ALASKA LEGISLATURE COMMITTEE FILES 1983-1984 8672

2546 SJ HB 352 - HB 479

2546

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST
Bill/Resolution No.: HB 352
Title: Definition of death
Sponsor: Rep. Fritz by request
Requestor: House HESS

II. FISCAL DETAIL
Agency Affected: Health & Social Services
Program Category Affected: Health
SRU, Program or Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

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

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Dean Tirador Phone: 465-2113
Division: Public Health Date: 4-14-83

Approved by Commissioner: Kolt Lauer Smith, M.D. Date: 4/18/83
Department: Health and Social Services

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

3/8/83

COMMITTEE REPORT

HOUSE

JUDICIARY

(7) FURTHER:

4/12/83 Date: 4/22/83

Mr. Speaker:

The Committee on HEALTH, EDUCATION AND SOCIAL SERVICES has had HB 352

An Act relating to the definition of death; and providing for an effective date.

under consideration and reports it back as follows:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[X] replace with CS for HB 352 [X] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] Zero Fiscal Note Attached

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

Milo Davis

CS _____
CHAIRMAN
CS - MILO H. FRITZ

H 60

FILE WITH HB 352

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

June 14, 1983

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

Re: CSHB 352(HESS)

Dear Mr. Chairman:

This bill relates to the definition of death; it is not a House priority and I feel it could very well be held over until next year.

Attached you will find copies of the original bill, the committee substitute, the current statutory definition (A.S. 09.65.120), together with a position paper on the bill from Dr. Rabeau.

If I had my druthers, I would prefer that we put out a committee substitute in which we incorporate the Uniform Definition of Death. It is set forth in its entirety at the top of page one of the position paper and it appears to me to say the same thing as the committee substitute, only more concisely. Apparently 19 other states have adopted this definition, and, as the position paper states, that is up from two states in 1981.

On the other hand, if you're beholding to Dr. Fritz and his requestor, there isn't anything indirectly wrong with the committee substitute, according to what I have been able to ascertain and according to the position paper.

Regards,

Robert H. Ziegler, Sr.

RHZ.lk

Attachment

sec. 1 of this Act, is in addition to liability for an award of reasonable attorneys' fees which may be made to the prevailing party in a civil action under Rule 82 of the Rules of Civil Procedure."

Sec. 09.65.120. Definition of death. A person is considered medically and legally dead if, in the opinion of a medical doctor licensed or exempt from licensing under AS 08.64.010 — 08.64.380, based on ordinary standards of medical practice, there is no spontaneous respiratory or cardiac function and there is no expectation of recovery of spontaneous respiratory or cardiac function or, in the case when respiratory and cardiac functions are maintained by artificial means, a person is considered medically and legally dead, if, in the opinion of a medical doctor licensed or exempt from licensing under AS 08.64.010 — 08.64.380, based on ordinary standards of medical practice, there is no spontaneous brain function. Death may be pronounced in this circumstance before artificial means of maintaining respiratory and cardiac function are terminated. (§ 1 ch 8 SLA 1974)

Sec. 09.65.130. Representation of child. (a) The court may, upon the motion of either party or upon its own motion, appoint an attorney to represent the minor with respect to his custody, support, and visitation or in any other legal proceeding involving his welfare. When custody, support, or visitation are at issue in a divorce, it is the responsibility of the parties or their counsel to notify the court that those matters are at issue. Upon notification, the court shall determine whether the child should have legal representation or other services and shall make a finding on the record before trial. The court shall enter an order for costs, fees, and disbursements in favor of the child's attorney and may further order that other services be provided for the protection of the child.

(b) If custody, support, or visitation is 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 either or both parents are only temporarily without funds, as determined by the court, the court may advance payment for legal representation or other services rendered to the child; however, no repayment may be required for those who are receiving legal services for the indigent. The attorney general is responsible for enforcing collections owed the court, and repayment shall be made directly to the 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 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.

(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

POSITION PAPER

HOUSE BILL NO. 352

"An Act relating to the definition of death; and providing for an effective date."

BACKGROUND

A Uniform Definition of Death has been endorsed by the National Conference of Commissioners on Uniform State Laws, the American Medical Association, the American Bar Association, the President's Commission for the Study of Ethical Problems in Medical and Biomedical and Behavioral Research as well as by the American Academy of Neurology and the American Electroencephalographic Society. The Uniform Definition is as follows:

> "An individual who has sustained either (1) irreversible cessation of circulatory and respiratory functions, or (2) irreversible cessation of all functions of the entire brain, including the brain stem, is dead. A determination of death must be made in accordance with accepted medical standards."

According to information received from the Commissioners on Uniform State Laws, 19 states have now adopted this definition, up from two states in 1981.

DISCUSSION

The definition proposed in this Bill, differs from the Uniform Definition in several respects:

1. In the Bill, "person" is substituted for "individual". The Uniform Definition purposely included the term "individual" to conform to the standard designation of a human being. The term "person" was not used because it is sometimes used by the law to include a corporation. Although that particular confusion would be unlikely to arise, the narrower term "individual" is more precise and thus avoids possibility of confusion.

2. In the Bill, the phrase "medically and legally dead" is used. The Uniform Definition prefers the phrase "is dead" since the broader provisions were considered to be misleading. The President's Commision stated, "A law setting a general standard without explicit limitations would be assumed to apply for all legal purposes; to say so in the statute, however, only raises needless questions (e.g., what does 'all legal purposes' leave out? For example, proceedings in equity?)" [1]

[1] Defining Death. Medical, Legal and Ethical Issues in the Determination of Death. President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research. Pg. 79. Government Printing Office, Washington, D.C., 1981.

3. The Bill sets the standard for establishing death as "ordinary standards of medical practice", while the Uniform Definition adopts "accepted medical standards". This difference is probably not important.

4. The Bill adds a provision that death may be pronounced "before artificial means of maintaining respiratory and cardiac function are terminated." The Uniform Definition avoids the necessity for such a provision by simply stating that an individual "is dead" when either "irreversible cessation of circulatory and respiratory function or irreversible cessation of all functions of the entire brain, including the brain stem" has occurred. When either of these circumstances prevails, the appropriateness of stopping medical intervention is apparent.

POSITION

While the Department considers the definition proposed in the Bill to be better than the current statutory definition, it would prefer that the Uniform Definition of Death be adopted.

Recommended by: E. S. Rabeau

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

Date: April 15 1983

Approved by: Robert London Smith

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

Date: 4/18/83

STATE OF ALASKA
FISCAL NOTE

Revision Date

I. REQUEST

Bill/Resolution No.: HB 352
Title: Definition of death
Sponsor: Rep. Fritz by request
Requestor: House HESS

II. FISCAL DETAIL

Agency Affected: Health & Social Services
Program Category Affected: Health
SRU, Program or Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

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

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Dean Tirador
Phone: 465-3113
Division: Public Health
Date: 4-14-83

Approved by Commissioner: Robert Loken Smith, M.D.
Date: 4/18/83
Department: Health and Social Services

Distribution:
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3/8/83

COMMITTEE REPORT

HOUSE

JUDICIARY

(7) FURTHER:

4/12/83 Date: 4/22/83

Mr. Speaker:

The Committee on HEALTH, EDUCATION AND SOCIAL SERVICES has had HB 352

"An Act relating to the definition of death; and providing for an effective date."

under consideration and reports it back as follows:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[X] replace with CS for [illegible] [X] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note [X] Zero Fiscal Note Attached

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING DO PASS

[illegible]

MILO H. FRITZ

[illegible]

Mike Davis

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

MEMBERS HAVING OTHER RECOMMENDATIONS:

[illegible]

Co [illegible]
CHAIRMAN

Co - MILO H. FRITZ

H 60

sec. 1 of this Act, is in addition to liability for an award of reasonable attorneys' fees which may be made to the prevailing party in a civil action under Rule 82 of the Rules of Civil Procedure."

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POSITION PAPER

HOUSE BILL NO. 352

"An Act relating to the definition of death; and providing for an effective date."

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POSITION

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Recommended by: E. S. Rabeau

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

Date: April 15, 1983

Approved by: Robert London Smith

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

Date: 4/18/83

STATE OF ALASKA
FISCAL NOTE

Revision Date

I. REQUEST

Bill/Resolution No.: HB 352
Title: Definition of death
Sponsor: Rep. Fritz by request
Requestor: House HESS

II. FISCAL DETAIL

Agency Affected: Health & Social Services
Program Category Affected: Health
SRU, Program or Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

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

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Dean Tirador Phone: 465-2113
Division: Public Health Date: 4-14-83

Approved by Commissioner: Robert Loeb Smith M.D. Date: 4/19/83
Department: Health and Social Services

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3/3/83

COMMITTEE REPORT

HOUSE

JUDICIARY

(7) FURTHER:

4/12/83 Date: 4/12/83

Mr. Speaker:

The Committee on HEALTH, EDUCATION AND SOCIAL SERVICES has had HB 352

"An Act relating to the definition of death; and providing for an effective date."

under consideration and reports it back as follows:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[X] replace with CS for [illegible] [X] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note [ ] Zero Fiscal Note Attached

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING DO PASS

[illegible]

MILO H. FRITZ

[illegible]

Mike Davis

[illegible]

[illegible]

MEMBERS HAVING OTHER RECOMMENDATIONS:

[illegible]

CHAIRMAN

CO - MILO H. FRITZ

H 60

HB

373

COMMITTEE REPORT

SENATE

FURTHER:

Date_____

Mr. President

The Committee on _____considered_____

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

[ ] do pass

[ ] do pass with attached amendment(s)

[ ] replace with/or adopt CS for _____
[ ] new title
[ ] same title and recommends _____

[ ] and attached a "LETTER OF INTENT" [ ] NEW FISCAL NOTE

[ ] reports it back without recommendation

[ ] recommends referral to _____ Committee

MEMBERS SIGNING
DO PASS

_____

_____

_____

_____

_____

_____

_____

_____

MEMBERS HAVING
OTHER RECOMMENDATIONS

_____

_____

_____

_____

_____

_____

_____ _____
Chairman

_____
Chairman recommendation

CALENDAR PLEASE!

ALASKA STATE LEGISLATURE - SENATE

SENATOR RICHARD I. ELIASON

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

P.O. BOX 143
SITKA, ALASKA 99835

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4916

MEMORANDUM

TO: Senator Bill Ray, Chair
Senate Judiciary Committee

FROM: Senator Dick Eliason

DATE: February 27, 1984

RE: CSHB 373 (L&C) - "An Act relating to nonforfeiture benefits of life insurance policies and reserve valuation standards for life insurance policies and annuity contracts."

As chairman of the Senate Labor & Commerce Committee, I had the opportunity to review the merits of the above-mentioned legislation and I recommend that HB 373 pass out of the Judiciary Committee with a "do pass".

HB 373, introduced by the House Labor & Commerce Committee, tracks model legislation adopted by the National Association of Insurance Commissioners (NAIC) in 1980. To date, Alaska is the only state which has not adopted this legislation.

HB 373 represents a comprehensive revision of the Standard Valuation Law and the Standard Nonforfeiture Law for life insurance. It would allow the insurance industry more flexibility in responding to the ever-changing life insurance marketplace.

However, this legislation will not only benefit the insurance industry, but will also help reduce the cost of insurance to the consumer. For example, for an Alaskan male, age 35, a whole life insurance policy now costs $16.23 per thousand dollars of coverage per year. If HB 373 is in effect the same policy would cost $12.64. (These figures were provided by the Prudential Insurance Company).

Attached is further back-up information regarding this legislation.

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: CSHB 373 (L&C)
Title: Nonforfeiture benefits of life insurance policies
Sponsor: Labor & Commerce
Requestor:
Date of Request:

FISCAL DETAIL
Agency Affected: Commerce & Econ. Development
Program Category Affected: Public protection
BRU, Program or Subprogram(s) Affected: Division of Insurance

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Kenneth C. Moore, Director — Phone: 465-2515
Division: Insurance — Date:

Approved by Commissioner: Richard A. Lyon — Date: 12/29/83
Agency: Commerce and Economic Development

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

12/1/83

Life Insurance (standard nonforfeiture/ valuation)

HOUSE BILL NO. 373, by the Labor & Commerce Committee. Represents a comprehensive revision of the standard valuation and standard nonforfeiture law for life insurance, based on model amendments proposed by a number of groups and organizations, including the National Association of Insurance Commissioners, the American Council of Life Insurance, and the Society of Actuaries. The standard laws have not been revised since they were originally enacted in the 1940's, and the changes proposed have been adopted in 39 states to date. Similar measures have been introduced in other state legislatures.

The bill amends the existing section of state law relating to the standard valuation law for life insurance (AS 21.18.110(b)). The standard valuation law establishes minimum reserving standards to provide for the solvency of life insurance policies, guaranteeing future benefits provided for by the policies. The current basis for reserving is based on mortality tables and interest rates. In general, HB 373 does not change the method of reserving, but would change the mortality tables, reflecting increased longevity, based on the 1980 Standard Ordinary Mortality Table.

