

ALASKA LEGISLATURE COMMITTEE FILES 1903-1904 00/2

2494 SJ SB 1 - SB 24 2494

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ALASKA STATE LEGISLATURE - SENATE

SENATOR RICHARD I. ELIASON

LABOR AND COMMERCE COMMITTEE, CHAIRMAN
RESOURCES COMMITTEE
JUDICIARY COMMITTEE
FISHERIES SUB-COMMITTEE



P.O. BOX 143
SITKA, ALASKA 99835
POUCH V
JUNEAU, ALASKA 99811
(907) 465-4916

April 15, 1983

Lee W. Armaker, Mayor
City of Craig
P. O. Box 23
Craig, Alaska 99921

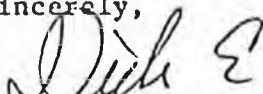
Dear Lee:

Thanks for your recent letters. I understand your concern about the definition of "developed" on line 22, page 106 of Senate Bill 1, relating to municipal government.

Senate Bill 1 is a very complicated measure, and I seriously doubt that it will pass this year. However, we will research your concern and, if possible, amend the bill to allow the municipalities to keep their tax base.

I appreciate your bringing this to my attention, and I have referred your letter to the Senate Committee on Community and Regional Affairs, chaired by Sen. Frank Ferguson, for consideration.

Sincerely,


Sen. Dick Eliason



CITY OF CRAIG

P.O. Box 23
Craig, Alaska 99921
(907) 826-3275

March 25, 1983

The Honorable Richard I. Eliason
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Dear Senator Eliason:

I am writing with reference to Committee Substitute for Senate Bill No. 1 ("An act Relating to municipal government; and providing for an effective date."). My particular concern is the definition of "developed" on line 22, page 106 of the bill. The definition specifically excludes from the definition of "developed": "surveying, construction of roads, providing utilities or other similar actions normally considered to be component parts of the development process, but in this paragraph..."

Our attorney believes, and I concur, that this definition would likely exclude logging, a major industry on Prince of Wales Island, from being defined as a development. Such a definition would render privately owned timber land as exempt from paying property taxes.

I urge you to examine and amend this particular language. The Governor is speaking of making cities become more financially independent. This definition could seriously damage the ability of many small cities even to maintain their present level of financial independence.

Thank you for your consideration in this and other matters. I appreciate your efforts in our behalf.

Sincerely,

Lee W. Axmaker
Mayor

LWA/hg

cc: Members of City Council



Official Business

Alaska State Legislature

Senate Committee on Community & Regional Affairs

Pouch V
State Capitol
Juneau, Alaska 99811

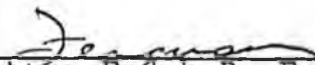
LETTER OF INTENT TO CSSB 1

February 24, 1983

It is the intent of the Senate Community and Regional Affairs Committee that the assumption of the education power by newly formed or upgraded first class or home rule cities be dependent upon a vote in the existing Regional Education Attendance Area. If the vote both within the city and in the remainder of the REAA was not in favor of the city assuming the education power, it would not.

This Letter of Intent was discussed and unanimously approved by the Senate C & RA Committee. The attached page labelled "Proposed Amendment #10" is what the committee members had in front of them when the Letter of Intent was endorsed. The longer attached amendment, drafted by Legal Services, represents all of the actual changes that need to be made to SB 1 to carry out the Letter of Intent.

Though the committee strongly endorse this concept it was felt the full amendment should be available for review before it was adopted, which is why this method of presentation was followed. The Community and Regional Affairs Committee urges the Finance Committee to incorporate the intent of the attached proposed Amendment #10 into SB 1.



Senator Frank R. Ferguson
Chairman

S-E-N-A-T-E---A-M-E-N-D-M-E-N-T

PROPOSED SENATE AMENDMENT

By Community & Regional Affairs Committee

To: _____ SENATE BILL No. 1

To: _____ HOUSE BILL No. _____

PAGE: LINE:

Note: This change is listed as a proposal rather than an amendment because of the complex drafting that will be required to make sure all the necessary sections are cross referenced. Legal Services has reviewed this proposal and suggested this approach because of time constraints. If the Committee approves this proposal, Legal Services will incorporate it as part of the Committee Substitute.

Page 10, after line 19, insert new section:

"29.05.145. ASSUMPTION OF THE EDUCATION POWER. (a) When an unincorporated area or second class city that is part of a Regional Education Attendance Area incorporates or upgrades to first class or home rule city status, the assumption of the education power shall be in accordance with this section

(b) When an unincorporated area or city that is part of a REAA incorporates or upgrades to first class or home rule city status, that Director of Elections shall conduct an election in the REAA within 90 days of the incorporation.

(c) At this election, voters of the REAA shall be given an opportunity to approve or disapprove the assumption of the education power by the newly incorporated or upgraded first class or home rule city.

(1) The vote shall be counted separately within the city limits of the newly incorporated or upgraded city and in the remainder of the REAA.

(2) A majority of voters in both areas must approve the assumption of the education power by the newly incorporated or upgraded city or it may not assume the education power"

Alter other sections as necessary to conform.

A M E N D M E N T

Offered in the SENATE

By the Community and Regional

TO: CSSB 1 (C&RA)

Affairs Committee

Page 2, after line 25 insert:

"(f) A second class city in a regional educational attendance area that reclassifies to first class status after July 1, 1983 remains part of the regional educational attendance area unless the education power is acquired under AS 29.35.270."

Page 10, after line 18 insert:

"(d) A first class or home rule city in a regional educational attendance area that incorporates after July 1, 1983 remains part of the regional educational attendance area unless the education power is acquired under AS 29.35.270."

Reletter the following subsection accordingly.

Page 34, after line 20 insert:

"(36) AS 29.35.270. (acquisition of education power)"

Reletter the following paragraphs accordingly.

Page 85, line 23:

Delete "A" and insert "Subject to AS 29.35.270, a"

Page 86, after line 5 insert:

"Sec. 29.35.270. ACQUISITION OF EDUCATION POWER. (a) A home rule or first class city formed in a regional educational attendance area after July 1, 1983 remains part of the regional educational attendance area and may not establish a city school district unless the education power is acquired by the city under this section.

(b) Within 90 days after a community in a regional educational attendance area is incorporated as a home rule or first class city or a second class city in a regional educational attendance area reclassifies to first class status or adopts a home rule charter the director of elections shall conduct an election in the regional educational attendance area on the question of whether the city should acquire the education power and form a city school district.

(c) After an election under this section the vote shall be counted separately within the boundaries of the newly formed city and within the area of the regional educational attendance area outside of the city.

(d) If a majority of voters within the newly formed city and a majority of the voters within the area of the regional educational attendance area outside of the newly formed city approve, the city shall assume the education power and form a school district. If a majority of voters in both areas do not approve, the city remains a part of the regional educational attendance area.

(e) This section applies to home rule and general law cities."

Page 186, after line 6 insert:

"* Sec. 21. AS 14.08.031 is amended by adding a new subsection to read:

(e) A first class or home rule city in a regional educational attendance area that incorporates after July 1, 1983 and a second class city in a regional educational attendance area that reclassifies to first class status or adopts a home rule charter after July 1, 1983 shall be included in the regional educational attendance area boundary unless the city acquires the education power under AS 29.35.270."

Re-number following sections accordingly.

Page 186, after line 29 insert:

"* Sec. 24. AS 14.12.010(1) is amended to read:

(1) each home rule and first class city in the unorganized borough is a city school district, except as provided under AS 29.-35.270;

* Sec. 25. AS 14.12.010(3) is amended to read:

(3) the area outside organized boroughs and outside home rule and first class cities is divided into regional educational attendance areas, except that a home rule or first class city may be included in a regional educational attendance area in accordance with AS 29.35.270."

Re-number following sections accordingly.

Page 205, line 20:

Delete "86" and insert "89"

Page 205, line 23:

Delete "86" and insert "89"

ACK- COPY GABRIELLI AND FILE WITH SB

hospital
association

319 Seward St., Juneau, Alaska 99801 • (907) 586-1790

REPRESENTING ACUTE, LONG TERM AND OUTPATIENT FACILITIES

Chairman of the Board
Ronald A. Pavellas
Humana Hospital Alaska
Anchorage

Chairman-Elect
Mark Hawkins
Sitka Community Hospital
Sitka

Immediate Past Chairman
Tom Mingen
Fairbanks Memorial
Hospital
Fairbanks

Secretary-Treasurer
Edward Zeine
Cordova Community
Hospital
Cordova

Delegate to the American
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Providence Hospital
Anchorage

Alternate Delegate to the
American Hospital Assoc.
Michael Lockwood
Central Peninsula Hospital
Soldotna

Delegate to the American
Health Care Association
Jack Buck
St. Ann's Nursing Home
Juneau

Alternate Delegate to the
American Health Care
Association
Emma G. Ivy
Wrangell General Hospital
Wrangell

Delegate to the Association
of Western Hospitals
Michael Herring
South Peninsula Hospital
Homer

Alternate Delegate to the
Association of Western
Hospitals
Daniel Van Wieringen
Kodiak Island Hospital
Kodiak

Trustee Delegate to the
American Hospital Assoc.
Moe Kadish
Trustee, Providence
Hospital
Anchorage

Alternate Trustee Delegate
to American Hospital
Association
Robert Jensen
Central Peninsula Hospital
Soldotna

Physician Member of
the Board
Keith Brownsberger, M.D.
Anchorage

President
Dennis L. DeWitt
Juneau

March 17, 1983

The Honorable Bill Ray
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Subject: Senate Bill 1

Dear Senator Ray:

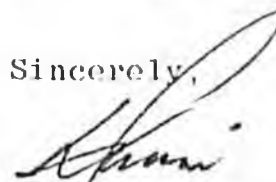
You have before you SB 1, the municipal code revision which includes in it revisions to the existing law, AS 29.89, state aid to municipalities and other eligible recipients for health facilities and hospitals.

That section as currently drafted, AS 29.60.120 in SB 1, continues to discriminate against the Juneau Regional Rehabilitation Hospital by excluding it from hospital revenue sharing. This, inspite of the fact that the facility was required to be built to acute hospital standards and functions as an acute facility with a specialty license. The specific problem is caused in the definition section of Article 15, General Provisions, Section 29.60.800(2). This should be changed to read as follows:

(2) "hospital" means a licensed hospital determined by the Department of Health and Social Services to be a general or special hospital; the term excludes a facility operated or wholly supported by the state or the federal government.

Your assistance in securing this amendment would be greatly appreciated.

Sincerely,



Dennis L. DeWitt
President

cc: Representative Mike Miller
Matthew Felix

S

B

/

3

COMMITTEE REPORT

SENATE

1/16/73

FURTHER:

Date: 1/21/73

Mr. President:

The Committee on JUDICIARY has had SENATE BILL NO. 17

An Act relating to: Act of arson in the first degree

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

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

SENATE JUDICIARY COMMITTEE LETTER OF INTENT

(SENATE BILL 13)

The Judiciary Committee has had under consideration SB 13, relating to the crime of arson. The Committee recommends that SB 13 be replaced with Committee Substitute for SB 13 (CSSB 13), and that CSSB 13 do pass.

Under Alaska Statute 11.46.400, a person, under certain circumstances set forth in the section, is guilty of the crime of arson in the first degree if by starting a fire or explosion, such person recklessly places another "person" in danger of physical injury.

