ALASKA LEGISLATURE COMMITTEE FILES · 1983-1984 8672

2518 SJ SB 312 - SB 328 2518

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: SB 312
Title: Creating Office of Public Advocacy
Sponsor:
Requestor:
Date of Request:

FISCAL DETAIL
Agency Affected: Alaska Court System
Program Category Affected: Justice
BRU, Program or Subprogram(s) Affected: Alaska Court System

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING		(328.9)				
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL		(2,066.6)				
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		(2,395.5)				
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		(2,395.5)				
FEDERAL FUNDS						
OTHER						
TOTAL		(2,395.5)				

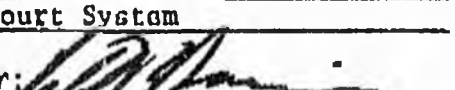
POSITIONS:

FULL-TIME		(8)				
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Robert G. Fisher Phone: 264-0561
Division: Alaska Court System Date: 1/17/84

Approved by Commissioner:  Date: 1/17/84
Agency: Alaska Court System

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

ANALYSIS OF SB 312

The FY 85 budget for the Court System contains $2,395.500 of funds for the functions being transferred to the Department of Administration by this bill. In the transfer of the guardian function, the Court System will maintain the existing eight (8) positions until the Department of Administration has established its organization and offices around the state. At that time the positions will be transferred to the Department of Administration.

TELECOPY COVER SHEET
ANCHORAGE INFORMATION OFFICE

465

TO: Sen. Ray FOR: Paula Scavera PHONE: 465-4922

FROM: Karla Forsythe PHONE: 264-0634

ADDITIONAL INSTRUCTIONS: _____

DATE/TIME SENT: 1/19/84 4:25 PLEASE ACK. RECEIPT: ✓

DISPOSAL OF ORIGINAL: ____ THROW AWAY

✓ HOLD FOR PICK UP

NUMBER OF PAGES: 8 (NOT COUNTING COVER SHEET)

BY: [signature]

MEMORANDUM

To: Paula Scavera

From: Karla Forsythe, General Counsel
Alaska Court System

Date: January 19, 1984

Subject: CS for SB 312 (Judiciary)

After discussing with Senator Pettyjohn his concerns about the present draft committee substitute, I have the following suggestions for the final version:

1. Page 2, line 6. Instead of "AS 47.15", the statutory citation should read "AS 47.15.050". I believe the deletion was a typographical error.

2. Page 5, lines 20 and 21. Since indigent defendants will be represented either by the public defender agency or through the office of advocacy, the last part of the paragraph should be deleted, to read:

(d) If a court determines that the person is entitled to be represented by an attorney at public expense, it shall promptly notify the agency or the office of public advocacy [OR ASSIGN A PRIVATE ATTORNEY FOR HIM UNDER AS 18.85.130.]

3. Page 5, line 24. For the same reason, the reference to assigned private attorney should be deleted, so that the section will read:

(e) Upon notification or assignment under this section, the agency or office of public advocacy [OR ASSIGNED PRIVATE ATTORNEY] shall represent the person with respect to whom the notification or assignment is made.

4. Page 5, line 27. This entire section (a) should be repealed, and therefore should read:

"Sec. 11. AS 18.85.130(a) is repealed. Section b should be retained as noted on the attached copy

Since either the public defender agency or the office of advocacy will provide representation, the court will no longer be concerned with appointing attorneys other than these agencies in these cases.

5. Page 6, lines 22 and 23. The office of public advocacy will NOT be appointed in every proceeding under this section, but only if the parties are indigent. Therefore, the reference to "an attorney" should be included, and the paragraph should read:

Sec. 25.24.310. REPRESENTATION OF MINOR. (a) In an action involving a question of the custody, support, or visitation of a minor, the [THE] court may, upon the motion of a [EITHER] party to the action or upon its own motion, appoint an attorney or the office of public advocacy . . . (the remainder of page 6 does not change).

6. Page 7, lines 2 and 3. Senator Pettyjohn was concerned that appointments are made at state expense only if there is no other recourse. The language could be changed to read:

If the parties are indigent or temporarily without funds. . .

rather than "If one or both of the parties is indigent or temporarily without funds."

7. Page 7, line 13. Similarly, this line could read:
[EITHER PARTY OR BOTH PARENTS]
"If the parties are only temporarily without funds . . ." .

8. Page 7, lines 17 through 19. Senator Pettyjohn would like to delete the reference to persons receiving legal services, and the court system has no problem with this deletion. The wording would read:

(starting on line 16) "FOR] legal representation or other

services required by the court [RENDERED TO THE CHILD: HOWEVER, NO REPAYMENT MAY BE REQUIRED FOR THOSE WHO ARE RECEIVING LEGAL SERVICES FOR THE INDIGENT].

9. Page 7, line 27. Senator Pettyjohn is concerned that the language regarding sale of property belonging to both parties might be interpreted as excluding other mechanisms for allocating costs. His concern could be clarified by adding language to line 27, so that line 27 would read:

before a division of property is made, or by other appropriate means.

10. Page 8, line 10. Since the court may appoint guardians ad litem outside the advocacy office for persons who can afford them, the existing statutory language should be retained, so that line 10 would read:

"appointing a guardian ad litem shall . . ." .

11. Page 8, lines 25 and 26. This language could be conformed to previous changes to read:

"If the parties are indigent"

rather than

"If one or both of the parties is indigent . . .".

* * * *

I have attached a marked-up copy of the committee substitute draft to show these changes. Please give me a call if you have any questions.

by a public agency, and to indigent parents or guardians of a minor respondent in a commitment proceeding concerning the minor under AS 47.30.775;

(5) provide legal representation and guardian ad litem services under AS 25.24.310; in cases arising under the Uniform Interstate Compact on Juveniles (AS ~~47.15~~ 47.15.050); in cases involving petitions to adopt a minor under AS 25.23.100(j); in cases involving petitions to remove the disabilities of a minor under AS 09.55.590; in children's proceedings under AS 47.10.050(a); and in cases involving indigent persons who are entitled to representation under AS 18.85.100 and who cannot be represented by the public defender agency because of a conflict of interests.

(b) The commissioner of administration may

(1) adopt regulations that the commissioner considers necessary to implement AS 44.21.400 - 44.21.440;

(2) report on the operation of the office of public advocacy when requested by the governor or legislature or when required by law;

(3) solicit and accept grants of funds from the federal government and from private foundations, and allocate or restrict the use of those funds as required by the grantor.

Sec. 44.21.420. EMPLOYMENT OF OFFICE PERSONNEL. (a) The commissioner of administration may employ guardians ad litem, public guardians, clerical staff, and other assistants that the commissioner determines are needed to perform the duties set out in AS 44.21.410. Employees under this subsection are in the classified service under AS 39.25.100.

(b) The commissioner of administration may employ attorneys needed to perform the duties set out in AS 44.21.410. Attorneys

Sec. 13.26.360. PURPOSE. The legislature recognizes that many Alaskans, for reasons of incapacity or minority, are in need of a guardian or conservator. Often these persons cannot find a person able and willing to serve as guardian or conservator. The legislature intends through AS 13.26.360 - 13.26.410 to establish the function [OFFICE] of public guardian for the purpose of furnishing guardianship and conservatorship services. It further intends by establishing this function [OFFICE] to provide assistance to guardians throughout the state in securing necessary services for their wards and to assist the courts, attorneys, visitors, respondents, and proposed guardians in the orderly and expeditious handling of guardianship proceedings.

* Sec. 8. AS 13.26.370(a) is amended to read:

(a) The office of public advocacy (AS 41.21.400) shall serve as the public guardian [PUBLIC ADMINISTRATOR (AS 22.15.310) SHALL ALSO ACT AS THE PUBLIC GUARDIAN FOR THE JUDICIAL DISTRICT FOR WHICH HE IS APPOINTED].

* Sec. 9. AS 18.85.110(d) is amended to read:

(d) If a court determines that the person is entitled to be represented by an attorney at public expense, it shall promptly notify the agency or the office of public advocacy [or assign a private attorney ~~to represent the person~~ [FOR HIM] under AS 18.85.130].

* Sec. 10. AS 18.85.110(e) is amended to read:

(e) Upon notification or assignment under this section, the agency or office of public advocacy [, or assigned private attorney] shall represent the person with respect to whom the notification or assignment is made.

* Sec. 11. AS 18.85.130 ~~(a) is amended to read:~~ is repealed.

~~(a)~~ [For cause, the court may, on its own motion or upon the application of the public defender ~~or the office of public advocacy~~,

* Sec. 12. AS 18.65.130 is amended to read:

Sec. 18.65.130 ~~(a)~~ In addition to substitution under (a) of this section, when the public interest requires, and a person is entitled to representation by the agency under this chapter, the public defender may contract with one or more private attorneys to assist him. The public defender shall pay for these services out of appropriations to the agency. (§ 1 ch 109 SLA ~~1968; am § 3 ch 16 SLA 1971~~)

appoint an attorney other than the public defender or the office of public advocacy to represent the indigent person at any stage of the proceedings or on appeal. THE ATTORNEY SHALL BE AWARDED REASONABLE COMPENSATION ACCORDING TO A SCHEDULE OF FEES PROMULGATED BY THE SUPREME COURT AND REIMBURSEMENT FOR EXPENSES NECESSARILY INCURRED. THIS SHALL BE PAID BY THE COURT SYSTEM.

* Sec. 12. AS 22.15.310 is amended to read:

Sec. 22.15.310. APPOINTMENT. When authorized by the supreme court, the presiding judge in each judicial district shall appoint a person to act as public administrator of the estates of deceased persons and [,] as coroner [, AND AS PUBLIC GUARDIAN].

* Sec. 13. AS 22.15.350 is amended to read:

Sec. 22.15.350. OTHER DUTIES. In addition to the other duties of a public administrator, the public administrator shall perform the duties set out in AS 22.15.110 and AS 12.65.020 - 12.65.110 [AND SHALL PERFORM THE DUTIES OF PUBLIC GUARDIAN AS SET OUT IN AS 13.26.360 - 13.26.410].

* Sec. 14. AS 25.24.310 is amended to read:

Sec. 25.24.310. REPRESENTATION OF MINOR. (a) In an action involving a question of the custody, support, or visitation of a minor, the [THE] court may, upon the motion of a [EITHER] party to the action or upon its own motion, appoint an attorney or the office of public advocacy [AN ATTORNEY] to represent a minor with respect to the custody, support, and visitation of the minor or in any other legal proceeding involving the minor's welfare. When custody, support, or visitation is [ARE] at issue in a divorce, it is the responsibility of the parties or their counsel to notify the court that such a matter is [THOSE MATTERS ARE] at issue. Upon notification, the court shall determine whether the minor [CHILD] should have legal representation or other

services and shall make a finding on the record before trial. If ~~one~~ or ~~both of~~ the parties ~~is~~ are indigent or temporarily without funds, the court shall appoint the office of public advocacy. The court shall notify the office of public advocacy if the office is required to provide legal representation or other services. The court shall enter an order for costs, fees, and disbursements in favor of the state [CHILD'S ATTORNEY] and may further order that other services be provided for the protection of the minor [CHILD].

(b) If custody, support, or visitation is at [AN] issue, the order for costs, fees, and disbursements shall be made against either or both parents, except that, if one of the parties responsible for the costs is indigent, the costs, fees, and disbursements for that party shall be borne by the state. If [ALL CAPS either party or both parents] are only temporarily without funds, [AS DETERMINED BY THE COURT,] the office of public advocacy shall provide [COURT MAY ADVANCE PAYMENT FOR] legal representation or other services required by the court [RENDERED TO THE CHILD]; however, [ALL CAPS NO] repayment may ~~not~~ be required ~~of a party who is~~ [FOR THOSE WHO ARE] receiving legal services for the indigent. The attorney general is responsible for enforcing collections owed the state. Repayment [COURT, AND REPAYMENT] shall be made [DIRECTLY] to the Department of Revenue under AS 37.10.050 for deposit in the general fund [COURT UNDER THE PROVISIONS OF RULES GOVERNING THE ADMINISTRATION OF THE COURTS]. The court shall, if possible, avoid assigning costs to only one party by ordering that costs of the minor's [CHILD'S] legal representation or other services be paid from proceeds derived from a sale of property belonging to both parties, before a division of property is made, or by other appropriate means.