The bill would also change the method of determining valuation interest rates. Currently the interest factor allowed is statically fixed in law. Each time economic conditions warrant change in rates, the law must be changed. HB 373 would take a dynamic approach to interest rates, linking the interest rate to Moody's Corporate Bond Yield Average -- Monthly Average Corporates, as published by Moody's Investors Service, Inc., and would allow the interest rate to change, based on the index.

page 581

The bill would also allow new mortality tables to be adopted by regulation, although the tables would first have to be adopted by the National Association of Insurance Commissioners, and the regulation process would have to be observed.

The standard nonforfeiture law for life insurance determines how benefits are paid to defaulting or surrendering policyholders, depending on the number of years the premiums were paid, and the payment provisions stipulated in the insurance policy. In determining the benefits of a defaulting or surrendering policyholder the interest rates and mortality factors are taken into account. Life insurance policies issued in the state must contain provisions for payment of nonforfeiture benefits, and cash surrender values. A statement of the mortality table and interest rate used in calculating the cash surrender values and the paid-up nonforfeiture benefits avaliable may be used in some types of policies. The standard nonforfeiture law and the standard valuation law are linked on the basis of interest rates and mortality tables.

The bill lists the methods of payment of benefits to terminating policyholders, language to be contained in insurance policies guaranteeing payment of benefits, calculation of and value of the policy, and calculation of adjusted premiums and present values of life insurance policies.

Provides Act takes effect immediately.

Brief Summary

4/83

TECHNICAL NOTES
Proposed Amendments to the Standard Valuation Law and Standard Nonforfeiture Law for Life Insurance

The proposed amendments were adopted by the National Association of Insurance Commissioners (NAIC) in December, 1980. Instrumental in their development were the NAIC, the American Council of Life Insurance (ACLI), and the Society of Actuaries. This cooperative effort resulted in these amendments which are the most encompassing changes since these laws were first adopted.

To date, at least 39 states have enacted the 1980 amendments, including most of the western states. The uniform enactment of the standard valuation and nonforfeiture laws by the various states obviates an insurer from establishing its reseves on different bases for different states with varying minimum valuation standards. Such an approach would only result in increased insurance costs with no greater assurance of insurer solvency.

Interest and mortality are the prime factors in establishing reserves and in the determination of nonforfeiture values. Currently, the minimum standards for these factors are statically established in law. So, any changes in these factors needs to be accomplished by legislative action.

The proposed amendments establish a dynamic approach to the interest factor. The interest rate is pegged to an outside index (Moody's Corporate Bond Yield Average - Monthly Average Corporates) and automatically responds to the movement of that index. Therefore, the necessity of legislative action each time a change in interest rate is called for is eliminated. This index has historically tracked the long term interest trends without undue fluctuations. The variable policy loan interest rate utilizes this some index. Additionally, formula weightings also further insulate the interest factor from chance fluctuation. Current economic conditions require the interest factor be more reflective of the current economic state in a more timely manner. An indication of the magnitude of the impact of the interest factor is that for each 1% change in the valuation interest rate, the value of the reserves changes by approximately 10% (e.g. a 1% increase in valuation interest rates causes the reserves to decrease by approximately 10%).

The proposed amendments change the mortality basis through the adoption of the Commissioners 1980 Standard Ordinary Mortality Table (1980 CSO) and the Commissioners 1980 Extended Term Insurance Table. The current mortality basis is the Commissioners 1958 Standard Ordinary Mortality Table (1958 CSO). The 1980 CSO reflects the better mortality (increased longevity) experienced in more recent years. Generally, increased longevity results in decreased amounts of reserves similar to the impact created by changes in the valuation interest rates. Additionally, the proposed amendments allow for the director of insurance to adopt by

Summary

regulation new mortality tables for valuation and nonforfeiture determinations once they have been adopted by the NAIC.

The Standard Valuation Law establishes the minimum standards (interest, mortality, and valuation method) for a life insurer in establishing its required reserves. The regulatory interest is to assure the solvency of an insurer so that it may meet its current contractual obligations and those which extend many years into the future. The proposed amendments establish a conservative but more realistic basis for the required reserves. An ancillary effect will be a greater array of new life insurance contracts being offered to the public by a wider range of insurers at a lower cost.

The Standard Nonforfeiture Law establishes the minimum standards for determining what share of the insurer's assets a terminating policyholder is due. The regulatory intent is to provide equity to the terminating policyholder as well as to those policyholders whose coverage remains in force. A more realistic determination of surrender values is provided for by the proposed amendments. Also, appropriate patterns for nonforfeiture values are established which prevents manipulations of these values for certain periods of time commonly used in comparing the values of similar life insurance contracts offered by different insurers.

Due to the financial integration which is currently taking place, a proliferation of new and innovative life insurance and annuity contracts has taken place. No standard valuation or nonforfeiture law can accomodate or anticipate all possible kinds of life insurance and annuity contracts. Therefore, the proposed amendments provide the director of insurance with the authority to promulgate regulations to establish the valuation and nonforfeiture standards for such products.

The above represents an overview of the proposed amendments to the Standard Valuation and Standard Valuation Laws. The materials provided by the ACLI presents a more detailed and technical discussion of these proposed amendments, presented in an equitable manner. The division of insurance feels that such information can be relied upon.

The division of insurance recommends enactment of the proposed amendments.

Testimony notes. HB 373

Administration favors bill.

Bill tracks model legislation adopted by the NAIC (National Association of Insurance Commissioners) in 1980.

Bill amends the Standard Valuation Law and the Standard Nonforfeiture Law for life insurance.

Allows for a more dynamic approach to determining values in the two laws. Allows more flexibility in responding to change in the life insurance marketplace.

Approach to establishing reserves is conservative but realistic.

Will make available a much wider range of products.

Div of Insurance support

Attachment 3

SUMMARY OF 1980 AMENDMENTS TO STANDARD VALUATION LAW AND STANDARD NONFORFEITURE LAW FOR LIFE INSURANCE

These amendments adopted by the National Association of Insurance Commissioners in December, 1980 are the most significant and comprehensive changes to the Standard Laws since these laws were originally enacted in the 1940's. They represent the culmination of years of effort in a cooperative project involving a number of organizations and groups.

Purposes of Amendments

1. Update the minimum standards for reserves and nonforfeiture benefits and provide for future automatic updating of these standards in order to permit company operations and the products offered to the consumer to keep pace with changes in the economy and in longevity.
2. Accommodate more effectively products that have been introduced since the laws were first enacted.
3. Accommodate new products that may be developed in the future, thereby increasing company flexibility to offer, and insurance department flexibility to regulate, products that meet new public needs and expectations.

Principal Features of Amendments

1. A system for the automatic annual updating of the statutory valuation and nonforfeiture interest rate standards applicable to new business.
2. New mortality tables for ordinary life insurance and authority for the insurance commissioner to promulgate more modern life insurance, annuity, and disability tables.
3. Changes in the allowance for company excess initial expenses that is used in calculating minimum nonforfeiture benefits for life insurance.
4. Provisions to require appropriate patterns of nonforfeiture benefits.
5. Provisions that take account of special features of products not contemplated in the original versions of these laws, such as family policies, policies that provide for changes in benefits and premiums after issue at the option of the policyholder, and policies that provide for the payment of an additional premium in the first policy year.
6. Provisions to authorize the insurance commissioner to promulgate valuation and nonforfeiture regulations to accommodate life insurance plans providing for future premium determination by the company and plans for which minimum reserves or nonforfeiture values cannot be determined by the other provisions of the laws.

ERICKSON INSURANCE AGENCY

February 13, 1984

Senator Dick Eliason, Chairman
Senate Labor & Commerce Committee
Pouch V
Juneau, Alaska 99811

Re: H.B.373

Dear Senator Eliason:

I am writing to express my full support in passage of H.B.373. I believe that Alaska is the only state not to have such a law but that the bill has passed the House (37-0) and now lies in the Senate Labor & Commerce Committee. Truly, this bill is in the best interest of the consumer and can only benefit everyone.

It is my hope, Senator, that you feel as I do and will urge the committee, as well as the Senate, to pass this legislation into law as soon as possible. Your comments will be most appreciated.

Most respectfully,

Jack Clough
Erickson Life
President

JC:lb

Letters of support

625 EAST 34th AVENUE, SUITE 401 • ANCHORAGE, ALASKA 99503 • (907) 279-6554 TXL 26-612

Richard Scott/Financial Plans
P. O. BOX 80345 - COLLEGE STATION - FAIRBANKS, AK 99708
(907) 479 6778

January 28, 1984

Rep. Bob Bettisworth
Juneau, AK

Dear Bob,

HB 373 includes a proposal to authorize use of the latest mortality table in computing premiums and cash values for life insurance. Since the insurance commisioners of all the states create a committee to approve proposed new tables, they are generally referred to by the date approved, and called the Commissioners Standard Ordinary mortality table, or "CSO" for short. The latest table is the "1980 CSO" and at last count had been approved by 31 states so far. The last one before that one, I think, was the 1958 CSO.

Since premiums are based on projected life spans starting at various ages, and since life expectancy in general has changed considerably since the 1958 table, it appears valid to adopt the 1980 CSO table as soon as it can be arranged. From a premium standpoint, the change reduces most rates and resulting cash values slightly and at some ages may increase them slightly. The reason that adoption of a new table doesn't make major changes is that the companies constantly monitor mortality statistics and adjust the premiums from time to time.

I was told that HB 373 was sponsored by the Labor and Commerce committe and is presently in the Rules Committee, Rep. Cowdery, Chairman. Mark Ringstad and Niilo Koponen are also on the Committee.

Now that the 1980 CSO has been out long enough to become generally adopted across the country, I notice a trend for life insurance companies to issue their new policy forms only in those states which have approved the 1980 CSO table. Since the newer policy constructions include current-interest-assumption plans with what appear to be substantial buyer advantages, adoption of the new table will broaden the choices available to Alaskan buyers and sellers of life insurance.

If past history repeats, this shouldn't come up again for another 22 years. Anything you can do or advice you may have in this matter will be most appreciated.

Best wishes to you and your colleagues as you work to develop plans for the future of this state.

Sincerely,

Richard Scott

cc:
Mark Ringstad
Niilo Koponen
Rep. Cowdery

HB

375

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

_____

_____

_____

_____

_____

_____

_____

_____

_____

MEMBERS HAVING
OTHER RECOMMENDATIONS:

_____

_____

_____

_____

_____

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_____

CHAIRMAN

632 N. Pine
Anchorage, Alaska 99504
May 8, 1983

Dear Representatives and Senators:

I am writing this on behalf of the Alaska Chapter of S.L.A.M. (Society's League Against Molestation) and the citizens who cared enough to sign our petition. (copy attached) This letter is to appeal to each of you to address the four sections listed in the petition, and act upon them without delay, and r st certainly before the 1983 legislative session adjourns.

Representatives, there is presently before you HB 375 sponsored by Representative Ramona Barnes which will make it possible for employers to obtain any record of sex crimes or contributing to the delinquency of minors on the part of applicants, including volunteers, when seeking employment where he/she would have supervision over minors. In doing this, employers will be safe-guarding the children entrusted to their care.

Molesters, more than anyone else, should pay dearly when they use the trust that children have in them to do them harm! We will not tolerate this any longer as parents and concerned citizens. We urge you to vote yes on HB 375.

Senators, there is before you SB 74, sponsored by Senator Fritz Pettyjohn. It is a good bill and deserves to be a top priority issue. We have come to the conclusion that "some" womens' groups have influenced several of our Senators to put off action on SB 74, because of their "misguided" concerns for the sex offenders' low self esteem. We of SLAM do not give two hoots for the sex offenders' low self esteem. We are most concerned over the las'ing effect their acts leave on the victims. What does sex offenders' low self esteem have to do with reclassifying sex abuse, anyway? If it does concern you, then place him/her in the prisoner treatment program where he/she should have been in the first place! We are sick and tired of these criminals' grievances being addressed, before the needs for the victims are even considered! So, with our thoughts being expressed, we now beseech Senators Joe Josephson and Vic Fischer to bring SB 74 out of Senate HESS Committee where it has been gathering cobwebs, and to pass it unamended.

To All Legislators, do not let session '83 end without doing everything in your power to protect our innocent children.

Thank you for reading this, and we will thank you with all of our hearts when we see these two bills signed into law this year.

Sincerely,

Celia Warrior

Celia Warrior
President, Alaska Chapter
Society's League Against Molestation (SLAM)

:cw

May 20, 1983

To: All members of the Senate Judiciary Committee

From: Chris & Deanna Botts

Subj: CSHB 375 (Finance) am

Please know that we, without reservation, recommend passage of this bill which would allow the release of criminal records involving sex offenses against minors to any employer of persons who work directly with children in the role of directing or influencing their activity in order to protect fully the interests of minor children involved.

