

ALASKA LEGISLATURE COMMITTEE FILES 1965-1980 00/2

3223 HESS HB 543 - HB 602

8

House Bill 543

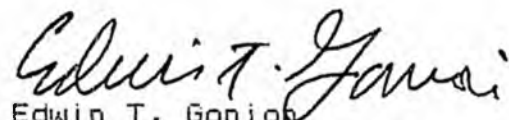
Page 2

because many of the students served by this program would otherwise require residential placements.

I urge your support of House Bill 543 in order that we may continue to provide specialized education services to severely handicapped students in their villages.

Thank you for your consideration of this important piece of legislation.

Sincerely,



Edwin T. Gonion
Superintendent
Bering Strait School District

Alaska Association of Administrators for Special Education

P.O. Box 225
Unalakleet, Alaska 99684

February 14, 1986

Honorable John G. (Jack) Fuller
Representative for Alaska
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Representative Fuller:

The Alaska Association of Administrators for Special Education strongly supports House Bill 554 which provides for the establishment of a Special Education Service Agency to make special education and related services available to all hard-to-serve low incidence handicapped children throughout the State of Alaska. Presently outreach services for low incidence students are funded from the "Contract Services" portion of the Department of Education budget, therefore the existing funding of \$1.4 million per year could be transferred to fund the Special Education Service Agency. The intent of the legislation sponsored by Senators Zharoff, Rodey and Fahrenkamp is to provide a permanent state administrative structure attached to the Department of Education, which would insure stability and continuity of services for students in every region of the state.

House Bill 554 provides for a governing board which is appointed by the Commissioner of Education, therefore the service provided to districts by the Agency would be subject to standards developed for education of exceptional students by the Department of Education and quality services would be guaranteed. The project entitled Alaska Resources for the Moderately/Severely Impaired (A.R.M.S.I.) has been maintaining a high level of excellence in coordinating with districts to meet the needs of low incidence students in isolated areas, however each year districts, parents and students do not have the guarantee of an on-going level of services. The tenuous nature of the existing funding does not provide for a continuity of services or performance and personnel standards which are incorporated into the state education plan, because a different agency could be awarded the grant every year depending on the terms of the grant award.

Due to the unique population profile in Alaska a creative approach to the delivery of special education and related services to low incidence students was required in order to meet the needs of exceptional students in rural areas. The outreach model has met that challenge by providing specialized services for deaf, visually impaired, severely

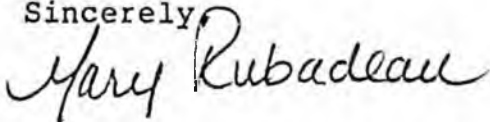
emotionally disturbed, and mentally retarded students to districts which do not have the professional expertise on staff to provide the technical services required for students with low incidence handicapping conditions.

As special education director for the Bering Strait School District, I am currently coordinating with the outreach program to provide services to a deaf preschooler, a visually impaired elementary student and a multi-handicapped high school student in the remote bilingual villages of Little Diomedea, Shishmaref and Gambell. The district is committed to providing services locally, however without the expertise of specialists it is doubtful whether these students could be educated in their villages. The delivery of services provided by the outreach model realizes the least restrictive environment for exceptional students while being cost effective for the state, because many of the students served by this program would otherwise require residential placements.

The primary advantage which would result from the establishment of a Special Education Service Agency is that handicapped children would be assured of a level of service which meets state standards and is available to them in the least restrictive environment. The low incidence outreach program has proven successful and has been modeled by other states with rural population areas. Alaska can be very proud of the programs provided to handicapped students in every section of the state, and House Bill 554 would insure stability and continuation of these high quality services for all exceptional children in the future.

Your support for House Bill 554 is requested by the Alaska Association of Administrators for Special Education. Thank you for your consideration of this important piece of legislation.

Sincerely,



Mary Rubadeau
President

CC: Harold Reynolds, Jr., Commissioner of Education
Dorothy Turin, Director, Governor's Council for the
Handicapped and Gifted
William Mulnix, Administrator, Office for Special
Services
Edwin T. Gonion, Superintendent, Bering Strait School
District

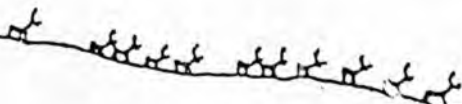


LOW INCIDENCE HANDICAPPED OUTREACH PROJECT

QUARTERLY REPORT

**FOR THE PERIOD
OCTOBER~DECEMBER 1985**

Alaska Resources for the
Moderately/Severely Impaired
2211-B Arca Street
Anchorage, Alaska 99508



INTRODUCTION

This report provides an overview of the major activities and accomplishments of the Low Incidence Handicapped Outreach Grant for the fourteenth quarter (October 1, 1985 through December 31, 1985).

In July of 1982 Alaska Resources for the Moderately/Severely Impaired was awarded a grant from the Department of Education to provide outreach services to school districts who serve the low incidence handicapped students. The Low Incidence Handicapped Outreach Project is monitored by the staff from the Department's Office for Exceptional Children. In addition, a twelve member advisory board composed of school district personnel advise the project on a bi-yearly basis.

This report uses the diagnostic criteria established in Title IV Education Regulations: Chapter 2 - Education for Exceptional Children. A school district determines that a student has met one or more of these criteria before referring the student to the Low Incidence Handicapped Outreach Project. This project currently does not serve students classified as Gifted or those whose primary handicap has been identified as a Learning Disability.

In addition, the reader will see numerous references to "technical assistance" provided by this project. This refers to the various types of service that ARMSI provides to school districts. A document, called the Technical Assistance Agreement (TAA), is ratified by ARMSI and school districts prior to the delivery of service. The TAA delineates objectives, activities, timelines, responsibilities and evaluation strategies for each student.

ARMSI also evaluates its on-site visits using a Consumer Satisfaction Rating Form. This form is given to consumers at the conclusion of on-site visits. ARMSI's Data Flow Coordinator displays the data and information in a monthly summary for ARMSI supervisory staff. In this way, confidentiality of the evaluation form is maintained.

During this quarter the project's primary concern was on-site delivery of technical assistance. After returning from a visit, staff report the hours of service delivered by activity. These data are compiled quarterly for these reports. A computerized Low Incidence Student Registry is maintained by the Data Flow Coordinator and updated on a daily basis. Staff also track the number of instructional programs written and report their status quarterly. In general, instructional programs are defined as student centered plans which are based on assessment data, specified instructional methodologies and measureable outcomes.

Finally, cost effectiveness data are reported for the readers' review. These data are summarized from the monthly financial reports that are submitted to the Department of Education.

The data, as presented on the following pages, are meant to provide the Department of Education with documentation of the activities of this project and to demonstrate that the project is operating according to the intentions of the funding agency. Also, readers other than the Department of Education can see the extent to which services are provided and to some extent, judge the viability of the service delivery mechanism. These data were selected by the project staff and the Department of Education, as being primary indicators of the project's benefit to Alaskan schools and students.

Unless otherwise specified, the data in this report are consistent with the data reported in previous quarters.

LIST OF TABLES

Table 1:

Number of Students Eligible for Service
by State Eligibility Classifications.....3

Table 2:

Number of Students Served by Each ARMSI Program
During the Fourteenth Quarter.....5

Table 3:

Percent of Students Impacted Per Quarter.....7

Table 4:

Description of Technical Assistance Activity.....7

Table 5:

Frequency and Type of District Persons Contacted
During the Fourteenth Quarter.....8

Table 6:

Summary of Hours of Service During the
Fourteenth Quarter.....10

Table 7:

Status of Instructional Programs for the Quarter.....11

Table 8:

Average On-site Technical Assistance Ratings.....12

Table 9:

Frequency and Type of Technical Service for the 1985-86 Year.....13

Table 10:

Program Expenditures - July 1, 1985 - December 31, 1985.....15

Budget Information on Table 10.....15

LIST OF FIGURES

Figure 1:

Students Referred and Eligible for Outreach Services.....1

Figure 2:

*Number of Students on the Low Incidence Student
Registry by State Eligibility Classifications.....2*

Figure 3:

Percent of Service Delivery Hours.....9

Figure 4:

Summary of Program Expenditures by Categories.....14

SECTION 1

Major Accomplishments for the Fourteenth Quarter

Major Accomplishments for the Fourteenth Quarter

- At the end of the fourteenth quarter 200 low incidence handicapped students were on the active rolls for ARMSI service. This represented a net increase of 18 students from the previous quarter. (Thirty-eight students were referred and 20 students were dropped.) Students were dropped due to various reasons to include family relocation, specialized staff hired by the local districts or students no longer qualifying for services.

Figure 1 displays the number of students that were referred and eligible for service by each quarter. See Table 1 for a display of the current number of students by district on the low incidence student registry. Figure 2 displays the current number of students on the low incidence student registry by state classification for the fourteenth quarter, FY 1985-86.

Figure 1 STUDENTS REFERRED AND ELIGIBLE FOR OUTREACH SERVICES

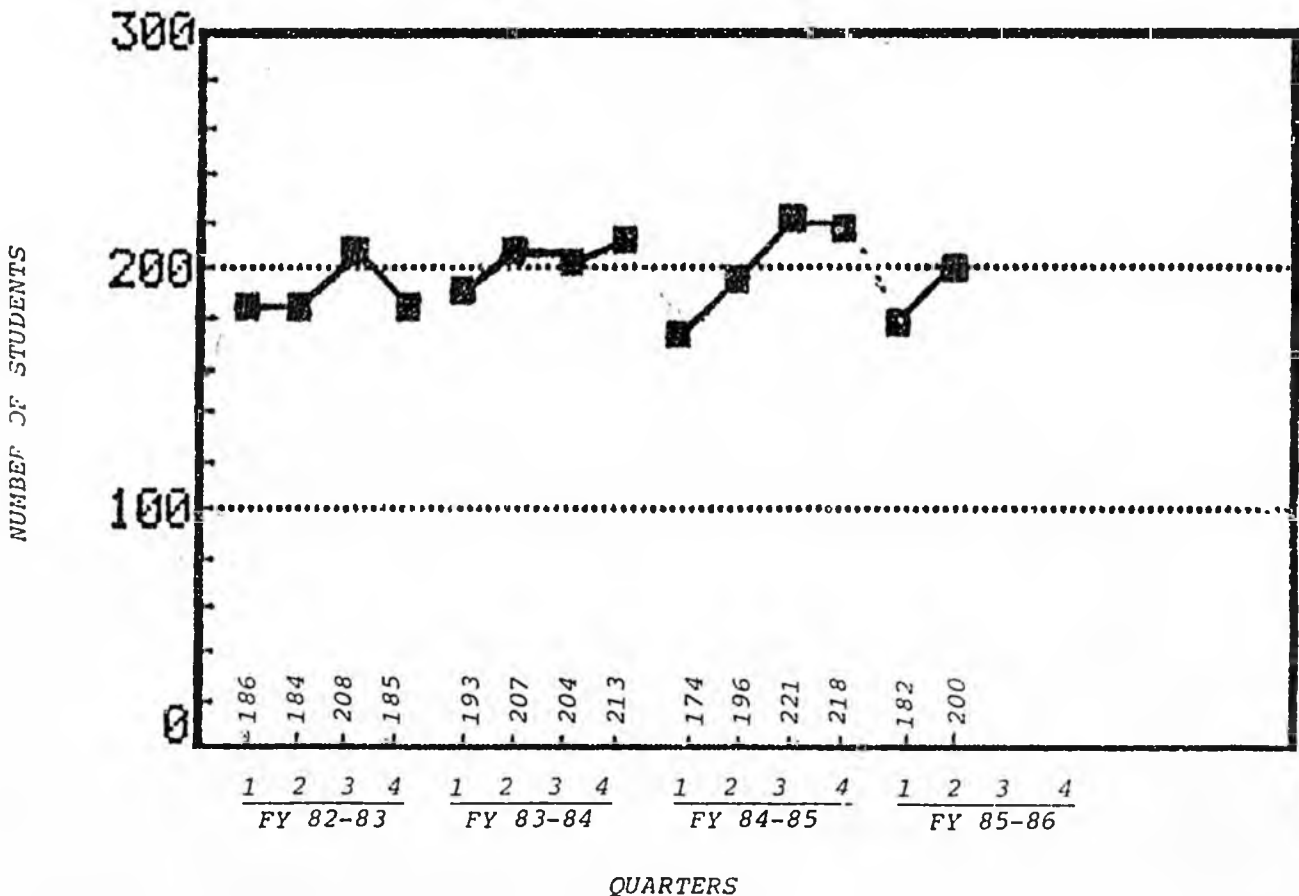
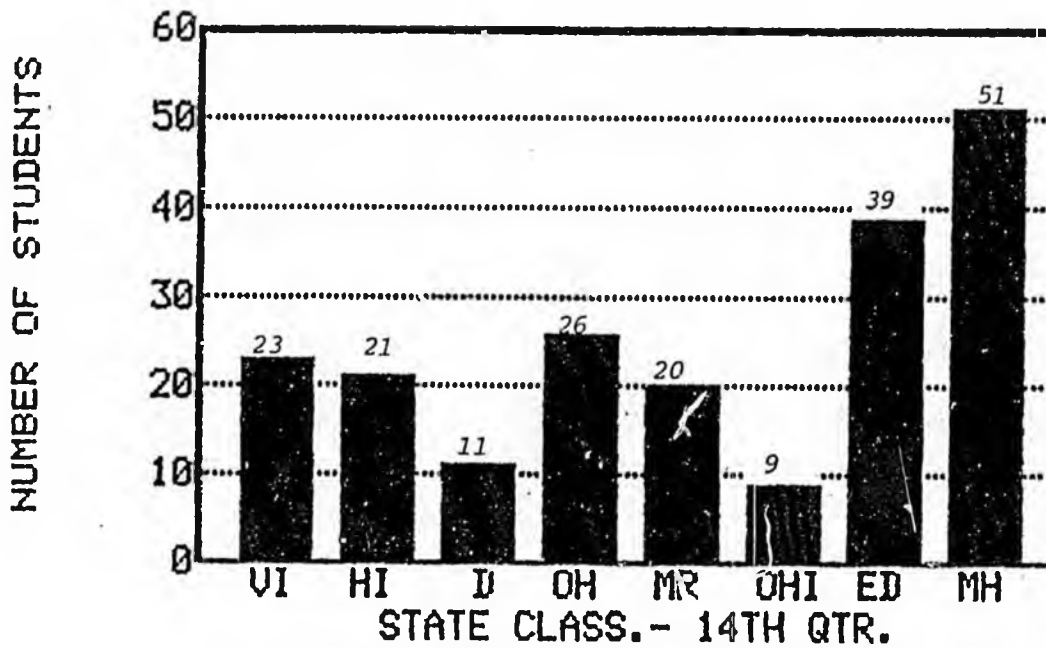