(c) Instead of, or in addition to, appointment of an attorney under (a) of this section, the court may, upon the motion of either

party or upon its own motion, appoint an attorney or other person or the office of public advocacy to provide [SERVE AS] guardian ad litem services to [REPRESENT THE BEST INTERESTS OF] a minor in any legal proceedings involving the minor's welfare. The court shall require [APPOINT] a guardian ad litem when, in the opinion of the court, representation of the minor's [CHILD'S] best interests, to be distinguished from preferences, would serve the welfare of the minor [CHILD] [THE PERSON APPOINTED UNDER (a) OF THIS SECTION MAY ALSO BE APPOINTED AS GUARDIAN AD LITEM UNDER THIS SUBSECTION.] The court in its order appointing ~~the office of public advocacy~~ a guardian ad litem shall limit the duration of the appointment of the guardian ad litem to the pendency of the legal proceedings affecting the minor's [CHILD'S] interests, and shall outline the guardian ad litem's responsibilities and limit the authority to those matters related to the guardian's effective representation of the minor's [CHILD'S] best interests in the pending legal proceeding. The court shall make every reasonable effort to appoint a guardian ad litem from among persons in the community where the minor's [CHILD'S] parents or the person having legal custody or guardianship of the minor's [CHILD'S] person reside. When custody, support, or visitation is [ARE] at issue in a divorce, it is the responsibility of the parties or their counsel to notify the court that such a matter is [THESE MATTERS ARE] at issue. Upon notification, the court shall determine if the minor's [CHILD'S] best interests need representation or if the minor [CHILD] needs other services and shall make a finding on the record before trial. If ~~one or both of~~ the parties are indigent or temporarily without funds the court shall appoint the office of public advocacy. The court shall notify the office of public advocacy if the office is required to provide guardian ad litem services. The court shall enter an order for costs,

SB 312 cont'd

The Honorable Jalmar Ferttula
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 to create an office of public advocacy within the Department of Administration.

The bill transfers responsibility for the public guardian program (AS 13.26.360 -- 13.26.410) and for administration of statutorily required advocacy services from the court system to the executive branch.

PUBLIC GUARDIANSHIP

The public guardian office, established by the legislature in 1981 (AS 13.26.370), provides guardianship and conservatorship services to incapacitated persons and minors when no one else is willing or qualified to perform in this capacity. Many of the wards are severely handicapped due to mental retardation, developmental disabilities, or mental illness. The public guardian's responsibilities for individual wards include placement; securing medical, dental, vocational, or rehabilitation services; financial management; benefits application, and personal visits.

The public guardian is also required to assist private guardians throughout the state to ensure that guardians and conservators secure the necessary services for the persons they protect. This task involves maintaining contact with community resource programs and government agencies, and producing informational and educational aids.

The court system is not qualified or equipped to handle such a social services program. By law, coroners/public administrators must serve as the public guardians, yet none of the coroner/public administrators is a social worker.

PUBLIC REPRESENTATION

The court system, by statute (AS 18.85.130(a)), appoints and compensates attorneys who represent indigent persons when the public defender agency cannot provide an attorney because of a conflict of interests. The court is also authorized by current law to appoint and pay for guardians ad litem to represent the best interests of a minor in proceedings which affect the minor's welfare (AS 09.65.130). Representation and guardian ad litem services presently are provided by contract with private law firms and by direct court appointment at hourly rates that are below customary rates charged by attorneys.

SB 312 cont'd

OFFICE OF PUBLIC ADVOCACY

The bill creates an office of public advocacy under the commissioner of administration, who also oversees the public defender agency. The office will be empowered to provide public guardian and guardian ad litem services as well as legal representation to indigent persons, when authorized by existing statutes. Services will be provided both by staff employed by the office and by independent contractors, subject to centralized management under the commissioner of administration.

In creating such an office, it is anticipated that it will have locations in major population areas around the state. This will permit efficient sharing of resources, including space, personnel, clerical support, and other administrative costs, with other state offices. In developing the staffing requirements and other costs, it has been determined that in many instances it will be less costly for the state to establish full-time offices with full-time employees rather than contract for these services.

The judicial branch supports transfer of the public guardian program and the management of advocacy services to the office of public advocacy. Principles of sound management and fiscal responsibility point to the desirability of this approach, and I urge passage of the bill.

Sincerely,

Bill Sheffield
Governor

SB 313

SENATE BILL NO. 313 by the Rules Committee by request of the Legislative Council (for the Code Revision Commission), entitled:

"An Act revising the nonprofit corporations code; and providing for an effective date."

was read the first time and referred to the Labor and Commerce Committee, the Judiciary Committee and the Finance Committee.

The letter from John W. Abbott, Chairman, Alaska Code Revision Commission and the Commentary to Accompany Proposed Bill on the Alaska Nonprofit Corporations Code (ANCC) appears in Senate and House Joint Supplement No. 12 to today's journal.

SB
320

COMMITTEE REPORT

SENATE

FURTHER:

Date: _____

Mr. President:

The Committee on _____ has had _____

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 _____ [X] 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

_____

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MEMBERS HAVING
OTHER RECOMMENDATIONS:

_____

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CHAIRMAN

(Rev. 12/78)

FILE WITH SB 320

Alaska State Legislature

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

While in Juneau
POUCH V
JUNEAU, ALASKA 99811

Senate

VICE CHAIRMAN
SENATE RESOURCES COMMITTEE

MEMBER
SENATE JUDICIARY COMMITTEE

WESTERN STATES LEGISLATIVE
FORESTRY TASK FORCE

WESTERN CONFERENCE COUNCIL
OF STATE GOVERNMENTS

January 27, 1984

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

Re: SB 320, An Act relating to the Dissolution of Marriage.

Dear Senator Ray:

Below, you will find a brief sectional analysis of SB 320. I have also enclosed a copy of the pertinent statutes cited in the bill.

Section 1. AS 25.24.200 (a) Dissolution.

Under Article 2, Dissolution of Marriage, this section adds a new paragraph (B) which requires that the court have jurisdiction as provided in AS 25.30.20 and is an appropriate forum under AS 25.30.050 and 060 before parents can file a petition for dissolution of marriage and can agree on custody and visitation.

In other words, the requirements set forth in AS 25.30.020, 050 and 060 must be met before a husband and wife may petition the Superior Court for dissolution of a marriage if there are minor children or the wife is pregnant.

Section 2. AS 25.24.210 Petition for Dissolution.

Adds wording which provides that the petition of dissolution or marriage shall include the facts showing whether the court has jurisdiction and is an appropriate forum under AS 25.30.020, 050 and 060 to determine custody and visitation.

Section 3. AS 25.24.230 (e) Judgment.

Adds new language which provides that the decree shall state that it does not bar future action on issues not resolved if: "The court does not have

jurisdiction or is not an appropriate forum or the court otherwise lacks jurisdiction to grant all of the relief requested."

Very truly yours,

Robert H. Ziegler, Sr.

RHZ:lk

Enclosures

NOTES TO DECISIONS

Applied in Rexford v. Rexford, Sup. Ct. Op. No. 2253 (File No. 4860), 631 P.2d 475 (1980).

Quoted in Morgan v. Morgan, Sup. Ct. Op. No. 2694 (File No. 7297), P.2d (1983).

Cited in Szmyd v. Szmyd, Sup. Ct. Op. No. 2472 (File No. 5854), 641 P.2d 14 (1982); Kimmons v. Heldt, Sup. Ct. Op. No. 2685 (File No. 6254), P.2d (1983).

Sec. 25.30.020. Jurisdiction. (a) The superior court has jurisdiction to make a child custody determination by initial or modification decree if the conditions set out in any of the following paragraphs are met:

(1) this state (A) is the home state of the child at the time of commencement of the proceeding, or (B) had been the child's home state within six months before commencement of the proceeding and the child is absent from this state because of removal or retention by a person claiming custody or for other reasons, and a parent or person acting as parent continues to live in this state; or

(2) the child is physically present in this state and is a child in need of aid as defined in AS 47.10.290; or

(3) it (A) appears that no other state would have jurisdiction under prerequisites substantially in accordance with (1) or (2) of this subsection, or another state has declined to exercise jurisdiction on the ground that this state is the more appropriate forum to determine the custody of the child, and (B) is in the best interest of the child that this court assume jurisdiction.

(b) Except under (a)(2) and (3) of this section, physical presence in this state of the child, or of the child and one of the contestants, is not alone sufficient to confer jurisdiction on a court of this state to make a child custody determination.

(c) Physicial presence of the child, while desirable, is not a prerequisite for jurisdiction to determine the child's custody. (§§ 1, 3 ch 61 SLA 1977)

NOTES TO DECISIONS

Determining jurisdiction. — Subject-matter jurisdiction either exists or does not exist at the time when the petition is filed with the court. Facts developing after that, such as the length of time the children have now been in another state, cannot be considered when determining whether the court initially had jurisdiction to hear the action. Rexford v. Rexford, Sup. Ct. Op. No. 2253 (File No. 4860), 631 P.2d 475 (1980).

Requirement for jurisdiction. — The superior court has no jurisdiction to make the "child custody determination" that is a prerequisite to the entry of a decree of dissolution under AS 09.55.234(a) unless one of the conditions listed in subsection (a) of this section exists. Layne v. Niles, Sup. Ct. Op. No. 2396 (File No. 5887), 632 P.2d 234 (1981).

The decision to decline jurisdiction if the court is an inconvenient forum is a discretionary one. Szmyd v. Szmyd, Sup. Ct. Op. No. 2472 (File No. 5854), 641 P.2d 14 (1982).

A parent's appearance in another state's proceeding and his cooperation with that state's child custody investigator in the preparation of a probation report did not waive or confer jurisdiction upon the

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court. Rexford v. Rexford, Sup. Ct. Op. No. 2253 (File No. 4860), 631 P.2d 475 (1980).

What "proceeding" encompasses. — The word "proceeding" in this statute clearly encompasses both the original divorce proceeding and any subsequent change-of-custody motions. Leighton v. Leighton, Sup. Ct. Op. No. 1844 (File No. 3941), 596 P.2d 8 (1979), overruled in Deivert v. Oseira, Sup. Ct. Op. No. 2357 (File No. 4910), 628 P.2d 575 (1981), to the extent that it indicates the need for an evidentiary hearing upon request, and Szmyd v. Szmyd, Sup. Ct. Op. No. 2472 (File No. 5854), 641 P.2d 14 (1982) to the extent that it is contrary to the holding that the jurisdictional prerequisites of this section apply when a superior court is asked to modify custody.

Jurisdiction under act adopted by other state. — Although Alaska had jurisdiction as the home state of the child, California arguably also had jurisdiction under a section of the Uniform Child Custody Jurisdiction Act adopted by California but not by Alaska, which conferred jurisdiction when the child and at least one parent had a significant connection with the state, and there was available in the state substantial evidence concerning the child's present or future care, protection, training, and personal relationships. Kimmons v. Heldt, Sup. Ct. Op. No. 2685 (File No. 6254), P.2d (1983).

Quoted in Morgan v. Morgan, Sup. Ct. Op. No. 2694 (File No. 7297), P.2d (1983).

Cited in Carter v. Brodrick, Sup. Ct. Op. No. 2500 (File No. 5511), 644 P.2d 850 (1982).

Sec. 25.30.030. Notice and opportunity to be heard. Before making a decree under this chapter, reasonable notice and opportunity to be heard, taking into account education and language differences which are known or reasonably ascertainable, shall be given to the contestants, any parent whose parental rights have not been previously terminated, and any person who has physical custody of the child. If any of these persons is outside this state, notice and opportunity to be heard shall be given under AS 25.30.040. (§ 1 ch 61 SLA 1977)

Sec. 25.30.040. Notice to persons outside this state; submission to jurisdiction. (a) Notice required for the exercise of jurisdiction over a person outside this state shall be given in accordance with the provisions of Rule 4, Alaska Rules of Civil Procedure.

(b) Notice under this section shall be served, mailed, delivered, or published at least 20 days before any hearing in this state.

(c) Proof of service outside this state shall be made according to the provisions of Rule 4, Alaska Rules of Civil Procedure.

(d) Notice is not required if a person submits to the jurisdiction of the court. (§ 1 ch 61 SLA 1977)

Sec. 25.30.050. Simultaneous proceedings in other states. (a) The superior court may not exercise its jurisdiction under this chapter if at the time of filing the petition a proceeding concerning the custody of the child was pending in a court of another state exercising jurisdiction substantially in conformity with this chapter, unless the proceeding is stayed by the court of the other state because this state is a more appropriate forum or for other reasons.

(b) Before hearing the petition in a custody proceeding the court shall examine the pleadings and other information supplied by the parties under AS 25.30.080 and shall consult the child custody records

maintained under AS 25.30.150 concerning the pendency of proceedings with respect to the child in other states. If the court has reason to believe that proceedings may be pending in another state, it shall direct an inquiry to the state court administrator or other appropriate official of the other state.

(c) If the court is informed during the course of the proceeding that a proceeding concerning the custody of the child was pending in another state before the court assumed jurisdiction, it shall stay the proceeding and communicate with the court in which the other proceeding is pending so that the issue may be litigated in the more appropriate forum and information may be exchanged in accordance with AS 25.30.180 — 25.30.210. If a court of this state has made a custody decree before being informed that a proceeding was commenced in another state after it assumed jurisdiction, it shall likewise inform the other court to the end that the issues may be litigated in the more appropriate forum. (§ 1 ch 61 SLA 1977)

NOTES TO DECISIONS

Editor's notes. — Leighton v. Leighton, Sup. Ct. Op. No. 1844 (File No. 3941), 596 P.2d 8 (1979), cited in the notes below was overruled in Deivert v. Oseira, Sup. Ct. Op. No. 2357 (File No. 4910), 628 P.2d 575 (1981), to the extent that it indicates the need for an evidentiary hearing upon request, and Szmyd v. Szmyd, Sup. Ct. Op. No. 2472 (File No. 5854), 641 P.2d 14 (1982), to the extent that it is contrary to the holding that the jurisdictional prerequisites of this section apply when a superior court is asked to modify custody.