We are convinced that a "character reliability" screening process is required to ensure that persons working with young children are "clean" with respect to their history of conduct in the relationships with children. This bill would serve to get a jump on those who would gravitate toward the child in terms of their employment and the opportunity of that employment serving as a means of gratifying an unwholesome, deviate sexual desire. We, as parents of a nine year old son, are only too well aware of the past instances of sexual license on the part of persons given a position of trust and authority, who then seek out the young child as a object of their untoward affection. It has happened in Juneau as recently as last year at the Teen Center with, we might add, emotionally scarring results to those youth who were drawn into sexual misconduct through the enticement of one "in charge" of a youth program.

Those who would work in positions of some type of leadership of the young should be above reproach with regard to their experiential behavior as it affects the young. An employer of such people must surely need to know where such people stand with respect to their intentions before they hire them or even later during the course of their employment. Those whose records don't stand up to normal standards of decency in their past conduct with the young should certainly not be hired or if already employed, be terminated at once.

At issue is the protection of our children in the course of their participation in various civic and social/recreational activities, perhaps, even including their interaction during the school day. CSHB 375 (Finance) am is a necessary vehicle for working to ensure that our children are not victimized by would-be abusers who hide behind their jobs to work their mischief.

We both feel that it is the state of Alaska that must assume responsibility for the records it releases. The buck should stop with those whose jobs are to review and release data involving sexual misdeeds to a requesting party identified within the bill as an "interested person(s)".

Deanna Botts
Chris Botts

Mailing Address: P.O. Box 391
Douglas, AK 99824

Residence: 1512 3rd Street
Douglas, Alaska

cc: Senate Finance Committee

Alaska State Legislature

Speaker of the House of Representatives

Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-3720

Official Business

CSHB 7 (Judiciary)
Effect of Amendments

The proposed Judiciary committee substitute makes the following changes:

Clarifies that the provisions of this law relate to 'motor' vehicles as defined in the statutes.

Includes a certificate of self insurance as one means of proving financial responsibility. This is typically used by commercial companies to insure a fleet of vehicles. The certificate is defined by AS 28.20.400.

Clarifies that a person seeking a license must only show proof of insurance only on vehicles which are both registered in that persons name and owned by the person which must be located within the state.

Changes the propsed liability limit increases from 100/300/50 to 50/100/25. Currently the limits in law are 25/50/10.

Adopts the language suggested by the Court system relating to issuance of a citation by a peace officer.

Deletes provisions which allowed a peace officer to impound a vehicle on the spot if he had cause to believe an insurance policy was not in effect.

Changes the responsibility for notifying parties in a forfeiture incident from the "court" to the Department of Law as suggested by the Court System.

Changes the date fo submission of the first annual report from February 1986 to 1988 and changes report from Dept. of Commerce and Economic Development to a JOINT report with Department of Public Safety.

Adds new effective date of January 1, 1984 for the provisions which mandate that insurance companies offer uninsured and underinsured insurance. These sections would now take effect before any other provision in the law.

RECEIVED APR 0 6 1983.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

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

MEMORANDUM April 6, 1983

SUBJECT: Definition of minority in Rule 1(e)

TO: Senator Rick Halford

FROM: Billy G. Berrier
Director
Division of Legal Services

You have requested wording for a suggested definition of "minority" for the purposes of Rule 1(e) essentially as we discussed.

I would suggest:

> For the purposes of this rule a minority is a group of members who have declared themselves to be a caucus not later than the day following the election of the presiding officers and who are not members of the majority. If there is more than one group who would meet these requirements, the larger group is the minority.

I believe this meets the concept you desired.

BGB:ljb
13/030

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF PUBLIC SAFETY
OFFICE OF THE COMMISSIONER

POUCH N
JUNEAU, ALASKA 99811
PHONE:

May 4, 1983 465-4322

The Honorable Charles Bussell
Chairman, House Judiciary Committee
Pouch V
Juneau, Alaska 99811

Dear Representative Bussell:

This is in response to your request for a Position Paper on HB 375. The Department of Public Safety supports passage of this legislation. Employers should be able to request records of convictions of all sex crimes or crimes dealing with contributing to the delinquency of a minor, of persons applying for positions involving supervision or disciplinary power over minors. The enactment of this Bill will help protect employers from unknowingly hiring a person with prior convictions in this area.

Sincerely,

Robert J. Sundberg
Commissioner

12-L21H

STATE OF ALASKA
FISCAL NOTE

Revision Date _____, 1983

I. REQUEST

Bill/Resolution No.: HB 375
Title: "Act relating to access. . ."
Sponsor: Rep. Barnes
Requestor: House Judiciary

II. FISCAL DETAIL

Agency affected: Public Safety
Program Category affected: Crime & ID
BRU, Program or Subprogram(s) affected: Alaska State Troopers

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

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

IV. ANALYSIS: Attach a separate page for any Analysis No fiscal impact anticipated

Prepared By: Jos Mapranath Phone: 465-4336
Division: Administrative Services Date: 5-4-83

Approved by Commissioner: [signature] Date: 5/4/83
Department: Public Safety

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

3/83

Friday, April 22, 1983, The Anchorage Times

House bill seeks to reveal child molesters

Times Juneau Bureau

Juneau — House conservatives have sponsored a bill to give employers access to some criminal records of workers who deal with minors.

The Governor's Commission on the Administration of Justice would be required to disclose to employers of workers who deal with minors records of all convictions for contributing to the delinquency of a minor or for sex crimes, under the bill.

"I hope I can close one small gap in a law that often times has assisted the sexually perverted to ply their trade with children," said Rep. Ramona Barnes, R-Anchorage, main sponsor of the proposal.

Current law permits release of these criminal records only to law enforcement agencies, she said.

"This information should also be provided employers and supervisors who recruit for positions whose main responsibility is supervising or disciplining minors.

The bill would require the commission to supply fingerprints to the employer, who also could fingerprint employees or job applicants.

The commission would be required to destroy the request for information six months after it is answered.

"The confidentiality of a criminal record rates way below my concern for innocent, trusting children who fall prey to child molesters," Barnes said.

Suspects arrested in sex cases

by Jeff Berliner
and Carl Gidlund
Times Writers

A man who allegedly used state agencies to procure juveniles for sex has been jailed.

Police and prosecutors say he gave the youths alcohol and drugs then sexually molested them. The man acted under the guise of helping youths he had obtained through legitimate channels, police said.

Held on $30,000 bail is Hensley L. "Pat" Patterson, 33. He is charged on two felony counts of sexual abuse of a minor, one felony count of contributing to the delinquency of a minor and five misdemeanor charges of contributing to the delinquency of a minor.

Patterson reportedly got access to the youths — all boys age 13 to 17 — through his work under the authority of the state juvenile probation office and as a state-approved foster parent.

"Patterson used state agencies as a way of maintaining contact with the boys," said Paul Olson, an assistant district attorney here who specializes in prosecuting sex crimes.

Police and prosecutors said they stopped another case of an adult man sexually molesting

See Arrest, page A-5

Arrest

(Continued from page A-1)

male juveniles in a second unrelated arrest Friday.

In that case, Robert Elstad, 41, was jailed on $35,000 bail and charged with six counts of sexual abuse of a minor and lewd and lascivious acts toward children.

Both men were arraigned Friday. The cases were put together by the sex crimes units of the Anchorage Police Department and the district attorney's office.

Authorities say that in addition to using state agencies to get custody of the youths, Patterson had other ways of coming into seemingly legitimate contact with young boys.

Olsen said Patterson was director of the Cook Inlet Native Association Youth Center and also worked at the Fairview Community Center. In both jobs he came into contact with boys about the age of those he is accused of molesting.

A foster parent from 1973 to 1975 and again from 1977 to 1979, Patterson was given legal custody of juveniles and was an officially approved guardian, Olson said.

Patterson was a so-called "pass partner" for youths held at McLaughlin Youth Center and for youngsters on probation, Olson said, adding that the state "juvenile probation office allowed him to be with kids on probation."

Juvenile probation officers have the power to authorize approved individuals, such as Patterson, to take the youths out of an institutional setting or out of other custodial situations and act as the guardian of the youths while they are assigned to him.

Officials at McLaughlin and in the Department of Health and Social Services could not be reached for comment Friday. However, Anchorage police Lt. George Novaky said the department's investigation began last December when a youth in custody at McLaughlin told investigators of his involvement with Patterson. The youngster provided information that led to the other boys, he said.

Although the criminal complaint against Patterson lists only five victims, Olson said it is "generally thought that more kids are involved."

The felony contributing-to-the-delinquency-of-a-minor charge alleges that Patterson induced a juvenile to commit a sex act with him. Five misdemeanor contributing-to-the-delinquency-of-a-minor charges state that Patterson supplied drugs and alcohol to the youngsters. The incidents are said to have occurred from 1979 to 1982 at Patterson's home.

In a similar case, police recently charged that the assistant director of the Boys Club of Alaska was using his job to come into contact with boys he allegedly molested sexually.

Venson Brown still faces trial on those charges. And although he has pleaded not guilty, court documents state that Brown has confessed "in substantial part" to the allegations on tape. He goes to trial next month.

Elstad, a businessman who operates a contracting firm, allegedly molested boys age 12 to 15 in incidents that occurred from 1980 through 1982. He lured the boys into his home at 6525 McGill St. without force and then sexually assaulted them, police reported.

Lt. Novaky said the department's investigation of Elstad began last October while officers were pursuing another case — not related to sexual conduct — that involved him. Investigators pursued leads that lead them to seven other alleged victims, several of whom were in McGlaughlin, he said.

Patterson and Elstad face grand jury indictments and will be returned to court next week.

A GIRL'S GRUESOME DEATH SPURS HER GRANDMOTHER TO WAR AGAINST CHILD MOLESTERS

Pictured here at 2, Amy Sue fell victim to a sadistic killer. "I was never aware of child molesting," says her grandmother.

Photographs by Nancy Ellison/Sygma

Six weeks before he killed Amy, habitual molester Frank, 43, was freed by psychiatrists who believed he had "recovered."

...978 was a mild spring ...ne rural Southern Califor... ...unity of Camarillo, where ...old Amy Sue Seitz was play... ...e in the backyard of her aunt's ...ouse. The aunt, Delfina, often looked ...ter Amy Sue during the day while her ...other, a single parent, worked as an ...lectronics assembler. In this quiet ...eighborhood, Delfina felt safe leaving ...er niece unattended for a few min... ...utes while she went inside to change ...lothes.

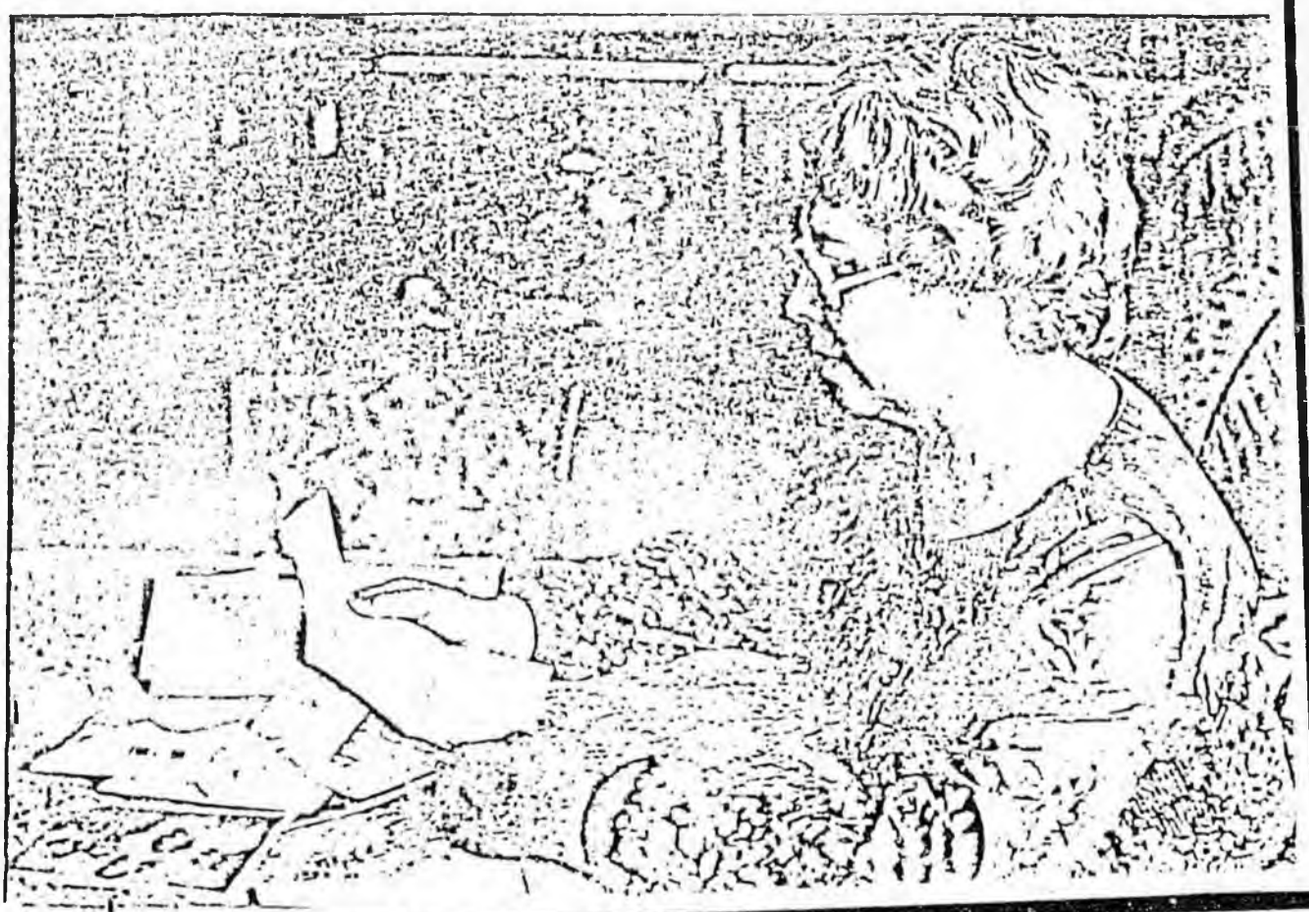
It was a mistake with horrible conse...quences. When Delfina looked outside, Amy Sue had vanished without a trace. For two days her relatives joined with neighbors and police in a futile search. Then, on the third day, a toddler's muti...lated body was found in a nearby can...yon. Of course, it was Amy Sue.