However, in the Superior Court at Fairbanks, a trial judge instructed a jury, in an arson prosecution under AS 11.46.400, that "a fireman is not a 'person' within the crime of first degree arson", i.e., that one who starts a fire or explosion, thereby placing a fireman in danger of physical injury, has not thereby put a "person" in danger of physical injury within the meaning of the section cited. (State v. Markland, case no. 4FA S82-100 Criminal).

The Alaska State Firefighters Association has sought an amendment to prevent such an instruction from being given again. The Committee Substitute for SB 13 would make clear that for purposes of AS 11.46.400, public safety personnel and public employees responding to emergencies are "person[s]" whose reckless endangerment by another who intentionally causes a fire or explosion could be the basis of a prosecution under the statute.

During the Judiciary Committee's consideration of SB 13, a representative of the Alaska Department of Law expressed concern lest the Legislature, by changing AS 11.46.400 only, could be viewed by a Court as having intended to exclude public safety personnel and/or public employees responding to emergencies from the meaning of the word "person" or "persons" where those words appear elsewhere in Title 11.

There is no such intention. Rather, the Committee wishes to cure a specific problem which arose in a specific setting under one section of Title 11. It is the view of the Committee, respectfully, and as part of the traditional legislative oversight of judicial interpretations of statutory law, that the exclusion of fire fighters from the purview of the term "person", in AS 11.46.400, in the instruction of the trial judge, was a misapprehension of legislative intent and was unsupportable as public policy. The Committee wishes to avoid any similar misapprehensions of the meaning of AS 11.46.400 in future. The report of the Committee and the enactment of CSSB 13 should not be construed to reflect any legislative intent to exclude fire fighters, police officers, or other public safety personnel or public employees from the purview of the term "person" in other sections of Title 11. On the

contrary, it is rather the view of the Committee that no such exclusion can be reasonably found or implied, and thus, no other statutory changes are required.

Date: January 31, 1983

Senator Bill Ray, Chairman

Letter of Intent
SENATE JUDICIARY COMMITTEE REPORT

Subject: SB 13, relating to the crime of arson.

The Judiciary Committee has had under consideration SB 13, relating to the crime of arson. The Committee recommends that SB 13 be replaced with Committee Substitute for SB 13 (CSSB 13), and that CSSB 13 do pass.

Under Alaska Statute 11.46.400, a person, under certain circumstances set forth in the section, is guilty of the crime of arson in the first degree if by starting a fire or explosion, such person recklessly places another "person" in danger of physical injury.

However, in the Superior Court at Fairbanks, a trial judge instructed a jury, in an arson prosecution under AS 11.46.400, that "a fireman is not a 'person' within the crime of first degree arson", i.e., that one who starts a fire or explosion, thereby placing a fireman in danger of physical injury, has not thereby put a "person" in danger of physical injury within the meaning of the section cited. (State v. Markland, case no. 4FA S82-100 Criminal).

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During the Judiciary Committee's consideration of SB 13, a representative of the Alaska Department of Law expressed concern lest the Legislature, by changing AS 11.46.400 only, could be viewed by a Court as having intended to exclude public safety personnel and/or public employees responding to emergencies from the meaning of the word "person" or "persons" where those words appear elsewhere in Title 11.

There is no such intention. Rather, the Committee wishes to cure a specific problem which arose in a specific setting under one section of Title 11. It is the view of the Committee, respectfully, and as part of the traditional legislative oversight of judicial interpretations of statutory law, that the exclusion of fire fighters from the purview of the term "person", in AS 11.46.400, in the instruction of the trial judge, was a misapprehension of legislative intent and was unsupportable as public policy. The Committee wishes to avoid any similar misapprehensions of the meaning of AS 11.46.400 in future. The report of the Committee and the enactment of CSSB 13 should not be construed to reflect any legislative intent to exclude fire fighters, police officers, or other public safety personnel or public employees from the purview of the term "person" in other sections of Title 11. On the contrary, it is rather the view of the Committee that no such exclusion can be reasonably found or

implied, and thus, no other statutory changes are required.

January 31, 1983.

Senator Bill Ray, Chairman

FIRE AND POLICE SERVICE
PERSONNEL OR OTHER PUBLIC
EMPLOYEES WHO RESPOND TO
EMERGENCIES, REGARDLESS OF
RANK, FUNCTIONS OR DUTIES
BEING PERFORMED.

A fireman is not "a person" within the crime of first degree arson; that is, the presence of a fireman will not establish the required element of placing another "person" in danger of serious physical injury as required for first degree arson.

Judges instructions to the Jury

STATE OF ALASKA V. MERLIN DEAN MARKLAND

CASE # 4FA.582-100 cr



Official Business

Alaska State Legislature

Senate

January 25, 1983

Pouch V
State Capitol
Juneau, Alaska 99811

The Honorable Bill Ray,
Alaska State Senator
Chairman - Senate Judiciary Committee
and
All Members of the Senate Judiciary Committee
Pouch V
Juneau, Alaska 99811

Re: SB 13: An Act relating to the
crime of arson in the first degree.

Dear Mr. Chairman and Members:

As the Chairman so correctly stated during the organizational meeting of the Senate Judiciary Committee on January 17, this bill, which has absolutely no fiscal impact, is essentially a housekeeping measure.

As far as I know, no one objects to it; it is endorsed by the Alaska State Firefighters Association, the Alaska Fire Chiefs Association and the Task Force on Fire Prevention and Control.

It is before us as a result of a Superior Court decision out of Fairbanks (State vs. Markland, #4FA-S82-100); the court instructed the jury that for the purposes of an arson prosecution that "A fireman is not "a person" with- in the crime of first degree arson; that is, the presence of a fireman will not establish the required element of placing another "person" in danger of serious physical injury as required for first degree arson."

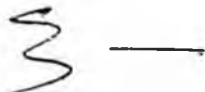
The new language in SB 13 would rectify what might very well be a serious defect in the law.

Also, on lines 14 and 15 it has been suggested that the words "fire protection officer" be deleted and that the words "fire service personnel, regardless of rank," be inserted in lieu thereof. By so doing, any ambiguities which might arise as the result of the usage of the word "officer" will be avoided.

Senator Bill Ray, Chairman
and
All Members of the Senate Judiciary Committee
January 25, 1983
Page Two

If the amendment is authorized by the Chairman, it can easily be submitted
as a Judiciary Committee amendment along with the Committee report.

Respectfully submitted this 26th day of January, 1983.



Robert H. Ziegler, Sr., Member
Senate Judiciary Committee

TO MEMBERS OF THE SENATE JUDICIARY COMMITTEE

TESTIMONY OF THE ALASKA STATE FIREFIGHTERS ASSOCIATION AND THE
ALASKA FIRE CHIEFS ASSN.

The Alaska State Firefighters Association, as well as the Alaska Fire Chiefs Association, during their respective annual meetings last October, 1982, passed resolutions recommending revision to AS11.46.400 (2)

The purpose of the resolutions were to define "another person".

The Associations appreciate Senator Ziegler introducing the bill.

They suggest the committee consider a slight change to the definition of "another person" in the bill.

Lines 14 and 15 contain words "fire protection officer". They suggest the words be changed to "fire service personnel, regardless of rank". No other changes to the existing bill are required.

The reason for the change is how a court, judge, jury or attorney might consider the words "fire protection officer". A "fire protection officer" could be construed as one involved only in fire protection. The word "officer" could be construed as only a command officer.

The Fire Fighter's Assn's and the Fire Chief's Assn's. resolutions used the words "fire service personnel" to cover all involved in the fire service, not just an Officer. The word "firefighter", which was considered, could be construed as only those fighting a fire and perhaps only a "fireman,

Please note that the resolutions (copy attached) were as a result of the case (State of Alaska v. Markland) in which Superior Court Judge Warren Taylor stated in the instructions to the jury that, "a fireman is not a person within the crime of first degree arson."

AS11.81.900 (39) states "Person means a natural person and, when appropriate, an organization, government, or governmental instrumentality".

The associations believe the words "fire service personnel, regardless of rank" would more appropriately cover all those who are involved in the Fire Service.

Example: Officers and paid personnel in organized Fire Depts;
Volunteers in organized Fire Depts; Volunteers in other
than organized municipality depts., who respond to a
fire or explosion. Personnel of the State Fire Marshal's
Office are normally covered under the "peace officer"
category

The associations respectfully request the Committee to seriously
consider this change of wordage during the early processing of
this important legislation to those in the Fire service and to the
peace officers.

The Associations also request the same word changes be made to SB 24
relating to assaulting a peace officer.....

RESOLUTION No. 82-8

WHEREAS Alaska Statutes, Title 11, Section 11.46.400 states:
A person commits the crime of arson in the first degree if, by starting a fire or causing an explosion, he intentionally damages protected property of another; or any property, whether his own or another's, and the act recklessly places another person in danger of physical injury or protected property of another in danger of damage, and

WHEREAS Alaska Statutes, Title 11, Section 11.81.900(39) states:
"Person" means a natural person and, when appropriate, an organization, government, or governmental instrumentality, and

WHEREAS in the case of the State of Alaska v. Markland (4FA-S82-100 Cr.), the defendant was charged with arson in the first degree, and

WHEREAS in the case of the State of Alaska v. Markland Superior Court Judge Warren Taylor stated in the instructions to the jury that, "a fireman is not a person within the crime of first degree arson",

NOW, THEREFORE, BE IT RESOLVED BY THE ALASKA STATE FIREFIGHTERS ASSOCIATION as follows:

Section 1: That the Alaska State Firefighters Association directs the Alaska State Firefighters Association President to have the Alaska Statutes, Title 11 (Alaska Criminal Code) amended to read in Section 11.46.400,

A person commits the crime of arson in the first degree if, by starting a fire or causing an explosion, he intentionally damages protected property of another; or any property, whether his own or another's, and the act recklessly places another person, including fire service personnel, police officers and public employees, in danger of physical injury or protected property of another in danger of damage.

ACTION

PassedDATE: October 23, 1982

Leigh Gallagher
LEIGH GALLAGHER, President, ASFA

ALASKA STATE FIREFIGHTERS ASSOCIATION

SENATE JUDICIARY COMMITTEE

Hearing on Senate Bill No. 13 Relating to Crime of Arson

January 28, 1983

Mr. Chairman:

My name is E. Robert Haag and today I am representing the 15 Chapters of the Alaska State Firefighters Association.

We wish to speak in favor of Senate Bill No. 13 now before your Committee.

The Alaska State Firefighters Association, as well as the Alaska Fire Chiefs Association, during their respective annual meetings last October, 1982, passed resolutions recommending revision to AS 11.46.400 (a). The purpose of the resolutions were to define the words "another person" in the existing Statute.

We suggest that your Committee consider a slight change to the definition of "another person" in SB-13. Lines 14 and 15 contains the words "fire protection officer". We would suggest the words be changed to "fire service personnel, regardless of rank". No other changes are suggested in the existing Bill.

The reason for the change is how a court, judge, jury, or attorney might consider the words "fire protection officer". The words "fire protection officer" could be construed as one involved only in fire protection. The word "officer" could be considered as only a command officer.

Our resolution (copy attached), as well as the Alaska Fire Chiefs Association, used the words "fire service personnel". The reason, at the time of the meetings, was to cover all personnel involved in the Fire Service not just an officer. The words "fire fighter", which was originally considered, could perhaps be construed as only those fighting a fire and perhaps only a "fireman".

Please note, in our resolution, we were concerned about the Court case of the State of Alaska v. Hark and in which Superior Court Judge Warren Taylor stated in his instructions to the Jury that a, "fireman is not a person within the crime of first degree arson".