The provisions of this section are jurisdictional. Leighton v. Leighton, Sup. Ct. Op. No. 1844 (File No. 3941), 596 P.2d 8 (1979).

Effect of pending suit in another jurisdiction. — The superior court was not authorized to exercise jurisdiction to enter an order changing permanent custody of the children from the mother to the father where it was aware of a pending Oregon suit by the mother which would have significantly restricted the father's access to the children. Leighton v. Leighton, Sup. Ct. Op. No. 1844 (File No. 3941), 596 P.2d 8 (1979).

Jurisdictional defect not waived. — Where the superior court was not authorized to exercise jurisdiction to enter an order changing permanent custody because of a pending Oregon suit, the Oregon party's failure to respond to the motion for change of custody before the superior court did not result in waiver of the jurisdictional defect. Leighton v. Leighton, Sup. Ct. Op. No. 1844 (File No. 3941), 596 P.2d 8 (1979).

Effect of parent's appearance in another state's proceedings. — A parent's appearance in another state's proceeding and his cooperation with that state's child custody investigator in the preparation of a probation report did not waive or confer jurisdiction upon the court. Rexford v. Rexford, Sup. Ct. Op. No. 2253 (File No. 4860), 631 P.2d 475 (1980).

Deferring to court without jurisdiction. — While jurisdiction need not be yielded under this section if the other court would not have jurisdiction under the criteria of this act, the policy against simultaneous custody proceedings was so strong that it was appropriate to leave the case to the other court even under such circumstances. Rexford v. Rexford, Sup. Ct. Op. No. 2253 (File No. 4860), 631 P.2d 475 (1980).

Although the supreme court of Alaska concluded that a certain court in another state did not have jurisdiction to determine a particular custody proceeding, they held that the Alaska superior court did not abuse its discretion in deferring to the other state in that case and staying the Alaska proceedings. Rexford v. Rexford, Sup. Ct. Op. No. 2253 (File No. 4860), 631 P.2d 475 (1980).

Where father transported children from Washington to Virginia but custody pro-

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ceedings were not instituted until after he had returned to Virginia, his conduct was therefore not "wrongful" within the meaning of AS 25.30.070(a), and the superior court should have declined to exercise its jurisdiction under subsection (a) of this section. Morgan v. Morgan, Sup. Ct. Op. No. 2694 (File No. 7297), P.2d (1983).

Ineffective communication with other courts. — Where the trial court sent an inquiry to the Virginia courts regarding the case, in accordance with subsection (b) of this section, but it did not receive the response until almost three weeks after the order resolving the jurisdictional issues was entered, no effective communication was established with the Virginia courts before the jurisdictional decision was rendered, in contravention of subsection (c) of this section. Morgan v. Morgan, Sup. Ct. Op. No. 2694 (File No. 7297 P.2d (1983).

Applied in Kimmens v. Heldt, Sup. Ct. Op. No. 2685 (File No. 6254), P.2d (1983).

Sec. 25.30.060. Inconvenient forum. (a) The superior court may decline to exercise its jurisdiction any time before issuing a decree if it finds that [illegible] inconvenient forum to make a custody determination under the circumstances of the case and that a court of another state is a more appropriate forum.

(b) A finding of inconvenient forum may be made upon the court's own motion or upon motion of a party or a guardian ad litem or other representative of the child.

(c) In determining if it is an inconvenient forum, the court shall consider if it is in the interest of the child that another state assume jurisdiction. For this purpose it may take into account the following factors, among others:

(1) if another state is or recently was the child's home state;

(2) if another state has a closer connection with the child and the child's family or with the child and one or more of the contestants;

(3) if better evidence concerning the child's present or future care, protection, training, and personal relationships is available in another state, or if equally substantial evidence is more readily available in another state;

(4) if the parties have agreed on another forum which is no less appropriate; and

(5) if the exercise of jurisdiction by a court of this state would contravene any of the purposes stated in AS 25.30.010.

(d) Before determining whether to decline or retain jurisdiction the court may communicate with a court of another state and exchange information pertinent to the assumption of jurisdiction by either court with a view to assuring that jurisdiction will be exercised by the more appropriate court and that a forum will be available to the parties.

(e) If the court finds that it is an inconvenient forum and that a court of another state is a more appropriate forum, it may dismiss the proceedings, or it may stay the proceedings upon condition that a custody proceeding be promptly commenced in another named state or upon any other conditions which may be just and proper, including the condition that a moving party stipulate consent and submission to the jurisdiction of the other forum.

(f) The court may decline to exercise its jurisdiction under this chapter if a custody determination is incidental to an action for divorce or dissolution of marriage or another proceeding while retaining jurisdiction over the divorce or other proceeding.

(g) If it appears to the court that it is clearly an inappropriate forum, it may require the party who commenced the proceedings to pay, in addition to the costs of the proceedings in this state, necessary travel and other expenses, including attorney fees, incurred by other parties or their witnesses. Payment is to be made to the clerk of the court for remittance to the proper party.

(h) Upon dismissal or stay of proceedings under this section the court shall inform the court found to be the more appropriate forum of this fact, or, if the court which would have jurisdiction in the other state is not certainly known, shall transmit the information to the court administrator or other appropriate official of the other state for forwarding to the appropriate court.

(i) Any communication received from another state informing this state of a finding of inconvenient forum because a court of this state is the more appropriate forum shall be filed in the custody records of the court in the appropriate judicial district. Upon assuming jurisdiction, the superior court of this state shall inform the original court of this fact. (§ 1 ch 61 SLA 1977)

NOTES TO DECISIONS

Decision is discretionary. — The decision to decline jurisdiction if the court is an inconvenient forum is a discretionary one. Szmyd v. Szmyd, Sup. Ct. Op. No. 2472 (File No. 5854), 641 P.2d 14 (1982).

Reasons must be stated. — It is error for a court to deny an inconvenient forum motion brought under this section without articulating its reasoning. Szmyd v. Szmyd, Sup. Ct. Op. No. 2472 (File No. 5854), 641 P.2d 14 (1982).

The trial court may consider all facts up to the date of the motion or hearing when ruling on an inconvenient forum motion. Szmyd v. Szmyd, Sup. Ct. Op. No. 2472 (File No. 5854), 641 P.2d 14 (1982).

Contact with state. — In ruling on inconvenient forum motion, it is not the state which has accumulated a longer duration of contact with the child which is dispositive; rather, the inquiry must be into which state has the closer connection with the child. Szmyd v. Szmyd, Sup. Ct. Op. No. 2472 (File No. 5854), 641 P.2d 14 (1982).

Quoted in Rexford v. Rexford, Sup. Ct. Op. No. 2253 (File No. 4860), 631 P.2d 475 (1980).

Sec. 25.30.070. Jurisdiction declined by reason of conduct. (a) If the petitioner for an initial decree has wrongfully taken the child from another state or has engaged in similar reprehensible conduct, the court may not exercise its jurisdiction unless it is necessary in an emergency to protect the child for reasons set out in AS 25.30.020(a)(2).

(b) If the petitioner for a modification decree has, without the consent of the person entitled to custody, improperly removed the child from the physical custody of the person entitled to custody or has improperly retained the child after a visit or other temporary

HUSBAND AND WIFE JOINTLY FILING
(AND THERE ARE CHILDREN OF THE MARRIAGE)

I. WHAT IS "DISSOLUTION OF MARRIAGE?"

Alaska Statutes 09.55.231-09.55.237 provide a "no fault" procedure for dissolution of marriage. A decree of dissolution of marriage has the same force and effect as a decree of divorce. The sole ground for dissolution of marriage is that an incompatibility of temperaments has caused the breakdown of the marriage. This means that there is no chance of saving the marriage because the husband and wife cannot get along.

II. UNDER WHAT CIRCUMSTANCES CAN DISSOLUTION OF MARRIAGE PROCEDURES BE USED?

These procedures apply only when at least one petitioner is an Alaska resident. This generally means physical presence within the State and an intent to remain. No specific duration of residence is required. A person serving in the military who has not established residency may use these procedures if he has been continuously stationed in a military base or installation in the state for a period of one year or more.

To allow this case to proceed, the court must have jurisdiction over the children of the marriage. This means that the children must have lived in Alaska for a minimum of 6 months. Also, the children must currently live in Alaska or Alaska must have been the children's home state within 6 months of the commencement of the case.

If these circumstances and those described in Section I. above are not met, dissolution procedures cannot be used. Further legal information concerning alternatives to the dissolution procedures may be obtained from an attorney. The court may not give legal advice.

A husband and wife may join in a petition for dissolution of marriage only if they reach agreement as to each of the following matters:

Property

1. The distribution of all jointly owned real and personal property;
2. The re-distribution, if any, of all separately owned real and personal property;
3. The payment of spousal support ("alimony"), if any;
4. The tax consequences resulting from these agreements.

Debts

1. The payment of all unpaid obligations already incurred by either or both spouses;
2. The payment of obligations which may be incurred jointly in the future.

Children

1. Who shall be awarded custody of each minor child of the marriage;
2. The extent of visitation rights to be awarded to the spouse who does not have custody;

does not have custody;
4. Whether child support should be paid through the Alaska Child Support Enforcement Agency;
5. The tax consequences of child custody and support.

III. WHAT ARE THE COSTS IN FILING FOR DISSOLUTION?

There is a $50 filing fee. If you cannot afford this fee, you may ask the court clerk for the form for exemption of payment of the filing fee.

IV. WHAT ARE THE STEPS IN THE DISSOLUTION PROCEDURE?

A. Filing a Petition for Dissolution.

The husband and wife must complete a Petition For Dissolution of Marriage: Husband and Wife (Form DR-105) and the Bureau of Vital Statistics Form Certificate of Absolute Divorce or Annulment (Complete the entire form except for lines 14-18, which will be completed by the court following the issuance of a decree.). These forms are then submitted to the clerk's office. The court clerk will assign a case number to the petition which must be written at the top of all other forms subsequently filed. If children are involved, the Child Custody Affidavit (Form DR-150) must also be completed and submitted.

After the petition is filed, any of the terms of the petition may be amended if both husband and wife agree and complete the Amendment of Agreement (Form DR-115). The form Withdrawal of Agreement (DR-120) may be used by a petitioner who wishes to withdraw from the agreement before a decree is signed. If the agreement is withdrawn, the case will be dismissed.

B. The Hearing.

At the time of filing the petition, the parties must check with the clerk's office for instructions on setting a hearing date. The hearing will be at a time acceptable to the petitioners and at least 30 days after the filing of the petition.

At least one petitioner must personally attend the hearing. The spouse not attending the hearing must sign a Waiver of Appearance and Notice of Hearing (Form DR-110).

Either spouse may have an attorney at the hearing, but none is required.

At the hearing the court will question the petitioner or petitioners to determine whether they fully understand the nature and consequences of the proceeding, whether an incompatibility of temperament has caused the breakdown of the marriage; and whether the terms of the agreement between the spouses are equitable and in the best interests of the children of the marriage.

The judge may amend the agreements between the spouses, but only if both petitioners concur in writing with the amendment.

C. The Decree.

After the hearing, the judge may grant a decree of dissolution of marriage if he finds that the agreements between the spouses are equitable and are in the best interests of the children of the marriage.

tion to the judge as to whether or not the decree should be granted. Therefore, the decree will not be granted at the hearing. If the master recommends approval, and the judge agrees with that recommendation, the decree will normally be granted within a few days after the hearing. DO NOT ASSUME THAT THE DECREE HAS BEEN GRANTED UNTIL YOU RECEIVE YOUR COPY.

An attorney's advice may be needed if real property or other property rights evidenced by legal documents are involved. Deeds and other legal documents must be prepared and validly executed. It is the parties' responsibility to make any legal transfers of title of assets listed in the petition.

V. HOW ARE CHILD SUPPORT PAYMENTS MADE AND ENFORCED?

If the petition provides for the payment of child support, it must specify whether the payments will be made directly to the custodial spouse or through the Alaska Child Support Enforcement Agency. The Agency maintains records of child support payments and enforces child support orders.

VI. GENERAL INSTRUCTIONS

The instructions and forms for dissolution of marriage are not necessarily a substitute for professional assistance. If there are any doubts about the proceedings, you should consult an attorney. Similarily, if child or spousal support are involved in the dissolution, tax consequences should be considered. This may require the assistance of an accountant or an attorney.

Neither the Alaska Court System nor the Department of Law can advise you.

Read the instructions carefully. Fill out the forms carefully and completely. TYPE OR PRINT NEATLY IN BLACK INK. Do not leave any spaces blank. Write "none" or "not applicable" where appropriate. If more space is needed, attach an additional page, and have each additional page signed by both petitioners. Be sure to fill out the caption at the top of each form.

VII. INSTRUCTIONS FOR COMPLETING THE PETITION FOR DISSOLUTION OF MARRIAGE: HUSBAND AND WIFE

A. Financial Data and Agreements:

Pages 2 and 3 of the Petition for Dissolution includes all financial data and agreements between the parties, except for child support, which is covered on page 4. The financial agreements include the distribution of assets, distribution of debts, and spousal support.

