

ALASKA LEGISLATURE COMMITTEE FILES 1983-1984 86/2

2511 SJ SB 167 - SB 196

2511

Jim Lear
5/19/83
Page 2

7. On page 12, at lines 25-28, make the appropriate gender corrections.
8. Gender corrections are also necessary on page 13, lines 1-7 (and there may be more).
9. On page 11, at line 23, replace subsection (c) (of sec. 33.30.181) with a new subsection (c) containing the following language or words to that effect:

A person who is imprisoned on a criminal charge or is serving a term of imprisonment for a criminal offense may not bring a civil action against the state, any state agency or its employees except one involving constitutional rights during the time of imprisonment. This section limits the time within which an action may be brought to the time set out in AS 9.10.140.

In addition, redesignate as (d) the present subsection (c) and insert directly after the above.

Please send me a copy of the c.s. in work draft form at room 123, Capitol Building and give me a call at 4451 if you have any questions, comments, etc.

Our committee passed the bill out with the above amendments and, as usual, Senator Ray is quite anxious to keep it moving as fast as possible.

SB 167 ^{replaces} { p. 12 line 22 - p. 13 line 8 }

1 * Sec. 3. AS 33.20.010 is repealed and reenacted to read:

2 Sec. 33.20.010. COMPUTATION OF GOOD TIME. Notwithstanding
3 AS 12.55.125(f)(3) and (g)(3), each prisoner, other than a juvenile
4 delinquent, convicted of an offense against the state and sentenced to
5 imprisonment, whose record of conduct shows that the prisoner has
6 faithfully observed the rules of the institution in which the prisoner
7 is confined, is entitled to a deduction from the term of imprisonment
8 of

9 (1) one day for every three days of good conduct served if
10 the prisoner is serving a sentence for the offense of murder in the
11 first degree, murder in the second degree, kidnapping or misconduct
12 involving a controlled substance in the first degree, or is sentenced
13 to a presumptive term of imprisonment under AS 12.55.125(c), (d), (e)
14 or (i); and

15 (2) one day for every two days of good conduct served if
16 the prisoner is serving a sentence for any other offense.
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SENATE JUDICIARY COMMITTEE

Meeting Minutes

5/4/83

The meeting was called to order by Chairman Ray at 1:30 p.m. Senator Eliason was excused and Senator Josephson was in a Finance Committee meeting.

The first order of business was Senate Bill 167 -- Correctional facilities, good time computation, etc., as to which Michael Stark, with the Department of Law, and Roger Endell, Director of the Division of Corrections, testified. Mr. Endell stated, in essence, that he has some serious concerns with the good time computation provisions of the bill. Furthermore, Mr. Endell admitted that he hasn't worked out these concerns with Mr. Stark and the Department of Law, whereupon Senator Ray announced that SB 167 will be taken up again by the Committee at another time.

The second order of business was the latest proposed Committee Substitute for Senate Bill 133 -- Revisor's bill, as to which David Dierdhoff, the revisor, testified. Senator Ziegler, who is the subcommittee chairman for this bill, suggested that the bill be passed out of committee and that when it gets to the Rules Committee it not be calendared for a week, during which time all legislators who have any questions with the bill in its present form can take up those questions with the revisor and the staff members who has been involved with the bill, thereby facilitating final passage of the bill. Senator Ziegler will write a letter to all legislators advising them of this plan. Senator Ziegler's suggestion was adopted without objection, whereupon the Senator moved that CSSB 133 be passed out with individual recommendations. Senators Ray, Ziegler and Pettyjohn signed "De Pass".

The third order of business was the proposed Committee Substitute for Senate Bill 241 -- Relating to adoption, as to which Cecilia "Pudge" Kleinkauf, with the Alaska Chapter of the National Association of Social Workers, testified in support of the bill and provided each member of the Committee with a short, written synopsis, whereupon Senator Ray asked some questions and a brief discussion was had.

Joyce Linear, a private citizen and mother of an adopted five year old girl, testified in opposition to the bill and in support of the full disclosure and release of all available information about the natural parents of adopted children.

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offenders to the victims of their offenses so that the victims can try to get restitution for the harm they suffered. The proposed amendments are as follows:

On page 8, lines 9 and 10, delete the following sentence:
"The court may not disclose the identity of the minor".

On page 9, line 29, delete the word "prohibiting" and insert the phrase "requiring a court order to authorize".

Without objection, Senator Ziegler's proposed amendments were adopted and it was agreed that they would be incorporated into a revised committee substitute.

Ms. Horteski answered some questions posed by Senators Ray and Pettyjohn about language located at the following places in CSSB 127: page 1, line 11; page 4, line 10; and page 2, lines 10 - 13. It was then agreed that Ms. Horteski would draft substitute language along the lines previously discussed and that CSSB 127 would be taken up again at the next Committee meeting on Monday, May 2, 1983.

The second order of business was Senate Bill 167 -- Relating to correctional facilities, good time computation, and the imprisonment and rehabilitation of offenders, as to which Lt. Col. Jim Vaden, with the Department of Public Safety, testified, stating that the department wishes to withdraw its letter of April 7th because their concerns have been removed after consultations with the Department of Law, who will offer an amendment to the bill relating to medical services.

Michael Stark, with the Department of Law, testified and stated that the concerns of the Department of Public Safety are covered by language on page 5, lines 17 - 21 of the bill. In addition, Mr. Stark proposed the following amendment to the bill:

On page 5, line 21, add: "This does not preclude the law enforcement agency from requiring the prisoner to compensate the agency for the cost of the medical services."

Without objection, the above amendment was then adopted by the Committee (it will be incorporated into a committee substitute).

Senator Ray asked if the entire first article of the bill is really necessary in light of the Committee's passage of CSIB 103. Mr. Stark responded, explaining why that article is required, whereupon Senator Ray asked a question about the good time provisions of SB 167, and Mr. Stark responded by giving a summary of those provisions, which begin on page 12, line 22, of the bill.

Senator Ray asked where the criteria came from for the one day for every two served good time provisions in the bill, and Mr. Stark explained that those particular provisions were initially requested by the Division of Corrections and since the request was made the jail overcrowding situation has gotten even worse. In addition, Mr. Stark stated that the

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good time provisions don't really shorten a prisoner's sentence and that about 8% of the beds in prisons will be freed up as a result of those provisions.

Senator Ray stated that he just doesn't comprehend the policy of freeing prisoners instead of building new jails, whereupon the Senator also asked about the denial of a prisoner's civil rights after a felony conviction, and Mr. Stark referred to the language in the bill starting on page 11, line 17, which clarifies existing law on which civil rights are affected. Mr. Stark also referred to language starting on page 11, line 8, of the bill relating to the monitoring of prisoners' phone calls, whereupon Senator Ray asked a question about some of the definitions in this area, and Mr. Stark responded.

Senator Pettyjohn stated that he rejects Mr. Stark's proposal of a committee substitute that will increase the good time earned by prisoners, and Senator Ray generally concurred, whereupon Mr. Stark suggested that the provisions increasing good time can be limited to prisoners who have not been convicted of unclassified or class A felonies, and Senator stated that perhaps they can be limited to first time offenders. Further discussion was then had on this point and on subsequent questions asked by Senators Ray and Pettyjohn regarding furloughs and the provisions beginning on page 8, line 17 of the bill, whereupon it was agreed that SB 167 will be taken up at the next Committee meeting on Monday, May 2, 1983, during which time Mr. Stark can draft some appropriate amended language to take into account the Committee's concerns previously discussed.

The third order of business was Committee Substitute for Senate Bill 163--Child safety devices in motor vehicles, as to which Cordilia Randall, with the Department of Health and Social Services, testified in favor of the bill, whereupon a discussion was had in which Senator Ray suggested that local option provisions be incorporated in the bill and Senator Ziegler generally concurred. It was then agreed that CSSB 163 will be taken up again at the next Committee meeting.

The fourth and final order of business was the following new subcommittee assignments:

CSHB 247--Tampering with and distributing certain food,
drug or cosmetic items.
Senator Ziegler

HJR 5--Constitutional amendment allowing legislature to
annulment regulations.
Senator Ziegler

HB 157--Expand the right to petition for a local option
election.
Senator Ray

HB 214--Relating to the number of superior court judges.

SB 167 { replaces
p. 11 lines 17-24 }

Sec. 33.30.181. EFFECT OF JUDGMENT OF CONVICTION ON CIVIL RIGHTS. (a) A person who is convicted of a felony involving moral turpitude as defined in AS 15.60.010 is disqualified from voting in a state or municipal election until his unconditional discharge.

(b) A person who is convicted of a crime is disqualified from serving as juror until his unconditional discharge.

(c) A person who is imprisoned on a criminal charge may not bring a civil action except one involving constitutional rights during the time of imprisonment, and then only for declaratory or injunctive relief. This section limits the time within which an action may be brought to the time set out in AS 9.10.140.

(d) In this section, "unconditional discharge" has the meaning ascribed to it in AS 12.55.185.

Answer
+ two copies

BENEFIT / COST ANALYSIS OF ALTERNATIVE
SITE SELECTIONS OF THE STATE OF ALASKA
MAXIMUM SECURITY PRISON

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BENEFIT / COST ANALYSIS OF ALTERNATIVE
SITE SELECTIONS OF THE STATE OF ALASKA
MAXIMUM SECURITY PRISON

Prepared for:

The Matanuska-Susitna Borough

Prepared by:

Policy Analysts, Ltd.

Applied Research Associates, Inc.

2

EXECUTIVE SUMMARY

Consideration for locating a long-term correctional facility should include three major categories at the very least. First is the economics from the State agency's point of view (operating efficiency). Second is the impact of the facility (short and long term) on the local community, in terms of employment, housing, support services demanded, and risk. Third is the impact of location on the prisoner population and their needs for visitation by family, attorneys, and parole boards.

Location of the facility in question in the Mat-Su Borough is seen as providing optimum siting for any facility which is not placed in Anchorage itself. In comparison with other locations under consideration: its proximity to Anchorage (the location where 44% of the convicted felons we currently send to the Lower 48 were arrested) is ideal - about 50 miles; it has suitable land available, in several locations; its state payrates and construction/facility maintenance costs are lower than the Seward/Whittier/Valdez alternatives; it has a labor force available for construction/operation with high unemployment; there is unoccupied housing available; and there would be no further costly delays to construction (estimated at up to a year for a possible increase in cost of \$4-5 million) due to planning for a new site. Over a 20-year period, costs in the Seward area would amount to more than \$21,500,000 higher than in Palmer, while a similar forecast for Valdez is more than \$50,000,000 higher than Palmer.

Community support for a Prison in the Matanuska-Susitna Borough is widespread and concerns over housing and social impacts can be easily addressed and mitigated.

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INTRODUCTION

This report presents a brief explanation of a decision to site the South Central Regional Long Term Facility in the Matanuska-Susitna Borough. (The facility will henceforth be referred to as the Prison). Sources for the information include the Alaska Department of Transportation and Public Facilities, the Alaska Department of Health and Social Services, the Mat-Su Borough Comprehensive Plan (Draft), the site-evaluation done by TRA/Farr et al in September, 1982, and the Alaska Court System 1982 Annual Report.

The three major areas of concern when locating a Prison are:

- 1) the economics/logistics/regulatory compliance from the operating agency's point of view;
- 2) the impact on the community which is proximate to the Prison;
and
- 3) the impact on the prisoner population of the location, i.e. expense and difficulty of visits by relatives and attorneys and visits to parole boards and courts.

Each of these areas will be discussed in detail in the following report.

(A)

AGENCY CONSIDERATIONS

The agency in question is the Alaska Department of Health and Social Services, Division of Corrections. It is responsible for the confinement of felons and others at the direction of the Court System. The facility in question would house convicted felons with relatively long sentences who are currently confined in the Lower 48 via the Federal Bureau of Prisons. There are currently around 200 of these prisoners, and the number is constantly increasing. The State has agreed to provide confinement facilities for its prisoners by 1987, hence the need for a maximum security prison in Alaska. A 1981 Facilities Profile projected 1982 sentenced felons to be 720 rising to 1176 by 1986. Current trends suggest that these figures are well below actual figures and thus conservative.

General requirements for the facility are determined by criteria of the American Correctional Association Standard 4147 and include location within 50 miles of a population centered over 10,000 with access to hospital, courts, and public transportation. This standard is not to be taken lightly. Service support both from the judicial system and logistical support systems rise in cost the further a facility is located from a population center. Examples include care for serious medical problems, psychiatric service support, support from the legal community, goods and services support for operation and maintenance, educational support services, etc. Siting criteria, developed by the Criminal Justice Planning Agency include: the size of the site should be 75-100 acres with 55 acres developable for the facility and a buffer space (developable means less than a 20% slope with drained soils, not on a flood plain, and suitable for sewage disposal and construction; and State ownership of the land. The Sutton site originally chosen for the Prison has 640 acres with more than enough developable land; access to the Glenn Highway is acceptable for the Prison's purposes; it is State owned and roughly 50 miles from Anchorage with local health care, services, and public transportation.

The economics of the Prison analysis includes construction, maintenance, and operation. In comparison with other sites, both construction and operation costs are significantly lower: construction in Seward would be

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approximately 10% higher with maintenance estimated to be 5% higher, while payroll costs would be about 4% higher (State employees get a two-step increase to work in Seward). This would amount to \$4-5 million in construction, about \$100,000 in annual maintenance, and approximately \$225,000 in salaries. Construction in Valdez would be 20% higher with maintenance 6% lower (though on a higher base cost), while payroll costs would be 16% higher (State employees get a five-step increase to work in Valdez). This would amount to \$7-8 million in construction, roughly \$500,000 in annual maintenance, and an estimated \$900,000 in salaries. In other words, start-up costs are \$4-8 million higher and yearly costs are \$325,000 - \$1,400,000 higher in other locations. In addition, there would be delays in project commencement if current site studies had to be abandoned; unofficial State estimates put this delay at up to a year, with attendant increases in final cost of construction as well as loss of the use of a facility for that year. The placement of any multi-million dollar State facility would require a thorough site evaluation and review. The costs of studies completed to date would have to be written off and repeated. In addition, the loss of time could jeopardize the agreement to transfer prisoners held in federal facilities by 1987, and certainly raise the cost of construction \$4-5 million due to the inflationary impact of delay.