Ten months later police charged a man named Theodore Frank with the loathsome crime. Just the day before, he had been sentenced for the kidnapping and molestation of two preteen girls. Frank, 43, an unemployed laborer, has admitted to molesting as many as 150 children over a 23-year period. Until he was convicted of Amy Sue's murder in December 1979 and sentenced to die in San Quentin's gas chamber, he had served less than two years in prison and almost nine years in state hospitals for his sex crimes. Even as he committed Frank to Death Row, Judge Byron K. McMillan stated that he considered the sentencing an empty exercise: "I think he'll die of old age—on the streets in about 15 years. I'd bet on it."

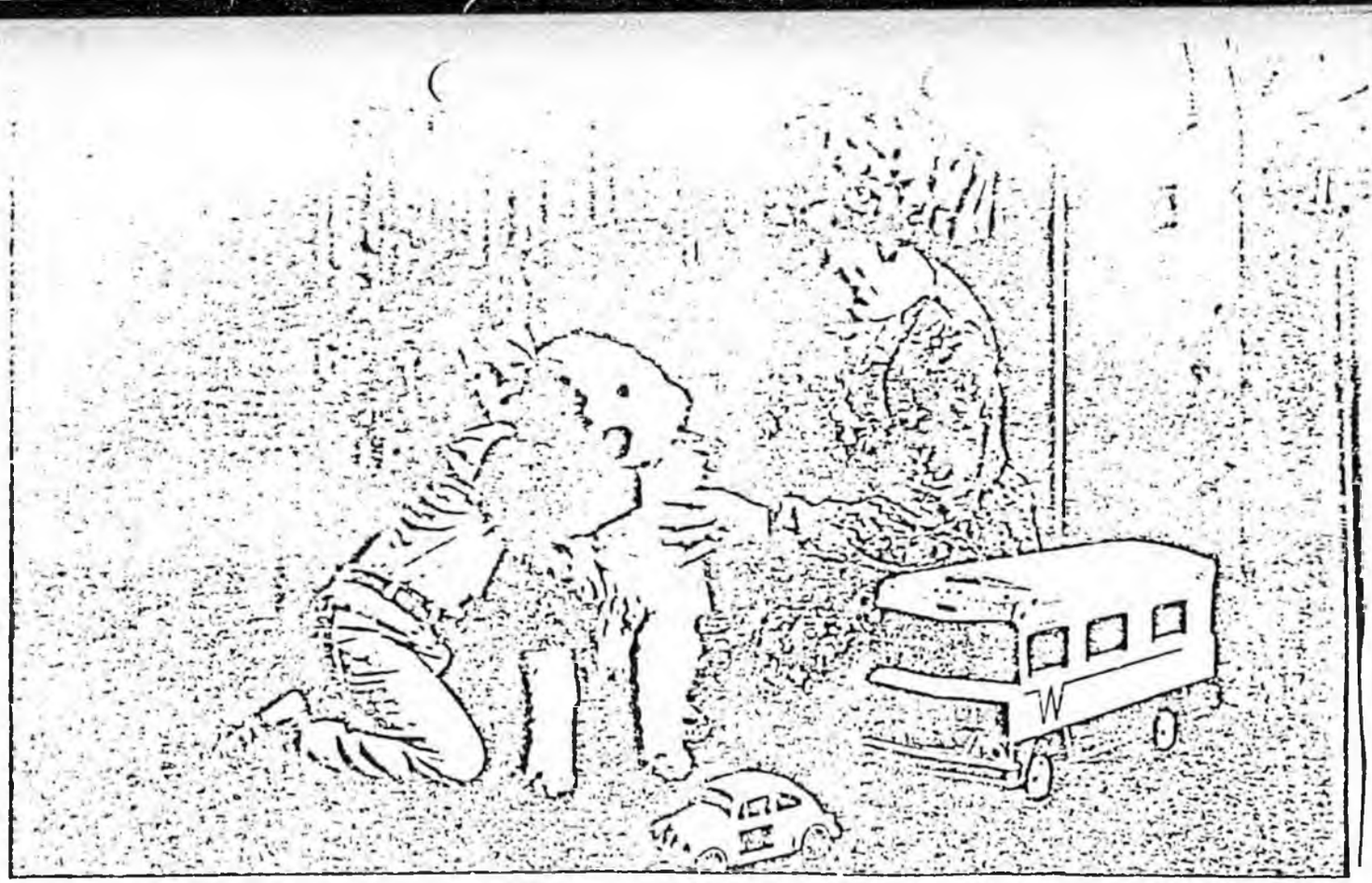
That prediction may prove true: Frank is appealing his death sentence, claiming that the crime was not premeditated and that the state used inadmissible evidence. Lawyers for both sides agree that a final resolution of the case may take years. Judge McMillan's baleful view of the judicial process produced at least one positive effect—it motivated Amy Sue's grandmother, Patti Linebaugh, to try to make sure that future Theodore Franks would not be dealt with lightly. "I couldn't believe that the judge who put him away, even in this state, even though we had capital punishment, was saying that Theodore Frank would be out on the streets in 15 years," says Linebaugh, 47. "I felt that the families of Frank's prior victims had a responsibility. If they had only fought to create some pressure on law enforcement, this man wouldn't have been free. Maybe Amy Sue would still be alive."

Along with Irv Praeger, who prosecuted the Frank case, and another friend, Linebaugh founded SLAM—Society's League Against Molestation. "What began as a murder investigation became an investigation of our system of dealing with child molesters," says

CONTINUED



"First we were victims of Theodore Frank," says Patti Linebaugh of her granddaughter's killer. "Then we were victims of the court system."



Playing with grandson Michael, 3, and family pet Nikki, Patti observes, "I look at the little ones and know I have to do something."

Praeger. Statistics show that when a molester is arrested, he has probably attacked some 19 other children. "Only about 5 percent of the attacks are reported," according to Praeger, "and, of the molesters convicted, less than 10 percent went to prison."

Shaken by her grief and those figures, Linebaugh began a petition drive that garnered 140,000 signatures and pressured California legislators into adopting tough new anti-molester laws, which took effect last January. Among the provisions: mandatory long-term prison sentences without hope of probation for virtually all serious or repeat offenders; an extension of the statute of limitations to six years in molestation cases, since victims are often unable to discuss the assault for years afterward; and minimum terms of three years for each count, plus five additional years for each previous conviction of child molestation and 20 years to life for a third offense. "Who's responsible for the death of Amy Sue—Frank?" Linebaugh asks. "Our judicial system. I came to realize that laws could be passed to prevent men like Theodore Frank from getting out on the streets again."

Indeed, Theodore Frank is an example of modern penology and jurisprudence gone gravely awry. Described by one of his former doctors as "a chronic, habitual child molester," Frank was first arrested in 1958. He subsequently served several terms in prisons and hospitals, emerging each time to commit new assaults, and treating his victims with escalating violence and cruelty. Just six weeks before he killed Amy Sue, Frank had been released from the Atascadero State Hospital, a mental hospital for criminals, after serving more than three years of a four-year sentence for kidnapping and molesting a 4-year-old Bakersfield girl. Frank, who, according to Praeger, took a correspondence course in psychology while in prison, won his release from Atascadero by masquerading as a reformed man. He hoodwinked the hospital psychiatrists so thoroughly that they petitioned Illinois authorities to drop child-molesting charges pending against him there. Frank admitted the deception before being sentenced for assaulting the two preteen girls. "When convenient," he wrote, "I have used my extensive knowledge of psychotherapy as an ongoing game of manipulation."

One of the country's leading authorities on child molestation believes that pedophiles like Frank are not treatable. "There's no percentage for the molester to give it up," explains Dr. Roland Summit, an assistant professor of clinical psychiatry at the University of California at Los Angeles. "He doesn't want to stop or come to the surface or be identified. He doesn't want to close off his option." While researchers have not found a single cause of pedophilia, says Summit, studies indicate that the childhood victim of molestation may become a molester in adult life.

Amy Sue's relatives are trying to put themselves back together. Her mother, Sherry, has married a noncommissioned officer in the U.S. Navy, a man whose strength brought her through the trauma; they now live in an Eastern city where Sherry recently gave birth to twins. Patti Linebaugh likewise perseveres. "Every time I start to back off," she says, "I realize I can't live with myself if I don't create an awareness—make other people understand what must be done."

There are now 44 chapters of SLAM in California alone, and 12 in nine other states. Linebaugh is frequently asked to address interested groups across the country. "I've never done anything like this," she says of herself. "I've just been a mom and a wife and that was it. Yet from somewhere I've had the strength to fulfill a promise to a little baby."

DORIS KLEIN BACON

STRIKE AMDS FROM REP. BARNE

SECTIONAL ANALYSIS OF CS HB 375 (Judiciary)

SECTION 1: Amends AS 12.62.030(a) to authorize the Governor's Commission on the Administration of Justice to release information in accordance with Section 2 below.

SECTION 2: Adds Section 12.62.035 to the Statutes, which would allow employers to learn of any convictions for sex crimes or contributing to the delinquency of minors on the part of employees or prospective employees (including volunteers) who would supervise minors.

Subsections make providing of fingerprints optional; provide disclaimer of State liability for negligence; provide for regulations to implement provisions of the bill; and define terms used therein.

The attached articles exemplify the need for this legislation.

FJW/rv

Daily News-Miner, Fairbanks, Alaska, Tuesday, May 10, 1983

Police say teacher molested 70

RENO, Nev. (AP)—Ninety parents trying to unravel a nightmare jammed into an auditorium to discuss the day care center they trusted—and the teacher who police say may have molested as many as 70 boys and girls.

"No one, including myself, had any comprehension of the magnitude of this case when we began," Reno Police Detective Lucky Burch said at the meeting for parents. "It's very, very sad."

The parents gathered Monday night to talk about the Papoose Palace Academy, a day care center in Reno with a mostly middle-class clientele.

Police say the abused children were as young as 2½ and as old as 12 and divided equally between boys and girls.

They allege that Stephen Boatwright, 35, described as a warm and caring teacher, well-liked by the children and their parents, was in reality a cunning child molester who sexually abused the children almost from the time the center opened in June 1979.

Boatwright was arrested April 28 for investigation of sexual assault following what police said was a three-month investigation. Unable to post $200,000 bail, he was put in the Reno City Jail.

On Monday the district attorney's office filed four counts of sexual assault against Boatwright. On Tuesday he was brought briefly into Reno Justice Court, where he waived his right to a preliminary hearing.

ADN TIMES 5 MAR 83

Suspects arrested in sex cases

by Jeff Berliner
and Carl Gidlund
Times Writers

A man who allegedly used state agencies to procure juveniles for sex has been jailed.

Police and prosecutors say he gave the youths alcohol and drugs then sexually molested them. The man acted under the guise of helping youths he had obtained through legitimate channels, police said.

Held on $40,000 bail is Hensley L. "Pat" Patterson, 33. He is charged on two felony counts of sexual abuse of a minor, one felony count of contributing to the delinquency of a minor and five misdemeanor charges of contributing to the delinquency of a minor.

Patterson reportedly got access to the youths — all boys age 14 to 17 — through his work under the authority of the state juvenile probation office and as a state-approved foster parent.

"Patterson used state agencies as a way of maintaining contact with the boys," said Paul Olson, an assistant district attorney here who specializes in prosecuting sex crimes.

Police and prosecutors said they stopped another case of an adult man sexually molesting

See Arrest, page A-5

Arrest

(Continued from page A-1)

male juveniles in a second unrelated arrest Friday.

In that case, Robert Elstad, 41, was jailed on $35,000 bail and charged with six counts of sexual abuse of a minor and lewd and lascivious acts toward children.