Assets

Assets include all kinds of property and rights in property. Houses and land are real property. Automobiles, boats, airplanes, snowmachines, furniture, household goods, etc., are personal property. Other property includes bank accounts, retirement funds, contract rights, stocks, bonds, etc.

Each spouse keeps his or her own property unless the parties agree otherwise. Joint assets may be distributed as the petitioners agree. The distribution of all assets must be indicated in the petition.

Debts

Debts include all kinds of financial obligations, such as loans, charge account balances, mortgages, etc.

Each spouse keeps his or her separate debts unless the parties agree otherwise. Joint debts may be distributed as the petitioners agree.

The distribution of all debts must be indicated in the petition. For joint debts, both spouses will remain legally obligated to the creditor until the debt is paid, regardless of the agreement of the parties.

If more space is needed, attach additional sheets.

Spousal Support

Petitioners may agree to the payment of spousal support ("alimony").

Spousal support payments must be included as income on the tax return of the spouse receiving the payments. An accountant's or attorney's advice may be helpful in regard to other tax consequences of spousal support.

B. Agreements Concerning Children.

Page 3 of the Petition for Dissolution includes all agreements between the parties concerning children of the marriage. In developing the agreements concerning child custody, visitation and support, petitioners must consider the best interests of the children. Mothers and fathers have an equal right to custody, all other things being equal. The mother does not have an automatic preference. Child support ordinarily must be paid, even if the parents might agree otherwise. This applies to unborn children if the wife is pregnant. Support is paid on behalf of the children, not for the benefit of the parent.

The court may order investigation of custody and support arrangements prior to approving the dissolution. The court may appoint a guardian ad litem (a lawyer or other party) to represent the best interests of any children of the marriage. Petitioners may be required to pay for these services.

An accountant's, attorney's, or advice may be helpful in regard to tax consequences.

C. Tax Consequences and Other Financial Agreements

There may be tax consequences as a result of the agreements between the parties concerning property division, spousal support, and child custody and support. An accountant's or attorney's advice may be helpful in regard to these tax consequences.

There may be other financial agreements between the parties which should be included in the petition. Examples of such agreements are the maintenance of life insurance by one spouse with the children or other spouse as beneficiary and the continued coverage of the children by one or both spouse's health insurance.

D. Signature and Notarizations

The petition must be signed and notarized by each petitioner. Each petitioner must also sign pages 2, 3, and 4. The Waiver of Appearance and Notice of Hearing, if used, must be signed by the petitioner who does not desire to be present at the hearing. All these signatures must be notarized.

AT _____

In the Matter of the Dissolution of the Marriage of

_____ and

_____,

Husband and Wife.

No. _____

PETITION FOR DISSOLUTION OF MARRIAGE

Petitioners hereby request a decreee of dissolution of marriage pursuant to AS 09.55.231-09.55.237. An incompatibility of temperament has caused the irremediable breakdown of the marriage.

I. Information About Petitioners

A. Husband:

1. Length of residence in Alaska _____ years.
2. Residence address _____ _____
_____ Home Phone
3. Mailing Address _____ _____
_____ Business Phone
4. Occupation _____

B. Wife:

1. Length of residence in Alaska _____ years.
2. Residence address _____ _____
_____ Home Phone
3. Mailing address _____ _____
_____ Business Phone
4. Occupation _____

C. Date and place of marriage _____

D. Children:

1. Are there minor children born of the marriage or adopted? yes ____ no ____. If yes, complete the following:

Name	Birthdate	Age	Currently In Custody of
_____	_____	____	_____
_____	_____	____	_____
_____	_____	____	_____
_____	_____	____	_____

2. Is the wife pregnant? yes _____ no _____

TYPE OR PRINT IN BLACK INK

II. Financial Data and Agreement of Petitioners

	Husband	Wife
A.	Income per month: $_____ ("Take-Home"-after tax)	Income per month: $_____ ("Take-Home"-after tax)

B. Monthly Expenses:

	Husband		Wife	
Housing & Utilities	$		$	
Food	$		$	
Transportation	$		$	
Other	$		$	
Total	$		$	

C. Assets:

1. Real Property: (Legal Description Required)

	Value	Owned by H	Owned by W	Owned by Jt	Awarded to H	Awarded to W	Awarded to Jt

2. Personal Property (Include make, model & serial # of car)

	Value	Owned by H	Owned by W	Owned by Jt	Awarded to H	Awarded to W	Awarded to Jt

HUSBAND SIGNATURE

WIFE SIGNATURE

	Owed by			Paid by		
	Amount	H	W	Jt	H	W	Jt

E. Spousal Support: $_____ per month to be paid by _____ Husband
until _____. _____ Wife

F. Other Financial Agreements:

G. Title transfer: All transactions necessary to effect any tranfers required by the above agreements will be completed by _____.
DATE

_____ HUSBAND SIGNATURE

_____ WIFE SIGNATURE

1. Child Custody:

Name	Custody to be Awarded to

2. Visitation Rights:

☐ a. Reasonable visitation

☐ b. Other visitation, as follows:

3. Child Support:

a. $ _____ per month, per child, commencing on _____, 19___ to be paid by _____.
Name
If different amounts are to be paid for different children, because of special circumstances, specify:

b. Will payments be made through the Child Support Enforcement Agency? ____ Yes ____ No.
If yes, the Child Support Enforcement Agency requests that the custodial parent provide his or her social security number, _____. This is not mandatory. Social Security #

c. The number of minor children to be claimed as dependents for tax purposes by

___ the parent awarded custody.

___ the parent not awarded custody (must be making support payments as required by tax laws.)

This agreement concerning the number of dependents claimed by each spouse may be modified, in accordance with tax laws, based upon unforseen or changed circumstances.

d. Agreements on Medical and Insurance Provisions:

_____ _____
HUSBAND SIGNATURE WIFE SIGNATURE

IV. ☐ Petitioner wants prior name restored to _____

_____

V. Other Agreements _____

_____

_____

VI. Signatures and Verifications - DO NOT SIGN UNTIL THIS PETITION HAS BEEN COMPLETELY FILLED OUT. EACH SIGNATURE MUST BE INDIVIDUALLY NOTARIZED.

A. HUSBAND'S SIGNATURE AND VERIFICATION

_____ _____
DATE HUSBAND SIGNATURE

_____
LOCATION

This affiant, a co-petitioner, having been duly sworn deposes and says: That the facts and matters in the above and foregoing petition are true, according to his best knowledge and belief, and that the petition therein is not made out of levity, or by collusion, fear, or restraint between co-petitioners for the mere purpose of a dissolution, but in sincerity and truth for the cause mentioned in his petition.

(SEAL) _____
Notary Public in and for _____
My commission expires _____

. . . . . .

B. WIFE'S SIGNATURE AND VERIFICATION

_____ _____
DATE WIFE SIGNATURE

_____
LOCATION

This affiant, a co-petitioner, having been duly sworn deposes and says: That the facts and matters in the above and foregoing petition are true, according to her best knowledge and belief, and that the petition therein is not made out of levity, or by collusion, fear, or restraint between co-petitioners for the mere purpose of a dissolution, but in sincerity and truth for the cause mentioned in her petition.

(SEAL) _____
Notary Public in and for _____
My commission expires _____

AT _____

In the Matter of the Dissolution of the Marriage of _____and _____, Husband and Wife.	No. _____ WAIVER OF APPEARANCE AND NOTICE OF HEARING

_____, upon oath, deposes and says:
(Husband or Wife)

1. I have read this petition and agree to all of its terms relating to custody of the children, child support, visitation, spousal support and resultant tax consequences, division of property and allocation of debts.

2. I agree that an incompatibility of temperament has caused the irremediable breakdown of the marriage.

3. I understand fully the nature and consequences of this Petition for Dissolution of Marriage.

4. I understand that I will not be notified of the time of hearing for this dissolution and that the court may proceed without me.

5. I am not under duress or coercion to sign this Waiver of Appearance

_____ _____
DATE (HUSBAND OR WIFE)

at _____

NOTARIZATION

THIS IS TO CERTIFY that on _____, 19___, the individual who executed the above waiver did appear before me personally and acknowledged to me that (s)he signed the same freely and voluntarily for the purposes mentioned in the waiver.

SUBSCRIBED AND SWORN to before me.

_____ _____
DATE Notary Public in and for Alaska
My Commission Expires: _____

DR-110 (6/81)
WAIVER OF APPEARANCE AND NOTICE OF HEARING

AT _____

CHILD CUSTODY AFFIDAVIT

_____ _____
CASE NAME CASE NO.

I, _____, upon oath, give the following information:

1. The following children are the subject of the present custody proceedings:

   a. Names: _____

   b. Present Addresses: _____

   c. Places where each child has lived within the last five years: _____

   _____

   d. Names and present addresses of the persons with whom each child has lived during the last five years: _____

   _____

   _____

2. I ☐ have ☐ have not

   participated as a party, a witness or in another capacity in other litigation concerning the custody of one or more of the above children in Alaska or in another state.

   Describe: _____

3. I ☐ do ☐ do not

   have information of another custody proceeding concerning one or more of the above children now pending in a court in Alaska or in another state.

   Describe other proceeding: _____

4. I ☐ do ☐ do not

   know of a person not a party to this proceeding who has physical custody of one or more of the above children or claims to have custody or visiting rights.

   Describe: _____

I swear that my statements in this affidavit are true to the best of my knowledge and belief.

_____
SIGNATURE

SUBSCRIBED AND SWORN to before me.

_____ _____
DATE Notary Public in and for _____
My Commission Expires: _____

DR-150 (6/81)
CHILD CUSTODY AFFIDAVIT

AS 25.30.080

AT _____

CHILD CUSTODY AFFIDAVIT

_____ _____
CASE NAME CASE NO.

I, _____, upon oath, give the following information:

1. The following children are the subject of the present custody proceedings:

   a. Names: _____

   b. Present Addresses: _____

   c. Places where each child has lived within the last five years: _____

   _____

   d. Names and present addresses of the persons with whom each child has lived during the last five years: _____

   _____

   _____

2. I ☐ have ☐ have not

   participated as a party, a witness or in another capacity in other litigation concerning the custody of one or more of the above children in Alaska or in another state.

   Describe: _____

3. I ☐ do ☐ do not

   have information of another custody proceeding concerning one of more of the above children now pending in a court in Alaska or in another state.

   Describe other proceeding: _____

4. I ☐ do ☐ do not

   know of a person not a party to this proceeding who has physical custody of one or more of the above children or claims to have custody or visiting rights.

   Describe: _____

I swear that my statements in this affidavit are true to the best of my knowledge and belief.

_____
SIGNATURE

SUBSCRIBED AND SWORN to before me.

_____ _____
DATE Notary Public in and for _____
My Commission Expires: _____

DR-150 (6/81)
CHILD CUSTODY AFFIDAVIT

AS 25.30.080

CERTIFICATE NO. SAN- ____ - ____ CITY

ALASKA DEPARTMENT OF HEALTH AND SOCIAL SERVICES
BUREAU OF VITAL STATISTICS - JUNEAU, ALASKA 99811

HUSBAND

HUSBAND - NAME (FIRST, MIDDLE, LAST)			
1			

RESIDENCE - STATE	RECORDING DISTRICT OR COUNTY
2a	2b
CITY, TOWN OR LOCATION	STREET AND NUMBER
2c	2d
DATE OF BIRTH (MONTH, DAY, YEAR)	STATE OF BIRTH (IF NOT IN U.S.A. NAME COUNTRY)	SOCIAL SECURITY NO.
---	---	---
3	4	4a

WIFE

WIFE - NAME (FIRST, MIDDLE, LAST)	MAIDEN NAME
4c	4b

RESIDENCE - STATE	RECORDING DISTRICT OR COUNTY
4a	4b
CITY, TOWN OR LOCATION	STREET AND NUMBER
4c	4d
DATE OF BIRTH (MONTH, DAY, YEAR)	STATE OF BIRTH (IF NOT IN U.S.A. NAME COUNTRY)	SOCIAL SECURITY NO.
---	---	---
5	6	6a

PLACE OF THIS MARRIAGE - STATE (IF NOT IN U.S.A. NAME COUNTRY)	RECORDING DISTRICT OR COUNTY	CITY, TOWN, OR LOCATION
8a	8b	8c

DATE OF THIS MARRIAGE (MONTH, DAY, YEAR)	APPROXIMATE DATE COUPLE SEPARATED (MONTH, YEAR)
10	11

LIVING CHILDREN - TOTAL NUMBER	UNDER 18 YEARS OF AGE	PLAINTIFF
12a	12b	13 ☐ HUSBAND ☐ WIFE ☐ BOTH

ATTORNEY FOR PLAINTIFF - NAME	MAILING ADDRESS (STREET OR P.O. BOX NO., CITY OR TOWN, STATE, ZIP CODE)
14a	14b

DATE DECREE GRANTED (MONTH, DAY, YEAR)	PLACE GRANTED (CITY OR TOWN)	TYPE OF DECREE
16	17 ANCHORAGE	☐ ABSOLUTE DECREE ☐ ANNULMENT ☐ DISSOLU