Finally the siting of any facility should consider sharing facilities already owned by the State. The Palmer Correctional Facility could readily share much of its services, such as dieticians, counselors, security and maintenance people, storage facilities, etc. Ancillary services, such as staff recreation and transportation can also be shared.

Table 1 shows approximate costs due to re-siting.

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TABLE 1

SITE EXAMPLES - 20 YEAR COST DIFFERENTIALS (1)

	<u>Palmer</u>	<u>Seward</u>	<u>Valdez</u>
Construction	\$ 0	\$ 4,500,000	\$ 7,500,000
Delay	0	4,500,000	4,500,000
Payroll (2)	0	4,500,000	18,000,000
Maintenance (2)	0	2,000,000	10,000,000
Travel (2)	<u>0</u>	<u>6,000,000</u>	<u>10,000,000</u> (est.)
TOTAL	\$ 0	\$21,500,000	\$50,000,000

(1) Table is designed to demonstrate relative cost differences among three sites which serve as examples for a variety of Southcentral locations in relationship to their proximity to Anchorage.

(2) 20-year costs above Palmer/Sutton site in 1982 dollars.

COMMUNITY IMPACT

Impact on the local community of a Prison includes the economic impact due to employment in construction and operation of the Prison, demand for housing and support of the staff, demand for public services, environmental impact, and risk of escaped felons.

The economic impact would be mostly positive, dominated by increased employment and economic growth through provision of services to the Prison. The Borough has a history of unemployment rates higher than either Anchorage or the State as a whole, running from 11-17%, hence would be able to absorb increased labor requirements happily. It currently has a labor force of around 11,000 with almost 2,000 unemployed and an unemployment rate of 17.6% (February 1983). This is up from 15.7% a year ago. It has a resident population which includes skills necessary to operate a confinement facility (there currently exists a similar low-risk facility in Sutton). We feel that it could easily absorb the additional requirement for labor and staff. In addition, the Matanuska-Susitna Borough is the only labor market in Alaska which can effectively draw from other areas on a regular year-round basis. Its proximity to Anchorage, particularly Eagle River/Chugiak area provides the site with a potential labor market area of 108,000. This capacity compares to Valdez, with a February, 1983, labor force estimate of 3,035 and Seward with 1,671. The Mat-Su labor market area is 3.6 - 6.6 times larger without drawing upon the larger Anchorage market. Currently, about 2,500 people commute between Mat-Su and Anchorage daily for employment. This level is similar to the entire labor market of the other sites considered here.

Land and housing is available freely, with over 800,000 acres of privately held land in the Borough and almost 1,000 vacant housing units. There is a 25-bed hospital, three health care centers, and two mental health centers, so medical support is available. With retail sales over \$50 million a year, the local economy can easily support the additional requirements of the Prison for supplies and routine services; utilities currently are available at the site due to the Palmer Correctional Facility.

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The environmental impact is considered nil and the risk of escaped felons is already being borne due to existing facility.

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LEVELS OF COMMUNITY SUPPORT
PALMER/SUTTON PRISON SITE

Examination of agencies, government bodies and other organizations in the Mat-Su Borough indicates that the level of community support for locating the prison in Palmer/Sutton is very strong. Appendix B depicts the historical development of community action since late 1981. The information was gathered through interviews conducted in the public and private sectors in the communities of Palmer, Wasilla and Sutton. Local government officials in Palmer and Wasilla, and Borough officials have unanimously supported the proposal of the construction of a maximum security facility at Sutton since its inception. Both the Wasilla and Palmer Chambers of Commerce have also passed resolutions in its favor; and the Palmer Chamber is in the process of raising \$10,000 to finance a lobbying effort in Juneau. It is of interest to note that the Palmer Chamber has been relatively inactive in recent years; however, the Sutton siting issue has generated tremendous interest and involvement by the business sector of this organization. The Chamber of Commerce funds are being matched by both the City and Borough governments.

The Palmer Elks have a very special interest in the Sutton siting. This organization owns the 640 acres which adjoin the proposed site. The Palmer Elks Club in conjunction with the State Elks Association, are in the process of drawing up plans to develop this land into a youth camp with special focus on handicapped children. The State Association has unanimously supported the recreation siting with the full understanding of the State's proposal to build the maximum security facility on the adjoining land.

The only concern appears to be with some of the people living in the Sutton area. Press coverage of the original State public hearings regarding the siting of the proposed facility indicated that community opinion was against the siting. However, interviews conducted of Mat-Su residents revealed several concerned families who had formed a rather "vocal minority." One interviewee indicated that the minority was, in fact, intimidating, and some of these residents are also on the Sutton Community Council, a newly recognized council whose origins are through the Alpine Civic Club. The

Alpine Civic Club did conduct a very questionable telephone survey in December, 1982 to ascertain the public opinion of the proposed siting at Sutton. Most of the interviewers were known to be against the siting.

One key difficulty in assessing community opinion is that no real information dissemination regarding the impact of the site selection as well as the costs/benefits had been made available to the local community at the time of these surveys. It is the belief of resident and local government officials living in the area that opposition has arisen largely out of fear and misunderstanding of the impact of such a siting. In fact, following a joint open meeting between the Palmer Chamber of Commerce and the Sutton Community Council on March 23, one Borough Assemblyman now plans to request the Borough Planning Department to assist the Sutton community in a needs assessment and impact analysis. One major concern of this group is impacts on the local housing market. In actuality, the site is located four miles south of Sutton and six miles north of Palmer. Such impact would be more likely to occur in the larger community of Palmer and areas south, with its more accommodating infrastructure.

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PRISONER IMPACT

In the case of prisoner impact, the location of the Prison is of lesser importance than it would be with pre-trial or low-risk facilities, since they have fewer occasions to travel to court or to otherwise leave the Prison. There are, however, costs associated with visits by others to them: social visits by family and friends become more difficult as the proximity of the Prison to population centers becomes greater. Similarly, visits by parole boards become more expensive and difficult with increasing distance from Anchorage.

It is difficult to calculate the costs associated with increasing the distance travelled by those wishing to visit the Prison. Hertz recently estimated the cost of ownership/use of a vehicle to be over 40 cents per mile nationally, so such costs could be appreciable when applied to State parole board members travelling to visit a felon. To illustrate the impact, if we assume that each of the projected prisoners would average 24 annual contacts involving personal, legal, other professional, or transport of prisoner to Anchorage for legal, medical, or other reasons, then: in 1982 dollars, the Seward site would add \$6 million in travel costs over 20 operational years and while Valdez would add \$30 million. This does not consider overnight accommodations which are increasingly likely the further the site is from Anchorage.

A centrally located site in South Central Alaska is critical to minimize problems for families and professional personnel. A 1981 Profile of Prisoners housed through the Federal Bureau of Prisons in the Lower 48 showed that 44% of the prisoners had been arrested in Anchorage, and 27% in Fairbanks. Over 70% of those visiting prisoners would be able to drive easily to the Sutton site and the balance would be travelling through Anchorage to get to the Prison. Appendix A to this report provides further data on the prison population housed in the Lower 48.

(12)

CONCLUSION

Two things stand out after a review of the data on the proposed Prison. They are: 1) that such a facility should be located as close to Anchorage as possible; and 2) that such a facility is greatly needed.

LOCATION

Factors affecting the operating agency indicate that agency costs will be minimized with placement in the Matanuska-Susitna Borough, and that operating criteria will be met with prison location at the Palmer/Sutton site.

Factors affecting the local community indicate that the Prison would be a welcome addition, reducing unemployment and increasing the economic base. Public support in the Matanuska-Susitna Borough is widespread, and opposition is centered on issues easily mitigated.

Factors affecting the Prison population indicate a preference for the Mat-Su location, in terms of reasonable access to personal, legal, and other support systems.

FACILITY NEED

The combination of a large prison population housed outside the State through the Federal Bureau of Prisons with a rapidly increasing need for confinement space results in a fairly desperate requirement for this Prison. Conservative estimates of correctional facilities needs by fiscal year 1986 show that total required bed space will only be met through the construction of at least 300 prison bed spaces.

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APPENDIX A

DATA FROM AUGUST 10, 1981 PROFILE OF PRISONERS HOUSED THROUGH THE FEDERAL BUREAU OF PRISON; IN THE L-48

Alaska Resident Time Before Crime

<u>Time</u>	<u>Number</u>	<u>Percent</u>
Less than 6 mo.	17	10
6-12 mo.	17	10
1.1-9 yr.	12	6
2-2.9 yr.	5	3
More than 3 yrs.	123	71

AGE

<u>Age</u>	<u>Number</u>	<u>Percent</u>
Under 20	1	.5
20-30	86	49
31-40	59	34
41-50	19	11
Over 50d	9	5

CRIME CLASS

<u>Class</u>	<u>Number</u>	<u>Percent</u>
Unclassified felon	67	30
Class A felon	96	55
Class B felon	9	5
Class C felon	2	2

PLACE OF ARREST

<u>Place</u>	<u>Number</u>	<u>Percent</u>
Anchorage	76	44
Fairbanks	46	27
Juneau	11	7
Ketchikan	3	2
Bethel	9	6
Bush	23	14

OTHER

43% had no prior convictions.

20% had college plus some graduate school.

93% had over two (2) years remaining before release, compared to 36% of instate.

APPENDIX B

CHRONOLOGY OF COMMUNITY SUPPORT

<u>DATE</u>	<u>ORGANIZATION</u>	<u>ACTION</u>
Nov. 11, 1981	Palmer City Council	Held public hearing and unanimously passed resolution supporting the location of the new State prison in Sutton.
Jan. 1982	Mayor of Palmer	Attended Alaska Conference of Mayors in Juneau; met with Health and Social Services personnel to inquire about the prison and to inform the Department of the City of Palmer's support for the Sutton site.
First Quarter 1982	Wasilla City Council	Discussed and supported the siting of the proposed State prison at Sutton.
March 1982	Palmer Chamber of Commerce	Passed resolution stating their support for the location of the Prison at Sutton.
Mid-winter	Elks	By unanimous vote, at the Elks mid-winter meeting in Petersburg, the organization decided to proceed with plans to build a youth camp on the 640 acres adjacent to the proposed prison site, presently owned by the Elks. The camp will be for all children with special focus on the handicapped.
Nov. 1982	Palmer Chamber of Commerce	Passed second resolution stating support of the Sutton site for the new Administration.
Dec. 1-13	Alpine Civic Club	Conducted telephone survey of Alpine Club membership assessing the level of community support for locating the Prison at Sutton.

Dec. 7, 1982	Mat-Su Borough Assembly	Passed a resolution urging the State of Alaska to locate the Prison at Sutton.
Dec. 14, 1982	Palmer City Council	Held a second public hearing and passed a second resolution reaffirming the facility at Sutton.
Jan. 23-25, 1983	Mayor of Palmer	Attended the Alaska Conference of Mayors in Juneau. Contacted Senator Kerttula and Representatives Larson and Lacher to engage their support.
Mar. 15, 1983	Mat-Su Borough Assembly	Appropriated \$7,000 toward cost benefit study and lobbying effort to support the location of the State prison in Sutton.
	Joint meeting of Palmer Chamber, Mat-Su Borough, and Palmer City Council	Joint meeting to work on conveying desire to have prison at Sutton site. Turned over lobbying effort to the Palmer Chamber of Commerce.
Mar. 22, 1983	Wasilla Chamber of Commerce	Went on record supporting the location of the prison at Sutton.
	Palmer City Council	Appropriated \$10,000 to support the lobbying effort with the Mat-Su Borough and the Palmer Chamber of Commerce funds to be used followed by a dollar-for-dollar pro rata share between the City of Palmer and the Mat-Su Borough after deducting the costs of the cost/benefit study.
Mar. 23, 1983	Joint open meeting between the Palmer Chamber of Commerce and the Sutton Community Council	Discussed local community concerns regarding the prison site selection.

	Mat-Su Borough Assembly	Appropriated an additional \$3,000 to support a joint lobbying effort and cost/benefit study with the City of Palmer and the Palmer Chamber of Commerce.
Mar. 24, 1983	Palmer Chamber of Commerce	Chamber issues emergency letter to raise \$10,000 for a major lobbying effort to support the location of the new State prison at Sutton.
Mar. 28, 1983	Wasilla City Council	Passed resolution supporting siting of the Prison at Sutton.
Apr. 1983 (1st week)	Sutton Community Council	Full membership meeting to discuss siting of Prison.
May, 1983	Elks State Association Meeting	Program for development of youth camp will be presented.

(18)

APPENDIX C1

CORRECTIONAL FACILITIES PROFILE

YEAR 1932

FACILITY PROFILE*

COMM. PLACEMENT	85	85 Min.
3RD. AVE.	70	12 Med., 58 Max.
6TH. AVE.	100	98 Med., 2 Max.
POST 6	50	50 Min.
PALMER	113	113 Min.
HILAND MOUNTAIN	80	60 Med., 20 Max.
MEADOWCREEK	33	28 Med., 5 Max.
FAIRBANKS	110	100 Med., 10 Max.
WYME	28	22 Med., 6 Max.
JIMENEZ MENS	90	59 Min., 12 Med., 19 Max.
KETCHIKAN	22	16 Min., 6 Med.
JOHNSON CENTER		
BETHEL		
300 BED		

SENT. INMATE/SPACE

SENT. MISO.	105	
SENT. FELON		720
CONTRACT HOUSES	85	
MIN. SECURITY		240
MED. SECURITY		336
MAX. SECURITY	120	
F.B.P.		188

COMPOSITE PROFILE

TOTAL INSENT.	243	
TOTAL SENT.		826
TOTAL SPACES		969

* Does not include intake facilities. 6th Ave. and Ridgeview assumed as sentenced facilities after opening of Pre-Tria December, 1932

311

APPENDIX C2

CORRECTIONAL FACILITIES PROFILE

1986

FACILITY PROFILE*

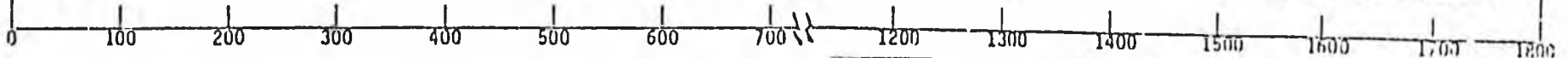
COMM. PLACEMENT	170	170 Min.
JRD. AVE.	50	12 Med., 38 Max.
6TH. AVE.	100	98 Med., 2 Max.
POST 6	50	50 Min.
PALMER	223	113 Min., 100 Med.
HILAND MOUNTAIN	160	140 Med., 20 Max.
MEADOWCREEK	33	28 Med., 5 Max
FAIRBANKS	313	56 Min., 247 Med., 10 Max.
HOME	48	42 Med., 6 Max.
JUNEAU MENS	126	59 Min., 12 Med., 55 Max.
KETCHIKAN	22	16 Min., 6 Med.
JOHNSON CENTER	5	5 Min.
BETHEL	40	40 Med.**
300 BED	300	300 Max.

