr. Stern - That's basically, precisely what we have done in this bill. We call it guilty, but mentally ill. The only distinction between what Michigan did and what we are doing here is that it was the jury who determined whether the person was mentally ill, under our bill, that is removed as a jury question, rather the jury simply considers did the person do the act, did he have the intent. If he did do the act and did have the intent, he is found guilty. Then after the verdict comes in, there is a separate hearing prior to sentencing where the defendant argues that he is guilty, but mentally ill. We felt in terms of judicial economy that would be a lot better than presenting all of that evidence to the jury and also the possibility providing compromise verdicts. We felt it was a better approach.

287 - Senator Parr - Let me ask another question. Didn't we do that same thing in SB 100? I know that the _____ you came in as a result of that Supreme Court verdict about 1979 or 80, I forgot the name of the case, but it seems to me that what was put into SB 100 was the trials were on the facts on the murder, lets say, whatever the choice was, would be immediately followed by the hearing when they send it to court and also what there would be, it would require an affirmative

298 - Mr. Stern - Yes. The reason being is that we redefined the defense of insanity and that is the reason.

304 - Senator Ray - I don't know. I think we are all trying to do the same thing, but by the time it gets done fooling around with the attorneys and the courts and that, it won't be anything. I hate to be pessimistic on it, but how many times have we attempted to do things and it turns up to be worse than when it starts.

311 - Senator Parr - You have to remember one thing, that is the second guarantee in the constitution, both U.S. and Alaska, is the right not to be deprived of liberty without do process of law, you have to have that, that's all there is to it. You have to give the person the right... you can't go out and yank them up and stick them in jail without going through the necessary procedures.

315 - Senator Rodey - I don't think anybody disagrees with that, however my personal thought is that being mentally ill doesn't alter that as far as I'm concerned. A mentally ill person is a danger to society, should be deprived the liberty exactly the same manner as a sane person.

320 - Senator Parr - Nobody has questioned that, the grounds are present

322 - Senator Ray - Do process means alot of things though.

323 - Mr. Stern - That isn't in the criminal area though.

323 - Senator Ray - Do process means all kinds of things. Do process means getting a criminal trial, a civil trial, a hearing on an insanity plea or anything else, as long as you get some kind of legal action that addresses whatever kind of situation. That's do process, isn't it?

328 - Mr. Stern - Well, in the area of criminal law, you have to have more do process than in the civil area, but, we will provide you with the bill and a seven page analysis of the legislation hopefully by 4:00 this afternoon.

334 - Senator Ray - Buy everybody a 357 magnum, and eliminate the courts and let lawyers defend clients at their own risk.

337 - Senator Rodey - Do you want to make that a formal motion?

338 - Senator Ray - Can they put that in law?

339 - Senator Parr - You remind me of that famous revolution. The first thing that they did when they were successful was to kill the lawyer.

343 - Senator Rodey - Are there any other questions, I will get copies of the language out to the members hopefully before they leave this evening. One other matter I wanted to take up, you might be interested in, we have one bill, that's SJR 68, proposing an amendment to the Constitution providing that legislators convicted of a felony forfeit legislative office.

349 - Senator Ray - Why do we just limit it to legislators? Why don't we limit it to, why don't we enlarge that to have Governors, Lt. Governors, judges, state employees? Why just have it legislators?

355 - Senator Rodey - You could certainly expand it to elected officials.

356 - Senator Ray - Why not?

357 - Senator Rodey - I see no reason why not.

358 - Senator Ray - We could even enlarge it up to state employees. People employed by the State. Why not? I'm tired of they just point at legislators, legislators, legislators. Lobbyists, the same thing.

364 - Senator Parr - Is it that we don't trust ourselves to make those decisions, or what?

366 - Senator Rodey - I think if there is any trust, it is lacking in the department of the public. The bill would provide for automatic expulsion upon the conviction of a felony.

368 - Senator Parr - I understand that Mr. Chairman. Exactly what is the need for it, I mean. What it sounds like we are going to do is just say that we have the right to exclude a member by expelling him on a two thirds vote. Now they are just going to make this an automatic expulsion convicted on a felon _____.

376 - Senator Rodey - It provides an automatic mechanism.

377 - Senator Parr - That is my question. Why do we need an automatic mechanism?

378 - Senator Ray - You are denying do process. You are. If you believe in do process for everybody else, this is not do process for a legislator. Do process goes through the appeal situation, the whole thing. But here you are cutting that short.

386 - Senator Anderson - You go through this kind of a process here, it can be challenged if it is adopted by the public, it can be challenged constitution because of the do process question. Legislators, if they decide among themselves to take an action, there is no other appeal. This is final. This is the final place where a decision is made. Did you get my point?

396 - Senator Rodey - Loud and clear.

397 - Senator Ray - School teachers, policemen, all of these people. Why is this the legislator all the time.

400 - Senator Rodey - Is there a member of the committee who wishes to work on the bill and bring it out? I thought that might be the consensus of the committee, but I wanted to bring this up.

413 - Adjourned at 2:35 P.M.



Official Business

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 Fisher testified in favor of his bill.

765 - SB 861 returned to file.

780 - Chairman Rodey adjourned due to the joint session.



Alaska State Legislature

Senate

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

Official Business

MINUTES OF THE SENATE JUDICIARY COMMITTEE

OF

APRIL 26, 1981

Butrovich Committee Room, State Capitol Juneau, Alaska

Legislation Before Committee:

- 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.
- HB 678 - "An Act relating to membership in electric and telephone cooperatives."
- HB 849 - "An Act relating to electric and telephone cooperatives."
- HB 339 - "An Act relating to the judicial review of administrative regulations."

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, Parr, and Anderson. Senators Bennett and Ray were absent.

003 - Call to order.

010 - Chairman Rodey brought HB 678 before the committee.

025 - Mr. Hutchins testified in support of the bill.

135 - *SENATOR RAY ENTERED THE ROOM*

147 - After brief discussion, Chairman Rodey laid HB 678 on the table.

157 - Chairman Rodey next brought HB 849 before the committee.

160 - Mr. Hutchins again testified in support of this legislation and offered the following amendments: On page 2, Line 5, add "or special" between "regular" and "meeting". On Page 2, Line 24, add "and for a valid corporate purpose" between "time" and ",". Mr. Hutchins also suggested adding a new subparagraph (3) under Sec. 10.25.175., Paragraph (c), to protect the attorney, client privilege.

166 - Senator Ray offered the following amendments: On Page 2, Line 10 add "formal" between the words "No" and "action". On Page 2, Line 11,

169 - Senator Parr offered the following amendment: On Page 2, Line 25 delete [except the names, addresses and accounts of the members].

771 - After discussion of the amendments, Chairman Rodey laid HB 849 on the table and directed staff to prepare a committee substitute.

779 - The next item on the calendar was HB 339.

780 - Representative Metcalfe testifies, giving the intent of his bill.

SIDE TWO

989 - Mr. Art Peterson, Assistant Attorney General, testified against HB 339, stating that this legislation would only give more power to the court system instead of the Legislature. Mr. Peterson offered a committee substitute for committee consideration.

244 - Chairman directed Senator Anderson to work as a subcommittee with Mr. Bruce to draft a committee substitute.

340 - Phil Holsforth, testified in favor of HB 339.

410 - Chairman Rodey put HB 339 in subcommittee.

412 - Next Chairman Podey brought SJR 68 before committee.

518 - After brief discussion, Chairman Rodey laid SJR 68 on the table.

520 - The committee directed Chairman Rodey to return SB 801 and SB 175 to the State Affairs Committee for further work.

525 - Chairman Rodey adjourned the meeting at 2:45 P.M.

Imprisonment
for Debt

SECTION 17. There shall be no imprisonment for debt. This section does not prohibit civil arrest of absconding debtors.

Eminent
Domain

SECTION 18. Private property shall not be taken or damaged for public use without just compensation.

Right to
Bear Arms

SECTION 19. A well-regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

Quartering
Soldiers

SECTION 20. No member of the armed forces shall in time of peace be quartered in any house without the consent of the owner or occupant, or in time of war except as prescribed by law. The military shall be in strict subordination to the civil power.

Construction

SECTION 21. The enumeration of rights in this constitution shall not impair or deny others retained by the people.

Right of
Privacy

SECTION 22. The right of the people to privacy is recognized and shall not be infringed. The legislature shall implement this section.

(The addition of this section, as an amendment to Article I, was approved by the voters of the state August 22, 1972 and became effective October 14, 1972.)

ARTICLE II

THE LEGISLATURE

Legislative
Power;
Membership

SECTION 1. The legislative power of the State is vested in a legislature consisting of a senate with a membership of twenty and a house of representatives with a membership of forty.

Members;
Qualifications

SECTION 2. A member of the legislature shall be a qualified voter who has been a resident of Alaska for at least three years and of the district

Election
and Terms

from which elected for at least one year immediately preceding his filing for office. He shall be at least twenty-five years of age and shall have resided in the district for at least twenty-one years

SECTION 3. Legislators shall be elected at general elections. Their terms shall begin on the first Monday of the January following the general election, unless otherwise provided by law. The terms of representatives shall be two years, and the terms of senators shall be four years. One-half of the senators shall be elected every two years.

(Exercising its authority under this section, the legislature provided that terms begin on the second Monday of the January following a general election; they begin on the third Monday in January.)

Vacancies

SECTION 4. A vacancy in the legislature shall be filled for the unexpired term and, if no provision is made, the governor shall fill the vacancy by appointment.

Disqualifications

SECTION 5. No legislator shall hold any office or position of profit under the State. During the term of office for one year thereafter, no legislator shall be nominated, elected, or appointed to any position of profit which has a salary or emoluments of more than \$10,000 per year, increased, while he was a member of the legislature. This shall not prevent any person from serving as secretary of the office of governor, secretary of the legislature, or member of Congress. This section shall not apply to a person elected by or election to a constitutional office.

(The Sixth Legislature's Senate Journal, in listing the name of the secretary of state, inadvertently omitted the name of the secretary of state in sixteen sections of the Alaska Constitution, effective August 25, 1970, inadvertently omitted the name of the secretary of state.)

Immunities

SECTION 6. Legislators may not be sued or answer before any other tribunal for any act made in the exercise of their official duties while the legislature is in session. No

from which elected for at least one year, immediately preceding his filing for office. A senator shall be at least twenty-five years of age and a representative at least twenty-one years of age.

**Election
and Terms**

SECTION 3. Legislators shall be elected at general elections. Their terms begin on the fourth Monday of the January following election unless otherwise provided by law. The term of representatives shall be two years, and the term of senators, four years. One-half of the senators shall be elected every two years.

(Exercising its authority under this section, the legislature has provided that terms begin on the second Monday in January, except in years immediately following a gubernatorial election when they begin on the third Monday in January; see AS 24.05.080.)

Vacancies

SECTION 4. A vacancy in the legislature shall be filled for the unexpired term as provided by law. If no provision is made, the governor shall fill the vacancy by appointment.

Disqualifications

SECTION 5. No legislator may hold any other office or position of profit under the United States or the State. During the term for which elected and for one year thereafter, no legislator may be nominated, elected, or appointed to any other office or position of profit which has been created, or the salary or emoluments of which have been increased, while he was a member. This section shall not prevent any person from seeking or holding the office of governor, secretary of state, or member of Congress. This section shall not apply to employment by or election to a constitutional convention.

(The Sixth Legislature's Senate Joint Resolution No. 2 "changing the name of the secretary of state to lieutenant governor" in sixteen sections of the Alaska Constitution, approved by the voters August 25, 1970, inadvertently omitted express amendment of this section.)

Immunities

SECTION 6. Legislators may not be held to answer before any other tribunal for any statement made in the exercise of their legislative duties while the legislature is in session. Members attending, go-

They may perform duties and employ personnel as provided by the legislature. Their members may receive an allowance for expenses while performing their duties.