Figure 2 NUMBER OF STUDENTS ON THE LOW INCIDENCE STUDENT REGISTRY BY STATE ELIGIBILITY CLASSIFICATIONS (TOTAL = 200)



- These 200 students are served by one or more programs within the Low Incidence Handicapped Outreach Grant. Several students require assistance from more than one disability area or from a program at ARMSI other than one that matches the district label for the student. Hence, the number of students served by each program will not necessarily match the number of students with a specific disability classification (e.g., a multi-handicapped student may be best served by the blind and orthopedically handicapped programs).

See Table 2 for a display of the number of students currently served by specific programs at ARMSI.

TABLE 1

Number of Students Eligible for Services by
State Eligibility Classifications

Date: 01/01/86

Page: 1

DISTRICT	VI	HI	DEAF	OH	MR	OHI	ED	MH	TOTAL
ADAK	0	0	0	0	0	0	0	0	0
ALASKA GATEWAY	0	2	0	0	1	2	1	0	6
ALEUTIAN REGION	0	0	0	0	0	0	0	0	0
ANCHORAGE	0	0	0	0	0	0	0	0	0
ANNETTE ISLANDS	0	0	0	0	0	0	0	0	0
BERING STRAIT	2	2	1	3	1	0	2	1	12
BRISTOL BAY	0	0	0	0	0	0	0	1	1
CHATHAM	0	0	0	0	0	0	0	1	1
CHUGACH	0	0	0	0	0	1	0	0	1
COPPER RIVER	0	0	0	0	1	0	2	3	6
CORDOVA	0	0	0	0	0	0	0	0	0
CRAIG	0	0	0	0	0	0	1	0	1
DELTA\GREELY	0	1	0	3	0	0	0	3	7
DILLINGHAM	1	0	0	0	1	0	0	3	5
FAIRBANKS	1	0	0	0	0	0	0	4	5
GALENA	0	0	0	0	0	0	0	0	0
HAINES	0	0	0	2	0	0	0	0	2
HOONAH	0	0	0	0	0	0	0	1	1
HYDABURG	0	1	0	2	0	0	0	0	3
IDITAROD	0	0	0	0	1	1	2	0	4
JUNEAU	7	0	0	0	0	0	0	1	8
KAKE	0	0	1	0	0	0	0	1	2
KASHUNAMUIT SD	0	0	0	0	0	0	0	1	1
KENAI	3	0	0	0	0	0	0	1	4
KETCHIKAN	1	1	1	0	2	1	1	3	10
KING COVE	0	0	0	0	0	0	1	1	2
KLAWOCK	0	0	0	0	1	0	0	1	2
KODIAK	0	0	2	0	0	0	3	0	5
KUSPUK	0	0	0	0	0	0	0	0	0
LAKE & PENN	0	2	0	0	0	0	1	0	3
LOWER KUSKOKWIM	4	5	2	1	2	0	7	3	24
LOWER YUKON	0	0	1	1	4	0	2	2	10
MAT-SU	1	0	0	1	0	0	0	4	6
NENANA	0	0	0	0	0	0	2	0	2
NOME	1	0	0	1	0	0	0	2	4
NORTH SLOPE	0	0	0	4	0	1	0	2	7
NW ARCTIC	0	0	0	3	1	0	3	2	9
PELICAN	0	0	0	0	0	0	0	0	0
PETERSBURG	0	0	1	1	0	0	0	1	3
PRIBILOF	0	0	0	0	0	0	0	1	1
RAILBELT	0	0	0	0	0	2	0	0	2
SAND POINT	0	0	0	0	0	0	1	0	1
SE ISLAND	0	0	0	0	0	0	0	0	0
SITKA	1	5	0	0	3	0	6	3	18
SKAGWAY	0	1	0	0	0	0	0	1	2
ST MARYS	0	1	0	1	0	0	1	0	3
SW REGION	0	0	0	1	0	0	0	1	2

TABLE 1

Number of Students Eligible for Services by
State Eligibility Classifications

Date: 01/01/86
Page: 2

DISTRICT	VI	HI	DEAF	OH	MR	OHI	ED	MH	TOTAL
TANANA	0	0	0	0	0	0	0	0	0
UNALASKA	0	0	0	0	0	0	0	0	0
VALDEZ	0	0	1	0	1	0	0	0	2
WRANGELL	0	0	1	0	0	0	3	0	4
YAKUTAT	0	0	0	0	0	0	0	0	0
YUKON FLATS	1	0	0	1	1	1	0	1	5
YUKON-KOYUKUK	0	0	0	1	0	0	0	2	3
YUPIIT SD	0	0	0	0	0	0	0	0	0
TOTAL:	23	21	11	26	20	9	39	51	200

TABLE 2

Number of Students Eligible for Services by
Each ARMSI Program

Date: 01/01/86

Page: 1

DISTRICT	ED	D/HI	MH/MR	OH/OHI	VI
ADAK	0	0	0	0	0
ALASKA GATEWAY	1	2	3	0	0
ALEUTIAN REGION	0	0	0	0	0
ANCHORAGE	0	0	0	0	0
ANNETTE ISLANDS	0	0	0	0	0
BERING STRAIT	2	3	2	3	2
BRISTOL BAY	0	0	1	0	0
CHATHAM	0	0	0	1	1
CHUGACH	0	0	1	0	0
COPPER RIVER	2	0	4	0	0
CORDOVA	0	0	0	0	0
CRAIG	1	0	0	0	0
DELTA\GREELY	0	1	3	5	1
DILLINGHAM	0	0	4	0	1
FAIRBANKS	0	0	0	0	5
GALENA	0	0	0	0	0
HAINES	0	0	0	2	0
HOONAH	0	0	1	0	0
HYDABURG	0	1	0	2	0
IDITAROD	2	0	2	0	0
JUNEAU	0	0	0	0	8
KAKE	0	1	1	0	0
KASHUNAMUIT SD	0	0	1	0	0
KENAI	0	0	0	0	4
KETCHIKAN	1	2	3	2	2
KING COVE	1	0	1	0	0
KLAWUCK	0	0	2	0	1
KODIAK	3	2	0	0	0
KUSPUK	0	0	0	0	0
LAKE & PENN	1	2	0	0	0
LOWER KUSKOKWIM	7	7	5	1	5
LOWER YUKON	3	1	4	2	0
MAT-SU	0	0	3	1	2
..ENANA	2	0	0	0	0
NOME	0	0	1	2	1
NORTH SLOPE	0	0	4	7	0
NW ARCTIC	3	0	4	3	0
PELICAN	0	0	0	0	0
PETERSBURG	0	1	1	1	0
PRIBILOF	0	0	1	0	0
RAILBELT	0	0	0	2	0
SAND POINT	1	0	0	0	0
SE ISLAND	0	0	0	0	0
SITKA	6	5	6	0	2
SKAGWAY	0	1	1	0	0
ST MARYS	1	1	0	1	0
SW REGION	0	0	1	1	1

TABLE 2

Number of Students Eligible for Services by
Each ARMSI Program

Date: 01/01/86

Page: 2

DISTRICT	ED	D/HI	MH/MR	OH/OHI	VI
TANANA	0	0	0	0	0
UNALASKA	0	0	0	0	0
VALDEZ	0	1	0	0	1
WRANGELL	3	1	0	0	0
YAKUTAT	0	0	0	0	0
YUKON FLATS	0	0	4	2	1
YUKON-KOYUKUK	0	0	2	1	0
YUPIIT SD	0	0	0	0	0
TOTAL:	40	32	66	39	38

- During the fourteenth quarter, ARMSI staff directly impacted 143 students or 72% of those students eligible for service. The types of service varies for each student. However, all service can be categorized by one of the seven types of service ARMSI provides. (1) Formal Educational Assessments. (2) Evaluating Progress and Recommending Intervention Strategies. (3) Modeling/Teaching Programs. (4) Direct Interventions. (5) Assisting With Materials/Equipment. (6) Parent/Liaison Training. (7) Ancillary Services.

Table 3 displays the percent of students impacted for each quarter.

Table 3: PERCENT OF STUDENTS IMPACTED PER QUARTER

FY 1985-86	
QUARTER	PERCENT OF REGISTRY IMPACTED
13	52%
14	72%
15	
16	

- During the fourteenth quarter ARMSI staff provided service in 78 different sites among 37 school districts. (See Appendices 4 (D))

Table 4 provides a description of technical assistance activities. See Table 5 for a display of the frequency and type of district personnel contacted in the fourteenth quarter. (Column headings are read as number of: teachers; aides; administrators, certificated; non-certified, and parents.)