SENT. INMATE/SPACE

SENT. MISO.	173	1176	
SENT. FELON	170		
CONTRACT HOUSES			
MIN. SECURITY			299
MED. SECURITY			685
MAX. SECURITY			136
F.R.P.		188	

COMPOSITE PROFILE

TOTAL UNSENT.	396	1349
TOTAL SENT.	170	
TOTAL SPACES		



* Does not include intake facilities. 6th Ave. and Ridgeview assumed as sentenced facilities after opening of Pre-Trial facility December, 1982.

** Complete with local prisoners - no increase in system capacity

APPENDIX D

PROFESSIONALS

Richard L. Ender, Ph.D., President, Policy Analysts, Ltd.; Professor, Public Policy and Administration, University of Alaska, Anchorage; participated in preparation of Mat-Su OEDP; principal in OCS Socioeconomic Studies Programme, Anchorage Health Study, Yukon-Kuskokwim CZM, and over 50 other studies.

Charles R. Gant, M.A., President, Applied Research Associates, Inc., former Chief of Life Cycle Cost Analysis for the State of Alaska, 1977-1982, has analyzed the economics of hundreds of projects both for the State of Alaska and for the Department of Defense.

4/7/83
Daily News
D-1
A-1
S-1

Study determines costs of proposed prison sites

By ED TRUITT
Daily News correspondent

PALMER — A cost benefit study commissioned by the Matanuska-Susitna Borough estimates it would cost \$21.5 million more over 20 years to build and operate a maximum-security prison at Seward and \$50 million more for one in Valdez than it would cost to put the facility near Sutton.

Dr. Richard Ender presented the figures, which are based on an earlier Department of Health and Social Services study, to the Mat-Su Borough Assembly Tuesday night.

The assembly commissioned the \$7,000 study as part of a \$30,000 joint lobbying effort with the Palmer Chamber of Commerce and city council to encourage building the prison in the Mat-Su Valley.

Originally planned for a site next to the Palmer Correctional Center, the \$41 million planned prison has been up in the air since other Southcentral communities began intense lobbying to get the project and its multimillion-dollar payroll.

Switching sites would waste the existing plans and

cause at least a year's delay in the project, Ender said.

Construction costs would run about 10 percent higher, annual maintenance about 5 percent higher, and the 200 new state employees would be paid 4 percent more in Seward, Enders predicted. State employees get a two-step salary increase for working in Seward and five steps, or about 16 percent, more in Valdez, he said.

In addition to the advantages of building the new prison next to the existing minimum- and medium-security prison, the state would find a ready labor force and a strong housing market in the Mat-Su Valley, he added.

With 44 percent of the prisoners coming from Anchorage, the increased travel costs to Seward or Valdez would add up for both the state and the families of the prisoners, Enders said.

While Gov. Bill Sheffield included only planning money instead of full funding for the proposed prison in his capital projects budget, Ender predicted the state could still meet its 1987 deadline mandated by the recent prisoners' lawsuit against the Alaska prison system.

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF PUBLIC SAFETY
OFFICE OF THE COMMISSIONER

POUCH #
JUNEAU, ALASKA 99811
PHONE:

April 7, 1983

465-4322

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

Dear Senator Ray:

If the intent of Senate Bill 167 is to place all contract facilities under the Division of Corrections, the Department of Public Safety has the following concerns:

We find nothing in SB 167 which requires the Commissioner of H&SS to contract with all or even some of the existing facilities which are now the responsibility of DPS and, in fact, Sec. 33.30.031 prohibits the Commissioner of H&SS from contracting with facilities "unable to provide a degree of custody care, and discipline similar to that required by the laws of this State." We question if any of DPS's contract jails could meet this requirement.

It is my view that SB 167 Sec. 33.30.171(a) at page five would not relieve the Department from providing custody and care for a person arrested, until that prisoner is transferred to a state correctional facility, thereby just adding to the cost of care for prisoners.

As long as the prisoner is being held in a "facility" rather than a state correctional facility that is owned or run by the state, the Department of Public Safety is responsible for their care.

Amendments Proposed:

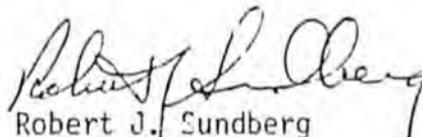
- Sec. 33.30.11(3) - provide necessary medical services for persons charged with state offenses or in correctional facilities or who are committed by the court to the custody of the Commissioner, including examination for communicable and infectious diseases; and
- Sec. 33.30.171(a) - Notwithstanding AS 33.30.011(1) and (2), the Commissioner of Public Safety shall provide for the custody, care, and discipline of prisoners pending transfer to the custody of the Commissioner of Health & Social Services (H&SS) at a contract facility or state correctional facility.

(c) - Medical services for a prisoner who is unconscious or in immediate need of medical attention before admission to a correctional facility or commitment by a court to the custody of the commissioner of health and social services must be provided by the law enforcement agency having custody of the prisoner. The commissioner of Health & Social Services and the commissioner of Public Safety and arresting agency are not responsible for medical costs for accidents, injury, communicable and infectious diseases, incurred prior to being taken into custody.

Sec. 33.30.081(c) - The Commissioner of Public Safety is responsible for furnishing return transportation to the place of arrest for a prisoner who is released from custody before admission to a state correctional facility or contract facility.

Sec. 33.30.181(2) - "Correctional facility or facilities means a prison, jail, camp, farm, half-way house, group home, contract facility, or other placement designated by the Commissioner for the custody, care, and discipline of prisoners . . ."

Sincerely,


Robert J. Sundberg
Commissioner

STATE OF ALASKA
FISCAL NOTE

Revision Date _____, 1983

I. REQUEST

Bill/Resolution No.: SB 167
Title: "...correctional facilities...(ect.)"
Sponsor: Rules/Governor
Requestor: _____

II. FISCAL DETAIL

Agency Affected: Public Safety
Program Category Affected: Admin of Justice
BRU, Program of Subprogram(s) Affected:
Alaska State Troopers

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL		200.0	212.0	224.7	238.1	252.3
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		200.0	212.0	224.7	238.1	252.3
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUNL		200.0	212.0	224.7	238.1	252.3
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Not identified by sponsor of Bill.

IV. ANALYSIS: Attach a separate page for any Analysis See attached.

Prepared By: Jos Mapranath Phone: 465-4336
Division: Administrative Services Date: 03/25/83
Approved by Commissioner: *[Signature]* Date: 3/25/83
Department: Public Safety

Distribution:

Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)
Copy to Department (for Governor introduced bills)
Copy to Sponsor
Copy to Requestor (if different from Sponsor)

3/8/83

This will have a tremendous impact. We will be, by statute, responsible for all injuries or medical problems the subject may have incurred prior to our taking custody.

As stated, this will have even a greater impact on municipal police agencies than on this Department.

Costs shown are for medical services. A 6% inflation factor is applied to FY 85 and beyond.

POSITION PAPER

Senate Bill 167

"An Act relating to the Imprisonment and Rehabilitation of Offenders."

This proposed legislation repeals and revises state statutes which address correctional facilities and programs; good time computation and unlawful evasion.

Correctional Facilities and Programs. AS 33.30.011-33.30.201 would clearly establish the Commissioner's authority to not only establish, operate and control correctional facilities but also to classify prisoners and establish programs for offenders to facilitate their reintegration into society. It mandates that correctional programs must include furloughs and sets forth criteria for furlough eligibility and levels of supervision to be required for prisoners on furlough. The current statutes AS 33.30.250 & .260 do not mandate furlough programs nor does it provide a criteria for eligibility or levels of supervision.

The Task Force on Corrections Report be of Dec./Jan. 1982-1983 recommends that every offender about to be released be provided the opportunity to participate in a halfway house program. This legislation is consistent with that recommendation.

Sec. 33.30.171 authorizes the use of monitoring equipment to listen to prisoners' telephone conversations. This authority will provide increased institutional security in regards to introduction of contraband, escape attempts and will reduce harassment of witnesses by prisoners.

Sec. 33.30.181 sets forth the effect of conviction of a felony offense on civil rights. This specifically disqualifies those offenders convicted of a felony involving moral turpitude from voting in a State or municipal election until that person is unconditionally discharged. Also, a person convicted of a crime is disqualified from serving as a juror until that person is unconditionally discharged. This section will alleviate administrative and legal problems encountered by corrections staff as it clearly defines the civil rights excluded to convicted persons.

Sec. 33.20.010 authorizes that prisoners earn one day of good time for every two days served with good behavior while participating in a furlough program. Incarcerated prisoners would earn one day of good time for every three days served with good behavior. This will help alleviate the overcrowding in Alaska's prison system to a degree; however, the Department strongly recommends that all prisoners with good behavior earn one day of good time for every two days served in order to further reduce prison population and to lessen the administrative burden of computing good time on two different scales. It is felt that those who are incarcerated would have more incentive for good behavior, even when overcrowding exists within correctional facilities, if the amount of good time were to be increased.

Sec. 33.30.071 as amended defines areas of responsibility for prisoners.

between the Department and the Department of Public Safety, i.e. responsibility for prisoners pending commitment and transportation.

Sec. 33.20.075 Effect of Pardon defines the legal effect of a pardon by the Governor.

Sec. 11.56.340 Unlawful Evasion clarifies existing statutes by specifically including prisoners on furlough who do not return to their community placement within the time specified under unlawful evasion section.

The Department supports the enactment of SB 167 legislation which revises AS 33.30 by incorporating legislation which has been enacted over the past several years, as well as, establishing statutory authority to enable the Dept. to better meet constitutional mandates.

In addition, in order to encourage good behavior and to clarify computing systems, the Department recommends that computation of good time be uniform at one day good time for two days served with good behavior for all prisoners whether incarcerated or on furlough status.

Recommended by: *Roger V. Endell*
for Roger V. Endell, Director
Division of Adult Corrections

Date: March 30, 1983

Approved by: *Robert London Smith, Ph.D.*
Robert London Smith, Ph.D.
Commissioner

Date: 4/4/83

<p>I. REQUEST</p> <p>Bill/Resolution No.: Senate Bill No. 167</p> <p>Title: "...corr. fac., good time comput..."</p> <p>Sponsor: Rules Committee</p> <p>Requestor: Governor Sheffield</p>	<p>II. FISCAL DETAIL</p> <p>Agency Affected: Health & Social Services</p> <p>Program Category Affected: Justice</p> <p>BRU, Program of Subprogram(s) Affected: Adult Confinement; Probation & Com. Prog.</p>
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EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTS						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Not applicable.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Roger C. Lange *Roger C. Lange* Phone: 465-3376
 Division: Adult Corrections Date: March 30, 1983

Approved by Commissioner: *Scott London Smith, M.D.* Date: 4/4/83
 Department: Health & Social Services

Distribution:

Original to Legislative Finance
 Copy to Office of Management and Budget (for Legislature introduced bills)
 Copy to Department (for Governor introduced bills)
 Copy to Requestor (if different from Sponsor)

IV. ANALYSIS

This proposed legislation repeals and revises state statutes which address correctional facilities and programs; executive clemency and unlawful evasion.

The only section which apparently has a fiscal impact for the Division of Adult Corrections is Section 33.20.010 (b). This section changes the entitlement for good time for one day for three days served to one day for two days served while a person is on furlough status.

Although the fiscal detail shows no savings, there would be a reduction of days served by each individual on furlough status. Based on the number of furlough beds currently under contract, it is estimated that the proposed legislation would result in relieving the overcrowding by approximately nine (9) beds statewide. However, the number of community placement beds for which funding has been provided does not meet the demand for inmates who meet the eligibility criteria to enter the furlough program. Therefore, no real savings will be experienced until this backlog of eligibles can enter the furlough program.

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION

BILL SHEFFIELD, GOVERNOR

POUCH KC - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3428

March 16, 1983

The Honorable Fritz Pettyjohn
Senator
Alaska State Legislature
Pouch V
Juneau, AK 99811

Re: SB 167

Dear Senator Pettyjohn:

I am the assistant attorney general with the Department of Law who serves as counsel to the division of corrections.

In that capacity I drafted SB 167, which I understand has been assigned to you by Senate Judiciary Chairman Ray. As you are probably aware, the problem of overcrowding in our prison system continues to worsen with the net addition of 120 new prisoners having come into the system during the months of January and February.

Section 3 of SB 167 (p.12 line 21) provides for an increase in good time for prisoners on furlough. Given the critical overcrowding that exists in Alaska's correctional institutions, and the need to address this problem on several fronts simultaneously, I now request that you consider a committee substitute to SB 167 which would provide for an increase in good time for all prisoners rather than just those on furlough. The prospect of the State having to spend millions of dollars every year to provide new prison bed space is not attractive, especially given the predictions for declining revenue. The change I have suggested would have a substantial impact on the bed space crunch.

I am available at your convenience to respond to any questions. Thank you for your time and attention.

Very truly yours,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By: Michael J. Stark

Michael J. Stark
Assistant Attorney General

The Honorable Fritz Pettyjohn -2-

March 16, 1983

MJS/gb-56

cc: The Honorable Bill Ray, Senator ✓
Alaska State Legislature

Norman C. Gorsuch
Attorney General

Arthur H. Peterson
Assistant Attorney General

Roger Endell, Director
Division of Corrections

The Honorable Douglas Serdahely
Superior Court Judge

Timothy Stearns, Esq.

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION

BILL SHEFFIELD, GOVERNOR

POUCH KC - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3428

April 15, 1983

John Gabrielli
Counsel
Senate Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

SUBJECT: Overview of SB 167 - "An Act relating to correctional facilities, good time computation, and the imprisonment and rehabilitation of offenders."