Rules

SECTION 12. The houses of each legislature shall adopt uniform rules of procedure. Each house may choose its officers and employees. Each is the judge of the election and qualifications of its members and may expel a member with the concurrence of two-thirds of its members. Each shall keep a journal of its proceedings. A majority of the membership of each house constitutes a quorum to do business, but a smaller number may adjourn from day to day and may compel attendance of absent members. The legislature shall regulate lobbying.

Form of Bills

SECTION 13. Every bill shall be confined to one subject unless it is an appropriation bill or one codifying, revising, or rearranging existing laws. Bills for appropriations shall be confined to appropriations. The subject of each bill shall be expressed in the title. The enacting clause shall be: "Be it enacted by the Legislature of the State of Alaska."

Passage of Bills

SECTION 14. The legislature shall establish the procedure for enactment of bills into law. No bill may become law unless it has passed three readings in each house on three separate days, except that any bill may be advanced from second to third reading on the same day by concurrence of three-fourths of the house considering it. No bill may become law without an affirmative vote of a majority of the membership of each house. The yeas and nays on final passage shall be entered in the journal.

Veto

SECTION 15. The governor may veto bills passed by the legislature. He may, by veto, strike or reduce items in appropriation bills. He shall reurn

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Veto

SECTION 15. The governor may veto bills passed by the legislature. He may, by veto, strike or reduce items in appropriation bills. He shall return

Action Upon
Veto

any vetoed bill, with a statement of his objections, to the house of origin.

SECTION 16. Upon receipt of a veto message during a regular session of the legislature, the legislature shall meet immediately in joint session and reconsider passage of the vetoed bill or item. Bills to raise revenue and appropriation bills or items, although vetoed, become law by affirmative vote of three-fourths of the membership of the legislature. Other vetoed bills become law by affirmative vote of two-thirds of the membership of the legislature. Bills vetoed after adjournment of the first regular session of the legislature shall be reconsidered by the legislature sitting as one body no later than the fifth day of the next regular or special session of that legislature. Bills vetoed after adjournment of the second regular session shall be reconsidered by the legislature sitting as one body no later than the fifth day of a special session of that legislature, if one is called. The vote on reconsideration of a vetoed bill shall be entered on the journals of both houses.

(The amendment of this section was approved by the voters of the state November 2, 1976 and became effective December 23, 1976. This amendment inserted "during a regular session of the legislature" in the first sentence and added the present fourth and fifth sentences.)

Bills Not
Signed

SECTION 17. A bill becomes law if, while the legislature is in session, the governor neither signs nor vetoes it within fifteen days, Sundays excepted, after its delivery to him. If the legislature is not in session and the governor neither signs nor vetoes a bill within twenty days, Sundays excepted, after its delivery to him, the bill becomes law.

Effective
Date

SECTION 18. Laws passed by the legislature become effective ninety days after enactment. The legislature may, by concurrence of two-thirds of the membership of each house, provide for another effective date.

Local or
Special Acts

SECTION 19. The legislature or special act or general act. Whether a general act shall be subject to judicial acts necessitating appropriate division may not become effective by a majority of the qualified in the subdivision affected.

Impeachment

SECTION 20. All civil of subject to impeachment by impeachment shall originate in be approved by a two-thirds. The motion for impeachment basis for the proceeding. shall be conducted by the he A supreme court justice de shall preside at the trial. Cor of the members of the hous ment of impeachment. The tend beyond removal from prevent proceedings in the related charges.

Suits Against
the State

SECTION 21. The legisla cedures for suits against the

ARTICLE III

THE EXECUTIVE

Executive
Power

SECTION 1. The executi vested in the governor.

Governor:
Qualifications

SECTION 2. The governo years of age and a qualified shall have been a resident years immediately precedi and he shall have been a States for at least seven yea

Local or
Special Acts

SECTION 19. The legislature shall pass no local or special act if a general act can be made applicable. Whether a general act can be made applicable shall be subject to judicial determination. Local acts necessitating appropriations by a political subdivision may not become effective unless approved by a majority of the qualified voters voting thereon in the subdivision affected.

Impeachment

SECTION 20. All civil officers of the State are subject to impeachment by the legislature. Impeachment shall originate in the senate and must be approved by a two-thirds vote of its members. The motion for impeachment shall list fully the basis for the proceeding. Trial on impeachment shall be conducted by the house of representatives. A supreme court justice designated by the court shall preside at the trial. Concurrence of two-thirds of the members of the house is required for a judgment of impeachment. The judgment may not extend beyond removal from office, but shall not prevent proceedings in the courts on the same or related charges.

Suits Against
the State

SECTION 21. The legislature shall establish procedures for suits against the State.

ARTICLE III

THE EXECUTIVE

Executive
Power

SECTION 1. The executive power of the State is vested in the governor.

Governor:
Qualifications

SECTION 2. The governor shall be at least thirty years of age and a qualified voter of the State. He shall have been a resident of Alaska at least seven years immediately preceding his filing for office and he shall have been a citizen of the United States for at least seven years.

S

R

15

H

B

2

SENATE AMENDMENT

By SENATOR
ANDERSON

To: _____ SENATE BILL No. _____

To: PS FOR _____ HOUSE BILL No. 2 _____

PAGE:

LINE:

AS 38.04 is amended by adding a new section to read:

Sec. 38.04.920. GRAZING LANDS. notwithstanding any other provision of law, state lands classified for agricultural purposes currently used for grazing or with a vegetation coverage suitable for grazing shall retain current use or classification upon the effective date of this Act.

SENATE JUDICIARY
STANDING COMMITTEE
April 12, 1982
1:30 p.m.

Members Present: Senator Pat Roddy, Chairman
Senator Bill Ray
Senator Nels Anderson
Senator Charles Parr

Members Absent: Senator Don Bennett

COMMITTEE CALENDAR

HB 2 "An Act relating to land; and providing for
and effective date."

HB 473 "An Act changing the classification of and
punishment for certain crimes against the
person."

HB 34 "An Act requiring the preparation of a
course transferability guide covering
courses in post-secondary institutions; and
providing for an effective date."

HB 548 "An Act providing for legal services in
civil cases for persons who are financially
unable to obtain legal counsel.

HB 848 "An Act reenacting the law relating to the
marital deduction in testamentary
transfers; and providing for an effective
date."

HB 621 "An Act providing for the issuance of
certificates of birth for persons born
outside the United States and adopted by
Alaskan residents."

HB 637 "An Act relating to taking, purchase, or
sale of certain fishery resources.

WITNESS REGISTER

Dale Cheek
Department of Labor
Box 630, Juneau, Ak 99811
No Phone provided.
Position Statement: Observed.

Theresa R. Hebert

Exxon
Pouch 6601, Anchorage, Ak
No Phone provided.
Position Statement: Testified on HB 2.

Bill Lodwig
Department of Health & Social Services
Pouch H-03, Juneau, Ak 99811
No Phone Number provided.
Position Statement: Testified on HB 473.

William Nix, Commissioner
Department of Public Safety
Pouch N, Juneau, Ak 99811
465-4322
Position Statement: Testified on HB 473.

Julia Coster, Aide
Rep. Ramona Barnes
Pouch V, Juneau, Ak 99811
465-3718
Position Statement: Testified on HB 473.

Caren Robinson, President
Alaska Network on Domestic Violence and Sexual Assault
P.O. Box 809, Juneau, Ak 99801
No Phone provided.
Position Statement: Testified on HB 473.

Jeff Haynes, Deputy Commissioner
Department of Natural Resources
Pouch M, Juneau, Ak 99811
465-2400
Position Statement: Testified on HB 473 & HB 2.

Barry Stern, Assistant Attorney General
Department of Law
Pouch KC, Juneau, Ak 99811
465-3460
Position Statement: Testified on HB 473.

Rodger Painter
Executive Director of
United Fishermen of Alaska
(no address or phone provided)
Position Statement: Testified on HB 637, explained that the
amendment was developed in conjunction with
the processors.

PREVIOUS ACTION

HB 34

Refer to S. Health, Education & Social
Services Committee meeting 5/11/82, for

waive of committee referral and referred to S. Judiciary Committee. Refer to H. HESS Committee meeting 4/24/81. During the Senate Judiciary Committee meeting of 5/12/82 Senator Parr moved to hold the bill till the next meeting to consider it further.

HB 2

Please refer to S. Resources Committee minutes 05/03/82. Please refer to H. Resources Committee meeting 3/12/82. During the Senate Judiciary Committee meeting of 5/12/82 Senator Anderson proposed an amendment, under the direction of Senator Rodey, held the bill in committee till the morning meeting in order for Mr. Haynes, Mr. Bruce and Senator Kerttula to get together and put together a Committee Substitute for HB2.

HB 548

No Senate Previous Action to report. H. Judiciary Committee meeting 5/05/82. During the Senate Judiciary Committee meeting of 5/12/82 Theresa Herbert representing Exxon proposed a amendment that entails 18 words. That Exxon only provide initially processed data from the group shoot survey and would be able to protect the initial processed data from proprietary surveys. Senator Ray moved the Exxon amendment. Senators Anderson and Rodey raised their hands in support of the Exxon amendment. Senators Ray and Parr raised their hand in opposition of Exxon's amendment. Mr. Haynes of the Department of Natural Resources explained the department credit tax amendment. Mr. Haynes also explained establishing class "B" felony for willfully disclosing secured information and bonding third party contractors. The bill stayed in committee until the next meeting for further consideration.

HB 848

No Senate Previous Action to report. Please refer to H. Judiciary Committee meeting 4/01/82.

HB 473

No previous action to report. During the Senate Judiciary Committee meeting of 5/12/82 Barry Stern of the Department of Law proposed a Committee Substitute that deals with the subject of all Class A violent crimes that specify a presumptive sentence of 5 years on any 1st offense Class A

felony. And if a weapon was used the sentence would be increased to 7 years. In relation, the Judge would have the discretion to raise that 5 year presumptive sentence to 20 years for aggravating factors and decrease it to 2 1/2 years for mitigating factors. Conclusively the offender would not be eligible for parole. Julia Coster representing Ramona Barnes, presented to the S. Judiciary Committee a position statement from Representative Barnes - see supplement 1. Senator Ray moved to adopt the Department of Law's proposed Committee Substitute as the Committee Substitute. Senator Parr objected and the bill was tabled until the next meeting for further consideration.

HB 621

No previous action to report. During the S. Judiciary Committee meeting on 5/12/82 Senator Ray moved to adopt the Committee Substitute, the Committee Substitute received unanimous consent for adoption. Senator Ray moved bill out with individual recommendations. The bill was passed from Committee.

HB 637

For Previous Action please refer to Senate Resources Committee Record of 5/6/82. During the S. Judiciary Committee meeting on 5/12/82 Mr. Bruce explained the amendment: page 3, line 16 now reads "a person who violates this section". Formerly read "a person who violates or assists in the violation of this section". Same changes made on page 5, line 1. Page 2, line 23 reads "has been convicted of three offenses under this section. Formerly read "has been convicted of three or more offenses under this section. Senator Ray and Parr asked to hold this bill over till the next Senate Judiciary meeting for further consideration.

ACTION NARRATIVE

Tape #043
Recording
Number 0010

Senator Rodey: Meeting came to order at 12:00 p.m. with member Senators Rodey, Anderson, Parr, and Ray present. Senator Bennett was absent. We are discussing the method of moving bills expeditiously from the Committee, with the closing days of the

session, would it be possible to come in here at 9:00 a.m. for approximately 10 minutes. I want the committee members to see the actual language in the bill, to insure that we have no problems, the Senate relies upon our work on these bills. We should start tomorrow morning, because I suspect there will be drafts back in the morning.

Number 0016

Senator Rodey: First I would like to take up HB 848 by Mr. Hayes. "An Act relating to the law relating to marital deduction in testamentary transfers; and providing for an effective date." This bill has been before us previously, the bill has heard testimony, there was an agreement by the Committee but there was no action by the Chairman. May I have a motion to pass this bill from Committee.

Number 0020

Senator Anderson: So moved Mr. Chairman.

Number 0021

Senator Rodey: It has been moved that HB 848 be passed from Committee with individual recommendations. Is there any objection to that motion. Hearing no objection, the bill is passed from Committee. Next SB 621. Oh, HB 621. This is a bill relating to certificates of birth, births that are born outside the United States and that are adopted by Alaskan residents.