AS 11.81.900 (39) states "Person means a natural person and, when appropriate, an organization, government, or governmental instrumentality".

We believe that the words "fire service personnel, regardless of rank" would more appropriately cover all those involved in the Fire Service".

Example: Officers and paid personnel in organized Fire Departments; Volunteers in organized Fire Departments; and, Volunteers in other than organized municipality departments, who respond to a fire or explosion. Personnel of the State Fire Marshal's Office are normally covered under the "peace officer" category.

We respectfully request your Committee seriously consider this change of wordage, during the early processing of this important legislation to those of us in the Fire Service including our fellow friends in the "peace officer" category.

RESOLUTION No. 82-8

WHEREAS Alaska Statutes, Title 11, Section 11.46.400 states:
A person commits the crime of arson in the first degree if, by starting a fire or causing an explosion, he intentionally damages protected property of another; or any property, whether his own or another's, and the act recklessly places another person in danger of physical injury or protected property of another in danger of damage, and

WHEREAS Alaska Statutes, Title 11, Section 11.81.900(39) states:
"Person" means a natural person and, when appropriate, an organization, government, or governmental instrumentality, and

WHEREAS in the case of the State of Alaska v. Markland (4FA-S82-100 Cr.), the defendant was charged with arson in the first degree, and

WHEREAS in the case of the State of Alaska v. Markland Superior Court Judge Warren Taylor stated in the instructions to the jury that, "a fireman is not a person within the crime of first degree arson",

NOW, THEREFORE, BE IT RESOLVED BY THE ALASKA STATE FIREFIGHTERS ASSOCIATION as follows:

Section 1: That the Alaska State Firefighters Association directs the Alaska State Firefighters Association President to have the Alaska Statutes, Title 11 (Alaska Criminal Code) amended to read in Section 11.46.400,

A person commits the crime of arson in the first degree if, by starting a fire or causing an explosion, he intentionally damages protected property of another; or any property, whether his own or another's, and the act recklessly places another person, including fire service personnel, police officers and public employees, in danger of physical injury or protected property of another in danger of damage.

ACTION

Passed

DATE:

October 23, 1982

Leigh Gallagher
LEIGH GALLAGHER, President, ASFA

Alaska Fire Chiefs' Association



RESOLUTION No. 82-1 amended

WHEREAS Alaska Statutes, Title 11, Section 11.46.400 states:
A person commits the crime of arson in the first degree if, by starting a fire or causing an explosion, he intentionally damages protected property of another; or any property, whether his own or another's, and the act recklessly places another person in danger or physical injury or protected property of another in danger of damage, and

WHEREAS Alaska Statutes, Title 11, Section 11.81.900(39) states:
"Person" means a natural person and, when appropriate, an organization, government, or governmental instrumentality, and

WHEREAS in the case of the State of Alaska v. Markland (4FA-S82-100 Cr.), the defendant was charged with arson, in the first degree, and

WHEREAS in the case of the State of Alaska v. Markland Superior Court Judge Warren Taylor stated in the instructions to the jury that, "a fireman is not a person within the crime of first degree arson",

NOW, THEREFORE, BE IT RESOLVED BY THE ALASKA FIRE CHIEFS' ASSOCIATION as follows:

Section 1: That the Alaska Fire Chiefs' Association directs the Alaska Fire Chiefs' Association President to have the Alaska Statutes, Title 11 (Alaska Criminal Code) amended to read in Section 11.46.400,

A person commits the crime of arson in the first degree if, by starting a fire or causing an explosion, he intentionally damages protected property of another; or any property, whether his own or another's, and the act recklessly places another person, including fire service personnel, police officers, and public employees, in danger of physical injury or protected property of another in danger of damage.

APPROVED in conference October 20, 1982 in Ketchikan, Alaska.

BASIL J. SANDS, Jr., President

Buel 452-1527

ALASKA STATUTES

§ 11.46 ARSON IN THE FIRST DEGREE

(Effective January 1, 1980)

(2) as soon as reasonably practical after the entry, use, or occupancy, the person contacts the owner of the premises, the owner's agent or, if the owner is unknown, the nearest state or local police agency, and makes a report of the time of the entry, use, or occupancy and any damage to the premises or personal property, unless notice waiving necessity of the report is posted on the premises by the owner or the owner's agent. (§ 4 ch 166 SLA 1978)

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

(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)

Article 3. Arson, Criminal Mischief, and Related Offenses.

Section	Section
400. Arson in the first degree	482. Criminal mischief in the second degree
410. Arson in the second degree	484. Criminal mischief in the third degree
430. Criminally negligent burning	486. Criminal mischief in the fourth degree
450. Failure to control or report a dangerous fire	488. Littering
480. Criminal mischief in the first degree	490. Definitions

Sec. 11.46.400. Arson in the first degree. (a) A person commits the crime of arson in the first degree if he intentionally damages any property by starting a fire or causing an explosion and by that act recklessly places another person in danger of serious physical injury.

(b) Arson in the first degree is a class A felony. (§ 4 ch 166 SLA 1978)

For cases construing former first degree arson statute, see *Salinas v. United States*, 277 F.2d 914 (9th Cir. 1960); *Rank v. State*, Sup. Ct. Op. No. 92 (File No. 167), 373 P.2d 734 (1962), overruled on another point in *Shafer v. State*, Sup. Ct. Op. No. 563 (File No. 1034), 456 P.2d 466 (1969).

For cases construing former second degree arson statute, see *Tarnoff v. State*, Sup. Ct. Op. No. 911 (File No. 1486), 512 P.2d 923 (1973).

Am. Jur., ALR and C.J.S. references. — 4 Am. Jur., Arson, § 1 et seq.

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- (TABELLI) -

FROM THE DESK OF IRIS A. LATHROP

P.O. BOX 187, TOK, ALASKA 99780
907-883-5172

April 18, 1983

The Honorable Mitch Abood
Alaska State Legislature
Pouch V, Mail Stop 3100
Juneau, Alaska 99811

Dear Representative Abood: Re: Magistrate Retirement
House Bill 279

I respectfully ask for your "do pass" recommendation on the subject bill. I spoke with Representative Shultz a few days ago and he recommended that I write to you, as Chairman for the State Affairs Committee.

I was present at a teleconference March 25th at Anchorage, where two of our magistrates and a district judge gave testimony to Senator Ray and the senate judiciary committee. During that conference APEA entered their opposition, to which I later responded by letter to Senator Ray and enclose a copy for your information.

In addition, a representative of the State Division of Retirement and Benefits advised it would cost the state \$625,000 to include the magistrates in the judicial retirement system, inasmuch as I have no conception of what is involved to administer a retirement system, I have written to that division for a cost breakdown. If this figure is accurate, I wonder at the cost to the state for the high-salaried people that are presently participating in that system.

I realize that you have many other issues to decide this session, however, I must ask that you give consideration to our magistrate association's request. We have had bills submitted in prior years, and as you may or may not know, we have been deeply disappointed that none of those bills were enacted. Hopefully, with your help, as well as the members of your committee, this will be the year the legislature acts in our favor.

Thank you for your consideration.

Enclosure
Copy: Honorable Bill Ray

Sincerely,
Iris A. Lathrop
Iris A. Lathrop

P. S. Please feel free to copy this letter for distribution to other house members.



Alaska Public
Employees Association

APEA

State Headquarters: 340 N. Franklin, Juneau, AK 99801 (907) 586-2334

MEMORANDUM

TO: Senator Bill Ray, Chairman
Senate Judiciary Committee

FROM: Cherie Shelley, Executive Director
Alaska Public Employees Association

Jean Krause, President *Jean Krause*
National Education Association-Alaska

SUBJECT: SB 20

DATE: March 24, 1983

At a time when the cost of the various state-sponsored retirement systems is being closely scrutinized, the Alaska Public Employees Association and the National Education Association-Alaska cannot support legislation which will add another group of employees to the most lucrative retirement system available.

Unlike judges, magistrates seldom leave a high paying professional practice to serve in the courts. In fact, the qualifications of magistrates are quite simple:

A magistrate shall be a citizen of the United States and of the state, at least 21 years of age, and a resident of the state for at least six months immediately preceding appointment. The supreme court may prescribe additional qualifications. (AS.22.15.160.(b))

This bill is particularly expensive as the employer's rate of contribution will rise to 109.14% of covered payroll. The estimated additional cost of this legislation is \$625,000 in FY 84, \$675,000 in FY 85, and \$729,000 in FY 86.

Fairbanks Field Office
825-D College Road
Fairbanks, AK 99701
Telephone: (907) 456-5412

Anchorage Field Office
833 Gambell Street, Suite A
Anchorage, AK 99501
Telephone: (907) 274-1688

Juneau Field Office
227 4th Street
Juneau, AK 99801
Telephone: (907) 586-6305

Not only are the mandatory contributions to this system particularly high, the retirement benefits are equally generous.

A retired justice or judge eligible for retirement pay shall receive from the date of eligibility until death monthly compensation equal to five percent per year of service, to a maximum of 75 percent, of the monthly salary authorized for justices and judges respectively, at the time each retirement payment is made. (AS 22.25.020)

William M. Mercer, Inc., in an actuarial valuation of the Public Employees' Retirement System, estimated the unfunded liability owed by the State of Alaska to be \$75,563,548. as of June 30, 1981.

The inclusion of a small group of individuals in JRS at such high cost cannot be justified when other retirement systems have very large, unfunded liabilities.

CS/rb

SPONSOR: Senate Judiciary
 SUBJECT: leg non-leg pub hear work sess inv hear
S.B. 20. Magistrates Retirement Benefits.

DATE TAKEN/BY 1mb
 T/C DATE/DAY Fri. March 25
 TIME: 1:30 - 2:30 PACIFIC

MAILING ADDRESS: _____
 PHONE X 4451 CONTACT Judy

YUKON
 11:30-12:30 ALASKA
 BERING

SITES PARTICIPATING:

- | | | | | |
|---|--|---|---|---|
| North Slope
Anaktuvuk Pass
* Barrow
Kaktovik
Point Hope
Wainwright | * ANA
Ambler
* Kotzebue
Moorvik
Selawik | Bristol Bay
Aleutians
* Bethel
* Dillingham
St. Paul
Sand Point
** Unalaska | South-Central <u>possible offnet</u>
* Anchorage
Homer
* Kenai (Sol)
* Kodiak
* Mat-Su
Seward
* Valdez | Southeast
Cordova
Haines
Hoonah
* Juneau
* Ketchikan
* Petersburg
* Sitka
Wrangell
Yakutat |
| ALL ALASKA
ALL LIC's
WASH., D.C. | Norton Sound
Gambell
Hooper Bay
* Nome
Savoonga
Shishmaref
** Unalakleet | Interior
* Delta Junction
* Fairbanks
** Fort Yukon
Galena | | |

Chairing Site/Person X Sen. Ray Jim Special Offnet possible offnet do
 Location/Phone# Captain Cook
Judy Johnston - Lintz
 Signature of Sponsor/Contact Person Date

-----TELECONFERENCE OFFICE USE ONLY-----

Stephanie Coles 264-0553 - Magistrates Services. (liaison person)

Linda Hartshorn (Magistrate from Wrangell):
 + others will be present.

