

ALASKA LEGISLATURE COMMITTEE FILES 1983-1984

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vised, and compensated by the assembly on which the contractor sits. It is the virtually universal rule at common law that such a transaction is illegal, even if the assemblyman-contractor abstains and takes no part in the review and compensation of the performance. E.g., Beebe v. Supervisors of Sullivan County, quoted supra. While some commentators have declared that the common law rule has been extended to bar such transactions if any public officer or employee, regardless of their official connection with the transaction, is the private contractor, 9/ a close analysis of the cases decided to date and due regard for the difference between holding and dicta belie the claim. 10/

Many states have statutes or constitutional provisions which prohibit legislators or other public officers from contracting with the state. A number of cases have declared that such provisions are declaratory of the common law, i.e., even if there were no statute, the same rule would apply by force of the common law. One case is Schultze v. City of New York, 136 N.Y.S.

9/ E.g., Note, Conflict of Interests: State Government Employees, 47 Va. L. Rev. 1034, 1039 (1961).

10/ Kaplan and Lillich, Municipal Conflicts of Interest: Inconsistencies and Patchwork Prohibitions, 58 Col. L. Rev. 157, 158-174 (1958). We were guilty of uncritically accepting the conclusion of the Virginia Law Review note writer in our formal opinion of August 8, 1979; fortunately, it made no difference in the result in that opinion since the individual in question was an officer with authority to vote on the award of contracts and review the contractor's performance.

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715 (App. Div. 1912), aff'd 106 N.E. 1042 (N.Y. 1914). Schultze was a duly appointed coroner's physician whose duty it was to perform autopsies and give evidence at coroners' inquests. He was called upon to assist the district attorney in a homicide case involving a decedent whom Schultze had not examined; he acted as an expert consultant. He submitted a bill which was disapproved under a charter provision which forbade officers to become interested, directly or indirectly, in performance of any contract or work to be paid for from the city treasury; a violation was a misdemeanor, the violator forfeited his office, and the contract was voidable. The court held that the city was not required to pay the bill, and observed that "[t]hese prohibitions are merely declaratory of the common law." Id. at 718. Accord, Marjohn Realty Co. v. City of Long Beach, 204 N.Y.S. 53, 55 (Sup. Ct. 1924), aff'd 206 N.Y.S. 933 (App. Div. 1924).

The case of Norbeck & Nicholson Co. v. State, 142 N.W. 847 (S.D. 1913), involved a legislator who contracted with the state to drill a well. The contract was voided on the basis of a constitutional provision which prohibited legislators to be directly or indirectly interested in any state contract. However, there followed extremely broad dicta:

A member of the state Legislature, by virtue of his office, stands in a fiduciary and trust relation towards the state; in other words, he is the confidential agent of the state for the purpose of appropriating the state's money in payment of the lawful contractual obligations of the

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state, and it seems to be almost universally held that it is against sound public policy to permit such an agent, or any agent occupying a like position, to himself be directly or indirectly interested in any contract with the state or other municipality, during the period of time of the existence of such trust and confidential relationship. The private interest of such an agent should not become antagonistic to his public duty.

Id. at 849.

On the other hand, at least two courts have described statutory prohibitions of such contracts as new legislative rules foreign to the common law. In re Opinion of Justices, 82 A. 90, 93 (Me. 1911); Lindberg v. Benson, 70 N.W.2d 42, 45 (N.D. 1955). However, the Lindberg court went on to state in forceful terms the very public policy considerations which militate in favor of a common law rule in the absence of legislative action:

The purpose of the enactment was to extend the ancient common-law rule that no state officer may be interested in any contract which he has a voice in letting (which rule is expressed in many statutes of this state) by providing a more comprehensive legislative rule, founded in public policy, which would take away from legislators as a class any personal incentive to increase their opportunities to make profitable contracts by their votes in the legislature, or to use their influence as legislators in securing contracts or the approval of the work done under them. The members of the Legislative Assembly exercise a high degree of control over the fiscal affairs of the State and its subdivisions. They regulate assessments and tax levy limits. They authorize bond issues and, for the State, they make all appropriations. By enacting this initiated measure the people have attempted to remove from the legislators temptation to venality in the exercise of their legislative functions. Many states have constitutional or legislative provisions which are similar in

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nature and which have remained in force unchal-
lenged for many years.

Id. at 45-46.

In two recent cases, courts have held that legislator attorneys may not represent persons in litigation against their city or state. In Georgia Department of Human Resources v. Sistrunk, 291 S.E.2d 524 (Ga. 1982), the Sistrunks were represented by Hill, a state legislator. The department invoked fiduciary principles and a Georgia constitutional provision which declared that "[p]ublic officers are the trustees and servants of the people, and at all times are amenable to them." The court expressly noted that this was not analogous to the classic self-dealing situation, since Hill was not representing both the Sistrunks and the state. Id. at 526.

The Sistrunk court framed the issued in the following terms:

All public officers, within whatever branch and at whatever level of our government, and whatever be their private vocations, are trustees of the people, and do accordingly labor under every disability and prohibition imposed by law upon trustees relative to the making of personal financial gain from the discharge of their trusts.

....

May one trustee of the people, as attorney and for his own financial gain, negotiate on behalf of another for a favorable official dispensation at the hands of another trustee of the people?

Specifically concerning legislators, may one

trustee of the people -- in whose office are vested the powers of enhancement, diminution, and destruction of the office of another trustee of the people -- as attorney and for his own financial gain act in a manner to hinder or frustrate the discharge by such other trustee of the duties of their common trust?

No.

Id. at 528.

It bears noting that the court in Sistrunk based its decision on a Georgia constitutional provision and not on the common law. However, that provision is so general in its terms and was analyzed with such close attention to common law trust principles that the Sistrunk holding has significance independent of the constitutional language. A similar provision appears in Alaska law. 11/

In a California case, People v. Municipal Court of San Diego Judicial District, 138 Cal. Rptr. 235, 238 (Cal. App. 1977), the court barred a city councilman-attorney from representing a defendant being prosecuted by the city. The decision appears to rest primarily on the ethical standards of, and trust reposed in, members of the bar, rather than on any statutory or constitutional provision. 12/

11/ Compare the Georgia constitutional provision quoted in the text with AS 39.50.0.0(b)(1), which provides "public office is a public trust which should be free from the danger of conflict of interest."

12/ However, the court did, in passing, compare the councilman's

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A legislator contract also raises novel and troubling questions of separation of powers. The federal courts have, in perhaps a dozen cases, condemned the practice of interference by individual legislators or committees in executive branch decision-making. The leading case is Pillsbury Co. v. Federal Trade Commission, 354 F.2d 952 (5th Cir. 1966). In Pillsbury, a decision of the FTC in its quasi-judicial capacity was invalidated because of intense Congressional committee pressure while the decision was pending.

Much less pressure was required to invalidate the decision at issue in Koniag, Inc. v. Andrus, 580 F.2d 601 (D.C. Cir. 1978), cert. denied 439 U.S. 1052 (1978). The court ruled that a letter sent by Congressman Dingell to the Secretary of the Interior, in effect urging him to deny several applications for "native village" status, compromised the Secretary's impartiality in a quasi-judicial proceeding; the court ordered reconsideration of the applications by the new Secretary. In other cases, however, explicit and extreme threats were said to be required before invalidation would occur. E.g., D.C. Federation v. Volpe, 459 F.2d 1231 (D.C. Cir. 1972) (threat of loss of appropriation for unrelated project); Texas Medical Association v. Mathews, 408 F.

12/ cont. . . .
representation to conduct by "[a] local agency officer or employee" which is statutorily proscribed as "incompatible." Id. at 238.

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Supp. 303 (W.D. Tex. 1976)(threat of loss of job).

Here, as in the federal legislator influence cases, the legislators would be placing themselves in a non-legislative, i.e., administrative or quasi-judicial, arena. But the kind of legislator pressure which caused the court in Pillsbury to invalidate the FTC decision is not involved here. Still, the federal legislator interference cases lead us to conclude that a court would not require a showing of direct threats where a legislator acted on behalf of himself rather than on behalf of a constituent.

The remarks of the Alaska Supreme Court in two opinions bear on this inquiry. Both cases, Begich v. Jefferson, 441 P.2d 27 (Alaska 1968), and Warwick v. State ex rel. Chance, 548 P.2d 284 (Alaska 1976), involved legislators who held or wished to hold an office of state government outside the legislative branch.

In Begich, the court observed generally:

Alaska's constitutional prohibition against members of our three separate branches of state government holding any other positions of profit under the State of Alaska reflects the intent to guard against conflicts of interest, self-aggrandizement, concentration of power, and dilution of separation of powers in regard to the exercise by these governmental officials of the executive, judicial, and legislative functions of our state government. The rationale underlying such prohibitions can be attributed to the desire to encourage and preserve independence and integrity of action and decision on the part of individual members of our state government.

441 P.2d at 35.

In Warwick, the court considered Alaska Constitution, article II, section 5, which forbids a person to accept a government post which was created, or the salary for which was increased, while that person served in the legislature. The court observed:

There is little disagreement as to the purpose of the type of constitutional provision under consideration here. Although the exact language varies from state to state, all such provisions are aimed at a common goal: to remove improper motives from considerations of legislators in voting for increased salaries or the creation of new offices. In one often-cited quotation, Justice Story, commenting upon a like provision in the Constitution of the United States, said:

The reasons for excluding persons from offices who have been concerned in creating them, or increasing their emoluments, are to take away, as far as possible, any improper bias in the vote of the representative, and to secure to the constituents some solemn pledge of his disinterestedness.

This type of constitutional provision is designed not only to stop overt trafficking in offices, but also to prevent less obvious influences on a legislator's actions:

[T]his constitutional provision was enacted through fear that a legislator might be, either consciously or unconsciously, influenced by selfish motives when voting for or against a bill.

Another purpose has been said to be the elimination of even the suspicion that legislators were acting with improper motives. As in the case of the judiciary, it is important that the legislature not only avoid impropriety, but also the appearance of impropriety.

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548 P.2d at 387-388 (emphasis added by the court, footnotes omitted).

Both the Alaska Constitution and AS 39.50 were adopted by popular vote. From these electoral expressions it is clear that Alaskans view as morally opprobrious public officials who use public office for private gain. Indeed, even the appearance of impropriety is a circumstance to be avoided. Warwick at 388, quoted supra; Falcon v. A.P.O.C., 570 P.2d 469, 477 (Alaska 1977). See AS 39.50.010(b)(1) ("public office is a public trust which should be free from the danger of conflict of interest").

The size of the legislature and the executive branch is also an important consideration. There are only 60 legislators, all of whom are likely well-known to the relatively few departmental commissioners, deputy commissioners and directors. Most of these persons work together in close proximity in Juneau for five months of the year.

Our legislators have a keen interest in the budget process. Those legislators who sit on the finance committees are usually familiar with the thousands of pages of budget documents in the minutest detail and make allocations in multi-billion dollar budgets in increments of thousands of dollars. Any legislator, and especially a member of the finance committees or the free conference committee on the budget, can have an enormous impact on the budget of a state agency. Recent legislative ses-

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sions have seen both the creation and destruction of agencies at the behest of single or a few legislators who took the initiative to bless or gut the agencies. In recent years, the legislature has also taken to designating its own non-governmental agents to carry out state programs. E.g., p. 25, § 51, ch. 120, SLA 1980.

Alaska is a very small state, with a small pool of talented people from which to draw its leaders. Many of the most talented have extensive commercial enterprises which may do business with the state. Unreasonable barriers should not be placed before these most promising aspirants to public service. Yet, with the legislature tending toward a half-time profession, and with the great potential for conflicts of interests with multi-billion dollar budgets and pervasive government involvement in private commerce, the courts might well be convinced that the only solution in the public interest is a common-law prohibition. This would be all the more compelling in the absence of evidence that aspirants to public service are being dissuaded by a common law rule prohibiting legislator contracts, and in the absence of legislative action in this area. Indeed, such a common law prohibition might be a telling experiment for the information of the courts and the legislature.

As we have already noted, there is no case authority directly on point pro or con, but the foundation is there, in Beebe and its progeny, in Begich, in Warwick, and in AS 39.50,

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upon which a common law rule against legislator contracts could be constructed. Any voter could bring an action to void such contracts 13/ and we would likely support that result in the absence of a compelling contrary justification. 14/

It is therefore our conclusion that a contract between a state agency, 15/ on the one hand, and a legislator, a business owned or operated by a legislator, or a business in which the legislator is an officer, manager, or large stockholder, on the other hand, would be illegal under the common law. 16/

* * * *

The second legislator conflict situation concerns legislators (and some state officers and employees) who apply to re-

13/ See AS 39.50.100.

14/ Were a legislator contractor the only possible source for particular goods or services, we might support an exception. Similarly, an exception might be justifiable if a legislator proposed to provide non-unique, "off-the-shelf" goods (e.g., office supplies, motor oil) where price would be virtually the only variable. Exceptions are not supportable where the transaction requires the exercise of judgment by an administrator or an extended period of performance by the legislator. See State v. Yoakum, quoted infra.

