

ALASKA LEGISLATURE COMMITTEE REPORTS 1962

1726 SJ HB 210. -

HB 339

1 minor child of the spouses or of either of them whose welfare
2 might be affected thereby, or whenever any controversy exists
3 between the parties as to child custody, the family court shall
4 have jurisdiction over the controversy and over the parties
5 thereto and all persons having any relation to the controversy
6 as provided in this chapter.

7 Sec. 11. Section 10, chapter 50, Laws of 1949 and RCW
8 26.12.100 are each amended to read as follows:

9 Prior to the filing of any action for ((divorce,
10 annulment--or--separate--maintenance)) dissolution of marriage,
11 legal separation, or declaration concerning the validity of a
12 marriage, either spouse or both spouses may file in the family
13 court a petition invoking the jurisdiction of the court for the
14 purpose of preserving the marriage by mediating or effecting a
15 reconciliation between the parties or for amicable settlement of
16 the controversy between the spouses so as to avoid further
17 litigation over the issue involved. Prior to the filing of any
18 action for child custody or modification of an order for child
19 custody, any party may file in the family court a petition
20 invoking the jurisdiction of the court for the purpose of
21 mediating or effecting an amicable settlement of the controversy
22 between the parties so as to avoid further litigation over the
23 issue involved. In any case where an action for ((divorce,
24 annulment--or--separate--maintenance)) dissolution of marriage,
25 legal separation, a declaration concerning the validity of a
26 marriage, child custody, or modification of an order for child
27 custody shall have been filed, either party thereto may by
28 petition filed therein have the cause transferred to the family
29 court for proceedings in the same manner as though action had
30 been instituted in the family court in the first instance.

31 Sec. 12. Section 12, chapter 50, Laws of 1949 and RCW
32 26.12.120 are each amended to read as follows:

33 The petition shall:

34 (1) Briefly allege that a controversy exists between the
35 ((spouses)) parties and request the aid of the family court to

Sec. 12

1 mediate or effect a reconciliation or an amicable settlement of
2 the controversy;

3 (2) State the name and age of each minor child whose
4 welfare may be affected by the controversy;

5 (3) State the name and address of the petitioner or
6 petitioners;

7 (4) If the petition is presented by one ((spouse)) party
8 only, name the other ((spouse)) party as respondent and state
9 the address of that ((spouse)) party;

10 (5) Name any other person who has any relation to the
11 controversy and state the address of the person if known to the
12 petitioner; and

13 (6) State such other information as the court may by rule
14 require.

15 Sec. 13. Section 18, chapter 50, Laws of 1949 and RCW
16 26.12.180 are each amended to read as follows:

17 At or after hearing, the court may make such orders in
18 respect to the conduct of the spouses and the subject matter of
19 the controversy as the court deems necessary to preserve the
20 marriage ~~((or))~~, to mediate or implement the reconciliation of
21 the spouses, or to effect an amicable settlement of a
22 controversy involving child custody between the parties, but in
23 no event shall such orders be effective for more than thirty
24 days from the filing of the petition, unless the parties
25 mutually consent to an extension of such time.

26 Sec. 14. Section 19, chapter 50, Laws of 1949 and RCW
27 26.12.190 are each amended to read as follows:

28 During the period of thirty days after filing a petition
29 for conciliation no action for ~~((divorce, annulment or separate~~
30 ~~maintenance))~~ dissolution of marriage, legal separation, a
31 declaration concerning the validity of a marriage, child
32 custody, or modification of an order for child custody shall be
33 filed by either ((spouse)) party and further proceedings in an
34 action then pending in the superior court shall be stayed and
35 the case transferred to the family court: PROVIDED, The family

1 court shall have full power in all pending cases to make, alter,
2 modify and enforce all temporary orders, orders for custody of
3 children, possession of property, attorneys' fees, suit money or
4 costs as may appear just and equitable; if, after the expiration
5 of such thirty day period or the formal conclusion of the
6 proceedings for conciliation, the controversy between the
7 ~~((spouses))~~ parties, in the meantime not having been terminated,
8 either ~~((spouse))~~ party may apply for ~~((divorce; annulment-of~~
9 ~~marriage; -or- separate-maintenance))~~ dissolution of marriage,
10 legal separation, a declaration concerning the validity of a
11 marriage, child custody, or modification of an order for child
12 custody by filing in the clerk's office additional pleadings
13 complying with the requirements relating to ~~((divorce; annulment~~
14 ~~of-marriage; -or- separate-maintenance))~~ dissolution of marriage,
15 legal separation, a declaration concerning the validity of a
16 marriage, child custody, or modification of an order for child
17 custody respectively, or by asking that the pending case be set
18 for trial; and the family court shall have full jurisdiction to
19 hear, try, and determine such action for ~~((divorce; annulment-of~~
20 ~~marriage; -or- separate-maintenance))~~ dissolution of marriage,
21 legal separation, a declaration concerning the validity of a
22 marriage, child custody, or modification of an order for child
23 custody under the laws relating thereto, and to retain
24 jurisdiction of the case for further hearings on decrees or
25 orders to be made therein. The conciliation provisions of this
26 chapter may be used in regard to ~~((post-divorce))~~ post-
27 dissolution of marriage problems, concerning support, child
28 custody, visitation, contempt, or for modification based on
29 changed conditions, in the discretion of the family court.

30 The family court may retain jurisdiction in any
31 proceedings for a longer period than thirty days upon good cause
32 appearing therefor on its own motion for further conciliation or
33 upon application of either of the ~~((spouses))~~ parties, but in no
34 event shall retain jurisdiction more than ninety days without
35 the written consent of both ~~((spouses))~~ parties filed with the
36 court. Except as specifically so provided nothing in this

Sec. 14

1 chapter shall be construed to repeal, nullify or change the law
2 and procedure relating to ~~((divorce,--annulment--or--separate
3 maintenance))~~ dissolution of marriage, legal separation, a
4 declaration concerning the validity of a marriage, child
5 custody, or modification of an order for child custody; and the
6 family court shall, when application for relief is made under
7 this chapter, apply such laws in the same manner as if the
8 action had been brought thereunder in the superior court, save
9 that the conciliation procedures of the family court shall be
10 applied so far as appropriate to mediate or arrive at an
11 amicable settlement of all issues in controversy.

12 Sec. 15. Section 20, chapter 50, Laws of 1949 and RCW
13 26.12.200 are each amended to read as follows:

14 Whenever any action for ~~((divorce,--annulment--of--marriage
15 or--separate--maintenance))~~ dissolution of marriage, legal
16 separation, a declaration concerning the validity of a marriage,
17 child custody, or modification of an order for child custody is
18 filed in the superior court and it appears to the court at any
19 time during the pendency of the action that there is any minor
20 child of the ~~((spouses--or--of--either--of--them))~~ parties whose
21 welfare may be affected by the dissolution ~~((or--annulment--of--the
22 marriage))~~ of marriage, legal separation, declaration concerning
23 the validity of a marriage, the child custody proceedings, or
24 the disruption of the household, the case may be transferred to
25 the family court for proceedings for reconciliation of the
26 ((spouses)) parties, mediation, or amicable settlement of issues
27 in controversy in accordance with the provisions of this
28 chapter.

29 Sec. 16. Section 9A.40.050, chapter 260, Laws of 1975
30 1st ex. sess. and RCW 9A.40.050 are each amended to read as
31 follows:

32 (1) A person is guilty of custodial interference if,
33 knowing that she or he has no legal right to do so, she or he
34 takes ((or)) from, entices from, or refuses to return to lawful
35 custody any incompetent person or other person entrusted by

1 authority of law to the custody of another person or
2 institution.

3 (2) Custody shall include "residential care" where the
4 incompetent person or other person entrusted by authority of law
5 to the custody of another person or institution is the subject
6 of a joint custody order or decree.

7 (3) Custodial interference is a ((gross-misdemeanor))
8 class C felony.

9 NEW SECTION. Sec. 17. If any provision of this act or
10 its application to any person or circumstance is held invalid,
11 the remainder of the act or the application of the provision to
12 other persons or circumstances is not affected.

13 NEW SECTION. Sec. 18. This act shall take effect on
14 July 1, 1983.



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252

SENATE AMENDMENT

By Judiciary Committee

To: Senate Secretary SENATE BILL No. _____

To: _____ HOUSE BILL No. 252 (Jud) am

PAGE: 1 LINE: 19

Insert "landlord or" between "the" and "tenant".

COMMITTEE REPORT

SENATE

5/15/81

L+C added
FURTHER: ~~None~~ 5/18/81

Date: JUNE 12, 1981

Mr. President:

The Committee on JUDICIARY has had CSHB 252 (FIN) am relating to the obligations of landlords

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

do pass do not pass

INDIVIDUAL RECOMMENDATIONS
~~do pass~~ with attached amendments(s)

replace with CS for _____ same title
 new title
and recommends _____

AND attaches a "Letter of Intent" New Fiscal Note

reports it back without recommendation

referred to the _____ Committee

MEMBERS SIGNING
DO PASS

Charles H. Pa.

MEMBERS HAVING
OTHER RECOMMENDATIONS:

John M. Rec

Patricia Bradley
CHAIRMAN

do pass



Official Business

Alaska State Legislature

Senate

Judiciary Committee

Pouch V
State Capitol
Juneau, Alaska 99811

May 19, 1981

Bruce Horowitz
Supervising Attorney
Alaska Legal Services Corporation
419 Sixth Street, Suite 322
Juneau, Alaska 99801

Dear Bruce:

Thank you for your comments on SB 252.

I will enclose a copy of your letter in each committee member's file for his information and consideration of this proposed legislation.

I appreciate your concerns in this area.

Sincerely,

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

Senator Patrick M. Rodey
Chairman

PMR/ods

Original sponsor: Anderson by Request

Offered: 4/30/81
Referred: Rules

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2

CS FOR HOUSE BILL NO. 252 (Judiciary) am

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

TWELFTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act relating to the obligations of landlords."

7

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

8

* Section 1. AS 34.03.070(b) is repealed and reenacted to read:

9

(b) Upon termination of the tenancy, property or money held by

10

the landlord as prepaid rent or as a security deposit may be applied to

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the payment of accrued rent and the amount of damages which the landlord

12

has suffered by reason of the tenant's noncompliance with AS 34.03.120.

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"Damages" do not include wear resulting from ordinary use of the pre-

14

mises. The accrued rent and damages must be itemized by the landlord

15

in a written notice mailed to the tenant's last known address within

16

the time limit prescribed by (g) of this section, together with the

17

amount due the tenant.