DECREE GRANTED TO	LEGAL GROUNDS FOR DECREE (SPECIFY)
17b ☐ WIFE ☐ HUSBAND ☐ BOTH	17c INCOMPATIBILITY

DECREE

I CERTIFY THAT THE MARRIAGE OF THE ABOVE NAMED PERSONS WAS DISSOLVED ON THE DATE STATED

18a COURT OFFICIAL - SIGNATURE	TITLE
18b NAME (TYPE OR PRINT)	DEPUTY CLERK 18c

DATE SIGNED (MONTH, DAY, YEAR)	COURT - NAME AND ADDRESS	JUDICIAL DISTRI
18d	18e Clerk of the Trial Courts 303 K Street, Anchorage, Alaska 99501	18f THIRD

IS MARRIED NAME OF WIFE TO BE RETAINED AFTER DECREE IS GRANTED?
18g ☐ YES ☐ NO If No, please state the name to be used

CONFIDENTIAL INFORMATION

HUSBAND

HUSBAND - RACE	NUMBER OF THIS MARRIAGE	IF PREVIOUSLY MARRIED		EDUCATION - SPECIFY HIGHEST GRADE COMPLETED		
		HOW MANY ENDED BY -		ELEMENTARY	HIGH SCHOOL	COLLEGE
WHITE, NEGRO, AMERICAN INDIAN, ETC (SPECIFY)	FIRST, SECOND ETC (SPECIFY)	DEATH	DIVORCE OR ANNULMENT (SPECIFY IF NONE)	(0,1,2,3,4 OR 5)	(1,2,3, OR 4)	(1,2,3,4, OR 5
19	20	21		22		

WIFE

WIFE - RACE	NUMBER OF THIS MARRIAGE	IF PREVIOUSLY MARRIED		EDUCATION - SPECIFY HIGHEST GRADE COMPLETED		
		HOW MANY ENDED BY -		ELEMENTARY	HIGH SCHOOL	COLLEGE
WHITE, NEGRO, AMERICAN INDIAN, ETC (SPECIFY)	FIRST, SECOND ETC (SPECIFY)	DEATH	DIVORCE OR ANNULMENT (SPECIFY IF NONE)	(0,1,2,3,4 OR 5)	(1,2,3, OR 4)	(1,2,3,4 OR 5
23	24	25		26		

SB

326

COMMITTEE REPORT

SENATE

FURTHER: FINANCE

2/23/84

Date: 3-7-84

Mr. President:

The Committee on JUDICIARY has had SB 38 426

constitutional spending limit; etc.

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 SCS SB 426 [X] 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

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MEMBERS HAVING
OTHER RECOMMENDATIONS:

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CHAIRMAN

S 60 (Rev. 12/78)

MEMORANDUM State of Alaska

TO: John Shively, Chief of Staff
Office of the Governor

DATE: January 4, 1984

FILE NO: 84B-1

TELEPHONE NO: 465-3568

FROM: Gordon S. Harrison
Associate Director
Office of Management and Budget

SUBJECT: Appropriation Limit

This memorandum discusses the complexities of interpreting the State's constitutional limit on appropriations (Article IX, Section 16). It recommends an explicit method of calculating the limit. This method would be used to calculate the limit for fiscal year 1985 and subsequent years as well, provided legislation is not enacted which specifies a different method. Dr. Tom Chester of this office has provided much of the background information in this memo, and he has made the actual mathematical computations.

The constitutional language that creates a problem of interpretation is "appropriations . . . shall not exceed $2,500,000,000 by more than the cumulative change, derived from federal indices as prescribed by law, in population and inflation since July 1, 1981." The Legislature has not passed a law prescribing which Federal indices are to be used and how. Several major ambiguities, complications and issues stand in the way of an easy, straightforward interpretation of this language. These are discussed below, and a recommended approach to each of them is suggested.

Period of Adjustment to Base

The law states that the limit of $2.5 billion is to be adjusted for the cumulative change in population and inflation since July 1, 1981. Does this mean that $2.5 billion is the limit for fiscal year 1982 (July 1, 1981 - June 30, 1982) or that it is the base for calculating the limit for FY 82? In other words, should the adjustment for population and inflation be made to the beginning of the fiscal year to which it applies, or through the end of it? The longer the period of time for which adjustments are made, the higher the allowable appropriations will be in future years.

The intent of the limit is to permit per capita spending levels to remain constant over time. In my opinion the adjustment should include the year in which the spending is to take place, so the population growth and inflation that occurs during that year does not result in an actual decrease of government services in per capita terms. The only contrary argument I see is simply that making the adjustment through the end of the

fiscal year may give the appearance to some that the Governor and Legislature are manipulating the law to give them a higher, less restrictive limit. To avoid the appearance of any trickery in this sensitive matter, I suggest that the adjustment for population and inflation be made only to the beginning of the fiscal year.

Indices

The most complex question in interpreting the appropriation limitation language is which index of the many available should be used for making adjustments to the $2.5 billion base for population and inflationary changes.

Population

Table 1 presents population information for Alaska. This information suggests three plausible measures of population growth that could be used for purposes of interpreting the spending limit: (1) the average annual population growth that occurred during the decade 1970-1980; (2) population change based on current estimates by the Alaska Department of Labor (ADOL); (3) population change based on current estimates by the U.S. Census Bureau (published by the Bureau of Economic Analysis [BEA]).

TABLE 1

Various Population Measures for Alaska

		Population Estimate	
Year	Population Census	Alaska DOL (% change)	U.S. Census Bureau (% change)
1970	308,500.0		
1980	419,700.0		
1981		435,000.0	416,000.0
1982		461,000.0 (5.98)	443,000.0 (6.49)
1983		N/A	N/A

The advantage of using the 1970-1980 annual rate of change[1] is that the numbers are based on the Federal decennial census and are not now subject to significant revision. Also, derivation of the number is simple and easy for people to understand. The disadvantage of this number, on the other hand, is that it may

not reflect actual population changes that are occurring in the 1980s. As a result, it may overstate or understate current growth.

The Alaska Department of Labor, Research and Analysis Section, makes population estimates of Alaska for purposes of Federal programs. The estimates are derived from methods approved by the U.S. Census Bureau, which certifies the State numbers. Because of this link with U.S. standards and estimating methodology, I believe the State estimates of population change could satisfy the constitutional requirement that the adjustment factors be "derived from federal indices." However, recent departmental changes have undermined the ability of the State to make timely and accurate population estimates. The professional demographer employed by the Department of Labor recently resigned, and no replacement has been hired at this time. Also, a reorganization within the Department of Health and Social Services has reduced the ability of the Department to make vital statistics available in a timely fashion to the Department of Labor. These statistics are necessary for estimating the natural increase component of population growth. As a result of this situation, and because we would need to stretch somewhat the phrase "federal indices" to use the State population estimates, I suggest that Federally-published estimates of population change be used.

Federal population estimates for 1981 and 1982 are shown in Table 1. While the Federal estimates are lower than the State estimates, and presumably less accurate, the Federal rate of change between 1981 and 1982 is somewhat higher. For purposes of calculating an appropriation limit, changes between July 1 and July 1 of each year should be used.

Inflation

Several different indices of inflation could plausibly be used for calculating the constitutional limit for a particular fiscal year. Most commonly discussed are the Federal consumer price indices. Currently the Bureau of Labor Statistics (BLS), U.S. Department of Labor, produces two basic consumer price indices: the All Urban Consumers (CPI-U) and the Urban Wage Earners and Clerical Workers (CPI-W). CPI-U is a more inclusive definition. CPE-W primarily measures changes in prices of goods typically purchased by urban workers while CPI-U measures changes in price of items typically bought by all urban dwellers irrespective of their attachment to the labor force. CPI-U covers approximately twice as many persons and in general produces an inflation rate higher than that for CPI-W.

BLS produces an Anchorage CPI-U and CPI-W. While the cost of living in Anchorage is higher than the U.S. average, the CPI

indices are higher than the national CPI indices. However, the rate of change in cost of living (inflation) is lower in Anchorage than in the U.S. because economies of scale are being realized in the transportation and distribution of goods. It is not known to what extent the Anchorage CPI indices reflect statewide changes. Inflationary change may be slower in Anchorage than the U.S. average, but that may not be so in Juneau or the bush where many government services are provided.

One serious drawback to using the consumer price indices is a change made by the BLS in measuring the shelter component of these indices.[2] This change creates an inconsistency in the series from July 1, 1981 to the present, with the result that the published inflation rate takes a significant dip in 1983. The effect of this change is especially dramatic in the Anchorage consumer price indices because of a related change made in measuring housing costs.[3]

The major problem with the CPI series for our purposes, however, is that it measures changes in the cost of a market basket of goods purchased by consumers, not of goods and services purchased by the State government.

There is a Federally-computed inflation index for the cost of services provided by state and local governments. The government purchase index is published monthly by the Bureau of Economic Analysis in a publication titled Current Business Trends. Even though this is a measure of price changes at the national level, the government purchase index seems to be the most logical for our purposes. I recommend that we adopt this index, using the annual point-to-point percentage change between July 1 and July 1 of each year.

Table 2 presents rates of change measured by the various indices. The low rates shown for the Anchorage CPI series in 1983 reflect the problem of definitional change discussed above.

TABLE 2

Various Rates of Inflation

Rate of Change	Fiscal Year 1980	1981	1982	1983
U.S.A.				
CPI-U	13.20	10.73	7.7	2.43
CPI-W	13.47	10.25	6.29	2.19
Government Purchase Index	9.77	5.79	6.81	6.34
Anchorage				
CPI-U	10.10	7.75	7.11	.83*
CPI-W	8.91	7.52	7.2	-.62

*Due to change in definition of shelter component.

Estimating in the Absence of Data

Calculation of the appropriation limit requires a value for population and inflationary change that is not available at the time it is needed. Note in Table 1 that population estimates are not yet available for 1983. We actually need an estimate of population change for 6 months in the future (to July 1, 1984) to calculate an FY 85 limit. While the publication of inflation indices does not lag as much as the publication of population figures, the problem still exists. There are several options for obtaining the missing data; among them are the purchase of an estimate from a national economic forecasting firm, and the production of an estimate in-house by OMB with an econometric model. Our recommendation, however, is to simply use for the missing number the trend since July 1, 1981. That is, the average of the annual point-to-point changes since July 1, 1981 becomes the missing value. This approach has the advantage of not being subject to manipulation. To avoid the erosion of public credibility, it is important that the Governor and Legislature use a method which is easily understood and reproducible by everyone.

Revised Indices

Federal indices of population and inflation are subject to revision by the agency that issues them. This is because the figures they release are typically based on survey data, and

additional information invariably becomes available, or new benchmarks are used, or errors are discovered, etc. For purposes of computing the spending limit, the most current published estimate available should be used, and a mid-year adjustment in the spending limit should not be made even if revised indices are issued.

FY 84 Precedent

When the Sheffield Administration took office in December, 1982, former Governor Hammond's administration had prepared an executive budget for FY 84. This executive budget contained a spending limit calculation of $2.98 billion. The only written explanation of this number is a footnote on page 3 of the Executive Budget Book that states "...according to the spending limit, the FY 84 budget ceiling could exceed the FY 82 figure of $2.5 billion by the estimated rate of inflation and population growth. For FY 83 our estimate is 10%, hence the FY 83 base is $2,750.0. The $2.98 billion limit for FY 84 is estimated to be 8.4% over the FY 83 base level." Since there is no explanation of the assumptions or method used, I do not see why this Administration is bound by whatever those may have been, nor bound to $2.98 billion as a base for calculating the FY 85 limit. It seems to me that Governor Sheffield and the Legislature may adopt a method that best comports with the intent of the law and with logic, even if the method produces a different number from that used in FY 1984.

Appropriation Limit Options

From the foregoing discussion it should be clear that there are theoretically a large number of possible limit calculations. This section presents several options that suggest the range of possible outcomes. It also includes the recommended calculation, which is Option 4. In accord with our earlier recommendation regarding the period of adjustment to the base, all of the options shown here assume that the adjustment for population and inflation are made for three years rather than four. A fourth year of adjustments would add approximately $250 million to the numbers shown. The options are:

Option 1	=	ADOL Population and Alaska CPI-U
Option 2	=	ADOL Population and Government Services
Option 3	=	BLS Population and Alaska CPI-U
Option 4	=	BLS Population and Government Services
Option 5	=	Census* Population and Alaska CPI-U
Option 6	=	Census* Population and Government Services

*1970-1980 compound average

The appropriation limits that result from these options are:

FY	Option 1	Option 2	Option 3	Option 4	Option 5	Option 6
84	3.041	3.199	3.062	3.220	2.871	3.020
85	3.356	3.618	3.390	3.654	3.079	3.319
86	3.704	4.092	3.753	4.147	3.301	3.648
87	4.087	4.630	4.156	4.707	3.539	4.010
88	4.509	5.238	4.602	5.343	3.795	4.406

We have analyzed these spending limits in terms of maximum allowable appropriations and available revenue, and the results of that analysis are available. However, the focus of this memo has been the methodological issues surrounding the calculation of a limit.

