

ALASKA LEGISLATURE COMMITTEE FILES 1905-1900 00/2

3367 HJUD HB 516 - HB 519



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James O. Smith
Signature of Camera Operator

7/25/89
Date

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STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY
LEGISLATIVE REFERENCE LIBRARY

May, 1986

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS date base CM 14. In order to save space copies of minutes have not been left in the files.

Jeanie Henry

House Judiciary	3/7/86	1:30 pm
" "	4/10/86	8 AM

Original sponsors: Gruenberg, Taylor,
Pattyjohn, et al

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 516 (Judiciary)

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 the impeachment of judges of the
7 court of appeals and the district court and to dis-
8 qualification of judges for cause."

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

10 * Section 1. AS 22.07 is amended by adding a new section to read:

11 Sec. 22.07.075. IMPEACHMENT. A judge of the court of appeals is
12 subject to impeachment by the legislature for malfeasance or mis-
13 feasance in the performance of official duties. Impeachment must
14 originate in the senate and must be approved by two-thirds vote of its
15 members. The motion for impeachment must list fully the basis for the
16 proceeding. Trial on impeachment shall be conducted by the house of
17 representatives. A supreme court justice designated by the court
18 shall preside at the trial. Concurrence of two-thirds of the members
19 of the house is required for a judgment of impeachment. The judgment
20 may not extend beyond removal from office, but does not prevent pro-
21 ceedings in a court on the same or related charges.

22 * Sec. 2. AS 22.15 is amended by adding a new section to read:

23 Sec. 22.15.205. IMPEACHMENT. A district judge is subject to
24 impeachment by the legislature for malfeasance or misfeasance in the
25 performance of official duties. Impeachment must originate in the
26 senate and must be approved by two-thirds vote of its members. The
27 motion for impeachment must list fully the basis for the proceeding.
28 Trial on impeachment shall be conducted by the house of representa-
29 tives. A supreme court justice designated by the court shall preside

1 at the trial. Concurrence of two-thirds of the members of the house
2 is required for a judgment of impeachment. The judgment may not
3 extend beyond removal from office, but does not prevent proceedings in
4 the courts on the same or related charges.

5 * Sec. 3. AS 22.20.020(a) is repealed and reenacted to read:

6 (a) A judicial officer may not act in a matter in which

7 (1) the judicial officer is a party or is related to a
8 party or a party's attorney by consanguinity or affinity within the
9 third degree;

10 (2) the judicial officer is a material witness;

11 (3) the judicial officer or the spouse of the judicial
12 officer, individually or as a fiduciary, or a child of the judicial
13 officer has a direct financial interest in the matter;

14 (4) a party, except the state or a municipality of the
15 state, has retained or been professionally counseled by the judicial
16 officer as its attorney within two years preceding the assignment of
17 the judicial officer to the matter;

18 (5) the judicial officer has represented a person as attor-
19 ney for the person against a party, except the state or a municipality
20 of the state, in a matter within two years preceding the assignment of
21 the judicial officer to the matter;

22 (6) an attorney for a party has represented the judicial
23 officer or a person against the judicial officer, either in the judi-
24 cial officer's public or private capacity, in a matter within two
25 years preceding the filing of the action;

26 (7) the law firm with which the judicial officer was asso-
27 ciated in the practice of law within the two years preceding the
28 filing of the action has been retained or has professionally counseled
29 either party with respect to the matter;

1 (8) the judicial officer feels that, for any reason, a fair
2 and impartial decision cannot be given.

3 * Sec. 4. AS 22.30.020 is amended by adding a new subsection to read:

4 (d) In this section "municipality" has the meaning given in
5 AS 29.71.300.
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Bradley ✓
2/26/86

Original sponsors: Gruenberg, Taylor,
Pettyjohn, et al

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 516 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

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7 court of appeals and the district court and to dis-
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14 originate in the senate and must be approved by two-thirds vote of its
15 members. The motion for impeachment must list fully the basis for the
16 proceeding. Trial on impeachment shall be conducted by the house of
17 representatives. A supreme court justice designated by the court
18 shall preside at the trial. Concurrence of two-thirds of the members
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27 motion for impeachment must list fully the basis for the proceeding.
28 Trial on impeachment shall be conducted by the house of representa-
29 tives. A supreme court justice designated by the court shall preside

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5 * Sec. 3. AS 22.20.020(a) is repealed and reenacted to read:

6 (a) A judicial officer may not act in a matter in which

7 (1) the judicial officer is a party or is related to a
8 party or a party's attorney by consanguinity or affinity within the
9 third degree;

10 (2) the judicial officer is a material witness;