Number 0027

Senator Ray: Adopt a Senate Committee Substitute Mr. Chairman.

Number 0027

Senator Rodey: It has been moved that the Senate Committee Substitute be adopted, is there any objection to that motion. Hearing no objection, the Senate Committee Substitute is adopted.

Number 0028

Senator Ray: Could it be moved out with individual recommendations?

Number 0029

Senator Rodey: It's been moved that HB 621 be passed from committee with individual recommendations. Is there any objection to that motion. Hearing no objection, HB 621 is passed from committee.

Number 0042

Senator Rodey: Next we will take up HB 637, from Mr. Chuckwuk. "An act relating to purchase sale of certain fishery resources.

Mr. Bruce we have the Committee Substitute before us. Could you go through that with Bennett and the Committee members.

Number 0044

Mr. Bruce: Well, I could Mr. Chairman, the only thing, I have made a few technical changes where they designate the classification of misdemeanor, whether it is an A or a B, and we've got some language which is superfluous on page 3, line 16, where the section now reads "a person who violates this section". It formerly read "a person who violates or assists in the violation of this section". And under provisions of the Criminal Code a person will be covered in the violation.. any way the same change is made on page 5, line 1, in which existing.I should go back to the beginning, page 2, line 23, it did read "has been convicted of three offenses or more under this section"; and I just took out the "or more" so it makes it just three.

Number 0058

Senator Rodey: Senator Ray.

Number 0058

Senator Ray: Well here we have something similar to other responsibilities where you have somebody else other than the licensee themselves, is or could be responsible in a offense where it was causing them to lose their license. And sometimes that isn't the best policy. I understand what your saying, but at the same time, you are putting the person who has the investment, you are putting the damage into an employee whose in a policy making decision. What is the policy of making decisions. In other words to buy fish or not, is that a policy?

Number 0066

Senator Rodey: Which section are you referring to specifically?

Number 0068

Senator Ray: D on page 2. You had it, a licensee or an officer director or an employee in a policy making position. Now how do you construe what a policy making position is. In other words, somebody with a substantial investment at the mercy of somebody who could be a strong boss in a fish gang someplace. It seems like that is a pretty heavy thing to put upon upon a licensee.

Number 0075 Senator Rodey: Let me direct a question to Mr. Painter.

Number 0076 Mr. Painter: Yes sir, this language was developed in conjunction with the processors, who would be very interested in who takes the responsibility. The Attorney's say that that language would leave it to the discretion of the court to be decided to on a case by case basis as to who is in a policy making decision. We didn't use language that would say Foreman, or Superintendent, or any kind of titles like that. Because they mean different things at different operations. Policy making position I think is clear, that they have influence over a broad activities of the fish buying operation, not just a.....

Number 0088 Senator Rodey: Senator Ray.

Number 0088 Senator Ray: Well you have somebody here who is buying fish, and he buys fish illegally three times. He is just buying fish, he is the guy down there that's taking the slip. And the licensee might not even know it, and when the time comes, where all of a sudden he's found out that the guy is gone; and the licensee loses his licences. That's a little heavy.

Number 0093 Senator Rodey: Mr. Painter.

Number 0094 Mr. Painter: Mr. Chairman, while that language was picked very carefully to avoid the very situation your talking about. Employee and policy making position would be someone who has the power from the company, the Board of Directors, to carry out the activities of that corporation. I wouldn't get down to the level of the individual fish buyers, or it would be the Superintendent of the cannery who sets the policy for the whole operation.

Number 0100 Senator Ray: That's your interpretation. That doesn't necessarily mean that the court is going to accept it.

Number 0103 Senator Rodey: Senator Anderson.

Number 0103 Senator Anderson: I understand what your saying, we ran into the same trouble with this particular section two years ago, when

I had the bill drafted. And as a matter of fact it was one of the things that really slowed it up during the waiting days at the end of the 1980 session. That language was primarily responsible for this bill not passing. In the mean time the processing industry has come up with this language that they are in agreement with, and one of the things that we really needed to take a good close look at, because of the nature of the problem, the abuses, we felt we had to take a real tough line. And of course the processing industry was in opposition to the language I had originally drafted, now this modifies it significantly so that they are satisfied with the things that you are concerned about won't occur. As a result of this new language that they have helped draft, as I understand it.

- Number 0114 Senator Ray: It doesn't satisfy me, and I am only one member, but I am going to oppose it greatly. At least that section of it.
- Number 0115 Senator Rodey: Senator Parr.
- Number 0115 Senator Parr: I have not heard any testimony on this yet, there is a bill here in front of me to look at. But nobody has said why it is needed, what it will do exactly or anything else. I hope you are not remotely looking at passing it out at this time.
- Number 0118 Senator Rodey: No this bill is not on my list of bills that we have heard previously.
- Number 0119 Senator Ray: Could we hold this one over Mr. Chairman and perhaps we could go together and formulate additional language to it to identify policy making or something like that.
- Number 0121 Senator Anderson: I hope we do not hold it over too long.
- Number 0122 Senator Parr: I am not interested in holding it too long, but I would like someone to tell me....
- Number 0123 Senator Rodey: If it is a situation that the members can, perhaps, tomorrow mornings, perhaps we can.....Yes, Senator Anderson.

Number 0124

Senator Anderson: Excuse me Mr. Chairman.

Number 0124

Senator Rodey: At tomorrow mornings meeting perhaps we can take this up, we'll have some procedural motions, and we can take that bill up. I would like to move these matters along as expeditiously as good workmanship will allow. I think the body is relying on us to make it in a workman like manner. That bill will be laid on the table. Next I would like to take up HB 2. At the request of Mr. Anderson the bill has been split. The seismic portion is being put on another House title, it will be heard, we can take some testimony on that. The portion that deals with homestead provision is in the bill, the portion dealing with the University of Alaska.....

Number 0147

Unanimous: May I have a copy of that please. Thank you so much. This is for Senator Bennett's package. (sic) yes, Senate Bill 261.

Number 0150

Senator Rodey: My error on the bill, we have separated the bill into three separate bills. Which I am not sure whether that is necessarily the intention of the Committee, or perhaps the best tactic on this. Perhaps if I could here first from Mr. Haynes with regard to the Departments position on the homestead bill.

Number 0158

Jeff Haynes: With the Department of Natural Resources. I am speaking on behalf of Commissioner Katz who is absent at a long standing commitment to a public hearing on the oil and gas leasing schedule. On the homestead bill and I see you're talking about only that portion of what is or whether to. This bill essentially adds homesteading for a method for obtaining state land under the existing land disposal program. And what the homesteading concept does is trade sweat equity in a form of constructing a habitable dwelling, living on land for 35 months out of seven years, clearing a portion of the land having it surveyed in return for forgiveness of the purchase price. So that if a applicant to a homestead parcel complies with the statutory requirements that constitute the sweat equity. Then the applicant obtains title to the land without having to pay any purchase

The maximum is forty acres but by the staking instruction that we have set. We can limit it to smaller than that if the carrying capacity of lands that are.....

Number 0241

Senator Rodey: Why do we have to put any clearing instruction in there by statute? Particularly if it is not agricultural.

Number 0243

Mr. Haynes: Well, all I can tell you is that there is a number of varying points of view in prior committees that considered this bill and we support the bill. Because we feel that we have the administrative ability to address the kinds of concerns that you brought up. That were not included in the bill as a matter of law.

Number 0246

Senator Kerttula: Mr. Chairman. I do not want to antagonize the Deputy Commissioner who tends to have short views. But I frankly think that they don't have good land use planning as a spirit of this legislation and these fellows here who know what they are talking about may, if they do know what they are talking about, may not pass that on to the next generation of in-house bureaucrats. And they are going to read the law. And right now it looks to me like it says that, you know, the following. And that just hit me right in the face because I lived with it half my life.

Number 0255

Senator Ray: Mr. Chairman, under the section on page 2, the cap for homestead entry provides 1/8 of the land entered, if the land is not owned or tagged corporate use. Must be clear, cleared and prepared for cultivation. On page 1 you have a homesteaded entry, 320 acres; and then you got another one that's only 160 acres. And neither one of them before you are 20 acres.

Number 0265

Mr. Haynes: If I understand your question sir. On page one sub-section B, that refers to a maximum size for agricultural parcels, 320 acres. Which is the maximum size of our distribution. And the next one down would be the maximum size for remote parcels. Our existing remote parcel limitation is 40 acres. So that means under the homesteading option you would be able to stake up to 160 acres.

price. The way this homestead provision works here, is that it really presents an option for a participant in a land disposal program which could be applied to either to the small agricultural parcels that we sell. Or to remote parcels that we sell. Of either requiring the land under the existing remote parcel program or agricultural program, lottery program, or to do it through the homesteading method. It would be the purchasers choice. In other words if we open an area, a remote parcel staking the person could either stake it and get it surveyed pay the appraised value the way it reads in the law now. Or they could do it under the homesteading provisions as attained under title that way. The major difference, as I said, is that that purchasers ends up not having to pay purchase price for the land. The Department certainly supports the sweat equity provision in a homesteading provision and is in the support of the provisions of this bill.

Number 0184

Senator Rodey: Are there any other questions from the members of the committee? Yes, Senator Kerttula.

Number 0185

Senator Kerttula: Obviously having lived with this sort of thing, although I have never homesteaded, but I have watched homesteading destroy existing resource values of land. When you have to clear a portion of the land that is conditioned of acquisition, that land, you may well destroy the area and even the future habitability of that area. If you are not very, very careful. I have seen it in homesteading, in mountainous areas, and so on. Remote parcels may well be at times be exactly in this category. Now if it is truly agricultural lands, for conventional, non-grazing agriculture, I can understand the clearing of the land and showing progress. That is the typical homestead that was in the center of Kansas 150 years ago, or 1862, or what ever. Presently, you allow homesteading and require land clearing, some areas you destroy the value of that property by clearing the land and you have done nothing for it. You stripped it down to the very thin surface and you removed the root that stabilized it and built on what little

there is on top of this rock, sometimes in rather steep areas. And you must not do that. There is a condition of non-agricultural lands acquisition. If in fact you are going to have homesteading. You want to be very, very careful. Don't require people to destroy the values of that property in order to acquire it. And I have seen it, I've lived with it.

Number 0207

Mr. Haynes: The Department shares your concern exactly. First of all we are not in support of having people do something out on the land that doesn't make any sense in the first place. And I think that it would be our intent to try to direct this homesteading program to either agricultural parcels where clearing the land makes sense for agricultural purposes. Or remote parcels on lands that are actually containing agricultural soils even though we may not have classified them as agricultural lands.

Number 0224

Senator Kerttula: Do you say that in the law. Just superficially I was reading it, thats why I am asking.

Number 0225

Mr. Haynes: The law does not say that in so many words. No sir. We do have the ability to limit the application of this, so it doesn't apply to all remote parcels. But you would essentially have to rely on the Department in order to carry out what you are talking about.

Number 0227

Senator Rodey: Mr. Haynes it appears from the language on page 2, under the least restrictive portion of the bill, one twelve of a 160 acres or we are talking about around 20 acres would have to suffer the same mandatory clearing with the federal act, unwisely probable.

Number 0233

Mr. Haynes: Assuming that....and we do believe that under this bill we have the authority to limit, both the size and the application, of any homestead. In other words, we would not be required to allow 160 acre staking in all cases. We would limit it to less than that. It is a maximum of 160 acres that may be allowed for a homestead parcel. But for the same reason under our existing remote parcel program.

Number 0268 Senator Ray: What's AS 38.09.0308? A person with exterior boundaries by lottery should apply. Is there any maximum or minimums on that? That's page 2 at the top of the page. That's what you are referring to here in clearing the land.

Number 0276 Mr. Haynes: Yes, sir. That's actually the following section 40 is the one that contains the actual requirements for clearing the land. Which in the case of agricultural lands 1/4, and in the case of non-agricultural lands and remote parcels are.....