18

* Sec. 2. AS 34.03.070 is amended by adding a new subsection to read:

19

(g) If the ~~tenant~~ ^{LANDLORD OR} gives notice which complies with AS 34.03.290,

20

the landlord shall mail the written notice and refund required by (b)

21

of this section within 14 days after the tenancy is terminated, and

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possession is delivered by the tenant. If the tenant does not give

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notice which complies with AS 34.03.290, the landlord shall mail the

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written notice and refund required by (b) of this section within 30

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days after the tenancy is terminated, possession is delivered by the

26

tenant or the landlord becomes aware that the dwelling unit is aban-

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doned. If the landlord does not know the mailing address of the tenant,

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but knows or has reason to know how to contact the tenant to give the

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notice required by (b) of this section, the landlord shall make a

1 reasonable effort to deliver the notice and refund to the tenant.
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Original sponsor: Anderson by Request

Offered: 4/30/81
Referred: Rules

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 252 (Judiciary) am
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the obligations of landlords."
7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 * Section 1. AS 34.03.070(b) is repealed and reenacted to read:

CHECK WITH
LAW

(b) Upon termination of the tenancy, property or money held by
the landlord as ~~prepaid~~ ^{UNPAID} rent or as security deposit may be applied to
the payment of accrued rent and the amount of damages which the landlord
has suffered by reason of the tenant's noncompliance with AS 34.03.120.
"Damages" do not include wear resulting from ordinary use of the pre-
mises. The accrued rent and damages must be itemized by the landlord
in a written notice mailed to the tenant's last known address within
the time limit prescribed by (g) of this section, together with the
amount due the tenant.

18 * Sec. 2. AS 34.03.070 is amended by adding a new subsection to read:

2

19 ~~IF THE LANDLORD RECEIVES NOTICE OF TERMINATION TO THE TENANT'S~~

(g) If the tenant gives notice which complies with AS 34.03.290,
the landlord shall mail the written notice and refund required by (b)
of this section within 14 days after the tenancy is terminated, and
possession is delivered by the tenant. If the tenant does not give
notice which complies with AS 34.03.290, the landlord shall mail the
written notice and refund required by (b) of this section within 30
days after the tenancy is terminated, possession is delivered by the
tenant or the landlord becomes aware that the dwelling unit is aban-
doned. If the landlord does not know the mailing address of the tenant,
but knows or has reason to know how to contact the tenant to give the
notice required by (b) of this section, the landlord shall make a

1 reasonable effort to deliver the notice and refund to the tenant.
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LAW OFFICE OF
ALASKA LEGAL SERVICES CORPORATION
419 SIXTH STREET, SUITE 322
JUNEAU, ALASKA 99801
TELEPHONE: (907) 586-6425

May 6, 1981

Senator Patrick Rodey
Chairperson of the Senate Judiciary Committee
Capitol, Room 207
Juneau, Alaska 99801

Re: CS For House Bill No. 252 (Judiciary)

Dear Chairperson Rodey:

It is my opinion that no changes are needed at this time in AS 34.03.070. However, if the CS for House Bill No. 252 moves in the Senate I would make the following suggestion in regard to Section 3 of the Bill, concerning AS 34.03.070(g):

This subsection provides that a tenant will have the right to 14-day notice and refund only if the tenant complies with AS 34.03.290, by giving notice of termination to the landlord. In many cases, it is the landlord who gives notice of termination to the tenant. Under the subsection (g) as written, the landlord might claim the prerogative of waiting 30 days after termination before sending on the notice and refund to the tenant.

I do not believe that this was the intention of the Committee in drafting a new subsection (g). In fact, tenants who are given 30-day notices to quit, are among those people who need their refund as quickly as possible.

Therefore, I propose the following amendment to proposed AS 34.03.070(g):

"If the landlord gives notice of termination to the tenant, or if the tenant gives notice which complies with AS 34.04.290,...",
etc.

Page Two

I hope that my suggestions may be of some help to the Committee,
if the Committee believes that AS 34.03.070 requires modification.

Sincerely,
ALASKA LEGAL SERVICES CORPORATION

Bruce Horowitz
BRUCE HOROWITZ
Supervising Attorney

BH:mm

THE FOLLOWING DOCUMENT(S) MAY NOT FILM
LEGIBLY BECAUSE OF POOR QUALITY OF THE
ORIGINAL.

14 days after the written offer has been made. The landlord may refuse consent to a sublease if the rejection signed and delivered to the tenant is one or more of the following reasons: (a) the prospective occupant has poor credit standing or financial responsibility; (b) the prospective occupant is a minor or a person under 18 years of age in the business of the prospective occupant; (c) the prospective occupant is included in the existing rental agreement; (d) the prospective occupant has a record of maintenance of pets; (e) the prospective occupant is engaged in commercial activity; or (f) the prospective occupant has provided false information signed by a previous landlord. The landlord's consent to a sublease is conclusively presumed. (§ 1 ch 10 SLA 1971)

Article 3. Landlord Obligations.

Section

31.03.090. Security deposits; prepaid rent.
31.03.100. Landlord to maintain fit premises.

100. Landlord to maintain fit premises.
110. Notification of termination of tenancy.

31.03.070. Security deposits; prepaid rent. (a) A landlord may not receive prepaid rent or a security deposit in an amount or value in excess of two months' rent.

(b) At the termination of the tenancy, property or money received as a security deposit may be applied to accrued rent and the amount of damages suffered by reason of the tenant's noncompliance with this chapter. The accrued rent and damages must be stated in a written notice delivered to the tenant not later than 14 days after termination of the tenancy. "Damages" does not include damages from ordinary use of the premises. (c) Money paid to the landlord by the tenant as a security deposit in a lease or rental agreement shall be held by the landlord, wherever practicable, in a trust account.

(d) A landlord may not require a tenant to provide to the tenant the terms and conditions under which the tenant may receive a refund of any prepaid rent or security deposit or portions of them may be applied to the tenant's rent. (e) Nothing in this chapter prohibits the landlord from requiring prepaid rents and security deposits in a single payment. (f) If a landlord wilfully fails to comply with (b) of this section, the tenant may recover an amount not to exceed twice the actual amount of the security deposit. (g) This section does not preclude a landlord or tenant from recovering other damages to which he may be entitled under this chapter. (h) A person who is a holder of the landlord's interest in the premises at the time of the commencement of the tenancy is bound by this section. (§ 1 ch 10 SLA 1974)

31.03.080. Disclosure. (a) The landlord or person authorized to execute a rental agreement on his behalf shall disclose to the tenant at or before the commencement of the tenancy the address of the premises.

(b) The landlord or person authorized to manage the premises; and the owner of the premises or a person authorized to act for and on behalf of the owner for the purpose of process and for the purpose of receiving and receipting for notices and demands. (c) The information required to be furnished by this section shall be in writing and this section extends to and is enforceable against any landlord, owner or manager. (d) A person who fails to comply with (a) of this section becomes an agent of the landlord for the purpose of process and receiving and receipting for notices and demands.

(e) This section does not alter the obligations of the landlord under this chapter and does not require the landlord to expend or make available for the tenant the full rent collected from the premises. (§ 1 ch 10 SLA 1974)

31.03.090. Landlord to supply possession of the dwelling. (a) At the commencement of the term the landlord shall deliver possession of the premises to the tenant in compliance with the rental agreement and § 100 of this chapter. The landlord may bring an action against any person wrongfully in possession and may recover the damages provided in § 230 of this chapter. (§ 1 ch 10 SLA 1974)

31.03.100. Landlord to maintain fit premises. (a) The landlord shall maintain the premises in a fit and habitable condition; (b) The landlord shall make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition; (c) The landlord shall keep all common areas of the premises in a clean and safe condition.

(d) Within 14 days after the written offer to the landlord, the landlord may refuse consent by a written rejection signed and delivered containing one or more of the following reasons rejecting the prospective occupant:

- (1) insufficient credit standing or financial resources;
- (2) number of persons in the household;
- (3) number of persons under 18 years of age;
- (4) unwillingness of the prospective occupant to accept terms as are included in the existing rental agreement;
- (5) proposed maintenance of pets;
- (6) proposed commercial activity; or
- (7) written information signed by a previous occupant accompanying the rejection, setting out abuses of the premises by the prospective occupant.

(e) In the event the written rejection fails to state grounds permitted by (d) of this section for rejection of the prospective occupant, the tenant may consider the landlord's rejection as a refusal. In this event, the tenant may terminate the rental agreement, given without unnecessary delay to the landlord at the termination date specified in the notice.

(f) If the landlord does not deliver a written rejection to the tenant within 14 days after a written offer is made to him by the tenant, the landlord's consent to the offer shall be conclusively presumed. (§ 1 ch 10 SLA 1974)

Article 3. Landlord Obligations

Section	Section
70. Security deposits, prepaid rent	100. Landlord's obligation to maintain premises
80. Disclosure	110. Landlord's obligation to provide utilities
90. Landlord to supply possession of the dwelling unit	

Sec. 34.03.070. Security deposit : prepaid rent may not demand or receive prepaid rent or a security deposit, in an amount or value in excess of three months' rent.

(b) Upon termination of the tenancy, property or money held by the landlord as prepaid rent or as a security deposit may be applied to the payment of accrued rent and the amount of damages to the premises the landlord has suffered by reason of the tenant's noncompliance with § 120 of this chapter. The accrued rent and damages shall be paid to the landlord in a written notice delivered to the tenant within 14 days after the amount due no later than 14 days after termination and delivery of possession by the tenant. "Damages" means wear resulting from ordinary use of the premises.

(c) All money paid to the landlord by the tenant as a security deposit in a lease or rental agreement shall be deposited by the landlord, wherever practicable, in a

THE PRECEDING DOCUMENT(S) MAY NOT FILM
LEGIBLY BECAUSE OF POOR QUALITY OF THE
ORIGINAL.

H B

254

COMMITTEE REPORT

SENATE

FURTHER: None

3/24/81

Date:

June 8
1981

Mr. President:

The Committee on JUDICIARY has had HB 254 am
jurors and jury panels

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

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

MEMBERS SIGNING
DO PASS

Charles H. R.

Bill Kay

MEMBERS HAVING
OTHER RECOMMENDATIONS:

None

CHAIRMAN

H B

287

COMMITTEE REPORT
SENATE

5/11/81

FURTHER: None

Date: JUNE 3, 1981

Mr. President:

The Committee on JUDICIARY has had CSHE 287(Jud)
domestic violence

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

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for HB 287 (Jud) same title
 new title
- and recommends WITH INDIVIDUAL RECOMMENDATIONS
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

...ability clause shall be construed as though it contained the following language, "If any provision of this Act, or application thereof to any person or circumstance is held inapplicable, the remainder of this Act and the application to other persons or circumstances shall not be effected thereby." (§ 1 ch 98 SLA 1949)

Quoted in *State v Baker*, Sup Ct. Op. No. 584 (File No. 1014), 460 P.2d 77 (1969).
Op. No. 227 (File No. 428), 393 P.2d 77 (1969).
Op. No. 693 (1964); *Speidel v. State*, Sup.

Sec. 01.10.040. Words and phrases. Words and phrases shall be construed according to the rules of grammar and according to their common and approved usage. Technical words and phrases and those which have acquired a peculiar and appropriate meaning, whether by legislative definition or otherwise, shall be construed according to the peculiar and appropriate meaning. (§ 2 ch 62 SLA 1962)

Judicial construction.—The court is required to construe words and phrases according to their "common and approved usage" unless such words and phrases have acquired a peculiar meaning by virtue of statutory definition or judicial construction. *Smith v. McCann*, Sup. Ct. Op. No. 659 (File No. 1142), 478 P.2d 836 (1970).
 Quoted in *Employment Sec. Comm'n v. Wilson*, Sup. Ct. Op. No. 587 (File No. 1084), 461 P.2d 425 (1969); *Thorsheim v. State*, Sup. Ct. Op. No. 611 (File No. 1090), 469 P.2d 383 (1970).