Dear John:

Pursuant to your request, the following is a brief overview of SB 167. The main thrust of this bill is a rewrite and update of Alaska's statutes pertaining to corrections. Most of these statutes have existed since statehood and are outdated by correctional practices and court decisions.

The bill establishes criteria that must be considered in classifying prisoners and establishing programs for offender rehabilitation. Further, the bill provides for a comprehensive furlough program that does not presently exist such that eligibility criteria and levels of supervision that will be required for prisoners on furlough will be set out in the appropriate statutes. Present furlough statutes provide little in the way of guidelines, eligibility criteria and required supervision.

The bill clarifies the legal effects of a pardon. It also provides for an increase in good time deductions for prisoners on furlough from one day for every three days served without rule violations to one day for every two days served. On March 16, 1983, I sent a letter to Senator Pettyjohn with a copy to Senator Ray suggesting a committee substitute to this section (sec. 3 P. 12-13), which would increase good time deductions for all prisoners to one day for every two served without rule violation. This would be consistent with many other states (some provide for 50% or more of a sentence as a good time deduction) and one inexpensive way to deal with the urgent problem of prison overcrowding.

John Gabrielli
Senate Judiciary Committee

April 15, 1983
Page 2

Finally, the bill provides authority for monitoring of telephone calls of prisoners to preserve security in correctional institutions, and updates unlawful evasion statutes to incorporate the furlough situation.

If you have any questions regarding this important bill, please contact me at your convenience.

Sincerely,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By: Michael J. Stark
Michael J. Stark
Assistant Attorney General

MJS/lb-69



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 9, 1983

The Honorable Jalmar Kerttula
President of the Senate
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. President:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the imprisonment and rehabilitation of offenders and to correctional facilities.

The bill has four main components, the most important of which is a total revision of AS 33.30, Alaska's statutes dealing with the state correctional system. Most of these statutes have not been amended since their original enactment at the time of statehood. There have been many changes in the law relating to corrections in the last several years (e.g. responsibility of the commissioner of health and social services to provide treatment for mental and physical disabilities), and this bill incorporates these changes.

The bill also provides authority for the commissioner of health and social services to authorize the monitoring of prisoner telephone calls so as to preserve the security and orderly administration of correctional institutions. It also revises and restructures existing law on furlough programs for prisoners by establishing certain eligibility requirements, setting out when furloughs may be granted, for what purpose, and the quality of supervision that is required for prisoners on furlough.

Areas of confusion regarding the respective responsibilities of the commissioner of health and social services and the commissioner of public safety as they pertain to prisoners are also resolved and clarified.

The second major component of the bill increases the amount of time that may be deducted from a sentence for good behavior for prisoners on furlough. Presently all prisoners receive one day of "good time" deducted from their sentence for every three days served. This bill, changing the deduction to one day for every two days

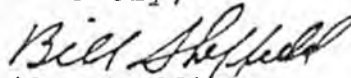
served by prisoners participating in a furlough program, will reward those prisoners who are most deserving, increase the incentive for good behavior for prisoners who are incarcerated, and help alleviate the problem of overcrowding in Alaska's correctional institutions.

The third major component of the bill clarifies the legal effect of a pardon.

Finally, the bill amends existing statutes dealing with unlawful evasion so as to cover prisoners on furlough who fail to return to their place of confinement or residence within the time specified by those having direct supervision over them.

This bill addresses many existing problems in Alaska's correctional system, and will enhance the ability of the state to carry out its responsibilities to the public and to offenders. Since it amends current statutes, the bill does not recognize Executive Order No. 54's proposed creation of a Department of Corrections. If that order is not disapproved by the legislature by March 17, 1983, and the new department is created, this bill will have to be amended to reflect that reorganization.

Sincerely,



Bill Sheffield
Governor

I. REQUEST

Bill/Resolution No. _____
 Title An Act relating to the imprisonment & rehabilitation of offenders
 Requested by Office of the Governor Date Dec. 29, 1982

II. FISCAL DETAIL

Agency Affected Health & Social Services
 Program Category Affected Offender Confinement, Reform. and Supervision
 BRU, Program or Subprogram(s) Affected Adult Confinement, Prob. & Comm. Prg.
 (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-	-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

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

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

This proposed legislation repeals and revises state statutes which address correctional facilities and programs; executive clemency and unlawful evasion.

IV. DATE Jan. 7, 1983

PREPARED BY Rogey C. Lange

Original: Legislative Finance

AGENCY Division of Adult Corrections

cc: Budget and Management

PHONE 465-3376

Prime Sponsor (First Legislator Named)

S

B

175

COMMITTEE REPORT
SENATE

FURTHER:

Date: _____

Mr. President:

The Committee on Education has had 55 175

relating to the noncompetitive purchase of a product or service from a public official or state employee.

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

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

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

S

B

/

7

9

COMMITTEE REPORT

SENATE

3/15/63

FURTHER:

Date: 3/15/63

Mr. President:

The Committee on Judiciary has had 415-177

Relative to the delimitation of department head membership
of boards, commissions, and other units of the state government.

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 SP 122, 123, 124, 125 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

ALASKA STATE LEGISLATURE - SENATE

SENATOR RICHARD I. ELIASON

April 15

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

MEMORANDUM

TO: Senator Bill Ray, Chair
Senate Judiciary Committee

FROM: Senator Dick Eliason *Dick*

DATE: March 31, 1983

RE: SB 179---"An Act relating to the delegation of department head memberships on boards, commissions, and other units of the state government."

As requested, I reviewed the above-referenced bill and I am now reporting my findings to you.

Senate Bill 179, introduced by Senator Mulcahy, would allow Commissioners to delegate their membership on boards and commissions to high-level subordinate employees. This legislation has the support of the Sheffield administration, as evidenced by the enclosed position paper by Peter Mc Dowell, Director, OMB.

Senator Mulcahy and Peter McDowell have expressed their desire to testify before the Judiciary Committee.

Enclosures

asey	Dan	Comm.	Coastal Policy Council			FD
asey	Dan	Comm.	Geographic Board			
asey	Dan	Comm.	Power Authority	03/01/18		FD
asey	Dan	Comm.	Rural Development Council			
asey	Dan	Comm.	Transportation Safety			
ollinsworth	Don	Comm.	Coastal Policy Council			FD
ollinsworth	Don	Comm.	Fisheries Board	03/02		FD LC
ollinsworth	Don	Comm.	Game Board	03/02		FD LC
ollinsworth	Don	Comm.	Pacific Marine Fisheries		84/10/03	
ollinsworth	Don	Comm.	Wood-Tikchik State Park			
each	Robert	Comm.	Housing Finance	03/01/24		FD
each	Robert	Comm.	Industrial Development			
each	Robert	Comm.	Medical Facilities			FD
each	Robert	Comm.	Municipal Bond Bank			FD
each	Robert	Comm.	Permanent Fund Corporation	03/01/18		FD
each	Robert	Comm.	Royalty Oil & Gas			FD
ewis	Mark	Comm.	Coastal Policy Council			FD
ewis	Mark	Comm.	Geographic Board			
ewis	Mark	Comm.	Industrial Development	02/12/17	84/07/01	
ewis	Mark	Comm.	Medical Facilities			FD
ewis	Mark	Comm.	Municipal Bond Bank			FD
ewis	Mark	Comm.	Older Alaskans Commission			
ewis	Mark	Comm.	Rural Development Council			
ind	Marshall	Comm.	Domestic Violence			FD
ind	Marshall	Comm.	Educational Commission			
ind	Marshall	Comm.	Geographic Board			
von	Richard	Comm.	Agricultural Action	03/01/03		FD
von	Richard	Comm.	Coastal Policy Council			FD
von	Richard	Comm.	Housing Authority			FD
von	Richard	Comm.	Housing Finance	03/01/13		FD
von	Richard	Comm.	Industrial Development			
von	Richard	Comm.	International Trade			
von	Richard	Comm.	Marine Pilots			LC
von	Richard	Comm.	Power Authority	03/01/18		FD
von	Richard	Comm.	Royalty Oil & Gas			FD
von	Richard	Comm.	Rural Development Council			
von	Richard	Comm.	Science & Technology		03/10/03	
edowell	Peter	Director	Power Authority	03/01/18		FD
eve	Richard	Comm.	Agricultural Action	03/01/13		FD
eve	Richard	Comm.	Coastal Policy Council			FD
eve	Richard	Comm.	Water & Wastewater Works			
eve	Richard	Comm.	Water Resources Board			
obison	Jim	Comm.	Fishermen's Fund Advisory			FD

LAST NAME	FIRST	TITLE	BOARD	APPT	TERM	FD	LC
bison	Jim	Comm.	Worker's Compensation			FD	LC
dd	Lisa	Comm.	Correctional Industries				
dd	Lisa	Comm.	Housing Finance	03/01/13	04/07/01	FD	
dd	Lisa	Comm.	Older Alaskans Commission				
ith	Robert	Comm.	Administration of Justice			FD	
ith	Robert	Comm.	Controlled Substances				
ith	Robert	Comm.	Correctional Industries				
ith	Robert	Comm.	Domestic Violence			FD	
ith	Robert	Comm.	Medical Facilities			FD	
ith	Robert	Comm.	Older Alaskans Commission				
ith	Robert	Comm.	Transportation Safety				
ndberg	Robert	Comm.	Administration of Justice			FD	
ndberg	Robert	Comm.	Controlled Substances				
ndberg	Robert	Comm.	Domestic Violence			FD	
ndberg	Robert	Comm.	Police Standards Council				
ndberg	Robert	Comm.	Transportation Safety				
nnicke	Esther	Comm.	Agricultural Action	03/02/28	06/06/30	FD	
nnicke	Esther	Comm.	Coastal Policy Council			FD	
nnicke	Esther	Comm.	Geographic Board				
nnicke	Esther	Comm.	Power Authority	03/01/10		FD	
nnicke	Esther	Comm.	Royalty Oil & Gas			FD	
nnicke	Esther	Comm.	Water Resources Board				
nnicke	Esther	Comm.	Wood-Tikchik State Park				

BOARD	LAST NAME	FIRST	TITLE	APPT	TERM	FD	LC
Administration of Justice	Smith	Robert	Comm.			FD	
Administration of Justice	Sundberg	Robert	Comm.			FD	
Agricultural Action	Lyon	Richard	Comm.	83/01/03		FD	
Agricultural Action	Neve	Richard	Comm.	83/01/13		FD	
Agricultural Action	Wunnicke	Esther	Comm.	83/02/28	86/06/30	FD	
Postal Policy Council	Casey	Dan	Comm.			FD	
Postal Policy Council	Collinsworth	Don	Comm.			FD	
Postal Policy Council	Lewis	Mark	Comm.			FD	
Postal Policy Council	Lyon	Richard	Comm.			FD	
Postal Policy Council	Neve	Richard	Comm.			FD	
Postal Policy Council	Wunnicke	Esther	Comm.			FD	
Controlled Substances	Smith	Robert	Comm.				
Controlled Substances	Sundberg	Robert	Comm.				
Correctional Industries	Rudd	Lisa	Comm.				
Correctional Industries	Smith	Robert	Comm.				
Domestic Violence	Lind	Marshall	Comm.			FD	
Domestic Violence	Smith	Robert	Comm.			FD	
Domestic Violence	Sundberg	Robert	Comm.			FD	
Educational Commission	Lind	Marshall	Comm.				
Fishermen's Board	Collinsworth	Don	Comm.	83/02		FD	LC
Fishermen's Fund Advisory	Robison	Jim	Comm.			FD	
Game Board	Collinsworth	Don	Comm.	83/02		FD	LC
Geographic Board	Casey	Dan	Comm.				
Geographic Board	Lewis	Mark	Comm.				
Geographic Board	Lind	Marshall	Comm.				
Geographic Board	Wunnicke	Esther	Comm.				
Housing Authority	Lyon	Richard	Comm.			FD	
Housing Finance	Heath	Robert	Comm.	83/01/24		FD	
Housing Finance	Lyon	Richard	Comm.	83/01/13		FD	
Housing Finance	Rudd	Lisa	Comm.	83/01/13	84/07/01	FD	
Industrial Development	Heath	Robert	Comm.				
Industrial Development	Lewis	Mark	Comm.	82/12/17	84/07/01		
Industrial Development	Lyon	Richard	Comm.				
International Trade	Lyon	Richard	Comm.				
Marine Pilots	Lyon	Richard	Comm.				LC
Medical Facilities	Heath	Robert	Comm.			FD	
Medical Facilities	Lewis	Mark	Comm.			FD	
Medical Facilities	Smith	Robert	Comm.			FD	
Municipal Bond Bank	Heath	Robert	Comm.			FD	
Municipal Bond Bank	Lewis	Mark	Comm.			FD	
Order Alaskans Commission	Lewis	Mark	Comm.				
Order Alaskans Commission	Rudd	Lisa	Comm.				
Order Alaskans Commission	Smith	Robert	Comm.				

Pacific Marine Fisheries	Collinsworth	Don	Comm.		04/10/03	
Permanent Fund Corporation	Heath	Robert	Comm.	03/01/18		FD
Alaska Standards Council	Sundberg	Robert	Comm.			
Water Authority	Casey	Dan	Comm.	03/01/18		FD
Water Authority	Lyon	Richard	Comm.	03/01/18		FD
Water Authority	McDowell	Peter	Director	03/01/18		FD
Water Authority	Wunnicke	Esther	Comm.	03/01/18		FD
Arctic Oil & Gas	Heath	Robert	Comm.			FD
Arctic Oil & Gas	Lyon	Richard	Comm.			FD
Arctic Oil & Gas	Wunnicke	Esther	Comm.			FD
Arctic Development Council	Casey	Dan	Comm.			
Arctic Development Council	Lewis	Mark	Comm.			
Arctic Development Council	Lyon	Richard	Comm.			
Science & Technology	Lyon	Richard	Comm.		03/10/03	
Transportation Safety	Casey	Dan	Comm.			
Transportation Safety	Smith	Robert	Comm.			
Transportation Safety	Sundberg	Robert	Comm.			
Water & Wastewater Works	Neve	Richard	Comm.			
Water Resources Board	Neve	Richard	Comm.			
Water Resources Board	Wunnicke	Esther	Comm.			
Wood-Tikchik State Park	Collinsworth	Don	Comm.			
Wood-Tikchik State Park	Wunnicke	Esther	Comm.			
Worker's Compensation	Robison	Jim	Comm.			FD IC

STATE OF ALASKA

OFFICE OF THE GOVERNOR

OFFICE OF MANAGEMENT AND BUDGET

BILL SHEFFIELD, GOVERNOR

POUCH AM
JUNEAU, ALASKA 99811
PHONE: (907) 465-3568

POSITION PAPER

SB 179

A Bill Relating to the Delegation of Department Head Membership on Boards, Commissions, and Other Units of State Government

The Sheffield Administration supports this bill -- a bill which allows Commissioners to delegate their membership on boards and commissions to high-level subordinate employees.