15/ A court might well go further and say that legislators may not, as private contractors, do business with any entities (state agencies, municipalities, nonprofit corporations) whose projects are financed with state funds.

16/ At this time, we offer no opinion on situations where the legislator is an employee of the contracting firm, or where a close relative of a legislator is an officer, manager, large stockholder or employee of the contracting firm.

ceive loans from the state. The only case which offers even brief analysis of the public policy considerations which would underlie an exception to the common law rule is State v. Yoakum, 306 S.W.2d 39 (Tenn. App. 1957). In explaining why a loan to a school board of which the president of the lender bank was a member did not violate a statutory prohibition of a direct or indirect interest in a public contract, the court impliedly undercut any common law prohibition:

A loan of money, however, is unlike a contract for goods or services involved in all our reported decisions. Because they involve questions of value, contracts relating to goods and services provide opportunity for imposition upon the public. In the loan of money the law fixes the maximum rate of interest and no question of value is involved. Only a rate of interest below the maximum fixed by law can be the subject of negotiation. In the loan here involved it is not insisted that such a short term loan could have been made elsewhere at a lower rate of interest and, as we have seen, the loan actually resulted in a loss to the Bank. To apply the statutes to such a situation, it seems to us, would be going beyond their meaning and purpose and result in great inconvenience in small communities where bank officers and stockholders frequently occupy positions of public trust and authority.

Id. at 40.

While the analysis is terse, Yoakum provides a basis for distinguishing the loan situation from other contracts between the state and legislators. However, we can say this with confidence only in the cases of loans for tuition or personal residences, where loan ceilings are relatively low, eligibility

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standards are fixed, and the range of administrator discretion subject to influence and abuse is small. 17/ Commercial loan programs, where ceilings are much higher and where evaluation of credit-worthiness is more subjective, may yet present conflicts of interests where the loans are made to legislators.

However, there is potential for influence or abuse in any loan program, especially when foreclosure or other enforcement actions must be considered. Thus, whether the loan is educational, residential, or commercial, a conflict of interests may arise, and state legislators (and some state officers and employees) and their agents, must act with the greatest circumspection and propriety in dealing with the agency concerning the loan or any other matter. The agency, in order to maintain public confidence in the fairness of its program, should brook not even a hint of interference and should report questionable communications to the attorney general.

* * * * *

We view the third question, concerning the propriety of a legislator voting on a bill which will financially advantage the legislator, in a different light. It is clear in the case law that, when a legislator acts in a legislative capacity, that

17/ Even a competitive bidding procedure is subject to greater influence and abuse where the contracting officer has discretion in evaluating the responsibility of the bidders. AS 39.05.230. See AS 36.98.040 -- 36.98.050.

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action can be challenged only when the legislator's conduct is "tainted with fraud, or palpably not in the service of the public interest, or otherwise a clear perversion of power." Rollins v. Carter, 69 A. 777 (N.H. 1908); Pyatt v. Mayor of Dunellen, 89 A.2d 1, 3 (N.J. 1952); MASON'S MANUAL OF LEGISLATIVE PROCEDURE, § 522. However, when a legislator acts outside the legislative sphere, with respect to a particular transaction or adjudication in which the legislator is interested, a challenge may be sustained if there is found a "private interest at variance with the impartial performance of ... public duty." Pyatt; Rollins. See Burton v. United States, 202 U.S. 344, 366-367 (1906); Pillsbury Co. v. Federal Trade Commission, 354 F.2d 952, 964 (5th Cir. 1966); Note, Conflicts of Interest of State Legislators, 76 Harv. L. Rev. 1209, 1214, n.38 (1963)("[I]mproper activities in other capacities should not be protected merely because the impropriety arises from the fact that the actor is also a legislator.").

Therefore, where a legislator votes on a bill which will financially benefit the legislator as a member of the public generally, e.g., personal income tax repeal, or where a legislator votes on a bill which will financially benefit the legislator as a member of a numerous though limited class of Alaskans, e.g., bank deregulation or corporate income tax repeal which will benefit shareholders, the legislator's vote may not be challenged. See the memorandum opinion from Kenneth E. Vassar to Wilson L.

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Condon dated April 1, 1982.

Where, however, the class of beneficiaries of the legislation is tiny, especially where the bill relates to a project for which the legislator is a private contractor or affiliated with a private contractor, the legislator must disclose the conflict of interests and the legislative body should bar the legislator from voting. See MASON'S MANUAL OF LEGISLATIVE PROCEDURE, § 522 (1979).

VI. OFFICER CONFLICTS

Four potential conflicts of interests by executive branch officers have been presented for our review. We will treat them in turn.

It is first asked whether a director of a state corporation, board, or commission which is governed by no specific conflict of interests statute has a conflict if he or she is an officer, employee, or large stockholder of a company or firm which has contracts with the state to provide goods or services. If there is a conflict, what remedial steps need be taken?

The question is answered by the Beebe case, quoted supra, and the accompanying discussion: a conflict clearly does exist if the person with the potential conflict is associated with both parties to the contract, i.e., the state agency procuring the goods or services and the private contractor providing

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them. 18/ If, however, the person with the potential conflict works for a state agency with no contracts with the private contractor with which the person is associated, there would be no conflict. 19/

The Beebe case makes it clear that public service demands total fidelity to the public interest at all times. A public servant, faced with a conflict of interests by reason of private financial associations may not pass official decision-making responsibility on to a colleague or subordinate who may share the same prejudice or be subject to influence. "He cannot put on and off the garb of a public official, and discharge or refuse to discharge the duties of his trust, at will, and as best subserve his private interests." Id. at 630. Faced with a conflict, the person must either resign his or her position, or forego the private opportunity to do business with the state.

18/ If the person is only an employee, there may not be a conflict. Those situations must be addressed on a case-by-case basis.

19/ We must qualify this last mentioned conclusion by noting that a conflict might arise even if the person was not an official in the contracting state agency if the person nevertheless has extensive contacts with the contracting state agency. For example, certain officers of the Department of Law and the Office of the Governor, though not within the Department of Administration, may have extensive contacts with, and considerable influence in, the Department of Administration. A person with similar "interdepartmental" duties might be in a conflict situation if he or she entered into an agreement as a private contractor with the other department.

* * * *

It is next asked whether an officer of the Division of Minerals and Energy Management (DMEM) may hold a mining claim, an interest in a mine, or an interest in the products of a mine on land under state jurisdiction. AS 27.05.020 provides:

In conducting the inquiries and investigations authorized by AS 27.05.010 -- 27.05.070, no officer or employee of the department may have any personal or private interest in a mine or the products of a mine under investigation, or accept employment from a private party for services in the examination of private mineral property. Nothing in this section prevents employment by the department, in a consulting capacity or in the investigation of special subjects, of an engineer, or other expert whose principal professional practice is outside his employment by the department.

The syntax of AS 27.05.020 is not an aid to understanding. A thoughtful reading of the provision reveals that it is not any officer or employee of the department who is prohibited from holding an interest in a mine under investigation; only officers and employees "conducting the inquiries and investigations authorized by AS 27.05.010 -- 27.05.070" are so restricted. We are informed by the director of DMEM that that division conducts virtually none of the "investigations" in question; those matters are within the jurisdiction of the Division of Geological and Geophysical Surveys. However, there is still the common law.

DMEM is the state agency which regulates the acquisition of mining claims and leases on lands under state jurisdiction, see AS 38.05.185 -- 38.05.280; 11 AAC 86, and issues mis-

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cellaneous land use permits. See 11 AAC 96. DMEM also has a representative on the regional planning teams which make recommendations to the commissioner on state land use classifications. See AS 38.04.065; 11 AAC 55.

As the regulatory agency for mining claims, DMEM receives the filings of persons who stake mineral claims. See AS 38.05.195. It must review the filings to verify that there has been a discovery, see 11 AAC 86.105, and that the claim has been properly staked. See 11 AAC 86.205 -- 11 AAC 86.215. On an annual basis, DMEM receives additional filings from each claim owner attesting to the performance of statutorily-required annual labor on the claim, see AS 38.05.210; 11 AAC 86.220, and must verify that the claimed labor meets prescribed requirements. Id. A major component of the DMEM mining section's effort and budget is devoted to this "adjudication" of mineral claims.

In this light, we believe that an ownership interest in mineral claims (or in a company which owns mineral claims) on lands under state jurisdiction creates a common law conflict of interests on the part of officers and employees of DMEM. Given the size of the mining section of DMEM (25 persons) and the likely close working association of all the officers and employees, it is probable that a court, as a matter of common law, would forbid any person in DMEM to own a mineral claim on lands under state jurisdiction since the opportunity for influence is so evi-

dent. It is even clearer that a court would forbid a supervisory officer to own such a mineral claim since it would be that person's subordinate who would review the sufficiency of the claim and the annual labor affidavit. 20/ And, as we noted, supra, at page 31, the conflict is not cured by removing oneself from the review of one's own filings: the public has the right to demand that a state officer bring his or her skills to bear in all matters which the office calls upon him or her to consider.

DMEM is one of only three agencies principally responsible for overseeing mineral exploration and mining activities on lands under state jurisdiction. DMEM personnel cannot be both regulators and regulated. If they wish to serve in DMEM, they must forego this relatively narrow range of investment opportunities. The common law requires officers and employees in DMEM who have interests in mining claims to dispose of those interests with all deliberate speed, or resign. 21/

20/ DMEM officers and employees also have access to confidential geological, geochemical, geophysical, and airborne surveys. See AS 38.05.240. Were they permitted to own mineral claims, they might have a distinct advantage over other prospectors, miners, and investors. This is another aspect of the conflict of interests inherent in the situation.

21/ The Department of Law has had the full cooperation of DMEM officers and employees in this inquiry; indeed, it was a DMEM officer with an interest in mineral claims who first asked our advice on this matter. At that time, we informally advised him that there was no conflict, and he ordered his affairs accordingly. Thus, it was our erroneous advice, and no wrongdoing by the DMEM officer, that allowed the conflict situation to develop.

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It is next inquired whether a Department of Environmental Conservation (DEC) inspector of seafood processing plants may sell the right to use a process he developed and patented to companies whose plants he inspects. The answer is clearly no.

The evil of such an arrangement is patent: seafood processors might feel compelled to purchase the right to use the process or suffer the wrath of the seller when next he inspects their plants.

We hasten to add that there is not the slightest suggestion that the particular inspector involved has ever acted improperly; it is the appearance of impropriety which condemns these proposed transactions. If the inspector wishes to market his process, he must resign or sell his rights in the process to another who may market it. 22/

The same inspector also wishes to apply to the Department of Commerce and Economic Development (DCED) for a grant to test his process. Because the grant project would likely involve one or more seafood processors in a cooperative effort to test the process, a conflict of interests on the inspector's part

22/ If the inspector chooses the latter course, he may not reserve any right to receive royalties or license fees; were he to do so, the spectre of influence would again appear since, though he is not personally marketing the process, each seafood processor that used the process would be paying the inspector indirectly.

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would almost certainly arise. In that case, the grant would be illegal. See Newton v. Demas, 258 A.2d 376 (N.J. App. 1969) (municipal engineer had an outside contract with a developer to design a water system; the contract was void because the engineer would have had to review his own design in his official capacity).

* * * *

It is last asked whether a member of the board of the Alaska Resources Corporation (ARC) has a conflict of interests if he or she is associated with a company that has a contract with the state. AS 37.12.065 provides:

(a) Members of the board are subject to the provisions of AS 29.50.

(b) No member or employee of the board may acquire an interest, direct or indirect, in a corporation, company, association, or project owned, controlled, or invested in by the corporation. If a member or employee owns or controls such an interest, he shall immediately disclose the interest in writing to the board and refrain from participating in any manner in any activity relating to that interest.

Subsection (b) modifies the common law as it would apply to ARC. Under the common law, the member could neither acquire a new interest nor keep an old interest in a company doing business with ARC, and this disability could not be cured by abstaining on votes and taking no part in deliberations. Under AS 37.12.065, acquisition is forbidden, but interests owned upon appointment may be retained, so long as the member abstains from

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voting and has no contact, formal or informal, with other members concerning ARC's policies or actions toward the firm in which the member has an interest. This departure from the common law applies only to members and employees of ARC. 23/

VII. CONCLUSION

The common law of conflict of interests is uncharted water for most public officials, including government attorneys. They err when they believe that a public official's conflict can be cured if the official takes no part in the decision in which he or she is interested. They err when they believe that a court will not invalidate a contract if, though a party to the contract has a conflict, it is still a fair price.

The courts take the view that officials have a duty to the public to participate in all the decisions they were elected or appointed to make. The courts ordinarily will not allow an

23/ It was also inquired whether an ARC board member may also be a member of the Alaska Historical Commission. AS 44.27.01, et seq. In view of the clear prohibition on holding "any other state or federal office, position, or employment . . .," AS 37.-12.045(b), we believe the board member must resign from either ARC or the Alaska Historical Commission. This prohibition goes further than the common law; indeed, as applied in this situation, it appears to advance no laudable goal. But it is within the legislature's power, and it does prevent the appearance of conflict of interests in many other situations. If a more refined provision is to be substituted, one which is better able to discriminate between real and imagined potential for abuse, the legislature alone has the power to do it.