Both men were arraigned Friday. The cases were put together by the sex crimes units of the Anchorage Police Department and the district attorney's office.

Authorities say that in addition to using state agencies to get custody of the youths, Patterson had other ways of coming into seemingly legitimate contact with young boys.

Olson said Patterson was director of the Cook Inlet Native Association Youth Center and also worked at the Fairview Community Center. In both jobs he came into contact with boys about the age of those he is accused of molesting.

A foster parent from 1973 to 1975 and again from 1977 to 1979, Patterson was given legal custody of juveniles and was an officially approved guardian, Olson said.

Patterson was a so-called "pass partner" for youths held at McLaughlin Youth Center and for youngsters on probation, Olson said, adding that the state "juvenile probation office allowed him to be with kids on probation."

Juvenile probation officers have the power to authorize approved individuals, such as Patterson, to take the youths out of an institutional setting or out of other custodial situations and act as the guardian of the youths while they are assigned to him.

Officials at McLaughlin and in the Department of Health and Social Services could not be reached for comment Friday. However, Anchorage police Lt. George Novaky said the department's investigation began last December when a youth in custody at McLaughlin told investigators of his involvement with Patterson. The youngster provided information that led to the other boys, he said.

Although the criminal complaint against Patterson lists only five victims, Olson said it is "generally thought that more kids are involved."

The felony contributing-to-the-delinquency-of-a-minor charge alleges that Patterson induced a juvenile to commit a sex act with him. Five misdemeanor contributing-to-the-delinquency-of-a-minor charges state that Patterson supplied drugs and alcohol to the youngsters. The incidents are said to have occurred from 1979 to 1982 at Patterson's home.

In a similar case, police recently charged that the assistant director of the Boys Club of Alaska was using his job to come into contact with boys he allegedly molested sexually.

Venson Brown still faces trial on those charges. And although he has pleaded not guilty, court documents state that Brown has confessed "in substantial part" to the allegations on tape. He goes to trial next month.

Elstad, a businessman who operates a contracting firm, allegedly molested boys age 12 to 15 in incidents that occurred from 1980 through 1982. He lured the boys into his home at 6525 McGill St. without force and then sexually assaulted them, police reported.

Lt. Novaky said the department's investigation of Elstad began last October while officers were pursuing another case — not related to sexual conduct — that involved him. Investigators pursued leads that lead them to seven other alleged victims, several of whom were in McGlaughlin, he said.

Patterson and Elstad face grand jury indictments and will be returned to court next week.

PETITION

WE, THE UNDERSIGNED ALASKAN VOTERS AND CITIZENS PETITION OUR LEGISLATORS TO ENACT LEGISLATION WHICH WOULD CHANGE SEXUAL ABUSE OF A MINOR FROM A CLASS C FELONY TO A CLASS B FELONY. AS A CLASS C FELONY, IT DOESN'T REQUIRE STIFF ENOUGH PENALTIES.

WE URGE THAT YOU TOUGHEN THE LAWS ON ENTICEMENT. THERE IS PRESENTLY NO LAW AGAINST SOLICITING A MINOR FOR SEXUAL FAVORS (AS LONG AS THERE IS NO BODY CONTACT), BE IT FOR PERSONAL OR COMMERCIAL INTENT. WE REQUEST THAT YOU PASS A STRONG LAW AGAINST THE SOLICITING OF MINORS FOR SEXUAL FAVORS BY ADULTS.

WE ALSO ASK THAT YOU PASS A BILL THAT AN EMPLOYER UPON REQUEST BE PROVIDED WITH THE CRIMINAL RECORDS OF ANYONE APPLYING FOR A POSITION WHERE THEY WOULD HAVE SUPERVISION OVER MINORS.

WE PETITION THAT OUR JUDGES BE DISCIPLINED WHEN THEY HAND DOWN UNREASONABLY LIGHT OR SUSPENDED SENTENCES IN CRIMINAL CASES WITHOUT JUSTIFICATION. WE BELIEVE ALASKAN JUDGES DEVIATE TOO MUCH FROM THE ALASKA CRIMINAL CODE.

WE URGENTLY PLEAD FOR PROMPT ACTION ON THESE PETITIONS BECAUSE CRIMES AGAINST OUR CHILDREN ARE OF EPIDEMIC PROPORTIONS AND CRIMINALS ARE GOING UNPUNISHED.

PRINT NAME	SIGNATURE	ADDRESS	DATE
Tony N Lucas	Tony N Lucas	2561 Monte [illegible] Cir Anc AK 99502	18 Feb 83
George P Dodge III	[illegible]	POB 17309 [illegible] 99507	18 Feb 83
[illegible]	[illegible]	5545 E. Debarr #7	2-18-83
Bradley E Porter	Bradley E Porter	PO Box 4-2000 99509	2-18-83
Peter Wawrzyniak	Peter Wawrzyniak	4260 Spenard Rd #21	2-18-83
Geoff Brewington	[illegible]	P.O. Box 4-1654 Anch AK	18 FEB 83
Mark Reys	Mark R Reys	4620 REKA B-20 Anch 99504	18-FEB-83
Richard Shoemaker	Richard Shoemaker	2401 Foxhall Anch AK 99502	18-Feb-83
Rae Ann Lappo	Rae Ann Lappo	SR PT Box 113-A [illegible] AK 99577	18 Feb 83
[illegible]	[illegible]	[illegible]	18 Feb 83
Ruth Moore	Ruth M Moore	255 Latouche #1019	18 Feb 83
[illegible]	[illegible]	341 [illegible]	2-18-83
Hollie Van Horn	Hollie Van Horn	2106 Lincoln	2-18-83
Fred Metcalf	Fred Metcalf	[illegible] Anchorage	2-18-83
Janet Nosek	Janet Nosek	1226 'P' St Anch	2-18-83

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: HB 375
Title: "Act relating to access. . ."
Sponsor: Rep. Barnes
Requestor: House Judiciary

II. FISCAL DETAIL

Agency Affected: Public Safety
Program Category Affected: Crime & ID
BRU, Program or Subprogram(s) Affected: Alaska State Troopers

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

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

IV. ANALYSIS: Attach a separate page for any Analysis No fiscal impact anticipated

Prepared By: Jos Mapranath Phone: 465-4336
Division: Administrative Services Date: 5-4-83

Approved by Commissioner: [signature] Date: 5/4/83
Department: Public Safety

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

3/9

HB

444

MEMORANDUM (Brief Communications) **State of Alaska**

TO:	Name: Senator Ray	Dept./Div./Sect.: Chairman, Senate Judiciary	Mail Stop:
FROM:	Name: Norman C. Gorsuch	Dept./Div./Sect.: Attorney General, Dept. of Law	Telephone: 3600
SUBJ.:	House Bill 444	Date: May 30, 1984	

The Department of Law is preparing technical amendments to this bill to meld it in to the existing criminal code, therefore would you please hold this bill until we have prepared these amendments.

02-001C(12/80)

HB

446

COMMITTEE REPORT

SENATE

FURTHER:

2/14/84

Date April 30, 1984

Mr. President

The Committee on [illegible] considered [illegible]

duty to stop at the direction of a peace officer

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

[ ] do pass

[ ] do pass with attached amendment(s)

[ ] replace with/or adopt CS for _____
[ ] new title
[ ] same title and recommends _____

[ ] and attached a "LETTER OF INTENT" [ ] NEW FISCAL NOTE

[ ] reports it back without recommendation

[ ] recommends referral to _____ Committee

MEMBERS SIGNING
DO PASS

Joe Josephson

MEMBERS HAVING
OTHER RECOMMENDATIONS

_____
Chairman

_____
Chairman recommendation

TO: Senator Bill Ray

FROM: Paula d. Scavera

DATE: April 30, 1984

RE: CSSS HB 446 (Judiciary)

This bill clarifies that a person driving or operating a vehicle or motor vehicle, an aircraft or watercraft shall stop at the direction of a peace officer.

SECTION 1

Adds language to the the Motor Vehicle Code that a person driving or operating a vehicle or motor vehicle, or operating an aircraft or watercraft shall stop if reguested or signalled to do so for a lawful purpose by a peace officer.

The peace officer must be driving or operating a vehicle or motor vehicle, or operating an aircraft or watercraft with markings or lighting and audible signals of law enforcement vehicle. Or the peace officer must be wearing a uniform or displaying a badge.

The crime is a Class B misdemeanor

There is no effective date clause.

The fiscal note is zero.

Alaska State Legislature

COMMITTEES
Vice Chairman — Judiciary
Vice Chairman — Legislative Regulations Review
Resources
Finance Sub Committee on Labor

House of Representatives

John J. Liska

While in Session
Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-3733

Home - District 15
Star Route Box 421
Eagle River, Alaska 99577
(907) 688-2526

MARCH 12TH, 1984

POSITION PAPER

CSSSHB 446, "AN ACT RELATING TO THE DUTY TO STOP AT THE DIRECTION OF A PEACE OFFICER."

"STOPPING FOR A PEACE OFFICER"

THE PURPOSE OF THIS LEGISLATION IS TO CLOSE A LOOPHOLE WHICH IS PRESENTLY EXISTING IN THE STATUTES.

IN YOUR PACKET FROM HOUSE RESEARCH AGENCY, PAGE ONE, PARAGRAPH #3, IT STATES, "WHEN APPROACHED BY AN AUTHORIZED EMERGENCY VEHICLE OR A POLICE VEHICLE YOU SHALL YIELD THE RIGHT OF WAY BY SLOWING, STOPPING, OR MOVING TO RIGHT HAND LANE." ALSO SEE PAGE ONE OF THE LETTER FROM DEPT. OF PUBLIC SAFETY, PARAGRAPH 3, AND I QUOTE, "THERE ARE NO REQUIREMENTS FOR A PERSON, UNDER ANY CIRCUMSTANCES, TO STOP AT THE REQUEST OF, OR LAWFUL COMMAND OF A PEACE OFFICER".

OUR BILL PUTS INTO THE STATUTES EXACTLY WHAT YOU ARE TO DO WHEN APPROACHED BY A PEACE OFFICER.

WE HAVE WORKED CLOSELY WITH COMMISSIONER SUNDBERG'S OFFICE ON THIS LEGISLATION AND YOU WILL FIND IN YOUR PACKET INFORMATION FROM DEPT. OF PUBLIC SAFETY SHOWING THE NEED FOR THIS LEGISLATION.

A. REQUEST FROM COMMISSIONER SUNDBERG FOR THIS STATUTE.

B. CASE IN KENAI - SOLDOTNA WHERE JUDGE ANDERSON DECIDED THERE WAS NO EXISTING LAW REQUIRING AN INDIVIDUAL TO STOP, AND THEREFORE THE CASE WAS DISMISSED.

C. STATEMENT OF SUPPORT BY COMMISSIONER SUNDBERG.

D. FISCAL NOTE FROM PUBLIC SAFETY.

E. NEWSPAPER CLIPPING FROM THE FAIRBANKS DAILEY MINER 1-23-84.

IT IS THE FEELING OF MYSELF AS WELL AS COMMISSIONER SUNDBERG'S OFFICE THAT THIS IS A LOOPHOLE WHICH NEEDS TO BE TAKEN CARE OF AND THIS BILL IS DOING JUST THAT.

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

September 15, 1983

MEMORANDUM

TO: Representative John Liska

FROM: Deb Pomeroy
Administrative Assistant

RE: Stopping for a Police Officer
Research Request 83-199

Linda Edgeworth, of your staff, asked whether or not there is a statute requiring a motorist to stop when flagged down by a police officer. She also asked for information regarding a case in which a defendent was charged with failure to stop for a police officer. The defendant was acquitted because no statute set out this requirement. I spoke with the Gretchen Derr in the Commissioner's Office of the Department of Public Safety, who provided the attached correspondence pertaining to this issue.

The case the defendant won occurred prior to April 28, in Soldotna. A motorist had failed to stop when the police officer turned on the flashing lights and siren, and was subsequently charged with violating 13 AAC 02.140. I spoke with the District Attorney's Office in Kenai and requested the judge's decision as well as any pertinent documents. These will be forwarded to you as soon as we receive them.

The Alaska Adminstrative Code 13 AAC 02.140 (attached) states that "upon the approach of an authorized emergency vehicle...or a police vehicle making use of either a visual or an audible signal, the driver of every vehicle...shall yield the right-of-way by slowing, stopping, changing lanes or pulling to the right-hand edge of the roadway clear of an intersection to await passage of the emergency vehicle" (emphasis added). It appears that 13 AAC 02.140 pertains mostly to emergency situations.

Judge Anderson of Anchorage, who heard the case, ruled that the State had "made a half hearted attempt" in writing the regulation when it defined what a motorist must do when approached by a police vehicle with visual lights in a non-emergency situation. He went on to state that the police officer was attempting to stop a suspected violator when there was no existing emergency, and that the violator was therefore not required to stop.

A September 3, 1982 memorandum from Assistant Attorney General Balfe to the Kenai Police Chief concerning a similar incident states that as 13 AAC 02.140 is now written, any one of the required actions listed would comply with the regulation.