Table 4: DESCRIPTION OF TECHNICAL ASSISTANCE ACTIVITY

	FY 1985-86			
	QUARTER			
	13	14	15	16
A. Number of districts with ratified Technical Assistance Agreements.	37	39		
B. Number of districts referring students during each quarter.	13	20		
C. Number of districts visited by ARMSI staff. (See Appendices - Table 4 D)	28	37		
D. Number of individual sites visited by ARMSI. (See Appendices - Table 4 D)	56	78		
E. Number of individual students served on-site.	95	143		
F. Number of times on-site technical assistance occurred.	100	169		
G. Frequency of district persons served on-site. (See Table 5)	495	862		

TABLE 5

Frequency and Type of District
Persons Contacted During the Quarter

Date: 01/01/86

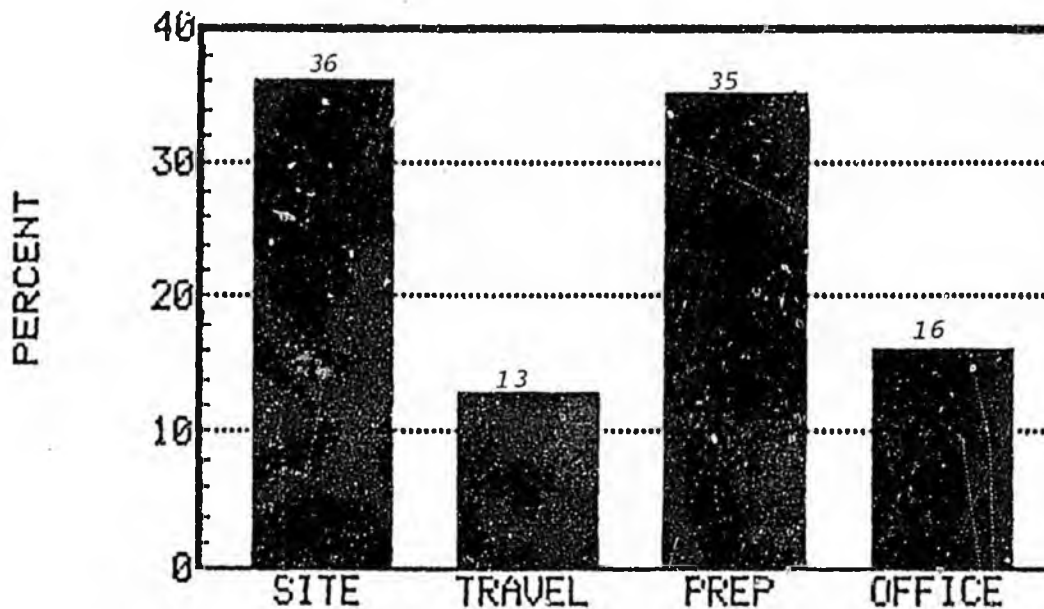
Page: 1

DISTRICT	TEACH.	AIDES	ADMIN.	CERT.	NON C.	PARENTS	TOTAL
BERING STRAIT	21	5	10	4	0	2	42
BRISTOL BAY	1	0	1	0	0	1	3
CHATHAM	5	3	0	0	0	5	13
CHUGACH	1	1	1	0	0	1	4
COPPER RIVER	9	3	6	0	0	0	18
CRAIG	3	1	2	0	1	0	7
DELTA/GREELY	20	0	15	2	0	7	44
DILLINGHAM	2	2	4	4	1	5	18
FAIRBANKS	13	6	8	8	2	8	45
HAINES	2	1	2	1	0	3	9
HOONAH	2	0	2	1	0	2	7
HYDABURG	3	0	10	2	6	3	24
IDITAROD	2	1	0	0	0	1	4
JUNEAU	15	7	7	5	3	5	42
KAKE	1	1	0	0	2	1	5
KENAI	3	1	3	3	0	1	11
KETCHIKAN	14	4	6	8	1	8	41
KING COVE	2	0	1	1	0	1	5
KLAWOCK	3	3	3	1	0	1	11
KODIAK	6	4	3	1	3	1	18
LAKE & PENN	8	3	6	2	0	3	22
LOWER KUSKOKWIM	41	14	24	7	7	11	104
LOWER YUKON	34	22	8	3	4	12	83
MAT-SU	8	14	3	0	3	1	29
NENANA	3	0	2	0	2	1	8
NOME	7	2	8	3	1	3	24
NORTH SLOPE	2	0	2	0	0	2	6
NW ARCTIC	11	3	5	1	5	4	29
PETERSBURG	8	4	2	0	2	0	16
RAILBELT	3	3	4	1	2	4	17
SITKA	29	5	20	6	4	5	69
SKAGWAY	2	0	1	0	0	1	4
ST MARYS	3	2	3	0	0	1	9
SW REGION	3	1	3	1	0	1	9
WRANGELL	10	3	7	2	0	6	28
YUKON FLATS	5	3	7	0	0	3	18
YUKON-KOYUKUK	5	2	2	0	2	5	16
TOTALS:	310	124	191	67	51	119	862

• ARMSI staff spent an approximate total of 307 days on-site. This number represents the total number of hours worked on-site divided by an eight hour workday. A summary of hours of service delivery for this quarter is provided in Table 6. The percent of ARMSI staff time in service delivery categories can be seen in Figure 3.

Table 6 is a summary of hours of service for the fourteenth quarter. (See next page.)

Figure 3 PERCENT OF SERVICE DELIVERY HOURS



KEY:

SITE = On-site Assistance
TRAVEL = Travel Time (to include weathered-in time)
PREP = Office Preparation (Student Related)
OFFICE = Office Time

Table 5:

Summary of Hours of Service Delivery During the Quarter

1. On-Site Assistance	
A. Administrative and/or Ancillary Conferences	238.75
B. On-Site Preparation and Follow-Up	372.80
C. Parent Contact	166.35
D. Parent Training	17.90
E. Student Contact	240.85
F. Direct Student Teaching	78.90
G. Formal Assessment	60.50
H. Classroom Observation	431.20
I. Staff Feedback	490.65
J. Staff Training	<u>201.25</u>
	TOTAL
	2299.05
2. Travel Time (includes 139.40 hours weathered-in)	859.60
3. Office Preparation (student related)	2233.00
4. Other Office Time	<u>998.35</u>
	GRAND TOTAL
	6390.00

- ARMSI staff initiated 339 new instructional programs and completed 62 instructional programs during this quarter.

Table 7 provides a breakdown of the number of programs written, completed and terminated.

Table 7: STATUS OF INSTRUCTIONAL PROGRAMS FOR THE FOURTEENTH QUARTER

Quarter	Number of Programs Written	Number of Programs Completed	Number of Programs Terminated
13	180	1	0
14	339	62	3*
15			
16			
TOTAL	519	63	3

*Program cancelled by district.

- On-site technical assistance was rated in a range of 6.28 - 6.55 (on a 7.00 point scale) by district personnel receiving service from ARMSI. Each participating district was given an opportunity to rate their satisfaction with the technical assistance they received from the Low Incidence Handicapped Project.

Table 8 displays the average evaluation ratings by content area.

Table 8: AVERAGE ON-SITE TECHNICAL ASSISTANCE RATINGS

	QUARTER							
	13		14		15		16	
	N	Rating	N	Rating	N	Rating	N	Rating
A. Was the purpose of this trip achieved?	32	6.34	67	6.28				
B. The assistance provided was beneficial to me.	32	6.37	67	6.36				
C. I will utilize the assistance/information provided during the school year.	32	6.53	67	6.55				
D. Overall, the assistance provided met my needs to better serve the student(s).	32	6.38	66	6.50				

- From July 1, 1985 district and ARMSI staff had developed 347 Technical Assistance Objectives. A total of 125 Technical Assistance Objectives were initiated during the fourteenth quarter. The types of services delineated through the Objectives include:

Type 1: Formal Educational Assessments

Type 2: Evaluation of Student Progress and Recommendations/Monitoring of Intervention Strategies

Type 3: Modeling and/or Teaching Other Persons How to Conduct Program(s)

Type 4: Direct Interventions

Type 5: Assisting in the Procurement of Materials/Equipment

Type 6: Parent/Liaison Training

Type 7: Assisting in Obtaining Ancillary Services

Table 9 displays the frequency of times each type is used as reflected cumulatively in the Technical Assistance Agreements during this 1985-86 Project Year.

Table 9: FREQUENCY AND TYPES OF TECHNICAL SERVICE FOR THE 1985-86 YEAR

TECHNICAL ASSISTANCE TYPE	13 Qtr	14th Qtr	15th Qtr	16th Qtr
1. Assessments	6	11		
2. Recommending Interventions	111	170		
3. Modeling and Teaching	29	44		
4. Direct Interventions	5	7		
5. Materials	40	64		
6. Parent/Liaison	2	5		
7. Ancillary Services	29	46		

COST ANALYSIS

- In the year to date approximately \$560,970.00 was expended to serve low incidence handicapped students.

Table 10 provides a breakdown of program expenditures across budget categories for the fourteenth quarter. Figure 4 displays the percent of monies spent in budget categories.

Figure 4: SUMMARY OF PROGRAM EXPENDITURES BY CATEGORIES

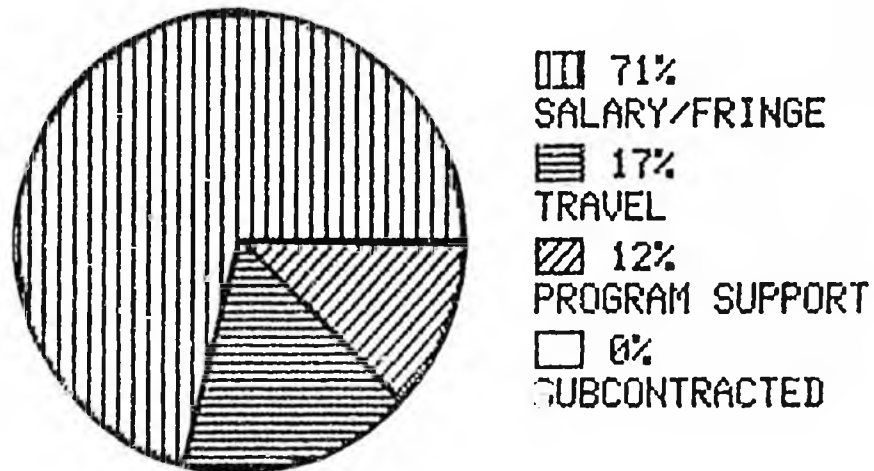


Table 10: PROGRAM EXPENDITURES - July 1, 1985 THROUGH December 31, 1985

1. Salary and Fringe Benefits	\$398,675.93
2. Program Support	67,182.99
3. Travel and Per Diem	95,111.83
4. Subcontracted Costs	-0-
	<hr/>
Total	\$560,970.75

BUDGET INFORMATION ON TABLE 10

Salary and Fringe Benefits:

Includes all administrative, professional and support staff salaries and fringe benefits.

Program Support:

Includes telephone and postage; insurance bond; rental of facility, equipment, and postage meter; janitorial and facility maintenance; teaching supplies, office supplies, office equipment, books and depository expenses.

Subcontracted Costs:

Includes auditing, advisory board meetings, and all subcontracted costs.

Travel and Per Diem:

Includes all travel and per diem costs for staff.

A P P E N D I C E S

TABLE 4 (D)

District and Sites Visited by
ARMSI Staff for the Quarter

Date: 01/01/86

Page: 1

DISTRICT	SITE
BERING STRAIT	GAMBELL SCHOOLS GOLOVIN SCHOOL SHISHMAREF TELLER SCHOOL
BRISTOL BAY	BRISTOL BAY
CHATHAM	GUSTAVUS
CHUGACH	WHITTIER COMM S
COPPER RIVER	GLENNALLEN KENNY LAKE
CRAIG	CRAIG SCHOOLS
DELTA\GREELY	DELTA JUNCTION
DILLINGHAM	DILLINGHAM SCH
FAIRBANKS	BARNETTE ELEM BIRCH SPED HUTCHISON
HAINES	HAINES SCHOOLS MOSQUITO LAKE E
HOONAH	HOONAH SCHOOLS
HYDABURG	HYDABURG
IDITAROD	ANVIK SCHOOL
JUNEAU	GLACIER VALLEY MENDENHALL ST. JUDE
KAKE	KAKE SCHOOL
KENAI	KALIFONSKY BEAC KENAI CENTRAL
KETCHIKAN	KETCHIKAN CITY VALLEY PARK ELE
KING COVE	KING COVE SCH
KLAWOCK	KLAWOCK SCHOOL
KODIAK	CHINIAK SCHOOL EAST ELEMENTARY OUZINKIE SCHOOL
LAKE & PENN	NEWHALEN SCHOOL PEDRO BAY SCH PERRYVILLE SCH
LOWER KUSKOKWIM	BETHEL BIA-TOKSOOK BAY GOODNEWS BAY KASIGLUK KIPNUK KUNGIGANAK SCH KWETHLUK KWIGILLINGOK MEKORYUK NUNAPITCHUK HIG OSCARVILLE SCH

TABLE 4 (D)

District and Sites Visited by
ARMSI Staff for the Quarter

Date: 01/01/86

Page: 2

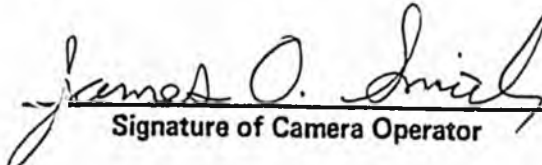
DISTRICT	SITE
LOWER KUSKOKWIM	TUNUNAK SCHOOLS
LOWER YUKON	HOOPER BAY
	MT VILLAGE SCH
	PILOT STATION S
	RUSSIAN MISSION
	SHELDON PT SCH
MAT-SU	WASILLA ELEMENT
	WASILLA HIGH S
	WASILLA JR HIGH
NENANA	NENANA SCHOOLS
NOME	NOME SCHOOLS
NORTH SLOPE	NUIQSUT SCHOOL
NW ARCTIC	DEERING SCHOOL
	KOTZEBUE
PETERSBURG	PETERSBURG
RAILBELT	ANDERSON SCHOOL
SITKA	BARANOF ELEM
	BLATCHLEY JR H
	LINCOLN ST ELEM
	MT EDGEJUMBE EL
	SITKA HIGH SCH
SKAGWAY	SKAGWAY SCHOOLS
ST MARYS	ST MARYS
SW REGION	LEVELOCK SCHOOL
	TOGIAK SCHOOL
WRANGELL	WRANGELL SCHOOL
YUKON FLATS	BIRCH CREEK
	FT YUKON SCHOOL
	VENETIE SCHOOL
YUKON-KOYUKUK	ALLAKAKET SCH
	BETTLES SCHOOL
37 DISTRICTS	78 SITES

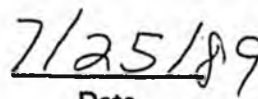




RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.