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A66-393-81, J66-457-81

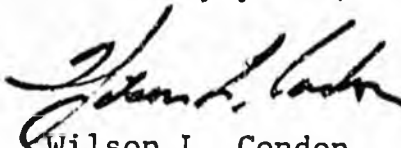
December 3, 1982
Page #38

official to decline to make a decision in order that he or she might be free to have the benefit of that decision.

The courts will not allow an official to make a contract with his agency and, when challenged, assert as a defense that the contract was more advantageous to the state than any other offer received.

The common law of conflict of interests aims not only to prevent officials from actually taking unfair advantage of their office. It also aims to eliminate the potential for abuse and the appearance to the public that officials are subject to temptation. For these reasons, the courts have dealt sternly with officials in conflict situations, and they will continue to do so. Unless the legislature formulates another means to sustain the public's confidence that public officials are not benefiting in private from their positions in public, we, and all public officials, must abide by the common law.

Sincerely yours,



Wilson L. Condon
Attorney General

WLC/pjg

H B

2 9

Alaska State Legislature

ST

REPRESENTATIVE
TERRY MARTIN
DISTRICT 13
HOUSE FINANCE COMMITTEE
CHAIRMAN—UNIVERSITY OF ALASKA BUDGET



3960 REKA DRIVE—B6
ANCHORAGE, AK 99508
PHONE 333-6990

DURING LEGISLATURE
POUCH V
STATE CAPITOL BLDG
JUNEAU AK 99811
PHONE 465-3783

April 30, 1984

Senator Vic Fischer, Chairman
Senate State Affairs Committee
Pouch V
Juneau, Alaska 99811

Open Letter regarding House Bills 29 and 30

Dear Senator Fischer:

The purpose of this letter is to formally request that you schedule the above-referenced bills for hearing before your committee. These bills are extremely pertinent to the upcoming elections, and should be given a fair hearing before your committee.

House Bill 29 would authorize the Division of Elections to investigate a candidate's claim of proper residency in the district in which the candidate has filed to run for office. At this time, the Division has no authority to investigate a candidate's residency. In fact, the only agency empowered to do so is the Alaska Court System, and then only when a suit is brought by a private concern or individual challenging the candidate's residency.

House Bill 30 authorizes the Division of Elections to require more specific information from a person who registers to vote. This bill is designed to eliminate questionable registrations. It would, for instance, allow the Division to question a person registering to vote in one district, but showing a mailing address across town; or to request a more specific address than "general delivery".

These bills have been in your committee since May, 1983, and my office has several times asked that these bills be scheduled for hearing by the State Affairs Committee. I cannot understand your hesitation to hold public hearings on these bills. I would appreciate knowing your specific objections to hearing these bills.

Your constituents and I look forward to your response.

Sincerely,

A handwritten signature in cursive script that reads "Terry Martin".

Representative Terry Martin

cc: All Legislators
Anchorage Times
Anchorage Daily News



Alaska State Legislature

REPRESENTATIVE
TERRY MARTIN

DISTRICT 2
CHAIRMAN—LABOR AND COMMERCE COMMITTEE
PHONE 465-3873



3250 REK/ DRIVE—06
ANCHORAGE, AK 99504
PHONE 333-6990

DURING LEGISLATURE
POUCH V
STATE CAPITOL
JUNEAU, AK 99801
PHONE 465-3784

MEMORANDUM

To: Senator Vic Fischer, Chairman
Senate State Affairs Committee

From: Representative Terry Martin *TMM*

Date: February 3, 1984

Subject: HB 29

"An Act relating to the verification of residency of candidates for certain public offices."

The Constitution of the State of Alaska, Article II, Section 2, requires that "a member of the legislature shall be a qualified voter who has been a resident of Alaska for at least three years and of the district from which elected for at least one year, immediately preceding his filing for office." HB 29 is necessary in order to give the Division of Elections statutory authority to investigate a declared candidate's eligibility to seek office.

Under current law, no state agency is authorized to check a candidate's claims of residency when a citizen of Alaska questions the matter. If a complaint is lodged with the Division, the Division asks the candidate to verify the statements made at the time of filing for office. If the candidate says that the the statements made are true, then neither the Alaska Public Offices Commission nor the Division of Elections has authority to investigate further. The party questioning the candidate's filing must take the issue to court if the matter is to be pursued. I refer you to the attached Memorandum from Rodger Pegues, Assistant Attorney General, to Terry Miller, Lieutenant Governor, dated January 22, 1980:

"As a general rule, you should accept filings which are valid on their face, and it is neither your duty nor your function to question their validity....

...The Election Code makes no provision for the election officials to reject an application which is valid on its face and timely filed....

On page 2 of that same memorandum, paragraph 2, Mr. Pegues goes on to say that, even if a candidate states that he is not sure he does meet residency requirements, but later "repudiates" that statement, the Division of Elections has no authority to question residency, because an admission of disqualification could be "dead wrong", and because "proof of residence consists of both objective facts and subjective feelings" (page 2, para. 1).

This is inconsistent with state policy in other residency-based programs, such as the permanent fund dividend distribution. If a permanent fund applicant does not appear to meet residency requirements, the state not only has the authority, but has an obligation to question the applicant's legal residence. If we can question every permanent fund applicant's right to a permanent fund dividend based on that applicant's legal Alaskan residency, then we surely should enable our election officials to determine whether a candidate meets the Constitutional residency requirements to run for office.

Your careful consideration of this legislation is greatly appreciated. Please contact me if I can offer any assistance to you with regard to HB 29. It is most important to expedite hearing on this bill so that implementation can be assured before the upcoming election.

OFFICE OF THE LIEUTENANT GOVERNOR

Rod Pegues
Assistant Attorney General
Dept. of Law

January 18, 1980

Terry Miller
Lieutenant Governor

Constitutional Residency
Requirements for Filing
for Office

Rod, as you already know, my office has had many requests for the necessary forms for filing for office for the 1980 elections. Along with these requests have been several questions regarding the residency requirements outlined in the State Constitution. For example, one gentleman has lived in California since 1977; however, he has maintained a permanent residence address in Alaska and has voted by absentee ballot. According to the constitution, he qualifies as being a resident of the state for three years and a resident of the district for one year although in reality he no longer lives here.

I am requesting an opinion from the Department of Law on the residency requirement, what my position is in accepting an individual's declaration base on these requirements, and what the appropriate response may be to individuals in this situation.

I would appreciate your prompt attention to this matter.

Thanks!

MEMORANDUM

LIEUTENANT GOVERNOR

TO: [Honorable Terry Miller
Lieutenant Governor

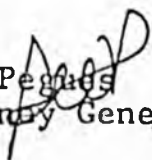
DATE: January 27, 1980

FILE NO: J-66-412-89-99

TELEPHONE NO:

FROM: AVRUM M. GROSS
ATTORNEY GENERAL

SUBJECT: Constitutional resi-
dency requirements
for elective state
office

By: 
Rodger W. Pegues
Assistant Attorney General

RECEIVED
STATE OF ALASKA
JAN 25 1980

You have asked what you, as Lieutenant Governor and the state's chief election officer, should do with respect to the application of the constitution's residency requirements to those who file for elective state office.

As a general rule, you should accept filings which are valid on their face, and it is neither your duty nor your function to question their validity.

Under the Alaska Constitution, one who files for elective public office must have been a resident of the State (and, for legislators, of the election district) for a prescribed period. */ A candidate's eligibility for filing is determined "immediately preceding his filing for office." Alaska Const., art. II, § 2, art. III, § 2. The requisite information is entered on the declaration of candidacy which is filed by the candidate. AS 15.25.030(8).

The Election Code makes provision for the election officials to reject an application which is valid on its face and timely filed. Under AS 15.25.040, an untimely filed declaration of candidacy clearly must be rejected. But there is no similar provision for rejecting a declaration which substantially complies with the prescribed requirements for filing for office. With respect to residency, those requirements are that, in substance, the candidate states that he meets "the specific residency requirements of the office for which he is a candidate." AS 15.25.030(8). Given substantial compliance by the candidate, his name must

*/ For the legislature, three years in the State and one in the district is required. Alaska Const., art. II, § 2. For governor and lieutenant governor, seven years in the State is required. Alaska Const., art. III, §§ 2, 7.

EXHIBIT A - 5

Honorable Terry Miller
January 22, 1980
Page #2

be placed on the ballot. AS 15.25.060.

For the most part, the Alaska Election Code, like many others, depends upon the adversarial nature of the election process for enforcement. The law reasonably assumes that a candidate's opponents will be the first to raise complaints against any false or fraudulent filing. Residence (domicile) is an elusive legal concept. Proof of residence consists of both objective facts and subjective feelings. A determination requires a full blown hearing and an independent, nonpartisan decision maker. The Election Code quite wisely does not provide for the election officials to make such determinations.

Of course, if a declared or would-be candidate states to the election officials that in his own mind he does not believe he is a resident of the state or of the election district or that he believes that he no longer meets the constitution's residency requirements, then the officials -- on the basis of that admission -- may reject a declaration of candidacy from that person unless it is preceded or accompanied by a withdrawal or repudiation of the admission of disqualification. While election officials have no duty to question or determine residency, they are not compelled to ignore admissions of disqualification. However, whether one is qualified or not is a legal question and an admission of disqualification could be dead wrong. Therefore, the election officials must honor any subsequent withdrawal or repudiation of such an admission. And, indeed, if they are convinced at the outset that a candidate's admission of disqualification is in error, they can and should disregard it and accept a timely and properly filed declaration of candidacy from the candidate.

RWP/pjg

HB 29

BILL HB0029
PAGE 00024
DATE 01/17/83
CHAMBER HOUSE
TEXT HOUSE BILL NO. 29 by Martin, Flood and Lindauer, entitled:
"An Act relating to the verification
of residency of candidates for certain
public offices."
was read the first time and referred to the State Affairs
and Judiciary Committees.

BILL HB0029
PAGE 00049
DATE 01/18/83
CHAMBER HOUSE
TEXT Speaker Hayes added a Finance Committee referral to
HOUSE BILL NO. 29 (relating to the verification of resi-
dency of candidates for certain public offices)
HB 29 is now referred to the State Affairs, Judiciary
and Finance Committees.

BILL HB0029
PAGE 00501
DATE 03/16/83
CHAMBER HOUSE
TEXT The State Affairs Committee has had HOUSE BILL NO. 29
(verification of residency of candidates for certain pub-
lic offices) under consideration and reports it back as
follows: Abood (Chairman), Shultz, Cowdery, Furnace and
Larson recommend do pass. A fiscal note was attached.
HB 29 was referred to the Judiciary Committee.
Fiscal note appears in House Journal Supplement No. 25.

BILL HB0029
PAGE 01251
DATE 05/10/83
CHAMBER HOUSE
TEXT The Judiciary Committee has had HOUSE BILL NO. 29 (relating
to the verification of residency of candidates for certain
public officer) under consideration and reports it back as
follows: Bussell (Chairman), Liska, Hayes, Wendte and
Barnes recommend do pass. Malone and Clocksire have no
recommendation.
HB 29 was referred to the Finance Committee.

HOUSE JOURNAL
SUPPLEMENT

No. 25

March 16, 1983

HB
29

PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: HB 29 Date on Bill: 1/17/83
 Title: relating to the verification of residency of candidates for certain public offices
 Sponsor: Martin, Flood & Lindhauer
 Requestor: State Affairs Committee (HOUSE) 1/14/83 1:45 pm Rm. 102

1. Estimated fiscal impacts on: Division of Elections staff

a. Expenditures:

(Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87
LAOICSI					
OPERATING			-1-		-2-
OTSI					

Revenues:

RE	83	84	85	86	87

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

3. Assumptions: Regulations must be written and adopted to require coordination between Div. of Elections and local taxing authorities to confirm length of residency. (\$1,000 in FY 85)
 Staff time must be allocated to verify residency of 120-150 state office candidates every 2 years. This should take the month of July for one person. (\$3,000 every 2 years)

4. Disclaimer: This statement has not been reviewed by the CAB in the Office of the Governor. It do not represent the policy of the Sheffield Administration or the final estimate of its impact.

Prepared By: JPThoma Phone: 4611
 Division: Elections Date: _____
 Approved by Commissioner: _____ Date: _____
 Department: _____

5. Distribution:
 Original to Legislative Finance
 Copy to OMB
 Copy to Sponsor

COMMITTEE REPORT

HOUSE

5/17

Rules

FURTHER:

5/10/83

Date: 5/16/83

Mr. Speaker:

The Committee on FINANCE has had HB 29

"An Act relating to the verification of residency of candidates for certain public offices."

under consideration and reports it back as follows:

- 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 Zero Fiscal Note Attached
- [] referred to the _____ Committee

MEMBERS SIGNING DO PASS

[Handwritten signatures]

MEMBERS HAVING OTHER RECOMMENDATIONS:

[Handwritten signature]

CHAIRMAN

Candidates for
Public Office
(residency
requirements)

HOUSE BILL NO. 29, by Martin, Flood and Lindauer.
Amends section of the Election Code relating to the nomination of candidates (AS 15.25) by adding new sections requiring the verification of residency of candidates. Candidates must meet specific requirements (to be adopted as regulations by the Director of Elections). Requirements apply to candidates for state executive and national legislative offices (AS 15.25.030), and also for candidates who do not represent a political party (AS 15.25.180). Does not provide for an effective date.

page 36

Introduced January 17 and referred to State Affairs, Judiciary, then to Finance.