*Advise
do people*

2-Wire _____ 4-Wire
 Bridges: #1 (206)447-0620
 #2 (206)447-1554
 #3 (206)447-3627
 #4 (206)447-9479
 Bridge operator (800)426-3232
 JNU trouble #'s 506-1062
 465-2836

Publicity:
 Local press list attached
 Media/P.A. attached
 Can expect:
 Longevity book-up back up by Stephanie
 Bill summary
 Participants list

POST TELECONFERENCE NOTES
 Site/Date: Bates
 Local Moderator _____
 T/C Started: _____ T/C Ended _____
 T/C Recorded? _____
 Testified/Participated: _____
 Unable to Testify: _____
 Observers: _____
 Total Number _____

SENATOR
ROBERT H. ZIEGLER, SR.
207 BAWDEN STREET
KETCHIKAN, ALASKA 99901

While in Juneau
POUCH V
JUNEAU, ALASKA 99811



Senate

VICE CHAIRMAN
SENATE RESOURCES COMMITTEE
MEMBER
SENATE JUDICIARY COMMITTEE
WESTERN STATES LEGISLATIVE
FORESTRY TASK FORCE
WESTERN CONFERENCE COUNCIL
OF STATE GOVERNMENTS

February 14, 1983

The Honorable Linda Hartshorn,
Magistrate
Alaska Court System
Box 869
Wrangell, Alaska 99833

Dear Judge:

Thank you very much for your letter of February 9th pertaining to SB 20. A copy of that letter, and a copy of this letter, have been delivered to Senator Ray and his staff for their consideration. It would not be prudent or wise for me to answer all the questions you raised, such as teleconference meetings, for I would be usurping the chair's prerogative were I to do so.

However, I am requesting the chair to advise you, if he wishes to proceed, as to the manner of holding hearings on the bill and when the same will be held.

In any event, if it is determined by Senator Ray that he wants "live" testimony, I don't believe that he would require more than three or four magistrates, since I assume their testimony would be practically identical.

Under applicable legislative rules the committee of first referral must furnish a fiscal note. Accordingly, I doubt that much action will be taken on the bill until Senator Ray has the fiscal note to which you referred in hand.

Best regards,

Robert H. Ziegler, Sr.

RHZ:lk

cc: Senator Bill Ray w/encl.

✓ Mr. John Gabrielli w/encl.



TRIAL
District Court

State of Alaska

FIRST JUDICIAL DISTRICT
P. O. BOX 869
WRANGELL, ALASKA
99929

XXXXXXXXXXXXXXXXXXXX

February 9, 1983

Senator Robert H. Ziegler, Sr.
Pouch V
Juneau, Alaska 99811

Dear Senator Ziegler:

A belated thank you for introducing Senate Bill 20 on behalf of the magistrates of Alaska.

The magistrates who have agreed to testify before the Senate Judiciary and Finance committees (if their court calendars allow) are:

Bill Cheney Box 128, Kake, AK 99830	785-3651
Marilyn Hanson P.O. Box 910, Sitka, AK 99835	747-3291
Linda Hartshorn Box 869, Wrangell, AK 99929	874-2311
Carl Heimiller Box D, Haines, AK 99927	766-2801
Karl Heiker Box 8, Cold Bay, AK 99571	532-2440
Brian Johnson Box 860, Palmer, AK 99645	745-4284
Jess Nicholas Drawer I, Kenai, AK 99611	283-3110
Rick Redeker Box 1009, Petersburg, AK 99833	772-4466

Senator Robert H. Ziegler, Sr.
February 9, 1983
Page Two

Earl (Skip) Slater
Box 177, Nenana, AK 99760 832-5430

Sheldon Sprecker
Box 86, Glennallen, AK 99588 822-3405

There will be a statewide magistrate conference in Anchorage the week of March 21st and the afternoon of March 25th has been set aside for a meeting of the Association of Alaska Magistrates. If SB 20 is still pending at that time, possibly we could set up an audio conference with the legislature. All of the magistrates in the state would be in attendance and available for comments and questions. Please let me know if you think this would be beneficial and, if so, who should initiate the conference.

Within the next two weeks the court system has promised to supply me with further information on the current number of magistrates, base salaries, length of service, age, etc. This is the information they have provided to the Division of Retirement and Benefits to assist them in preparing a fiscal note on the bill. I will forward any information I can gather to you.

I believe Magistrate Heinmiller has contacted Senator Ray about this bill. Should I contact Representatives Wendte and McBride and request that they file a companion bill in the House? I believe Representative Wendte, when in Wrangell, indicated he would file a bill if he had the background information on it.

Thank you for your assistance. I will supply you with any and all information I receive that would be of benefit to you.

Sincerely,



Linda Hartshorn

THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. Senate Bill 20
 Title An Authorizing Participation by Magistrates in the Judicial Ret. System
 Requested by _____ Date _____

II. FISCAL DETAIL

Agency Affected Administration - Division of Retirement & Benefits
 Program Category Affected Labor Services
 BRU, Program, Or Subprogram(s) Affected 02-96-8-01-01-01 (PERS) 01-02-07 (JRS)
 (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 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	-0-	625.2	675.2	729.2		

FUNDING (Thousands of Dollars)

GENERAL FUND		640.2	591.4	746.7		
FEDERAL FUNDS		(7.2)	(7.8)	(8.4)		
OTHER (Specify Source)		(7.8)	(8.4)	(9.1)		

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

1. This bill would reduce the state cost to PERS and increase the state cost to JRS. The net cost to the state is reflected above.
2. The state cost to JRS will be increased by 65.82% of the FY 84 covered payroll for magistrates. The state cost to JRS for existing members for FY 84 will be 109.14% of covered payroll of which approximately 40% is to fund benefits of existing retirees. The remainder is to fund past and future service of those members not yet retired.

IV. DATE 1/27/83

PREPARED BY J.K. Humphreys

AGENCY Director

PHONE 465-4460

Original: Legislative Finance
 cc: Budget and Management

Prime Sponsor (First Legislator Named) Senator Ziegler

33-001 (Rev. 12/82) OMB Reviewed by: David Gentry

J.K. Humphreys
D. Gentry



Trial Courts

State of Alaska

FIRST JUDICIAL DISTRICT
P. O. BOX 869
WRANGELL, ALASKA
99929

March 10, 1983

Senator Robert H. Ziegler, Sr.
pouch V
Juneau, Alaska 99811

Dear Senator Ziegler:

Enclosed are copies of a letter and Senate Bill 20 which were sent to each magistrate in the state. I am also enclosing copies of the information received from Alaska Court System fiscal officer Bob Fisher and Supreme Court Order No. 544 relating to magistrate salaries.

It seems the lack of enthusiasm for this bill is based on the thought that magistrates are not judges, per se, and an aversion to the administrative paperwork which would inevitably follow passage of the bill. We feel we are judges and would hazard a guess that most persons who have come before us would be of the same opinion. In support of our stand we offer the following:

Buckalew v Holloway 604 P2d 240 (1979)

Alaska Supreme Court determination that magistrates are "judges" within the meaning of Article IV, Section 4 of the Alaska Constitution.

AS 22.15.020

Number of district court judges and magistrates listed for the district court of each judicial district.

AS 22.15.100 and 22.15.110

Lists functions, powers and additional duties of district court judges and magistrates.

AS 22.15.120

Limitations on proceedings which a magistrate may hear.

AS 22.15.220(c)

Requirement that district judges and magistrates must file an affidavit monthly to receive salary.

AS 22.15.240

Appeals from magistrate judgments are handled the same as those from a district court judge judgment.

Senator Robert H. Ziegler, Sr.
March 10, 1983
Page Two

AS 22.20.010

Judicial officer defined. "The term 'judicial officer' means a supreme court justice, including the chief justice, a judge of the court of appeals, a judge of the superior court, a district court judge and a magistrate."

Criminal Rule 56(b)

Definitions. "Magistrate" includes magistrates, district court judges, superior court judges and any other judicial officer authorized by law to conduct a preliminary examination of a person accused of a crime.

Administrative Rule 21(b)

Requirement of magistrate to wear black judicial robe as do all other judges.

Administrative Rule 24(f)

Assignment of Judicial Officer. "In this rule, 'judicial officer' means a superior court judge, district court judge or magistrate."

Administrative Rule 28(b)

Judicial vacations and leave outlined for district court judges and magistrates.

AS 22.25.010(g)

Magistrates not included as "judges" under the judicial retirement system.

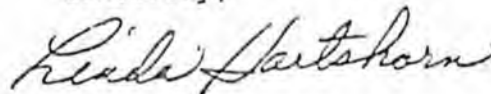
The last citation is the only one which excludes magistrates as judges. We feel the duties we perform are those of a district court judge with some jurisdictional limitations. We are on 24-hour call, as required by statute and rule, to perform "judicial" functions. Many of us sit as masters in superior court matters and are standing masters in children's cases.

I have copied those sections of the statutes, and rules pertaining to jurisdiction, duties, etc., and would make these available to you if you so desire.

Mr. Van Doran has agreed to supply me with a copy of the fiscal note on this bill as soon as your office receives it. I spoke with Bob Fisher yesterday and he said the fiscal note should be in Juneau by tomorrow.

Thank you for your continued support of the magistrates.

Sincerely,



Linda Hartshorn
Magistrate

March 9, 1983

Dear Fellow Magistrates:

As most of you know, the Association of Alaska Magistrates has had a bill in the legislature the past several years to include magistrates in the Judicial Retirement System. Senator Robert Ziegler has introduced Senate Bill 20 in the thirteenth legislature on our behalf. A copy of that bill is enclosed for your information.

The contribution rate under the Judicial Retirement System (JRS) is 7% as compared to the 4.25% we currently pay under the Public Employees Retirement System (PERS). Under SB 20, to receive credit for service as a magistrate prior to July 1, 1983, the magistrate must:

- 1) withdraw from PERS
- 2) receive a refund of contributions under PERS
- 3) elect to receive credit for service prior to July 1, 1983, and
- 4) make retroactive contributions for service as a magistrate after January 3, 1959.

Retroactive contributions may be set up as a payroll deduction over a reasonable period of time.

Following is my understanding of the differences between PERS as outlined in AS 39.35 and JRS as outlined in AS 22.25:

PERS - Contribution rate is 4.25% of base salary

Benefits paid:

- 1) Age 55 with 5 years of service; or
- 2) 30 years of service; or
- 3) Early retirement at 50 years of age and 5 years of service with adjustment for early retirement

Computation of benefits:

2% of average monthly wage for 3 high years times years of service
PLUS COLA (if remain in Alaska) of \$50.00 or 10% of the benefit, whichever is greater
PLUS medical insurance coverage

JRS - Contribution rate is 7% of base salary

Benefits paid:

- 1) Mandatory retirement at 70 years of age
- 2) Age 60 with 5 years of service
- 3) Early retirement at 55 years of age or 20 years of service with adjustment for early retirement

Computation of benefits:

5% for each year of service (up to 15 years or 75%)
times base monthly wage paid incumbents at the time of the benefit payment
PLUS medical insurance coverage

Please read the statutes cited above for further information on the two plans.

Examples of approximate monthly retirement benefits based on 5 years of service and current base monthly salaries are:

		PEPS .	JRS
Magistrate I	(15 hours/week)	\$ 84.60	\$211.50
Magistrate II	(20 hours/week)	119.40	298.50
Magistrate III	(27.5 hours/week)	170.20	425.50
Magistrate IV	(37.5 hours/week)	260.70	651.75
Magistrate V	(37.5 hours/week)	331.90	829.75
Magistrate VI	(37.5 hours/week)	387.30	968.25

The information provided to me indicates that the average age of the magistrates is 42 years with an average length of service of 6.83 years. There are 49 positions authorized by Supreme Court Order No. 544 and they are distributed as follows:

Magistrate I	19
Magistrate II	5
Magistrate III	6
Magistrate IV	13
Magistrate V	3
Magistrate VI	3

The Senate Judiciary Committee has set up a teleconference with the magistrates at 11:30 A.M. on March 25, 1983 in Anchorage. They will hear testimony at that time from one or two magistrates but we ask that everyone attend, if possible. This was coordinated at our request and will determine if Senate Bill 20 goes from the Judiciary to the Finance Committee with a "do pass" recommendation.