Signature of Camera Operator


Date

H

B

5

6

0

HOUSE
COMMITTEE REPORT

(7)

Date referred: 2/11/86

FURTHER REFERRALS: JUDICIARY

HEALTH, EDUCATION AND
The SOCIAL SERVICES

DATE: April 22, 1986

Committee has considered HB 560

"An Act relating to imitation controlled substances."

and recommends:

- do pass
- do not pass
- do pass with attached amendment(s)
- no recommendation
- replace with CSHB 500 (HESS) same title
- new title

and recommends no recommendation

further referral to the _____ Committee

and attaches:

- letter of intent
- first fiscal note
- new fiscal note
- 2 zero fiscal notes

SIGNING DO PASS:

[Signature]

SIGNING OTHER RECOMMENDATIONS:

[Signature] No Rec.

[Signature] when amended

[Signature] - NO REC

[Signature] - No Rec.

[Signature] no rec

[Signature]
Chairman

[Signature] - co-chair

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : HB560
 Title : "An Act relating to imitation
 controlled substances"
 Sponsor : Rep. Gruenberg
 Requestor : H. HESS
 Date of Request : _____

FISCAL DETAIL

Agency Affected : Public Safety
 BRU : Alaska State Troopers
 Components : Narcotics

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING : (Thousands of Dollars)

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

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

K. Allen

Prepared by : Francis C. Allan *F.C.A.*
 Division : Alaska State Troopers

Phone : 269-5691
 Date : 2-20-86

Approved by Commissioner : *[Signature]*
 Agency : Public Safety

Date : 2/24/86

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER

Opposed

February 20, 1986

HB560 - "An Act relating to imitation controlled substances."

It is our interpretation of the wording used in this bill that law enforcement agencies will be required to prove the intent of a suspect in cases involving imitation controlled substances.

By requiring that law enforcement officers must demonstrate "...that the person knows..." that they are dealing with an imitation controlled substance, enforcement of the statute will be extremely difficult. The requirement for proving 'intent' was removed from various narcotics related statutes several years ago. This bill will return this element in cases involving imitation controlled substances.

As a result of the implementation of the bill, law enforcement agencies will be less likely to be able to prevent the sale of "look-alike" imitation drugs and drug pushers will be able to increase the initiation of minors into the drug culture. Further, dangers to the public will occur when users become accustomed to using "look-alikes" and unknowingly take the same dosage of a real drug.


Robert J. Sundberg
Commissioner

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : HB 560
 Title : "An Act relating to imitation
 controlled substances."
 Sponsor : Repr. Gruenberg
 Requestor : House HESS
 Date of Request : April 25, 1986

FISCAL DETAIL

Agency Affected : Department of Law
 BRU : Prosecution
 Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING : (Thousands of Dollars)

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

POSITIONS :

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

ANALYSIS : Attach a separate page if necessary

This bill will not have a fiscal impact on the Department of Law.

Prepared by : Richard I. Pegues, Director Phone : 465-3672
 Division : Administrative Services Division Date : 4/28/86
 Approved by Commissioner : Richard I. Pegues / HAR
Harold M. Brown, Attorney General Date : 4/28/86
 Agency : Department of Law

Distribution (by Agency preparing fiscal note) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

The Honorable Bill Sheffield
Governor
State of Alaska
Pouch A
Juneau, AK 99811

Re: CSSH 10(Jud) -- imitation
controlled substances
Our file no: 388-029-83

Dear Governor Sheffield:

As requested by Emil Notti on your behalf, we have reviewed CSSH 10(Jud), relating to imitation controlled substances. This bill prohibits the manufacture, delivery, or possession with intent to deliver of an "imitation controlled substance." An imitation controlled substance is defined as a substance that contains specific listed chemical components and which, by its dosage unit appearance (including color, shape, size, and markings) or representations made about it, would lead a reasonable person to believe that the substance is a "controlled substance."

Although this bill raises some legal questions, we recommend that you sign it.

The language of CSSH 10(Jud) is based upon a Model Imitation Controlled Substances Bill drafted by the federal Drug Enforcement Administration, and upon Alaska's new controlled substances law, ch. 45, SLA 1982, passed during the second session of the Twelfth Legislature. The new controlled substances law completely revised the state's drug laws, classifying controlled substances according to the degree of danger to health presented, and setting appropriate penalties for the possession or distribution of these substances. The imitation controlled substances bill responds to a problem not addressed in the drug bill: persons who sell substances that are not controlled, such as caffeine or lidocaine, representing to the buyer (either explicitly or impliedly) that they are controlled substances such as amphetamines or cocaine.

Experience in other states has shown that purchasers of these "fake" controlled substances believe that they are

buying the "real thing." These purchasers, often young teenagers, ingest large dosages of these fake substances in order to achieve the desired sensation or "high." When, without realizing the difference, the drug purchaser happens to purchase (for the same price) a genuine controlled substance, he or she is likely to ingest the customary dosage, and overdose on the drug. Testimony by law enforcement officers before the legislative committees considering this bill indicated that, although there have not yet been any known overdoses of this nature in Alaska, there have been several deaths in other states directly attributable to an overdose by a young person who in the past had taken large quantities of imitation drugs, believing that they were genuine. Members of the state troopers' drug enforcement network testified that a high percentage of the illicit "drug" traffic in Alaska involves imitation controlled substances.

This bill would enable law enforcement authorities to apprehend and charge those who are selling fake substances as genuine controlled substances. These persons often purchase the imitation substances wholesale from pharmaceutical suppliers, and may sell them as controlled substances with a 400 or 500 percent markup. The profit to these dealers is much higher than it would be if they were selling "real" controlled substances, which are more expensive to obtain. Also, a person selling "drugs" on the street, whether genuine or imitation controlled substances, exposes young purchasers to the drug subculture lifestyle. This lifestyle often involves other criminal offenses such as prostitution, theft, burglary, fencing of stolen articles, and violence. Under current law, if an undercover police officer purchases what he believes to be a controlled substance such as cocaine or heroin from a seller, and subsequent laboratory analysis indicates that the substance is a non controlled "look-alike" drug, the seller often cannot be charged with any criminal offense.

Since the substances which can be considered "imitation controlled substances" (depending upon the facts surrounding their manufacture, delivery, or possession) are specifically listed in the bill, the law provides adequate notice of prohibited conduct, as required by Crutchfield v. State, 627 P.2d 196 (Alaska 1980), and Williford v. State, 653 P.2d 339 (Alaska Ct. App. 1982).

There are two aspects of the bill, however, which may be subject to constitutional challenge. In common with the D.E.A. model statute, "imitation controlled substance" is defined (at AS 11.73.099(3)) as a substance containing specified chemical components and which, by dosage unit appearance or by representations made about it, would lead a reasonable person to believe that the substance is a controlled substance.

June 11, 1983

Since it would not be appropriate to charge a person with a crime for the mere possession of a legal substance which looks like a controlled substance, the "or" in the definition cited above should be changed to "and". This change would require that a person actually make representations about a substance; the item's appearance would be one factor which the trier of fact could consider when deciding whether, under all the facts of the case, a reasonable person would have believed the substance to be a controlled one.

As a general rule, a person to whom a criminal statute is constitutionally applied may not challenge that statute on the ground that it may conceivably be applied unconstitutionally to others in situations not before the court. New York v. Ferber, 448 U.S. 420, 73 L.Ed.2d 1113, 102 S.Ct. 3348 (1982); Broadrick v. Oklahoma, 413 U.S. 601, 37 L.Ed.2d 830, 93 S.Ct. 2908 (1973). The criminal division of the Department of Law is aware of this potential problem in the statutory language, and will alert prosecutors to make sure that all instructions to grand or petite juries require that the jurors base their decisions in individual prosecutions upon representations made by the distributor of the substance, rather than upon the appearance of the item alone. If criminal prosecutions are instituted only in appropriate cases, the statute should withstand constitutional challenge. An amendment to the statutory definition, perhaps during the next legislative session, is recommended, however.

The second potential legal problem in the bill appears in AS 11.73.040, which prohibits a person from placing an advertisement to promote delivery of an imitation controlled substance in a newspaper, magazine, handbill, or other publication, if the person knows that the purpose of the advertisement is to promote the delivery of an imitation controlled substance in this state. It will generally be difficult to prove the requisite mental state of "knowing." A case would depend upon the language of the advertisement (i.e., what representations were made about the substances) and proof that the advertiser knew that the publication would be distributed in Alaska. If facts sufficient to prove the requisite mental element were present, however, the statute should survive a First Amendment challenge.

The placing of an advertisement is an exercise of "commercial speech," and is thus accorded less protection under the First Amendment than "pure speech." Virginia Pharmacy Board v. Virginia Consumer Council, 425 U.S. 748, 48 L.Ed.2d 346, 96 S.Ct. 1817 (1976). Additionally, a state may regulate or totally ban commercial speech which promotes an illegal transaction or advocates violating the law. Stoianoff v. Montana, 695 F.2d 1214 (9th Cir. 1983); Central Hudson Gas and Electric Co. v. Public Service Commission, 447 U.S. 557, 100

June 27, 1983

S.Ct. 2343, 65 L.Ed.2d 341 (1980); Pittsburgh Press Co. v. Human Relations Commission, 413 U.S. 376, 93 S.Ct. 2553, 37 L.Ed.2d 669 (1973).

Under AS 01.10.030, any portion of a law which is declared invalid is considered severed from the remainder of the law; the remainder may be enforced if, standing alone, it can be given legal effect. Lynden Transport, Inc. v. State, 532 P.2d 700 (Alaska 1975); Williams v. Zobel, 619 P.2d 422 (Alaska 1980). Thus, even if the advertisement section and, to a lesser extent, the appearances portion of the imitation controlled substances definition were to be declared invalid, the remainder of the bill could be enforced.

The potential legal problems with the bill do not appear to be of sufficient magnitude to prevent the bill from becoming law.

Sincerely,

Norman C. Gorsuch
Attorney General

NCG:GAH:gb

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY


POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

MEMORANDUM

November 26, 1985

SUBJECT: Imitation controlled substances,
Morrow v. State, No. 499, August 9, 1985
(Work Order No. 14-1357)

TO: Representative Max Gruenberg

FROM: Richard A. Bradley
Legislative Counsel 

You have asked that we analyze the Court of Appeals opinion in Morrow, above, and comment on the solution that you suggest.

While the "oversight" report comment that I just wrote suggests that legislative review is not necessary, that was because the court achieved the legislative goal through what you fairly call a "tortured interpretation."

The law in question, AS 11.73.010(a), provides:

(a) Except as provided in AS 11.73.050, a person may not manufacture, deliver, or possess with intent to deliver, an imitation controlled substance.

I agree with your suggestion that the material added in the draft bill enclosed, responsive to your suggestion, should resolve the question before the court in Morrow.

RAB:ml
me1/024

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 1800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

December 4, 1985

SUBJECT: Imitation controlled substances
(Work Order No. 14-1357)

TO: Representative Max Gruenberg

FROM: Richard A. Bradley
Legislative Counsel *B*

Gayle Horetski called recently to comment on the "oversight report" and one of her concerns was our recommendation in the Morrow case, the case that was the occasion of your request.

Her concern was that we made the wrong recommendation in that case; she thought that the difficulty that the court had reaching the result it did should have indicated a need for review. My own basis for making the recommendations in the oversight report is that if the court seems to have reached the "apparent legislative intent", I leave it as it is, given the usual legislative difficulties in achieving change.