Number 0277 Senator Ray: 38.05.077, Mr. Chairman, if I might continue. 38.05.077 is what we are talking to and that is what we are relating to down here in the next section. That is a homestead entry under AS 38.05.077.

Number 0281 Mr. Haynes: That is a remote parcel.

Number 0282 Senator Ray: And what is the maximum on that?

Number 0283 Mr. Haynes: The maximum would be 160 acres.

Number 0285 Senator Ray: So you would have to clear 20 acres of the land.

Number 0286 Mr. Haynes: That's correct assuming that in our staking instruction we authorize entries up to the entire 160 acres.

Number 0287 Senator Rodey: Does the Committee think there ought to be any clearing instruction for non-agricultural lands. Senator Parr.

Number 0288 Senator Parr: I talked to Commissioner Katz about this and also Mr. Charney some time ago, about a concern of some of my constituents here. It wasn't always appropriate for small agricultural project to require clearing a certain number of acres. Depends on what you want to do with the land under the development plans that's the way they were all set up. But suppose a person wants to raise pigs or maybe do a number of other things, it may not always be the sensible thing to require a certain amount of acreage to be cleared. You might require a certain number of buildings to be constructed. Now this bill I think we need

to admit with the Department to accept an alternative to the clearance. And like I say it might be, say construction of certain whatever, the Department would make sense there, depending on the alternate thing. But the very, very small acreages are not going to be raising grain, generally speaking, the small acreage people will be doing something else, perhaps, sometimes truck stops. And for those cases it doesn't make sense to give an acreage clearance for them. I didn't find the opposition of that to be that of the Commissioner or Mr. Charney.

Number 0307

Mr. Haynes: I think our intention would be of where there was no sense in an agricultural parcel or whatever, to have a land clearing requirement would clearly be for some other use, that we would not apply the homestead program to those parcels. We just dispose of them under a regular lottery with the development requirement.

Number 0311

Senator Parr: I'm talking about agricultural, raising pigs is agricultural. There shouldn't necessarily be a clearance requirement, maybe it should require construction of certain kinds of buildings they normally have on a small farm, as an alternative to the clearance to the acreage. Are you following that.

Number 0315

Mr. Haynes: Well, I really haven't thought about it before in terms of what amounts to use as the habitable dwelling requirement, or another dwelling requirement substituted for the land clearing requirement. I guess if this law were to pass, what our intent would be if it were an agricultural parcel, or operations that did not require clearing land then we would consider not applying the homestead provisions we have. And simply selling it under our regular lottery program with the development requirement that included building, or whatever else.

Number 0324

Senator Kerttula: I am really sorry for walking in so late, Senator. Senator Parr again is correct, he's drawing from the experiences of those who have had the experience the same as mine. And there are all kinds of self destructive things that happen to be perfectly good grazing ground

on mountainside and so on. If you require for an agricultural parcel any land clearing in the conventional sense. And you have been out on those mountain sides in Talkeetna and so on. The whole thing will slip if you take out the roots. If you are going to have this program, for not in some places allowing homesteading type setting. Because there are agricultural type purposes. i.e. grazing, the things that Senator Parr has suggested and so on. Just worries me to even have it in the law as a necessary condition. Because I can just pull into the Hatcher Pass area and see the foolishness of that whole development.

Number 0337

Senator Rodey: Is it the sense of the Committee that the requirement of clearing one acre of the land for non-agricultural use be eliminated from the bill.

Number 0341

Senator Parr: On agricultural, I don't see any reason.

Number 0342

Senator Rodey: Okay, Senator Anderson. The mandatory requirement that non-agricultural land be cleared.

Number 0344

Senator Anderson: I don't think that it is necessary.

Number 0346

Senator Rodey: With regard to the 1/4 is required for agricultural land. Is the feeling of the committee that that mandatory amount is appropriate, or language outlining a developmental plan be placed instead.

Number 0350

Senator Ray: Is there the possibility that we could put in there some language that say when required by the Department.

Number 0352

Senator Parr: Mr. Chairman I think Senator Ray and I think in the same direction. That is I would like to give the Department an option. Either the clearance of so much in land. Or its equivalent, I'm sure that's the best way to word that. Depending upon what the purpose is going to be.

Number 0358

Senator Kerttula: Again, the grazing lands are agricultural, and you want to have the option of not clearing them. In fact you allow them to be homesteaded on a hillside.

- Number 0361 Senator Rodey: Would the Committee prefer an option; one with clearing of agricultural land; or a developmental plan approved by the Department. Would be language off the top of my head. Senator Parr.
- Number 0368 Senator Parr: I would like to ask Mr. Haynes a question. We did have a state homestead act at a point in time which wasn't quite like the federal member. Was there some special reason we didn't going back to that one, instead of going back to this one, which corresponds.
- Number 0373 Mr. Haynes: We did have one and I know that there were problems with it, and that was back in 1972 or 1973. There were a number of administrative problems involving...I believe that was terminated.
- Number 0377 Senator Parr: The reason why I was asking the question, is that we didn't have any requirement at all when land is not agricultural. All we have here right now would be to occupy the dwelling. It seems to me that the old State Homestead Act there is also a provision for roads for example. I'm dragging this out of memory too. There was for example a road credit of some sort.
- Number 0383 Senator Kerttula: Our old homestead act was 10% down and the rest could split equity or cash. That's what it went to.
- Number 0386 Senator Parr: You got a credit Mr. Chairman as I remember against the purchase price. So much for the home, so much for the roads, so much for the other buildings there were. All I am pointing out is that just building a home and living there for 35 months to get 160 acres maybe a little bit much.
- Number 0390 Senator Anderson: Mr. Chairman, what is the intent of the chair on this particular bill. There is a bill going on in Resources now that is of importance to my district. And I do have an amendment to this bill that I would like the committee to consider. But I cannot be in two places at one time.
- Number 0396 Senator Rodey: That's understandable. If you have an amendment, please leave it while you attend your other bill. I would like to get the bill in shape to move, it is on the

house priority list to get to the floor. We are breaking several of these out that were originally on this bill in front of the Committee. Do you wish to leave the amendment with us or do you....?

Number 0405 Senator Anderson: I would prefer to be here when the amendment is brought up. It's just a little insignificant little amendment four pages long.

Number 0407 Senator Rodey: We can come back to this when you return or we can take it up in the morning.

Number 0409 Senator Anderson: Thank you.

Number 0410 Senator Rodey: Mr. Haynes if you could work with Mr. Bruce on drafting the suggested language for the Committee Substitute. We will take this bill up in the morning. Senator Kerttula this will give you sufficient time, I know you are very concerned about this area, also it may impact your district perhaps more than other member's district.

Number 0412 Senator Kerttula: That is very kind of you, I do have some thoughts on that issue.

Number 0417 Senator Rodey: We will lay HB 2 aside. Next I would like to take up HB 34. This is one of the House bills that we used in a title to try and separate the ominous bill that came from the House. This relates to the transfer and ownership of the University Trust Lands.

Number 0425 Mary Tutten: Director of Land Management for the University of Alaska's statewide system. I do not have prepared testimony to the instance. This bill has already gone through the Senate once and passed unanimously. I would however be more than willing to answer any questions about the bill, or give a summary to the members.

Number 0432 Senator Rodey: I just wanted to make the Committee members aware that there was someone from the University in case there were any questions. It has been dealt with before and I don't wish to take the Committee's time with.....Yes, Senator Parr.

Number 0434

Senator Parr: One brief question Mr. Chairman, is what is in the packet now for Senate CS for HB 34, and Ms. Tutten has seen that I assume. This is the same thing that we have already dealt with, no changes.

Number 0439

Senator Rodey: Yes, it is in exactly the same form, there is no new changes. Is there any further question for Ms. Tutten.

Number 0442

Senator Rodey: I would like to discuss informally before we do pass that one, we will set that aside. Because that is one thing that should be passed out. Next is HB 548. This is the seismic portion of the bill that again was taken out. Is there someone from the Department. If I could call on someone from the industry who would like to testify.

Number 0455

Theresa Hebert: I am here on behalf of Exxon's attorney in the Anchorage office. As I testified on Monday before this Committee. We oppose forfeiture of geophysical data prior to a lease sale. Because we believe that forfeiture jeopardizes our competitive position in a lease sale. This position we believe is the very life blood of free enterprise. However, we sincerely believe we have compromised in good faith to help the DNR out of it's budget predicament. Only in the spirit of compromise have we testified that we are willing to provide the DNR raw field data and the associated material necessary to process and analyse that data. Yet DNR says that is not enough and that they also must have our initially processed data. We have responded that dollars will not compensate us for our initially processed data. Because of the intrinsic worth of that data to us. And therefore the major issue to us is not dollars. The issue to use is the proprietary worth of that data or as you would the work of trade secrets. However, the issue is one of dollars to the DNR. We responded to the DNR by providing them quotes from three primary geophysical contractors in the state of Alaska. These quotes show that data is acquired at \$15,000 dollars a mile or approximately \$7.5 million dollars for a typical seismic shoot. Which we are willing to forfeit in order to achieve compromise. These quotes next show

that data is initially processed at \$450 dollars by one contractor and up to \$1,300 dollars by another contractor. However the DNR in essence has said that they also must save the relatively insignificant in processing that data as well. We had responded again in compromise with the request that we be allowed to at least be able to protect our initially processed data from proprietary surveys. Again, in order to achieve compromise we have proposed an amendment which would clarify that only initially processed data from a group seismic survey would be provided, yet the DNR has said that that is not enough. We must have more. Now we must respond that we can compromise no more. As I testified on Monday, proprietary surveys are so critically important to us, this type of survey involves one company, who through its own proprietary techniques has studied the results from the group seismic survey and has seen something that it wants to examine more closely. The company then conducts a proprietary survey that is usually no more than one hundred miles of seismic shoot. We stated that we would compromise and provide the raw field data from these proprietary surveys and that the DNR could in turn have this data processed or whatever it chooses. I might add that processing costs would be minimal because the proprietary shoots typically such a small shoot. Yet, the DNR has responded that raw field data from a proprietary survey is not enough. Again, I must say that we cannot compromise further. And again I ask this Committee to consider just 18 words addition to this bill which would make it clear that we can protect from disclosure our initially processed data generated from proprietary surveys. Mr. Chairman with your permission.... with your permission I would like to distribute this proposed amendment.

Number 0523

Senator Rodey: Please do that. I have one question as you are doing that. It has been alleged that this bill settles a law suit that is still in dispute going on in the Supreme Court. Is that correct?

Number 0526

Ms. Hebert: Well, it would not in essence settle the entire suit. There were 5 issues before the Superior Court. The Superior

involved to begin with and not assuming the risk and that sort of thing.

- Number 0574 Senator Ray: So what you are saying then is in a group seismic survey there wouldn't be anything in there secret anyway. If what one person knows and two people know it is no longer a secret. So what your saying is that its an open field day and it's available to anybody anyway.
- Number 0581 Ms. Hebert: Well it's not a secret and it is available to any party to purchase this. It is available, I think you are right.
- Number 0583 Senator Ray: You wouldn't have the same batting if it was an individual survey.
- Number 0584 Ms. Hebert: Exacily.
- Number 0587 Senator Parr: Mr. Chairman a question. Does Exxon, just using that as an example since you are here, do you have to have a permit to run this survey in the state.
- Number 0589 Ms. Hebert: Yes sir we do.
- Number 0589 Senator Parr: And the permit does not run through the requirement that your points establish.
- Number 0592 Ms. Hebert: Well that is what the present litigation it rose over.
- Number 0593 Senator Parr: In other words the requirement is included in the permit, is that what you are saying?
- Number 0595 Ms. Hebert: Well we maintain that without statutory authority they can not include that in the permit and they did or the DNR did pass regulations. And then attempted to promulgate those regulations be included into the permits.
- Number 0600 Senator Parr: So your position, though, it is without statutory authority that could not be included in one of the requiremerts in the terms of giving the permi (sic).
- Number 0604 Ms. Hebert: Yes sir.
- Number 0605 Senator Ray: The only trouble I have in any of this is that any exploration, or seismic

Court ruled that the DNR in our case, actually there were two Superior Court cases. In our case, the Superior Court ruled that the DNR does not presently have the authority to require this data. And they have attempted by regulation to require this data. The court reserved one issue. And that issue is before the Supreme Court and could possibly be remanded back down to the Superior Court and that involves the question of whether the taking of this data constitutes unfair taking, or unjust taking under the Alaska Constitution. So in response to your question it would settle the question of the DNR's authority, but it would not settle the question of whether it constitutes of taking without just compensation under the Alaska Constitution.