DIVISION OF ELECTIONS
POUCH AF
JUNEAU, ALASKA 99811-9974

OFFICE OF THE GOVERNOR

PHONE: (907) 586-6181

September 27, 1983

Honorable Vic Fischer
Alaska State Senate
State Affairs Committee
1024 W. 6th, Suite 204C
Anchorage, Alaska 99501
Attn: Suzanne Tryck

Dear Senator Fischer:

Enclosed are the observations and other materials that you requested for HB 29 and HB 30.

If this office can be of any further assistance to you, please do not hesitate to call upon us.

Sincerely,



Mary Lou Meiners
Director

Enclosures

TO: Senate State Affairs Committee
FR: Director, Division of Elections
RE: HB 29 and HB 30

Date: 9/27/83

The Division gave considerable testimony in the respective State House Committees in 1983 on both HB 29 and HB 30. We consider both bills as unnecessary legislation that will complicate the present procedures for running for office and registering as a voter.

The analysis of HB 29 is attached. In addition to this analysis, we feel that the present situation of candidate scrutiny of other candidates who file for office from the same district is superior to any regulatory or administrative checks that the Division could impose. To give two examples:

One Alaskan filed as a representative from Ketchikan in 1974. His long and immediate residence in Anchorage was known to his fellow candidates and to many voters; his candidacy was thus disallowed. Another Alaskan was an Anchorage House candidate, challenged on duration of residency by her opposing candidate in 1982. Because of her housing situation in that district, she was allowed to remain on the ballot.

In both situations it was the opposing candidates who made public their charges of residency; after review of their answers to the charges, the situations were resolved without the Division becoming directly involved.

The Division feels that an investigative arm for checking each candidates' truth in filing would be a magnet for opposing candidates to plant suspicion of eligibility. If a opposing candidate is so unsure of the "facts" regarding a candidates' eligibility, then they should let their doubts be publically known to members of the press or others who can ascertain whether that candidate is eligible. The Division is no more capable of determining this information though State or local government entities than is the neighbor next door or a campaign worker, or member of the press.

Again, we feel this investigative arm would be a target for candidates and the press, which, if our information is incorrect, could well lead to lawsuits and charges of misconduct or malfeasance by the Division.

Similarly, we do not feel comfortable in requesting or checking local tax records, phone bills or other information on the residence of candidates.

We are not that sort of watchdog or investigative agency. Our files reflect the residence and mailing addresses of each registered voter. We feel this is sufficient information to check a candidate's residence, using previous years microfiche of voter registration.

HB 30 - "an Act relating to proof of eligibility for registration as a voter" by Martin.

This legislation would require the Division of Elections to design and print new voter registration forms containing an expanded oath section. The estimated cost would be \$20,000 for 500,000 forms.

Section (e) is an unneeded new subsection; some sort of identification is already required by all new registrants, unless they are personally known by a registrar. However, a new voter is not required to list their social security number or date of birth, the traditional ways to verify the identify of a person through cross-files. Thus, we do not feel that information from other divisions of state government will provide any better knowledge of eligibility than a potential voter's own Alaskan identification at the time of registration.

Section (f) would require new sections on the form which we feel is also unnecessary; a person can easily file a change of voter addresss; registrars are well aware of the 30 day period of registration prior to an election, but many city and borough charters do not require this; overseas voters are an extremely small percentage of our voters, mostly military; those eligible to vote for only presidential candidates during the November election every four years are also an extremely small percentage of the votes cast, and should not merit this special treatment on the voter registration form. They vote questioned ballots, and our election workers are aware of this category of voter who may vote only for President.

Section (g) is an open-ended authority by the Director to launch investigations of voters, which we consider to be unnecessary. Also, as we've stated, the access and level of information available is rarely of better use than a voter's own identification.

In summary, we feel that both HB 29 and HB 30 are bills that would put the Division in a delicate position of instigating, investigating, judging and sentencing both candidates and voters for subjective violations in filling out forms. Since Alaska has no history of voter fraud, and candidates seem to police their fellow candidates with close scrutiny, we request that both pieces of House legislation be examined carefully for their merits, if any.

Attachments:

Legislative testimony
fiscal notes (revised)
1984 candidates application form
voter registration form

ELECTION CODE—TITLE 15

Chapter 25. Nomination of Candidates Article 1. Primary Elections—Excerpts

Section

- 30. Declaration of candidacy
- 40. Manner and date of filing declaration
- 45. Withdrawal of Candidacy

Sec. 15.25.030. Declaration of candidacy. (a) A member of a political party who seeks to become a candidate of the party in the primary election shall execute and file a declaration of candidacy. The declaration shall be executed under oath before an officer authorized to take acknowledgments and shall state in substance: (1) the full name of the candidate; (2) the full mailing address of the candidate; (3) if the candidacy is for the office of state senator or state representative, the election or senate district of which the candidate is a resident; (4) the office for which the candidate seeks nomination; (5) the name of the political party of which he is a candidate for nomination; (6) the full resident address of the candidate; (7) the date of the primary election at which the candidate declares himself to be a candidate; (8) that the candidate will meet the specific residency requirements of the office for which he is a candidate; (9) that the candidate will meet the specific citizenship requirements of the office for which he is a candidate; (10) that the candidate is a qualified voter as required by law; (11) that the candidate will meet the specific age requirements of the office for which he is a candidate; (12) that the candidate requests that his name be placed on the primary election ballot; (13) that the required fee accompanies the declaration; (14) that he is not a candidate for any other office to be voted on at the primary or general election and that he has not filed another declaration of candidacy or nominating petition for the office for which this declaration is filed; (15) the manner in which he wishes his name to appear on the ballot; and (16) that the candidate is registered to vote as a member of the political party whose nomination he seeks. (b) A person filing a declaration of candidacy under this section shall simultaneously file a statement of income sources and business interests which complies with the requirements of AS 39.50.

Sec. 15.25.040. Manner and date of filing declaration. (a) The declaration is filed by either (1) the actual physical delivery of the declaration in person or by mail at or before 5:00 p.m., prevailing time, June 1 of the year in which a general election is held for the office, or (2) the actual physical delivery by telegram of a copy in substance of the statements made in paragraphs (1) - (5) of the declaration as required by AS 15.25.030 at or before 5:00 p.m., prevailing time, June 1 of the year in which a general election is held for the office and

Section

- 50. Requirement of filing fee
- 55. Removal of name from primary ballot

also the actual physical delivery of the declaration containing paragraphs (1) - (16) as required by AS 15.25.030 by registered mail which is received not more than 15 days after that time. (b) If the postmark is illegible, a dated receipt from the post office where dispatched shall be acceptable as evidence of mailing. If June 1 is a Sunday or holiday, the deadlines for postmarking and receipt of the declaration shall be extended 24 hours in each instance. (c) A candidate for a statewide office or a candidate for a district-wide office shall file either with the director or an election supervisor. If the candidate files his declaration with an election supervisor, the election supervisor shall immediately forward the declaration to the director. (d) If the declaration filed under (a) of this section is not received within seven calendar days, the candidate shall be notified of nonreceipt. The candidate shall have the opportunity to refile his declaration with proof that his previous declaration has been filed in a timely manner and in accordance with law.

Sec. 15.25.045. Withdrawal of candidacy. Notice of withdrawal of candidacy must be in writing over the signature of the candidate.

Sec. 15.25.050. Requirement of filing fee. (a) At the time the declaration is filed, each candidate shall pay a filing fee to the director. The filing fee for candidates for office of governor, lieutenant governor, United States senator, and United States representative is \$100. The filing fee for candidates for office of state senator and state representative is \$30. Subject to legislative appropriation, the director shall pay the filing fee collected from a candidate under this section to the central committee of the political party of that candidate. (b) An indigent person as defined by regulations adopted under the administrative procedure act (AS 44.62) may file a statement of indigency in the form prescribed by regulation in place of the filing fee required by this section.

Sec. 15.25.055. Removal of name from primary ballot. A candidate's name will appear on the primary election ballot unless notice of his withdrawal from the primary is received by the director at least 30 days before the date of the primary election.

DECLARATION OF CANDIDACY
STATE HOUSE OF REPRESENTATIVES
1984

PLEASE TYPE OR PRINT

HOME PHONE _____

WORK PHONE _____

I, _____, (Please use same form of name as on your voter acknowledgment card) declare that my full resident address is: _____

_____, Alaska, and that my full mailing address is: _____, Alaska _____ (zip code)

I declare myself a resident of and candidate for nomination to the office of State Representative representing Election District _____, Seat _____. I am a candidate for the _____ political party in the primary election to be held on August 28, 1984. I am a citizen of the United States and have been a resident of Alaska since _____, 19 _____. I am a qualified voter and am registered to vote under the _____ political party and have been a resident of Election District _____ since _____, 19 _____. I shall meet the age requirement upon taking the oath of office if elected. I am not a candidate for any other office to be voted upon at the primary or general election and I have not filed another declaration of candidacy or nominating petition for the office for which this declaration is filed. I request that my name appear on the primary election ballot and that it appear in the following form.*

(printed name for ballot use)

The required fee of \$30.00 accompanies this declaration.

(Signature of Candidate)

Subscribed and sworn before me this _____ day of _____, 198 .

(Notary Public or Postmaster)
(Commission expires: _____)

Please check one of the following:

- _____ I am filing my conflict of interest statement with this declaration.
- _____ I have a current conflict of interest statement on file with the Alaska Public Offices Commission. (A current municipal conflict of interest does not apply)

To assist the staff in verifying voter identification, please provide one or more of the following:

- 1. Voter Registration Number _____
- 2. Social Security Number _____
- 3. Birthdate _____

*The director of elections may not include on the ballot, as a part of a candidate's name, any honorary or assumed title or prefix but may include in the candidate's name any nickname or familiar form of a proper name of the candidate. (AS 15.15.030 (4))

I. REQUEST

Bill/Resolution No.: HB 29
 Title: "Verify residency of candidates"
 Sponsor: Representative Martin & Flood
 Requestor: House Finance

II. FISCAL DETAIL

Agency Affected: Office of the Governor
 Program Category Affected: Exec. Operation
 BRU, Program of Subprogram(s), Affected:
Division of Elections

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES			4.4		5.	
200 TRAVEL						
300 CONTRACTUAL			1.			
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING			5.4		5.	
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND			5.4		5.	
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY			2		2	

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL: Not Provided

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: T.P. Thora, Information Officer Phone: 465-4611
 Division: Division of Elections Date: 05-16-83
 Approved by Commissioner: *[Signature]* Date: 05-16-83
 Department: Lieutenant Governor

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)

FISCAL ANALYSIS
HB 29

"Verification of residency of candidates for certain offices"

ASSUMPTIONS:

Regulations must be written in FY 83 to allow cooperation between the Division of Elections and local entities such as property taxing authorities. This would confirm length of local residency. It is assumed that advertising for the change in regulations will cost \$1000 in contractual services.

Two temporary staff persons, at range 10, would work one month to verify residency of between 120- 150 state office candidates every two years. With 25% benefits and 6% inflation, these costs should be \$4,400 in FY 85 and \$5000 in FY 87.

"An Act relating to the verification of residency of candidates for certain public offices"

by: Martin, Flood and Lindauer

This bill would require the Director of Elections to verify the residency (by place and duration) of all candidates for the offices of:

Governor
Lieutenant Governor
U.S. Senate

U.S. House
State Senate
State House

In 1982 for example, there were 120 individual candidates in the Primary whose address and length of residence would need verification by the Division.

ASSUMPTION:

If this proposal were to become statutory law, the Division of Elections foresees the need to employ up to four more temporary staff persons in 1984 to investigate the durational residence and residence location of an increasing number of candidates for state office.

Presently, the Division of Elections requires candidates to file a notarized declaration of candidacy with the Division which includes their:

- 1) full residence address;
- 2) that the candidate meets the residency requirements as outlined in Article 2, Section 2 of the Alaska Constitution;
- 3) that they are registered voters of the parties under which they have filed as candidates for office.

At the bottom of the notarized form is the statement "to assist the staff in verifying voter identification, please provide one or more of the following:

- 1) voter registration number;
- 2) social security number;
- 3) birthdate"

RESOLVE:

An oath similar to that on the voter registration form could be added to the candidacy form attesting that all the information is true and setting out penalties for false statements. This may address the intent of HB 29.

The present method of challenging residency statements by candidates for office is to file a legal challenge with the courts, Attorney General, the Division of Elections, APOC or take the matter directly to the press.

IMPACT OF HB 29:

For the Division of Elections to verify each individual candidate for office would require that, between June 1 (the last day for filing) and August 1 (an arbitrary date before the primary), a check of residence and duration be run on all 120-150 candidates. Since the Division has only six year voter history, not district residence history, per se, we would have to check with the property tax division of the boroughs and municipalities, landlords or others renting units to absolutely confirm duration of residency.