Sec. 01.10.050. Tense, number, and gender. (a) Words in the present tense include the past and future tenses, and words in the future tense include the present tense.

(b) Words in the singular number include the plural, and words in the plural number include the singular.

(c) Words of the masculine gender include the feminine and the neuter and when the sense so indicates, words of the neuter gender may refer to any gender. (§ 3 ch 62 SLA 1962)

Sec. 01.10.060. Definitions. In the laws of the state, unless the context otherwise requires,

- (1) "action" includes any matter or proceeding in a court, civil or criminal;
- (2) "daytime" means the period between sunrise and sunset;
- (3) "month" means a calendar month unless otherwise expressed;
- (4) "nighttime" means the period between sunset and sunrise;
- (5) "oath" includes affirmation or declaration;
- (6) "peace officer" means any officer of the state troopers, members of the police force of any incorporated city or borough, United States marshals and their deputies, and other officers whose duty it is to enforce and preserve the public peace;
- (7) "person" includes a corporation, company, partnership,

Title 3
Agriculture and Animals

Title 4
Alcoholic Beverages

Title 5
Vocational and Sports

Title 2
Aeronautics

POSITION PAPER
ON
CS FOR HOUSE BILL NO. 287 (Judiciary)

"An Act relating to domestic violence."

The Department of Health and Social Services supports the amendments to House Bill No. 287. During the 1980 legislative session, the Department supported House Bill No. 392 which eventually became the present statute. Since that time, the local programs of Domestic Violence and Sexual Assault have coordinated closely with the public safety and police officers of each major community. The Alaska Network on Domestic Violence and Sexual Assault has assisted in preparing training for police officers at the Academy; and victims of domestic violence are beginning to use the right for restraining orders. Each of the domestic violence programs has had an increase in number of clients during the year; perhaps some of this has been due to the obligation now placed on a police/public safety officer to inform a victim of the availability of a protected environment.

Adding Sec. 1 (b) (7) which directs the respondent to engage in personal or family counseling will presumably be a constructive move in an effort to provide further prevention of violence by requiring treatment.

It has become evident with the use of the current statute that complex living situations do exist in Alaska and that violence frequently occurs within those interrelated "families" - no matter what the definition of family. According to the publication "Crime in Alaska," published by CJPA, in 1980, of 39 murders in the state, 12 victim/offenders were family members.

The Department is also aware that for many victims a period of 45 days to "solve problems" and make decisions about life decisions is frequently too short a time; if the perpetrator chooses to seek help, in order to help solve the relationship problem, a period of 45 days is by no means long enough to help learn new methods and techniques of handling stress. Therefore, the Department supports the extension of the restraining order as well as an extension of 45 days.

Recommended by: Elizabeth Muktarian
Elizabeth Muktarian
Director
Div. of Adult and
Aging Services

Date: 5/5/81

Approved by: Helen D. Beirne
Helen D. Beirne
Commissioner
Dept. of Health and
Social Services

Date: 5-12-81

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. CS for House Bill No. 287 (Judiciary)

Title "An Act relating to domestic violence."

Requested by The Judiciary Committee

Date May 5, 1981

II. FISCAL DETAIL

Agency Affected Department of Health and Social Services

Program Category Affected Social and Economic Assistance for the General Population

BRU, Program, or Subprogram(s) Affected Division of Adult and Aging Services - Adult Services

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

EXPENDITURES (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		-0-				

FUNDING (Thousands of Dollars)

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

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

Zero Impact

IV. DATE

5-5-81

PREPARED BY

Dorothy Walt

Dorothy Walt

AGENCY Division of Adult and Aging Services

PHONE 465-3250

Original: Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named)

M&B Approval

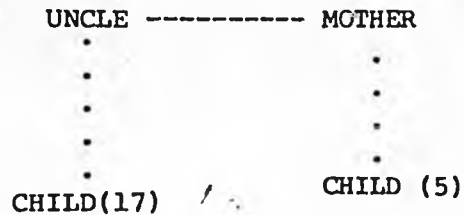
[Signature]

Date

5/6/81

RELATIONSHIP BY BLOOD DEGREE

(64) GREAT AUNT -----GRANDMOTHER -----GREAT UNCLE(63)



Each degree of blood relationship is represented by a dotted line; for example Mother and Grandmother are within one degree, Uncle and Grandmother are within two degrees, and Child(5) and Great Uncle is within three degrees.

Under the PRESENT statute, none of these people could get protective orders against the other unless they were living in the same house.

Under the proposed definition (second degree of blood) the following situations could arise and the persons still not qualify for a restraining order:

The Great Uncle visits regularly and sexually assaults the 5 year old child.

The 17 year old child visits great aunt and physically assaults her.

We believe that the familial and social relationships between these persons is such that they also would be loath to seek criminal sanctions against their family member and thus would greatly benefit by access to the restraining order process.



Alaska Network on Domestic Violence and Sexual Assault

AWAIC, Inc.
Anchorage
Shelter
274-4561
Community Office
279-9581
Male Awareness Project
279-9581

AWARE, Inc.
Juneau
586-6623

Arctic Women's Group
Barrow

Bering Sea Women's Group
Nome
443-5144

Family Violence Counselor,
Police Dept.
Kodiak
486-3221

Kenai Soldotna
Women's Resource Center
Soldotna
262-9378

Kodiak Women's Resource Center
Kodiak
486-5038

WICCA, Inc.
Fairbanks
452-2293

Women in Safe Homes
Ketchikan, Alaska
225-2730

Tundra Women's Coalition
Bethel
543-3455

January 1981 in Anchorage

15 petitions were filed:

9 married

1 separated

2 divorced

2 household

1 family (daughter was petitioner against father)

2 incidents involved weapons

11 incidents resulted in injuries

15 incidents included threats by the respondent

of the 15 petitions filed;

3 were denied emergency treatment and no further date was set

2 both parties absent at hearing

2 were withdrawn because of reconciliation

3 the petitioner was present but there had been no return of service on respondent.

5 went to full hearing

1 was the daughter/father both represented themselves

2 were divorced from each other

2 were married to each other

One of these was dismissed because the woman's attorney informed the court that the USAF has flown her home.



Alaska Network on Domestic Violence and Sexual Assault

February 1981 in Anchorage

28 petitions were filed. We have information on 24 of them:

AWAIC, Inc.
Anchorage
Shelter
274-4561
Community Office
279-9581
Male Awareness Project
279-9581

AWARE, Inc.
Juneau
586-6623

Arctic Women's Group
Barrow

Bering Sea Women's Group
Nome
443-5444

Family Violence Counselor,
Police Dept.
Kodiak
486-3221

Kenai-Soldotna
Women's Resource Center
Soldotna
262-9378

Kodiak Women's Resource Center
Kodiak
486-5038

WICCA, Inc.
Fairbanks
452-2293

Women in Safe Homes
Ketchikan, Alaska
225-2730

Tundra Women's Coalition
Bethel
543-3455

13 married

4 separated

3 divorced

2 living together

2 ex-boyfriends

1 family widow being assaulted by her teen-age son

5 incidents involved weapons

15 incidents resulted in injuries

21 incidents included threats by the respondent

Of the 24 petitions that we have information on:

5 were denied emergency treatment and no further date
was set

2 proceeded on to divorce and were either withdrawn or
consolidated

1 withdrawn because the petitioner also pursued criminal
charges and the respondent had a bail condition ordering
no contact

1 respondent was not served

1 petitioner requested withdrawal because the respondent entered
both alcoholic and psychiatric counseling

4 petitioner withdrew without explanation

10 went to a full hearing:

4 married

2 divorced

2 separated

1 living together

1 family

MEMORANDUM

May 20, 1981


To: Senate Judiciary Committee
Senator Rodey, Chairman
Senator Bennett
Senator Hohman
Senator Parr
Senator Ray

From: Grant Callow, General Counsel
Alaska Court System

Subject: CSHB 287 (HESS) - An Act Relating to Domestic
Violence

The Alaska Court System respectfully requests that CSHB 287 be amended to make it clear that municipal law enforcement officers are required to serve and enforce restraining orders in domestic violence cases when so ordered by the court.

Attached is a short memorandum explaining the reasons for this proposed amendment and offering suggested amendatory language.



M E M O R A N D U M

TO: Grant Callow
General Counsel

May 19, 1981

FROM: Lucinda McBurney *LM*
Judicial Education Coordinator

RE: Domestic Violence Orders: Service of Process

At present, the Alaska State Troopers serve the bulk of domestic violence orders in Anchorage. Judicial Services handles the paperwork during regular court system hours, and the Troopers send someone to pick up the paperwork after regular hours. The only time the Anchorage Municipal Police will assist with serving process is when a petitioner has also signed a criminal complaint against a respondent. The police will then take the civil and criminal paperwork together.

Since September 28, 1980, the effective date of the Domestic Violence Act, approximately 145 petitions have been filed in Anchorage, 100 of which were filed in 1981. Although the State Troopers have attempted to serve process as expeditiously as possible, there have been occasions when service of emergency paperwork was delayed because no trooper was available. This has happened primarily after regular court system working hours.

The Anchorage police have taken the position that they are not required by law to serve domestic violence paperwork. I would, therefore, recommend that language be added to the amended bill which would broaden the responsibility for service of process of domestic violence orders to include municipal police. A proposed amendment is attached to this memorandum.

The Troopers may still be expected to carry the biggest burden in terms of serving process, but the municipal police could provide the necessary backup if an emergency occurred. The effectiveness of a domestic violence order depends in part upon how quickly it can be served. In addition, domestic violence legislation was designed to give victims a civil remedy, and petitioners should not have to sign a criminal complaint in order to get their process served if a manpower crisis arises.

It is my impression that the difficulty with service of process (in terms of number of petitions filed, trooper activity, and interpretation by the police of their role) is confined to Anchorage.

LMB: jm
Enclosure

CURRENT STATUTE:

Sec. 09.55.630. Notification to law enforcement agencies. If a superior court, district court, or magistrate issues an order under AS 09.55.600 or 09.55.610 restraining a respondent from subjecting a petitioner to domestic violence, the superior court, district court, or magistrate shall transmit a copy of the order to the appropriate local law enforcement agency. Each law enforcement agency shall establish procedures to inform their peace officers of copies of the orders received by the law enforcement agency under this section. Peace officers shall use every reasonable means to enforce an order issued under AS 09.55.600 or 09.55.610. (Sec. 1 ch 139 SLA 1980)

SUGGESTED CHANGE:

Sec. 09.55.630. Notification to law enforcement agencies. If a superior court, district court, or magistrate issues an order under AS 09.55.600 or 09.55.610 restraining a respondent from subjecting a petitioner to domestic violence, the superior court, district court, or magistrate shall transmit a copy of the order to the appropriate local law enforcement agency. Each law enforcement agency shall establish procedures to inform their peace officers of copies of the orders received by the law enforcement agency under this section. Peace officers, including municipal law enforcement officers, shall use every reasonable means to serve and enforce an order issued under AS 09.55.600 or 09.55.610. (Sec. 1 ch 139 SLA 1980)

POSITION PAPER
ON
HOUSE BILL NO. 287

"An Act relating to domestic violence."