11 (3) the judicial officer or the spouse of the judicial
12 officer, individually or as a fiduciary, or a child of the judicial
13 officer has a direct financial interest in the matter;

14 (4) a party, except the state or a municipality of the
15 state, has retained or been professionally counseled by the judicial
16 officer as its attorney within two years preceding the assignment of
17 the judicial officer to the matter;

18 (5) the judicial officer has represented a person as attor-
19 ney for the person against a party, except the state or a municipality
20 of the state, in a matter within two years preceding the assignment of
21 the judicial officer to the matter;

22 (6) an attorney for a party has represented the judicial
23 officer or a person against the judicial officer, either in the judi-
24 cial officer's public or private capacity, in a matter within two
25 years preceding the filing of the action;

26 (7) the law firm with which the judicial officer was asso-
27 ciated in the practice of law within the two years preceding the
28 filing of the action has been retained or has professionally counseled
29 either party with respect to the matter;

1 (8) the judicial officer feels that, for any reason, a fair
2 and impartial decision cannot be given.

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

Revision Date : _____

REQUEST

Bill/Resolution No. : HB 516
 Title : "An Act relating to impeachment of judges of the court of appeals and the district court and to disqualification of judges for cause."
 Sponsor : Gruenberg
 Requestor : House Judiciary
 Date of Request : 4/10/86

FISCAL DETAIL

Agency Affected : Alaska Court System
 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,
CAPITAL						
REVENUE						

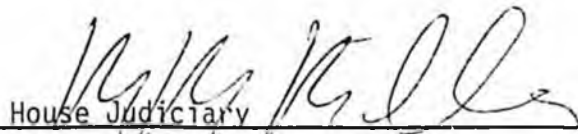
FUNDING : (Thousands of Dollars)

GENERAL FUND		0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

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

ANALYSIS : Attach a separate page if necessary

Prepared by : House Judiciary  Phone : _____
 Division : _____ Date : 4/10/86

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 Court System
State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

303 K Street
Anchorage, AK 99501

KARLA L. FORSYTHE
General Counsel

March 24, 1986

Representative Max Gruenberg
Alaska State Legislature
P. O. Box V
Juneau, Alaska 99811

Dear Representative Gruenberg:

The Alaska Supreme Court in its administrative capacity has reviewed your proposed amendments to HB 516, an act relating to the impeachment of certain judges, and to disqualification of judges for cause. The amendments contained in the 2/26/86 draft appear to create no administrative, procedural or fiscal difficulties for the court system.

If you have any questions about the court system's position, please let me know.

Sincerely,

Karla I. Forsythe
General Counsel

KLF:smh

cc: Chief Justice Jay A. Rabinowitz
Arthur H. Snowden, II



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

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STATE OF ALASKA THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

LEGISLATIVE REFERENCE LIBRARY

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JUNEAU, ALASKA 99811
907-465-3800

May, 1986

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Jeanie Henry

House Judiciary	3/11/86	3pm
" "	4/10/86	8AM

HOUSE
COMMITTEE REPORT

(7)

Date referred: 2/17/86

FURTHER REFERRALS:

DATE: 4/10/86

The JUDICIARY Committee has considered HB 517

"An Act relating to the private sale and consignment of works of art."

and recommends:

- do pass
- do not pass
- do pass with attached amendment(s)
- no recommendation
- replace with Committee Substitute same title
 new title

and recommends do pass

further referral to the _____ Committee

- and attaches:
- letter of intent
 - first fiscal note
 - new fiscal note
 - zero fiscal note

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

 _____ NO REC
 _____ NO REC

 Chairman

Original sponsors: Gruenberg, Goll,
Koponen, et al

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 517 (Judiciary)

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 the private sale and consignment
7 of works of art."

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

9 * Section 1. AS 45.02.326(c) is repealed and reenacted to read:

10 (e) When an artist delivers a work of art to an art dealer as
11 described in AS 45.67.010, the art dealer shall prominently display a
12 sign stating substantially, "Works of art for sale are on consign-
13 ment." Works of art on consignment are not subject to the claims of
14 the art dealer's creditors.

15 * Sec. 2. AS 45 is amended by adding a new chapter to read:

16 CHAPTER 67. ARTISTS AND WORKS OF ART.

17 Sec. 45.67.010. ARTISTS AND ART DEALER RELATIONSHIPS. (a) When
18 an artist delivers or causes to be delivered a work of art of the
19 artist's own creation to an art dealer for the purpose of sale, or
20 exhibition and sale, on a commission, fee, or other basis of compen-
21 sation, the acceptance of the work of art by the art dealer is a
22 consignment, and

23 (1) the art dealer is, with respect to the work of art, the
24 agent of the artist;

25 (2) the work of art is trust property in the hands of the
26 art dealer for the benefit of the artist; and

27 (3) proceeds from the sale of the work of art are trust
28 funds in the hands of the art dealer for the benefit of the artist.