Be that as it may, she noted that the administration has a bill pending that addresses the matter. SB 151, a bill "amending the controlled substance, imitation controlled substance, and forfeiture laws" addresses the concern at Sec. 5. The bill solves the Morrow problem differently. The bill amends AS 11.73.099(3) as follows:

Sec. 11.73.099. DEFINITIONS. In this chapter

* * *

(3) "imitation controlled substance" means a substance containing ephedrine, ephedrine sulfate, pseudoephedrine, pseudoephedrine hydrochloride, phenylpropanolamine, caffeine, theophylline, lidocaine, procaine, tetracaine, dyclonine, acetaminophen,

Representative Max Gruenberg

Page 2

December 4, 1985

salicylamide, doxylamine, diphenhydramine, pheniramine, chlorpheniramine, or pryrilamine, or their salts, that is not a controlled substance, and that by dosage unit appearance (including color, shape, size, and markings) and [OR] by representations would lead a reasonable person to believe that the substance is a controlled substance; the term "representations", as used in this paragraph, includes

(A) statements made by an owner or by anyone else in control of the substance concerning the nature of the substance, or its use or effect;

(B) statements made to the recipient that the substance may be resold for inordinate profit;

(C) whether the substance is packaged in a manner normally used for controlled substances;

(D) evasive tactics or actions used by the owner or person in control of the substance to avoid detection by law enforcement authorities;

(E) the storage, packaging, presentation, display of or reference to a controlled substance with, near, or in connection with the activity involving the imitation controlled substance.

She suggests that the burden of proof would be simpler in her bill than in the language I read to her from your bill's solution to the problem.

I did not, of course, identify you as the legislator who had filed a request on the subject.

If you would prefer the style of Sec. 5 from SB 151, that can be substituted for what I gave you earlier.

If I may be of further assistance, please advise.

RAB:mk
M1:115

Enc: SB 151

AS 11.73.010(a) THE LAW REGULATING "IMITATION CONTROLLED SUBSTANCES" IS EXAMINED FOR CONSTITUTIONALITY.

The Court of Appeals of Alaska held that the law can be applied to a situation involving an intentional misrepresentation that an imitation drug is a controlled drug. The court noted that while the law possessed some vagueness problems, in Stock v. State, 526 P.2d 3, 8 (Alaska 1974), the Alaska Supreme Court allowed a court to construe a statute which is vague on its face in such a way as to avoid constitutional vagueness problems: "A statute in its broad contours may be subject to criticism for failure to give adequate notice to all types of conduct which are punishable, but, when not involved with the "overbreadth" (a First Amendment) problem, may still pass muster if: (a) there can be no question as to its applicability to the particular offense involved, and (b) a construction may be placed upon the statute so that in the future the type of offenses coming within its purview may reasonably be understood." The court concluded that the law could be interpreted to apply to those situations involving an intentional misrepresentation that an imitation drug is a controlled drug. Morrow v. State, 704 P.2d 226.

The Alaska Court of Appeals construed the law according to the apparent legislative intent. Legislative action is not recommended.

State of Alaska

COMMITTEES

HOUSE HEALTH, EDUCATION
AND SOCIAL SERVICES
(Co-Chairman)
HOUSE JUDICIARY
HOUSE COMMUNITY AND
REGIONAL AFFAIRS

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4968

914 CLAY COURT
ANCHORAGE, ALASKA 99503
(907) 276-6844

Representative Max F. Gruenberg, Jr.
District 11
Spennard, Upper Midtown Anchorage

August 20, 1985

Billy G. Berrier, Director
Division of Legal Services
Pouch Y
Juneau, Alaska 99811

Re: AS 11.73.010

Dear Mr. Berrier:

The above statute was recently construed in Morrow v. the State of Alaska, P.2d, Op. no. 499 (Alaska App. August 9, 1985), narrowly to avoid an unconstitutional interpretation. Footnote one at page 12 indicates other possible problems. It appears to me that the statute could be saved from unconstitutionality and from requiring appellate courts to engage in tortured interpretations by simply adding the requirement that the defendant can only be convicted if he (1) knows the substance is an imitation controlled substance, and (2) distributes it with the intent to misrepresent it as a controlled substance.


Do you agree?

If you so, please draft me a bill to amend the above statute to add these two elements.

Reviewing the remainder of Chapter 73, I do not believe any other section needs to be similarly amended. If you feel it does, please add such amendments in the bill.

Thank you very much.

Cordially,


Max F. Gruenberg, Jr.

Thanks!

enclosure

NOTICE: This opinion is subject to formal correction before publication in the Pacific Reporter. Readers are requested to bring typographical or other formal errors to the attention of the Clerk of the Appellate Courts, 303 K Street, Anchorage, Alaska 99501, in order that corrections may be made prior to permanent publication.

THE COURT OF APPEALS OF THE STATE OF ALASKA

JO ANN MORROW,)
Appellant,)
vs.)
STATE OF ALASKA,)
Appellee.)

File No. A-510
OPINION
No. 499 - August 9, 1985

Appeal from the Superior Court of the State of Alaska, Fourth Judicial District, Fairbanks, Thomas B. Stewart, Judge.

Appearances: Carl E. Forsberg, Birch, Horton, Bittner, Pestinger and Anderson, Anchorage, for Appellant; John A. Scukanec, Assistant Attorney General, Office of Special Prosecutions and Appeals, Anchorage, and Norman C. Gorsuch, Attorney General, Juneau, for Appellee.

Before: Bryner, Chief Judge, Coats and Singleton, Judges.

COATS, Judge.

December 1, 1983, the mother of a sixteen-year-old juvenile, M.W., contacted Alaska State Trooper Geoffrey Engleman. M.W.'s mother informed Trooper Engleman that she believed her daughter was dealing drugs. Later that day, Trooper Engleman and another officer met with M.W.'s mother at her residence. There, she informed them that she had discovered plastic bags containing pills in M.W.'s purse. An officer then

searched M.W.'s purse and discovered six plastic bags containing different colored pills. Subsequently, Trooper Engleman interviewed M.W. At that time, M.W. informed the trooper that seven to nine days previously, Jo Ann Morrow had supplied her with 300 pills. She had obtained them from Morrow while in Morrow's car. At that time, Morrow told M.W. the pills were "speed" and instructed M.W. to sell each pill for \$1.00. Morrow told M.W. she would receive 1/3 of the money from the sales and if M.W. ran out of pills, Morrow could supply more. M.W. also stated that she had sold some of the pills and had given Morrow \$39 and Morrow had returned \$12 or \$14 to M.W. on November 30, 1983, as commission on the sales.

Trooper Engleman had the pills field-tested and determined that they were not "speed." However, because of their appearance, they could pass for "speed" on the street. Subsequent laboratory tests disclosed that the pills contained caffeine and ephedrine.

Based on the information provided by M.W., and his own familiarity with "fake controlled substances," Trooper Engleman obtained a search warrant for Morrow's residence. The warrant authorized a search of the residence for: drugs which appeared to be amphetamine based; written records of the ordering of such drugs; and magazines or books from which such drugs could be ordered. A search of the residence on December 1, 1983, resulted in the seizure of: approximately 5,000 tablets and capsules, similar to those obtained from M.W.; brochures advertising diet pills and stimulants; various items of drug paraphernalia; and from Morrow's purse, a list of names and telephone numbers, including M.W.'s.

On December 6, 1983, a grand jury returned a two-count indictment charging Morrow with delivery of an imitation controlled

substance to a minor land possession of an imitation controlled substance with intent to deliver AS 11.73.030(a); AS 11.73.010(a). On March 10, 1984, a jury returned a verdict of guilty on the possession with intent to deliver charge only.

Morrow now appeals, raising the following issues: (1) that the trial court erred by denying her motion to suppress evidence because the search warrant for her residence was not supported by probable cause; (2) that the trial court erred in denying her motion to dismiss the indictment because hearsay evidence was presented to the grand jury in the form of a "telex" preliminary lab report; and (3) that AS 11.73.099, the statute defining "imitation controlled substances," is unconstitutional.

SEARCH WARRANT ISSUES

The standard of review regarding a magistrate's determination of probable cause was enunciated in Rosa v. State, 633 P.2d 1027, (Alaska App. 1981), where this court said:

In reviewing a magistrate's determination of probable cause this court must give great deference to the magistrate's decision and must resolve doubtful or marginal cases largely by the preference to be accorded warrants. The Fourth Amendment's requirements are practical and not abstract, and affidavits must be tested and interpreted by magistrates and courts in a commonsense and realistic fashion. The burden of proof on questions pertaining to the sufficiency of the affidavit is on the defendant. [Citations and footnotes omitted.]

Id. at 1029-30, quoting State v. Davenport, 510 P.2d 78, 82 n.8 (Alaska 1973). With these standards in mind, the question to be asked is "whether the issuing judge [or magistrate] was provided sufficient evidence to make an independent finding of probable cause" to issue a

warrant. Lockwood v. State, 591 P.2d 969, 970 (Alaska 1979), quoting Davis v. State, 499 P.2d 1025, 1028 (Alaska 1972), rev'd on other grounds, 415 U.S. 308, 39 L.Ed.2d 347 (1974).

Morrow argues that the affidavit in support of the search warrant was inadequate because there was no indication that M.W. was a credible informant. See Kralick v. State, 647 P.2d 1120, 1124-25 (Alaska App. 1982).

Morrow argues that the affidavit does not make any allegation that M.W. had given reliable information in the past and the police did not conduct an independent investigation to corroborate her statements.

Morrow also contends that this warrant is defective for the same reasons we articulated in Jones v. State, 681 P.2d 364 (Alaska App. 1984).

In Jones we held that an affidavit in support of a search warrant by a police detective was not sufficient where the detective relied on a report by a juvenile informant that he witnessed a sale of one-half gram of cocaine at Casey Jones's apartment. The juvenile also stated that he had been to the apartment several times when he or his companions have purchased cocaine from Jones in the last few weeks. Id. at 365. The juvenile also

pointed out an apartment which was confirmed by another police officer to be Jones's apartment. In noting that the hearsay statement of the juvenile informant was not sufficient to support the warrant, we stated:

Moreover, B.V.'s statements that he had observed a friend purchase cocaine and that he had been to Jones's apartment ten to fifteen times when "he or his companions" had purchased cocaine do not qualify as the kind of declarations against penal interest which a court could find inherently credible. It is not a crime to be present when someone else is purchasing cocaine even though that someone else is a friend; nor would vague admissions about past purchases of cocaine support a criminal prosecution in the absence of evidence establishing a corpus delicti for a specific purchase. More significantly, the affidavit does not explain the circumstances under which B.V.'s statement was made. If B.V. was being prosecuted by

and juvenile authorities for drug transactions unrelated to Casey Jones, he would hardly view his statement that he had purchased cocaine in the past from Jones as increasing his exposure to criminal sanctions.

Id. at 365, n.6 (1980).

We see the situation in this case as significantly different from that in *Jones*. M.W. had the imitation drugs in her possession and apparently believed that she was confessing to the police that she had been selling amphetamines. There was every reason for the magistrate to credit her story as a declaration against interest. *Wong La Fave, Search and Seizure*, §3, 3(c), (1978). We conclude that M.W.'s credibility was adequately supported.

Morrow next argues that the affidavit in support of the warrant did not establish probable cause because it was based on stale information. She argues this is true because M.W.'s alleged transaction with Morrow had occurred seven to nine days prior to the issuance of the warrant. In *Snyder v. State*, 661 P.2d 638, 647 (Alaska App. 1983), this court said:

The question of whether the information contained in the affidavit was "stale" depends on an evaluation of the circumstances related by the affidavit and the length of time between the issuance of the search warrant and the time of the most recent incriminating activity described in the affidavit.

In evaluating "staleness," this court has chosen to evaluate the following four factors: (1) the type of crime; (2) the nature of the items sought; (3) the extent of the suspect's opportunity for concealment; and (4) normal inferences as to where a criminal would be likely to hide incriminating articles. *Id.* at 648.

It appears that the magistrate could have properly concluded the information was not stale because the affidavit evidenced ongoing criminal activity. See, e.g., 1 W. LaFare, Search and Seizure § 3.7(a), at 683-87 (1978); State v. Ogden, 391 So.2d 434 (La. 1980) (probable cause found despite fact that drug sale took place five days prior to the issuance of the warrant where the informant's statements indicated continuous activity and drug transactions, supporting an inference that a continuing supply of cocaine would be available). On the present facts, the affidavit stated that although the actual capsules and tablets were obtained from Morrow seven to nine days previously, money had been turned over to Morrow "within the last few days." Also, Morrow had represented to M.W. that if M.W. sold out of the substances, Morrow could readily obtain more. We conclude that the magistrate could properly find that there was probable cause that Morrow was still in possession of the imitation drugs and related material.

Next Morrow argues that because M.W. indicated she obtained the pills from Morrow while Morrow was in her car, there was no nexus between Morrow's residence and the items to be searched for.