We will have a meeting of the Association of Alaska Magistrates in the early part of the conference week and can discuss the issue further at that time. Please jot down any other issues you wish to discuss.

I look forward to seeing all of you at the conference. It promises to be a good experience with varied topics and beneficial discussion periods.

Sincerely,



Linda Hartshorn
Secretary/Treasurer
Association of Alaska Magistrates

THE SUPREME COURT OF THE STATE OF ALASKA
ORDER NO. 544

Relating to Magistrate
Salaries.

IT IS ORDERED:

Supreme Court Order No. 451 is rescinded and the following is adopted as the magistrate salary schedule:

1. There are established six salary levels for magistrate posts. The base annual salary for each level is as follows:

Magistrate I	\$10,161
Magistrate II	\$14,335
Magistrate III	\$20,430
Magistrate IV	\$31,291
Magistrate V	\$39,832
Magistrate VI	\$46,476

Geographic cost of living adjustments shall be provided in accordance with applicable statutes.

2. Each magistrate location has been assigned to a salary level based on the number of hours which the court system expects the magistrate at that location to work in order to accomplish the estimated court workload at that location. The minimum number of hours of work required of the magistrates in each salary level are as follows:

<u>Salary Level</u>	<u>Hours Per Week (annual average)</u>
Magistrate I	15
Magistrate II	20
Magistrate III	27.5
Magistrate IV	37.5
Magistrate V	37.5
Magistrate VI	37.5

This is an annual average of the weekly work hours. Seasonal variations in workload at certain locations will require the magistrates at those locations to work longer hours during some parts of the year and shorter hours during other parts of the year.

The salaries listed in section 1. above are for the number of hours per week listed in section 2. plus 24-hour on-call availability for emergencies. These salaries also include compensation for full-time attendance at all required training courses.

3. Magistrate positions are allocated to the salary levels as follows:

<u>Magistrate VI</u>		
Kenzl	Kodiak	Palmer
<u>Magistrate V</u>		
Glennallen	Seward	Sitka

Magistrate IV

Barrow	Haines	Tok
Bethel	Kotzebue	Unalaska
Cordova	Nerana/Healy	Wrangell
Craig	Nome	
Dillingham	Petersburg	

Magistrate III

Cold Bay	Hoonah
Ft. Yukon	Naknek
Galena	Yakutat

Magistrate II

Aniak	Salawik	Skagway
Delta Jct.	Seldovia	

Magistrate I

Angoon	Kiana	Pt. Hope	Shungnak
Emmonak	McGrath	Sand Point	Tununak
Gambell	Mekoryuk	Savoonga	Unalakleet
Hooper Lay	Mt. Village	St. Mary	Whittier
Kake	Noorvik	St. Paul Island	

4. Step increases.

A. Frequency and amount.

All magistrates are eligible for step increases of 3.5% annually for the first five years of their service. The procedure for granting step increases shall be patterned after that which applies to classified employees except that part-time magistrates will not be required to work 1,950 hours before being eligible to receive an annual raise. There will be a total of five steps of annual increases followed by longevity steps after the seventh, ninth, fourteenth and eighteenth years of continuous employment at one salary level.

If a magistrate's salary level is raised, the magistrate's salary step within the higher level will be determined by the same method used for classified employees (see Personnel Rule 6.02.03).

B. Criteria for receiving step increases.

1. Tenure - one year.
2. Written approval by presiding judge stating that the magistrate is performing adequately.
3. Passing scores on all correspondence courses required for that level in that region of the state (required by either the presiding judge or the administrative director).

4. For Magistrates I through V: written verification by the presiding judge that the following are being adequately maintained:
 - a. dockets
 - b. indexes
 - c. library books (that is, that the Statutes, Administrative Code and Rules are kept up to date)
 - d. case files and the case numbering system
 - e. tape recordings of formal hearings and the binder for duplicate copies of all log notes
 - f. accounting records (receipts, revenue deposits, trust deposits, trust checks and proper recording of all accounting data on the case dockets)

C. Implementation.

All magistrates who are in office on January 1, 1981 will start at Step A of their designated salary level. The anniversary date for all such magistrates will be January 16. The anniversary date of all magistrates hired or promoted after January 1, 1981 will be the 16th of the month following their date of hire or promotion.

5. Review of Classification.

All magistrate positions shall be reviewed annually by the director of personnel to assure correct classification. These reviews shall be based on statistical evaluation of duties accomplished by each magistrate. The magistrate salary at every location must be re-evaluated by the director of personnel whenever a vacancy occurs. Vacancies may not be advertised until the salary for that position has been re-evaluated and any recommended changes for reclassification of the position have been approved by the chief justice.

6. Change in Classification.

The director of personnel shall recommend to the chief justice salary increases based upon reclassification of magistrate positions after first conferring with the area court administrator and the presiding judge of the judicial district in which the magistrate is located. The director of personnel shall recommend to the chief justice that a magistrate position be refilled at a lower level upon the position becoming vacant, after first conferring with the area court administrator and presiding judge for that judicial district.

7. Compensation for part-time magistrates asked to do extra work.

If a part-time magistrate (Levels I, II and III) is asked to serve in another court location to replace another magistrate or a district court judge for a period of time, the part-time magistrate must receive compensation for the additional hours worked.

DATED: September 24, 1982

EFFECTIVE DATE: March 16, 1982

James G. Bush
Chief Justice

Dr. A. Lakimuntz
Justice

Thomas H. Corcoran
Justice

Winnon Leighton
Justice

Allen T. Compton
Justice

PCN	CLASS	COURT	TITLE	NAME	2,793	33,510	9.50
418109	X017	AKA	MAGISTRATE IV	HANSON	2,793	33,510	9.50
418111	X019	AKD	MAGISTRATE IV	HARTSHORN	2,793	33,510	10.00
418110	X017	AKA	MAGISTRATE IV	REDEKER	2,793	33,510	5.70
418101	X018	AKA	MAGISTRATE III	DENNIS	1,702	21,144	4.50
418102	X019	CKC	MAGISTRATE IV	HEINMILLER	2,687	34,644	14.70
418103	X017	AWA	MAGISTRATE III	SAVLAND	1,885	22,020	11.50
418104	X016	AKR	MAGISTRATE I	CHENEY	907	10,884	2.50
418105	X016	AKK	MAGISTRATE I	VACANT	907	10,884	2.50
418106	X017	CKA	MAGISTRATE II	WURLEY	1,322	15,864	3.90
418107	X017	CSA	MAGISTRATE II	GALLAGHER	1,322	15,864	4.30
418108	X016	ARD	MAGISTRATE I	HOWARD	907	10,884	2.50
412015	X017	HIA	MAGISTRATE IV	VACANT	3,105	37,260	
418201	X019	MEA	MAGISTRATE IV	KRUSS	3,429	41,148	
418202	X019	KAA	MAGISTRATE IV	SINKEY	3,429	41,148	
418203	X016	JWB	MAGISTRATE I	VACANT	1,152	13,824	
418204	X016	ENC	MAGISTRATE I	KAMEROFF	1,121	13,452	
418205	X016	HSA	MAGISTRATE I	APANGALOOK	1,152	13,824	15.15
418206	X016	LSA	MAGISTRATE I	NAPUELETT <i>Naney</i>	1,152	13,824	7.00
418207	X016	KUD	MAGISTRATE I	HENRY	1,113	13,356	1.10
418208	X016	KJC	MAGISTRATE I	HARVEY	1,113	13,356	2.40
418209	X016	KYA	MAGISTRATE I	LISBOURNE	1,152	13,824	2.30
418210	X016	EWG	MAGISTRATE I	ANDREWS	1,121	13,452	2.70
418211	X016	HSS	MAGISTRATE I	GOLDBERGEN	1,152	13,824	1.50
418212	X017	KSA	MAGISTRATE II	BALLOT	1,570	18,840	90
418214	X016	HUA	MAGISTRATE I	ANAGICK	1,152	13,824	15.30
418215	X016	LXA	MAGISTRATE I	VACANT <i>Arrest</i>	1,152	13,824	
418217	X016	EDU	MAGISTRATE I	JEANS	1,121	13,452	11.70
418218	X016	KCA	MAGISTRATE I	DOUGLAS	1,152	13,824	1.10
418310	X015	CAA	MAGISTRATE VI	MCGRIDE	4,209	51,468	1.90
418302	X015	UWA	MAGISTRATE VI	NICHOLAS	4,289	51,468	22.00
418303	X015	ECF	MAGISTRATE VI	JOHNSON	4,140	49,776	3.70
418304	X020	USA	MAGISTRATE V	PECK	3,076	44,112	7.50
418309	X019	DAK	MAGISTRATE IV	ASHMAN	3,246	39,952	90
418307	X016	DIA	MAGISTRATE III	HEIKER	2,173	26,316	10.50
418308	X019	DWA	MAGISTRATE IV	WENTWORTH	3,076	36,912	7.00
418310	X020	HDE	MAGISTRATE V	SPRECKER	3,916	46,992	11.90
418312	X018	CKA	MAGISTRATE III	SHAWBACK	2,193	26,316	7.90
418313	X016	LEC	MAGISTRATE I	RUKUVISHWIKOFF	1,091	13,092	6.30
418314	X015	HSD	MAGISTRATE IV	HAKALA	1,091	13,092	4.30
418315	X016	CYA	MAGISTRATE I	KASHEVAROFF	1,332	15,984	2.70
418317	X016	USH	MAGISTRATE I	HARRIS <i>Vacant</i>	905	11,500	
418319	X020	DBC	MAGISTRATE I	VACANT	1,091	13,092	
418316	X016	BKA	MAGISTRATE III				

PCN	CLASS	COURT	FILE	INCUMBENT	RANGE/ STEP	MONTHLY SALARY	ANNUAL SALARY	SERVICE
418402	X016	HJI	MAGISTRATE IV	MACFARLANE		3,429	41,148	8.50
418414	X019	HB6	MAGISTRATE IV	LATHROP		3,076	36,912	9.40
418409	X016	KJA	MAGISTRATE III	SMYTH		2,317	27,804	3.50
418405	X016	HYC	MAGISTRATE III	JACKSON		2,238	26,856	1.40
418403	X017	JJB	MAGISTRATE II	HARDING		2,518	30,216	9.00
418401	X017	LJB	MAGISTRATE II	MCMAHON		1,625	19,500	5.00
418406	X010	JKC	MAGISTRATE I	VACANT		1,113	13,356	
418407	X010	EZA	MAGISTRATE I	VACANT		1,113	13,356	
418408	X010	UMB	MAGISTRATE I	SMITH		1,121	13,452	5.80
418411	X010	UJA	MAGISTRATE I	VACANT		1,083	12,996	
418412	X010	JKB	MAGISTRATE I	VACANT		1,113	13,356	
418415	X016	LHD	MAGISTRATE I	LINCOLN		1,121	13,452	11.20
418425	X010	JKA	MAGISTRATE I	VACANT		1,113	13,356	

* 1,315,424 6.83 yrs average

Average age - 4 yrs

BILL: SB 20

DATE: 1/20/83

RE: FISCAL NOTE PER TELEPHONE CONVERSATION WITH
ART SNOWDEN, ADMIN. DIRECTOR

ALMOST IMPOSSIBLE TO PUT FISCAL NOTE TOGETHER, BUT WILL
DO BEST THAT THEY CAN. WILL BRING IT WITH HIM WHEN HE
COMES TO JUNEAU NEXT WEEK.