The Department of Public Safety is currently looking into this issue. According to Ms. Derr, revisions to the administrative code and possible statutory changes which would rectify this problem are being considered at this time. No written draft of the revisions is available. I have requested a copy of any proposal when it is completed, and will forward it to you.

I hope this information is useful to you. If you want more information, please call.

DP

Attachments

STATE OF ALASKA

DEPARTMENT OF PUBLIC SAFETY

OFFICE OF THE COMMISSIONER

BILL SHEFFIELD, GOVERNOR

POUCH N
JUNEAU, ALASKA 99811
PHONE: 465-4322

November 4, 1983

Ms. Mary Whitman
Administrative Assistant
Legislative Affairs Agency
Pouch V
Juneau, AK 99811

Dear Ms. Whitman:

This is in reference to your request related to input from this department on HB 446, "An act relating to stopping a motor vehicle at the direction of a peace officer."

I have enclosed some statutes from other states, and the I.A.C.P. model "Uniform Vehicle Code" recommendation on the subject. The statutes sources were from the states of California, Oregon, and Washington. As can be seen, there are a variety of approaches, but all with the same theme.

As for this State, as reflected in a previous internal memorandum of this department, of which you have a copy, there are no requirements for a person, under any circumstances, to stop at the request of, or lawful command of a peace officer except when he is actually regulating or directing traffic (AS 28.35.280). Nor do any administrative code provisions require a person, under any circumstances, to stop as the result of a lawful order of a peace officer (13 AAC 02.140 and 13 AAC 02.195).

The department's desire, and I am sure you would find it the entire law enforcement community's desire, is to develop an all encompassing obedience statute covering a person, vehicle, boat, or aircraft. Whether this can be achieved is another matter.

House Bill 446, as it is now written, meets a portion of law enforcement needs, but may be somewhat vague and broad as it relates to "law enforcement vehicle."

If not being presumptive, and keeping in mind that the author is not trained in the legalized framing of statutes, the following is, at least, a draft revision of HB 446 for

consideration that would meet the law enforcement needs. The draft is not in proper form.

Sincerely,

ROBERT J. SUNDBERG
COMMISSIONER

BY: Inspector Frank N. Gorham
Assistant to the Commissioner

cc: Emil Notti
Legislative Assistant
to the Governor

Norman Gorsuch
Attorney General
Department of Law

Col. Michael Kolivosky, Director
Division of Alaska State Troopers
Department of Public Safety

MEMORANDUM State of Alaska

TO: Joseph Balfe
Assistant Attorney General
Department of Public Safety

DATE: May 12, 1983

MAY 16 1983

FILE NO:

TELEPHONE NO: 465-4322

FROM: Lt. Col. James D. Vaden
Office of the Commissioner
Department of Public Safety

SUBJECT: Failure to Stop

Please draft a change in our regulations requiring an individual to stop when lawfully directed to do so by a peace officer.

Return the draft to me and I will begin the procedures necessary to change the traffic regulations.

Since this problem could involve situations not involving a vehicle, we should also propose changes in the statutes. That recommendation should be held until the Administration requests proposed changes through legislation.

Attachments: a/s

cc: Robert J. Sundberg
Commissioner
Department of Public Safety

5/13/83
Rep. John Lisle —
RE: our conversation on 5-11-83 —
we will proceed as outlined above.
Thank you.
Robert J. Sundberg
Comm.

02-001A (Rev. 10/79)

Soldotna Police Department

P.O. Box 2499
Soldotna - Alaska 99669

April 28, 1983

Duane Udland
Chief of Police

Commissioner Robert Sundberg
Department of Public Safety
Pouch N
Juneau, AK 99811

Dear Commissioner Sundberg:

I am requesting that your staff review 13 AAC02.140 (a) for possible changes. Recently Soldotna had a case ruled on by Judge Anderson from Anchorage. The judge ruled that the State had "made a half hearted attempt" in writing the regulation when it defined what a motorist must do when approached by a police vehicle with visual lights on in a non-emergency situation.

The judge went on to say that in the case of Soldotna where the police officer was attempting to stop a suspected violator there was no existing emergency and the suspected violator was not required to stop. The judge then dismissed the citation that had been issued under the authority of 13 AAC02.140.

I am including in this letter a copy of a similar request made by Chief Ross of the Kenai Police Department. In the case of Kenai our local judge also dismissed a citation because the way the regulation is worded. It seems there is concern from more than one court about this regulation.

I have one other concern about the rules of the road contained in 13 AAC. Presently there is no regulation titled "Excessive Acceleration" or some other similar language. A problem comes up frequently when you have a motorist who spins his tires intentionally under heavy acceleration.

The only possible citation that can be issued in this situation is negligent driving. Our court has consistently ruled that absent other factors such as fishtailing, loss of control, etc. the elements of negligent driving are not satisfied.

It would seem to me that a new regulation could be written to cover this type of driving. This type of regulation would be most helpful in curtailing this sort of driving.

Thank you for your time and consideration.

Sincerely,

Duane D. Udland

Duane Udland
Chief of Police

mb

4

MEMORANDUM State of Alaska

TO: Robert J. Sundberg
Commissioner
Department of Public Safety

DATE: May 3, 1983

FILE NO:

TELEPHONE NO: 465-4322

FROM: Inspector Frank M. Gorham
Assistant to the Commissioner
Department of Public Safety

SUBJECT: Chief Udland Letter
re: Failure to Stop

As requested, research was done on the requirements, or more, the lack of requirements for a person to stop when signaled to do so by a police officer.

I could find but one area of the State Statutes that requires a person (driver of a vehicle) to obey the signals of an officer. Even at that, it only relates to the condition of directing traffic. See attached AS 28.35.180.

The 13 AAC 2.1[illegible] does not directly require a vehicle to stop but makes it an option when an emergency vehicle of any type is approaching. Nor does the companion, 13 AAC 2.195, related to pedestrians.

Also attached is a proposed addition to either the Administrative Code or State Statutes that should serve the purpose. Not being a legal beagle, I am not sure how many holes it has in it.

Enclosures: a/s

DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER - SSHB446

Support with Amendment

January 16, 1984

SSHB446 - "An Act relating to the duty to stop at the direction of a peace officer.

This legislation deals with the public's responsibility to follow the directions of peace officers in emergency situations. Some confusion has existed on this subject on the part of the public due to the inconcise wording of present regulations (13.AAC.02.140). This proposed legislation clarifies the duty of the public without infringing upon their rights.

The wording in Sec. 28.35.184 requires that a person guilty of flight from a police officer is guilty of a class C felony. This is felt to be too severe a penalty and we request that it be amended to a class B misdemeanor. The original wording would result in many individuals having felony records that now only face misdemeanor violations. Additionally, the numerous violations of the section may place an unnecessarily heavy burden upon the Criminal Justice System.

Robert J. Sundberg
Commissioner

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: 01/16/84

REQUEST
Bill/Resolution No.: SSHB446
Title: "...stop at the direction of a Peace Officer
Sponsor: Rep. Liska & Syzmanski
Requestor: House Judiciary
Date of Request: 1-16-84

FISCAL DETAIL
Agency Affected: Public Safety
Program Category Affected: Administration of Justice
BRU, Program or Subprogram(s) Affected: Alaska State Troopers

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

No Fiscal Impact.

Prepared By: Francis C. Allan mck F.C.A. Phone: 269-5691
Division: Alaska State Troopers Date: 01/16/84

Approved by Commissioner: Robert J. Sundberg RJS. Date: 1-19-84
Agency: Public Safety

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

12/1/83

Daily News-Miner, Fairbanks, Alaska, Monday, January 23, 1984

Officials want to fill little traffic loophole

By Tim Bradner
News-Miner Bureau

JUNEAU—In theory, it's no crime to ignore the flashing red lights of a state trooper flagging you down after a traffic violation.

But like many theories, putting it into practice may be another question.

The House Judiciary Committee was told Friday that there is no state law requiring drivers to stop when a police officer in a car turns on his emergency flashers.

Committee members began working to close the loophole by considering a bill filed by Rep. John Liska, R-Eagle River, and Rep. Mike Szymanski, D-Anchorage.

Frank Gorham, an assistant to the commissioner of Public Safety, told the committee two cases on the Kenai Penninsula have been thrown out of court because there's no law requiring drivers to stop.

The bill offered by Liska and Szymanski would make it a misdemeanor to ignore a police officer's signal to stop.

Current law requires drivers to stop only at the direction of a traffic officer.

When an "emergency vehicle" like an ambulance or fire truck approaches from behind, drivers are required to yield by slowing down or turning off onto a side street. Stopping is just one of the options.

Legislators expressed concern that news of the loophole would prompt motorists to ignore signals from law enforcement officers. Failure to pull off in most cases could not be defined as resisting arrest, said assistant Attorney General Gayle Horetski.

However, it's not too smart, Horetski said.

To elude a police officer, a driver would most likely break a law that is on the books, such as excessive speed or reckless driving.

If a driver bashed the car of a police officer attempting to force him to stop, or crashed through a roadblock, he would add to the original offense for which he was being stopped, Horetski said.

HB

455

COMMITTEE REPORT

SENATE

FURTHER:

Date _____

Mr. President

The Committee on _____ considered _____

_____

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

[ ] do pass

[ ] do pass with attached amendment(s)

[ ] replace with/or adopt CS for _____
[ ] new title
[ ] same title and recommends _____

[ ] and attached a "LETTER OF INTENT" [ ] NEW FISCAL NOTE

[ ] reports it back without recommendation

[ ] recommends referral to _____ Committee

MEMBERS SIGNING
DO PASS

_____

_____

_____

_____

_____

_____

_____

_____

MEMBERS HAVING
OTHER RECOMMENDATIONS

_____

_____

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_____

_____

_____
Chairman

_____
Chairman recommendation

-FILE-

ALASKA STATE LEGISLATURE - SENATE

SENATOR RICHARD I. ELIASON

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

P.O. BOX 143
SITKA, ALASKA 99835

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4916

MEMORANDUM

TO: Senator Bill Ray, Chair
Senate Judiciary Committee

FROM: Senator Dick Eliason

DATE: May 14, 1984

RE: HB 455

The purpose of HB 455 is to provide a mechanism to settle Native Allotment Claims. When the Commissioner of Natural Resources makes a determination that land or interest in land was wrongfully or erroneously conveyed to the state by the federal government, the commissioner may quitclaim land or an interest in land to the federal government. Currently, the only way to return lands with Native claims on them to the federal government is through the courts.

On April 24, 1984, the Senate favorably considered the language embodied in HB 455 when SB 375, "An Act relating to land disposal and management", passed the Senate 16 to 0. Currently, SB 375 is in House Finance and I am hopeful that this legislation will pass both houses this session. However, in the event SB 375 does not make it this year, it is important that the Commissioner of the Department of Natural Resources be granted authority to "quitclaim" native allotment claims.

I strongly recommend passage of HB 455 to ensure that native allotment claims are settled as expediously as possible.

From Sen. Ferguson
2-8-84

In 1979 a federal court found that the federal government transferred land to the state which was eligible for selection under the 1906 Native Allotment Act. That act granted up to 160 acres to Native Alaskans who used the land for at least five years. The act was extinguished with the passage of the Native Claims Settlement Act but claims that were pending at that time were still eligible for the land grant.

HB 455 would provide a means to return valid allotment lands improperly transferred to the state by the federal government to the U.S. Department of the Interior.

The state will review the disputed land and return to the federal government lands with valid allotment claims. The state will then re-select other federal lands to replace the land given back to the federal government for allotments.

In instances where the state has already turned disputed tracts over to municipalities or other parties, arrangements would be made by the state to negotiate settlements. The state would ensure that parties would receive equal or better parcels of land and be compensated for any improvements on the land. In many cases, though, there is no third party interest and the transfer could be easily accomplished.

Allotment claims that will benefit from this legislation stretch from Barrow to Ketchikan.

11-30-83
Sheila - Elicson's office
incorporate into SB 222 or new leg.
~~she has more back up~~

BILL SHEFFIELD, GOVERNOR

1031 W. FOURTH AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-3550

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL

September 15, 1983

Ron Swanson, Head
Retained Lands Unit
Division of Land and Water Management
Department of Natural Resources
Pouch 7-005
Anchorage, AK 99510

Dear Ron:

Enclosed is a draft bill giving DNR the authority to quitclaim land back to the federal government. The proposed bill is designed to resolve two types of problems currently troubling the state: (1) the need to correct errors made in conveyances; and (2) the desire to settle native allotment claims without litigation. The bill would also allow DNR to correct other similar kinds of title defects that have arisen or may arise. I anticipate that Sec. 2 of the bill would be codified as one of the director's discretionary powers under AS 38.05.035(b).

The proposed language requires the director to determine that the land to be quitclaimed was "wrongfully or erroneously conveyed to the state." In the case of a native allotment claim, this would mean determining that native use or occupancy predated state selection and that the allotment is otherwise valid. In my view, however, a full-scale investigation or adjudication of the claim is not necessary. Rather, the director may rely on BLM's assertion that the allotment is valid or make his own determination based on the documentation in the file.