H B

30

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: HB 30 Date on Bill: 1/17/83
 Title: "relating to proof of eligibility for registration as a voter"
 Sponsor: Martin and Lindhauer
 Requestor: House State Affairs Committee

1. Estimated fiscal impacts on: Office of the Governor, Division of Elections

a. Expenditures:

(Thousands of Dollars)

			FY 83	FY 84	FY 85	FY 86		
Capital								
Operating				12				
Total								

b. Revenues:

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

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

3. Assumptions: Passage of HB 30 would require the re-design and new printing of the voter registration forms. Compared to costs experienced by printing these forms in 1982, a run of one-half as many forms should incur this fiscal impact.

4. Disclaimer:

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

Prepared By: TPTThoma Information Officer Phone: 4611
 Division: Elections Date: 2/23/83

Approved by Commissioner: _____ Date: _____
 Department: _____

5. Distribution:

Original to Legislative Finance
Copy to OMB
Copy to Sponsor

THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. House Bill No. 30
 Title "An Act relating to proof of eligibility for registration as a
 Requested by House State Affairs Date 1-18-83 voter."

II. FISCAL DETAIL

Agency Affected Office of the Governor
 Program Category Affected Division of Elections
 BRU, Program, Or Subprogram(s) Affected Division of Elections
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

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

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS None

FULL TIME						
PART TIME						
TEMPORARY						

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

No additional fiscal impact is anticipated. Although House Bill No. 30 would require to some extent a re-design of the currently used voter registration form, reprinting of such forms is periodically provided for in the normal operating budget.

IV. DATE 1-19-83

PREPARED BY *Danith D. Arnoldt* Deputy Director
 AGENCY Office of the Governor, Div. of Electio
 PHONE 586-6181

Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/82)

INTRODUCTION OF BILLS (House)

Voter
Registration
(proof of
eligibility)

HOUSE BILL NO. 30, by Martin and Lindauer. Amends section of the Election Code relating to information required when registering to vote (AS 15.07.060) by adding a new section that would allow the Director of Elections to require an applicant to provide proof of eligibility to vote. The Director may use information available from other state departments or agencies to determine an applicants eligibility to vote. The Director shall provide an application form containing a statement wherein the voter certifies that he has been a state resident for at least 30 days prior to the date of the election or that he claims eligibility as an overseas voter, or that he is eligible to vote in a presidential election. Provides a false claim of eligibility is a criminal offense. The Director is to investigate a claim of eligibility if information provided by the voter is or seems inconsistent with other information regarding eligibility of the applicant. Does not provide for an effective date.

Introduced January 17 and referred to State Affairs, Judiciary, then to Finance.

Property Tax
(exemption--
disabled
veterans)

HOUSE BILL NO. 31, by Furnace, Barnes, Grussendorf, Koponen, Phillips, Lindauer, Abood, Liska, Larson and Fritz. Would require municipalities to exempt the real property owned and occupied as a permanent place of abode by a disabled veteran from taxation. The exemption for veterans would be the percentage of the assessed value of the property that is the same as the percentage of disability as established by the vets' service disability rating. The bill changes sections of the existing Municipal Code relating to assessment and taxation (AS 29.53.020--required exemptions), effective January 1, 1984, and would change those sections of a new Municipal Code (AS 29.45.030) when enacted by the Thirteenth Legislature.

Introduced January 17 and referred to Community & Regional Affairs, then to Finance.

Appropriation
(special)
(Anchorage
campus dorms)

HOUSE BILL NO. 32, by Furnace, Martin, Barnes, Flood, Lindauer, Abood, Liska, Szymanski and Fritz. Makes a special appropriation in the amount of \$15,000,000 to the University of Alaska for construction of dormitories for the U of A Anchorage campus. Provides appropriation is for a capital project and does not lapse. Provides Act takes effect immediately.

Introduced January 17 and referred to Health, Education and Social Services, then to Finance.

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(special)
(Anch. state
trooper
facility)

HOUSE BILL NO. 33, by Furnace, Martin, Barnes, Lindauer, Abood, Liska, Szymanski, Pestinger. Makes a special appropriation in the amount of \$8,100,000 to the Department of Public Safety for construction of a state trooper crime laboratory and office facility in Anchorage. Provides appropriation is for a capital project and does not lapse. Provides Act takes effect July 1, 1983.

Introduced January 17 and referred to State Affairs, then to Finance.

government to provide housing facilities to persons engaged in national defense activities, to register and vote at election in state. 142 ALR 430.

Sec. 15.07.040. Time for registration. A person who is qualified under AS 15.05.010(1) — (4) is entitled to register at any time throughout the year except that a person under 18 years of age may register at any time within 90 days immediately preceding his 18th birthday. (§ 2 ch 211 SLA 1968; am § 20 ch 32 SLA 1971; am § 6 ch 116 SLA 1972; am § 7 ch 100 SLA 1980)

Effect of amendments. — The 1980 amendment substituted "a person under 18 years of age may register at any time within 90 days immediately preceding his 18th birthday" for "no registration will be made for a period of 30 days preceding the

election" at the end of the section.

Collateral references. — Constitutionality of statutes in relation to registration before voting at election or primary. 91 ALR 349.

Sec. 15.07.050. Registration in person or by mail. Registration may be made in person before a registration official or by mail. (§ 2 ch 211 SLA 1968)

Sec. 15.07.060. Required registration information. (a) Each applicant who requests registration or reregistration shall supply the following information under oath:

- (1) name and sex;
- (2) address and other necessary information establishing residence if requested;
- (3) Repealed by § 8 ch 100 SLA 1980.
- (4) term of residence in state and in election district; and whether the applicant has previously been registered to vote in another jurisdiction, and, if so, the jurisdiction and the address of the previous registration;
- (5) a declaration that the registrant will be 18 years of age or older within 90 days of the date of registration;
- (6) a declaration that the registrant is a citizen of the United States;
- (7) date of application;
- (8) signature or mark.

(b) If the applicant has been previously registered to vote in another jurisdiction, he shall surrender to the registration official any voter registration or identification card or credentials from that jurisdiction the applicant may possess. The director shall notify the chief elections officer in that jurisdiction that the applicant has registered to vote in Alaska, request that jurisdiction to cancel the applicant's voter registration there, and return the applicant's voter registration or identification card or credentials, if any, to that jurisdiction.

(c) If application for registration is made in person before a registration official, the applicant shall exhibit one form of identification to

the official, including but not limited to a driver's license, birth certificate, passport, hunting or fishing license. A registration official who knows the identity of the applicant may waive the identification requirement.

(d) If the applicant requests reregistration, the applicant shall supply under oath any former name under which the applicant was registered to vote in the state. (§ 2 ch 211 SLA 1968; am § 21 ch 32 SLA 1971; am §§ 6, 7 ch 197 SLA 1975; am § 8 ch 100 SLA 1980)

Effect of amendments. — The 1980 amendment inserted "under oath" at the end of the introductory paragraph of subsection (a), repealed the former provisions of paragraph (3) of subsection (a), which read: "Election district and precinct as of the date of registration," substituted "the jurisdiction and the address of the previous registration" for "where" at the end of

paragraph (4) of subsection (a), substituted "within 90 days of the date of registration" for "on or before the date of the next statewide election" at the end of paragraph (5) of subsection (a), substituted "director" for "lieutenant governor" at the beginning of the second sentence of subsection (b), and added subsections (c) and (d).

NOTES TO DECISIONS

Omission of a voter's complete address is not a "minor" omission. *Willis v. Thomas*, Sup. Ct. Op. No. 1923 (File No. 4398), 600 P.2d 1079 (1979).

Where a voter filled out a voter registration application on October 5, 1978, but failed to supply her complete street address as required by this section, and on election day, filled out a second voter regis-

tration form, this time including her complete address, her ballot should not be counted. *Willis v. Thomas*, Sup. Ct. Op. No. 1923 (File No. 4398), 600 P.2d 1079 (1979).

Applied in *Hammond v. Hickel*, Sup. Ct. Order (File Nos. 4281, 4282, 4283, 4284, 4285, 4291), 588 P.2d 256 (1978).

Collateral references. — Validity of statute requiring information as to age, sex, residence, etc., as condition of registration or right to vote. 44 ALR 260.

Propriety of test or question asked applicant for registration as voter other than

formal questions relating to specific conditions of his right to registration. 76 ALR 1238.

Right of married woman to use maiden surname. 67 ALR3d 1266.

Sec. 15.07.065. Exchange of voter registration information.

Repealed by § 231 ch 100 SLA 1980.

Editor's notes. — The repealed section derived from § 8, ch. 197, SLA 1975.

Sec. 15.07.070. Procedure for registration. (a) The director may adopt regulations under the Administrative Procedure Act (AS 44.62) relating to the registration of voters consistent with the requirements of this section.

(b) To register by mail the director or the area election supervisor shall furnish, upon request, and at no cost to the voter, forms prepared

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(proof of
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trooper
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HOUSE BILL NO. 33, by Furnace, Martin, Barnes, Lindauer, Abood, Liska, Szymanski, Pestinger. Makes a special appropriation in the amount of \$8,100,000 to the Department of Public Safety for construction of a state trooper crime laboratory and office facility in Anchorage. Provides appropriation is for a capital project and does not lapse. Provides Act takes effect July 1, 1983.

Introduced January 17 and referred to State Affairs, then to Finance.

REGISTRATION PROCEDURES BY MAIL

1. If you are currently registered to vote in another state you must complete the attached "Voter's Authorization to Cancel Registration" card.
2. Print or type full name - last, first and middle initial. Names containing punctuation, such as a hyphen (-) or apostrophe ('), should be shown with that punctuation. A name suffix such as "Jr.", "Sr.", or "III" should follow the last name.
3. Print previous name if registered to vote under that name. Be sure to sign this card according to your new name.
4. Print complete Alaska residence address. Exact descriptions are necessary to determine accurately the exact precinct and district in which you live. As examples (where applicable) you should provide street name and house number, subdivision name, highway name, milepost number, a pier and slip number for ships, space number and trailer park name for trailers, and tract or plot numbers for rural areas. A rural postal box or highway will not suffice.
5. Print your mailing address if different from your residence address including a specific street address (where applicable), postal box number, star route, city and zip code.
6. It is not mandatory to provide your social security number, however, this information is helpful to our office.
7. Please fill in place of birth, although this information is not mandatory. If you were born abroad, enter the foreign country along with a phrase indicating military or American parents (if applicable).
8. Please fill in date of birth. Although this information is not mandatory, it is helpful to the Elections Office for identification purposes.
9. If you are a naturalized citizen, fill in your date of naturalization.

10. Fill in how long you have lived in Alaska. This information is computed from the day you moved to Alaska to the date of registration. For those who have lived here longer than one year, only the number of years need be entered. If you have temporarily resided outside of Alaska after initially residing here, your time in Alaska would include the time spent outside IF you have not registered to vote in any other state. IF you have registered to vote in another state, THEN, the length of time in Alaska would be computed from the date of your return to Alaska.
11. Fill in how long you have lived in the current election district, following the same guidelines as above. If you are unsure of your election district, indicate how long you have lived at your current address.
12. Indicate male or female.
13. Please indicate if you have been convicted of a felony. If your civil rights have not been restored, it is illegal for you to register to vote. If you have been unconditionally discharged from incarceration, probation and/or parole be sure to indicate the date of your discharge.
14. You are not required to provide your political affiliation. "Non-Partisan" is the same as "Independent" (a designation used in some other states) while "Other" is the category for any political affiliation other than Republican and Democrat (such as Libertarian, Alaskans for Independence, etc.)
15. Fill in today's date -- the date of this registration -- so that this office can compute the thirty-day registration requirement.
16. You are required to sign the registration form, and are, in fact, taking an oath. Sign the form by the same name you have printed above (i.e. by your proper first, middle initial, and last name, including any suffixes, etc.).
17. Have a registrar, notary public, U.S. postal official, a district judge or magistrate, commissioned officer of the armed forces, or other person qualified to administer oaths, witness and sign this registration form. If a qualified official is not available, two witnesses over the age of 18 years may sign this registration form, and, in addition, shall provide certification according to AS 09.65.012. A sample certification is attached.

SAMPLE VOTER REGISTRATION CARD

STATE OF ALASKA
VOTER
REGISTRATION

PLEASE PRINT

READ INSTRUCTIONS
ON BACK SIDE BEFORE
COMPLETING CARD

1 VOTER'S AUTHORIZATION TO CANCEL REGISTRATION

To the voter registration office of _____
City or County State

This is to advise that I am now a resident of Alaska. Therefore, my registration where I formerly resided at the following address should be cancelled.