In Snyder, 661 P.2d at 645, we said: "Probable cause to search requires sufficient information to permit the conclusion that criminal activity or evidence of crime will be found at the place to be searched. Put another way, there must be a 'nexus' between the place to be searched, criminal activity, and the items sought." 1 W. LaFare, Search and Seizure § 3.7(d), at 704 (1978).

See also State v. Gutman, 670 P.2d 1166 (Alaska App. 1983). We believe that the magistrate could properly conclude from the continuing contacts between M.W. and Morrow that Morrow was engaged in an ongoing business and it is logical to assume that some of the drugs would be stored at her

residence. We conclude there was probable cause to search Morrow's residence. Morrow next contends that the police should not have been permitted to seize the telephone list which had on it M.W.'s name and telephone number along with several other names and telephone numbers.

Morrow concedes the police could search her purse to find the list, but argues that the incriminating nature of the list was not immediately apparent and therefore the police had no authority to seize it. We disagree. The fact that Morrow had M.W.'s name and telephone number on a list in her purse showed her connection to M.W. and corroborated M.W.'s version of the relationship. It was also probable that the other names and telephone numbers on the list were connected with Morrow's distribution of imitation controlled substances. We conclude the police had authority to seize the list and that the trial judge did not err in refusing to suppress the use of the list as evidence.

GRAND JURY

Morrow argues that the indictment should have been dismissed since the state proved by means of a preliminary laboratory report that the substance which she was charged with possessing contained ephedrine and caffeine. Morrow claims that introduction of this report was inadmissible hearsay for which there was no compelling justification. Alaska R. Crim. P. 6(r). Morrow recognizes that in McKinnon v. State, 526 P.2d 18 (Alaska, 1974), the supreme court permitted the state to introduce the results of a laboratory report despite the fact that the report was hearsay. Morrow specifically objects to the fact that the report

presented to the grand jury was a telex which read: "Preliminary screening indicates presence of ephedrine and caffeine. Final report will be mailed upon completion of analysis." She argues that the situation in her case is more similar to that described by the supreme court in Metler v. State, 581 P.2d 669, 673-74 (Alaska 1978), where the court disapproved of introducing at grand jury the hearsay conclusion of handwriting experts. In Metler the court concluded that the grand jury was given insufficient information to evaluate the credibility of the experts and their methods. However in Morrow's case, Trooper Engleman, who introduced the report, did give the grand jury background information about the chemist who performed the test. He indicated that the chemist, Suzanne Feller, was a state chemist that he was personally acquainted with and that she had testified as an expert in other drug cases. Trooper Engleman also testified that he field-tested the suspected drugs and found they were not amphetamines. We also note that Suzanne Feller's testimony at trial was apparently essentially the same as her preliminary report, so it appears that we do not have a situation where later tests were inconsistent with the preliminary one. We conclude that under these circumstances the grand jury had sufficient information to evaluate Suzanne Feller's hearsay testimony and that the grand jury could properly find that the substances which Morrow possessed fell within the imitation controlled substances statute.

VAGUENESS AND OVERBREADTH

Morrow next challenges the statute under which she was convicted as being unconstitutionally overbroad and vague. U.S. Const.

amend. XIV and Alaska Const. art. I § 7. Morrow was convicted of possession of imitation controlled substances with the intent to deliver in violation of AS 11.73.010(a). That statute provides in part that "a person may not manufacture, deliver, or possess with intent to deliver, an imitation controlled substance." The definition of "imitation controlled substances" is found in AS 11.73.099(3) which provides:

(3) "imitation controlled substance" means a substance containing ephedrine, pseudoephedrine, pseudoephedrine hydrochloride, phenylpropanolamine, caffeine, theophylline, lidocaine, procaine, tetracaine, dyclonine, acetaminophen, salicylamide, doxylamine, diphenhydramine, pheniramine, chlorpheniramine, or pyrilamine, or their salts, that is not a controlled substance, and that by dosage unit appearance (including color, shape, size, and markings) or by representations would lead a reasonable person to believe that the substance is a controlled substance; the term "representations" as used in this paragraph, includes

- (A) statements made by an owner or by anyone else in control of the substance concerning the nature of the substance, or its use or effect;
- (B) statements made to the recipient that the substance may be resold for inordinate profit;
- (C) whether the substance is packaged in a manner normally used for controlled substances;
- (D) evasive tactics or actions used by the owner or person in control of the substance to avoid detection by law enforcement authorities;
- (E) the storage, packaging, presentation, display of or reference to a controlled substance with, near, or in connection with the activity involving the imitation controlled substance. [Emphasis provided.]

Morrow points out that this statute could reach some conduct which it is unlikely that the statute was intended to cover. Morrow proposes a hypothetical where someone, without any intent to deceive, gives caffeine diet pills, which are available as non-prescription medicine, to someone indicating that the pills are as effective for weight loss as any

prescription medicine. The state recognizes that the statute could be construed to reach conduct, such as that described by Morrow, which it is unlikely that the legislature intended to prohibit in promulgating the statute. The state urges us to interpret the statutory language defining an imitation controlled substance in such a manner that the meaning of the statute will be more clear to avoid any vagueness problems. As AS 11.73.099(3) now reads in part, an imitation controlled substance is a substance containing specific chemical components which by dosage unit appearance or by representations would lead a reasonable person to believe that the substance is a controlled substance. [Emphasis provided.] The state asks us to read the "or" in AS 11.73.099(3) as "and" in construing the statute. The state argues that as so construed, the statute would not reach innocent behavior.

In Summers v. Anchorage, 589 P.2d 863, 866-67 (Alaska 1979),

the supreme court set out three factors which must be considered in determining whether a statute is unconstitutionally vague: (2)

First, a statute may not be so imprecisely drawn and overbroad that it "chills" the exercise of first amendment rights. The second consideration is that in order to be consistent with notions of fundamental fairness a statute must give adequate notice of the conduct that is prohibited. The final element in an analysis of statutory vagueness is whether the statute's imprecise language encourages arbitrary enforcement by allowing prosecuting authorities undue discretion to determine the scope of its prohibitions. [Footnotes omitted.]

The first question we need to answer is whether the statute is overbroad. The overbreadth doctrine was described in Marks v. Anchorage, 500 P.2d 644, 646 (Alaska 1972):

The overbreadth doctrine has evolved to give adequate breathing room to specific first amendment freedoms; a statute violates the doctrine when constitutionally-protected conduct as well as conduct which the state

and can legitimately regulate are included within the ambit of the statute's prohibition. [Footnote omitted.]

The statute in question regulates conduct, the possession and sale of certain specific drugs, not speech or association. See Summers v. Anchorage, 589 P.2d at 867; McKenzie v. Anchorage, 631 P.2d 514, 516-17 (Alaska App., 1981). We therefore conclude that the statute is not overbroad.

The next question which we need to answer is whether the statute gives "adequate notice of the conduct that is prohibited." The state has conceded that the statute does have vagueness problems in this area and has asked us to construe the statute. In Stock v. State, 526 P.2d 3, 8 (Alaska 1974), the supreme court stated the doctrine which allows a court to construe a statute which is vague on its face in such a way as to avoid constitutional vagueness problems:

A statute in its broad contours may be subject to criticism for failure to give adequate notice to all types of conduct which are punishable, but, when not involved with the "overbreadth" problem, may still pass muster if: (a) there can be no question as to its applicability to the particular offense involved, and (b) a construction may be placed upon the statute so that in the future the type of offenses coming within its purview may reasonably be understood. [Footnotes omitted.]

In this case the state contends Morrow possessed certain imitation drugs with the intent to deliver those drugs. The state alleges that Morrow knew that the drugs were imitation drugs but intended to deliver them while intentionally misrepresenting that the imitation drugs were controlled drugs. Certainly the conduct which the state alleges is clearly covered by the statute. We believe that the statute can be interpreted by us to apply to those situations involving an intentional misrepresentation that an

imitation drug is a controlled drug. As so interpreted we believe that the statute is not vague.

The third factor which we are to consider is the statute's potential for arbitrary enforcement. The record of this case does not reflect a history of arbitrary or selective enforcement of this statute. See Summers v. Anchorage, 589 P.2d at 868. We also do not find that the

language of the ordinance is so vague that arbitrary enforcement is likely. See Brown v. Anchorage, 584 P.2d 35 (Alaska 1978). We therefore do not invalidate the ordinance for vagueness on this ground. We conclude that the statute, as interpreted, is not unconstitutionally vague.

The state asks us to affirm Morrow's conviction even though the state concedes that the jury instructions which were given in the trial below vary from the interpretation of the imitation controlled drug statute which the state has argued on appeal. The state contends that it is clear

that Morrow's defense did not turn on the particular jury instructions which were given in her trial and which might be modified in response to her vagueness claim. See Stock v. State, 526 P.2d at 11-12. Morrow did not file a reply brief and therefore had not responded to the state's argument that the statute can be construed so that it is not vague or

whether, if the statute is so construed, Morrow's conviction should be affirmed. Furthermore, we have before us only a minimal record to decide this case, which does not include a transcript of the trial. We therefore

1. It appears to us that it may be argued that certain other conduct falls within the statute. An example of conduct which might fall within the statute would be a person who delivers an imitation drug honestly believing that the imitation drug is a controlled substance. However, the case before us does not present this question, and this matter has not been briefed on appeal. We reserve ruling on this issue.

do not decide whether Morrow has any claim that her conviction was improper because of a claim that might arise out of our post-trial construction of the statute. We remand the case to the trial court to determine whether Morrow's conviction should stand in light of our construction of the statute under which she was convicted.²

This case is REMANDED for proceedings not inconsistent with this opinion.

2. We retain jurisdiction of this appeal.



ANCHORAGE
SCHOOL DISTRICT

4600 DeBarr Avenue
P.O. Box 196614
Anchorage, Alaska 99519-6614
AREA CODE [907] 333-9561

March 21, 1986

The Honorable Max Gruenberg, Jr.
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear Mr. Gruenberg:

Review of House Bill No. 560 entitled, "an Act relating to imitation controlled substances", prompts this letter. The Anchorage School District has for the past four years prohibited imitation controlled substances as well as currently illegal drugs and alcohol in schools and at school functions. We have found it necessary to treat the imitation substances as if they were the real things in order to continue to maintain as drug/alcohol free school environment as possible.

Since these substances are reported to be real, they promote drug related activity in exactly the same manner the actual substance does. We would welcome State support in eliminating this troublesome feature of the drug subculture from our schools and our State.

Sincerely,

E. E. (Gene) Davis, Ed.D.
SUPERINTENDENT

rs

cc Steve Daeschner, Deputy Superintendent for Instruction
L. T. Freeman, Assistant Superintendent for Business Management
Bill Miles, School District Lobbyist

SCHOOL BOARD

Betty Davis
President

Martha Roderick
Vice President

William Frick
Clerk

Jean Buchanan
Clerk Pro Tem
Past President

Jim Robinson
Treasurer
Immediate Past President

Carl Stolpe
Assistant Treasurer

Betty Bruckman
Parliamentarian

SUPERINTENDENT

E. E. (Gene) Davis, Ed.D.

DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER

Opposed

February 20, 1986

HB560 - "An Act relating to imitation controlled substances."

It is our interpretation of the wording used in this bill that law enforcement agencies will be required to prove the intent of a suspect in cases involving imitation controlled substances.

By requiring that law enforcement officers must demonstrate "...that the person knows..." that they are dealing with an imitation controlled substance, enforcement of the statute will be extremely difficult. The requirement for proving 'intent' was removed from various narcotics related statutes several years ago. This bill will return this element in cases involving imitation controlled substances.

As a result of the implementation of the bill, law enforcement agencies will be less likely to be able to prevent the sale of "look-alike" imitation drugs and drug pushers will be able to increase the initiation of minors into the drug culture. Further, dangers to the public will occur when users become accustomed to using "look-alikes" and unknowingly take the same dosage of a real drug.


Robert J. Sundberg
Commissioner

Bradley
4/19/86

Original sponsor: Gruenberg

1 IN THE HOUSE

BY THE HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

2 CS FOR HOUSE BILL NO. 560 (HESS)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to imitation controlled substances."

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

8 * Section 1. AS 11.73.010(a) is amended to read:

9 (a) Except as provided in AS 11.73.050, a person may not manu-
10 facture, deliver, or possess with intent to deliver, an imitation
11 controlled substance with an intent to misrepresent the imitation
12 controlled substance as a controlled substance.

13 * Sec. 2. AS 11.73.030(a) is amended to read:

14 (a) Except as provided in AS 11.73.050, a person 19 years of age
15 or older may not deliver an imitation controlled substance with an
16 intent to misrepresent the imitation controlled substance as a con-
17 trolled substance to a person under 19 years of age, who is at least
18 three years younger than the person delivering the substance.