Sec. 3 of the proposed bill waives the state statutory requirement to reserve the mineral estate. The Solicitor's office agrees with our interpretation that §6(i) of the Statehood Act (the federal statute requiring the state to reserve the mineral estate) does not apply to conveyances to the federal government. The Solicitor's office has agreed to issue an opinion to that effect. Thus, the state would be able to quitclaim both the surface estate and the mineral estate to the federal government, and would not be charged with the acreage. When general grant lands are involved, the state thus will not lose its ability to recoup selection rights. (Unfortunately, however, the state still will not be able to recoup selection rights when mental health lands are involved, since the time for selecting mental health lands has run. This problem cannot be

solved with state legislation, and warrants further discussion as to possible solutions.)

I would like to point out several important subjects that this draft bill does not address, including requirements for giving public notice, for protecting third party rights, and for protecting the ability to recoup selection rights. These subjects were left out because I believe they are adequately covered in existing statutes.

The Alaska Constitution requires public notice before any "disposal" of state land is made. Quitclaims for the purpose of correcting mistakes, where the federal government will promptly reconvey, would not constitute disposals, and no notice would be required. However, quitclaims for the purpose of settling native allotment claims would be disposals, and the public notice provisions of AS 38.05.345 would apply. The determination of whether a "disposal" is involved must be made on a case-by-case basis.

The director is also required to make a finding that disposals will be in the best interests of the state. AS 38.05.035(a)(14). No such finding is necessary when DNR is simply correcting patents. However, a "best interests" finding must be made in quitclaims of native allotment lands. The existence of third party rights on lands to be quitclaimed should be considered in making the finding. Likewise, the ability to recoup selection rights for the quitclaimed acreage should be considered in determining whether the state's interests will best be served. Of course, however, the existence of third party rights or the inability to recoup selection rights does not necessarily preclude a best interests finding.

If you have any questions regarding the draft bill or my comments in this letter, please let me know.

Sincerely,

NORMAN C. GORSUCH
Attorney General

By: Barbara L. Malchick
Assistant Attorney General

MEMORANDUM State of Alaska

TO: Tom Hawkins
Division of Land and Water Management
DNR - Anchorage

DATE: August 4, 1983
FILE NO: 166-683-83
TELEPHONE NO: 276-3550

FROM: NORMAN C. GORSUCH
ATTORNEY GENERAL
By:
Barbara L. Malchick
Assistant Attorney General
AGO - Anchorage

SUBJECT: Settlement of Haines Aguilar allotment claims.

Gary Gustafson, formerly of the Division of Research and Development, requested our opinion regarding the State's authority to settle five allotment claims on state patented lands in the Haines area under the settlement provisions of Aguilar v. United States, 474 F. Supp. 840 (D. Alaska 1979). Under existing statutes, it is unclear whether the State has authority to implement the Aguilar settlement procedures. There are, however, other options available to the State. Of these options, it is our opinion that new legislation would be the best means of settling Aguilar allotment claims.

After a background discussion of Aguilar, three broad problem areas are discussed: (1) the State's authority to convey patented lands; (2) the State's ability to recoup selection rights; and (3) the existence of third-party rights on the patented lands. Although this memorandum focuses primarily on the five particular allotments in Haines, the issues discussed are applicable to the more than 220 other Aguilar allotments statewide.

I

BACKGROUND

Aguilar v. United States, 474 F. Supp. 840 (D. Alaska 1979), was a class action suit brought by Natives whose allotment applications were rejected because the land they applied for had previously been conveyed to the State. Although the Natives claim that they used and occupied the land before the State selected it, their applications were not filed until after the state selections were made. The court held that if the land was used and occupied by Natives, it should not have been conveyed to the State. The court further held that the federal government has a trust responsibility to recover for the Natives any land

wrongfully conveyed to the State. The State was not a party to the suit.

The plaintiffs and the federal government stipulated to procedures to implement the court's order. Under the procedures, BLM first conducts an informal adjudication to determine whether an allotment application is valid. If the application appears valid, BLM recommends that the U.S. Attorney bring suit against the State to cancel the State's patent. The stipulated procedures also provide for expedited settlement, whereby the State quitclaims all or part of its interest in the land to the federal government, which in turn grants the allotment to the Native applicant. The expedited procedures further provide that the acreage quitclaimed by the State shall be credited to the state entitlement under which the lands were originally conveyed.

Last year, the Commissioner's office indicated its intention to expedite settlement of some of the Aguilar claims in the Haines area. DNR divided the allotments into three categories: (1) those where the State is willing to quitclaim its entire interest; (2) those where the State is willing to quitclaim its interest with a reservation of an access easement; and (3) those where the State has an important interest and will insist upon full adjudication. One of the Haines area allotments that DNR proposes to quitclaim is from the first category, and four are from the second. The five parcels are on lands that were patented to the State under the Alaska Mental Health Enabling Act.

II

AUTHORITY

A. Existing Statutes.

Article VIII, Section 9 of the Alaska Constitution specifies that "the Legislature may provide for the sale or grant of state lands .... " Article VIII, Section 10 provides that "no disposals or leases of state lands, or interests therein, shall be made without prior public notice and other safeguards of the public interest as may be prescribed by law." In order to implement Section 10, the Legislature enacted the Alaska Land Act, AS 38.05. DNR, through the Commissioner and the Director of

the Division of Lands, is the agency charged with administering the Alaska Land Act. AS 38.05.005.

DNR, as any administrative agency, has only those powers that are expressly granted or necessarily implied by statute. See, e.g., Washington State Human Rights Commission v. Cheney School District No. 30, 641 P.2d 163, 167 (Wash. 1982). The Alaska Land Act does not explicitly authorize DNR to quitclaim its interest in the land described in the five allotment applications. Arguably, however, the proposed conveyances fall within the terms of the public and charitable use statute. Moreover, the authority to quitclaim may be a "necessarily implied" power of the Commissioner's or the Director's.

1. Disclaimer

DNR has suggested that it simply "disclaim" its interest to the allotment lands. Where DNR is convinced of the validity of an allotment application, a disclaimer would in effect merely correct the mistake made by the federal government in granting the land to the State in the first place.

There is no express authority that would allow DNR to disclaim. Moreover, the Alaska Land Act already provides a procedure for correcting mistakes made by the federal government. Under AS 38.05.035(b)(2), DNR is authorized to grant a preference right to a diligent applicant for the purchase of state land in order to correct past errors of a federal agency.1/ The very fact that the Legislature provided a method for dealing with federal mistakes may be a "positive inhibition" against correcting the mistakes except by compliance with the preference

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1/ This is not the procedure specified in Aguilar, and it is probably not a viable option for settling the Aguilar claims. Because the preference right would be given directly to the applicant rather than to the federal government, the property conveyed to the applicant would not have the trust status that allotments have. It is therefore questionable whether allotment applicants and the federal government would agree to this option.

right statutes. See Hughes v. City of Torrance, 175 P.2d 290 (Cal. App. 1946).

2. Public and Charitable Use Statute

The public and charitable use statute provides that the State may dispose of land to a government agency for less than the appraised value if it is "fair and proper and in the best interests of the public .... " AS 38.05.315(a). Quitclaiming the land at issue here may be in the best interests of the public since it would settle the allotment claims without time-consuming and expensive litigation. Moreover, quitclaiming the land to the federal government may be in the public interest since it would allow BLM to discharge its duty as trustee for the Native applicants.

In determining whether a disposal to a government agency is in the public interest, "due consideration [must be] given to the nature of the public services or function rendered by the agency .... " AS 38.05.315(a). The statute's focus on an agency's public function implies that the Legislature envisioned that the ultimate use of the land would be in the public interest. Likewise, the title of the statute implies that the land will be used for a public and charitable purpose. Here, the federal government would be conveying the land into private ownership, rather than using the land for the benefit of the public.

In determining whether there is a public interest, due consideration must also be given to "the terms of the grant under which the land was acquired by the state." AS 38.05.315(a). The land at issue here was acquired by the State under the Mental Health Enabling Act. Under the terms of the grant, mental health lands "shall be administered by the Territory of Alaska as a public trust and [the] proceeds and income [therefrom] shall first be applied to meet the necessary expenses of the mental health program of Alaska." Thus, a conveyance of these lands for less than their appraised value would be contrary to the terms of the grant under which they were acquired. However, a superior court judge in Fairbanks recently upheld a state statute which in

effect treats mental health lands as general grant lands.2/ Since the State is not obligated to administer general grant lands as a trust, this requirement may not be a problem.

In summary, it is unclear whether the proposed conveyances fall within the scope of the public and charitable use statute. For the protection of the State and the allotment applicants, we therefore do not recommend this option.

3. Implied Authority

The Director of the Division of Lands is authorized, with the consent of the Commissioner, to approve contracts for the sale, lease, or other disposal of available lands "when he makes a written finding that the interests of the State will be best served." AS 38.05.035(a)(14).3/ The Alaska Supreme Court has interpreted this statute as giving the Director broad discretion in deciding whether to approve a disposal. Moore v. State, 553 P.2d 8, 31 (Alaska 1976). It is possible that a court would construe the statute as a grant of authority sufficiently broad to encompass the proposed conveyances.

There are several problems with this approach, however. First, the Supreme Court interprets Article VIII, Section 10 of the Constitution as reflecting "the framers' recognition of the importance of our land resources and of the concomitant necessity for observance of legal safeguards in the disposal or leasing of

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2/ The court went on to hold that the State is obligated to reimburse the trust for the full value of any lands transferred from it. See Weiss v. State of Alaska, 4FA-83-2206 Civ., June 15, 1983. It is unknown at this time whether the State will appeal this decision.

3/ Although this responsibility falls on the Director, the Commissioner may assume the responsibility if she does so in a clear and explicit manner. Moore v. State, 553 P.2d 8, 37 (Alaska 1976).

state lands." Alyeska Ski Corporation v. Holdsworth, 426 P.2d 1006, 1011 (Alaska 1967). Thus, a court may be reluctant to find authority to dispose of land unless it is expressly delegated by statute.

Further, a court may not interpret the statute as an independent grant of authority. Rather, the statute may be procedural (requiring the Director to make a written "best interest" finding), and may only apply where the disposal is otherwise authorized by law. This reading would be consistent with AS 38.05.035(a)(6), which provides that the Director shall, "under the conditions and limitations imposed by law and the commissioner, issue deeds, leases or other conveyances disposing of available lands, resources, property or any interest in them."

Finally, even if subsection (a)(14) is read as a broad grant of authority, a decision to quitclaim the lands at issue may not best serve the interests of the State. As discussed above, the State's interest may be served in that the allotment claims would be settled without time-consuming and expensive litigation. However, the interests of the State would not be served in that the State would not receive anything in return for the conveyances. This is so because the State must reserve the mineral estate and thus could not be credited for the surface estate acreage conveyed (see Section III, A. below) and because the State is precluded from selecting additional mental health lands to replace the conveyed lands (see Section III, B. below).

B. Other Options.

1. New Legislation.

In our opinion, the best option available to the State is to draft new legislation specifically authorizing the proposed conveyances. Once the legislation is passed, the State would be authorized to quitclaim its interest in the lands pursuant to the stipulated procedures of Aguilar. The tremendous advantage to this option is that the legislation would apply to settlement of all of the more than 220 Aguilar claims across the State. It is likely that this new legislation would be supported by the allotment applicants and Alaska Legal Services Corporation, and would be popular in the Legislature. Under this option, however,

the State may lose its ability to recoup selection rights unless companion federal legislation is passed (see below).

2. Land Exchange.

Another option available to the State is to enter into a land exchange with the federal government. Under this option, the State would exchange the allotment lands for other lands in federal ownership. The land exchange statutes require that "exchanges shall be for the purpose of consolidating state land holdings, creating land ownership and use patterns which will permit more effective administration of the state public domain, facilitating the objectives of state programs, or other public purposes." AS 38.50.010. The general purpose of settling Native allotment claims would seem to fall within the "public purpose" language of the statute.

As discussed below, one advantage to this option is that the State would not lose its ability to recoup selection rights since it would be receiving specified lands in return for the allotment lands. The land exchange option does present procedural problems, however. It is time-consuming, since land must be identified, appraisals must be performed, public notice must be given, and public hearings must be held. Moreover, DNR has indicated that most of the remaining BLM lands in Alaska are undesirable. If the lands proposed for the exchange are of unequal value, the State would also need legislative approval before the exchange could take place. In addition, although the federal government is authorized to enter into such a land exchange (ANCSA § 22(f)), this is not the procedure specified in Aguilar. The Solicitor's office has indicated that BLM is unwilling to enter into a land exchange because of the time and expense involved.

3. Settlement of Litigation.

An additional option available to the State is to allow the federal government to proceed with the Aguilar procedures and

bring suit in federal court to cancel the State's patents.4/ The Attorney General would then have the authority to settle the litigation by agreeing to a court order cancelling the patents. Any such settlement, of course, must be done in good faith and free from fraud.