JOHN GABRIELLI
COUNSEL

ALASKA STATUTES .

AS 39.35 PUBLIC EMPLOYEES' RETIREMENT SYSTEM OF ALASKA

reemployed with an employer and whose contributions have not been refunded before re-employment is not eligible for a refund. (§ 9 a ch 143 SLA 1960; am § 12 ch 1 SLA 1974; am § 1 ch 81 SLA 1976; am § 22 ch 128 SLA 1977)

Effect of amendments. — The 1976 amendment inserted "a" preceding "refund" in present subsection (a) and in the first sentence of present subsection (b) and added the second sentence of present subsection (b).

The 1977 amendment designated the former first sentence as subsection (a) and

the former second and third sentences as subsection (b), rewrote present subsection (a), and in present subsection (b), substituted "an employee" for "the employee" in the first sentence and substituted "an employer" for "a participating employer of the system" in the second sentence.

Sec. 39.35.210. Refund upon termination of employment by death.

Repealed by § 55 ch 128 SLA 1977.

Editor's note. — The repealed section derived from § 9 b, ch. 143, SLA 1960; am § 106, ch. 127, SLA 1974.

Sec. 39.35.220. Refund upon retirement.

Repealed by § 55 ch 128 SLA 1977.

Editor's note. — The repealed section derived from § 9 c, ch. 143, SLA 1960.

Sec. 39.35.230. Refund upon death of retired employee. Upon the death of a retired employee, the employee's beneficiary shall be paid

(1) the excess of the balance in the employee contribution account of the deceased employee as of the date of the beginning of the employee's pension payments over the sum of the pension payments previously received by the employee, but this amount may not be paid if a joint and survivor option under AS 39.35.450 is in effect or if a surviving spouse's pension under AS 39.35.440 is payable; and

(2) the remaining payments purchased by the balance in the employee savings account of the deceased employee as of the date he retired. (§ 9 d ch 143 SLA 1960; am § 107 ch 127 SLA 1974)

Sec. 39.35.240. Withdrawal of voluntary contributions. An active employee may withdraw his savings account only if he receives the consent of the administrator. The administrator may permit a withdrawal before termination of employment only in cases of financial need. (§ 9 e ch 143 SLA 1960; am § 23 ch 128 SLA 1977)

SENATE JUDICIARY COMMITTEE

Meeting Minutes
March 25, 1983

The meeting was called to order at 1:30 p.m. by Senator Ray, Chairman. All members were present except Senator Josephson, who was excused.

The first order of business was Senate Bill 20--An Act authorizing participation by magistrates in judicial retirement system--as to which Senator Ray acknowledged the presence of House Judiciary Committee Chairman Bussell and Representatives Liska and Malone, along with the staff of other members of the House Judiciary Committee.

Senator Ray turned the scheduled teleconference with Anchorage over to subcommittee chairman Ziegler.

By teleconference from Anchorage, Sheldon Sprecker, a magistrate in Glenallen and president of the Magistrates' Association, testified in favor of the bill and stated that about 30 magistrates and district court judges were present in Anchorage to listen to and participate in the teleconference. Mr. Sprecker also emphasized that magistrates are judges under a number of relevant criteria, including the recent Hol loway decision.

By teleconference from Anchorage, Linda Hartshorn, a magistrate in Wrangell, testified in favor of the bill. Senator Ray asked Ms. Hartshorn some questions, to which she responded and discussion was had.

By teleconference from Anchorage, Steven Cline, a District Court Judge in Fairbanks, testified in favor of the bill pointing out that he has been a magistrate training judge for approximately five years and that the functions and duties of magistrates are essentially similar to those of judges and involve extreme hardships, such as having social activities restricted and being exposed to harsh, sometimes dangerous, working and living conditions. Senator Ray asked Judge Cline a question, to which the Judge responded and discussion was had, whereupon Representative Bussell asked the witness a question, to which the Judge responded and discussion was had. Judge Cline also stated that Fairbanks District Court Judge Cruchfield was present and was fully in favor of the bill.

From Juneau, Lee Paulson of the A.P.E.A., testified in opposition to the bill and stated that his organization's views were shared by a teachers' union, the N.E.A. As the main reasons for opposing it, Mr. Paulson emphasized the high cost of the bill in reference to the limited number of people benefiting therefrom; the fact that funds are desperately needed for cost of living adjustments to senior citizens' benefits; and that under existing law magistrates are not required to be attorneys or

have any other type of special training. Representative Bussell asked a question, to which Mr. Paulson responded and discussion was had, whereupon, by teleconference from Anchorage, Sheldon Sprecker responded to and pointed out several "inaccurate points" in Mr. Paulson's prior testimony. Furthermore, Magistrate Sprecker stated that he feels the fiscal note amount of approximately \$650,000.00 is a reasonable figure and, as an example of the terrible hardships magistrates have to endure, Magistrate Sprecker pointed out that he recently had to handle the identification and physical carrying of the bodies of the victims of the McCarthy killings.

Senator Ray asked a question about whether or not, and how much, Magistrate Sprecker was paid for carrying out his duties in McCarthy, to which a response was made.

From Juneau, Ken Humphreys, Director of the Division of Retirement and Benefits, testified in response to questions posed by Senator Ray. Mr. Humphreys verified and explained the accuracy of the fiscal note figures, whereupon Senator Eliason asked a question about magistrates receiving a retirement credit for military service, to which Mr. Humphreys stated that as PERS employees magistrates should receive such credit and any assertion to the contrary must be in error. Senator Eliason also asked whether the same reasons for enacting generous judiciary retirement benefits apply to retirement benefits for magistrates. Mr. Humphreys responded by stating that, from the employer's standpoint, the basic rationale of retaining qualified people doesn't seem to apply to magistrates.

Representative Malone asked a question about the current PERS cost figures in the fiscal note, to which Mr. Humphreys responded and discussion was had, whereupon Senator Ray asked a question regarding the same subject, to which Mr. Humphreys also responded and discussion was also had.

Senator Eliason asked Senator Ziegler about how other states handled this type of problem, and Senator Ziegler responded, whereupon the teleconference was terminated. Chairman Bussell and the other House Judiciary Committee members and staff, then left the meeting.

The second order of business was new sub-committee assignments as follows:

SB 147	Relating to safeguarding self-identity and address of motor vehicle operators involved in accidents	Josephson
SB 208	Extending the termination date of the Alcoholic Beverage Control Board	Ray

The third order of business was the following announcements:

By Senator Ray: The Committee meeting on April 4, 1983
will start at 1:00 p.m.;

By Senator Pettyjohn: leave to take up SJR 19 at the Committee
hearing on April 8, 1983 was requested and
granted.

There being no further business the meeting adjourned at 2:14 p.m.

committee: Senate Judiciary Com date 3-25-83 to _____

bill numbers: SB20 + MAGISTRATES + ANCHORABLE

other information: Josephson, Excused (25 members present in House Present: Busseil, Liska and Malowe; also ANCHORABLE) CLOCK-IN AND Wendte Staff

Date/Time	Tape Meter No.	Bill	Significant Information (Witness, Action)
1:30 pm	0-36		Sen Ray Chaired - Introduced
			House members
	58	SB20	SPECKLER, Sheldon S. Pres. of
			MAGISTRATE'S Assn - IN FAVOR
	145		HARTSHORN, Linda - mag. WRANGELL
1:40			MALOWE, Rep now Present
	190		RAY - QUESTIONS CURRENT Benefits
	200		CLINE, Steve, FAI DIST. Ct. Judge
	235		LISTS functions of MAGISTRATES
	385		RAY - How many qualify for Retirement in next 3 yrs
	441		Busseil - Continues discussion in some manner
	517		PAULSON, Lee - A.P.E.A. OPPOSES Due to priorities
	570		RAY - How much SALARY pd for carry out duties -
	617		SPECKLER - Objected to PAULSON'S STATEMENT - Pointed out directly WK for STATE & not UNION
	675		Humphreys XEN - Dir. of DIVISION Retirements - testifies to
			QUESTIONS RE: FISCAL Note
	700		ELIASON - ASKED ABOUT PERS and Military fees

MSG 83-00003539 PRTY 1 03/25/83 13:39:49 ORIG: LA08 IN= 0005 OUT= 0018
FROM: CANDY FOR BARBARA TO: GAIL
TARGET: LJHZ SUBJ: MAGISTRATES' BENEFITS

OMNI # 2

IRIS LATHROP HAS ASKED THAT YOU ASK THE LEGISLATORS IF THEY WOULD LIKE TO ASK ANY QUESTIONS OF THE OBSERVERS. I REALIZE YOU DO NOT HAVE THE OBSERVERS' NAMES YET -- WILL SEND THEM DOWN IN NEXT OMNI.

MSG 83-00003541 PRTY 1 03/25/83 13:42:35 ORIG: LA08 IN= 0006 OUT= 0019
FROM: CANDY/ANCHORAGE TO: GAIL
TARGET: LJHZ SUBJ: MAG. BENEFITS /TC

OMNI # 3

OBSERVERS:

1. RICK REDEKEN/ASSOC. AK MAGISTRATES
2. CARL HEINMILLER
3. BILL CHENEY
4. JEAN WORLEY
5. H.E. CANTERFEILD
6. LINDA HARDY
7. CRAIG MCMAHON
8. IRIS LATHROP
9. ELIZABETH MCDENNIS
10. EARL "SKIP" SLATON
11. BARBARA MCFARLANE
12. MARILYN D. HANSON
13. SHARON C SMITH
14. MAXINE GAVLAND
15. PAUL VERTAGE
16. JESS MICHAELS
17. BRIAN JOHNSON
18. DALE CURDA
19. H.P. GAZAWAY
20. BRIGITTE S. MCBRIDE
21. CHRITINA KASHWANOF
22. JEAN CROSS

THERE ARE 5 NAMES WHICH I CAN MAKE OUT -- WILL SEND THIS DOWN NOW IN THE INTEREST OF TIME.

MSG 83-00003534 PRTY 1 03/25/83 13:37:08 URIG: LA08 IN= 0004 OUT= 001
FROM: CANDY FOR BARBARA TO: GAIL
TARGET: LJHZ SUBJ: MAGISTRATES BENEFITS T/C

WITNESSES:

1. SHELDON S. SPRECKER
2. LINDA HARTSHORN
3. JUDGE STEPHEN CLINE

OBSERVERS:

- 27 FROM THE MAGISTRATES' CONFERENCE
- 2 PEOPLE FROM AN ALASCOM FILM CREW (GETTING FILM FOOTAGE FOR ALASCOM)

S

B

2

4

COMMITTEE REPORT
SENATE

1/18/83

FURTHER: NONE

Date: 2/2/83

Mr. President:

The Committee on JUDICIARY has had SENATE BILL NO. 25

An Act relating to assaulting a peace officer, fire fighter, or emergency responder.

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 Senate Bill No. 25 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

1 IN THE SENATE

BY RODEY

2 COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 24 (JUDICIARY)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to penalties for assaulting a peace
7 officer, fire fighter, or other emergency responder."