Number 0546

Senator Rodey: Which is a very good point. Obviously there would have to be payment involved should the court find that data isn't taking for some constitutional reason it would have to be justly compensated. At the very least with ignoring all of the other problems, it is just as well.

Number 0550

Ms. Hebert: Yes, and I think also the court would have to look at what is the taking. Is it just the worth of the data to acquire or process. Or is it just the worth of that data as a trade secret or is proprietary data. I think the level of taking would be an issue before the courts as well.

Number 0557

Senator Ray: Speaking to the proposed amendment. The first part of it there you speak of a group seismic survey. Does that mean where a group of people appliance go together and make the survey. Or is this a group. In other words this one, this one and this one as opposed to just this one which would be an individual survey.

Number 0565

Ms. Hebert: A group seismic survey is open to any party that wishes to join that survey. And it typically is a group of people that join together to conduct the survey, and then the results of that survey are also open to anyone who wishes to purchase. Now if a party wishes to purchase after the survey has already been conducted. There is normally a penalty involved. In order to keep people from not getting

data, or surveys that are done on the state land. I think that they should be made available to the state and the state must get the highest return on the resource and we not interested in who does the work as long as someone does it.

Number 0610

Ms. Hebert: Well I would grant you that the constitution does provide that the state should maximize its return on its resources. The constitution also provides that the government shall not take or damage private property without just compensation. So I think there are two competing constitutional provisions here.

Number 0618

Senator Ray: Well the idea of that is that the state would deny you the research and the survey unless you agreed to giving us the information so then you would be without it anyway.

Number 0623

Ms. Hebert: We have also maintained litigation that the state cannot condition the acceptance of a permit on the imposition of the unconstitutional provision. That a permittee should not be required to accept an unconstitutional requirement in order to move forward and accept a permit.

Number 0630

Senator Ray: Is that law suit in the Alaska Supreme Court.

Number 0631

Senator Rodey: Yes sir.

Number 0632

Senator Ray: And who took it to the Supreme Courts, the companies or the State?

Number 0634

Ms. Hebert: Well at this point since we wanted the Superior Court level the DNR has appealed our case to the Supreme Court. But there is another Superior Court case where the DNR won, so the states....yea, we have a one on one deal here.

Number 0640

Senator Parr: How could a requirement of this information be furnished to be considered to be a taking without compensation if it were a part of the requirement that you obtain a permit would be a quid pro quo wouldn't it. You have not given any obligation to apply for a permit and you would not be under any obligation where the state says okay if you get the

permit in accordance with the information. Maybe on your existing situation as this is in statute. I don't see that this is taking without compensation.

Number 0647

Ms. Hebert: Well I guess that I would have to respond to that again, what is the level of the taking vs. what we are having to accept. Is the.....

Number 0647

Senator Parr: Wouldn't that be a matter in which the corporation concerned would make its own decision and it would say that the risk we take, or the cost to us is too great. And therefore, we would not enter into it like any other private contract. So you wouldn't be being deprived of something against your will.

Number 0654

Ms. Hebert: You're right, we would have that choice and I think I would respond to that, that that is going to be to the states detriment if it proposed bidders to.....

Number 0658

Senator Parr: That's a separate issue isn't it. Whether it is good public policy or not, that is not the issue which we are addressing here which is legal or constitutional requirements is what I'm talking about. Whether it is good public policy that's another ball game.

Number 0662

Ms. Hebert: Well I would have to again go back to my former response that we feel like that it's in the state's best interest that we learn as much as we can before we bid on that lease. And that is in your best interest that we know as much as we possibly can and that we should not be required to accept an unconstitutional condition in order to pursue that activity.

Number 0670

Senator Parr: But it wouldn't be unconstitutional is my point. If it's in statute and if the quid pro quo is not unconstitutional.

Number 0673

Ms. Hebert: Well I would have to say that a Court, of course, would look at that issue and the question would be is it a quid pro quo.

Number 0678

Senator Rodey: Are there further questions from the members of the Committee?

Number 0680

Senator Kerttula: Are you talking about it as a matter of contract agreeing to it another statement on agreeing to it. We should make sure. The necessary seismic information.....

Number 0685

Senator Rodey: Yes, that is what essentially the DNR proposal is, is a matter of state law be provided.

Number 0690

Ms. Hebert: So as you can see this amendment would make it clear that we would provide them raw field data generated by both proprietary surveys and group shoot surveys. But that we would only provide initially processed data from the group shoot survey and would be able to protect the initially processed data from a proprietary survey. And again I would ask this committee to balance the DNR's need to save the cost of processing data generated by relatively small proprietary surveys against our need to hold trade secrets in confidence prior to release. But in addition we have also objected to the retroactive effect of this bill. And it raised serious legal questions on such effect. The DNR has responded that they must have data generated since January 1st. Again in order to reach compromise we have testified if the bill so required we would provide without protest raw field data and the necessary materials necessary to process and analysis which we have generated since January 1st. The DNR has responded that we must provide more. Again in order to achieve compromise we would be willing to provide initially processed data generated from group shoots since January 1st. However, if this bill is not clarified to exempt proprietary surveys and the initially processed data from those surveys, we expressly reserve the right to contest the legality of the DNR's authority to require raw field data and initially processed data generated by both group shoot and proprietary surveys. In addition in the event compromise fails, and I think as you can see we have in good faith (tape ends.....) disrespectful to the DNR. I would correct that impression that I have the highest regard of Commissioner Katz and his staff. However, we hope that this fiscal problem that faces DNR is a short

term problem. We do not believe that this legislature should adopt a long term solution to a short term problem.

Number 2/0001

Senator Parr: Senator are we going to hear from DNR?

Number 0002

Senator Rodey: Of course we are.

Number 0002

Senator Parr: Because I will state right here and now that if it were simply the matter of DNR shortage of funds that would not be sufficient justification in doing it. The real justification is it is a good public policy and some ways we should encourage it. Maximize the state return. But the emphasis is..... has been on DNR's shortage of funds.

Number 0005

Ms. Hebert: Mr. Chairman, could I respond to that. I have not raised this issue out of respect for Commissioner Katz' own interpretation but we have taken the position and maintain the position that this data is not necessary to maximize the state's returns on its resources. And I believe that the federal government has also reached that conclusion and has recently announced that it is going to move away from pre-sale analysis resources in making their determination of bidding systems, etc. And instead they are going to conduct a post sale analysis and I would also point out that we are required to provide all data generated from leases after a lease sale and in fact we do so provide that.

Number 0014

Senator Rodey: Thank you very much. Yes, Mr. Haynes.

Number 0015

Mr. Haynes: DNR for the Record. Ms. Tuten in correct that the situation requiring this change in the law really rises out the revenue shortfalls this year and budgetary necessities. We were willing to go through the litigation process on this; but when it became necessary to make capital budget reductions in conjunction with the current budget process that that placed us in a very disadvantageous position as far as the acquiring the seismic data by purchase. I think that Commissioner Katz has stated before that the Oil and Gas leasing schedule

concept is virtually sacred to the Department. Because without it there is no certainty, either to the industry or to the state that the potential oil and gas problems will be systematically explored and developed. And that it is necessary in order to both maintain a healthy industry and also a steady flow of hopefully state revenues there from. However, under both state law and good common sense, DNR must have geophysical data, sufficiently in advance of a sale to make the requisite design of the sale in order for constitutional reasons and state law reasons and just plain sensible reasons, decide the bidding method to select. Maximize competition as well as return. To analyze the cost effects of environmental stipulations that may severely penalize the lessee. To analyze the cost effects of track leases, recommended by other agencies. All of these are part of that pre-sale design very similar to the appraisal process that we do for any disposition of interest in state land. Ordinarily the Department obtains geophysical information primarily by purchase. However, we also adopted regulations last year to require geophysical information as a condition of conducting geophysical reconnaissance with on state lands, on public lands. That litigation has prevented us from actually retaining the data. In the necessity of making the capital budget reduction which includes a reduction of \$3.5 million for geophysical data acquisition now for this year. Places the conduct of the fourth Beaufort Sea Lease sale, which is a very important sale in jeopardy, if DNR cannot obtain this data. Therefore, we have supported this amendment to the existing oil and gas statutes in order to have the data necessary to conduct this important sale. This amendment would require the submission of the uninterpreted geophysical data obtained from seismic work conducted on state lands after January 1, of 1982. There really policy issues that have come up in conjunction with this amendment. First of all the responsibility of the cost and that both Commissioner Katz and I have said before that the idea of obtaining this, not necessarily obtaining this free, we have mixed feelings about that. And that has been raised by several other legislators as

well, as to whether or not the Department in fact should pay for the data. Of course if, had the capitol budget as we originally presented it this year, that is something we could have done, but revenue shortfalls prevent that. However, we are recognizing that there are two philosophical sides to the cost issue. I presented language I think to the Committee before the hearing that would establish a credits program. Provide that the state would pick up to 50% of the share of geophysical data collection. Which would be credited against future royalty and tax payments. And that is something that DNR is willing to support, that's consistent to the committee's responsibility. Confidentiality is another matter which the industry has been very concerned about and we have too. We have backed changes to this amendment which make it a class B felony for willful disclosure of confidential data and also bonding requirements for third party contractors so that there is a maximum possible protection of the confidentiality objected. The third one, and the one in which there is serious level of disagreement of the level of data required. The spokesman for Exxon said they are willing to provide initially processed data from a group shoot and not from an individual company. The problem is is that we are capable of purchasing that data and have purchased that level of data from private companies before in conjunction with several lease sales. The companies are willing to provide it by sale. Had we have had a full capital budget amount that we had hoped to get before the revenue declines, that's what we would have done. We wouldn't be here. Unfortunately budgetary restriction and that very important fourth Beaufort Sea sale requires us to do that. We were only presented with raw data from a private company and had to process it ourselves. Including hiring dozens of new state employees, computer equipment, hiring additional contractor and the net cost to us would have been virtually in the vicinity of what our original capital budget request is. I believe the figures are that our budget has been reduced by \$3.5 million and takes something over \$2 or \$2.5 million to process that law, and hire the employees to do it. So there is really no cost saving to us and

it doesn't solve our problem. The last thing that I had mentioned that these are in fact public lands, that we are the owner of those lands. Some people have different philosophical opinions as to whether the state should own those kinds of resources. But as long as it does it is up to the state to lease them responsibly and with the kind of data that any private land owner would use and acquire and require before they lease those resources. I am certain that any oil company or other land owning company, Native Corporation or otherwise, if they were in the position that we were would take the same position that we have about the data we need for the sale. It is extremely important that we have this data to comply not only with existing state law, require a pre-sale analysis before the Beaufort sale. But with the constitutionally mandated best interest decision that we have to make before making a disposition of an interest in a state land, including an oil and gas lease sale. And so therefore because we feel so very strongly about maintaining the oil and gas leasing schedule and being legally able to hold the fourth Beaufort Sea sale we feel that we have to have the data that is provided by this amendment.

- Number 0092 Senator Ray: Do you oppose the amendment?
- Number 0093 Mr. Haynes: The amendment does not solve our problems sir, we have lost \$3.5 million that would cost an additional \$2.5 million and it would not provide us with the data we needed for the sale.
- Number 0094 Senator Ray: Do you oppose the amendment?
- Number 0094 Mr. Haynes: Yes, sir.
- Number 0094 Senator Rodey: Senator Parr.
- Number 0095 Senator Parr: Mr. Hanyes you've said you had been buying data, did you buy data from Exxon?
- Number 0095 Mr. Haynes: I don't believe Exxon has provided any, no.
- Number 0096 Senator Parr: Do you buy it from people who are in the same position as Exxon.