III

RECOUPMENT OF SELECTION RIGHTS

The Aguilar stipulated procedures provide that if the State quitclaims its interest, the acreage shall be credited to the state entitlement under which the lands were originally conveyed. This provision, however, may be unenforceable. First, the requirement that the State reserve the mineral estate may prevent the State from receiving credit for the quitclaimed acreage. Secondly, the five allotment claims involved here are on mental health lands and the time for selecting mental health lands has passed.

A. Mineral Estate.

Under AS 38.05.125, the State must reserve the mineral estate in conveyances of land made under the Alaska Land Act (AS 38.05). Where the State receives a mineral estate, DLI must charge the acreage against the State's acreage entitlement. Thus, DLI would not be able to credit the State for the surface estate acreage conveyed, regardless of the provisions of the Aguilar settlement. Accordingly, if the State conveys the allotment lands under the Alaska Land Act (for example, under the public and charitable use statute), the surface acreage will simply be lost.

The requirement to reserve the
be a problem under the three other option
legislation could specify that the State

4/ Indeed, the State may be forced into
DLI recently sent out the "90-day lette
Aguilar procedures for the five allotment

the mineral estate, along with the surface estate, to the federal government.5/ Likewise, in a land exchange, the State can exchange mineral rights to the extent authorized by applicable federal law (AS 38.50.050); section 22(f) of ANCSA authorizes the State to transfer the mineral estate in exchanges with the federal government. Finally, there would be no mineral estate problem under the settlement of litigation option since the

State's patent would be cancelled and the mineral estate would merely revert to the federal government.

B. Mental Health Lands.

The Aguilar procedures provide that the quitclaimed acreage shall be credited to the state entitlement under which the lands were originally conveyed. Under the terms of the Mental Health Enabling Act, however, the time for selecting mental health lands has expired. According to the Solicitor's office, BLM does not have the authority to extend the time for the State to select mental health lands. This was not considered at the time the Aguilar procedures were drafted.

Under any of the options other than a land exchange, the State would thus lose its ability to recoup its selection

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5/ This problem may not be so easily solved for other than mental health lands. The Alaska Constitution specifies that grants of state land must contain such reservations to the State of all resources as may be required by Congress or the State. In Section 6(i) of the Alaska Statehood Act, Congress required the State to reserve the mineral estate when disposing of general grant lands. Thus, if the State wished to quitclaim Aguilar lands that are general grant lands, federal legislation in addition to state legislation may be required. See State v. Lewis, 559 P.2d 630 (Alaska 1977). We note, however, that if the State does dispose of the mineral estate, Section 6(i) provides that the mineral estate will be forfeited to the federal government in an action brought by the U.S. Attorney. Since the federal government would be getting the mineral estate anyway, such an action would be meaningless.

rights and the acreage will simply be lost.6/ However, the fact that the time for selecting mental health lands has passed would not result in a loss of acreage if the State enters into a land exchange because the State would be receiving specified lands in return for the allotment lands.

The inability to recoup selection rights is not a problem, of course, if the State has selected more than its statutory entitlement of one million acres of mental health lands. While DNR is convinced that the State is in fact under-selected, BLM maintains that the State is over-selected. The actual situation will not be known for years.

IV

THIRD-PARTY RIGHTS

The State has created many types of third-party rights on its patented Aguilar lands, including mining claims, special use permits, rights-of-way, disposals of resources from the land, and disposal of the land itself. Because the title reports for the five allotment claims involved here indicate that a timber sale contract was the only third-party interest created, the other types of interests will not be discussed in this memorandum. These interests and the State's ability to protect them must, of course, be considered as the situations arise.

In 1979, the State entered into a contract with the Schnabel Lumber Company. The contract describes a large area of land near Haines and provides that Schnabel is entitled to cut 10.2 million board feet (mmbf) of timber per year from this land. The five parcels at issue here are included in the contract, as are many other Aguilar allotment claims. Under the terms of the contract, the State may reserve lands from cutting, but the State is still obligated to provide 10.2 mmbf for harvest.

6/ It is possible that federal legislation could be drafted allowing the State to select replacement mental health lands in this situation.

The Division of Forestry is currently developing a management plan for the area. This involves inventorying the land available for cutting to determine the annual allowable cut; i.e. the amount that would permit timber to be harvested on a sustained yield basis. Forestry is hopeful that the annual allowable cut will be greater than the 10.2 mmbf specified in the contract even if the Native allotment lands are considered unavailable for cutting. Forestry will not be able to determine the allowable cut until late summer or fall.

Shortly after the Schnabel timber contract was signed, a lawsuit was brought by Southeast Alaska Conservation Council (SEACC). The basis of the lawsuit was SEACC's assertion that the contract volume of 10.2 mmbf per year would violate the constitutional requirement that timber be harvested on a sustained yield basis. SEACC argued in part that Forestry's allowable cut calculation was incorrect because the amount of land available for cutting was actually much lower than the amount used by Forestry in making its calculation. The Alaska Supreme Court recently held that the allowable cut calculation was "reasonable". However, if the State conveys the allotment lands to the allotment applicants, thousands more acres may be unavailable for cutting. This could potentially re-open the SEACC lawsuit.

V

CONCLUSION

There are more than 220 known Aguilar claims statewide, affecting well over 25,000 acres of general grant, mental health, university, and school lands. There is currently no explicit authority for the State to settle the claims by quitclaiming its interest in the lands. However, colorable arguments can be made that the Commissioner has implied authority to quitclaim or that the proposed conveyances are within the scope of the public and charitable use statute. It is our recommendation that new legislation specifically authorizing the Commissioner to settle Aguilar claims be drafted and presented to the Legislature as soon as possible. Whatever option is chosen, the State's ability to protect third-party rights and its statutory acreage entitlements should be carefully considered.

HB

479

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

_____

_____

_____

_____

_____

_____

_____

_____

_____

MEMBERS HAVING
OTHER RECOMMENDATIONS:

_____

_____

_____

_____

_____

_____

_____

CHAIRMAN

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: 3/6/84

REQUEST
Bill/Resolution No.: CS for HB 479
Title: Bail Schedule

Sponsor: Haves & Liska
Requestor: 1/9/84
Date of Request:

FISCAL DETAIL
Agency Affected: Natural Resources
Program Category Affected: Div. of Parks

BRU, Program or Subprogram(s) Affected:
Park Management/Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Mike Lee
Phone: 264-2123
Division: Parks
Date: 1/26/84

Approved by Commissioner: Robert D Durnell Deputy
Date: 3/6/84
Agency: Department of Natural Resources

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

PARKS
12/1/83

Analysis of Fiscal Note for Bail Schedule legislation

Present System - Each person cited for a violation of a park regulation must go to court. If a Park Ranger cites an Anchorage person for a minor violation in Ninilchik, approximately ten days later the Ranger and the individual must attend the court session in Kenai. Both individuals spend at least one day in the Kenai court plus the cost of meals, lodging and transportation. These expenditures and inconveniences do not include the costs of a judge, court clerks, District Attorney and the correspondence necessary to document the case, which generally run $300-400 for each arraignment.

Proposed System - A bail schedule would establish a predetermined fee for violation of regulations or statues and the person would have the option of not contesting the citation and sending in the fee or challenge the violation and ask for a court appearance. It is anticipated that most people will elect not to challenge the citation and simply send in the fee. This would save money for the individual, the District Attorney's office, the courts and parks staff. The only cost we anticipate on this matter is for the printing of citation forms at an annual cost of $1000.00 to $2000.00. This is approximately what is spent on the existing citation program, so no real new costs should occurr. Because of the savings in costs for the state, the individual, and more efficient management of our Park Rangers, the Bail Schedule will be a cost-effective program.

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

No. 1

REQUEST
Bill/Resolution No.: (S)HB 479(Fin)
Title: "An act ... issuance of citations... within state parks."
Sponsor: Representative Hayes
Requestor:
Date of Request:

FISCAL DETAIL
Agency Affected: Public Safety
Program Category Affected: Administration of Justice
BRU, Program or Subprogram(s) Affected: Alaska State Troopers

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Francis C. Allan F.C.A. mck Phone: 269-5691
Division: Alaska State Troopers Date: 01/25/84

Approved by Commissioner: Robert J. Sundberg Date: 1-31-84
Agency: Public Safety

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

Justice
12/1/83

Analysis of Fiscal Note for Bail Schedule legislation

Present System - Each person cited for a violation of a park regulation must go to court. If a Park Ranger cites an Anchorage person for a minor violation in Ninilchik, approximately ten days later the Ranger and the individual must attend the court session in Kenai. Both individuals spend at least one day in the Kenai court plus the cost of meals, lodging and transportation. These expenditures and inconveniences do not include the costs of a judge, court clerks, District Attorney and the correspondence necessary to document the case, which generally run $300-400 for each arraignment.

Proposed System - A bail schedule would establish a predetermined fee for violation of regulations or statues and the person would have the option of not contesting the citation and sending in the fee or challenge the violation and ask for a court appearance. It is anticipated that most people will elect not to challenge the citation and simply send in the fee. This would save money for the individual, the District Attorney's office, the courts and parks staff. The only cost we anticipate on this matter is for the printing of citation forms at an annual cost of $1000.00 to $2000.00. This is approximately what is spent on the existing citation program, so no real new costs should occur. Because of the savings in costs for the state, the individual, and more efficient management of our Park Rangers, the Bail Schedule will be a cost-effective program.

FEDERAL SCHEDULE

DENALI NATIONAL PARK AND PRESERVE
BAIL SCHEDULE Revised 11/82

PART 2 - PUBLIC USE AND RECREATION

2.1	ABANDONED PROPERTY Superseded by 36CFR 13.22 and 36CFR 13.63(c)	
2.2	AIRCRAFT	
	(a) Superseded by 36CFR 13.13	
	(b) Air Drop	$100.00
	(c) Operate in accordance with current FAA regulations	Court
2.3	AUDIO DEVICES	
	(a) Operation of any noisy device	$ 50.00
	(b) Public address system	$ 50.00
	(c) Aerials	$ 25.00
2.4	BEGGING AND SOLICITING	
	(a) Begging	$ 50.00
	(b) Hitchhiking	$ 50.00
	(c) Commercial soliciting	$ 50.00
2.5	CAMPING	
	(a) Superseded by 36CFR 13.18(a) and 36CFR 13.63(b)	
	(b) Superseded by 36CFR 13.18(a) and 36CFR 13.63(b)	
	(c) Camping over designated time limit	$100.00
	(d) Permanent camping facilities	$100.00
	(e) Digging or leveling campsite	$100.00
	(f) Failure to clean and clear site before departure	
	--Failure to remove camping equipment	$ 50.00
	--Leaving camp refuse in exposed or unsanitary condition	$100.00
	(g) Camping within 25 ft. of water, main road, hydrant	$ 25.00
	(h) Base camp for hunting	$250.00
	(i) Quiet hours (10 PM to 6 AM)	$ 25.00
	(j) Former Mt. McKinley National Park: Wood gathering (not dead and down)	$100.00
	(j) Lands in 12/2/80 Additions: Superseded by 36CFR 13.20(b)(4)	
2.6	CLOSURES/PUBLIC USE LIMITS	
	(a)(2) Failure to observe closed areas/visiting hours	$ 50.00
	(b)(4) Entry into area without permit, registration, or reservation	$ 50.00
	(b)(5) Entry into area in violation of posted restrictions	$ 50.00

2.7	DISORDERLY CONDUCT	
	(a) Disorderly conduct prohibited	
	(b) Offense defined:	
	(b)(1) Fighting, threatening, violent or tumultuous behavior	$150.00
	(b)(2) Unreasonable noise; offensive utterance, gesture, or display; or abusive language	$150.00
	(b)(3) Hazardous or physically offensive condition	$150.00
2.8	PETS	
	(a) Physical restraint	$ 50.00
	(b) Pets prohibited: public use eating places, food stores, swimming beaches, other areas where posted	$ 50.00
	(c) Prohibited for residents except by Superintendent's policy	$100.00
	(d) Pets running at large and observed molesting humans/wildlife may be disposed of	No Bail
	(e) Use of dogs in violation of State or Federal law	$100.00
2.9	EXPLOSIVES	
	(a) Use or possession of explosives without permit from Superintendent	$150.00
	(b) Use or possession of fireworks/ firecrackers without permit from Superintendent	$ 50.00
2.10	FALSE REPORT	Court
2.11	FIREARMS, TRAPS, AND OTHER WEAPONS	
	(a) Former Mt. McKinley National Park: Possession prohibited in natural areas (unless unloaded and cased or packed in such a way as to prevent use while in park)	$100.00
	(a) Lands in 12/2/80 Additions: Superseded by 36CFR 13.19	
2.12	FIRES	
	(a)(1) In campground, fire must be in place provided	$ 50.00
	(a)(2) Backcountry, only with permit	$ 50.00
	(b) Building fire where it will be likely to spread	$ 50.00
	(c) Leaving fire unattended or failure to extinguish	$100.00