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

9 * Section 1. AS 12.55.125(c)(2) is amended to read:

10 (2) if the offense is a first felony conviction, other than
11 for manslaughter, and the defendant possessed a firearm, used a
12 dangerous instrument, ^{or} ~~and~~ caused serious physical injury during the
13 commission of the offense, or knowingly directed the conduct
14 constituting the offense at a uniformed or otherwise clearly
15 identified peace officer, fire fighter, emergency medical technician,
16 paramedic, ambulance attendant, or other emergency responder who was
17 engaged in the performance of official duties at the time of the
18 offense, seven years;

19 * Section 2. AS 12.55.125(d) is amended by adding a new paragraph to
20 read:

21 (3) if the offense is a first felony conviction, and the
22 defendant knowingly directed the conduct constituting the offense at a
23 uniformed or otherwise clearly identified peace officer, fire fighter,
24 emergency medical technician, paramedic, ambulance attendant, or other
25 emergency responder who was engaged in the performance of official
26 duties at the time of the offense, two years.

27 * Section 3. AS 12.55.125(e) is amended by adding a new paragraph to
28 read:

29 (3) if the offense is a first felony conviction, and the

1 defendant knowingly directed the conduct constituting the offense at a
2 uniformed or otherwise clearly identified peace officer, fire fighter,
3 emergency medical technician, paramedic, ambulance attendant, or other
4 emergency responder who was engaged in the performance of official
5 duties at the time of the offense, one year.

6 * Section 4. AS 12.55.135 is amended by adding a new subsection to
7 read:

8 (d) A defendant convicted of assault in the fourth degree upon a
9 uniformed or otherwise clearly identified peace officer, fire fighter,
10 emergency medical technician, paramedic, ambulance attendant, or other
11 emergency responder who was engaged in the performance of official
12 duties at the time of the assault shall be sentenced to a minimum term
13 of imprisonment of 30 days. The execution of sentence may not be
14 suspended and probation or parole may not be granted until the minimum
15 term of imprisonment has been served. Imposition of sentence may not
16 be suspended, except upon condition that the defendant be imprisoned
17 for no less than the minimum term of imprisonment provided in this
18 section, and the minimum sentence provided for in this section may not
19 be otherwise reduced.

20 * Section 5. AS 12.55.155(e) is amended to read:

21 (e) If a factor in aggravation is a necessary element of the
22 present offense, or requires the imposition of a presumptive term
23 under AS 12.55.125(c) (2), (d) (3) or (e) (3), that factor may not be
24 used to aggravate the presumptive term. If a factor in mitigation is
25 raised at trial as a defense reducing the offense charged to a lesser
26 included offense, that factor may not be used to mitigate the
27 presumptive term.
28
29

Introduced: 1/18/83
Referred: Judiciary

BY RODEY, RAY, MOSS,
PETTYJOHN, FERGUSON,
JOSEPHSON, V.FISCHER
AND P.FISCHER

1 IN THE SENATE

2

SENATE BILL NO. 24

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to assaulting a peace officer, fire
7 fighter, or emergency responder."

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

9 * Section 1. AS 11.41.220(a) is amended to read:

10 (a) A person commits the crime of assault in the third degree if
11 that person recklessly

12 (1) places another person in fear of imminent serious
13 physical injury by means of a dangerous instrument; [OR]

14 (2) causes physical injury to another person by means of a
15 dangerous instrument ; or

16 (3) causes physical injury to a peace officer, fire
17 fighter, emergency medical technician, paramedic, ambulance attendant,
18 REGARDLESS OF RANK, FUNCTIONS OR DUTIES,
or other emergency responder/while in the performance of official
19 duties.

Introduced: 1/18/83
Referred: Judiciary

BY RODEY, RAY, MOSS,
PETTYJOHN, FERGUSON,
JOSEPHSON, V. FISCHER
AND P. FISCHER

1 IN THE SENATE

2

SENATE BILL NO. 24

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to assaulting a peace officer, fire
7 fighter, or emergency responder."

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

9 * Section 1. AS 11.41.220(a) is amended to read:

10 (a) A person commits the crime of assault in the third degree if
11 that person recklessly

12 (1) places another person in fear of imminent serious
13 physical injury by means of a dangerous instrument; [OR] *Don't*

14 (2) causes physical injury to another person by means of a
15 dangerous instrument; or

16 (3) causes physical injury to a peace officer, fire
17 fighter, emergency medical technician, paramedic, ambulance attendant,
18 or other emergency responder while in the performance of official
19 duties.

18 or other emergency responder, regardless of rank,

19 functions, or duties being performed.

ATMS GET g;13-dd7:31;;t

M E M O R A N D U M

Everyone in category

SUBJECT: CSSB 24(Jud)

TO: Jim Lear
Legislative Counsel

FROM: David R. Dierdorff *Dierdorff*
Revisor of Statutes

When I reviewed your draft of CSSB 24 (Jud) in final, I noticed that section 4 will add a lot of duplicative material to AS 12.55.135. I did not want to slow down the process of the bill by suggesting a change at this time, and it may be that I can accomplish my goal through editing and reorganization after enactment. On the other hand, I will need

to find out from Billy whether my powers include combining duplicative material.

Anyway, here's how I would like to see this type of amendment handled:

*Section 1. AS 12.55.135(c) is amended to read:

(c) A defendant convicted of assault in the fourth 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 20 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.>

*Sec. 2. AS 12.55.135 is amended by adding new subsections to read:

TO: Senator Ray

FROM: John

DATE: March 10, 1983

This is the synopsis you asked me to draft. It has been approved by Gail Horetski of the Department of Law. If you like it, we can send it on up to the Senate Secretary.

SYNOPSIS

CSSB 24 (Jud)

Under existing law, an assault on a police officer, firefighter or other public employee engaged in responding to an emergency is treated like any other assault, without special regard for the greater vulnerability of these emergency responders, or the greater potential of harm in interfering with the performance of their duties during an emergency.

The sponsors and supporters of Senate Bill 24 and members of the Judiciary Committee believe that providing stiffer penalties for assaults on emergency responders in the line of duty will deter such acts and will thus help prevent the serious, often disabling injuries, with their correspondingly high public cost, which were described by the many witnesses who testified before the Committee.

CSSB24 provides stiffer sentences for assaults on emergency responders in the line of duty. It also grades the offenses according to the seriousness of injury suffered by the emergency responder.

The original bill sought to accomplish these basic goals by creating a new offense for assaulting an emergency responder. The bill was rejected by the Committee, at the request of the Department of Law, because it unnecessarily altered the statutory scheme of the newly revised Criminal Code. The Department of Law helped draft and endorses CSSB 24; its provisions have been fully adapted to the existing statutory scheme dealing with sentencing and aggravation of sentence.

MSG 83-00007918 PRTY 1 02/11/83 13:37:02 ORIG: LF02 IN= 0001 OUT= 0003
FROM: LYNDA/FBX TO: ALL
TARGET: LJH6 SUBJ: SEN. JUD 2/11 T/C

FBX MSG #1
FAIRBANKS:

TO TESTIFY:

1. JEANNE OSTNES, EMRG. MED. SVS., P.O. BOX 2120, FBX. 99707 456-3978
2. ROCKY DUNCAN, FBX. FIREFIGHTERS, 656 7TH AVE., FBX. 99701 452-1557

-----EOM

MSG 83-00007910 PRTY 1 02/11/83 13:34:27 ORIG: LA08 IN= 0004 OUT= 0002
FROM: CANDY/ANCHORAGE TO: JNU T/C
TARGET: LJH6 SUBJ: S. JUDICIARY, SB 24

OMNI #1 **** NOTE TIME CONSTRAINT, TESTIFIER #2

TO TESTIFY:

- 1.) KATHLEEN GRAY/ANCHORAGE POLICE DEPT., 625 C ST., ANCHORAGE 264-4155
- 2.) GUY TUTTEROA/APD***** PLEASE NOTE TIME CONSTRAINT, HE IS ONLY ON HIS LUNCH HOUR; WOULD LIKE TO SPEAK ASAP *****
- 3.) RICHARD WILLIAMS/ANCHORAGE EMS PARAMEDIC, 211 WEST 7TH, ANCHORAGE 264-4940
- 4.) HOLLY PLOOG/APDEA, 701 W. 58TH ST., ANCHORAGE 99502, 561-1158
- 5.) PAT CHEESE, ANCHORAGE EMS PARAMEDIC, 1764 EAGLE RIVER RD., EAGLE RIVER 694-3888
- 6.) RON BECKER/APD, P.O. BOX 3-004 ECB., 995-7333-
- 7.) WALT STIEHM/APD, 625 C STREET., ANCHORAGE 345-5799
- 8.) GEORGE NOVAKY/APD, 625 C STREET

TO OBSERVE:

- 1.) DAVID SKITT/ANCHORAGE EMS PARAMEDIC, 211 W. 7TH, ANCHORAGE

MSG 83-00007921 PRTY 1 02/11/83 13:38:32 ORIG: LM00 IN= 0006 OUT= 0004
FROM: MARTIE (MATSU) TO: TELECONFERENCE MODERATOR
TARGET: LJH6 SUBJ: SEN JUDICIARY T/C, SB24

MSG #1

TO TESTIFY

1. JAKE WRIGHT, WASILLA FIRE DEPARTMENT, WASILLA, ALASKA

MSG 83-00007922 PRTY 1 02/11/83 13:38:53 ORIG: LA08 IN= 0005 OUT= 0005
FROM: CANDY/ANCHORAGE TO: LINDA/JNU
TARGET: LJH6 SUBJ: S. JUDICIARY T/C ONGOING

OMNI #2

Time Constraint: Witness in Anchorage. (George Novaky)
← Guy Tutter

GEORGE NOVAKY OF APD, TESTIFIER #8, HAS JUST INDICATED A TIME CONSTRAINT. HE WOULD LIKE ALSO TO GO ASAP. HE EXPLAINS THAT MOST PEOPLE HERE HAVE SPECIFIC INCIDENTS TO DISCUSS, WHILE HE HAS SOME GENERAL COMMENTS. I TOLD HIM I WOULD PASS HIS REQUEST ON.

POSITION PAPER

Senate Bill No. 24

"An Act relating to assaulting a peace officer, fire fighter, or emergency responder."

This bill would make a person who recklessly causes physical injury to a peace officer, fire fighter, emergency medical technician, paramedic, ambulance attendant, or other emergency responder, while in the performance of official duties, liable for assault in the third degree.

The Emergency Medical Services Section of the Division of Public Health, Department of Health and Social Services, supports this bill in the hope that it may deter someone from causing injury to an emergency responder.

Recommended by: E.S. Rabeau M.D.
E.S. Rabeau, M.D., Director
Division of Public Health

Date: Feb. 10, 1983

Approved by: Robert Lordon Smith, M.D.
Robert Lordon Smith
Commissioner

Date: 2/14/83

Sen. JD

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: Senate Bill No. 24 Date on Bill: 1/18/83
 Title: "An Act relating to assaulting peace officer, fire fighter or emergency responder"
 Sponsor: Sen. Rodey et al
 Requestor: _____

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

			FY 83	FY 84	FY 85	FY 86		
Capital			0	0	0	0		
Operating			0	0	0	0		
Total			0	0	0	0		

b. Revenues:

Revenue								
---------	--	--	--	--	--	--	--	--

2. Source of funds to offset fiscal impact of bill:

3. Assumptions:

4. Disclaimer:

This statement has not been reviewed by the OMB in the Office of the Governor. It does not represent the policy of the Sheffield Administration or the final estimate of fiscal impact.