Number 0097 Mr. Haynes: Major oil companies whose names you would recognize.

Number 0097 Senator Ray: What was the concern of these companies about this confidentiality when you say you need the data. That seems to be to me a good part of it is a trade secret and very, very valuable and is such a valuable private property. That the state cannot take without compensation etc. etc. But is confidentiality is that important, why are these companies even willing to sell to you?

Number 0102 Senator Rodey: Caren do you have a comment.

Number 0103 Caren Robinson: This was data that we need to hold the upcoming lease sale for next September. Without the data, we were in a position of cancelling the sale and not simply delaying it for a 5 month period and the companies agreed with us that it was better to hold the sale this year. Than to delay it for indefinite period of time. And they agreed that therefore sell.

Number 0107 Senator Parr: I guess my question is, very confidentiality is all that much of a concern. If somebody was still willing to sell it, wouldn't be willing to give it, but they would be willing to sell it to the Department and the confidentiality to those concerned, seemed to take second place. I don't guess you have your cake and eat it to. The stuff is either so dog gone valuable you shouldn't turn it loose at all in any form in circumstances. Or else it is not all that valuable.

Number 0113 Mr. Haynes: Well I'm sure its valuable to them. Again when they are firing that on state lands on unleased acreage, that information that they acquire, gives them a competitive edge.

Number 0114 Senator Parr: But you wouldn't take their risk for confidentiality, right.

Number 0115 Mr. Haynes: Well, assuming there is a risk.

Number 0115 Senator Parr: Well, as I am saying, but assuming there is a risk they are willing to take that risk and sell it to us.

Number 0116 Mr. Haynes: Yes sir they have made those same risks.

Number 0117 Senator Parr: And now they are not willing to take that risk and give it to you.

Number 0117 Mr. Haynes: That's why we felt that to the extent, there is a cost issue, there are two sides to that one. Whether or not you feel that state should actually pay for the data or be able to acquire it free. And that's why we have advanced that language as a way of taking the other side from the way the regulations currently read.

Number 0121 Senator Rodey: To be as expeditious as possible, I would like to ask for Ms. Robinson to respond to that. You're are squeezing your pencil rather hard so I presume you disagree.

Number 0123 Ms. Robinson: Well I don't know the circumstances to what he is referring to in terms of approaching the companies in which companies are willing to sell and what level of data they are willing to sell. But I think that I would be awfully red in the face if I were testifying here today that, that initially processed data that we process from aproproprietary data that we process from a proprietary survey. And we were willing to walk out on the street and sell it to people. I would be awfully red in the face because it is genuinely is that level of data whic. is what we consider the most proprietary trade secret. Of course I have distinguished between raw field data, initially processed data, from group seismic surveys, and it would have to reach compromise. But it is at this other level of data that we seem to have the most problems.

Number 0134 Mr. Haynes: I could understand why they wouldn't want to sell it to another company. But the state is not bidding at the sale. The state sells the resources.

Number 0135 Senator Ray: That's the point I can't get. They keep referring to this as a trade secret. I can't get any other analogy where somebody else comes in and uses somebody elses property in a secret process and won't tell them what it is. I don't understand

that. The land belongs to the state. It doesn't belong to the oil companies, and whatever you are doing on there, we are allowing you to do it. And if we were make a permit that says, unless you are willing to do this and that, you cannot do it. Do we have that right, do we have that constitutional right? Well as far as I'm concerned we can keep on doing it.

Number 0145

Ms. Robinson: I would add that this data is not even available not even available to many employees in our own company. And those that it is available to is only under very guarded conditions. So I am very sincere in saying that this data is important.

Number 0149

Mr. Haynes: That is why we back establishing a Class B felony for willful disclosure, that is why we back bonding third party contractors, and why we have given a standing offer to all oil companies to come view our facilities for holding this data and if they have suggestion for improving the security, we will do our best to act on it. We agree that confidentiality is extremely important.

Number 0154

Senator Parr: In the proposed amendmenr from the Department where they are using this credit provision here. What kind of policy are we possibly looking at Mr. Haynes. Do you have an estimated fiscal note on this of any kind.

Number 0158

Mr. Haynes: The estimated fiscal note would probably depend on the sales that come within the fiscal year. It is going to be expensive. We are talking in the millions of dollars annually in order to acquire this data. This of course would be 50% of the states per rate or share. Our capital budget appropriation this year for seismic was what \$7.9 million originally and the cost of seismic data acquisition will probably go up over time. So it is a considerable amount of money. Nevertheless considering the amount of money that is also at stake at an oil and gas lease sale. I can understand why some people believe that the state should pay for that. At least pay for part of it. Again it is a philosophical question of which we freely admit that there

is two sides and we are willing to accept this approach as well as just the existing one.

Number 0171 Senator Parr: Mr. Haynes I thought you said something of the figure of \$2.5 million a while ago, earlier in your part of your presentation. I am wondering if that is the approximate amount that you estimate the 50% cost to the state?

Number 0173 Mr. Haynes: No sir, this year of that \$7.9 million because of capital budget reductions. We are \$3.5 million short in order to just purchase the data to have that fourth Beaufort Sea sale. Now if you adopted Exxon's amendment there and we only had raw field data shot by the company we would have to go through substantial additional process, and hire employees and all that. So of the \$3.5 million that we would save with this amendment we would have to spend \$2.5 million of it back. So it wouldn't do us any good.

Number 0180 Senator Parr: Let me rephrase the question. The amendment the Department submitted, if that were to be adopted, then what is the ball park guess as to how much money we are talking about. You know, this coming fiscal year, I'm not expecting 5 years to the future. But you must have some estimate of what it would cost in the coming fiscal year.

Number 0186 Ms. Mary Holleron, Department of Natural Resources: I will have to get back to you Senator Parr, I don't want to make a guess on something like this.

Number 0188 Senator Rodey: Is there any further questions for Mr. Haynes. Thank you very much. What is the committee's pleasure on this bill, would you like to make final decision on the bill and amendments in the morning, giving members the opportunity to look that over.

Number 0192 Senator Ray: In fairness to the oil companies, I would move their amendment.

Number 0193 Senator Rodey: O.K. The amendment has been moved all those members who are in favor of

the amendment raise your right hand (at which time Senator Anderson raised his hand, and Senator Rodey raised his hand). All those opposed (at which time Senator Ray raised his hand, and Senator Parr raised his hand). The amendment fails 2 to 2.

Number 0198

Senator Ray: I don't have any more questions. Maybe perhaps the other members have.

Number 0199

Senator Rodey: The Administration has an amendment as well.

Number 0200

Senator Parr: That's why I was asking.

Number 0200

Senator Rodey: Would you like to hold that until the morning when you have your information.

Number 0201

Senator Parr: Information of cost. It appears to me on the part of the Department to go in the right direction toward the companies. I kind of think that the confidentiality thing is being over played here and I understand how valuable it is to the companies. But if other companies other than Exxon were willing to sell this stuff and take their risk of the confidentiality. I have a little trouble in believing Exxon's data is that much more confidential than ARCO's or somebody elses. I think the confidentiality thing is a little bit over played.

Number 0208

Senator Rodey: Fine, we will lay this bill on the table, and take this bill up in the morning. I would like to recess for approximately one minute.

Number 0211

Barry Jeffery Stern: I am Assistant Attorney General with the Alaska Department of Law in the Criminal Division. I am speaking today on HB 473. I should state that I have just this morning discussed this bill with the Governor and the position I am, is going to be stated reflects not only the Department of Law's position on this legislation but also the Governor's. Our position is that we oppose this bill as it is presently drafted. Let me make it clear that we that there should be some changes to our current waive treating people who commit sexual assault in the first degree. As well

as there should be some changes. Just generally in the way we treat people who commit Class A felony offenses. We think that the approach in this bill however, presents a number of legal problems and we certainly do not think that it is comprehensive as it could be. I have provided the committee with a letter to Senator Rodey signed by myself and the Chief Prosecutor Dan Hickey. Which goes into detail of one of our problems with the bill. Let me just summarize it very briefly. In the first hand we believe that sexual assault in the first degree is properly classified as a Class A felony, we don't feel that the conduct described there is really comparable to homicide, killing someone, intentional killing, or kidnapping. We also feel that to the extent that we need to limit the judges discretion in sentencing a person who commits sexual assault in the first degree. That discretion is limited when we talk about a repeat offender. But when we talk about first time offender, it's not limited and we believe that it should be limited through...sentencing. Thirdly, despite the claims of some of the supports of this bill. That it increases sentence for rapist. We feel that when we are dealing with repeat offenders, in other words a person that commits two prior felonies now commits rape. This bill actually provides for a lessor sentence. A lessor mandatory minimum sentence than would be imposed today. And we feel that that is the significant problem with the bill. Finally the bill creates almost a page of statutes dealing with multiple unclassified crimes. For example if a person commits an intentional murder. I'm sorry, kidnap s the victim and then commits an intentional murder. The bill specifies a mandatory sentence. We simply think that is unnecessary in light of the existing judicial sentencing practices in which the average sentence for murders is life and we don't feel that that has been abused by judges in the past. We don't see any reason for those provisions. In conclusion we do find it somewhat difficult as we point out in the letter to oppose this bill. Especially when supporters argue that it is necessary to clamp down on vital crime. We just don't feel that it accomplishes that

result, particularly in an average sentence that is imposed today for rapist is the same or higher that is required by this bill. We drafted a proposed Committee Substitute that we feel deals more appropriately with the problem. In fact, we feel that it deals very appropriately with the subject of all class A violent crimes. We are talking about the most serious offenses, what we've done in our proposed Committee Substitute is specify a presumptive sentence of five years for any first offense Class A felony. We are talking here about sexual assault in the first degree, you're talking about assault in the first degree, we're talking about armed robbery and that offense would be a five year presumptive sentence, if a weapon was used or serious injury caused that sentence would be increased to seven years. Again, let me state that that's the position of the Governor. We feel that there should be some changes we just don't feel that this vehicle ... that this bill is the way to go about it. I'd be happy to answer any questions.

Number 272

Senator Rodey: Are there questions from members of the Committee?

Number 273

Senator Ray: You would say the five year hard time.

Number 273

Barry Stern: Yes, that's correct under the five year presumptive sentence the judge would have discretion to increase that up to twenty years for aggravating factors and decrease it to two and a half years for mitigating factors. Once that was done though there could not be procreation or there could not be a suspended imposition of sentence and the offender would not eligible for parole.

Number 278

Senator Ray: Then you're saying, Mr. Chairman, if I might.

Number 278

Senator Rodey: You can continue.

Number 278

Senator Ray: Then you're saying that the judge can't let them off like they can. That's why you specifically mention that they can suspend it under AS 12.35.085.

Number 280

Barry Stern: We would prevent that from occurring.

- Number 281 Senator Ray: Not too bad.
- Number 282 Senator Rodey: Just fine, there's no question about that.
- Number 283 Senator Parr: The Department then is still pushing this presumptive on first offense, is that right.
- Number 284 Barry Stern: Well let me, in the letter we point out that we feel strongly that presumptive sentencing should apply to all first offenders for purposes of this proposal, however, we have tried to make it as limited as possible and only applied Class A felony offenses. And when you really look at the issue, Senator Parr, currently first offense Class A felonies are subject to a presumptive sentence of I believe, apparently I sometimes lose track, I believe it is six years if there is a weapon used or serious physical injury inflicted. What we've done is we've specified a five year presumptive sentence for ordinary Class A felony and then we've upped the six year to seven year if a weapon is used or serious injury is inflicted. And again, we feel that that approach is, it's certainly, I know that this Committee is very concerned about addressing the area of violent crime and instead of singling out one crime and treating totall' different that any other, basically any other offense in the Criminal Code, you'll be dealing with the subject as a integrated whole, consistent with the Criminal Code.
- Number 299 Senator Rodey: The Committee is always in favor of adjusting the Rubic's cube with a uniform fashion.
- Number 300 Senator Ray: Now, so I don't get mixed up here, first degree is more serious than fourth degree?
- Number 301 Barry Stern: Yes, that's true.
- Number 302 Senator Ray: An the, I know that you gave testimony in the House to the original bill and their Committee Substitute and come off and look like they lessened all the degrees from third to second. Could you tell us why?
- Number 306 Barry Stern: Yes, I'll explain that, it

looks like it's lessened but it isn't. What they have done is sexual assault in the first degree can be committed four different ways. What the Committee did was to take the first two ways it could be committed and call that sexual assault in the first degree. The other two ways that used to be sexual assault in the second degree and they provided a felony penalty for that. And every other crime had to be adjusted to a lower degree but they kept the same penalty for...