The Department of Health and Social Services supports the amendments to House Bill No. 287. During the 1980 legislative session, the Department supported House Bill No. 392 which eventually became the present statute. Since that time, the local programs of Domestic Violence and Sexual Assault have coordinated closely with the public safety and police officers of each major community. The Alaska Network on Domestic Violence and Sexual Assault has assisted in preparing training for police officers at the Academy; and victims of domestic violence are beginning to use the right for restraining orders. Each of the domestic violence programs has had an increase in number of clients during the year; perhaps some of this has been due to the obligation now placed on a police/public safety officer to inform a victim of the availability of a protected environment.

It has become evident with the use of the current statute that complex living situations do exist in Alaska and that violence frequently occurs within those interrelated "families" - no matter what the definition of family. According to the publication "Crime in Alaska," published by CJPA, in 1980, of 39 murders in the state, 12 victim/offenders were family members.

The Department is also aware that for many women a period of 45 days to "solve her problems" and make decisions about life decisions is frequently too short a time; if the perpetrator chooses to seek help, in order to help solve the relationship problem, a period of 45 days is by no means long enough to help him learn new methods and techniques of handling stress. Therefore, the Department supports the extension of the restraining order.

Recommended by: Elizabeth Muktarian
Elizabeth Muktarian
Director
Div. of Adult and
Aging Services

Date: 3/24/81

Approved by: Helen D. Beirne
Helen D. Beirne
Commissioner
Dept. of Health and
Social Services

Date: 3/26/81

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. House Bill No. 287

Title "An Act Relating to domestic violence."

Requested by _____

Date March 17, 1981

II. FISCAL DETAIL

Agency Affected Department of Health and Social Services

Program Category Affected Social & Economic Assistance for the General Population

BRU, Program, or Subprogram(s) Affected Division of Adult & Aging Services - Adult Services

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

EXPENDITURES (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		-0-				

FUNDING (Thousands of Dollars)

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

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

Zero Impact

IV. DATE 3-17-81

Dorothy Walt
PREPARED BY Dorothy Walt
AGENCY Division of Adult and Aging Services
PHONE 465-3250

Original: Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named) M&B Approval *[Signature]*

Date 3/20/81

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. HB 287
 Title "An Act relating to domestic violence."
 Requested by Representative Clocksin Date March 17, 1981

II. FISCAL DETAIL

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

EXPENDITURES (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	0	0	0	0	0	0

FUNDING (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
FULL TIME	0	0	0	0	0	0
PART TIME						
TEMPORARY						

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

The proposed bill, in Sec. 9, speaks to services already provided by the Department's Criminal Division. Likewise, the Department's Civil Division is already providing legal services for the Division of Social Services to such extent as that division may be involved in protecting minor children as provided by Sec. 2 of the proposed Act. Therefore, no additional fiscal impact will be felt by the department by the enactment of this legislation.

IV. DATE March 18, 1981 PREPARED BY Richard I. Pegues, Admin. Officer
 AGENCY Department of Law
 PHONE 465-3695
 Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

Article 9. Domestic Violence.

Section	Section
600. Injunctive relief in case involving domestic violence	620. Forms for filing petition
610. Emergency injunctive relief in cases involving domestic violence	630. Notification to law enforcement agencies
	640. Definitions

Cross reference. -- As to domestic violence police training, see AS 18.65, art. 6.

Editor's note. -- Section 5, ch. 139, SLA 1980, provides: "Section 1 of this Act has the effect of changing Rule 3, Rules of Civil Procedure, by enacting a provision that allows a court to proceed upon the filing of a petition rather than a complaint,

and Rule 76, Rules of Civil Procedure, by enacting a provision that allows a court to accept for filing petitions which are handwritten in part. Section 1 of this Act also has the effect of changing Rule 65, Rules of Civil Procedure, by enacting a provision that establishes an alternate procedure for obtaining orders for relief from domestic violence."

Sec. 09.55.600. Injunctive relief in cases involving domestic violence. (a) A person who is subjected to domestic violence may petition a superior court for injunctive relief restraining the infliction of further domestic violence against the petitioner by the respondent.

(b) Upon receiving a petition under (a) of this section, the superior court shall schedule a hearing and shall provide at least 10 days notice to the respondent of the hearing and of the respondent's right to appear and to be heard either in person or by attorney. If, at the hearing, the superior court finds that the petitioner has been subjected to domestic violence by the respondent, the superior court may issue any order it determines to be necessary for the protection of the health, safety or welfare of the petitioner or of a minor child in the care of the petitioner. An order under this subsection may include provisions which

- (1) restrain the respondent from subjecting the petitioner to domestic violence;
- (2) direct the respondent to vacate the home of the petitioner;
- (3) restrain the respondent from communicating directly or indirectly with the petitioner;
- (4) direct the respondent to pay support for the petitioner or for a minor child in the care of the petitioner if there is an independent legal obligation of the respondent to support the petitioner or the child;
- (5) award temporary custody of a minor child to the petitioner;
- (6) direct the respondent to pay medical expenses incurred by the petitioner as a result of the domestic violence.

(c) An order issued under this section remains in effect for a period of time not to exceed 45 days. However, the petitioner may petition the superior court for extensions of a provision of the order if the provision is described in (b)(1), (b)(2) or (b)(3) of this section. If the superior court, after notice to the respondent of and a hearing on the petition for the extension in accordance with the procedures described in (b) of this section, finds that an extension of the provision of the order is necessary to protect the petitioner from domestic violence, the superior court may extend the provision of the order for a period of time not to exceed 45 days.

(d) Proceedings under this section do not preclude any other available civil or criminal remedies. (§ 1 ch 139 SLA 1980)

Cross reference. -- As to release before trial in cases involving domestic violence, see AS 12.30.025.

Sec. 09.55.610. Emergency injunctive relief in cases involving domestic violence. (a) A person who has been subjected to domestic violence may petition the superior court for a temporary order providing for emergency injunctive relief restraining the infliction of further domestic violence against the petitioner by the respondent. If there is no superior court within 50 road miles of the residence of the person subjected to domestic violence, the person may petition the nearest district court for a temporary emergency injunctive relief order. If there is no district court within 50 road miles of the residence of the person subjected to domestic violence, the person may petition the nearest magistrate for a temporary emergency injunctive relief order. The district court or magistrate shall notify the superior court immediately upon issuance of an order granting emergency injunctive relief under this section.

(b) An order under this section may be granted without written or oral notice to the respondent if the court finds that the petitioner has been subjected to domestic violence and

(1) it clearly appears that there is a substantial likelihood of immediate danger from the respondent to the health, safety, or welfare

of the petitioner or of a minor child in the care of the petitioner; and

(2) the petitioner or the petitioner's attorney certifies to the court in writing the efforts, if any, which have been made to provide notice to the respondent and the reasons supporting the claim that notice should not be required.

(c) An order issued under this section may include a provision described in AS 09.55.600(b). The order shall be endorsed with the date and hour of issuance, shall be filed in the clerk's office and entered in the records of the court, and shall state the reason that it was granted without notice. The order shall remain in effect for a period not to exceed 10 days, unless extended by the court for good cause. The reasons for the extension shall be entered in the records of the court.

(d) If an order under this section is granted without notice, a hearing before the superior court for injunctive relief under AS 09.55.600 shall be scheduled by the superior court at the earliest possible time consistent with the notice provisions of AS 09.55.600. If at the hearing the petitioner does not proceed with the petition for injunctive relief, the superior court shall dissolve the emergency injunctive relief order.

(e) On two days notice to the petitioner, or on shorter notice as the superior court may prescribe, the respondent may make a motion to the superior court for the dissolution or modification of an order for emergency injunctive relief under this section. The superior court shall hear and rule on the motion in an expeditious manner.

(f) Proceedings under this section do not preclude other available civil or criminal remedies. (§ 1 ch 139 SLA 1990)

Cross reference. — As to release before trial in cases involving domestic violence, see AS 12.30.025.

Sec. 09.55.620. Forms for filing petition. (a) The Alaska court system, in cooperation with interested persons and organizations, shall prepare forms and instructions for the use of persons seeking an order for relief under AS 09.55.600 or 09.55.610, including forms for waiving filing fees on the basis of indigency. The forms shall conform to the requirements of AS 09.55.600 and 09.55.610 and the Alaska Rules of Civil Procedure, except that information on the forms may be filled in by legible handwriting. The office of the clerk of each superior and district court shall make the forms and instructions available to the public.

(b) The form for a petition prepared under (a) of this section shall include a notice that a false statement made in it stating that the respondent has subjected the petitioner to domestic violence constitutes the crime of unsworn falsification under AS 11.56.210, which is punishable by a maximum term of imprisonment of one year and a \$5,000 fine. (§ 1 ch 139 SLA 1980)

Sec. 09.55.630. Notification to law enforcement agencies. If a superior court, district court, or magistrate issues an order under AS 09.55.600 or 09.55.610 restraining a respondent from subjecting a petitioner to domestic violence, the superior court, district court, or magistrate shall transmit a copy of the order to the appropriate local law enforcement agency. Each law enforcement agency shall establish procedures to inform their peace officers of copies of the orders received by the law enforcement agency under this section. Peace officers shall use every reasonable means to enforce an order issued under AS 09.55.600 or 09.55.610. (§ 1 ch 139 SLA 1980)

Sec. 09.55.640. Definitions. For the purposes of AS 09.55.600 — 09.55.640, "domestic violence" means a crime under AS 11.41 committed against a spouse, a former spouse, or a member of the social unit comprised of those living together in the same dwelling as the respondent. (§ 1 ch 139 SLA 1980)

Sec. 11.46.350. Definition. (a) As used in §§ 300 — 350 of this chapter, unless the context requires otherwise, "enter or remain unlawfully" means to

(1) enter or remain in or upon premises or in a propelled vehicle when the premises or propelled vehicle, at the time of the entry or remaining, is not open to the public and when the defendant is not otherwise privileged to do so; or

(2) fail to leave premises or a propelled vehicle that is open to the public after being lawfully directed to do so personally by the person in charge.

(b) For purposes of this section, a person who, without intent to commit a crime on the land, enters or remains upon unimproved and apparently unused land, which is neither fenced nor otherwise enclosed in a manner designed to exclude intruders, is privileged to do so unless

(1) notice against trespass is personally communicated to him by the owner of the land or some other authorized person; or

(2) notice against trespass is given by posting in a reasonably conspicuous manner under the circumstances. (§ 4 ch 166 SLA 1978)

Sec. 11.61.120. Harassment. (a) A person commits the crime of harassment if, with intent to harass or annoy another person, he

(1) insults, taunts, or challenges another person in a manner likely to provoke an immediate violent response;

(2) telephones another and fails to terminate the connection with intent to impair the ability of that person to place or receive telephone calls;

(3) makes repeated telephone calls at extremely inconvenient hours;

(4) makes an anonymous or obscene telephone call or a telephone call that threatens physical injury; or

(5) subjects another person to offensive physical contact.