Prepared By: Mark S. Johnson *M. S. Johnson* Phone: 465-3027
 Division: Public Health, Emergency Medical Services Section Date: 2/10/83

Approved by Commissioner: Robert Gordon Smith, M.D. Date: 2/14/83
 Department: Health and Social Services

- Distribution:
- Original to Legislative Finance
- Copy to OMB
- Copy to Sponsor
- Copy to Requestor

SENATE JUDICIARY COMMITTEE

Meeting Minutes
February 2, 1983

The meeting was called to order at 1:35 p.m. by Senator Ray, Chairman.

Members present were Senators Ray, Josephson, Pettyjohn, Eliason and Ziegler.

Senator Ray introduced a former colleague, Senator Cliff Groh.

The first order of business was Senate Bill 24. Senator Rodey, the prime sponsor, testified briefly, stating that the bill is self explanatory in that it merely raises the penalty for assaulting a peace officer, firefighter or emergency responder from a misdemeanor to a felony. He further explained that the present statute offers no deterrent to protect law enforcement officers and others who respond to an emergency situation, and he stated that Senate Bill 24 is supported by the law enforcement community in Alaska.

Senator Ray raised questions about the physical injury requirement of the existing statute.

Mr. Robert Haag, lobbyist for the Alaska State Firefighters Association and the Alaska Fire Chiefs Association, testified in favor of the bill

and introduced an amendment to change the language on lines 18 and 19. He also submitted a memo to that effect (copy of which is attached hereto).

Senator Ray raised a questions about appropriateness of the word "rank" in the proposed amended language. It was generally agreed that a different word might be better.

Senator Josephson raised a question about the purpose of the proposed amendment.

Senator Josephson also raised a question about the application of the existing statute, to which Senator Rodey responded. Discussion was held on the question, focusing on the type of conduct (recklessness/intent) required for a conviction. Discussion was also held on limiting the offense to the use of dangerous weapons.

Senator Ray explained that the main purpose of Senate Bill 24 appears to deter intentional interference with police and

other emergency responders. Senator Rodey concurred and further explains about the bill's purpose.

Senator Ray utilized "weighted ballet slippers" example to additionally explain the apparent purposes and application of the bill.

Senator Pettyjohn explained that the existing statutes appears to do away with the requirement of intent and utilizes a common law definition of recklessness.

Senator Rodey also noted a difference of opinion about the requirement of intent and expressed his opinion that intent required and that the Dept of Law shares this view.

Senator Rodey also suggested that the apparent problem could be solved by adding the word "intentionally" on line 11 of the bill, in place of the word "recklessly". Discussion was had on this point.

Senator Ray remarked that the committee seemed to be trying to marry an apple with an orange and getting a banana. Therefore, he suggested that it may be necessary to enact a separate statute to cover the specific conduct in question.

Senator Ziegler suggested an additional amendment leaving the existing statutory language intact and just adding a new section specifically defining "another person" to include police and fire service personnel, etc. Discussion was had on this point and objections thereto were expressed.

Captain Joseph Turner, of the Alaska State Troopers, testified on behalf of the Department of Public Safety. Basically, his department is in favor of any additional protection that can be afforded to police and fire service personnel. The Captain cited statistics as to the large number of injuries suffered by officers as a result of assaults while responding to emergencies. The Captain explained that classifying the crime as a Class C felony will deter some of the misconduct and help prevent such injuries.

Senator Ray introduced a letter from the Juneau Police Department in support of the bill. (A copy thereof is attached hereto).

Senator Josephson asked Captain Turner what the most significant danger is that they are trying to prevent, in relation to the statistics quoted by the Captain.

Senator Ray again suggested that a separate statute should be enacted because it really covers a separate problem, and seeks to define a special type of felonious act. Senator Pettyjohn and Josephson concurred with Senator Rodey.

Senator Ray requested that Senators Rodey and Pettyjohn get together with committee counsel to draft a committee substitute along the lines previously discussed.

Senator Pettyjohn raised a question about the definition of "physical pain", as distinguished from the term "physical injury" in the existing statute and Senate Bill 24.

Senator Ray suggested that for the purpose of the proposed new committee substitute, a special definition of physical injury may necessary.

Senator Ray raised a question about the intent requirement and suggested that such a requirement be included, in the committee substitute. Discussion was had on this point and it was tentatively agreed that intent would be required.

The following bill has been assigned for subcommittee work:

SB 95 - An Act requiring that certain
legislative officers file
statements of financial interest
and an effective date

Ray

There being no further business the meeting adjourned at
3:10 p.m.

MSG 83-00003298 PRTY 1 01/24/83 12:50:11 ORIG: LA02 IN= 0006 OUT=
FROM: SHIRLEE, ANC LIO TO: PDMS, JUREAU INFO
TARGET: LJHL SUBJ: FOM

1/24/83, SHIRLEE, ANC LIO, MSG 3298 (REPLACES #2 OF 3282)

TO: PRESIDENT KERTTULA, ALASKA SENATE
SENATORY RAY, CHAIRMAN S-JUD
SENATORS JOSEPHSON, ELIASON, PETTYJOHN, ZIEGLER

FROM: HOLLY FLOOG, REPRESENTING THE ANCH. POLICE DEPT. EMP. ASSOC.
701 W. 58TH, ANCHORAGE, AK 99502 (H) 276-3644

RE: SENATE BILL 24

APDEA URGES THE PASSAGE OF SB 24 WHICH WOULD INCREASE PENALTIES FOR ASSAULT AND BATTERY AGAINST POLICEMEN, FIREMEN AND PARAMEDICS IN THE COURSE OF PERFORMING THEIR DUTIES. AT THIS TIME, UNLESS A WEAPON IS USED OR SERIOUS PHYSICAL INJURY RESULTS, ASSAULT & BATTERY IS A MISDEMEANOR. SEVERAL OF OUR OFFICERS HAVE RECEIVED DISABILITIES WHICH HAVE KEPT THEM OFF THE STREETS FOR WEEKS AND MONTHS, YET NO FELONY CAN BE CHARGED. WE NEED GREATER PROTECTION.

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: Senate Bill No. 24 Date on Bill: 1/18/83
 Title: "An Act relating to assaulting peace officer, fire fighter or emergency responder"
 Sponsor: Sen. Rodey et al
 Requestor: _____

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

			FY 83	FY 84	FY 85	FY 86		
Capital			0	0	0	0		
Operating			0	0	0	0		
Total			0	0	0	0		

b. Revenues:

Revenue								

2. Source of funds to offset fiscal impact of bill:

3. Assumptions:

4. Disclaimer:

This statement has not been reviewed by the OMB in the Office of the Governor. It does not represent the policy of the Sheffield Administration or the final estimate of fiscal impact.

Prepared By: Mark S. Johnson *1/18/83 M.S.J.* Phone: 465-3027
 Division: Public Health, Emergency Medical Services Section Date: 2/10/83
 Approved by Commissioner: *Robert Gordon Smith, M.D.* Date: 2/14/83
 Department: Health and Social Services

5. Distribution:

- Original to Legislative Finance
- Copy to OMB
- Copy to Sponsor
- Copy to Requestor

POSITION PAPER

Senate Bill No. 24

"An Act relating to assaulting a peace officer, fire fighter, or emergency responder."

This bill would make a person who recklessly causes physical injury to a peace officer, fire fighter, emergency medical technician, paramedic, ambulance attendant, or other emergency responder, while in the performance of official duties, liable for assault in the third degree.

The Emergency Medical Services Section of the Division of Public Health, Department of Health and Social Services, supports this bill in the hope that it may deter someone from causing injury to an emergency responder.

Recommended by:

E. S. Rabeau, M.D.
E.S. Rabeau, M.D., Director
Division of Public Health

Date:

Feb 10, 1983

Approved by:

Robert London Smith, Ph.D.
Robert London Smith
Commissioner

Date:

2/14/83

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ALASKA STATE FIREFIGHTERS ASSOCIATION

SENATE JUDICIARY COMMITTEE

Hearing on Senate Bill No. 24 Relating to Assaulting
a Peace Officer, Fire Fighter, or Emergency Responder

February 2, 1983

Mr. Chairman:

My name is E. Robert Haag representing the Alaska State Firefighters Association and the Alaska Fire Chiefs Association.

We wish to speak in favor of Senate Bill No. 24 now before your Committee.

Our Associations, at their annual meetings, did not make any specific resolutions for such additional wordage to AS 11.41.220 (a) as proposed in SB-24. However, we do believe that the suggested additional sub paragraph (3) is important in that it defines responders.

We would suggest consideration of some wordage change in lines 18 and 19. The suggested changes are similar to those made in SB-13 recently before your Committee.

Lines 18 and 19 revised to read "or other emergency responder, regardless of rank, functions, or duties being performed".

Mr. Chairman this change in words was discussed informally with your Committees Counsel.

Sec. 11.41.210. Assault in the second degree. (a) A person commits the crime of assault in the second degree if

(1) with intent to cause physical injury to another person, that person causes physical injury to another person by means of a dangerous instrument; or

(2) that person recklessly causes serious physical injury to another person.

(b) Assault in the second degree is a class B felony. (§ 3 ch 166 SLA 1978; am § 4 ch 102 SLA 1980; am § 3 ch 143 SLA 1982)

Effect of amendments. — The 1980 amendment, in subsection (a), redesignated former paragraph (1) as paragraph (2), added "or" to the end of that paragraph, added present paragraph (1), and deleted the previous paragraph (2), which read: "he intentionally places another person in fear of imminent serious physical injury by means of a dangerous instrument; or."

The 1982 amendment, in subsection (a), substituted "that person" for "he" preceding "causes" and "another person" for "any person" preceding "by means of" in paragraph (1), added "or" to the end of

paragraph (1), repealed former paragraph (2), which read: "with intent to cause physical injury to another person, he causes serious physical injury to any person; or," redesignated former paragraph (3) as paragraph (2), and substituted "that person" for "he" and deleted "by means of a dangerous instrument" from the end, both in present paragraph (2).

Legislative history reports. — For a report on Chapter 102, SLA 1980 (HCS CSSB 511), see 1980 Senate Journal Supplement, No. 44, May 29, 1980, or 1980 House Journal Supplement, No. 79, May 29, 1980.

NOTES TO DECISIONS

Applied in *State v. Silas*, Sup. Ct. Op. No. 1851 (File No. 4237), 595 P.2d 651 (1979); *Kimbrell v. State*, Ct. App. Op. No. 101 (File No. 5944), P.2d (1982).
Stated in *Coleman v. State*, Sup. Ct. Op.

No. 2190 (File No. 4416), 621 P.2d 869 (1980).

Cited in *State v. Ahwinona*, Ct. App. Op. No. 037 (File No. 5373), 635 P.2d 488 (1981).

Sec. 11.41.220. Assault in the third degree. (a) A person commits the crime of assault in the third degree if that person recklessly

(1) places another person in fear of imminent serious physical injury by means of a dangerous instrument; or

(2) causes physical injury to another person by means of a dangerous instrument.

(b) Assault in the third degree is a class C felony. (§ 5 ch 102 SLA 1980; am § 4 ch 143 SLA 1982)

Effect of amendments. — The 1982 amendment, in subsection (a), added the paragraph (1) designation, substituted "that person" for "he" in the introductory language, added "or" to the end of paragraph (1), and added paragraph (2).

Legislative history reports. — For a report on Chapter 102, SLA 1980 (HCS CSSB 511) see 1980 Senate Journal Supplement, No. 44, May 29, 1980, or 1980 House Journal Supplement, No. 79, May 29, 1980.