19 * Sec. 3. AS 11.73.099(3) is amended to read:

20 (3) "imitation controlled substance" means a substance
21 containing ephedrine, ephedrine sulfate, pseudoephedrine, pseudoephe-
22 drine hydrochloride, phenylpropanolamine, caffeine, theophylline,
23 lidocaine, procaine, tetracaine, dyclonine, acetaminophen,
24 salicylamide, doxylamine, diphenhydramine, pheniramine, chlorpheni-
25 ramine, or pryrilamine, or their salts, that is not a controlled
26 substance, and that by dosage unit appearance (including color, shape,
27 size, and markings) and [OR] by representations would lead a reason-
28 able person to believe that the substance is a controlled substance;
29 the term "representations", as used in this paragraph, includes

1 (A) statements made by an owner or by anyone else in
2 control of the substance concerning the nature of the substance,
3 or its use or effect;

4 (B) statements made to the recipient that the sub-
5 stance may be resold for inordinate profit;

6 (C) whether the substance is packaged in a manner
7 normally used for controlled substances;

8 (D) evasive tactics or actions used by the owner or
9 person in control of the substance to avoid detection by law
10 enforcement authorities;

11 (E) the storage, packaging, presentation, display of
12 or reference to a controlled substance with, near, or in connec-
13 tion with the activity involving the imitation controlled sub-
14 stance.
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29



RECORDS CERTIFICATION



I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

7/25/89
Date

H

B

G

O

2

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : HB602
 Title : Regulation of Postsecondary Institutions
 Sponsor : Rules
 Requestor : House HESS
 Date of Request : March 17, 1986

FISCAL DETAIL

Agency Affected : Education
 BRU : Postsecondary Education
 Components : General Administration

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	N.A.	-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING : (Thousands of Dollars)

GENERAL FUND	N.A.	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

FULL-TIME	N.A.	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : Kerry D. Romesburg, Executive Director Phone : 465-2854
 Division : Alaska Commission on Postsecondary Education Date : March 17, 1986

Approved by Commissioner : _____ Date : _____
 Agency : _____

Distribution (by Agency preparing fiscal note) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

ALASKA COMMISSION ON POSTSECONDARY EDUCATION

Analysis of HB602

1. Section 1 establishes a surety fund into which schools could contribute as an alternative to posting a bond. The amount of contribution would be based upon a percentage of tuition revenues and, over time, would serve the same consumer protection purpose as a bond.

The Alaska Private School Association and the Commission on Postsecondary Education both endorse this concept but oppose establishing the surety fund in the general fund. As originally planned, the fund would be established in a private bank and would be interest bearing. In time it is hoped the interest will accrue to the point of being available for grants to students attending participating schools.

2. Section 2 simply provides for the automatic revocation of an authorization to operate for a school that closes. Currently, a formal hearing must be held with a hearing officer appointed by the Governor. This provision will enable the Commission to avoid unnecessary contractual expenses.

BILL SHEFFIELD
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 14, 1986

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to postsecondary institutions. The bill has two components.

The first is a provision, added to AS 14.48.100, that authorizes the commission to establish, by regulation, a surety fund as an alternative to imposing bonding requirements on postsecondary institutions. As a result of recent experience involving schools that have stopped operating while still having students enrolled, or have otherwise violated the minimum standards governing their operation, and the difficulty the commission has had in obtaining restitution for aggrieved students under such circumstances, the commission has faced the necessity of implementing bonding requirements for the protection of postsecondary students. However, the costs of obtaining bonds may be prohibitively expensive for some schools. Therefore, authorization for the commission to establish a surety fund as an alternative, is proposed. Bonding requirements for agents under AS 14.48.100(b) are not affected by this bill.

The second component is a provision, added to AS 14.48.120, that automatically revokes, by operation of law, a postsecondary institution's authorization to operate when the institution ceases to operate. This will do away with the time and expense of a formal hearing in circumstances in which the action is usually uncontested anyway. An institution that wishes to challenge the revocation may appeal to the commission.

Sincerely,

A handwritten signature in cursive script that reads "Bill Sheffield".

Bill Sheffield
Governor

New Section 1.
New Section 2

AS 14.48.100(e) is amended to read:

AS 14.48.100(e). In lieu of the surety bond required in (a) and (b) of this section, the applicant may file with the commission a cash deposit (OR), other negotiable security, or property, acceptable to the commission, in the amount specified for bonds.

AS 14.48.060(b) is amended by adding a new paragraph (13)

(13) charges set by the institution for tuition, fees, books, and supplies, are fair and equitable.

*P.S.C. - investigate, findings
if no compliance → Consumer Protection
Agency.*

Amend unfair trade Practices Act

AS 14.48.100(e) is amended to read:

AS 14.48.100(e). In lieu of the surety bond required in (a) and (b) of this section, the applicant may file with the commission a cash deposit (OR), other negotiable security, or property, acceptable to the commission, in the amount specified for bonds.

AS 14.48.060(b) is amended by adding a new paragraph (13)

(13) charges set by the institution for tuition, fees, books, and supplies, are fair and equitable.

48.050
ational
ortions
profes-
e com-
ation's
l insti-
ely;
by the
eading
ffering
in the
toward
erated,
isions.
Alaska
hapter
n from
on and
l ch 25
mmis-
48.060
health
ization
ization
ons for
ns and
list of
similar
on the
hapter;
ademic

(7) promulgate regulations and procedures necessary or appropriate for the conduct of its work and the implementation of this chapter under the Administrative Procedure Act (AS 44.62);

(8) investigate on its own initiative or in response to a complaint lodged with it, persons subject to, or reasonably believed by the commission to be subject to, the jurisdiction of this chapter; and in connection with the investigation subpoena persons, books, records, or documents related to the investigation; require answers in writing under oath to questions propounded by the commission and administer oaths or affirmations to persons in connection with the investigation; and, for the purpose of examination at all reasonable times, shall have access to, and the right to copy, documentary evidence of a corporation that is under investigation or being proceeded against;

(9) exercise other necessary powers and duties in conformity with the provisions of this chapter which, in the judgment of the commission, are necessary to carry out the provisions of this chapter. (§ 1 ch 25 SLA 1976)

Collateral references. — Power of legislature to impose noneducational function upon state educational institution or instructors therein. 67 ALR 1032. Admission charges or other receipts from extracurricular activities of schools as subject to taxation. 115 ALR 1411.

Sec. 14.48.060. Minimum standards. (a) In establishing the criteria required by AS 14.48.050(1), the commission shall require compliance with the minimum standards set out in (b) of this section.

(b) A postsecondary educational institution must be maintained and operated, or, in the case of a new institution must demonstrate that it can be maintained and operated so that

(1) the quality and content of each course or program of instruction, training, or study are such as may reasonably and adequately achieve the stated objective for which the course or program is offered;

(2) the institution has or has access to adequate space, equipment, instructional materials, and personnel where applicable to achieve the stated objective of the course or program of study and to provide education of good quality;

(3) the education or experience qualifications of directors, administrators, supervisors, and instructors are such as may reasonably insure that the students will receive education consistent with the objectives of the course or program of study;

(4) the institution provides a catalog or brochure containing information describing the programs offered, program objectives, length of program, schedule of tuition, fees, and all other charges and expenses necessary for completion of the course of study, cancellation and refund policies, and other material facts concerning the institution and the program or course of instruction which are reasonably likely to affect the decision of the student to enroll, together with any other

ational
ortions

(7) promulgate regulations and procedures necessary or appropriate for the conduct of its work and the implementation of this chapter under the Administrative Procedure Act (AS 44.62);

profes-
ie com-
ation's

(8) investigate on its own initiative or in response to a complaint lodged with it, persons subject to, or reasonably believed by the commission to be subject to, the jurisdiction of this chapter; and in connection with the investigation subpoena persons, books, records, or documents related to the investigation; require answers in writing under oath to questions propounded by the commission and administer oaths or affirmations to persons in connection with the investigation; and, for the purpose of examination at all reasonable times, shall have access to, and the right to copy, documentary evidence of a corporation that is under investigation or being proceeded against;

l insti-
aly;
by the
eading

(9) exercise other necessary powers and duties in conformity with the provisions of this chapter which, in the judgment of the commission, are necessary to carry out the provisions of this chapter. (§ 1 ch 25 SLA 1976)

ffering
in the
toward

erated,
isions.

Collateral references. — Power of legislature to impose noneducational function upon state educational institution or instructors therein. 67 ALR 1032. Admission charges or other receipts from extracurricular activities of schools as subject to taxation. 115 ALR 1411.

Alaska
hapter
n from
on and
1 ch 25

Sec. 14.48.060. Minimum standards. (a) In establishing the criteria required by AS 14.48.050(1), the commission shall require compliance with the minimum standards set out in (b) of this section.

ommis-

(b) A postsecondary educational institution must be maintained and operated, or, in the case of a new institution must demonstrate that it can be maintained and operated so that

48.060
health
ization
ization

(1) the quality and content of each course or program of instruction, training, or study are such as may reasonably and adequately achieve the stated objective for which the course or program is offered;

ization
ons for

(2) the institution has or has access to adequate space, equipment, instructional materials, and personnel where applicable to achieve the stated objective of the course or program of study and to provide education of good quality;

ns and

(3) the education or experience qualifications of directors, administrators, supervisors, and instructors are such as may reasonably insure that the students will receive education consistent with the objectives of the course or program of study;

e list of

(4) the institution provides a catalog or brochure containing information describing the programs offered, program objectives, length of program, schedule of tuition, fees, and all other charges and expenses necessary for completion of the course of study, cancellation and refund policies, and other material facts concerning the institution and the program or course of instruction which are reasonably likely to affect the decision of the student to enroll, together with any other

similar
on the
hapter;
ademic

disclosures specified by the commission by regulation; and that this information is provided to prospective students before enrollment;

(5) upon satisfactory completion of training, the student is given appropriate educational credentials by the institution, indicating that the course of instruction or study has been satisfactorily completed by the student;

(6) adequate records are maintained by the institution to show attendance, progress, or grades, and that satisfactory standards are enforced relating to attendance, progress and performance;

(7) the institution is maintained and operated in compliance with all pertinent ordinances and laws relating to the safety and health of persons upon the premises of the institution;

(8) the institution is financially sound and capable of fulfilling its commitments to students;

(9) neither the institution nor its agents engage in advertising, sales, collection, credit, or other practices which are false, deceptive, misleading, or unfair;

(10) the chief executive officer, trustees, directors, owners, administrators, supervisors, staff, and instructors of the institution are of good reputation and character and have not been convicted of a violation of AS 14.48.020 or AS 14.48.150 or AS 45.50.471 — 45.50.551 or a comparable law in another state or province;

(11) the student housing owned, maintained, or approved by the institution is appropriate, safe, and adequate; and

(12) the institution has a fair and equitable cancellation and refund policy.

(c) Accreditation by national or regional accrediting agencies recognized by the commission may be accepted by the commission as evidence of compliance with the minimum standards established by this section and the criteria established under AS 14.48.050(1). However, the commission may require further evidence and make further investigation as may be necessary. Accreditation by a recognized, specialized accrediting agency may be accepted as evidence of compliance only as to the portion or program of an institution accredited by the accrediting agency if the institution as a whole is not accredited. (§ 1 ch 25 SLA 1976)

Sec. 14.48.070. Authorization to operate. (a) Each postsecondary educational institution desiring to operate in this state shall apply to the commission, upon forms provided by the commission. The application shall be accompanied by a catalog or brochure published, or proposed to be published by the institution, containing the information specified in AS 14.48.060(b)(4). The application shall also be accompanied by evidence of a surety bond or other deposit as required by AS 14.48.100, and by the required fees.

(b) Following review of the application and after necessary investigation of the applicant the commission shall either grant or deny

ational
ortions

profes-
ie com-
ation's

l insti-
ely;
by the
eading

ffering
in the
toward

erated,
isions.

Alaska
hapter
n from
on and
1 ch 25

ommis-

48.060
health
ization
ization

ization
ons for

ns and

a list of

similar
on the
hapter;
ademic

(7) promulgate regulations and procedures necessary or appropriate for the conduct of its work and the implementation of this chapter under the Administrative Procedure Act (AS 44.62);

(8) investigate on its own initiative or in response to a complaint lodged with it, persons subject to, or reasonably believed by the commission to be subject to, the jurisdiction of this chapter; and in connection with the investigation subpoena persons, books, records, or documents related to the investigation; require answers in writing under oath to questions propounded by the commission and administer oaths or affirmations to persons in connection with the investigation; and, for the purpose of examination at all reasonable times, shall have access to, and the right to copy, documentary evidence of a corporation that is under investigation or being proceeded against;

(9) exercise other necessary powers and duties in conformity with the provisions of this chapter which, in the judgment of the commission, are necessary to carry out the provisions of this chapter. (§ 1 ch 25 SLA 1976)

Collateral references. — Power of legislature to impose noneducational function upon state educational institution or instructors therein. 67 ALR 1032. Admission charges or other receipts from extracurricular activities of schools as subject to taxation. 115 ALR 1411.