(b) Harassment is a class B misdemeanor. (§ 7 ch 166 SLA 1978)

For case construing former AS Ct. Op. No. 732 (File No. 1231), 489 P.2d 1143,35 relating to illegal use of telephones, see Anniskette v. State, Sup.

Sec. 12.25.030. Grounds for arrest by private person or peace officer without warrant. (a) A private person or a peace officer without a warrant may arrest a person

(1) for a crime committed or attempted in his presence;

(2) when the person has committed a felony, although not in his presence;

(3) when a felony has in fact been committed, and he has reasonable cause for believing the person to have committed it.

(b) In addition to the authority granted under (a) of this section, a peace officer without a warrant may arrest a person when he has reasonable cause for believing that the person has committed assault in the fourth degree under AS 11.41.230(a)(1) against a member of the person's household.

(c) As used in this section "household" means the social unit comprised of those living together in the same dwelling. (§ 2.04 ch 34 SLA 1962; am § 11 ch 166 SLA 1978; am § 33 ch 102 SLA 1980)

Sec. 12.30.025. Release before trial in cases involving domestic violence. (a) In determining the conditions of release under AS 12.30.020 in cases involving domestic violence, the court shall consider the following conditions and impose one or more conditions it considers reasonably necessary to protect the alleged victim of the domestic violence, including ordering the defendant

- (1) not to subject the victim to further domestic violence;
- (2) to vacate the home of the victim;
- (3) not to contact the victim other than through counsel;
- (4) to engage in personal or family counseling;
- (5) to refrain from the consumption of alcohol or the use of drugs.

(b) As used in this section, "domestic violence" means a crime specified in AS 11.41 committed against a spouse, a former spouse, or a member of the social unit comprised of those living together in the same dwelling as the defendant. (§ 35 ch 102 SLA 1980)

Sec. 12.55.135. Sentences of imprisonment for misdemeanors. (a) A defendant convicted of a class A misdemeanor may be sentenced to a definite term of imprisonment of not more than one year.

(b) A defendant convicted of a class B misdemeanor may be sentenced to a definite term of imprisonment of not more than 90 days unless otherwise specified in the provision of law defining the offense.

(c) A defendant convicted of assault in the third degree committed in violation of the provisions of an order issued under AS 09.55.600 or 09.55.610 shall be sentenced to a minimum term of imprisonment of 10 days. The execution of sentence may not be suspended and probation or parole may not be granted until the minimum term of imprisonment has been served. Imposition of sentence may not be suspended, except upon condition that the defendant be imprisoned for no less than the minimum term of imprisonment provided in this section, and the minimum sentence provided for in this section may not be otherwise reduced. (§ 12 ch 166 SLA 1978; am § 2 ch 139 SLA 1980)

Sec. 18.65.520. Notification to victims of domestic violence. (a) During the course of responding to an offense involving domestic violence, a police officer shall orally or in writing inform the victim of services available to the victim and the rights of the victim, substantially as follows:

As a victim of domestic violence you should be aware of the following:

(1) In some places in Alaska there are organizations that provide aid and shelter to victims of domestic violence. The nearest such organization is located at _____.

(2) If you feel that there is a continuing danger to your safety, please let me know and I will make all possible efforts to insure your safety.

(3) Alaska law provides that you may file an application with the nearest court for a court order protecting you and your children from further harm. The forms to obtain the order are available at the court. It is not necessary to have an attorney to obtain a court order but one may be of help to you. If you cannot afford to hire an attorney, you should contact the nearest Alaska Legal Services office which is located at _____.

(4) Additionally, the victim/witness assistance program of the Department of Law may be able to help you. The nearest district attorney's office is located at _____.

(b) If the victim of domestic violence does not understand English, the police officer shall make reasonable efforts to inform the victim of the services and rights specified in (a) of this section in a language the victim understands.

(c) As used in this section "domestic violence" means a crime under AS 11.41 committed against a spouse, a former spouse, or a member of the social unit comprised of those living together in the same dwelling as the person who committed the crime. (§ 3 ch 139 SLA 1980)

Sec. 22.20.130. Commissioner to be aided by the members of the division of state troopers and Alaska state constabulary. (a) The commissioner shall be assisted in the execution of the authority and duty vested in him by §§ 100—140 of this chapter by such members of the division of state troopers or Alaska state constabulary as the commissioner designates. The commissioner is responsible on his official bond for the acts of all persons so designated by him. The persons so designated have the same authority and duty granted to the commissioner and are subject to orders of the courts of the state in the same manner as the commissioner. They are responsible to the commissioner and to the courts, and shall be executive officers of the courts.

(b) The commissioner has the responsibility of providing sufficient personnel to effectively execute the authority and duty vested in him by §§ 100 — 140 of this chapter, and shall adopt the necessary rules and regulations within his department for the efficient direction, control and discipline of the members designated by the commissioner to assist him. (§ 5 ch 95 SLA 1960; am § 10 ch 117 SLA 1968)

Sec. 22.20.140. Definitions. In §§ 100 — 140 of this chapter

- (1) "commissioner" means the commissioner of public safety;
- (2) "district courts" includes sessions presided over by a magistrate;
- (3) "process" means any summons, writ, process, order or subpoena.

(§ 1 ch 95 SLA 1960; am § 34 ch 8 SLA 1971)

Domestic violence bill, OK'd

By The Associated Press

House lawmakers passed nearly a dozen bills Friday, including a measure aimed at increasing protection for victims of domestic violence and a bill funding a new school in Wasilla.

The House voted unanimously to approve \$6.2 million to rebuild the Iditarod Elementary School in Wasilla. The school was destroyed by fire in January. The appropriation bill (CSHB188 2nd Finance) sponsored by Rep. Pat Carney, D-Wasilla, would require the borough to turn over to the state any proceeds from insurance on the school.

The measure now goes to the Senate.

Legislation to strengthen a year-old law dealing with victims of domestic violence won approval on a 38-0 ballot. Under the law, a victim of domestic violence can get a speedy court order restricting the alleged offender from contact with the victim.

The bill (CSHB287 Judiciary) approved Friday would allow a judge to issue an order for 90 days, rather than the 45 days allowed now, and a victim could request an extension of up to 45 days. The bill also would give the court authority to order counseling for offenders.

The House also voted final legislative approval to a Senate resolution urging the Hammond administration to delay the planned transfer of about 30 Department of Transportation employees from Valdez to Anchorage and Fairbanks.

The resolution (SCR27 am) asks DOT Commissioner Bob Ward to delay by at least one year the transfer of DOT's design and construction unit from Valdez. The resolution, which carries no weight

of law, passed on a 32-4 vote.

Rep. Terry Martin, R-Anchorage, opposed the measure. He said lawmakers have criticized the DOT for administrative problems and having a huge backlog of capital projects.

"Now that the man (Ward) has made a major decision in trying to straighten up his department ... here we are asking him to wait 12 months," Martin said.

But Rep. Russ Meekins, D-Anchorage, said "there is a tremendous problem in DOT, but the problem is not with the design unit in Valdez." Rep. Bette Cato, D-Valdez, said the delay would allow lawmakers time to help DOT officials with their reorganization plans.

The House also approved:

—A bill (CSHB34 H SS) requiring the state Postsecondary Education Commission to prepare an annual "course transferability guide." It would include a list of all courses offered by postsecondary institutions in Alaska, and would state which courses could be transferred for credit from one school to another.

—A bill (HB485) to continue the life of the state Alcoholic Beverage Control board until July, 1982. The board regulates bars and liquor stores in the state.

—A resolution (HJR44) urging the federal government to speed processing of applications for forest land promised to Alaska Natives under a 1906 federal law. The law, which allowed natives to apply for 160 acres of national forest land, was repealed in 1971. Since then, the outstanding applications have not been processed, lawmakers said.

House OKs domestic violence bill

The Associated Press

JUNEAU — House lawmakers passed nearly a dozen bills Friday, including a measure aimed at increasing protection for victims of domestic violence and a bill funding a new school in Wasilla.



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Legislation to strengthen a year-old law dealing with victims of domestic violence won approval on a 38-0 ballot. Under the law, a victim of domestic violence can get a speedy court order restricting the alleged offender from contact with the victim.

The bill (CSHB287 Judiciary) approved Friday would allow a judge to issue an order for 90 days, rather than the 45 days allowed now and a victim could request an extension of up to 45 days. The bill also would give the court authority to order counseling for offenders.

The House also voted final legislative approval to a Senate resolution urging the Hammond administration to delay the planned transfer of about 30 Department of Transportation employees from Valdez to Anchorage and Fairbanks.

The resolution asks DOT Commissioner Bob Ward to de-

lay by at least one year the transfer of DOT's design and construction unit from Valdez. The resolution, which carries no weight of law, passed on a 32-4 vote.

Rep. Terry Martin, R-Anchorage, opposed the measure. He said lawmakers have criticized the DOT for administrative problems and having a huge backlog of capital projects.

"Now that the man (Ward) has made a major decision in trying to straighten up his department ... here we are asking him to wait 12 months," Martin said.

But Rep. Russ Meekins, D-Anchorage, said "there is a tremendous problem in DOT, but the problem is not with the design unit in Valdez." Rep. Bette Cato, D-Valdez, said the delay would allow lawmakers time to help DOT officials with their reorganization plans.

The House also approved:

- A bill (CSHB34 HESS) requiring the state Postsecondary Education Commission to prepare an annual "course transferability guide." It would include a list of all courses offered by postsecondary institutions in Alaska and would say which courses could be transferred for credit from one school to another.

- A bill (HB485) to continue the life of the state Alcoholic Beverage Control board until July, 1982. The board regulates bars and liquor stores in the state.

- A resolution (HJR44) urg-

ing the federal government to speed processing of applications for forest land promised to Alaska Natives under a 1906 federal law. The law, which allowed natives to apply for 160 acres of national forest land, was repealed in 1971. Since then, the outstanding applications have not been processed, lawmakers said.

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COMMITTEE REPORT

SENATE

5/12/81

FURTHER: Finance

Date: May 24, 1981

Mr. President:

The Committee on JUDICIARY has had CSHB 325(LSC)
Alaska Securities Act of 1959

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

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

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN



STATE OF ALASKA
OFFICE OF THE GOVERNOR

BILL ANALYSIS

Department Commerce & Economic Development	Sponsor (Principal) Adams	Bill Number CS for HB 325
Department Position Approve		
Division Director <i>Willis F. Kirkpatrick</i> Willis F. Kirkpatrick	Date 4/7/81	Commissioner Charles R. Webber
Date		

GOVERNOR'S OFFICE USE

Comments:

Position Noted By _____ Date _____

SUMMARY

1. a) Related bills (Similar or Conflicting) None	1. b) Other Agencies Affected by Bill None
2. a) Organizational Support for Bill BBNC AFN	2. b) Organizational Opposition to Bill None of which I am aware

3. Program Effects of Bill
See original analysis

4. Fiscal Impact: None Fiscal Note Attached to original analysis

5. Amendments Proposed:
Have been incorporated in committee substitute as a result of testimony offered at House Commerce & Labor Committee.