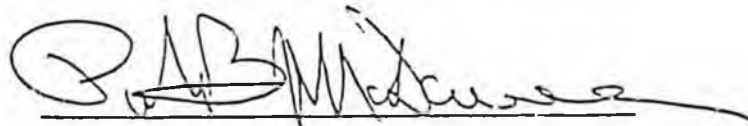
This bill would serve to clarify the management responsibilities of the heads of principal departments of the State. Present statutes provide that the heads of several principal departments must sit on many boards of the plethora of public agencies throughout the executive branch of government, in addition to serving as the chief executive officers (CEOs) of their respective agencies.

These provisions have created an anomalous situation that inhibits the ability of these key members of government to exercise either their duties as commissioners or board members. The statutes in question leave little room to allocate top management resources to these important functions. In fact, most of the public agency statutes require that important board memberships can only be filled from a group of fifteen (15) people.

Another effect of this severe limitation on the pool of talent available for boards has been the creation of single-deputy positions to assume CEO duties for principal departments. This creates an otherwise unnecessary layer of management that insulates the operational management of each agency from the line of accountability of top management. This insulation is not in the public interest.

It is in the public interest to ensure that government makes the best use of the abilities of the people who are appointed to manage the principal agencies.

Our laws must provide that the uppermost duty of the head of each department is to manage the affairs of that department. The laws should also provide that the many important public agencies directed by boards should benefit from access to the larger pool of top management talent presently available within the Alaska government.

A handwritten signature in dark ink, appearing to read "Peter B. McDowell", written over a horizontal line.

Peter B. McDowell, Director
Office of Management and Budget

March 30, 1983

Date

I. REQUEST

Bill/Resolution No.:
Title: "An act relating to the delegation of
Sponsor: department head membership on boards.
Requestor: Governor

II. FISCAL DETAIL

Agency Affected: A11
Program Category Affected: A11
BRU, Program of Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		0	0	0	0	0
CAPITAL		0	0	0	0	0
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Jeff Morrison, Program Budget Analyst *JM* Phone: 465-3568
 Division: OMB - Division of Budget Review Date: March 8, 1983
 Approved by Commissioner: *[Signature]* Date: 3/9/83
 Department: *[Signature]*

Distribution:

- Original to Legislative Finance
- Copy to Office of Management and Budget (for Legislature introduced bills)
- Copy to Department (for Governor introduced bills)
- Copy to Sponsor
- Copy to Requestor (if different from Sponsor)

MEMORANDUM

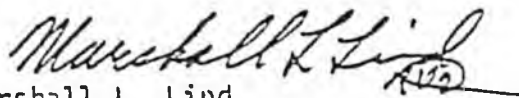
State of Alaska

TO: Peter B. McDowell, Director
Office of Management and Budget
Office of the Governor

DATE: March 18, 1983

FILE NO: 020.1

TELEPHONE NO: 455-2800

FROM: 
Marshall L. Lind
Commissioner
Department of Education

SUBJECT: Position Paper, SB 179

We concur with your position regarding Senate Bill 179, as expressed in the draft position paper.

TO: Peter McDowell, Director
Office of Management and Budget
Office of the Governor

DATE: March 25, 1983

FILE NO:

TELEPHONE NO:

FROM: Richard A. Lyon, Commissioner
Department of Commerce and
Economic Development

RAL
SUBJECT: SB 179 Delegation of
membership on boards
and commissions

SB 179 allows a commissioner, subject to the Governor's approval, to delegate his membership on a board, commission, public authority or other unit of State Government to a subordinate employee (director status or above). I agree with this proposal and request the Administration to support its passage.

RAL/mc5/12

TO: Peter B. McDowell . DATE: March 25, 1983
Director
Office of Management & Budget FILE NO:
TELEPHONE NO:

FROM: Esther C. Wunnicke *EWC* SUBJECT: SB 179
Commissioner
Department of Natural Resources

Thank you for inviting my comments on SB 179 and the draft position paper which you drafted.

I agree that SB 179 should be enacted into law, and, with one exception, I agree with the case you have so well presented for its enactment.

That part of the agreement with which I disagree is the assertion that it is the membership of Commissioners on boards which has led to the establishment of single-deputy positions. Given the range of Commissioner responsibilities to the Governor, to departmental employees, to legislators, and to the public, I think there are a multiplicity of reasons for the appointment of single deputy commissioners.

MEMORANDUM

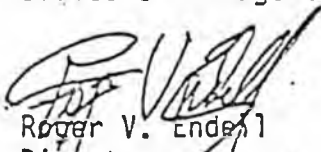
State of Alaska
MANAGEMENT & BUDGET

TO: Peter B. McDowell
Director
Office of Management & Budget

DATE: March 23, 1983
MAR 25 1983

FILE NO: DIRECTOR

TELEPHONE NO: 465-3376

FROM: 
Roger V. Enders
Director
Division of Adult Corrections

SUBJECT: Senate Bill No. 179 and
Draft Position Paper

Senate Bill No. 179 "An Act relating to the delegation of department head membership on boards, commissions, and other units of the state government," and the draft Position Paper has been reviewed. Adult Corrections is in agreement with the position that public agencies directed by boards would benefit from access to a larger pool of top management personnel.

RVE/AW/mjr

OFFICE OF
MANAGEMENT & BUDGET

MAR 29 1983

STRATEGIC PLANNING

MEMORANDUM


State of Alaska

TO: The Cabinet

DATE: March 17, 1983

FILE NO:

TELEPHONE NO: 465-3568

FROM:  Peter B. McDowell
Director
Office of Management
and Budget

SUBJECT: Draft SB 179 and
Position Paper

Attached for your review is a copy of SB 179 and a draft Position Paper on the bill. We request your comments and suggestions on the Position Paper.

Thank you.

*PETER,
I STRONGLY
CONCUR; WE'VE GOT
TO MUCH
STATE GOV
& NOT ENOUGH
DELEGATION!!
DAN*

RECEIVED

MAR 18 1983

DOT/PF
COMMISSIONER'S OFFICE

MEMORANDUM

State of Alaska

DEPARTMENT OF ENVIRONMENTAL CONSERVATION

TO: Peter B. McDowell
Director

DATE: March 23, 1983

Office of Management and Budget FILE NO:


TELEPHONE NO: 465-2600

FROM: Richard A. Neve' *RAN*
Commissioner
Environmental Conservation

SUBJECT: SB 179
Position Paper

This department fully supports the draft position paper on SB 179 which you sent for comment on March 17.

TO: Peter B. McDowell
Director
Office of Management
and Budget

FROM: 
Robert J. Sundberg
Commissioner
Department of Public Safety

DATE: March 23, 1983

FILE NO:

TELEPHONE NO: 465-4322

SUBJECT: Draft SB 179 and
related position
paper

The draft legislation and accompanying position paper were reviewed and I am in complete agreement. Passage of the legislation will be a godsend in allowing more time to manage the department.

OFFICE OF
MANAGEMENT & BUDGET

MAR 29 1983

STRATEGIC PLANNING

MEMORANDUM

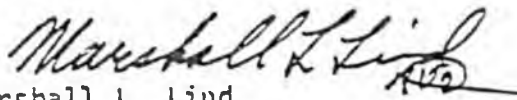
State of Alaska

TO: Peter B. McDowell, Director
Office of Management and Budget
Office of the Governor

DATE: March 18, 1983

FILE NO: 020.1

TELEPHONE NO: 455-2800

FROM: 
Marshall L. Lind
Commissioner
Department of Education

SUBJECT: Position Paper, SB 179

We concur with your position regarding Senate Bill 179, as expressed in the draft position paper.

MEMORANDUM

State of Alaska

TO: Peter B. McDowell
Director
Office of Management
and Budget

DATE: March 30, 1983

FILE NO:

TELEPHONE NO: 465-3030

Robert London Smith
FROM: Robert London Smith, Ph.D.
Commissioner
Department of Health and
Social Services

SUBJECT: Draft SB 179 and
Position Paper

This is in reply to your memorandum of March 17, 1983 on the above subject. I fully concur with SB 179 and the draft position paper setting forth support for the Administration of that bill.

S

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**COMMITTEE REPORT
SENATE**

3/11/89

FURTHER:

Date: _____

Mr. President:

The Committee on JUDICIARY has had SI 157

Relating to investigations by, and granting subpoenas to, the Alaska Police Standards Council

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

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

MEMORANDUM


State of Alaska

TO: Robert J. Sundberg
Commissioner
Department of Public Safety

DATE: January 7, 1983

FILE NO:

TELEPHONE NO: 465-4378

FROM: James F. Mayer 
Executive Director
Alaska Police Standards Council

SUBJECT: 1983 Legislation

To amplify on my memo of August 4, 1982 to former Commissioner Nix, most internal investigations and disciplinary actions against police officers by state and municipal police departments are considered confidential by those departments and not available for review by the Council. Yet those reports are necessary to form a basis for decisions by the Council on revocation of a police officer's certificate.

If the Council had the authority to subpoena these records it could avoid erroneous and premature decisions in denials and revocations and legally relieve the department of liability under the various privacy acts in addition to assisting the Attorney General's office in determining whether the Police Standards Act has been violated.

JFM:vm

RECEIVED
DEPARTMENT OF PUBLIC SAFETY
COMMISSIONER'S OFFICE
Juneau, Alaska.
JAN 11 1983 JAN 07 1983

Police Standards
Council

TO: William R. Nix
Commissioner
Department of Public Safety

DATE: August 4, 1982

FILE NO:

TELEPHONE NO: 465-4378

FROM: James F. Mayer
Executive Director
Alaska Police Standards Council

SUBJECT: 1983 Legislation

I've attached a copy of a bill drafted by the Department of Law at the Council's request for introduction in the Twelfth Legislature - Second Session. The bill was not introduced at that Session.

The Council requests that it be introduced in the Thirteenth Legislature - First Session.

The Council has experienced considerable difficulty in obtaining sufficient information from various police departments upon which to base decisions concerning denial or revocation of police officer certificates. In order to avoid erroneous decisions without sufficient information or based on inaccurate or incomplete information, the Council requests this legislation. It would also largely relieve the police departments of potential liability under the various privacy acts.

It would have no fiscal impact on the Council's activities.

JFM:vm
Attachments

12/31/82

~~Handwritten signature~~
Not on List from Hall.

RECEIVED
DEPARTMENT OF PUBLIC SAFETY
COMMISSIONER'S OFFICE
Juneau, Alaska

JAN 11 1983

DEC 30 1982

Police Standards
Council



CITY OF KENAI
"Oil Capital of Alaska"

P. O. BOX 580 KENAI, ALASKA 99611
TELEPHONE 283 - 7535

P.O. Box 3173
Kenai, Alaska 99611

February 16, 1983

James F. Mayer
Executive Director
Alaska Police Standards Council
Pouch N
Juneau, Alaska 99811

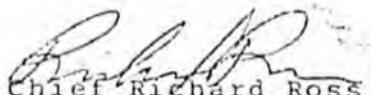
Dear Mr. Mayer,

On February 14, 1983 a meeting of the Alaska Association of Chiefs of Police was held in Anchorage. An item of specific interest at that meeting was the issue of subpoena powers for the APSC. This was discussed at some length with several presentations on this issue.

It was resolved by the Alaska Association of Chiefs of Police, that it is absolutely essential for the APSC to have subpoena powers in order to make informed decisions in carrying out their regulatory functions. You, or your staff, when testifying on this matter may represent this position on our behalf.

Please keep me informed as to the status of this proposed statutory change.

Sincerely,


Chief Richard Ross
Kenai Police Department
Secretary - Treasurer
AACOP

RAR/nc

RECEIVED
FEB 22 1983

Police Standards
Council

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COMMITTEE REPORT

SENATE

1/22/63

FURTHER:

Date: 1-22-63

Mr. President:

The Committee on Judiciary has had SB 100

Relating to the posting of a bond to secure the payment of costs, including attorney fees; and eff. date.

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

SENATOR
ROBERT H. ZIEGLER, SR.
307 BAWDEN STREET
KETCHIKAN, ALASKA 99801

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

March 29, 1983

Senator Bill Ray,
Chairman - Senate Judiciary Committee
Alaska State Legislature
Juneau, Alaska

Re: SB 196

Dear Senator Ray:

You assigned this bill to the right committee member! Could be, if inacted into law, it would have the salutary effect of making the greenies think twice before filing law suits which upon occasion in the past have proved to be both groundless and without merit.

A.A. Van Doren has done his customary thorough job in briefing the bill.

It might be a good idea if you would have John G. review the McCabe case to which Guy refers in the attached memo.

Very truly yours,

Robert H. Ziegler, Sr.

RHZ:lk

Attachments

RELATING TO THE POSTING OF A BOND TO SECURE THE
PAYMENT OF COSTS, INCLUDING ATTORNEY FEES

Section 1. AS 09.60.010 is amended by adding a new subsection to the section entitled COSTS ALLOWED PREVAILING PARTY.

The new section provides that a defendant may compel a plaintiff in an action to post a bond or other acceptable surety with the court in an amount determined by the court to be reasonable.

The affect of the bill would be to either halt nuisance cases, slow them down, or, at least, make anyone filing a case accountable through the use of the bonding requirement. However, in "City of Anchorage v. McCabe, Sup. Ct. Op No. 1490 (File No. 2737), 568 P.2d 986 (1977), it was determined that the trial court may, in its discretion, award full attorney fees to public interest plaintiffs.

The basis for awards of attorney's fees to public interest plaintiffs is to encourage plaintiffs to raise issues of public interest by removing the awesome financial burden of such suits. Further.....