NAME		
FORMER ADDRESS (House Number and Street Name or Rural Route and Box Number)		
CITY	STATE	ZIP CODE
BIRTHDATE	SOCIAL SECURITY NUMBER	
SIGNATURE X	DATE	

2 VOTER'S NAME _____
LAST FIRST INITIAL

3 PREVIOUS NAME (if registered to Vote in Alaska under that name) _____

4 ALASKA RESIDENCE ADDRESS _____
DO NOT LIST P.O. BOX OR RURAL ROUTES

CITY _____ STATE _____

5 MAILING ADDRESS _____

195108

FOR OFFICE USE ONLY

VOTER NUMBER _____

INITIAL REGISTRATION CHANGE OF AFFILIATION
 CHANGE OF ADDRESS CHANGE OF NAME

FORM 01-3001 (3/82)

CITY _____		STATE _____		ZIP _____	
6 SOCIAL SECURITY NUMBER	PLACE OF BIRTH 7	DATE OF BIRTH 8 MO DAY YR.		DATE OF NATURALIZATION 9 MO DAY YR.	
10 HOW LONG HAVE YOU LIVED IN ALASKA? YEARS MONTHS DAYS		11 HOW LONG HAVE YOU LIVED IN THIS ELECTION DISTRICT (AT CURRENT ADDRESS)? YEARS MONTHS DAYS		12 SEX: <input checked="" type="checkbox"/> MALE <input type="checkbox"/> FEMALE	
13 IF YOU HAVE EVER BEEN CONVICTED OF A FELONY, HAVE YOU BEEN UNCONDITIONALLY DISCHARGED FROM INCARCERATION, PROBATION AND/OR PAROLE? IF SO, GIVE DATE		15 DATE		16 SIGNATURE OF VOTER X	
14 POLITICAL AFFILIATION (Circle preference) REPUBLICAN DEMOCRAT NON-PARTISAN OTHER (SPECIFY) _____		17 WITNESS		17 WITNESS OR OFFICIAL	
		TWO WITNESSES OR A QUALIFIED OFFICIAL MUST SIGN		TITLE	LOCATION

Sample Certification

The following is a sample of the certification which must be used if a notary public or other individual empowered to administer oaths (discussed in number 17 of the previous page) is unavailable to witness the registrant's (voter's) signing of the voter registration card.

I _____ certify under penalty of
Registrant's Name (Please Print)

perjury that the information on the attached voter registration form is true and accurate. I further certify that no notary public or other official empowered to administer oaths is available.

Date

Signature of Registrant

Location

I certify that I am at least 18 years old and that I have witnessed the registrant's signing of the attached voter registration card and this certification.

Date

Signature of Witness

I certify that I am at least 18 years old and that I have witnessed the registrant's signing of the attached voter registration card and this certification.

Date

Signature of Witness

H B

3 3

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. House Bill No. 33
Title "An Act... for a State Trooper Facility"
Requested by _____ Date _____

II. FISCAL DETAIL

Agency Affected Department of Public Safety
Program Category Affected Administration of Justice
BRU, Program, Or Subprogram(s) Affected AST / Support & Services
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES			416.6	441.6	468.1	496.2
200 TRAVEL			10.0	10.6	11.2	11.9
300 CONTRACTUAL			30.0	31.8	33.7	35.7
400 COMMODITIES			28.3	30.0	31.8	33.7
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL			523.9	514.0	544.8	577.5

FUNDING (Thousands of Dollars)

GENERAL FUND			484.9	514.0	544.8	577.5
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME			9	9	9	9
PART TIME						
TEMPORARY						

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

This legislation provides funds for the construction of a 30,000 sq. ft. public safety facility in Anchorage to house an expanded Statewide Crime Laboratory, the Anchorage Metropolitan Drug Enforcement Unit and the local Alaska State Troopers and Fish & Wildlife Protection Detachments. The attached Schedule 1 details the Capital Costs and Schedule 2 details the operating Costs. The vast majority of the Operating Costs represents a shift in direction for the Crime Lab from being a limited service A.S.T. facility to becoming a full-service operation designed to meet the needs of all law enforcement agencies in the state. Operating costs after FY'85 reflect an annual 6% inflation rate estimate.

IV. DATE January 17, 1983 PREPARED BY Francis C. Allan F.C.Allan
AGENCY Division of Alaska State Troopers
Original: Legislative Finance PHONE 269-5691
cc: Budget and Management
- Prime Sponsor (First Legislator Named)
33-001 (Rev. 12/81)

Handwritten note: Ask for Chemists, in FY 84 operating budget but deleted by Gov.

Handwritten note: July 84

Handwritten note: 29.0 / 9.4

Handwritten note: 484.9 / 29.1 / 514.0

Handwritten note: 17K #
400K = B #



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

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

January 24, 1983

MEMORANDUM

To: Representative Walt Furnace
From: Leonard Steinberg, Research Staff *L.S.*
Re: FBI Examination of Legal Evidence
Research Request 83-11

Steve Levi of your office requested the following information:

- 1) The number of Alaska criminal cases which made use of the FBI crime lab in Washington D.C.;
- 2) How many legal cases went to court with FBI assistance;
- 3) How often the FBI's time for analysis exceeded Alaska's 120 day limitation for court appearances; and
- 4) What specific evidence has been sent to the FBI for analysis.

Our attempts to answer these questions involved contacting: the Federal Bureau of Investigation in Anchorage and in Washington D.C.; the State of Alaska's Chief Prosecutor and the Anchorage District Attorney; the Alaska State Troopers; and the municipal police in Anchorage and Fairbanks.

Number of Alaska Criminal Cases Involving the FBI's Crime Lab

The table below lists the number of Alaska cases and the number of different examinations of Alaska evidence that were performed by the FBI's crime lab in federal fiscal years 1980, 1981, and 1982. (The federal fiscal year runs from October 1 to September 30; FY 80, for example began October 1, 1979 and ended September 30, 1980.) This information was obtained from Manuel Marquez, of the Federal Bureau of Investigation in Washington D.C.

The number of examinations performed is many times larger than the number of cases because each case often includes many different items and each item may undergo numerous different examinations.

<u>Year</u>	<u>Number of Cases</u>	<u>Number of Examinations</u>
1980	181	10,744
1981	209	13,531
1982	236	19,510

Number of Legal Cases Which Went to Court With FBI Assistance

There are no records of the number of times the FBI's crime lab analysis has actually been used in court. Though FBI crime lab examiners frequently travel to Alaska to testify in criminal proceedings, only rough estimates of the number of visits are available.

According to Larry Nelson, the FBI's chief agent in Alaska, not a month goes by without one of the FBI's crime lab examiners traveling to Alaska to make a court appearance. Captain Smith, of the Anchorage Police Department, said he knew of at least 6 FBI crime lab examiners that visited Alaska during the last year.

The FBI in Washington D.C. may maintain records on number of visits examiners make to testify in Alaska courts, but the FBI declined to make that information available to us. The use of FBI examiners or laboratory analysis could be reconstructed by reviewing all the criminal files of the District Attorneys in Alaska, but doing so would require a substantial amount of time.

Excessive Time Required For FBI Analysis

Law enforcement authorities in Alaska are concerned that the FBI's crime lab will not analyze and return the evidence to Alaska in time to meet the requirement, unless waived by the defendant, that criminal trials take place within 120 days of an arrest.

There is little evidence of the FBI's laboratory analysis failing to arrive in time for a trial. The State Troopers have described one case (Alaska vs. Lewis, 1981) in which the trial court suppressed use of the FBI's lab report received the morning of the trial, but that case was complicated by other factors and the suppression was overturned on appeal.¹

No other specific cases of laboratory analysis too late for use in court have been cited. However, Fairbanks Police Chief Matthew Kiernan estimated that perhaps in one percent of his cases he was unable to use the

¹ Department of Public Safety. The Development of a Full Service Forensic Laboratory for Law Enforcement in Alaska. September 1982. Page 11.

Representative Walt Furnace

January 24, 1983

Page Three

FBI's laboratory analysis in court because of delays. Other Alaska law enforcement authorities indicated that, to their knowledge, evidence has always arrived in time, but not without the use of personal contacts between the law enforcement authorities in Alaska and FBI examiners in Washington D.C. Estimates of amount of time normally required for an FBI analysis ranged from two to six months.²

Specific Evidence Sent To The FBI For Analysis

It was not possible to obtain a list of the specific legal evidence which has been sent from Alaska to the FBI for analysis in the time available to complete this research request. All law enforcement authorities were contacted but regular records of what has been submitted for analysis have not been maintained.

The FBI crime lab in Washington D.C. may maintain records of what it has analyzed for Alaska, but this information was not made available to us. A list of the specific evidence sent to the FBI for analysis could be reconstructed by going through all the criminal files of the law enforcement authorities in Alaska, but doing so would require a substantial amount of time.

The FBI's crime lab conducts all known types of criminal analysis. Examples of Alaskan criminal evidence currently analyzed by the FBI include: questioned documents, body fluids, firearms, trace metals, voice prints, hair, fibers, and fingerprints.

Additional Information

Currently, all FBI service (analysis and expert witnesses) are available free of charge. The FBI crime lab's work is well respected and the examiners make excellent witnesses. However, many of Alaska's law enforcement officials spoke of the federal government's intention to cease providing lab services for state and local police.

The FBI, while supporting the development of regional criminal analysis laboratories, denies any intention of reducing services to state and local law enforcement authorities.

* * * * *

We hope this information is useful to you. Please let us know if we can be of any further assistance.

² Captain Smith of the Anchorage Police Department estimated normal FBI turnaround time at two months while Major Korhonen of the Alaska State Troopers estimated normal turnaround times of five to six months.



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The FBI in Washington D.C. may maintain records on number of visits examiners make to testify in Alaska courts, but the FBI declined to make that information available to us. The use of FBI examiners or laboratory analysis could be reconstructed by reviewing all the criminal files of the District Attorneys in Alaska, but doing so would require a substantial amount of time.

Excessive Time Required For FBI Analysis

Law enforcement authorities in Alaska are concerned that the FBI's crime lab will not analyze and return the evidence to Alaska in time to meet the requirement, unless waived by the defendant, that criminal trials take place within 120 days of an arrest.

There is little evidence of the FBI's laboratory analysis failing to arrive in time for a trial. The State Troopers have described one case (Alaska vs. Lewis, 1981) in which the trial court suppressed use of the FBI's lab report received the morning of the trial, but that case was complicated by other factors and the suppression was overturned on appeal.¹

No other specific cases of laboratory analysis too late for use in court have been cited. However, Fairbanks Police Chief Matthew Kiernan estimated that perhaps in one percent of his cases he was unable to use the

¹ Department of Public Safety. The Development of a Full Service Forensic Laboratory for Law Enforcement in Alaska. September 1982. Page 11.

FBI's laboratory analysis in court because of delays. Other Alaska law enforcement authorities indicated that, to their knowledge, evidence has always arrived in time, but not without the use of personal contacts between the law enforcement authorities in Alaska and FBI examiners in Washington D.C. Estimates of amount of time normally required for an FBI analysis ranged from two to six months.²

Specific Evidence Sent To The FBI For Analysis

It was not possible to obtain a list of the specific legal evidence which has been sent from Alaska to the FBI for analysis in the time available to complete this research request. All law enforcement authorities were contacted but regular records of what has been submitted for analysis have not been maintained.

The FBI crime lab in Washington D.C. may maintain records of what it has analyzed for Alaska, but this information was not made available to us. A list of the specific evidence sent to the FBI for analysis could be reconstructed by going through all the criminal files of the law enforcement authorities in Alaska, but doing so would require a substantial amount of time.

The FBI's crime lab conducts all known types of criminal analysis. Examples of Alaskan criminal evidence currently analyzed by the FBI include: questioned documents, body fluids, firearms, trace metals, voice prints, hair, fibers, and fingerprints.

Additional Information

Currently, all FBI service (analysis and expert witnesses) are available free of charge. The FBI crime lab's work is well respected and the examiners make excellent witnesses. However, many of Alaska's law enforcement officials spoke of the federal government's intention to cease providing lab services for state and local police.

The FBI, while supporting the development of regional criminal analysis laboratories, denies any intention of reducing services to state and local law enforcement authorities.

* * * * *

We hope this information is useful to you. Please let us know if we can be of any further assistance.

² Captain Smith of the Anchorage Police Department estimated normal FBI turnaround time at two months while Major Korhonen of the Alaska State Troopers estimated normal turnaround times of five to six months.



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

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

January 26, 1983

MEMORANDUM

To: Representative Walt Furnace

From: Leonard Steinberg, Research Staff *LS*

Re: Criminalistics Analysis--Additional Information On Costs
Research Request 83-11

Steve Levi of your office requested additional information on the costs of criminalistic analysis performed by both public and private institutions. Also included is an update on the FB crime lab's involvement in court proceedings in Alaska and the specific analytical techniques used by the FBI.

Criminalistics Analysis Costs--Findings

Many different rate structures are used to establish the prices of criminalistics analysis services. Most prices are based on hourly rates, though some labs charge a flat fee for each individual service. In general, labs are reluctant to charge flat fees because there is considerable variability in the amount of time required to analyze different pieces of evidence. Apparently some tests, such as toxicology, are very routine and their costs are affected by economies of scale. Other examinations, however, such as firearm and toolmark identification, vary greatly in the amount of time required for each examination.

Hourly rates vary from twenty-three to one hundred dollars per hour with the public and non-profit facilities providing the lowest hourly rates. Most private criminalistics analysis organizations provide only limited services, primarily for defense counsel's rebuttal of a prosecutor's evidence. In fact, there are very few private laboratories; most of the private sector activity in criminalistics is from individuals formerly associated with a criminalistics lab who are experts in interpreting the laboratory data. The private laboratories which do exist are small and their costs are high, in part, due to their low volume.