6. Comments:
OK as amended with fiscal note as attached to original analysis

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
 Bill/Resolution No. House Bill 325
 Title An Act Relating to Orders Under the Alaska Securities Act of 1959
 Requested by Adams Date 3/21/81

II. FISCAL DETAIL
 Agency Affected Commerce and Economic Development
 Program Category Affected Consumer Protection
 BRU, Program, or Subprogram(s) Affected Banking and Securities
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)
EXPENDITURES (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES		22.1	23.4	24.8	26.3	27.9
200 TRAVEL		10.0	10.5	11.0	11.5	12.0
300 CONTRACTUAL		2.7	2.7	2.7	2.7	2.7
400 COMMODITIES		1.0	1.0	0	0	0
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	0	35.8	37.6	38.5	40.5	42.6

FUNDING (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
GENERAL FUND	0	35.8	37.6	38.5	40.5	42.6
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
FULL TIME		1	1	1	1	1
PART TIME		0	0	0	0	0
TEMPORARY		0	0	0	0	0

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

See attached.

IV. DATE 3/16/81 PREPARED BY James J. Thompson J. Blum
 AGENCY Dept of Commerce & Econ Dev.
 PHONE 465 2521
 Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

FISCAL NOTE

When AS 45.55.139 was enacted in 1977, the Division of Banking and Securities had no prior history or other documentation to show the potential impact of administering proxy laws and regulations relative to the Alaska Native Claims Settlement Act. Based on investigative time and costs incurred in this area since 1977 and on the fact that 31 regional and village corporations currently come under the provisions of AS 45.55.139 and this proposed legislation, the projected costs are reasonable.

Travel costs include investigative travel of securities staff for hearings and witness travel costs. Contractual cost is for additional persons as required by the Department of Administration pursuant to the memorandum of February 5, 1981.

1	POSITION TITLE Administrative Support Tech II			RANGE/STEP 8A	BARG. UNIT. G	LOCATION Juneau	GOV	APPROV	DISAPP
2	TYPE OF POSITION PFT	STAFF MONTHS 12	RP No.	FCN No. 1186	PRIORITY	FORM 12 PAGE/LINE	LEG		

3 TYPE OF EXPENDITURE		AMOUNT	
1	2	3	
PERSONAL SERVICES:			
4 SALARY	\$1,393/month	16.7	
5 BENEFITS		2.6	
6 FICA		1.0	
7 HEALTH INS.		1.8	
8 TOTAL PERSONAL SERVICES	01		
9 TRAVEL	02	22.1	
10 CONTRACTUAL	03	0	
11 COMMODITIES	04	1.0	
12 EQUIPMENT	05	0	
13 OTHER space costs		2.7	
14 TOTAL COST		25.8	

JUSTIFICATION:

See Bill Analysis and Fiscal Note to ^{CSF} House Bill 325, and SB 411.

CODE	FUNDING SOURCE	
15	FED RCPTS. 1002	
16	GF MATCH. 1003	
17	GEN. FUND 1004	25.8
18	I-A RCPTS. 1005	
19	PGM RCPTS 1028	
20	OTHER	

21 CONTINUATION		FOR B&M USE ONLY
22 ADDITION	X	

AA KEY NUMBER _____ COLUMN NO. _____

AGENCY Commerce and Economic Development PROGRAM Consumer Protection

BRU Banking and Securities

COMPONENT Financial Institutions

13 REQUEST FOR NEW POSITION.

FY 82

Page _____ of _____

REVISED DATE _____

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B

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BERNARD P. KELLY
L. AMES LUCE
GREGORY J. GREBE

LAW OFFICES
KELLY & LUCE
A PROFESSIONAL CORPORATION
1015 WEST SEVENTH AVENUE
ANCHORAGE, ALASKA 99501

(907) 279-9571

April 12, 1982

Senator Pat Rodey
Pouch V
Juneau, Alaska 99811

Re: House Bill 332

Dear Senator Rodey:

Last Thursday, April 8, 1982, the State House, in its wisdom, saw fit to pass HB332, a copy of which is heretofore attached. This Bill grants immunity to aviation fuel refiners for civil liability for contaminated or impure fuel which they manufacture or deliver.

It is inconceivable to imagine a piece of legislation which is more diametrically opposed to the interests of your constituents than this piece of legislation. A large majority of Alaskans are required to utilize aircraft as a primary means of travel, for both business and recreational purposes. Under HB332, the grievous injuries and/or death that may be caused as a result of fuel refiners' negligently and/or defectively manufactured, stored or delivered products would go uncompensated.

A situation could easily be imagined where a 747, with 200-300 people on board might crash on take-off because of contaminated fuel which had originated from and was the responsibility of a fuel refiner, or that you or I might meet the same fate in light aircraft operation. Why one of the largest commercial concerns in the United States should be granted immunity under such situations defies reason and cries of injustice.

Under our present legal system, the refiners have ample safeguards to protect their interests, in that proof must be established of contaminated fuel when it left their custody or control.

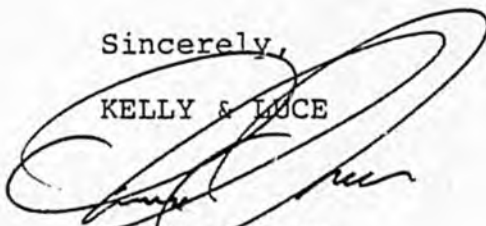
This piece of legislation will be referred to the Senate within the next several days. I would request if you would be kind enough to keep me advised of its progress.

Senator Pat Rodey
Page 2
April 12, 1982

I would further request your consideration in having
the same defeated.

Sincerely,

KELLY & LUCE

A large, stylized handwritten signature in black ink, appearing to read "L. Ames Luce". The signature is written over the typed name "KELLY & LUCE".

L. Ames Luce

LAL/cb

Enclosure

H

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COMMITTEE REPORT

SENATE

3/18/82

FURTHER: State Affairs

Date:

May 7, 1982

Mr. President:

The Committee on JUDICIARY has had CSHB 339(SA) am
judicial review of administrative regulations

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

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for HB 339 LD same title
 new title
- and recommends has introduced become statute
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

[Signature]

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

NO REC.

Original sponsors: Metcalfe, Abood,
Barnes, et al

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 339 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to adoption of administrative regula-
7 tions."

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

9 * Section 1. AS 24.30 is amended by adding a new section to read:

10 *Statement* Sec. 24.30.032. REGULATIONS STATEMENT ON BILLS. Each bill that
11 would require the adoption of regulations ~~if~~ enacted into law shall
12 contain a statement granting express authority to adopt those regula-
13 tions. If a bill does not contain this statement of authority, an
14 agency may not adopt regulations to implement, interpret, or otherwise
15 carry out the provisions of the statute or statutes enacted by or other-
16 wise affected by the bill.

17 * Sec. 2. APPLICABILITY. AS 24.30.032 added by sec. 1 of this Act applies
18 to bills introduced into the Alaska legislature after the adjournment of the
19 Second Session of the Twelfth Legislature. The authority granted by a state-
20 ment required by AS 24.30.032 applies to statutory provisions added or amended
21 by the Thirteenth Legislature or subsequent legislatures, and does not affect
22 regulations adopted under statutory provisions added or amended before the
23 Thirteenth Legislature, regardless of whether these regulations were adopted
24 by express authority, implied authority, or under the general authority
25 granted to a department or agency to adopt regulations to carry out the
26 provisions of a title or chapter.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3600


LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

May 28, 1982

SUBJECT: Adoption of administrative regulations
(HB 339)

TO: Senator Patrick M. Rodey
Representative Ray H. Metcalfe
Chairmen, Conference Committee on HB 339

FROM: Richard A. Bradley 
Legislative Counsel

The last sentence of the proposed Sec. 24.30.032 contains the following proposed language:

If a bill does not contain a statement prohibiting the adoption of regulations, an agency may adopt regulations to implement the statute or statutes enacted or otherwise affected by the bill.

The language appears to reverse the rule apparently conceded by Assistant Attorney General Art Peterson in his May 24th memorandum to Representative Metcalfe on an earlier version of HB 339: that an agency may only adopt "legislative type" regulations (as opposed to "interpretive type" regulations) to implement a statutory scheme if the legislature grants the agency the authority to adopt regulations. The committee may have intended the result and it may not be undesirable.

But since the focus of this bill is on the practices of the executive in the adoption of regulations, if the committee had in fact not intended this result, I did not want the committees to miss the implication of the language. It says that in the absence of an affirmative prohibition, an agency automatically is granted the authority to adopt regulations, at least once a general statutory scheme is modified by a bill not containing a prohibition.

RAB:ljb

Original sponsors: Metcalfe, Abocd,
Barnes, et al

Offered: 5/10/82
Referred: State
Affairs

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 339 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to adoption of administrative regula-
7 tions."

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

9 * Section 1. AS 24.30 is amended by adding a new section to read:

10 Sec. 24.30.032. REGULATIONS STATEMENT ON BILLS. Each bill ^{MM4} shall
11 contain a statement ~~regarding~~ the adoption of regulations by the agency
12 affected by the bill. The statement shall ^{PROHIBIT} ~~grant~~ the express authority
13 to adopt regulations to implement ^{the PROHIBITED STATUTES} ~~the provisions~~ of the bill. If a bill
14 ~~does not contain~~ this statement of ^{PROHIBITION} ~~authority,~~ an agency may ^{NOT} ~~adopt~~
15 regulations to implement the statute or statutes enacted by or otherwise
16 affected by the bill.

17 * Sec. 2. APPLICABILITY. AS 24.30.032 added by sec. 1 of this Act applies
18 to bills introduced into the Alaska legislature after the adjournment of the
19 Second Session of the Twelfth Legislature. The authority granted by a state-
20 ment required by AS 24.30.032 applies to statutory provisions added or amended
21 by the Thirteenth Legislature or subsequent legislatures, and does not affect
22 regulations adopted under statutory provisions added or amended before the
23 Thirteenth Legislature, regardless of whether these regulations were adopted
24 by express authority, implied authority, or under the general authority
25 granted to a department or agency to adopt regulations to carry out the
26 provisions of a title or chapter.

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Ray - Bureau should be on legislature - indicate portions which regulations cannot ~~be~~ be adopted under.



Official Business

Alaska State Legislature

Senate

Committee on Judiciary

Touch V
State Capitol
Juneau, Alaska 99811

MINUTES OF THE SENATE JUDICIARY COMMITTEE

OF

May 7, 1982

Butrovich Committee Room, State Capitol Juneau, Alaska

Legislation Before Committee:

SB 210 - "An Act relating to child custody."

HB 47 - "An Act relating to the prohibition against waste of the meat of wild food animals."

HB 74 - "An Act relating to the rights of debtors and creditors."

HB 339 - "An Act relating to the judicial review of administrative regulations."

HB 591 - "An Act making corrective amendments in the Alaska Statutes as recommended by the revisor of statutes; 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, Anderson, Parr, and Ray. Senator Bennett was absent.

001 - Call to order.

005 - HB 210 was brought before the committee.

008 - Mr. Bruce goes over the changes in the committee substitute.

531 - After discussion, Chairman Rodey laid HB 210 on the table.

535 - Chairman Rodey next brought HB 47 before the committee.

537 - Mr. Bruce goes over the committee substitute.