29 (b) A work of art initially received as a consignment remains

trust property notwithstanding the subsequent purchase of the artwork by the art dealer directly or indirectly for the art dealer's own account until the consignment price due to the artist is paid in full. If the work of art is resold to a bona fide third party before the artist has been paid in full, the proceeds of the resale are trust funds in the hands of the art dealer for the benefit of the artist to the extent necessary to pay any balance still due to the artist. The trusteeship continues until the fiduciary obligation of the art dealer with respect to the transaction is discharged in full.

Sec. 45.67.020. WAIVER. (a) A provision of a contract or agreement whereby the artist waives a provision of AS 45.67.010 is void except as provided in this subsection. An artist may waive the provisions of AS 45.67.010(a)(3) if the waiver is clear, conspicuous, and agreed to in writing by the artist. A waiver under this subsection is not valid with respect to the proceeds of a work of art initially received as a consignment but subsequently purchased by the art dealer directly or indirectly for the art dealer's own account.

(b) A waiver under (a) of this section may not inure to the benefit of the art dealer's creditors in a manner that is inconsistent with the artist's rights under AS 45.67.010.

Sec. 45.67.030. RETURN TO ARTIST. Unless the artist and art dealer have otherwise agreed in writing, the art dealer shall return an unsold work of art on demand of the artist.

Sec. 45.67.040. APPLICABILITY. (a) The provisions of AS 45.67.010, 45.67.020, and 45.67.030 may not be construed to have an effect upon a written or oral contract or arrangement in existence on the effective date of this section, except by the mutual written consent of the parties.

(b) The provisions of AS 45.67.010 and 45.67.020 apply

1 notwithstanding the absence of, or a conflict with, a written
2 agreement between the artist and the art dealer concerning any matter
3 covered by AS 45.67.010 and 45.67.020. In the event of a conflict
4 between AS 45.67.010, 45.67.020, or 45.67.030 and AS 45.01 - AS 45.09
5 (Uniform Commercial Code) or other provision of law, the provisions of
6 AS 45.67.010, 45.67.020, and 45.67.030 govern.

7 Sec. 45.67.050. RIGHT TO REPRODUCE WORKS OF ART. (a) When a
8 work of art is sold or otherwise transferred by or on behalf of the
9 artist who created it, or the heirs or personal representatives of the
10 artist, the right of reproduction is reserved to the grantor until it
11 passes into the public domain by act or operation of law, unless the
12 right is sooner expressly transferred by an instrument, note, or
13 memorandum in writing signed by the owner of the right or an author-
14 ized agent of the owner.

15 (b) When an exclusive or nonexclusive conveyance of a right of
16 reproduction is made by the holder of the right, or the holder's
17 authorized agent, ownership of the physical art work is presumed to
18 remain with and be reserved to the grantor unless expressly trans-
19 ferred in writing signed by the grantor or the grantor's authorized
20 agent.

21 (c) This section may not be construed to prohibit the fair use
22 of a work of art or to conflict with federal copyright law.

23 Sec. 45.67.100. DEFINITIONS. In this chapter, unless the con-
24 text otherwise requires,

25 (1) "artist" means the creator of a work of art or, if
26 deceased, the heirs or personal representatives of the creator;

27 (2) "art dealer" means a person engaged in the business of
28 selling works of art, other than a person exclusively engaged in the
29 business of selling goods at public auction;

1 (3) "consignment" means that no title to or estate in the
2 goods or right to possession superior to that of the consignor vests
3 in the consignee, notwithstanding the consignee's power or authority
4 to transfer and convey, to third person, all of the right, title and
5 interest of the consignor, in and to the goods;

6 (4) "creditor" has the meaning given in AS 45.01.201;

7 (5) "right of reproduction" means a right to reproduce,
8 prepare derivative works of, distribute copies of, or publicly display
9 a work of art;

10 (6) "work of art" means a painting, sculpture, drawing,
11 work of graphic art, photograph, or craft work, in any medium.
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Original sponsors: Gruenberg, Goll,
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1 IN THE HOUSE

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2 CS FOR HOUSE BILL NO. 517 (Judiciary)

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 the private sale and consignment
7 of works of art."

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

9 * Section 1. AS 45.02.326(e) is repealed and reenacted to read:

10 (e) When an artist delivers a work of art to an art dealer as
11 described in AS 45.67.010, the art dealer shall prominently display a
12 sign stating substantially, "Works of art for sale are on consign-
13 ment." Works of art on consignment are not subject to the claims of
14 the art dealer's creditors.