Number 316 Senator Ray: In section five of the original bill this is a person suffering from mental disorder and defect. Did they lessen that penalty.

Number 317 Barry Stern: No, I'm sure that they didn't. They changed the titles, Senator but they did not change the penalty applicable.

Number 321 Senator Ray: You get sexual assault in the third degree, why if you have a threat of death or physical injury... It would seem to me, this is my own philosophical idea as it ... A person who is a mentally defective and can't take care of himself is old and confined to a bed that cannot take care of themselves and somebody comes in and rapes them it seems to me that that is a more serious offense than someone holding up their fists and saying that if you don't submit I am going to knock the hell out of you. That's putting them in physical danger and it seems to me that the person that's mentally unbalanced or physically incapable of protecting themselves, just physically. It seems to me that that one should be a higher offense than just someone holding up their fist and saying that they are going to strike if they don't submit.

Number 335 Senator Rodey: That would be considered an aggravating factor.

Number 335 Barry Stern: It would and also the Senate Judiciary had already passed the bill increasing the penalty for that not as high as you wanted it but they, you have passed that bill. I think it's unfortunately still sitting in Senate Finance as a result of that fiscal note.

- Number 370 Senator Rodey: Let me ask a question along Senator Parr's line. It has been raised, at least in the legal profession that is the concern that by increasing the ... 473 would actually result in fewer convictions.
- Number 374 Barry Stern: Well, I don't address that in my paper. I know that it has been addressed by representatives of the Network on Domestic and the Council. I think that the concern is this that juries learn what the sentence is and when they are faced in a situation where it is a sexual assault under our law but there is no serious injury or weapon used there may be a tendency not to want to convict as a result of knowing that the person faces a life sentence. Another concern that has been raised and is not addressed in this analysis is the fact that if a rapist knows that he is facing the same maximum sentence for rape as he would be facing for killing the victim there is a fear and it can't be documented, but there is a fear that may be an incentive to the rapist to simply kill the victim. You're eliminating a critical piece of evidence there, that is a fear and we don't address, I think the public defender did, but we think that fear is a justified one and we understand why people would be concerned about that and that's one of the reasons we don't want to raise it to ninety-nine.
- Number 393 Senator Ray: That's one the second or third offense.
- Number 394 Barry Stern: No under the bill that is before you today, a person who goes out and commits a sexual assault in the first degree faces a ninety-nine year.
- Number 396 Senator Ray: I'm not talking about the Committee Substitute.
- Number 397 Barry Stern: The Committee Substitute still remains a twenty year maximum sentence. He faces a five year presumptive for the first offense, a ten year for the second and fifteen for the third.
- Number 400 Senator Ray: On the second offense, under the Committee Substitute, Mr. Chairman...
- Number 401 Senator Rodey: You have the floor sir.

- Number 339 Senator Ray: Where they send it.....somebody presumes that they are going to have to have more jail cells in order to...
- Number 341 Barry Stern: Two bits
- Number 342 Senator Rodey: Senator Parr:
- Number 342 Senator Parr: What is the situation at present with CS for HB 473 didn't just simply die here. What would happen? What is the situation at the present. The reason that I am asking the question is that my understanding was that this wasn't our problem, this wasn't the severity of the punishment. Our problem is catching the people who commit the crimes. It just doesn't seem to make any difference as far as catching the people in the first so can try them and send them to jail. What would happen if this bill didn't die just right here today?
- Number 351 Barry Stern: If this bill died right here without any action taken the penalty structure for sexual assault in first degree would stay the same in terms of a twenty year maximum sentence. We don't change that under our Committee Substitute. The only difference would be it's how do you deal with the first offender. In other words, no prior felony conviction. Today the judge may pose any sentence from zero to twenty years on that person except if any firearm or serious physical injury was inflicted, then the judge is limited to six years. What this really does is that it says if you go out and commit a rape and you had no prior felony offense you didn't use a weapon, you're presumptive sentence is five years, and it also applies that to all Class A felony offenses. So, it couldn't create any real problems.
- Number 366 Senator Parr: In terms of how this bill passes or dies doesn't touch any more people, does it.
- Number 368 Barry Stern: No, we don't really try to say that we are going to catch any more people by increasing the penalty or making it a presumptive sentence.

- Number 402 Senator Ray: Under the second conviction, ten years with no suspension. Then that's what the fear is that he might kill the person rather than do it.
- Number 408 Barry Stern: No. No, Senator, I was speaking to the proposal from the House and that says for any rape you're talking about a 99 year sentence the same penalty as murder and that's when our concern is present when the rapist is facing the same maximum penalty.
- Number 413 Senator Ray: Isn't the same concern there. Under second conviction, he's got ten years, he knows he going to spend ten years hard time.
- Number 415 Barry Stern: Yes, but under...if he kills the victim he's facing 99 years, you know for murder.
- Number 417 Senator Ray: But how many are serving?
- Number 418 Barry Stern: The average sentence that is imposed, Senator Ray, for murder in the first degree in the State is life. The Parole Board under the new Criminal Code cannot consider to parole the person to 33 years into the sentence.
- Number 423 Senator Ray: So don't forget that Charlie, remember that.
- Number 423 Senator Rodey: Senator Parr.
- Number 423 Senator Parr: I don't think the concern of the murder of, the chance of murder is really an unrealistic concern because a rapist in such a case has nothing to lose there's 99 years either way and he is going to remove the primary witness against him and maybe probably the only witness and I don't think that that is an unrealistic concern at all. I certainly think that this bill that came from the House has't been thought through the way it should have been.
- Number 432 Senator Rodey: Are there further questions for Mr. Stern?
- Number 433 Senator Ray: Is the Committee Substitute as rationally stiff as the the original bill.
- Number 435 Barry Stern: I think we can argue that the

Committee Substitute I haven't, well uh, I can say that the Committee Substitute is a presents a rational sentencing scheme consistent with the Criminal Code that provides appropriate sentences for all violent crimes and addressing the problem of violent crime is much more comprehensive than the proposal and it's stiff that's correct. In some ways, for repeat offenders, I feel that it is stiffer than came out of the House.

Number 446

Senator Ray: Are we willing to hear some pros and cons of it.

Number 447

Senator Rodey: Yes, Representative from Rep. Barnes' office we give permission to testify and the Network to testify also. Are there any question. Commissioner did you wish to testify. Please join us sir.

Number 450

William Nix: My name is William Nix, I am the Commissioner of the Department of Public Safety and the Chairman on the Council of Domestic Violence and Sexual Assault, I am here to testify in opposition to HB 473. I agree with the comments made by Mr. Stern, concerning the problems associated with trying to change or to mess up the sentencing structure that is pretty.. the basis is pretty well laid out in the Criminal Code, it also gives us some concern that you may be placing in the long run if such a bill as this is passed an undue burden on the Department of Law to act as a role of a gatekeeper. More so that they do now because of the types of sentences that this bill calls for. I feel and certainly we can agree that the responsibility for clearly defining these sentences rest with the Legislature so then that kind of a thing isn't necessary. We really don't have much more to say than we support the Committee Substitute, we think it is a more rational approach. I would like to reinforce again our concern about the possible increased harm to the victims because of the harshness of the sentence and nothing to show that's a fact and a concern of the Council and the Network and by everyone involved.

Number 484

Senator Rodey: Any questions for the Commissioner? Senator Parr.

Number 485

Senator Parr: Commissioner, the primary obligation of course we all have is to protect the general public and protect the public safety. I guess what disturbs me is although there may be a deterrent effect by stricter penalties. That's seems to be our primary thrust in trying to protect people the only thing I know that we have done essentially to help catch them in the first place is to say you went to trial and then the fingerprint thing that is going through the Senate. How would you go about catching more people (indisc.) You know if you catch one out of ten and actually bring them to trail and that means that's not really what we really do I am just giving you the fact that we have a tremendously tough penalty scheme that's not helping the problem and I don't see that really helps much with our general public safety problem except we can get the message and whatever deterrent effect is has.

Number 503

Commissioner Nix: What we know is that sexual assault cases that are originated in the smaller communities in the State are generally solved the majority are solved, a lot of course depends on the physical evidence available, you know, provided by the Department of Law. In some of the larger areas you do have the other Agencies.

Number 509

Senator Parr: In all the larger areas you obviously in the village you are much more likely to know who the person is.

Number 512

Commissioner Nix: In the larger areas as is experienced by any large cities in the United States maybe even in the world there is not a lot of physical evidence available at the scene and a lot of the evidence is destroyed by the victim because of a lack of understanding to absorb the evidence and the physical evidence that she might have on her body and so on. A lot of this can be improved through intensive education program and I might point out that a lot of this information is presented and passed on to the Women's resource Center and the kinds of programs that are in cooperation with the Department of Public Safety and additional training for additional police officers and how to obtain this evidence which is... We have to have the physical evidence as much

- as you have to have the identification of the person. I don't know what kind of legislation we could write to clear this up.
- Number 531 Senator Parr: I wouldn't (indisc.) the Department. I just want to find something which directly help you to catch more.
- Number 535 Commissioner Nix: I would certainly share any ideas I had.
- Number 536 Senator Ray: You don't have to worry about that Commissioner, if you knew the answer to that you'd be the head of FBI or (indisc.).
- Number 539 Commissioner Nix: (Indisc. comment).
- Number 540 Senator Rodey: Are there any further questions for the Commissioner?
- Number 541 Senator Ray: You got to share with the state under the proposal we did had here.
- Number 543 Commissioner Nix: Yes.
- Number 542 Senator Rodey: Senator Parr.
- Number 545 Commissioner Nix: It has to do with the fingerprint system which I think is a real valuable tool for law enforcement agency, but I don't believe we should be left feeling it is a panacea for solving crime. It really isn't.
- Number 550 Senator Rodey: It is only a tool, one more tool.
- Number 551 Senator Parr: The only thing I can think we have done in recent years is to try to help you get more able to solve these.
- Number 555 Senator Rodey: Thank you, Commissioner. Well we have heard from the Chief Prosecutor who feels that the bill should be opposed, we have heard from Public Safety, the troopers who feel that it should be opposed. We have people who prosecute and people who apprehend and previously the network has informed me that they don't approve the bill and they represent the concern of the victims certainly.
- Number 564 Senator Ray: They seemed opposed to it.

- Number 564 Senator Rodey: I don't believe so. Do you have a copy of the proposed Committee Substitute presented by the Department of Law. I would like to call Julia Coster from Rep. Barnes office who would like to speak on behalf of the bill.
- Number 570 Julia Coster: (Indisc. somebody) opposes it, I guess I represent people that you represent, the public, that have supported this legislation.
- Number 587 Senator Rodey: Mr. Stern, the comment is made here that the average is fourteen months in Alaska, certainly that's an error.
- Number 590 Barry Stern: It was reported to be that on the floor, Representative made that comment that this bill is necessary for the average sentence is fourteen months. Check with Judicial Council statistics and it's five years.
- Number 597 Senator Ray: It is somebody's law journal...(indisc.)
- Number 601 Senator Rodey: Miss Coster, you have the floor.
- Number 602 Julia Coster: For the record my name is Julia Coster, and I work for the House Judiciary Committee and I am representing Rep. Barnes who is home in bed and very ill today. She asked me to come in and give a (indisc.) and give a speech that she has prepared on this subject and answer any questions that you might have.
- Number 610 Senator Rodey: I would request that the speech be placed in the Committee Records so we can dispense with the speech because I have read it before and basically Rep. Barnes comments on the floor. Let me ask one question, the one chief concern is the fact that under the House version of the bill there would be a significant incentive for an assailant to murder his victim or victims. If, because, the penalty would be less then there would be a lesser chance, presumably, of being caught in the crime. What is the response to that argument?
- Number 626 Julia Coster: Like you say, it is just that, an argument it is something that can be

brought up, I guess, to oppose this bill. There has been no proof of the argument on either side it has just been something that has been said. This is a possibility but it could happen. I guess until.