556 - Ed Hein, Legal Services, testified, explaining the committee substitute.

705 - Senator Anderson moved the following: On Page 3, Line 25, delete [WALRUS] and delete [EXCEPTED]. Also on Page 3, Line 25, invert EXEMPTION and ANIMALS, so that it would read ANIMAL EXEMPTION. On Line 26, Page 3, delete [walrus if] and insert animals which. On Line 27, Page 3, delete [them]. There was no objection.

721 - Senator Ray moved to adopt the Senate committee substitute. There was no objection.

724 - Senator Rodey moved to pass SCSHB 47 from committee. There was no objection and the bill was passed.

733 - The next item on the agenda was HB 339.

740 - Diane Colvin, Department of Law, testified explaining the new draft.

870 - Senator Parr stated that his intent was not being met by this bill. He wanted statutes listed by specific sections, not titles and chapters which was not being set out by this legislation.

149 - Senator Parr moved to pass HB 339 with language in Diane Colvin's memo + sec. 2 of the draft committee substitute with individual recommendations. See attached.

221 - Next, Chairman Rodey brought HB 74 before the committee.

223 - Dickerson Regan, Code Revision Commission, testified, suggesting that the committee pass the bill as is because changes can be made by the revisor of statutes next year.

327 - Senator Anderson moved to pass the bill with individual recommendations.

336 - The last item on the agenda was HB 591.

340 - Mr. Walker testified in favor of this bill.

440 - Senator Anderson moved to pass HB 591 with individual recommendations. There was no objection.

444 - The meeting adjourned at 3:00 P.M.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

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

MEMORANDUM

April 30, 1982

SUBJECT: Statutory authority for regulations
(SCS HB 339)

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

FROM: Diane T. Colvin *DC*
Legislative Counsel

In connection with committee work on HB 339, you asked me to prepare a proposal in response to Senator Parr's suggestion on the need for specific, rather than general, statutory authority for administrative regulations. I had previously proposed an amendment to AS 44.62.020; suggested language for that amendment is contained in my memorandum to Senator Nels Anderson of April 28th.

Another possibility would be to amend AS 24.30, relating to the enactment of statutes, to require that all bills contain express language on the adoption of regulations. I believe this may be closer to meeting Senator Parr's intent. A new section could be added to this chapter to read:

Sec. 24.30.032. REGULATIONS STATEMENT ON BILLS. Each bill shall contain a statement regarding the adoption of regulations by the agency affected by the bill. The statement shall grant the express authority to adopt regulations to implement the provisions of the bill. If a bill does not contain this statement of authority an agency may not adopt regulations to implement the statutes affected by the bill.

It is the opinion of this office that this proposal, if enacted, would have a detrimental effect on the operations of all state departments and agencies. There would be a great deal of confusion resulting from any bills enacted which did not contain this statement but which affected

Senator Rodey
Page 2
April 30, 1982

statutes which are part of a broad statutory scheme or part of an integrated title.

In our opinion, there is no single approach which would cure this problem. The only solution would be to go through the statutes and remove, title by title or chapter by chapter, the general authority of departments and agencies to adopt regulations.

If we can be of further assistance, please do not hesitate to contact us.

DTC:ljb

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

JAY S. HAMMOND, GOVERNOR

POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99611
PHONE: (907) 465-3600

May 24, 1982

The Honorable Ray Metcalfe
Alaska State House of Representatives
Pouch V
Juneau, Alaska 99811

Re: Variations on HB 339
(administrative regulations)

Dear Representative Metcalfe:

This is a follow-up on our conversation of last Friday, during which we discussed various possible amendments to AS 44.62.030. You will recall that I said that, although the Department of Law does not think that the change is a good idea, I would mull over your proposal for the following amendment which would be the sole change made by the bill:

. . . no regulation adopted is valid or effective unless consistent with the statute and the public benefits resulting from the regulation clearly warrant the burdens placed on persons who are adversely affected by the regulation [REASONABLY NECESSARY TO CARRY OUT THE PURPOSE OF THE STATUTE].

However, after mulling it over, I think that the following version would be better, avoiding some interpretation problems:

. . . no regulation adopted is valid or effective unless it is consistent with the statute, [AND] reasonably necessary to carry out the purpose of the statute, and, in situations in which persons are adversely affected by the regulation, the public benefits resulting from the regulation warrant the burdens placed on the persons adversely affected by the regulation.

The "it is" is merely a grammatical clarification. The main change in your wording is that this version adds rather than substitutes your new standard, so that, in the situations in which no person can be identified as "adversely" affected, the traditional "reasonableness" standard will still apply. This version also deletes "clearly" from your wording (in

May 24, 1982

front of the word "warrant").

I must repeat that the Department of Law can not support this amendment of AS 44.62.030. However, we will agree that, if this is the version that is finally passed by the legislature, we will not advise the governor to veto it. But, if he should want to veto it anyway, we would not urge him not to do so.

You also have asked that I put my comments regarding the unconstitutionality of the Senate's version, SCS CSHB 339(Jud), in writing. The problem lies in the third sentence of sec. 1's new AS 24.30.032, stating: "If a bill does not contain this statement of authority, an agency may not adopt regulations to implement the statute or statutes enacted by or otherwise affected by the bill." As I mentioned to the Senate Judiciary Committee, that sentence does not recognize the distinction between "legislative" type administrative regulations and "interpretive" or "interpretative" type administrative regulations. The distinction is imbedded in many statutes and court decisions, as well as in scholarly literature. If that sentence is interpreted as applying to interpretive regulations, then it would be an undue interference with the executive branch's execution of the laws. An administrative regulation is one kind of indispensable tool the executive uses in meeting its constitutional obligations and performing its constitutional duties. An administrative regulation sets out in writing, for prospective application, the rules applicable to a particular program or function. It thus avoid purely arbitrary decision making on a case-by-case basis. (Obviously, the regulation will be applied to situations as they arise, but the room for decisions made without guidelines is much smaller.)

The Senate version has other problems in it, too. The most obvious and most serious one is that of inadvertent failure by a future legislature or drafter to include the required regulations statement. To the extent that legislative type regulations are needed, that simple failure could virtually close down or prevent a program or function that has overwhelming legislative and public support. While the idea of having legislation deal more specifically with the permissible area of administrative regulations for a particular program is a good one, the provisions in that version of the bill do not achieve that result. Instead, they create problems.


The Honorable Ray Metcalfe -3-

May 24, 1982

Yours truly,

WILSON L. CONDON
ATTORNEY GENERAL

By:


Arthur H. Peterson
Assistant Attorney General
and Regulations Attorney

WLC/AHP/11b

cc: Senator Patrick Rodey

Senator Nels Anderson

Honorable Keith Specking
Legislative Assistant
Governor's Office

STATE OF ALASKA
THE LEGISLATURE

FOUCH Y. STATE CAPITOL
JULIEN U. ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 30, 1982

SUBJECT: Statutory authority for regulations
(SCS HB 339)

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

FROM: Diane T. Colvin *DC*
Legislative Counsel

In connection with committee work on HB 339, you asked me to prepare a proposal in response to Senator Parr's suggestion on the need for specific, rather than general, statutory authority for administrative regulations. I had previously proposed an amendment to AS 44.62.020; suggested language for that amendment is contained in my memorandum to Senator Nels Anderson of April 28th.

Another possibility would be to amend AS 24.30, relating to the enactment of statutes, to require that all bills contain express language on the adoption of regulations. I believe this may be closer to meeting Senator Parr's intent. A new section could be added to this chapter to read:

Sec. 24.30.032. REGULATIONS STATEMENT ON BILLS. Each bill shall contain a statement regarding the adoption of regulations by the agency affected by the bill. The statement shall grant the express authority to adopt regulations to implement the provisions of the bill. If a bill does not contain this statement of authority an agency may not adopt regulations to implement the statutes affected by the bill.

It is the opinion of this office that this proposal, if enacted, would have a detrimental effect on the operations of all state departments and agencies. There would be a great deal of confusion resulting from any bills enacted which did not contain this statement but which affected

Senator Rodey
Page 2
April 30, 1982

statutes which are part of a broad statutory scheme or part of an integrated title.

In our opinion, there is no single approach which would cure this problem. The only solution would be to go through the statutes and remove, title by title or chapter by chapter, the general authority of departments and agencies to adopt regulations.

If we can be of further assistance, please do not hesitate to contact us.

DTC:ljb

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 29, 1982

SUBJECT: . Judicial review of administrative rules
(SCS HB 339)

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

FROM: Diane T. Colvin *DTC*
Legislative Counsel

Attached is a draft SCS for HB 339, version 2. The original request on this version contemplated the use of an executive order to trigger a shifting of the burden of proof, presumably to allow the legislature the opportunity to override the governor's decision. However, the use of an executive order is not appropriate in this instance. By Article III, Sec. 23 of the Alaska Constitution, executive orders are reserved for matters pertaining to the organization of the executive branch. Section 23 specifically provides a mechanism for legislative disapproval of these executive orders.

Because an executive order is not appropriate here, I have substituted an administrative order. This leaves the governor with little motivation not to execute one of these orders whenever a rule is challenged. Thus it may be appropriate for the committee to consider setting some legislative standards for when an order could be adopted by the governor.

If you wish further information, please contact us.

DTC:ljh

Enclosure

Original sponsors: Metcalfe, Abood,
Barnes, et al

THE HOUSE

BY THE JUDICIARY COMMITTEE

SENATE CS FOR CS FOR HOUSE BILL NO. 339 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWELFTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the validity and judicial review of
administrative regulations."

IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 44.62.030 is amended to read:

Sec. 44.62.030. CONSISTENCY BETWEEN REGULATION AND STATUTE. If,
by express or implied terms of a statute, a state agency has authority
to adopt regulations to implement, interpret, make specific or otherwise
carry out the provisions of the statute, no regulation adopted is valid
or effective unless consistent with the statute and unless the burdens
imposed on the public by the regulation are outweighed by the benefits
accruing to the public from the regulation [REASONABLY NECESSARY TO
CARRY OUT THE PURPOSE OF THE STATUTE].

* Sec. 2. AS 44.62.300 is amended by adding a new subsection to read:

(b) In an action under (a) of this section brought on the ground
that the burdens imposed on the public by the regulation are not out-
weighed by the benefits accruing to the public from the regulation as
required by AS 44.62.030, the state has the burden of proving that the
burdens imposed on the public by the regulation are outweighed by the
benefits accruing to the public from the regulation unless the governor
has adopted an administrative order objecting to the burden of persuasion
on that regulation, in which case the burden is on the person bringing
the action under (a) of this section to prove that the burdens imposed
on the public by the regulation are not outweighed by the benefits
accruing to the public from the regulation.

STATE OF ALASKA THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 28, 1982

SUBJECT: Agency regulations
(SCS HB 339)

TO: Senator Nels A. Anderson, Jr.

FROM: Diane T. Colvin
Legislative Counsel

In considering amendments to HB 339, you have expressed your concern that agency regulations often appear to be adopted with no specific statutory authority. You and Senator Parr have suggested that one way to cure this problem might be to require that no regulation be adopted unless it is under the authority of a specific section of the statutes.