It is an abuse of discretion to award attorney's fees against a losing party who has in good faith raised a question of genuine public interest before the courts (ibid.)

SEE ATTACHED PAGES FOR DISCUSSION OF THIS SECTION

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effect, that if there is a surviving husband or wife or children, that the recovery is for the exclusive benefit of the aforesaid beneficiaries. Then, on the other hand, it states quite to the contrary, that the amount recovered shall be distributed after payment of costs, expenses of suit and debts of administration. *Schacht v. Briggs*, Superior Court, 4th Jud. Dist., Ca 70-926 (1972).

When proceeds from judgment not subject to claims of general creditors of decedent's estate.—Under subsection (a) of this section the proceeds from judgment or settlement are not subject to the claims of general creditors of the decedents' estate when the action is prosecuted on behalf of the surviving spouse and children. *Schacht v. Briggs*, Superior Court, 4th Jud. Dist. Ca 70-926 (1972).

Costs of suit as encompassing debts and expenses of administration.—The supreme court cannot adopt the reasoning that costs and expenses of suit encompassed debts and expenses of administration, where absolutely no authority had been submitted to support such a proposition. *Schacht v. Briggs*, Superior Court, 4th Jud. Dist., Ca 70-926 (1972).

When recovery deemed assets of estate.—If there is no husband, wife, or children left by decedent, the amount recovered is assets of the estate to be administered as other personal property of the deceased person. *Koski v. Alaska Juneau Gold Mining Co.*, 6 Alaska 334 (1921).

If the decedent leaves a husband, wife, or children, then the estate has no interest whatsoever in any sum that may be recovered. It is only

when no husband, wife, or children are left surviving decedent that the estate has any claim on the amount recovered. *Koski v. Alaska Juneau Gold Mining Co.*, 6 Alaska 334 (1921).

Section 43-3-10, ACLA 1949, did not deprive administratrix of her right to sue for damages, except as between her and decedent husband's employer. *Andersen v. Pacific S.S. Co.*, 8 Alaska 291 (1931).

Prejudgment interest. — Interest should be awarded on damages recovered from the date of decedent's death until the date of judgment. *State v. Phillips*, Sup. Ct. Op. No. 619 (File Nos. 1117, 1124), 470 P.2d 266 (1970).

Recovery of medical and funeral expenses.—See *Dralle v. Steele*, 13 Alaska 680 (1952).

Am. Jur., ALR and C.J.S. refer- ences.—16 Am. Jur., Death, § 44 et seq.

Death of beneficiary as affecting right of action under death statute, 13 ALR 225; 34 ALR 162; 59 ALR 760; 43 ALR2d 1291.

Survival of action or cause of ac- tion for wrongful death against rep- resentative of wrongdoer, 61 ALR 830; 171 ALR 1392.

Survival of cause of action for death against tort-feasor killed in same accident, 70 ALR 1319.

Tort-feasor's death before death of injured person as precluding action for death, 112 ALR 343.

Insurer's liability for wrongful death for issuance of life policy at instance of one having no insurable interest, 61 ALR2d 1376.

25 C.J.S. Death, § 13 et seq.

Chapter 60. Costs.

- Section
- 10. Costs allowed prevailing party
- 15. Attorney fees in small tort ac- tions
- 20. Liability of guardian ad litem for costs
- 30. Guardian's responsibility for al- lowance against infant plaintiff
- 40. Costs where party is a representa- tive

- Section
- 50. Costs awarded against state, bor- ough, city, district, or other pub- lic agencies
- 60. Security for costs where plaintiff a nonresident or foreign corpo- ration

Sec. 09.60.010. Costs allowed prevailing party. Except as other- wise provided by statute, the supreme court shall determine by

rule or order what costs, if any, including attorney fees, shall be allowed the prevailing party in any case, (§ 5.14 ch 101 SLA 1962)

Cross references. — See Rules of Civil Procedure, Rules 54, 79 and 82.

The right to costs is purely statutory. *Mutual Benefit Health & Accident Ass'n v. Moyer*, 9 Alaska 235, 94 F.2d 906 (9th Cir. 1938), cert. denied, 9 Alaska 292, 304 U.S. 581, 58 S. Ct. 1054, 82 L. Ed. 1543 (1938).

And no such right existed at common law. *Mutual Benefit Health & Accident Ass'n v. Moyer*, 9 Alaska 235, 94 F.2d 906 (9th Cir. 1938), cert. denied, 9 Alaska 292, 304 U.S. 581, 58 S. Ct. 1054, 82 L. Ed. 1543 (1938).

No party is entitled to costs until he prevails in the suit, in other words, until judgment is entered. *Mutual Benefit Health & Accident Ass'n v. Moyer*, 9 Alaska 235, 94 F.2d 906 (9th Cir. 1938), cert. denied, 9 Alaska 292, 304 U.S. 581, 58 S. Ct. 1054, 82 L. Ed. 1543 (1938).

The prevailing party is entitled to costs. *Owen Jones & Sons v. C.R. Lewis Co.*, Sup. Ct. Op. No. 795 (File No. 1460), 497 P.2d 312 (1972).

The prevailing party is entitled to costs, including an award for attorney's fees. *De Witt v. Liberty Leasing Co.*, Sup. Ct. Op. No. 818 (File No. 1638), 499 P.2d 599 (1972).

No costs allowed where both prevail. — Where both parties prevailed in part in an action under the Miller Act (40 USC 270b) no costs should be taxed to either party. *United States ex rel. Miller & Bentley Equip. Co. v. Kelly*, 192 F. Supp. 274 (D. Alas. 1961).

"Prevailing party". — The prevailing party to a suit is the one who successfully prosecutes the action or successfully defends against it, prevailing on the main issue, even though not to the extent of the original contention. He is the one in whose favor the decision or verdict is rendered and the judgment entered. *De Witt v. Liberty Leasing Co.*, Sup. Ct. Op. No. 818 (File No. 1638), 499 P.2d 599 (1972).

The determination of which party prevails in certain cases is, like the award of attorney's fees, within the discretion of the trial judge. *Owen Jones & Sons v. C.R. Lewis Co.*, Sup. Ct. Op. No. 795 (File No. 1460), 497 P.2d 312 (1972).

The determination of which party prevailed is committed to the discretion of the trial court and is reviewable on appeal only for abuse. *De Witt v. Liberty Leasing Co.*, Sup. Ct. Op. No. 818 (File No. 1638), 499 P.2d 599 (1972).

Affirmative recovery not determinative. — It is not an immutable rule that the party who obtains an affirmative recovery must be considered the prevailing party. *Owen Jones & Sons v. C.R. Lewis Co.*, Sup. Ct. Op. No. 795 (File No. 1460), 498 P.2d 312 (1972).

Prevailing party not determined by amount of recovery. — Judgment was entered for plaintiff and the defendant's counterclaim was dismissed, therefore, plaintiff was the prevailing party within the purview of this section, even though it did not recover the full measure of the relief it prayed for. *Buza v. Columbia Lumber Co.*, Sup. Ct. Op. No. 254 (File No. 453), 395 P.2d 511 (1964).

An incidental recovery is not a sufficient recovery to bar a party who has defended a large claim from being considered a prevailing party. *Owen Jones & Sons v. C.R. Lewis Co.*, Sup. Ct. Op. No. 795 (File No. 1460), 498 P.2d 312 (1972).

Where part of the defendants are successful and part are unsuccessful the cost of bringing the successful defendants into court should be taxed against plaintiff and not against the unsuccessful defendants. *Humphries v. Starns*, 12 Alaska 525, 87 F. Supp. 374 (D. Alas. 1949).

Apportionment of costs. — If the problem involved in the litigation is one of general interest and the prevailing party is not wholly without benefit because of the instigation of the proceedings it may be proper to apportion the costs on an equitable basis and each may be made to bear his own. *Kederick v. Heinzelman*, 16 Alaska 333, 141 F. Supp. 633 (D. Alas. 1956).

Waiver. — Parties to an action may by stipulation waive their respective rights to costs and attorney's fees. *Jones v. Fuller-Garvey Corp.*, Sup. Ct. Op. No. 172 (File No. 344), 386 P.2d 538 (1963).

Costs in habeas — Where a habeas is found to be courts have taxed on the basis of the of the proceeds. *Spracher*, 17 Alaska 585 (D. Alas. 1955).

Allowance of costs. — See *Bak Mining Co.*, 5 *Forno v. Coyle*, 1935; *Pilgrim*, 417 (1938); *Col. Agostino*, 13 Alaska (9th Cir. 1950); *Brady's Floor*, 14 Alaska 214, 1 Alaska 1953; *Jon*, 17 Alaska 755, 1 Alaska 1958; *Ya*, F.2d 891 (9th Cir. 1950).

Statutory allowance of attorney's fees. — *Lee*, Sup. Ct. Op. No. 674, 420 P.2d 459 (1966).

The award of costs is governed by Civil Procedure. Sup. Ct. Op. No. 420 P.2d 459 (1966).

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Sec. 09.60.010 action for damages and the plaintiff, he shall court as attorney of the costs for the payment or more before attorney fees the defendant of the action, plaintiff.

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Costs in habeas corpus proceeding
—Where a habeas corpus proceeding
is found to be without merit, the
courts have taxed costs, apparently
on the basis of the necessity and merit
of the proceedings Application of
Spracher. 17 Alaska 144, 150 F Supp
555 (D. Alas. 1957).

Allowance of attorneys' fees as
costs.—See Baker v. Marvel Creek
Mining Co., 5 Alaska 348 1915);
Forno v. Coyle, 75 F.2d 692 (9th Cir.
1935); Pilgrim v. Grant, 9 Alaska
417 (1938); Columbia Lumber Co. v.
Agostino, 13 Alaska 34, 184 F.2d 731
(9th Cir. 1950); United States ex rel.
Brady's Floor Covering v. Breeden,
14 Alaska 214, 110 F. Supp. 713 (D.
Alas. 1953); Jonas v. Bank of Kodiak,
17 Alaska 755, 166 F. Supp. 739 (D.
Alas. 1958); Varnell v. Swires, 261
F.2d 891 (9th Cir. 1958).

Statutory authorization for the al-
lowance of attorney's fees is of rela-
tively ancient origin. McDonough v.
Lee, Sup. Ct. Op. No. 378 (File No.
674), 420 P.2d 459 (1966).

The award of attorney's fees as
costs is governed by the Rules of
Civil Procedure. McDonough v. Lee,
Sup. Ct. Op. No. 378 (File No. 674),
420 P.2d 459 (1966).

Federal law governs allowance of
attorney's fees in case involving con-
struction of federal statute — In
cases involving the construction of
federal statutes the federal law
rather than the law of the state in

which the action is brought governs
with regard to the allowance of at-
torney's fees. Gilliam v. A. Shyman.
Inc., 205 F. Supp. 534 (D. Alas.
1962).

The allowance of attorneys' fees in
diversity cases is governed by state
law, except that the amount there-
of should be governed by the federal
rules of court. Danzas. Ltd. v. Na-
tional Bank, 222 F. Supp. 671 (D.
Alas. 1963).

Liability of state for costs.—See
Fidaigo Island Packing Co. v Phil-
lips, 16 Alaska 621, 147 F. Supp. 883
(D. Alas. 1957); Reynolds v. Wade,
16 Alaska 221, 140 F. Supp. 713 (D.
Alas. 1956).

Allowance of witness fees. — See
Humphries v. Starns. 12 Alaska 535.
87 F. Supp. 374 (D. Alas. 1949).

Abuse of discretion.—An abuse of
discretion is established where it ap-
pears that the trial court's determi-
nation as to attorney's fees was mani-
festly unreasonable. De Witt v. Lib-
erty Leasing Co., Sup. Ct. Op. No.
818 (File No. 1638), 499 P.2d 599
(1972).

Applied in Brand v. First Fed.
Sav. & Loan Ass'n, Sup. Ct. Op. No.
658 (File Nos. 1119, 1154), 478 P.2d
829 (1970).

Quoted in Albritton v. Estate of
Larson, Sup. Ct. Op. No. 413 (File
No. 793), 428 P.2d 379 (1967).

C.J.S. reference.—20 C.J.S. Costs
§§ 95, 110, 112.

Sec. 09.60.015. Attorney fees in small tort actions. (a) In any
action for damages where the amount pleaded is \$1,000 or less,
and the plaintiff, when represented by counsel, prevails in the
action, he shall be allowed a reasonable amount to be fixed by the
court as attorney fees for the prosecution of the action as a part
of the costs of the action if the court finds that written demand
for the payment of the claim was made on the defendant 20 days
or more before the commencement of the action. However, no at-
torney fees shall be allowed to the plaintiff if the court finds that
the defendant tendered to the plaintiff before the commencement
of the action, an amount not less than the damages awarded to the
plaintiff.

(b) If the defendant, when represented by counsel, pleads a
counterclaim which does not exceed \$1,000, and he prevails in the
action, he shall be allowed a reasonable amount to be fixed by the

Effect of amendments. — The 1982 amendment, effective July 1, 1982, substituted "when the victim is a spouse or a former spouse of the respondent" for

"committed against a spouse, a former spouse, or" and added the language beginning "or a person who is not a spouse or former spouse" to the end.

Chapter 60. Costs.

Sec. 09.60.010. Costs allowed prevailing party.

NOTES TO DECISIONS

The authority to make awards of attorney fees is derived from this section, which is of relatively ancient origin, dating from an Act of Congress of June 6, 1900, 31 Stat. 415-18, which was amended in 1923 by the Territorial Legislature of Alaska to expressly permit the courts to impose reasonable attorney's fees. *Stepanov v. Gavrilovich*, Sup. Ct. Op. No. 1823 (File No. 3236), 594 P.2d 30 (1979).

Rule 82(a), which allows for the recovery of reasonable attorney's fees, is supported by legislation which specifies that the supreme court shall determine when attorney's fees are to be awarded. Thus, the award of attorney's fees is authorized, though not mandated, by statute. *Klopfenstein v. Pargeter*, 597 F.2d 150 (9th Cir. 1979).

There is no statute authorizing awards of attorney's fees in child in need of aid proceedings, nor has any rule or order authorizing such an award been promulgated. *Cooper v. State*, Sup. Ct. Op. No. 2453 (File Nos. 4906, 4970), 636 P.2d 174 (1981).