GSH/mm

FOOTNOTES

1. This change can be expressed, and calculated, in three ways: as one-tenth the decennial change; as the continuous annual change; and as the compound annual change. The latter (3.126%) is the best measure for the purposes at hand.

   One-tenth the decennial change: $\left(\frac{419,700}{308,500} - 1\right) / 10 = 3.6045$

   Continuous annual change: $P_{1980} = P_{1970}E^{rt} = 3.0782$

   Annual compound change: $P_{1980} = (1+r)^{t}P_{1970} = 3.1260$

2. The change involved a measure of shelter from the cost of mortgages and the selling price of homes to the cost of rental units.

3. In Anchorage, the BLS began for the first time in 1983 to measure Anchorage costs. Prior to this, they simply used the costs of housing in west coast cities of a size similar to Anchorage. In describing the effect of the new measure, the Alaska Department of Labor has written:

   > From January to July of this year the Anchorage Consumer Price Index registered increases below historical levels. During the last five months, the index's over-the-year change did not exceed 1% and, in fact, fell in May. This decline in inflation is misleading because of methodology changes causing inconsistency between 1983 and 1982 data. Because of this the BLS has recommended that in the short term, users of the CPI use either 1) a 12 month annual average, or 2) the U.S. rate; or 3) compare 1983 data only. Looking at the Anchorage CPI this way the index has risen 3.2% from January through July. If the CPI continues this same trend it will increase between 5.Ø% and 6.Ø% for the 1983 average.

   (Alaska Economic Trends, Alaska Department of Labor, November, 1983, p. 13.)

Why was the change made? The Commissioner of the U.S. Department of Labor provides the following reasons. First, the former method combined investment and consumption effects upon price. The new approach is an attempt to measure only the changing cost of consumption. Second, the old method was based upon the assumption of a fixed rate mortgage. Recently, a variety of alternatives to a fixed rate mortgage have become

available. The former method did not take them into account. Third, the appearance of seller financing distorted the measure since there is no accurate way to detect it. Finally, the Federal Government will be using the index, starting in 1985, to index tax brackets. Thus, the most accurate index possible is desired.

TABLE 2

OPERATING BUDGET COMPARISON FY 85-89

SSSB 326		OMB Plan*		Difference	
FY 85	$2,100.9	FY 85	$2,192.9	FY 85	$ 92.0
FY 86	2,248.0	FY 86	2,379.3	FY 86	131.3
FY 87	2,405.3	FY 87	2,581.5	FY 87	176.2
FY 88	2,573.7	FY 88	2,800.9	FY 88	227.2
FY 89	2,753.9	FY 89	3,039.0	FY 89	285.1
					$ 911.8

SSSB 326 would save $911.8 million

* Based on FY 85 proposed operating budget and 8.5% annual growth rate as stated in OMB Memo on Appropriation Limit dated January 4, 1984

SSSB 326

TABLE 1

Spending Limit SSSB 326 vs. OMB Plan

SSSB 326 Limit		Revenue Projections			OMB Plan		Revenue Projections		
		30th%	40th%	50%			30th%	40th%	50th%
FY 85	$3151.4	x	x	x	FY 85	3,654.0*			
FY 86	3372.0	x	x	x	FY 86	4,147.0			
FY 87	3608.0	x	x	x	FY 87	4,707.0			
FY 88	3860.6	x	x	x	FY 88	5,343.0			
FY 89	4130.8	x	x	x					

"x" denotes spending limit is under available appropriations

* OMB Memo on Appropriation Limit dated January 4, 1984

Note: Under SSSB 326, the inflation adjustment for FY 86 through FY 89 is the average of the two preceeding annual rates of change in the Anchorage CPI-U.

Alaska State Legislature

Senate

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

To: Senator Bill Ray
Chairman of Judiciary Committee

From: Senator Frank R. Ferguson

Date: January 19, 1984

Subject: Proposed Letter of Intent

LETTER OF INTENT SSSB 326

It is the intent of the Legislature that for the purposes of calculating the spending limit in Sponsor Subsitute for Senate Bill 326 the following equation be used:

Base x 1 + (rate of growth in population + inflation adjustment) = Limit

The base is $2,500,000,000 for fiscal year 1982. For each succeeding fiscal year the base shall be adjusted by the rate of change in population and the Anchorage Consumer Price Index-Urban (CPI-U)

The rate of change in population shall be calculated as the continuously compounded annual rate of change between 1970 and 1980 (April 1) estimates of population established by the U.S. Census Bureau in their decennial censuses. For example, the rate of change for the 1980's is computed as follows:

$$\text{Population}_{1980} = \text{Population}_{1970} \cdot e^{rt} \text{ or}$$

$$\text{Rate of Change} = r = \frac{\ln (\text{population } 1980/\text{population } 1970)}{t} \text{ or}$$

$$\text{Rate of Change} = .0284 = \frac{\ln (401851/302583)}{10}$$

The rate of change in the Anchorage (CPI-U) computed as the July to July change in the index as published by the U.S. Department of Labor, Bureau of Labor Statistics.

AUDIT DIVISION
POUCH W — ALASKA OFFICE BUILDING

FINANCE DIVISION
POUCH WF — STATE CAPITOL

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE JUNEAU 99801

M E M O R A N D U M

DATE: October 27, 1983

TO: Senator Frank Ferguson
attn: Mike Scott

FROM: Mike Greany, Director
Legislative Finance Division

SUBJ: The Spending Limit

You asked what the FY 1985 spending limit may be.

We have prepared a paper on the spending limit including examples of possible appropriation limit calculations -- the point being that the method of calculation and the source of the variables are not specified in the constitutional amendment or in statute. You will note that the amendment also does not specify who is responsible for either selecting the method or making the calculation.

cc: Rep. Adams, Chairman, House Finance Committee
Sen. Sackett, Co-Chair, Senate Finance Committee
Sen. Bennett, Co-Chair, Senate Finance Committee
Rep. Bettisworth, Chairman, Budget & Audit Committee

enclosure

MG:ro

L.F.D.--1b
10/26/83

THE SPENDING LIMIT

The Alaska constitutional appropriation limit (commonly referred to as the spending limit) went into effect at the beginning of the 1984 fiscal year. The law does not specify what variables should be used in the calculation of the limit, nor what agency is responsible for making the calculation.

This paper discusses the various factors involved in calculating the limit and provides various examples of different methods of calculation.

Reaching the limit

Three factors are involved in determining the limit: (1) revenues available for appropriation; (2) the calculated limit; and (3) the categorization of appropriations.

The amount of revenues available for appropriation is important because of an attorney general's opinion which states that if the available revenues are less than the calculated appropriation limit, the provisions of the limit do not have to be followed. Aside from the issue of what revenue estimate is to be used and what constitutes unrestricted revenue, a major problem is the timing of the revenue estimate. For example, if the March revenue estimate for FY 84 was less than the appropriation limit, but the actual revenue for FY 84 is more than the limit, what would that fact mean in terms of the legal requirement to abide by the provisions of the amendment? None of these issues have been settled.

Calculating the appropriation limit allows considerable latitude for interpretation. The amendment calls for a base of $2,500.0 to be adjusted by the "cumulative federal indices as prescribed by law, in population and inflation since July 1, 1981." Which federal indices or the methods to adjust them are not identified. Several sources of population estimates could be used as variables: the average yearly population growth from the 1970-1980 U.S. Census, the State Department of Labor forecasts, the population estimates developed by the local communities for state entitlement programs, and population estimates used by the federal government for federal entitlement programs.

The most common inflation factor used by various agencies in calculating the limit is the All Urban Consumer Anchorage Consumer Price Index (CPI). Other inflation factors which could be used include specific portions of the Anchorage CPI, U.S. national inflation factors, or a state government inflation factor.

The number of years of adjustment made to the base number is also subject to interpretation. The law calls for adjustments since July 1, 1981. In calculating the FY 84 limit, that provision can be interpreted as either two years of adjustments (from July 1, 1981 to July 1, 1983) or as three years of adjustments (from July 1, 1981 to June 30, 1984). The two year adjustment provides adjustments to the beginning of the 1984 fiscal year. The three year adjustment covers the entire 1984 fiscal year.

The categorization of appropriations is important in determining if the provision that "at least one third shall be reserved for capital projects and loan appropriations" has been met. Such a categorization requires a determination of what is a capital project. Also whether or not program receipts should be included as unrestricted revenue and whether lawsuit settlements are included under the limit, and if they are whether they are operating or capital.

EXAMPLES OF POSSIBLE APPROPRIATION LIMIT CALCULATIONS

Method A: The FY 84 Executive Budget Book (EBB) I: Historical population trends plus the yearly Average Anchorage Consumer Price Index.

Base x (average historical population + Anchorage CPI) = Limit

FY 83 2500.0 x (1.0 + (.029 + .071)) = 2750.0

FY 84 2750.0 X (1.0 + (.029 + .055)) = 2981.0

FY 85 2981.0 X (1.0 + (.029 + .039)) = 3183.7

Method B: FY 84 Executive Budget Book I Modified: A mathematical eror occured during the calculation of the Average Historical Population as published in EBB I. Method B uses the same variables as Method A, but with the correct numbers.

FY 83 2500.0 X (1.0 + (.032 + .071)) = 2757.5

FY 84 2757.5 X (1.0 + (.032 + .055)) = 2997.4

FY 85 2997.4 x (1.0 + (.032 + .039)) = 3210.2

Method C: FY 84 EBB I modified with FY 84 Actual CPI: The original spending limit in EBB I was calculated with an estimate of the Anchorage CPI because the actual CPI for FY 84 was not known.

Base X (average historical population + actual Anchorage CPI) = Limit

FY 83 2500.0 x (1.0 + (.032 + .071)) = 2757.5

FY 84 2757.5 x (1.0 + (.032 + .008)) = 2867.8

FY 85 2867.8 x (1.0 + (.032 + .039)) = 3071.4

Method O: Alaska Population Forecasts: Population increases based on the State Department of Labor population forecasts.

Base X (Alaska population forecasts X actual anchorage CPI) = Limit.

FY 83 2500.0 x (1.0 + (.025 + .071)) = 2740.0

FY 84 2740.0 x (1.0 + (.034 + .008)) = 2855.1

FY 85 2855.1 x (1.0 + (.035 + .039)) = 3066.4

Method E: Alaska Population Estimates: Population increases based on the population totals reported by the communities.

Base x (Alaska Population es.imates x actual Anchorage CPI) = Limit

FY 83 2500.0 x (1.0 + (.059 + 071)) = 2825.0

FY 84 2825.0 x (1.0 + (.100 + .008)) = 3130.1

FY 85 Unknown

Method F: State Government: Federal government estimate of inflation for state and local governments nationwide.

Base x (average Historical Population + Statewide Inflation) = Limit

FY 83 2500.0 x (1.0 + (.032 + .071)) = 2757.5

FY 84 2757.5 x (1.0 + (.032 + .094)) = 3104.9

FY 85 3104.9 x (1.0 + (.032 + .094)) = 3496.2

Method G: Three years adjustment: Adjustments to the FY 82 base to inflation proof the base.

Base x (Average Historical Population + Actual Anchorage CPI)

Base 2500.0 x (1.0 + (.032 + .071)) = 2757.5

FY 83 2757.5 x (1.0 + (.032 + .008)) = 2867.8

FY 84 2867.8 x (1.0 + (.032 + .039)) = 3071.4

FY 85 3071.4 x (1.0 + (.032 + .039)) = 3289.5

Method H: High number for each variable: The community population estimates plus the federal inflation index for State and Local governments with three years of adjustment.

Adjusted Base x (community population estimate + state government inflation) = limit.

Base Adjusted	2500.0 x (1.0 + (.037 + .071))	= 2770.0
FY 83	2770.0 x (1.0 + (.059 + .094))	= 3193.8
FY 84	3193.3 x (1.0 + (.100 + .094))	= 3813.4
FY 85	Unknown	

SB 326 (Sponsor Substitute) Appropriations Limit

	Limit ($ Million)	Population Rate of Change	Anch. CPI-U Rate of Change
FY 82	2500.0		
FY 83	2764.7 = 2500.0 x [1 + (0.0284 + 0.0775)]		
FY 84	3039.8 = 2764.7 x [1 + (0.0284 + 0.0771)]		
FY 85	3151.4 = 3039.8 x [1 + (0.0284 + 0.0083)]		

Note 1. The population adjustment used above is the Continuously Compounded Annual rate of change between the 1970 and 1980 Decennial Censuses. It is computed as follows:

$$\text{Population}_{1980} = \text{Population}_{1970} \cdot e^{rt}$$

$$\text{or} \quad \text{Rate of Change} = r = \frac{\ln(\text{Population}_{1980} / \text{Population}_{19}}{t}$$

$$\text{or} \quad \text{Rate of Change} = .0284 = \frac{\ln(401851 / 302583)}{10}$$

Note 2. The rate of change in the Anchorage CPI-U is computed as the July to July change in the index as published by the US Department of Labor, Bureau of Labor Statistics.