Theoretically, this problem should not require a statutory cure, because at the present time no agency has authority, with regard to substantive regulations, other than to adopt rules pursuant to statutory authority and which implement a statute. The Administrative Procedure Act does not expand this authority, and, in fact, AS 44.62.020 specifically provides:

. . . AS 44.62.010 - 44.62.320 do not confer authority upon or augment the authority of a state agency to adopt, administer, or enforce a regulation. To be effective, each regulation adopted must be within the scope of authority conferred and in accordance with standards prescribed by other provisions of law.

In addition, AS 44.62.200 requires that each notice of a proposed adoption, amendment or repeal of a regulation published by an agency contain the following:

(2) reference to the authority under which the regulation is proposed and a reference to the particular code section or other provisions of law which are being implemented, interpreted, or made specific;

Senator Nels A. Anderson, Jr.
Page 2
April 28, 1982

Despite strictures such as these, abuses do occur, and, this, of course, is your concern. In regard to your suggestion concerning adoption of rules only on specific statutory authority, I would make the following suggestion. While it does not prohibit anything not already prohibited by law, it may help to solve some of the problems that are of concern to you.

Amend AS 44.62.020 to read:

Sec. 44.62.020. AUTHORITY TO ADOPT, ADMINISTER, OR ENFORCE REGULATIONS.

Except for the authority conferred upon the lieutenant governor in AS 44.62.130 - 44.62.170, AS 44.-62.010 - 44.62.320 do not confer authority upon or augment the authority of a state agency to adopt, administer, or enforce a regulation. To be effective, each regulation adopted must be within the scope of authority conferred, specifically authorized by law, and in accordance with standards prescribed by other provisions of law.

Note that this section is not now affected by HB 339, so that if adopted a new bill section would be added.

If you have further questions, please do not hesitate to contact us.

DTC:ljb

cc: Senator Patrick M. Rodey



Official Business

Alaska State Legislature

Senate

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

MINUTES OF THE SENATE JUDICIARY COMMITTEE

OF

APRIL 29, 1982

Butrovich Committee Room, State Capitol Juneau, Alaska

Legislation Before Committee:

- HB 184 - "An Act authorizing convening special sessions of the legislature at any location in the state."
- HB 621 - "An Act providing for the issuance of certificates of birth for persons born outside the United States and adopted by Alaska residents."
- HB 678 - "An Act relating to membership in 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 5:10 P.M. Committee members present were: Senators Anderson, Parr, and Rodey. Senators Bennett and Ray were absent.

003 - Call to order.

010 - Mr. Bruce distributed HB 184, Rep. Martin's bill.

019 - Senator Anderson moved to pass HB 184. There was no objection.

053 - Chairman Rodey brought HB 621 before the committee.

060 - Joan Brooks, Vital Statistics, testified in favor of HB 621.

192 - Jan Ivey, Juneau Adoptive Parents Group, testified in favor of this legislation also.

267 - Chairman Rodey laid HB 621 on the table.

276 - The next item on the agenda was HB 678.

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

293 - The last item of business was HB 339.

297 - Mr. Art Peterson, Department of Law, testified, stating that if the burden of proof agreement were taken out of , then the Department of Law would be in agreement with this bill.

348 - Diane Colvin, Department of Law, testified, explaining the committee substitute.

709 - After brief discussion, Chairman Rodey laid HB 339 on the table.

712 - Chairman Rodey adjourned the meeting at 5:50 P.M.



Alaska State Legislature

Senate

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

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.

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 . 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 Rodey 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 861 and SB 175 to the State Affairs Committee for further work.

525 - Chairman Rodey adjourned the meeting at 2:45 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 27, 1982

Butrovich Committee Room, State Capitol Juneau, Alaska

Legislation Before Committee:

HB 210 - "An Act relating relating to child custody."

HB 184 - "An Act authorizing convening special sessions of the legislature at any location in the state."

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 5:10 P.M. Committee members present were: Senators Parr, Anderson, and Rodey. Senators Bennett and Ray were absent.

003 - Call to order.

007 - Chairman Rodey brought HB 210 before the committee.

024 - Ninna Kinney, representing Department of HESS, testified in support of HB 210.

348 - Mr. Bruce relayed concerns expressed by telephone calls.

406 - Senator Parr suggested the following amendment: Page 3, Line 12, delete [After the first conference either party may withdraw, or], and on Page 3, Line 14, delete [Upon withdrawal by either party or]. There was no objection.

510 - Senator Parr moved to pass CSHB 210 from committee with individual recommendations. There was no objection.

528 - Chairman Rodey brought HB 339 before the committee.

535 - Mr. Bruce explains the changes made by the committee substitute.

561 - Diane Colvin, Legal Services, testified giving explanation of committee substitute.

766 - Senator Rodey asks Mr. Bruce to work with Diane Colvin to prepare better language which would require regulations to derive from specific sections of statutes rather than general chapter provisions.

827 - Chairman Rodey laid HB 339 on the table.

831 - Chairman Rodey brought HB 184 before the committee.

SIDE TWO

967 - Chairman Rodey requested Mr. Bruce to get information on special sessions being convened in other areas of the state if the majority so wishes.

985 - The meeting was adjourned at 6:10 P.M.

April 27, 1992

The Honorable Nels Anderson
Alaska State Senate
Pouch "V", State Capitol Building
Juneau, AK 99811

Re: CSHB 339 (State Affairs) am

Dear Mr. Anderson:

As Chairman of the Subcommittee for this bill we request your consideration of our position on this bill. Please consider the following remarks as testimony related to the bill. We would also appreciate being a part of any discussions related to the bill.

We support the House Version of 339. Similarly, we support any legislation that requires a more thorough justification or review prior to adopting the regulation. We feel this bill does that. Specific comments are included below related to each Section of the bill.

In Section 1 we propose to delete the words "or implied" in line eleven since a law passed by the legislature should not leave interpretation up to the Executive Branch. If clarity is required other than can be expressed in a wording of a statute then we propose a "letter of intent" accompany the law.

In Section 2 we question the need to exclude the Boards of Fisheries & Game from subsection 030. We feel it would be very easy for the Department of Fish & Game or the Board to site a demonstrated need for the regulations and should not be provided special treatment. In fact, existing policies, I am sure, require a management plan or similar document explaining the purpose of the regulation which in our opinion would reflect the demonstrated need for the regulation.

In Section three we are opposed to including subsection three as a burden of proof since all regulations adversely affect the economic viability of private businesses.

In our opinion this legislation would put the Executive Branch on notice that proposed regulations must be better justified and the Department of Law would expand its role in reviewing proposed regulations by requiring the agency to demonstrate a need for the regulation. If such should be the case, litigation costs could be avoided as well as the time consumed in court.

Should you desire further discussion regarding our concerns we would be happy to meet with you at any time.

Sincerely,

Frank Seymour

Frank Seymour
Executive Vice President
Cape Fox Corporation

cc: Robert Ziegler
Terry Gardiner
Oral Freeman
Robert Loescher

Karen Sawell

Govt. Affairs Rep.

CFC

781-9977

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 27, 1982

SUBJECT: Validity of Administrative Rules
(SCS CSHB 339)

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

FROM: Diane T. Colvin *DTC*
Legislative Counsel

You have asked us to prepare a draft Senate Committee Substitute for CSHB 339, relating to administrative regulations. That draft is attached, and incorporates the changes you submitted to us. However, we have the following comments on deletion of the words "or implied" from AS 44.62.030.

What this proposed change accomplishes is to apply different standards for testing the validity of a regulation for regulations adopted by express terms of a statute and for regulations adopted by implied terms of a statute. That is, under AS 44.62.030, as amended by the SCS, a regulation adopted by express terms of a statute would, in order to be valid, have to be consistent with the statute and the burdens imposed would have to outweigh the benefits accrued, while a regulation adopted by implied terms would arguably not have to meet these statutory standards. This is not, in our opinion, advisable, since it is difficult to argue that one type of regulation should be treated differently than another.

This may have been your intent in adopting these amendments. However, it appears that the intent of this amendment may have been to modify the power of an administrative agency to adopt a regulation by implication. This is not accomplished, we believe, by the amendment suggested. The deletion of the words "or implied" does not affect an agency's authority in any substantive way, but simply, as indicated above, applies different standards to regulations adopted by express terms or by implied terms.

If you wish further information on this matter, please contact us.

DTC:j'n

Enclosure

Colvin ✓
4/27/82

Original sponsors: Metcalfe, Abood,
Barnes, et al

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 339 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the validity of administrative
7 regulations."

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

9 * Section 1. AS 44.62.030 is amended to read:

10 Sec. 44.62.030. CONSISTENCY BETWEEN REGULATION AND STATUTE. If,
11 by express [OR IMPLIED] terms of a statute, a state agency has authority
12 to adopt regulations to implement, interpret, make specific or otherwise
13 carry out the provisions of the statute, no regulation adopted is valid
14 or effective unless consistent with the statute and unless the burdens
15 imposed on the public by the regulation are outweighed by the benefits
16 accruing to the public from the regulation [REASONABLY NECESSARY TO
17 CARRY OUT THE PURPOSE OF THE STATUTE].

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19 44 62.0

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25 Smallest Citation POSSIBLE IN ADOPTION OF
26 REGULATIONS BY ADMINISTRATIVE AGENCIES.
27
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29

PHIL R. HOLDSWORTH, P.E.
CONSULTING ENGINEER & LEGISLATIVE COUNSEL
MINING — GEOLOGY — LANDS

PHONE 907-586-1383

326 FOURTH STREET, No. 1009
JUNEAU, ALASKA 99801

April 26, 1982

Senator Nels Anderson
Pouch "V"
Juneau, Alaska 99811

Dear Sen. Anderson:

Following are my comments on CSHB 339(SA) am.

1. Page 1, Line 11 - I agree with Senator Parr that the removal of the words "or implied" would eliminate the discretionary powers now allowed a state agency to "imply" legislative intent.
2. Sec. 2. of the bill speaks to several sections of the Fish & Game Code. AS 16.05.251 has to do with the Board of Fisheries. AS 16.05.255 covers the Board of Game. AS 16.05.260 provides for the creation of Advisory Committees. All three of these sections require that regulations shall be adopted under AS 44.62. AS 16.05.257 has to do with Subsistence Hunting Regulations and only portions of this section require AS 44.62 procedure. The purpose of this section is unclear to me and I see no reason for its adoption.
3. The purpose of Sec. 3. of the bill is quite clear. It provides that if the validity of a regulation is questioned through court action, the burden of proof as to validity lies with the agency adopting the regulation. This would appear to be proper as the guidelines spelled out in AS 44.62.010 are quite clear. If these guidelines are not followed, the burden of proof should lie with the regulator - not the regulated. The "(a)" on Line 24 of this section refers to the present AS 44.62.300 which reads as follows:

Sec. 44.62.300. Court review. An interested person may get a judicial declaration on the validity of a regulation by bringing an action for declaratory relief in the superior court. In addition to any other ground the court may declare the regulation invalid (1) for a substantial failure to comply with AS 44.62.010 - 44.62.320, or (2) in the case of an emergency regulation or order of repeal, upon the ground that the facts recited in the statement do not constitute an emergency under Sec. 250 of this chapter.