Sec. 14.48.060. Minimum standards. (a) In establishing the criteria required by AS 14.48.050(1), the commission shall require compliance with the minimum standards set out in (b) of this section.

(b) A postsecondary educational institution must be maintained and operated, or, in the case of a new institution must demonstrate that it can be maintained and operated so that

(1) the quality and content of each course or program of instruction, training, or study are such as may reasonably and adequately achieve the stated objective for which the course or program is offered;

(2) the institution has or has access to adequate space, equipment, instructional materials, and personnel where applicable to achieve the stated objective of the course or program of study and to provide education of good quality;

(3) the education or experience qualifications of directors, administrators, supervisors, and instructors are such as may reasonably insure that the students will receive education consistent with the objectives of the course or program of study;

(4) the institution provides a catalog or brochure containing information describing the programs offered, program objectives, length of program, schedule of tuition, fees, and all other charges and expenses necessary for completion of the course of study, cancellation and refund policies, and other material facts concerning the institution and the program or course of instruction which are reasonably likely to affect the decision of the student to enroll, together with any other

disclosures specified by the commission by regulation; and that this information is provided to prospective students before enrollment;

(5) upon satisfactory completion of training, the student is given appropriate educational credentials by the institution, indicating that the course of instruction or study has been satisfactorily completed by the student;

(6) adequate records are maintained by the institution to show attendance, progress, or grades, and that satisfactory standards are enforced relating to attendance, progress and performance;

(7) the institution is maintained and operated in compliance with all pertinent ordinances and laws relating to the safety and health of persons upon the premises of the institution;

(8) the institution is financially sound and capable of fulfilling its commitments to students;

(9) neither the institution nor its agents engage in advertising, sales, collection, credit, or other practices which are false, deceptive, misleading, or unfair;

(10) the chief executive officer, trustees, directors, owners, administrators, supervisors, staff, and instructors of the institution are of good reputation and character and have not been convicted of a violation of AS 14.48.020 or AS 14.48.150 or AS 45.50.471 — 45.50.551 or a comparable law in another state or province;

(11) the student housing owned, maintained, or approved by the institution is appropriate, safe, and adequate; and

(12) the institution has a fair and equitable cancellation and refund policy.

(c) Accreditation by national or regional accrediting agencies recognized by the commission may be accepted by the commission as evidence of compliance with the minimum standards established by this section and the criteria established under AS 14.48.050(1). However, the commission may require further evidence and make further investigation as may be necessary. Accreditation by a recognized, specialized accrediting agency may be accepted as evidence of compliance only as to the portion or program of an institution accredited by the accrediting agency if the institution as a whole is not accredited. (§ 1 ch 25 SLA 1976)

Sec. 14.48.070. Authorization to operate. (a) Each postsecondary educational institution desiring to operate in this state shall apply to the commission, upon forms provided by the commission. The application shall be accompanied by a catalog or brochure published, or proposed to be published by the institution, containing the information specified in AS 14.48.060(b)(4). The application shall also be accompanied by evidence of a surety bond or other deposit as required by AS 14.48.100, and by the required fees.

(b) Following review of the application and after necessary investigation of the applicant the commission shall either grant or deny

(7) promulgate regulations and procedures necessary or appropriate for the conduct of its work and the implementation of this chapter under the Administrative Procedure Act (AS 44.62);

(8) investigate on its own initiative or in response to a complaint lodged with it, persons subject to, or reasonably believed by the commission to be subject to, the jurisdiction of this chapter; and in connection with the investigation subpoena persons, books, records, or documents related to the investigation; require answers in writing under oath to questions propounded by the commission and administer oaths or affirmations to persons in connection with the investigation; and, for the purpose of examination at all reasonable times, shall have access to, and the right to copy, documentary evidence of a corporation that is under investigation or being proceeded against;

(9) exercise other necessary powers and duties in conformity with the provisions of this chapter which, in the judgment of the commission, are necessary to carry out the provisions of this chapter. (§ 1 ch 25 SLA 1976)

Collateral references. — Power of legislature to impose noneducational function upon state educational institution or instructors therein. 67 ALR 1032.

Admission charges or other receipts from extracurricular activities of schools as subject to taxation. 115 ALR 1411.

Sec. 14.48.060. Minimum standards. (a) In establishing the criteria required by AS 14.48.050(1), the commission shall require compliance with the minimum standards set out in (b) of this section.

(b) A postsecondary educational institution must be maintained and operated, or, in the case of a new institution must demonstrate that it can be maintained and operated so that

(1) the quality and content of each course or program of instruction, training, or study are such as may reasonably and adequately achieve the stated objective for which the course or program is offered;

(2) the institution has or has access to adequate space, equipment, instructional materials, and personnel where applicable to achieve the stated objective of the course or program of study and to provide education of good quality;

(3) the education or experience qualifications of directors, administrators, supervisors, and instructors are such as may reasonably insure that the students will receive education consistent with the objectives of the course or program of study;

(4) the institution provides a catalog or brochure containing information describing the programs offered, program objectives, length of program, schedule of tuition, fees, and all other charges and expenses necessary for completion of the course of study, cancellation and refund policies, and other material facts concerning the institution and the program or course of instruction which are reasonably likely to affect the decision of the student to enroll, together with any other

disclosures specified by the commission by regulation; and that this information is provided to prospective students before enrollment;

(5) upon satisfactory completion of training, the student is given appropriate educational credentials by the institution, indicating that the course of instruction or study has been satisfactorily completed by the student;

(6) adequate records are maintained by the institution to show attendance, progress, or grades, and that satisfactory standards are enforced relating to attendance, progress and performance;

(7) the institution is maintained and operated in compliance with all pertinent ordinances and laws relating to the safety and health of persons upon the premises of the institution;

(8) the institution is financially sound and capable of fulfilling its commitments to students;

(9) neither the institution nor its agents engage in advertising, sales, collection, credit, or other practices which are false, deceptive, misleading, or unfair;

(10) the chief executive officer, trustees, directors, owners, administrators, supervisors, staff, and instructors of the institution are of good reputation and character and have not been convicted of a violation of AS 14.48.020 or AS 14.48.150 or AS 45.50.471 — 45.50.551 or a comparable law in another state or province;

(11) the student housing owned, maintained, or approved by the institution is appropriate, safe, and adequate; and

(12) the institution has a fair and equitable cancellation and refund policy.

(c) Accreditation by national or regional accrediting agencies recognized by the commission may be accepted by the commission as evidence of compliance with the minimum standards established by this section and the criteria established under AS 14.48.050(1). However, the commission may require further evidence and make further investigation as may be necessary. Accreditation by a recognized, specialized accrediting agency may be accepted as evidence of compliance only as to the portion or program of an institution accredited by the accrediting agency if the institution as a whole is not accredited. (§ 1 ch 25 SLA 1976)

Sec. 14.48.070. Authorization to operate. (a) Each postsecondary educational institution desiring to operate in this state shall apply to the commission, upon forms provided by the commission. The application shall be accompanied by a catalog or brochure published, or proposed to be published by the institution, containing the information specified in AS 14.48.060(b)(4). The application shall also be accompanied by evidence of a surety bond or other deposit as required by AS 14.48.100, and by the required fees.

(b) Following review of the application and after necessary investigation of the applicant the commission shall either grant or deny

BILL SHEFFIELD
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 14, 1986

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to post-secondary institutions. The bill has two components.

The first is a provision, added to AS 14.48.100, that authorizes the commission to establish, by regulation, a surety fund as an alternative to imposing bonding requirements on postsecondary institutions. As a result of recent experience involving schools that have stopped operating while still having students enrolled, or have otherwise violated the minimum standards governing their operation, and the difficulty the commission has had in obtaining restitution for aggrieved students under such circumstances, the commission has faced the necessity of implementing bonding requirements for the protection of postsecondary students. However, the costs of obtaining bonds may be prohibitively expensive for some schools. Therefore, authorization for the commission to establish a surety fund as an alternative, is proposed. Bonding requirements for agents under AS 14.48.100(b) are not affected by this bill.

The second component is a provision, added to AS 14.48.120, that automatically revokes, by operation of law, a postsecondary institution's authorization to operate when the institution ceases to operate. This will do away with the time and expense of a formal hearing in circumstances in which the action is usually uncontested anyway. An institution that wishes to challenge the revocation may appeal to the commission.

Sincerely,

Bill Sheffield
Governor

*3-426 subcommittee Tuesday
on Calendar Wed.
HB 98 on Calendar Monday
Certified mail, return receipt requested.
(c) appeal may be made to superior
court if denied down by Commission according
to HPA*

*Unfair trade practice enforced
by consumer protection*

BILL SHEFFIELD
GOVERNOR



STATE OF ALASKA
OFFICE

*HB 726 subcommittee Tuesday
on calendar Wed.*

The Honorable Ben C
Speaker of the House
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

*HB 98 on calendar Monday
certified mail, return receipt requested.
(c) appeal may be made to superior
court if turned down by Commission according
to PPA*

Dear Representative G.

Under the authority of the
Constitution, I am transmitting
secondary institutions.

one Alaska
relating to post-
secondary two components.

The first is a provision, added to AS 14.48.100, that authorizes the commission to establish, by regulation, a surety fund as an alternative to imposing bonding requirements on postsecondary institutions. As a result of recent experience involving schools that have stopped operating while still having students enrolled, or have otherwise violated the minimum standards governing their operation, and the difficulty the commission has had in obtaining restitution for aggrieved students under such circumstances, the commission has faced the necessity of implementing bonding requirements for the protection of postsecondary students. However, the costs of obtaining bonds may be prohibitively expensive for some schools. Therefore, authorization for the commission to establish a surety fund as an alternative, is proposed. Bonding requirements for agents under AS 14.48.100(b) are not affected by this bill.

The second component is a provision, added to AS 14.48.120, that automatically revokes, by operation of law, a postsecondary institution's authorization to operate when the institution ceases to operate. This will do away with the time and expense of a formal hearing in circumstances in which the action is usually uncontested anyway. An institution that wishes to challenge the revocation may appeal to the commission.

Sincerely,

Bill Sheffield
Governor

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : 377-056-86
 Title : ...regulation of postsecondary institutions
 Sponsor : Governor
 Requestor : Governor
 Date of Request : 12-31-85

FISCAL DETAIL

Agency Affected : Education
 BRU : _____
 Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

The bill has no fiscal impact on this department.

Prepared by : Steve Hole Phone : 465-2800
 Division : Commissioner's Office Date : 12-31-85

Approved by Commissioner : Harold Raynolds, Jr. Date : 12-31-85
 Agency : Education

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

**STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE**

Revision Date : _____

REQUEST
 Bill/Resolution No. : _____
 Title : RE: Regulation of Postsecondary
Institutions

 Sponsor : Rules/Governor
 Requestor : _____
 Date of Request : December 15, 1985

FISCAL DETAIL
 Agency Affected : Education
 BRU : Postsecondary Education
Commission

 Components : General Administration

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	<u>N.A.</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>

CAPITAL	<u>N.A.</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
----------------	-------------	------------	------------	------------	------------	------------

REVENUE						
----------------	--	--	--	--	--	--

FUNDING : (Thousands of Dollars)

GENERAL FUND	<u>N.A.</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
FEDERAL FUNDS						
OTHER						
TOTAL	<u>N.A.</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>

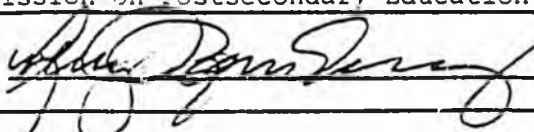
POSITIONS :

FULL-TIME						
PART-TIME						
TEM. ORARY						

ANALYSIS : Attach a separate page if necessary

No fiscal impact of changes, and administration will absorb any workload or supply changes.

Prepared by : Kerry D. Romesburg, Executive Director Phone : 465-2854
 Division : Alaska Commission on Postsecondary Education Date : December 15, 1985

Approved by Commissioner :  Date : _____
 Agency : _____

Distribution (by Agency preparing fiscal note) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)