SB
328

COMMITTEE REPORT

SENATE

FURTHER:

Date: _____

Mr. President:

The Committee on _____ has had _____

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

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MEMBERS HAVING
OTHER RECOMMENDATIONS:

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CHAIRMAN

S 60 (Rev. 12/78)

REPORT REGARDING THE SCOPE OF LEGISLATIVE IMMUNITY IN ALASKA AND RELATED TOPICS

TO

STATE OF ALASKA
LEGISLATIVE AFFAIRS AGENCY
JUNEAU, ALASKA

DECEMBER 7, 1983

Submitted By:

GROH, EGGERS & PRICE
550 W. 7th Avenue
Suite 1250
Anchorage, Alaska 99501

During the course of the 1983 Alaska legislative session several key issues surfaced relating to the privileges and immunities to be enjoyed by legislators, and also issues relating to the powers and responsibilities of the Governor. These issues are impacted by both federal and Alaska state law. This report addresses these issues.

INDEX

I. INTRODUCTION

The issues under consideration in this report are several, but in general all relate to the extent of protection afforded state legislators by the provisions of the privileges and immunities clause and the Speech or Debate Clause of the Constitution and laws of the United States and the State of Alaska.

The common law origins of these clauses relate back to the struggle for power between the English Parliament and the Stuart and Tudor kings. After years of struggle for legislative independence the clauses developed as a protective measure for members of Parliament against criminal liability and interference from the Crown.

In America, the colonists were often confronted with conflicts between their legislative assemblies and the royal governors as well as conflicts between the assemblies and Parliament. The members of assemblies contended that they possessed some judicial and legislative powers whereas Parliament maintained that only it was vested with such powers.

James Wilson, a member of the committee that drafted the Speech or Debate Clause of the U.S. Constitution explained the primary reason for the clause:

> In order to enable and encourage a representative of the public to discharge his public trust with firmness and success, it is indespensably necessary, that he should enjoy the fullest liberty of speech, and that he should be protected from the resentment of everyone, however powerful to whom the exercise of that liberty may occasion offense. II Works of James Wilson at 38 (R. McCloskey ed. 1967).

Thus, the clause was intended to support the constitutional concept of a separation of powers, the checks and balances system of co-equal branches of government.

In an early case involving a similar clause in the Massachusetts constitution, which has frequently been cited with approval by the U.S. Supreme Court, Chief Justice Parsons stated in Coffin v. Coffin, 4 Mass. 9, 27, 4 Tyng. 1 (1808) "[t]hese privileges are thus secured, not with the intention of protecting the members against prosecution for their own benefit, but to support the rights of the people, by enabling their representatives to execute the functions of their office without fear of prosecutions, civil or criminal."

Throughout the clause's history a major issue has been what form must a legislative act take in order to properly fall within the immunity of the clause. To that issue we now turn.

II. LEGISLATIVE IMMUNITY OF FEDERAL CONGRESSMEN IN FEDERAL COURT

Any analysis of the protections afforded state legislators during the course of their duties necessarily begins with an analysis of the U.S. Constitution. Article 1, Section 6, clause 2 states that Senators and Representatives:

> shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

The first clause of this provision, the privileges and immunities clause, grants Congressmen a privilege from arrest except in cases involving "treason, felony and breach of the peace." In Williamson v. United States, 207 U.S. 425 (1907), a member of the House of Representatives argued that his perjury conviction was not "treason" or a "felony" and was not embraced within the words "breach of the peace," but the Supreme Court rejected the argument and held that the words were understood at the time of adoption of the federal Constitution to exclude from the privilege all arrests for all criminal offenses.

Subsequently, in Long v. Ansell, 293 U.S. 76 (1934), the issue before the Court was whether the word "arrest"

refers only to those few remaining instances of civil arrest where actual detention of the person existed, or, more broadly construed, included service of civil process upon a member of Congress. The Court ruled that the language of Clause 1 was exact and left no room for a construction which would extend the privilege beyond the terms of the grant. Due to the fact that when the Constitution was adopted arrests in civil suits were still common in America, the Court held that it was only to such arrests that the provision applied. From these cases the general rule has emerged, with respect to U.S. Congressmen, that the privilege from arrest clause applies only to arrests in connection with civil suits, requires an actual physical detention, and does not refer to service of process.

The second part of the above-quoted constitutional provision relating to the privileges of U.S. Congressmen has come to be known as the "Speech or Debate Clause." The key to determining whether the U.S. Supreme Court will apply the Speech or Debate Clause in a particular action depends on the Court's construction of the constitutional language "speech or debate in either house."

In Kilbourn v. Thomas, 103 U.S. 168 (1881), the Court opted for a liberal construction of the Speech or Debate

Clause in order to effectuate its purpose of protecting Congressional independence. The phrase "speech or debate in either House" was held to include not only words spoken on the floor of the House, but also to committee reports, resolutions, acts of voting and things "generally done in a session of the House by one of its members in relation to the business before it."

It has also been held that Congressmen may not be subjected to civil suits for their legislative acts regardless of whether the remedy sought is damages, Kilbourn v. Thomas, supra; injunctive relief, Eastland v. U.S. Serviceman's Fund, 421 U.S. 491 (1975); declaratory relief, U.S. v. Johnson, 383 U.S. 169 (1966); or violation of constitutional rights, Stamler v. Willis, 287 F.Supp. 734, (1968) app. dism'd. 393 U.S. 217, vacated on other grounds 393 U.S. 407.

The broad language of these court decisions left open the possiblity that all Congressional activities would fall within the protection of the Speech or Debate Clause. Earlier decisions refrained from defining the scope of a "legislative act." The Kilbourn definition would include within the protection of the clause potentially all acts by a legislator relating to legislative functions. However, more recent decisions have refuted such a broad assertion

when asked to determine what legislative acts properly fall within the constitutionally mandated legislative privilege.

A key concept being utilized in the cases which have attempted to define the scope of legislative acts is the distinction between "political" and "legislative" acts. In U.S. v. Brewster, 408 U.S. 501 (1972), the Court first noted that not all acts of a Congressman in the legislative process are protected by the clause because some acts constitute "political errands" rather than proper legislative acts, and went on to hold that although a U.S. Senator could not be questioned about his motivation for voting in a certain fashion, the Speech or Debate Clause does not prevent evidence not directly tied to such voting from being entered in a criminal prosecution for bribery. And in Gravel v. U.S., supra, it was held that the Speech or Debate Clause does not exempt members of Congress from criminal liability for illegal or unconstitutional conduct in preparing for or in implementing legislative acts. Thus, the Court refused to extend the clause so as to privilege illegal or unconstitutional conduct beyond that essential to foreclose executive control of legislative speech or debate.

In U.S. v. Johnson, supra, it was held that communications with, or attempts to influence the actions of, federal executive and administrative agencies are not

"legislative acts." Similarly in Hutchinson v. Proxmire, 443 U.S. 111 (1979), the court emphasized that regardless of whether and to what extent the Speech or Debate Clause might protect a Congressman's calls to federal agencies seeking information, it does not protect libelous comments made during the course of those conversations. See also: Gravel, supra.

Another line of cases deals with the republication of statements which were privileged at the time they were made. The Supreme Court has indicated that although the contents of certain remarks may have been privileged under the Speech or Debate Clause at the time a Congressman originally made them, they do not remain privileged when later disseminated to the public in media interviews. Such republication would include the dissemination of newsletters and press releases by Congressmen for public consumption. Doe v. McMillan, 412 U.S. 306 (1973); Hutchinson v. Proxmire, supra; Gravel v. U.S., supra.

One more distinction which has been drawn occurred in U.S. v. Helstoski, 442 U.S. 477 (1979), where it was decided that the protections of the Speech or Debate Clause extend only to legislative acts already performed and do not relate to promises to undertake conduct within the legislative sphere at some future time.

The conclusion to be drawn from these federal cases appears to be that the Burger court has essentially enacted guidelines that indicate that a proper legislative activity is one that is part of the "deliberative and communicative processes" of house proceedings, Gravel, supra, that this activity must be undertaken for legislative and not political reasons, Brewster, supra, and will be examined closely whenever the act occurs outside the walls of Congress, Proxmire, supra. In essence, the scope of the clause will only be extended to what is necessary to preserve the integrity of the legislative process. It thus appears that the Court has placed a spacial test on the clause; one that ignores the content of the speech and instead focuses on where the speech is given. This would seem to explain the rationale behind the Court's distinction between items reported in the Congressional Record which are protected and those items reported outside Congress, which are not, albeit reported verbatim from the Congressional Record.

III. LEGISLATIVE IMMUNITY OF STATE LEGISLATORS IN FEDERAL COURT

Because of the shared origins and justifications for the doctrine of legislative immunity, the federal courts have extended to state legislators a common law immunity for "conduct within the scope of legislative authority" or "within the sphere of traditional legislative activity."

Nevertheless there are distinctions between the scope of the federal and state legislative immunity.

In suits involving Congress or the executive branch, the doctrine of separation of powers limits a federal court's inquiry. Where the court finds a constitutional commitment of the issue in question to a coordinate political department the separation of powers doctrine prohibits the exercise of federal judicial power. Baker v. Carr, 369 U.S. 186 (1962). The reasoning is that such an exercise of judicial review would amount to judicial control over the coordinate branch's action. However, the separation of powers doctrine has no effect on a federal court's power in suits involving state officials; rather, the relevant concern is federalism. Like the separation of powers analysis, the federalism analysis seeks to limit the disruptive effect of federal court action on other sovereign governmental bodies. Federalism, however, does not always preclude federal court disruption of state governmental activities; federal interests carry great weight. Given the federal responsibility for guaranteed constitutional rights, interests of comity generally will yield where state action violates the constitution. Note, Official Immunity in Federal Court: Supreme Court of Virginia v. Consumer's Union of the United States, Inc., Cornell L. Rev. 67:188 (1981).

One of the earliest Supreme Court decisions dealing with the immunities of state legislators in federal actions was Tenney v. Brandhove, 341 U.S. 367 (1951), wherein the Court ruled that state legislators were immune from suits for damages under the Civil Rights Act, 42 U.S.C.A. §1983. This decision, however, was limited to state legislators' liability for damages under the Civil Rights Act, and did not extend to claims of legislative immunity raised in other contexts. With respect to claims for injunctive or declaratory relief, there is strong dicta in Supreme Court of Virginia v. Consumer's Union of the U.S., 446 U.S. 719 (1980), that indicates that Tenney legislative immunity extends to §1983 actions seeking injunctive or declaratory relief.

In U.S. v. Gillock, 445 U.S. 360 (1980), the Supreme Court refused to recognize a state legislator's claim of legislative immunity in a federal criminal prosecution, suggesting a distinction between the scope of federal and state legislative immunity. In this case the court held that where important federal interests are at stake, as in the enforcement of federal criminal statutes, comity yields. Thus, the Court stated that federalism bars federal court actions only where judicial review "results in a direct federal impact on traditional state governmental functions." Gillock, supra, at 371.

In defining the permissible bounds of "legitimate legislative activity" the cases involving state legislators' common law immunity in federal court closely resemble those dealing with federal Congressmen. Such activities as conducting investigations, holding hearings, issuing subpoenas, making committee appointments, enacting laws and passing resolutions, voting, judging election contests and releasing committee reports to the press, for example, are typical of legislative conduct which is protected. Star Distributors, Ltd v. Marino, 613 F.2d 4 (2d Cir. 1980); Gewertz v. Jackman, 467 F. Supp. 1047 (D.C.N.J. 1979); Safety Harbor v. Birchfield, 529 F.2d 1251 (5th Cir. 1976); Porter v. Bainbridge, 405 F. Supp. 83 (D.C. Ind. 1975); Green v. DeCamp, 612 F.2d 368 (8th Cir. 1980). Conduct which has been deemed outside the bounds of "legitimate legislative activity" includes engaging in political activities such as preparing news releases expressing a personal view, acting in an executive or administrative capacity to carry out unconstitutional laws or disobeying a federal court order. Moreover, courts have distinguished legislative committee reports from newsletters and press releases as well as conduct which occurs during the pendency of a committee from that occurring after the committee was dissolved. Cole v. Gray, 638 F.2d 804 reh. den. 642 F.2d 1210 (5th Cir. 1981); Green v. DeCamp, supra.

With respect to the individuals protected, recent cases indicate that the U.S. Supreme Court may be adopting a functional approach to immunity wherein it is not the label attached to the office held but the nature of the functions exercised that determines whether or not the privilege attaches. Butz v. Economou, 438 U.S. 478 (1978) (defendant's duties were "functionally comparable" to those of a judge); Lake Country Estates v. Tahoe Regional Planning Agency, 440 U.S. 391 (1979) (defendants' duties were essentially those of a "regional" legislative body); Supreme Court of Virginia, supra, (Virginia Court exercised the state's entire legislative power to regulate attorney conduct).

The following is a brief run-down of the persons who have been extended immunity in federal actions under §1983:

1. Elected lawmakers, Star Distributors, Ltd, supra; Bergman v. Stein, 404 F. Supp. 287 (S.D.N.Y. 1975); Safety Harbor, supra.