Number 634

Senator Rodey: Of course, it is difficult to conclude that penalty of any kind actually deter criminal conduct either that it cannot be proved conclusively. We deal with different levels of probability in the Law and in Social Science in general. Senator Ray.

Number 640

Senator Ray: In the event, in the speech here the key question that arises at least in my mind the statement by Rep. Barnes that she has it for inspection a petition signed by over 2,000 Alaska residents calling for minimum mandatory sentences for sexual assault in Alaska. We know that of course 773 does but does the proposed Committee Substitute establish those.

Number 653

Senator Rodey: Mr. Stern, you have the floor.

Number 654

Barry Stern: As I pointed out in the paper I presented you with, it does establish mandatory minimum sentences for first offense, they already exist for repeat offenders and that's something else that I wanted to clear up in the paper. So it establishes a mandatory minimum sentence for first offenders. The problem with the bill that we pointed out is that for repeat offenders the mandatory minimum sentence is reduced by 50% by the bill that came out of the House.

Number 664

Senator Rodey: Miss Coster.

Number 665

Julia Coster: I agree that.....I'm sorry.....

Number 667

Senator Ray:that it reduces, that your bill reduces the crime.....

Number 668

Julia Coster: No, that's why I would like to make a few comments on the bill and then answer any questions. I hadn't seen the letter that Mr. Stern wrote until just a few moments ago, but just as it happened I had also gathered some statistics from the

Alaska Judicial Council on first time felony offenders, sexual assault offenders and all sexual assault offenses. You have these statistics in front of you right now. As you look at the bottom of the first page you will see that the average term for a first time offender, which commits a sexual assault in the first degree is 3.5 years. This is a first time offender. And then, the third thing down is 5.8 years for all offenders. It is not exactly correct what Mr. Stern has in there, however on a medium with all offenses that is correct. But when you break it down to first time offenders and then all offenders it is a whole big difference. 473 is...I guess what you can do is you can look at your statistics and look at you average sentence for each sentence. We have 9 out of 21 cases that were sentences under three years for sexual assault in the first degree, 9 out of 21 under three years. One case received zero sentence, one received six months. They're are going to have about 5, 4 or 5 that received three years.

- Number 709 Senator Ray: Are all these jury trials or they...?
- Number 710 Julia Coster: Usually these are... these were all cases that were convicted and sentenced by our judges.
- Number 714 Senator Ray: These are all judge trials and none of them are jury participation?
- Number 715 Julia Coster: Some of them went to jury, I don't which ones went to jury and which ones didn't but they were all sentenced by a judge.
- Number 716 Senator Rodey: Mr. Stern, were any of these judge trials?
- Number 718 Barry Stern: I assume that maybe ten percent were judge trials, and the point is that her figures are... we don't take issue with those figures that she come... that you point out, in terms of some of the sentences that have been imposed. The thing that we want to do in our bill of course is to specify 5 year presumptive sentence for that offense.

Number 726 Senator Rodey: What will happen in some of the close cases is that..... (Tape Ends Here)

Number 3/0002 Senator Rodey: Do you understand what I am saying?

Number 0003 Julia Coster: No I really don't, I know that I worked on this case, this study itself and each one these sentences had been given approximately a year to go to an appeal court or whenever and these were the final sentences on each one of them. I guess the thing that makes it so important is that there has to be some sort of a minimum mandatory sentence, there just has to be because the judges have abused the discretion and you can see it right on here and their giving less sentences than they should be. There's also been mentioned that there really was no need for their multiple sentence section of the bill and I just wanted to call your attention to one case on the second page. Where we have Senate number three. Sexual assault in the first degree and kidnapping and assault in the second degree. Under 473 he would have received a minimum mandatory sentence of fifty years. Here he received fifteen years. One unclassified felony, one class A felony and one B felony so there are what's been some abuses by (sic) that need to be addressed.

Number 0020 Senator Rodey: Are there questions from those of the committee?

Number 0021 Senator Parr: Is it your understanding that all rape cases are lets say no weapon no gun or anything. All rape cases are identical and people should receive the same sentence.

Number 0025 Julia Coster: No

Number 0026 Senator Parr: Then you make a distinction between the two cases where a women appears to be walking home from the bus to her house or whatever and passes somebody by and waves and the case with two people in a bar both of them pretty well liquored up will wind up in a pick-up (sic) and then she decides to vell rape, can you make a distinction between two people like that? The reason I'm asking the question, I'm not trying to

put you on the spot but I wondered if circumstances the kind I'm talking about might have had some play in the kind of Senators who have (sic) if you don't allow for the differences the kind I just described and of course there is only two of maybe of hundreds of different circumstances that could be (sic). You take away the judges discretion and of course the judge cannot allow on this nonsense the different factors. Has that been considered by the House before this bill came across?

Number 0038

Julia Coster: I think it has and I think the reason why this bill originated was from what seemed to be an inordinate amount of sentences that were below what the public felt should be the proper sentence. I don't know, I guess the people that sign our petitions that have been writing us and sending us telegrams.

Number 0043

Senator Parr: I bet I haven't had five letters from home from my district at least on this subject (sic).

Number 0046

Senator Rodey: Senator Ray you can have the floor.

Number 0047

Senator Ray: The test that the chairman was talking about is that two thousand people wanted it but four hundred forty-eight thousand that didn't. What I think that Senator Parr was trying to get at is there's a difference of opinion a philosophical difference of severity of penalties where the severity of a penalty for murder, if its capital punishment, that serves as a (sic) against murder because of the chances it might happen you might be killed or you might be put to death. There's another philosophical idea that's called by some people (sic) we're just talking about an average rape that has no aggravated ill, serious physical damage. If you commit that crime then there's no getting around it, your going to go to jail for three and a half to five years. Whatever the penalty is. Its just like a assembly line. You don't pass go, you don't do anything else, you go to jail. And you know what time you are going to jail for. These are the two different types. Now what do you believe in, do you think there should be discretion

on litigating circumstances, or do you believe that there should just be automatic go to jail for 3 1/2 years or 5 years of what it comes down to. What is your philosophy?

Number 0068

Julia Coster: I think that what this bill represents is that indeed there should be a minimum mandatory sentence for this particular fine. Because it is particularly, probably more particularly horrendous than most other crimes such as a burglary, assault in the second degree, this is a crime against a person.

Number 0074

Senator Ray: Well the proposed Committee Substitute more or less does that, just to make it an automatic term.

Number 0075

Julia Coster: The one that the Department of Law has just submitted?

Number 0076

Senator Ray: Yes.

Number 0076

Julia Coster: Well I haven't even looked at it yet, I have no idea, I have never seen it before.

Number 0078

Senator Rodey: Are there any further questions from Ms. Coster.

Number 0079

Senator Ray: I want to commend her for having the patients for listening to this guy.

Number 0081

Senator Rodey: Is there any other comments, thank you very much Ms. Coster. Next I would like to call Ms. Robinson from the network.

Number 0084

Caren Robinson: For the record I am the President of the Network on Domestic Violence and Sexual Assault. We are in agreement with the department of law and Commissioner Nix. I wasn't going to spend very much more time except that. They did cover our concerns over the fact of a possibility of victims being killed, the possibility of juries not convicting. I have been around now for 5 years, and at this time we have three cases that are coming to trial and/or in the process right now in Juneau. I have talked to jury members after three rape trials about

attending here in Juneau. I have some real strong feelings that these cases are not just clean cut cases. The cases that are clean cut we usually don't find a rapist. The last thing that I would like to state is that I would really like to see, possibly added in, the end of Barry Sterns proposed substitute that the committee consider the possibility of adding in also that mandatory treatment would have to take place. That is the only thing that I would like to see possibly added in.

- Number 0098 Senator Rodey: Caren this was proposed on the House side or was it a proposal that wasn't never fully passed for treatment.
- Number 0099 Caren Robinson: I heard rumors that something passed under the parole bill yesterday, or it was added or it passed.
- Number 0102 Mr. Bruce: It was passed under the parole bill yesterday, I don't know what happened with the reconsideration today. But they tacked it onto 327.
- Number 0103 Senator Rodey: SB 327?
- Number 0104 Mr. Bruce: Yes that is correct.
- Number 0105 Senator Rodey: If there is no major changes in the parole bill the Senate and the members of this committee find it acceptable, I certainly have no complaints. I am familiar with the language.
- Number 0106 Senator Ray: On the first offense only, after that we are.....
- Number 0107 Senator Rodey: Do you think that the treatment is wasted after the first offense there.
- Number 0108 Senator Ray: I am afraid so, because if he comes back the second time, I don't know what he would be treated for. If he didn't get the message the first time, he isn't going to the second time.
- Number 0110 Ms. Robinson: I think the other thing is that, within the HB 473, it's been looked at the fact that it might be a deterrent to this crime and I think what people need to

keep in perspective is that sexual assault is basically a behavior impulse and that rapist are not going to quite raping just because they might go a year to jail for ninety-nine years. I think that is something that we need to look at and understand that it is a behavior problem and we know that 2/3's of all rapists were sexually assaulted as children and that again, I really want to impress upon people that I think that our primary prevention is to really start education and treatment for children who have been sexually assaulted and start dealing with their problems at an early age when this occurs to them and get them to be identified and start coming out and let us know what is happening.

Number 0121

Senator Parr: Mr. Chairman I wonder if Ms. Robinson maybe had a slip of the tongue. It really isn't impulse. The latest research shows that it is not an impulsive act. Further it isn't really a sexual offense in the standpoint of a rapist, it is act to gain power, I guess is one way of saying it.

Number 0130

Ms. Robinson: What I meant by that is that I went to Western state and had an opportunity to sit in a room with 15 rapists and ask them every question I wanted. They made reference to the fact when they decided and had planned out that they were going to sexually assault they were going to do it no matter what.

Number 0133

Senator Parr: It wasn't impulse thing.

Number 0135

Senator Rodey: What is the pleasure of the committee with regard to the two proposals which we have before the committee.

Number 0136

Senator Ray: I move that we adopt the Committee Substitute as a Committee Substitute.

Number 0137

Senator Rodey: Senator Ray has moved the Department of Law proposal as a committee substitute. Yes, Senator Parr.

Number 0140

Senator Parr: I object, I have not had any time to go through it, I know what Mr. Stern said in a matter of a few minutes, but the 2 1/2 page bill, you have made some significant changes and I would like to have

time to look it over.

Number 0142

Senator Rodey: We will be meeting at 9:00 in the morning and....Yes Senator Ray.

Number 0142

Senator Ray: I agree with Senator Parr, but to save time you must be understanding and your a pro, you have been around here, you know that this bill isn't going to pass. It's going to go the free conference, and if we spend all our time trying to fool around with it, that's time wasted. Why don't we get it to the real people that is going to determinè this in free conference, and let them do it rather than us.

Number 0147

Senator Rodey: The point of the matter is well taken, this bill moves to the floor if there are changes that you feel should be made I will bring those changes to the floor on behalf of myself or the committee.

Number 0151

Senator Ray: No offense Charlie.

Number 0151

Senator Parr: I am not questioning the fact that the proposed Committee Substitute is better than bill that came from the house. I just would like to look it over, and for the same reason I objected to the bill a while ago about the fiscal thing, I had not seen it before and therefore object.

Number 0154

Senator Rodey: I would like to move as soon as possible. The bill is laid on the table. The Judiciary Committee is adjourned until 9:00 a.m. tomorrow morning in the Butrovich room.