Civil R. 82 established pursuant to delegation of authority in section. — Civil R. 82, authorizing awards of attorney's fees to the prevailing party in civil litigation, apart from eminent domain proceedings, was established by the supreme court pursuant to a legislative delegation of authority found in this section. *Crisp v. Kenai Peninsula Borough School Dist.*, Sup. Ct. Op. No. 1771 (File No. 3318), 587 P.2d 1168 (1978).

"Prevailing party".

In accord with original. See *Cooper v. Carlson*, Sup. Ct. Op. No. 907 (File No. 1769), 511 P.2d 1305 (1973).

A party does not have to prevail on all of the issues in the case to be a "prevailing party." *Malvo v. J.C. Penney Co.*, Sup. Ct. Op. No. 901 (File No. 1630), 512 P.2d 575 (1973).

A litigant who is successful in defeating a claim of great potential liability may be

the prevailing party even though the other side is successful in receiving an affirmative recovery. *Cooper v. Carlson*, Sup. Ct. Op. No. 907 (File No. 1769), 511 P.2d 1305 (1973).

Where a party prevailed on every liability issue, and was unsuccessful only in his argument that he was entitled to nominal damages on his counterclaim, he was the prevailing party. *Cooper v. Carlson*, Sup. Ct. Op. No. 907 (File No. 1769), 511 P.2d 1305 (1973).

As a general rule, the "prevailing party" is considered to be the party who has successfully prosecuted or defended against the action, the one who is successful on the "main issue" of the action and in whose favor the decision or verdict is rendered and the judgment entered. In re Adoption of V.M.C., Sup. Ct. Op. No. 1103 (File No. 2107), 528 P.2d 788 (1974).

The determination of which party prevails, etc.

Like the award itself, the actual determination of who the "prevailing" party is within the discretion of the trial court. In re Adoption of V.M.C., Sup. Ct. Op. No. 1103 (File No. 2107), 528 P.2d 788 (1974).

The determination of which party is the prevailing party is vested, in the first instance, in the trial judge's discretion and is reviewable on appeal only for abuse. *State ex rel. Palmer Supply Co. v. Walsh & Co.*, Sup. Ct. Op. No. 1583 (File No. 2816), 575 P.2d 1213 (1978).

The prevailing party in each case should not automatically be awarded the full amount of the attorney fees incurred. *Malvo v. J.C. Penney Co.*, Sup. Ct. Op. No. 901 (File No. 1630), 512 P.2d 575 (1973).

If a successful litigant were to receive full reimbursement for all expenses incurred in the case with no requirement of justification and no consideration of the "good faith" nature of the unsuccessful party's claim or defense, there would be a serious detriment to the judicial system.

Malvo v. J.C. Penney Co., Sup. Ct. Op. No. 901 (File No. 1630), 512 P.2d 575 (1973).

Public interest may, in some cases, justify awarding attorney's fees to a party. *City of Anchorage v. City of Anchorage*, No. 1490 (File No. 1490) (1977).

The basis for a public interest award of attorney's fees to plaintiffs to raise the burden of such a claim. *McCabe*, Sup. Ct. Op. No. 2737, 568 P.2d 273 (1977).

It is an abuse of discretion to award attorney's fees to a party in good faith who wins a public interest case. *City of Anchorage v. City of Anchorage*, No. 1490 (File No. 1490) (1977).

Attorney's fees against a party in good faith claim. *Gavrilovich v. Gavrilovich*, Sup. Ct. Op. No. 3236, 594 P.2d 30 (1979).

Reliance on ordinance. — Award of attorney's fees on a zoning ordinance may be invalid. *City of Anchorage v. City of Anchorage*, Sup. Ct. Op. No. 986 (1977).

Use of in-house express prohibition of attorney's fees representation in Greater Anchorage Area Chamber of Commerce v. Greater Anchorage Area Chamber of Commerce, Sup. Ct. Op. No. 862 (1978).

Where a claim is affirmed. — Award relating to award of attorney's fees is dismissed. *Peninsula Borough v. Peninsula Borough*, Sup. Ct. Op. No. 1771 (1978).

Given a test right to contest it would be to penalize the allowing an award the school district. *Kenai Peninsula Borough School District v. Kenai Peninsula Borough School District*, Sup. Ct. Op. No. 2168 (1978).

The award of attorney's fees to the trial judge.

Malvo v. J.C. Penney Co., Sup. Ct. Op. No. 901 (File No. 1630), 512 P.2d 575 (1973).

Public interest plaintiffs. — The trial court may, in its discretion, award full attorney's fees to public interest plaintiffs. City of Anchorage v. McCabe, Sup. Ct. Op. No. 1490 (File No. 2737), 568 P.2d 966 (1977).

The basis for awards of attorney's fees to public interest plaintiffs is to encourage plaintiffs to raise issues of public interest by removing the awesome financial burden of such a suit. City of Anchorage v. McCabe, Sup. Ct. Op. No. 1490 (File No. 2737), 568 P.2d 966 (1977).

It is an abuse of discretion to award attorney's fees against a losing party who has in good faith raised a question of genuine public interest before the courts. City of Anchorage v. McCabe, Sup. Ct. Op. No. 1490 (File No. 2737), 568 P.2d 966 (1977).

Attorney's fees may be awarded against plaintiffs who litigate good-faith claims. — See Stepanov v. Gavrilovich, Sup. Ct. Op. No. 1823 (File No. 3236), 594 P.2d 30 (1979).

Reliance upon invalid zoning ordinance. — It would be unfair to impose attorney's fees on a party who had relied on a zoning ordinance which was found to be invalid. City of Anchorage v. McCabe, Sup. Ct. Op. No. 1490 (File No. 2737), 568 P.2d 966 (1977).

Use of in-house counsel. — There is no express prohibition against awarding attorney's fees when a party's active representation in litigation is by in-house counsel rather than by retained counsel. Greater Anchorage Area Borough v. Sisters of Charity of House of Providence, Sup. Ct. Op. No. 1550 (File No. 3223), 573 P.2d 862 (1978).

Where teacher's dismissal is affirmed. — Application of Civ. R. 82, relating to awards of attorney's fees, was not extended to allow an award of attorney's fees against a teacher whose dismissal is affirmed. Crisp v. Kenai Peninsula Borough School Dist., Sup. Ct. Op. No. 1771 (File No. 3318), 587 P.2d 1168 (1978).

Given a teacher's statutorily guaranteed right to contest his dismissal in the courts, it would be manifestly unreasonable to penalize the exercise of that right by allowing an award of any attorney's fees to the school district dismissing him. Crisp v. Kenai Peninsula Borough School Dist., Sup. Ct. Op. No. 1771 (File No. 3318), 587 P.2d 1168 (1978).

The award is discretionary with the trial judge and is reviewable on appeal

only for abuse. Cooper v. Carlson: Sup. Ct. Op. No. 907 (File No. 1769), 511 P.2d 1305 (1973).

The matter of awarding attorney's fees is committed to the discretion of the trial court. The supreme court shall interfere with the exercise of that discretion only where it has been abused. Malvo v. J.C. Penney Co., Sup. Ct. Op. No. 901 (File No. 1630), 512 P.2d 575 (1973).

The award of costs and fees to the prevailing party is clearly within the broad discretion of the trial court. In re Adoption of V.M.C., Sup. Ct. Op. No. 1103 (File No. 2107), 528 P.2d 788 (1974).

The supreme court has recognized that the trial judge has wide discretion in awarding attorney's fees to a prevailing party. City of Anchorage v. McCabe, Sup. Ct. Op. No. 1490 (File No. 2737), 568 P.2d 966 (1977).

Trial judge need not make formal findings of fact and conclusions of law to justify his decision denying attorney's fees. An oral explanation on the record is sufficient. Larry v. Dupree, Sup. Ct. Op. No. 1652 (File No. 3714), 580 P.2d 326 (1978).

Attorney's fees not covered by literal requirements of Civ. R. 79(b). — While attorney's fees are costs, they are not covered by the literal requirements of Civ. R. 79(b), which specifies items allowed as costs. State v. University of Alaska, Sup. Ct. Op. No. 2303 (File No. 4579), 624 P.2d 607 (1981).

Abuse of discretion.

In accord with original. See Malvo v. J.C. Penney Co., Sup. Ct. Op. No. 901 (File No. 1630), 512 P.2d 575 (1973); Cooper v. Carlson, Sup. Ct. Op. No. 907 (File No. 1769), 511 P.2d 1305 (1973).

While the supreme court has made it clear that the award of attorney's fees to the prevailing party is not mandatory, it is equally clear that the denial of a motion for such fees may not be arbitrary or capricious or for some improper motive. Cooper v. Carlson, Sup. Ct. Op. No. 907 (File No. 1769), 511 P.2d 1305 (1973).

Only upon a clear abuse of discretion can the supreme court interfere with its exercise, such abuse being established only where it appears that the court's determination is manifestly unreasonable. In re Adoption of V.M.C., Sup. Ct. Op. No. 1103 (File No. 2107), 528 P.2d 788 (1974).

The supreme court will interfere only where the trial court's determination as to attorney's fees appears to be "manifestly unreasonable." City of Anchorage v. McCabe, Sup. Ct. Op. No. 1490 (File No. 2737), 568 P.2d 966 (1977).

no further sentence for his escape should have been imposed, arguing:

Defendant is not seeking to have a separate criminal offense abrogated with the excuse he was drunk, but simply claims that further punishment for symptoms inherently related to his disease of alcoholism was against the policy of this state as contained in AS 47.37.

[6] Walton's reliance on AS 47.37, the Uniform Alcoholism and Intoxication Act, is misplaced, for as we said in *Peter v. State*, *supra* at 1271, that Act "does not make drunkenness a defense to criminal liability for non-alcoholic substantive offenses committed by one under the influence of liquor."⁹ Walton, in his brief, concedes as much, but nonetheless argues that the sentences should not have been consecutive.

[7] Given the goals of sentencing, as set forth earlier in this opinion,¹⁰ we believe that the use of consecutive sentences is particularly appropriate in cases such as this, i. e., where one escapes while incarcerated on another charge. Those goals would be largely frustrated if no real or effective additional sanction or detriment flowed from the conviction for escape.¹¹ Thus, we are unable to accept Walton's argument that the trial judge was clearly mistaken in requiring that the sentences be served consecutively.

AFFIRMED.



9. See also *Alex v. State*, 484 P.2d 677 (Alaska 1971); *McIntyre v. State*, 379 P.2d 615 (Alaska 1963); AS 11.70.030.

ANCHORAGE, Alaska, a Municipal Corporation, Appellant,

v.

David T. McCABE and Janet W. McCabe, Edward B. Carlstrom, Appellees.

No. 2737.

Supreme Court of Alaska.

Sept. 9, 1977.

Homeowners appealed from denial by city council sitting as board of adjustment of homeowners' challenge to grant to developer by planning and zoning commission of special exception from zoning ordinance for construction of planned unit development. The Superior Court, Third Judicial District, Anchorage, Victor D. Carlson, J., held ordinance regulating planned unit developments to be invalid and awarded attorney fees and costs to homeowners, and city appealed. The Supreme Court, Burke, J., held that: (1) policy of encouraging public interest litigants supported award of attorney fees to homeowners; (2) city could be assessed for attorney fees; (3) borough was not indispensable party to action, and borough's interests would not be affected by affirmance of judgment of attorney's fees against city; (4) trial court did not abuse its discretion by charging only city with judgment of attorney fees, and (5) trial court did not abuse its discretion in awarding full attorney fees to homeowners.

Affirmed.

Rabinowitz, J., concurred and filed opinion in which Erwin, J., joined.

Boochever, C. J., dissented and filed opinion.

1. Costs ⇐ 172

Exception to rule on allowance of attorney fees, that it is abuse of discretion to award attorney fees against losing party who has in good faith raised question of

10. See note 5, *supra*.

11. See *State v. Wortham*, 537 P.2d 1117 (Alaska 1975).

genuine public interest before court, is designed to encourage plaintiffs to bring issues of public interest to courts. Rules of Civil Procedure, rule 82(a).

2. Costs ⇄ 172

Policy of encouraging public interest litigants supported award of attorney fees to homeowners who successfully challenged grant to developer by planning and zoning commission of exception from zoning ordinance for construction of planned unit development. Rules of Civil Procedure, rule 82(a).

3. Zoning ⇄ 729

City could be assessed for attorney fees in appeal from denial by city council sitting as board of adjustment of homeowners' challenge to grant to developer by planning and zoning commission of special exception from zoning ordinance for construction of planned unit development.

4. Zoning ⇄ 743

Although city never objected, during trial of action brought by homeowners challenging grant to developer by planning and zoning commission of exception from zoning ordinance, to homeowners' failure to join borough, Supreme Court could in its discretion for first time on appeal review question whether borough was indispensable party to action.

5. Parties ⇄ 18, 29

In determining at trial level whether party is indispensable, court must balance danger that judgments will lack finality against desirability of having some determination of dispute.

6. Zoning ⇄ 582

Where lower court was able to dispose in equitable manner of merits of action brought by homeowners challenging grant to developer by planning and zoning commission of special exception from zoning ordinance, without presence of borough, and there was no possibility that any further litigation of matter would ensue, borough was not indispensable party to action even though lower court's decision was based on decision that borough's zoning ordinance was invalid.

7. Appeal and Error ⇄ 187(3)

In reviewing for first time on appeal issue of whether party was indispensable, Supreme Court must consider additional factor of whether failure to overturn judgment would substantially prejudice interests of party who was not named.

8. Zoning ⇄ 749

Interests of borough not named as party in action by homeowners challenging grant to developer of special exception from zoning ordinance would not be affected by Supreme Court's affirmance of judgment of attorney's fees against city, where subsequent to commencement of litigation borough and city merged to form municipality.

9. Zoning ⇄ 729

In light of fact that developer was not only party who stood to profit from superior court's affirmance of grant of special exception from zoning ordinance to developer, in that city council sitting as board of adjustment had interest in seeing its decision upheld, and in light of fact that developer relied, in seeking special exception from zoning ordinance, upon planned unit development ordinance which was later found to be invalid, superior court did not abuse its discretion by charging only city, and not developer, with judgment of attorney fees.

10. Costs ⇄ 172

Trial court may, in its discretion, award full attorney fees to plaintiff who in good faith raises question of genuine public interest before court. Rules of Civil Procedure, rule 82.