2. Certain legislative aides and employees. Gravel, supra; Martone v. McKeithen, 413 F.2d 1373 (5th Cir. 1969) (staff investigators employed by statutory commission); Porter v. Bainbridge, supra (principal clerk, chief door keeper and payroll clerk of Indiana House of Representatives);

Green v. DeCamp, supra, (counsel for select committee); and in certain cases private individuals acting in concert with immune state officials have been extended immunity. Bergman v. Stein, supra. But to the contrary, see: Dennis v. Sparks, 449 U.S. 24 (1980) (conspiracy with judge).

4. Pursuant to the "functional approach," above, certain appointed officials, such as regional administrators, have been granted immunity. Lake Country Estates, supra.

5. Again, pursuant to the "functional approach," State Supreme Court judges have been granted legislative immunity where it was determined that they exercised the state's entire legislative power over the legal profession. Supreme Court of Virginia, supra.

6. Where the Lieutenant Governor of the state was acting in his capacity as president ex officio of the state Senate, legislative immunity has been granted. Eslinger v. Thomas, 476 F.2d 225 (4th Cir. 1973) disapproved on other grounds, Supreme Court of Virginia, supra. Also, where a governor was exercising his veto power he was deemed to be acting as a legislator in Saffioti v. Wilson, 392 F. Supp. 1335 (S.D.N.Y. 1975).

IV. LEGISLATIVE IMMUNITY OF STATE LEGISLATORS IN STATE COURT

We turn now to a comparison and analysis of the legislative immunity afforded by specific privileges and immunities clauses of constitutions and statutes of several states. In preparing this section the laws of the states of Alaska, Pennsylvania, Oregon, Illinois, California, Michigan, Texas and New York have been considered. Interpretive cases and comments have been obtained for all the states referred to with the exception of Oregon where it appears that occasion for review of the applicable provisions has not occurred. The interpretive materials from several states are quite inconsistent both in their scope and in the specific issues of their review. This, plus the fact that most of the states' legislative immunity provisions are modeled after the U.S. Constitution, suggests that reference to federal materials is in order.

A. Analysis Of Speech Or Debate Clause Provisions

The first principal issue to be addressed is a comparison and analysis of the existence and scope of the "speech or debate" immunities conferred by state constitutions and statutes.

Initially it should be remarked that all of the states reviewed except California have a constitutional speech or

debate clause. Furthermore, all of these states' constitutional speech or debate clauses bear a striking similiarity to that in the U.S. Constitution, with the exception of Alaska. The U.S. Constitution, Article I, Section 6, in relevant part, provides as follows:

> . . . and for any speech or debate in either house, they shall not be questioned in any other place.

Article II, Section 6 of the Alaska Constitution provides, inter alia:

> Legislators may not be held to answer before any other tribunal for any statement made in the exercise of their legislative duties while the legislature is in session.

As we have repeatedly observed, decisions in the federal courts dealing with the provisions of the U.S. Constitution as it relates to federal Congressmen are given great weight and frequently followed by state courts when addressing similar issues as a matter of first impression. This point is especially worth repeating in the present context because in none of the states reviewed have the courts had as much opportunity to refine the principles involved as have the federal courts, and therefore there is a greater likelihood

that state judicial proceedings involving legislative immunity will be of first impression.

As noted above, one key issue involves the scope of the term "speech or debate in either house." It will be recalled that Kilbourn v. Thomas, 103 U.S. 168 (1881), created the general standard that the phrase included things "generally done in a session of the House by one of its members in relation to the business before it." Subsequent decisions by the Supreme Court, interpreting the phrase have established further parameters that indicate that a proper legislative activity is one that is part of the "deliberative and communicative process" of house proceedings; that this activity must be undertaken for legislative, and not political reasons and will be examined closely whenever the act occurs outside the walls of Congress.

The language of the Alaska Constitution limiting the privilege to statements "made in the exercise of their legislative duties" has been held to be essentially the same as its federal counterpart; the test for applying the clause being whether or not the statements made or the actions taken by a legislator "directly affect the enactment of legislation or the contents of bills to be submitted to the legislature whether or not the statements or actions occur

in public." State v. Dankworth, _____ P.2d _____, Ak. Ct. App. Op. No. 308, p. 5, November 18, 1983.

For the most part, other states that have examined the phrase have applied the general standard of Kilbourn, but have not developed refined guidelines for application of that standard in particular circumstances.

For example, in Lincoln Building Associates v. Barr, supra, the court stated that the privilege is confined, under the New York constitution, to freedom from civil or criminal suits for utterances and activities of a legislator as a legislator; i.e., only so long as the public good is served. In Texas, the rule is stated that the "the privilege extends to things generally done in a session of either house by one of its members in relation to the business before it," and no court has developed this any further. "Interpretive Commentary" following Article III, Section 21 of the Texas Constitution. In Illinois, members of legislative bodies are accorded an absolute privilege in the performance of "official acts and duties." No elaboration is given. Arlington Heights National Bank, supra. In Pennsylvania it has been held that there is no basis for distinguishing the scope of the Pennsylvania speech or debate clause from that contained in the U.S. Constitution.

Consumers Education and Protective Association v. Nolan, 368 A.2d 675 (1977).

In California, the immunity granted is created by statute and furnishes a privilege from damages for communications made during any legislative, judicial or other official proceeding authorized by law. California Civil Code §47. The California decisions indicate that the statutory privilege is absolute if the statement made before the legislative body "bears some connection to the work of that body," Scott v. McDonnel Douglas Corporation, supra. The statute also requires a "proper discharge of an official duty." Frisk v. Merrihew, supra. The California statutory immunity differs considerably from that contained in Article I, Section 6 in that the statute designates as privileged "publications or broadcasts" in a variety of circumstances not limited to legislative proceedings.

1. Effect of Relief Sought

Regarding the effect, if any, of the relief being sought against a legislator, the federal rule is that regardless of whether the remedy sought is damages, injunctive or declaratory relief, or whether the case is a criminal action, a suit cannot be maintained against a Senator or Representative for his "speech or debate in any house." The major point of

contention then becomes whether or not the particular conduct in question properly falls within the purview of that phrase. (See discussion of Federal Legislative Immunity above.)

With respect to claims for injunctive or declaratory relief, one case out of Pennsylvania, Sweeney v. Tucker, 375 A.2d 698 (1977), recognized that the federal courts extended legislative immunity to such actions and acknowledged that federal cases are useful for guidance, but not binding. The court did not apply the federal standard in this case, however, because the complaint was dismissed as moot insofar as the state legislators were concerned.

In state cases involving criminal charges, a New York court acknowledged that the legislative immunity for speech or debate includes freedom from a criminal suit. Lincoln Building Associates v. Barr, supra. Another case from Texas involved a criminal action for conspiracy to accept a bribe. The court refused to apply the Speech or Debate Clause of the U.S. Constitution by virtue of the Fourteenth Amendment and went on to rule that the state constitutional provision regarding speech and debate was a general provision which did not supersede or conflict with a more specific constitutional provision prohibiting bribery. As such, the court refused to allow the Defendant to avoid prosecution for bribery on the basis of the state speech or debate clause.

In a very recent case out of the Court of Appeals of Alaska, State v. Dankworth, supra, the applicability of Alaska's speech or debate clause was considered in the context of a criminal proceeding. The Court endorsed the position that although the language differs, the state speech or debate clause is essentially the same as its federal counterpart. The Court went on to embrace the distinction between legislative and political activities:

> We thus accept the distinction drawn in the federal cases between the political activities of a legislator which are performed in order to insure reelection, and the legislative activities of a legislator, which are performed in order to directly influence the enactment of specific legislation. Political activities, which include attempts on behalf of constituents to influence the executive branch in carrying out administrative responsibilities, i.e., prosecuting criminals, are not privileged. Legislative activities as we define them are privileged. Id., at p. 5.

The Court held that the Speech or Debate Clause of the Constitution of the State of Alaska does provide legislators with immunity from criminal prosecution for their legislative acts:

> We hold that our constitutional provision protects any statements made or actions taken by a legislator that directly affect the enactment of legislation or the contents of bills to be submitted to the legislature whether or not the statements or actions occur in public. Id.

In determining that the test of "legislative acts" is whether or not the challenged conduct or statement directly affects the enactment or contents of proposed legislation, the court cited, with apparent approval, Dankworth's assertion that "acts other than oral communication and debate are protected . . . if they are purportedly or apparently legislative." (emphasis added) Id., p. 4.

The trial court went even further in discussing the scope of the speech or debate clause in Alaska when it stated: "in regard to the scope of the acts protected [the Alaska speech or debate clause is] broader than its federal counterpart."

The trial court reached this conclusion after comparing the language of Article I, Section 6 of the U.S. Constitution which, textually at least, covers only "speech or debate in either house," with Article II, Section 6 of the Alaska Constitution which protects "any statements made in the exercise of . . . legislative duties." Judge Carpeneti considered this difference to be highly important, as shown by the following quotation from his Memorandum of Decision and Order Re Motion to Dismiss Indictment, p. 6:

> [T]his difference appears to be important. The development of federal law under the federal speech or debate clause has largely been the

> process of defining the concept of "legislative acts" so as to accomodate the Supreme Court's concern that the literal statement of the immunity found in the text was too narrow to serve the great historical purposes of the framers. While that development may well support the result reached herein, . . . it is not strictly necessary to the interpretation of the Alaska Constitutional provision which protects any statement made in the exercise of . . . legislative duties.

It is thus apparent that both the Trial Court and the Court of Appeals consider the scope of the Alaska speech or debate clause to be more extensive then that of the federal version. If this standard survives further appeal it is possible that the scope of the speech or debate clause in Alaska could have much broader application than its federal counterpart.

Because the basis of speech or debate clause immunity is a desire to prevent intimidation by the executive branch and accountability before a possibly hostile judiciary, the courts have been less than unanimous in their treatment of motions to vacate subpoenaes issued to state legislators. In New York the rule appears to be that a legislator can be subpoenaed to testify regarding matters that cannot subject him to suit. Lincoln Building Associates v. Barr, supra. Furthermore, where the subpoena and subsequent warrant for arrest for contempt were issued by a legislative committee the court held that they did not constitute an arrest "in a

civil action or proceeding" as envisioned by the statute. In addition, the court stated that there could be no privilege from arrest asserted against the legislature itself by a legislator. Hastings v. Hofstadter, 180 N.E. 106 (1932).

To the contrary, in Bishop v. Montante, 237 N.W.2d 465 (Mich. 1976), the court ruled that in the absence of proof that the testimony of the legislator was crucial or that facts sought to be discovered were unavailable elsewhere, the privilege from civil process included subpoenaes.

Cases involving restrictions on legislative immunity by state courts are relatively rare. In Pennsylvania, the state Supreme Court considered a challenge to House procedures for expulsion of members. In so doing the Court stated that unless the Constitution unambiguously commits procedures used exclusively and finally to the House it does not bar judicial review for due process violations. Sweeney v. Tucker, supra. In another case, Mutscher v. State, supra, the Texas Court of Criminal Appeals declared flatly that taking a bribe is not a legislative act, citing U.S. v. Brewster, 408 U.S. 501 (1972), and therefore is not protected by the speech or debate clause.

Another possible vehicle for restricting the scope of legislative immunity is presented when the courts are asked to define what is the period of a "session" during which the immunity attaches. In answering this question the courts generally have given the term broad latitude. In Bishop v. Montante, supra, the Michigan court stated that the term "sessions" of the legislature includes regular and special sessions and is not limited to only working sessions when the legislature is actually sitting. The rule in Alaska, where statements made in the exercise of legislative duties are protected only "while the legislature is in session," is that a "session" is the sitting of the Legislature during the period of time that it is convened as a legislature to do business as a legislative body. The immunity runs from the time the member is "going to" or "returning" from a legislative session; 24 hours a day, 7 days a week from the time that the legislature is convened to the time that it adjourns sine die, i.e., indefinitely. 1959 Ak. Op. Att'y. Gen., No. 8. Where a committee was convened when the state Senate was not in session and the committee voted on a nomination by the governor to an executive post, the Pennsylvania Supreme Court held this to be clearly within the legislative sphere. Consumers Protective Association, supra.

From such a dearth of authority it is difficult to draw a generalized conclusion as to how a state court would decide a challenge to the claim of legislative immunity. Federal cases are useful for guidance, but are not binding on state courts. Sweeney v. Tucker, supra. However, because of the shared origins and common language employed, the prudent individual contemplating the exercise of the privilege should not assume that state courts will allow greater latitude in the exercise of legislative immunity than the federal courts have granted to comparable individuals on the national level. This conclusion is called into question, however, by the holding in State v. Dankworth, supra, which expressly adopted the reasoning of the federal line of cases in this area, but only after considering, and implicitly approving, assertions that the protections afforded by the Alaska Constitution are more extensive than those provided by the U.S. Constitution, even though it did so in less than a crystalline fashion.

B. Analysis of State Privileges & Immunities Provisions

In the absence of an express constitutional or statutory provision governing the matter, some conflict has been observed in determining whether or not members of Congress as well as members of state legislatures are exempt from the service of civil process by the applicable privileges and