Five public, one private non-profit, and three private for-profit criminalistics laboratories were sampled for the cost of their services. The results are listed below by each organization.

Contra Costa County Sheriff's Crime Lab

Like most counties in California, the Contra Costa County Sheriff's Crime Lab provides criminalistics analysis for all law enforcement agencies, municipal, county, state and federal, located in that county for no charge. The lab occasionally contracts to provide its services to public agencies outside the county, and charges only the additional costs it incurs in making these services available. In general, its extra costs are only labor; their labor rate has been estimated at \$23 per hour.

According to Gerald Mitosinko, the lab's director (415 372-2466), the Contra Costa County Crime Lab has calculated the amount of time it has spent on various criminalistics procedures during the last several years. The average amounts of time required are listed below by different types of examinations. In parentheses is a rough approximation of the costs of these examinations, calculated on the basis of the time shown multiplied by the labor cost of \$23 per hour.

Amphetamines	.7 hours (\$16)	Heroin	1.36 hours (\$31)
Cocaine	.5 hours (\$12)	Marijuana	.39 hours (\$9)
Explosives	4.83 hours (\$111)	Document	2.84 hours (\$65)
Shoe/Tire Prints	4.17 hours (\$96)	Firearms ID	11.91 hours (\$274)
Fiber & Hair	5.18 hours (\$119)	Toolmarks ID	7.13 hours (\$164)

Dallas County -- Southwestern Institute of Forensic Sciences

The Southwestern Institute of Forensic Sciences is a Dallas County agency. According to Director Irving Stone (214 638-9980), the Institute charges a fixed rate by the type of service performed. The rates have been set on the assumption that labor rates are approximately \$50 per hour. In addition, the Institute charges a flat \$200 fee for testimony and travel. The Institute's fee schedule and background information is being sent in the mail, but examples of their charges are listed below.

Documents Exam	\$50	Fingerprint Exam	\$50
Bullet Exam	\$35	Typewriter Comparison	\$50
Serial Number Restoration	\$50	Search for Spermatazoa	\$15

Representative Walt Furnace
January 26, 1983
Page Three

Tool Mark Comparison	\$50	Search for Blood or Seminal Stains	\$15
Hair & Fiber Analysis	\$30	Analysis of ABO/RH From Dried Stains	\$40

Connecticut State Police Forensic Sciences Laboratory

Dr. Henry Lee, is the Chief of the Forensic Sciences Laboratory in the state of Connecticut (203 238-6324). Dr. Lee explained that in addition to providing criminalistic analysis services for law enforcement authorities throughout Connecticut for no charge, his lab charges law enforcement authorities in surrounding states only for the cost of materials used in criminalistic analysis and for the time required for testimony.

Dr. Lee said that his lab has twenty-six employees and an annual budget of approximately \$500,000.

Washington State Police Crime Lab

George Ishi is the Director of the Washington State Police Crime Lab (206 464-7073). According to Mr. Ishi, the Washington State Police Crime Lab does provide criminalistics analysis services to other public agencies under contract. The lab charges \$60 per hour plus any unusual expenses such as for special chemicals, special instruments, or testimony. Mr. Ishi is sending an analysis of the time spent by his lab on different types of criminalistic procedures.

Kansas City, MO, Regional Criminalistics Laboratory

According to Gary Howell of the Regional Criminalistics Laboratory in Kansas City, MO (816 234-5000), public sector laboratory that charges \$30 per hour to all public agencies within a surrounding five county region and \$45 per hour to other public agencies outside that five county region. Howell was careful to say that it is impossible to predict how much time any particular examination will require.

Howell said that time spent by his staff testifying is billed at the same rate as laboratory time. Howell calculated that his lab spends about 20,000 hours examining evidence each year. Howell is sending additional information in the mail.

Northern Illinois Police Crime Lab

The Northern Illinois Police Crime Lab is a private non-profit membership agency organized to provide criminalistics services to municipal

police departments throughout Northern Illinois, an area with a population of approximately 500,000. The lab's Director, Andrew Principe (312 432-8160), explained that each member municipality pays an annual assessment based on its population as illustrated in the table below.

<u>Population of City</u>	<u>Annual Fee</u>
1000	\$1500
3500	\$3100
20,000	\$11,500
50,000	\$25,800
70,000	\$29,800
100,000	\$35,800

The Northern Illinois Police Crime Lab also provides criminalistic analysis for non-member public organizations at a cost of \$75 per hour, with a one-hour minimum charge. In addition, when the lab's staff is required to testify, the charge for that service is \$200 for the first hour and \$50 per hour thereafter.

According to Mr. Principe, the lab's annual budget of about \$300,000, is primarily from the annual membership fees. The lab employs a staff of ten and the lab has \$500,000 worth of equipment.

Forensic Science Associates

Forensic Science Associates is a private for-profit criminalistics laboratory located in the San Francisco area that does not provide routine types of analysis; Forensic Science Associates does not do toxicology, blood alcohol analysis, or drug identification. Peter Barnett (415 653-3530) said that his firm's fee is \$70 per hour and the amount of time he spends on any one procedure varies considerably. Most of this firm's work is for private defense counsel.

Criminalistic Laboratory

Criminalistic Laboratory is also a private for-profit small volume lab in the San Francisco area. According to the lab's Chuck Morton (415 451-0767), some of their work is performed for public agencies, but most of their work is also for private defense counsel. Criminalistic Laboratory charges \$75-100 per hour depending on the analysis being conducted. In addition, Criminalistic Laboratory also has some

fixed fees for standard procedures, such as paternity testing (\$70-80 per sample), blood grouping (\$75 per sample), saliva analysis (\$50 per sample) and others.

Western Laboratories

Western Laboratories, also in the San Francisco area, is primarily a private for-profit medical laboratory. However, Western Labs does perform toxicology, forensic alcohol, and autopsy service under contract to Alameda County. Dr. Paul Herman, head of the lab, said that fixed fees are charged for these services and is sending a fee schedule by mail. Dr. Herman warned, however, that Western's fees are expected to rise by about 20% in the near future.

FBI Crime Lab Update

According to Larry Nelson, the FBI's agent in charge in Alaska, in federal FY 82, FBI examiners made fifty-one trips to Alaska to testify in court. In forty-seven cases, testimony was actually given in court and four cases were resolved prior to the FBI examiner's scheduled court appearance.

The fifty-one trips made by FBI examiners to Alaska in FY 82 were to present testimony about the following analytical procedures.

<u>Type of Examination</u>	<u>Number of Examinations</u>
Firearm and Toolmark Identification	17
Hair and Fiber Analysis	15
Serology and Blood Type Examinations	13
Neutron Activation Tests	3
Paint Analysis	1
Metallurgy Analysis	1
Document Examination	1

of crime lab tests provide facts contributing to the exoneration of the innocent and the establishment of proof of the guilty. The modern lab requires highly trained scientists and technicians who use costly materials and sophisticated instrumentation in an expensive environment, for there can be no compromise in the quality of the work they perform.

A modern, full-services Crime Lab presents a wide array of expertise. Some of these are:

- * Toxicology A Toxicologist detects and identifies the presence of drugs or poisons in body tissues, fluids and organs.
- * Firearms and Tool Marks Examination The Examiner can, for example, match a spent bullet to the gun that fired it by examination of the microscopic markings on the bullet caused by the irregularities on the inner surface of the gun barrel, among other capabilities. As a Tool Marks Specialist, he can identify the tire iron or other implement found in the suspect's car as the one that pried open the window or door of the victim's home by comparing and matching the microscopic nicks on the blade of the tire iron to the impressions left in the wooden window sill.
- * Forensic Serology The Forensic Serologist, through analyses of body fluids, semen, and saliva found at the crime scene, can limit the population group of the assailant to those within certain blood groups, thus eliminating persons with other blood groups and characteristics as suspects in a given crime.
- * Questioned Documents Examination The Questioned Documents Examiner can ascertain the source or authenticity of a document through the many characteristics of an individual's handwriting, as well as through the variations in typewriter letters as a function of the use and wear to the machine's moving parts, and through the analyses of inks and different types of paper.
- * Forensic Chemistry The Forensic Chemist tests and analyzes unknown substances. By testing substances thought to be illegal drugs, he can determine the type drug, its relative purity and the substances that may be mixed with the drug. He can also identify small amounts of accelerants from a suspected arson fire by testing charred and burned materials

found at the fire, as well as numerous other related tasks requiring chemical analysis.

- * Trace Evidence Examination The Trace Evidence Examiner can narrow the origin of minute bits of evidence such as human hair and fibers, that are exchanged during a violent confrontation, to a group that includes (or excludes) the suspect. The brown head hair found on the shirt of the suspect can be shown to match the hair of the victim of the assault.

- * Fingerprint Examination The Fingerprint Examiner can match fingerprints found on a gun or some other surface to those of the suspect based upon the matching of the characteristics of the fingerprint ridges that are unique to each individual. (The Automated Fingerprint Identification System, funded during the 1982 session of the legislature, and now being developed, will be placed within the Crime Laboratory.)

It is the use of carefully gathered evidence, analyzed by the latest scientific methodologies of the numerous forensic disciplines that builds both a strong case against the accused, while eliminating other persons as suspects.

Unfortunately, state and local law enforcement agencies in Alaska do not have a laboratory with such capabilities. In fact, Alaska is the only State without a statewide crime lab. The rudimentary laboratory in the Troopers building in Anchorage is limited by space, personnel and budget to only narcotics testing, fingerprint identification and crime photography. These very limited services are performed at no cost to all law enforcement agencies in Alaska.

Historically Alaska has depended upon the FBI lab to perform criminalistics tests and has done so to a greater degree than any other state. While this dependence upon the FBI has worked reasonably well in the past, the FBI has recently suffered budget cuts as part of the general decrease

Project Justification: Continued

100 Personal Services - Maintenance & Operations

Job Class Range	Maintenance	
	Worker Range 54	Janitor Range 59
Annual Salary	\$22,380	\$16,776
One Month Overtime	- 0 -	- 0 -
Subtotal	22,380	16,776
Benefits	3,929	2,945
SBS	1,371	1,028
Health Insurance	2,400	2,400
TOTAL	\$30,080	\$25,149

Summary - Personal Services, Lab and Maintenance & Operations

	Lab	Maint & Ops	Total
Annual Salary	\$ 235,044	\$ 39,156	\$ 274,200
One Month Overtime	26,160	- 0 -	26,160
Subtotal	\$ 261,204	\$ 39,156	\$ 300,360
Benefits	45,861	6,874	52,735
SBS	14,903	2,399	17,302
Health & Ins.	20,160	4,800	24,960
TOTAL	\$ 342,128	\$ 53,229	\$ 395,357

CONTINUATION
FROM: 35b

CATEGORY Administration of Justice
 AGENCY Department of Public Safety
 PROGRAM Crime ID & Apprehension

Page 10 of 12

Revised Date

FY 84

200 Travel

In-state & out-of-state travel to maintain

OPERATING COSTS

and develop professional expertise.

\$ 10,000

OPERATING COSTS

300 Contractual

FY 85

FY 86

Telephone	\$18,400
Electricity	13,000
Other Utilities	5,000
Building Repairs & Maint	7,000
Subtotal	

\$395,357
+ 55,000
<u>\$450,357</u>
+ 27,021
<u>\$477,378</u>

Line 100	\$395,357
Other	+ 07,200
Sub-total	<u>\$402,557</u>
Inflation	+ 59,644
Total	<u>\$542,201</u>

\$ 43,400

400 Commodities

Heating Fuel	\$31,800
Miscellaneous	2,000
Subtotal	

\$ 33,800

Total Annual Operating Costs

\$402,557

IDENTIFICATION OF ALTERNATIVES CONSIDERED:

- (1) Do not expand the crime lab and thus avoid becoming involved in evidence analysis on a statewide basis. This is unreasonable and unacceptable given our statutory responsibilities.
- (2) Ship evidence to out-of-state laboratories (there is no in-state laboratory capable of performing the necessary tests). This is unacceptable for the following reasons:

CATEGORY Administration of Justice
 AGENCY Department of Public Safety
 PROGRAM Crime ID & Apprehension

CONTINUATION
FROM: 35b

Page 11 of 12

Revised Date 10/4/82

FY 84

ANCHORAGE COMBINED FACILITY
CAPITAL COSTS

Schedule 1

1) Construction Costs

Crime Lab - 17,000 sq. ft.	\$3,366.0	
A.S.T. & F.W.P. Posts - 11,000 sq. ft.	1,210.0	
Metro - 2,000 sq. ft.	220.0	
DOT/PF Overhead, Architect, Planning Contingency, etc.	<u>1,472.2</u>	
Subtotal		\$6,268.2

2) Equipment

Crime Lab	859.0	
A.S.T. & F.W.P. Posts	<u>37.5</u>	
Subtotal		896.5

3) Commodities

Crime Lab - Initial stock		71.0
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4) Inflation - Through construction start

864.3

TOTAL

Rounded \$8,100.0
8,066.6

*(The additional amt went into Dr. Fi
overhead)*

Lab Space Only - Operational = 5750 \square
Non-operational = 5500 \square
Future Expansion = 5500 \square
16,750 - rounded to 17,000 \square