11. Costs ⇄ 172

Trial court did not err in awarding full attorney fees to homeowners who brought action to challenge grant to developer by planning and zoning commission of special exception from zoning ordinance for construction of planned unit development.

Jerry A. Wertzbaugher, Asst. Municipal Atty., and Richard Garnett III, Municipal Atty., Anchorage, for appellant.

Joan M. Katz, Anchorage, for appellees.

Before BOOCHEVER, C. J., and RABINOWITZ, CONNOR, ERWIN and BURKE, JJ.

OPINION

BURKE, Justice.

In this case, the City of Anchorage appeals the superior court's award of \$5,151.41 in costs and attorney's fees to two of the appellees, David and Janet McCabe.

On January 15, 1975, appellee Edward Carlstrom petitioned the G.A.A.B. Planning and Zoning Commission for a special exception to the zoning ordinance for construction of a Planned Unit Development (hereinafter P.U.D.).¹ After holding a public hearing on the matter, the Planning and Zoning Commission granted Carlstrom permission to build two eleven-story buildings at the northwest corner of West 13th Ave-

nue and "I" Street. The McCabes, homeowners in the neighborhood of the proposed P.U.D., appealed this decision to the Anchorage City Council, which also sits as the Board of Adjustment for the City of Anchorage,² and this appeal was denied.

The McCabes appealed the City Council's decision to the superior court, pursuant to AS 29.33.130,³ and named the City Council and Carlstrom as appellees. The McCabes presented two arguments to the court: (1) that the City had abused its discretion in upholding the Planning and Zoning Commission's decision and approving a project which did not meet the G.A.A.B. ordinance's requirement that P.U.D.'s "enhance and preserve the value, spirit, character and integrity of the surrounding areas";⁴ and (2) that this G.A.A.B. ordinance regulating P.U.D.'s was, itself, unconstitutionally vague and overbroad and constituted an invalid delegation of authority. The superior court agreed with this second line of

1. Construction of P.U.D.'s was permitted only by special exception to the zoning ordinances. G.A.A.B. Ordinance § 21.05.020(B)(57) defined P.U.D.:

PLANNED UNIT DEVELOPMENT. A group or combination of certain specified residential, commercial or industrial uses developed as a functional and integral unit in a district or districts where some or all of the uses might not otherwise be permitted. Planned unit developments are permitted only by special exception.

2. AS 29.33.110 and G.A.A.B. Ordinance § 21.05.080(F) established a bifurcated system for hearing appeals from the Planning and Zoning Commission. The Borough Assembly was the board of adjustment for areas outside the city. The Anchorage City Council was the board of adjustment for the area within the former city boundaries.

3. AS 29.33.130 provides:

Judicial review. (a) The assembly shall provide by ordinance for appeals from the board of adjustment to the superior court.

(b) A municipal officer, a taxpayer, or a person, jointly or severally aggrieved, may appeal an action of the board to the superior court by filing with the borough clerk within the time fixed by ordinance, a notice of appeal specifying grounds. When the notice of appeal is filed, the board shall at once transmit to the superior court clerk copies of all the papers constituting the record in the case.

(c) An appeal from the board of adjustment stays enforcement proceedings unless the court issues an enforcement order based on a certificate of imminent peril to life or property made by the board.

(d) The appeal is heard upon the record by the superior court, and the court may reverse or affirm, wholly or partly, the decision appealed from.

(e) Issues in proceedings under this section have preference over all other civil actions and proceedings. An appeal lies from the decision of the superior court as in other civil cases.

4. G.A.A.B. Ordinance § 21.05.060(M)(9)(a) provides:

It is the intent of the Special Exception provision for a planned unit development to allow certain specified residential, commercial or industrial uses, or combinations thereof, to be developed as a functional and integral unit in a district or districts where some or all of the uses might not otherwise be permitted. The planned unit development concept provides a flexibility in the zoning ordinance which attempts to meet the needs of a growing urban area by encouraging a more creative approach in the development of land while at the same time enhancing and preserving the value, spirit, character and integrity of surrounding areas which have or are developing under conventional district regulations.

reasoning and, holding the P.U.D. ordinance to be invalid, reversed the City Council's decision. Throughout the proceedings in superior court, the City's attorney chose not to brief and argue the merits of the case; Carlstrom's attorney did take an active role in the case.

As prevailing parties, the McCabes moved for attorney's fees in the amount of \$4,612.50, calculated at 92½ hours at \$50 per hour. In support of this request, the McCabes submitted an affidavit of their attorney which attested to the amount of work she had performed on the case. Both the City and Carlstrom filed memoranda in opposition to the award of fees, each party arguing that it should not be liable for any fees awarded to the McCabes. Carlstrom and the City also contended that since the McCabes were litigating a public interest issue, they were not entitled to an award of fees at all. The superior court awarded the full amount of fees and costs requested by the McCabes, concluding that the City was the proper party to be charged.

The City appeals the superior court's award of fees on three grounds, contending:

1. That the McCabes are not entitled to any attorney's fees, since they were litigating a public interest issue;
2. That since the City was only a nominal party in the appeal to the superior court and had no interest in the outcome of the case, it should not be liable for any attorney's fees to which the McCabes may be entitled;
3. That the superior court abused its discretion in awarding the full amount of attorney's fees requested by the McCabes.

5. Rule 82(a), Alaska Rules of Civil Procedure provides:

(a) *Allowance to Prevailing Party as Costs.*

(1) Unless the court, in its discretion, otherwise directs, the following schedule of attorney's fees will be adhered to in fixing such fees for the party recovering any money judgment therein, as part of the costs of the action allowed by law:

STANDARD OF REVIEW

Rule 82(a)(1), Alaska Rules of Civil Procedure, provides that in cases where there is no monetary recovery, "attorney's fees for the prevailing party may be fixed by the court as a part of the costs of the action, in its discretion, in a reasonable amount." This court has recognized that the trial judge has wide discretion in awarding fees to a prevailing party. As we recently stated in *Alaska Placer Company v. Lee*, 553 P.2d 54 (Alaska 1976):

We will interfere only where the trial court's determination as to attorney's fees appears to be 'manifestly unreasonable.' (footnote omitted) 553 P.2d at 63

PUBLIC INTEREST NATURE OF THE CASE

We turn first to the question of whether the McCabes were entitled to any award of attorney's fees. Both the City and the McCabes have characterized this case as a suit involving issues of public interest, the constitutionality of the P.U.D. ordinance having been litigated in the superior court. This court has previously held that "it is an abuse of discretion to award attorney's fees against a losing party who has in good faith raised a question of genuine public interest before the courts." *Gilbert v. State*, 526 P.2d 1131, 1136 (Alaska 1974) (emphasis added). *Accord, Girves v. Kenai Peninsula Borough*, 536 P.2d 1221, 1227 (Alaska 1975). Although in Alaska costs and attorney's fees are normally awarded to the prevailing party,⁵ the City now argues that if a plain-

ATTORNEY'S FEES IN AVERAGE CASES

		Contested	Without Trial	Non-Contested
First	\$2,000	25%	20%	15%
Next	\$3,000	20%	15%	12.5%
Next	\$5,000	15%	12.5%	10%
Over	\$10,000	10%	7.5%	5%

Should no recovery be had, attorney's fees for the prevailing party may be fixed by the court as a part of the costs of the action, in its discretion, in a reasonable amount.

tiff does not risk being charged attorney's fees by virtue of the public interest nature of the suit, he should not be able to benefit from Rule 82 if he prevails.

The City supports its contention with a policy argument that to allow a public interest plaintiff to collect attorney's fees will increase the number of public interest suits and encourage attempted resolution of political disputes through the judicial process. The City also contends that plaintiffs in all civil actions will be motivated to label their suits as public interest litigation in order to be assured of compensation in the case of victory and immunity in the case of defeat. We are not persuaded by these arguments, since they are inconsistent with the policy considerations behind *Gilbert* and conflict with the trend to award attorney's fees to public interest plaintiffs in the federal courts.

[1] The *Gilbert* public interest exception to Rule 82 is designed to encourage plaintiffs to bring issues of public interest to the courts. In holding that as a matter of sound policy attorney's fees should not be assessed against public interest plaintiffs, we relied in *Gilbert* on the appellant's argument "that awarding fees in this type of controversy will deter citizens from litigating questions of general public concern for fear of incurring the expense of the other party's attorney's fees."⁶ Adoption of the City's contention that public interest plaintiffs should not be awarded attorney's fees would be inconsistent with the above stated policy.

Although all jurisdictions other than Alaska have adopted the "American rule"

(2) In actions where the money judgment is not an accurate criteria for determining the fee to be allowed to the prevailing side, the court shall award a fee commensurate with the amount and value of legal services rendered.

(3) The allowance of attorney's fees by the court in conformance with the foregoing schedule is not to be construed as fixing the fees between attorney and client.

6. 526 P.2d at 1136.

7. Although the United States Supreme Court recently resisted in *Alyeska Pipeline Service v.*

that each party to a legal dispute is responsible for his own attorney's fees, regardless of the ultimate disposition of the suit, awards of attorney's fees to public interest plaintiffs have long been an exception to that general no-fee rule. The policy behind the award of attorney's fees to "private attorneys general" was first articulated by the United States Supreme Court in *Newman v. Piggie Park Enterprises, Inc.*, 390 U.S. 400, 88 S.Ct. 964, 19 L.Ed.2d 1263 (1968). In that case, the court held that a plaintiff who was successful in bringing a suit under Title II of the Civil Rights Act of 1964, which prohibits discrimination in restaurants, should ordinarily recover attorney's fees. The basis for this holding was the same policy articulated by this court in *Gilbert*—to encourage plaintiffs to raise issues of public interest by removing the awesome financial burden of such a suit.

When a plaintiff brings an action under [Title II], he cannot recover damages. If he obtains an injunction, he does so not for himself alone but also as a 'private attorney general', vindicating a policy that congress considered of the highest priority. *If successful plaintiffs were routinely forced to bear their own attorney's fees, few aggrieved parties would be in a position to advance the public interest by invoking the injunctive powers of the federal courts.* (emphasis added) 390 U.S. at 402, 88 S.Ct. at 966. (footnote omitted)

Thus, if courts in jurisdictions which do not ordinarily allow the award of attorney's fees to prevailing parties make an exception for successful public interest plaintiffs,⁷ certainly in a state where com-

Wilderness Soc., 421 U.S. 240, 95 S.Ct. 1612, 44 L.Ed.2d 141 (1975) the opportunity to expand the "private attorney general" doctrine to the award of fees to all public interest plaintiffs, the court did not retreat from the policy it articulated in *Piggie Park*. Rather it concluded that the "American rule" is grounded in statute and that the courts may not award counsel fees unless they determine that Congress so intended. Since Rule 82 not only specifically authorizes but requires the award of attorney's fees to the prevailing party in civil cases, the Court's reasoning in *Alyeska* would not be applicable to the instant case.

compensation is the rule, the contention that public interest plaintiffs should be the only successful plaintiffs not entitled to attorney's fees has no merit.

With regard to the City's warning that all plaintiffs will now be prompted to characterize their cases as public interest litigation, if the *Gilbert* case did not cause such characterization, affirmance of the award in this case will not do so. Since the award of fees to the prevailing party is the general rule, compensation of a public interest plaintiff will not cause plaintiffs to fabricate public interest issues. If anything were to motivate a plaintiff to falsely label the nature of his case, it would be the impunity assured to public interest plaintiffs by *Gilbert*. Furthermore, criteria for determining what constitutes "public interest" litigation have been delineated. In *La Raza Unida v. Volpe*, 57 F.R.D. 94 (N.D.Cal. 1972), the court held that an action by private citizens to enjoin construction of a state highway project for failure to comply with Federal statutes was public interest litigation because of the presence of three factors: "(1) the effectuation of strong public policies; (2) the fact that numerous people received benefits from plaintiffs' litigation success; (3) the fact that only a private party could have been expected to bring this action." 57 F.R.D. at 101; *accord*, Nussbaum, *Attorney's Fees in Public Interest Litigation*, 48 N.Y.U.L.Rev. 301, 304-305 (1973).

[2] The policy of encouraging public interest litigants, articulated by the court in *Gilbert*, supports an award of attorney's fees to the prevailing plaintiffs in this and all other public interest cases.

AWARD OF FEES AGAINST THE CITY

The City's next contention in this appeal is that even if the McCabes were entitled to an award of attorney's fees, the City was not the proper party to be charged with this award. In this argument, the City has raised several issues: (a) that it had no capacity to be charged with fees since it had insufficient party status or legal interest in the case; (b) that the Borough was

an indispensable party to the case and was the only municipal body capable of being charged with the fees; and (c) that Carlstrom should have been charged with the full amount or at least a portion of the fees.

a. Capacity to be assessed

[3] In arguing that the City was not the proper party to be assessed for attorney's fees, the City first contends that it had no capacity to be charged with the awards. It bases its lack of capacity argument on the contention that it had no legal interest in the case. First, it claims that it was disinterested in the outcome of the case since its role was that of a "quasi-judicial" body and its function was "closely analogous to the role of the Superior Court in this case." It thus seems to argue that it never should have been named as a party in the McCabe's appeal to the superior court at all. In support of this argument, the City cites *State v. Bd. of Zon. Adjust. of New Orleans*, 197 So.2d 691 (La.App.1967), in which plaintiffs, attempting to appeal the Board of Adjustment's decision to grant a variance, named only the Board and City as defendants. The trial court's decision to dismiss the case for failure to join the owners of the lots in question was based on the Board's quasi-judicial status and its resultant lack of capacity to be sued.

The Board is a quasi-judicial body and can have no legal interest in the outcome of the case. *It can neither sue nor be sued nor can it appeal from a Court's reversal of its decision for the reason that it has no legal interest in the outcome of the Court's review thereof.* 197 So.2d at 694 (emphasis added)

However, in this jurisdiction, the Board of Adjustment has in the past been afforded full party status in appeals of its decisions. When, in *Munroe v. City Council for City of Anchorage*, 545 P.2d 165, *reh'g granted and opinion modified*, 547 P.2d 839 (Alaska 1976), builders appealed the Board of Adjustment's decision to deny a special exception to the zoning ordinance for construction of a P.U.D., the superior court upheld the Board's decision, awarding it