Cost - FBI says forensic lab cost = 180% of Commercial Bldg Space -
Commercial Space - Area - 11/82 = 110 \square

ANCHORAGE COMBINED FACILITY
FY'85 OPERATING COSTS

Schedule 2

100 Personnel Services

Serologist - Range 19	\$38,124	
Trace Evidence Specialist - Range 19	38,124	
Fingerprint I.D. Specialist - Range 18	35,580	
Fingerprint I.D. Specialist - Range 18	35,580	
Firearms & Tool Marks Specialist - Range 19	38,124	
Forensic Chemist/Dep. Director - Range 21	44,508	
Administrative Ass't II - Range 14 & O.T.	29,133	
Maintenance Worker - Range 54	22,380	
Janitor - Range 59	16,776	
	<u>Subtotal</u>	\$298,329
Benefits for above	94,662	
	<u>Subtotal</u>	\$392,991
Subtotal - Above at 106% to reflect inflation through FY'85		\$416,570

*Only state employees
can be on list*

*These have always been in the
Capital budget*

200 Travel

In-state & out-of-state travel needed to attain and maintain professional expertise	10,000
---	--------

300 Contractual Services

Telephone	\$12,500	
Electricity	9,100	
Other Utilities	3,500	
Building Repairs & Maintenance	4,900	
	<u>Subtotal</u>	30,000

400 Commodities

Heating Fuel	\$26,700	
Miscellaneous	1,600	
	<u>Subtotal</u>	28,300
	<u>TOTAL</u>	<u>\$484,870</u>

1785

Slight increase

Have had a wage increase

Job Class Range	Serologist Range 19	Trace Evidence Specialist Range 19	Fingerprint ID Specialist Range 19	Fingerprint ID Specialist Range 19	Firearms & Tool Marks Specialist Range 19	Domestic Police Range D1	Administrative Ass't II Range 14	Maintenance Worker Range 54	Janitor Range 59	Total
Annual Salary	\$38,124	38,124	35,580	35,580	38,124	44,508	26,592	22,320	1,16,776	296,088
	-0-	-0-	-0-	-0-	-0-	-0-	2,211	-0-	-0-	2,211
Subtotal	38,124	38,124	35,580	35,580	38,124	44,508	28,803	22,320	16,776	298,299
Benefits	6,695	6,695	6,240	6,248	6,695	7,898	5,116	3,930	2,995	50,000
SBS	2,240	2,240	2,183	2,183	2,240	2,240	1,577	1,371	1,028	17,302
Health Insurance	2,880	2,880	2,880	2,880	2,880	2,880	2,880	2,400	2,400	24,960
TOTAL	49,939	49,939	46,893	46,893	49,939	57,426	38,796	30,021	21,199	399,991
<p>300 Contractual</p> <p>Telephone \$ 12,500</p> <p>Electricity 8,700</p> <p>Other Utilities 3,300</p> <p>Building Repairs & Maint 4,000</p> <p>Subtotal 28,500</p>										28,500
<p>400 Commodities</p> <p>Heating Fuel \$ 26,700</p> <p>Miscellaneous 12,000</p> <p>Subtotal 38,700</p>										38,700
<p>Total Annual Operating Costs</p>										29,900
										434,870
										156,109

Column write

300 17 and by state amount of state

434,870

156,109

FISCAL NOTE

I. REQUEST

Bill/Resolution No. House Bill No. 33

Title "An Act... for a State Trooper Facility"

Requested by _____ Date _____

II. FISCAL DETAIL

Agency Affected Department of Public Safety

Program Category Affected Administration of Justice

BRU, Program, Or Subprogram(s) Affected AST / Support & Services

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

EXPENDITURES (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES			416.6	441.6	468.1	496.2
200 TRAVEL			10.0	10.6	11.2	11.9
300 CONTRACTUAL			30.0	31.8	33.7	35.7
400 COMMODITIES			28.3	30.0	31.8	33.7
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL			484.9	514.0	544.8	577.5

FUNDING (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
GENERAL FUND			484.9	514.0	544.8	577.5
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
FULL TIME			9	9	9	9
PART TIME						
TEMPORARY						

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

This legislation provides funds for the construction of a 30,000 sq. ft. public safety facility in Anchorage to house an expanded Statewide Crime Laboratory, the Anchorage Metropolitan Drug Enforcement Unit and the local Alaska State Troopers and Fish & Wildlife Protection Detachments. The attached Schedule 1 details the Capital Costs and Schedule 2 details the operating Costs. The vast majority of the Operating Costs represents a shift in direction for the Crime Lab from being a limited service A.S.T. facility to becoming a full-service operation designed to meet the needs of all law enforcement agencies in the state. Operating costs after FY'85 reflect an annual 6% inflation rate estimate.

IV. DATE January 17, 1983

PREPARED BY Francis C. Allan F.C.Allan
AGENCY Division of Alaska State Troopers

Original: Legislative Finance PHONE 269-5691
cc: Budget and Management
- Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/81)

*in Chemists
FVSE quantity
not defined by Gov.*

(July 84)

2909⁸⁶

*484.9
29.1
514.0*

*inc. P. = 17K
F. = 13K*

Winn Bill No. 33

FY85

Slight increase here

Have had a large increase 10%

Job Class Range	Serologist Range 19	Trace Evidence Specialist Range 19	Fingerprint ID Specialist Range 19	Fingerprint ID Specialist Range 19	Firearms & Tool Marks Specialist Range 19	Detective Range 01	Administrative Ass't II Range 14	Maintenance Worker Range 54	Janitor Range 59	Total
Annual Salary	\$38,124	38,124	35,580	35,580	38,124	44,508	26,392	22,380	16,776	276,088
	-0-	-0-	-0-	-0-	-0-	-0-	2,241	-0-	-0-	2241
Subtotal	38,124	38,124	35,580	35,580	38,124	44,502	28,633	22,380	16,776	278,329
Benefits	6,675	6,675	6,240	6,240	6,675	7,828	5,116	3,930	2,945	52,100
SBS	2,240	2,240	2,183	2,183	2,240	2,240	1,577	1,371	1,028	17,302
Wealth Insurance	2,880	2,880	2,880	2,880	2,880	2,880	2,800	2,400	2,400	24,960
TOTAL	49,939	49,939	46,893	46,893	49,939	57,452	38,750	30,121	23,154	392,971

200 7.000
D. State and local

300 Contractual

- Telephone \$ 12,500
- Electricity 11,000
- Other Utilities 3,500
- Building Repairs & Maint 2,000
- Subtotal 31,000

400 Commodities

- Heating Fuel \$ 7,000
- Miscellaneous 1,000
- Subtotal 8,000

Total Annual Operating Costs

416,570

487,179

ANCHORAGE COMBINED FACILITY
FY'85 OPERATING COSTS

Schedule 2

100 Personnel Services

Serologist - Range 19	\$38,124	
Trace Evidence Specialist - Range 19	38,124	
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Fingerprint I.D. Specialist - Range 18	35,580	
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	<u>Subtotal</u>	30,000

400 Commodities

Heating Fuel	\$26,700	
Miscellaneous	<u>1,600</u>	
	<u>Subtotal</u>	28,300
	<u>TOTAL</u>	<u>\$484,870</u>

ANCHORAGE COMBINED FACILITY
CAPITAL COSTS

Schedule 1

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Metro - 2,000 sq. ft.	220.0	
DOT/PF Overhead, Architect, Planning Contingency, etc.	<u>1,472.2</u>	
Subtotal		\$5,268.2

2) Equipment

Crime Lab	859.0	
A.S.T. & F.W.P. Posts	<u>37.5</u>	
Subtotal		896.5

3) Commodities

Crime Lab - Initial stock		71.0
---------------------------	--	------

4) Inflation - Through construction start

864.3

TOTAL

Rounded \$8,100.0

8,066.6

(The additional amt went into DOT/PF overhead.)

Lab Space Only - Operational = 5750 sq ft
 Non-operational = 5500 sq ft
 Future Expansion = 5500 sq ft
14,750 - rounded to 17,000 sq ft

Cost - FBI says forensic lab cost = 180% of Commercial Bldg Space -
 Commercial Space - Area - 4110'82 = 6110 sq ft



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

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

January 26, 1983

MEMORANDUM

To: Representative Walt Furnace

From: Leonard Steinberg, Research *LS*

Re: Criminalistics Analysis--Additional Information On Costs
Research Request 83-11

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Criminalistics Analysis Costs--Findings

Many different rate structures are used to establish the prices of criminalistics analysis services. Most prices are based on hourly rates, though some labs charge a flat fee for each individual service. In general, labs are reluctant to charge flat fees because there is considerable variability in the amount of time required to analyze different pieces of evidence. Apparently some tests, such as toxicology, are very routine and their costs are affected by economies of scale. Other examinations, however, such as firearm and toolmark identification, vary greatly in the amount of time required for each examination.

Hourly rates vary from twenty-three to one hundred dollars per hour with the public and non-profit facilities providing the lowest hourly rates. Most private criminalistics analysis organizations provide only limited services, primarily for defense counsel's rebuttal of a prosecutor's evidence. In fact, there are very few private laboratories; most of the private sector activity in criminalistics is from individuals formerly associated with a criminalistics lab who are experts in interpreting the laboratory data. The private laboratories which do exist are small and their costs are high, in part, due to their low volume.

Five public, one private non-profit, and three private for-profit criminalistics laboratories were sampled for the cost of their services. The results are listed below by each organization.

Contra Costa County Sheriff's Crime Lab

Like most counties in California, the Contra Costa County Sheriff's Crime Lab provides criminalistics analysis for all law enforcement agencies, municipal, county, state and federal, located in that county for no charge. The lab occasionally contracts to provide its services to public agencies outside the county, and charges only the additional costs it incurs in making these services available. In general, its extra costs are only labor; their labor rate has been estimated at \$23 per hour.

According to Gerald Mitosinko, the lab's director (415 372-2466), the Contra Costa County Crime Lab has calculated the amount of time it has spent on various criminalistics procedures during the last several years. The average amounts of time required are listed below by different types of examinations. In parentheses is a rough approximation of the costs of these examinations, calculated on the basis of the time shown multiplied by the labor cost of \$23 per hour.

Amphetamines	.7 hours (\$16)	Heroin	1.36 hours (\$31)
Cocaine	.5 hours (\$12)	Marijuana	.39 hours (\$9)
Explosives	4.83 hours (\$111)	Document	2.84 hours (\$65)
Shoe/Tire Prints	4.17 hours (\$96)	Firearms ID	11.91 hours (\$274)
Fiber & Hair	5.18 hours (\$119)	Toolmarks ID	7.13 hours (\$164)

Dallas County -- Southwestern Institute of Forensic Sciences

The Southwestern Institute of Forensic Sciences is a Dallas County agency. According to Director Irving Stone (214 638-9980), the Institute charges a fixed rate by the type of service performed. The rates have been set on the assumption that labor rates are approximately \$50 per hour. In addition, the Institute charges a flat \$200 fee for testimony and travel. The Institute's fee schedule and background information is being sent in the mail, but examples of their charges are listed below.

Documents Exam	\$50	Fingerprint Exam	\$50
Bullet Exam	\$35	Typewriter Comparison	\$50
Serial Number Restoration	\$50	Search for Spermatazoa	\$15

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Tool Mark Comparison	\$50	Search for Blood or Seminal Stains	\$15
Hair & Fiber Analysis	\$30	Analysis of ABO/RH From Dried Stains	\$40

Connecticut State Police Forensic Sciences Laboratory

Dr. Henry Lee, is the Chief of the Forensic Sciences Laboratory in the state of Connecticut (203 238-6324). Dr. Lee explained that in addition to providing criminalistic analysis services for law enforcement authorities throughout Connecticut for no charge, his lab charges law enforcement authorities in surrounding states only for the cost of materials used in criminalistic analysis and for the time required for testimony.

Dr. Lee said that his lab has twenty-six employees and an annual budget of approximately \$500,000.

Washington State Police Crime Lab

George Ishi is the Director of the Washington State Police Crime Lab (206 464-7073). According to Mr. Ishi, the Washington State Police Crime Lab does provide criminalistics analysis services to other public agencies under contract. The lab charges \$60 per hour plus any unusual expenses such as for special chemicals, special instruments, or testimony. Mr. Ishi is sending an analysis of the time spent by his lab on different types of criminalistic procedures.

Kansas City, MO, Regional Criminalistics Laboratory

According to Gary Howell of the Regional Criminalistics Laboratory in Kansas City, MO (816 234-5000), public sector laboratory that charges \$30 per hour to all public agencies within a surrounding five county region and \$45 per hour to other public agencies outside that five county region. Howell was careful to say that it is impossible to predict how much time any particular examination will require.

Howell said that time spent by his staff testifying is billed at the same rate as laboratory time. Howell calculated that his lab spends about 20,000 hours examining evidence each year. Howell is sending additional information in the mail.

Northern Illinois Police Crime Lab

The Northern Illinois Police Crime Lab is a private non-profit membership agency organized to provide criminalistics services to municipal