15 ✓ ~~Sec. 2. AS 45.09.114(a) is amended to read:~~

16 ~~(a) A person who delivers goods under a consignment, other than~~
17 ~~a consignment under AS 45.02.326(e) or AS 45.67.010, that [WHICH] is~~
18 ~~not a security interest and who would be required to file under~~
19 ~~AS 45.09.101 - 45.09.507 by AS 45.02.326(c)(3) has priority over a~~
20 ~~secured party who is or becomes a creditor of the consignee and who~~
21 ~~would have a perfected security interest in the goods if they were the~~
22 ~~property of the consignee, and also has priority with respect to~~
23 ~~identifiable cash proceeds received on or before delivery of the goods~~
24 ~~to a buyer, if~~

25 (1) the consignor complies with the filing provision of
26 AS 45.02.326(c)(3) before the consignee receives possession of the
27 goods;

28 (2) the consignor gives notification in writing to the
29 holder of the security interest if the holder has filed a financing

1 statement covering the same types of goods before the date of the
2 filing made by the consignor;

3 (3) the holder of the security interest receives the noti-
4 fication within five years before the consignee receives possession of
5 the goods; and

6 (4) the notification states that the consignor expects to
7 deliver goods on consignment to the consignee, describing the goods by
8 item or type.

9 / * Sec. 3. AS 45.09.114 is amended by adding a new subsection to read:

10 (c) When an art dealer sells a work of art for an artist as
11 described in AS 45.67.010, the proceeds due to the artist from the
12 sale or resale of the work of art are not subject or subordinate to a
13 claim, lien, or security interest of the art dealer's creditors.

14 * Sec. 3. AS 45 is amended by adding a new chapter to read:

15 CHAPTER 67. ARTISTS AND WORKS OF ART.

16 Sec. 45.67.010. ARTISTS AND ART DEALER RELATIONSHIPS. (a) When
17 an artist delivers or causes to be delivered a work of art of the
18 artist's own creation to an art dealer for the purpose of sale, or
19 exhibition and sale, on a commission, fee, or other basis of compen-
20 sation, the acceptance of the work of art by the art dealer is a
21 consignment, and

22 (1) the art dealer is, with respect to the work of art, the
23 agent of the artist;

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25 art dealer for the benefit of the artist; and

26 (3) proceeds from the sale of the work of art are trust
27 funds in the hands of the art dealer for the benefit of the artist.

28 (b) A work of art initially received as a consignment remains
29 trust property notwithstanding the subsequent purchase of the artwork

1 by the art dealer directly or indirectly for the art dealer's own
2 account until the consignment price due to the artist is paid in full.
3 If the work of art is resold to a bona fide third party before the
4 artist has been paid in full, the proceeds of the resale are trust
5 funds in the hands of the art dealer for the benefit of the artist to
6 the extent necessary to pay any balance still due to the artist. The
7 trusteeship continues until the fiduciary obligation of the art dealer
8 with respect to the transaction is discharged in full.

9 Sec. 45.67.020. WAIVER. (a) A provision of a contract or
10 agreement whereby the artist waives a provision of AS 45.67.010 is
11 void except as provided in this subsection. An artist may waive the
12 provisions of AS 45.67.010(a)(3) if the waiver is clear, conspicuous,
13 and agreed to in writing by the artist. A waiver under this subsec-
14 tion is not valid with respect to the proceeds of a work of art ini-
15 tially received as a consignment but subsequently purchased by the art
16 dealer directly or indirectly for the art dealer's own account.

17 (b) A waiver under (a) of this section may not inure to the
18 benefit of the art dealer's creditors in a manner that is inconsis-
19 tent with the artist's rights under AS 45.67.010.

20 Sec. 45.67.030. RETURN TO ARTIST. Unless the artist and art
21 dealer have otherwise agreed in writing, the art dealer shall return
22 an unsold work of art on demand of the artist.

23 Sec. 45.67.040. APPLICABILITY. (a) The provisions of AS 45.-
24 67.010, 45.67.020, and 45.67.030 may not be construed to have an
25 effect upon a written or oral contract or arrangement in existence on
26 the effective date of this section, except by the mutual written
27 consent of the parties.

28 (b) The provisions of AS 45.67.010 and 45.67.020 apply notwith-
29 standing the absence of, or a conflict with, a written agreement

1 between the artist and the art dealer concerning any matter covered by
2 AS 45.67.010 and 45.67.020. In the event of a conflict between
3 AS 45.67.010, 45.67.020, or 45.67.030 and AS 45.01 - AS 45.09 (Uniform
4 Commercial Code) or other provision of law, the provisions of AS 45.-
5 67.010, 45.67.020, and 45.67.030 govern.

6 Sec. 45.67.050. RIGHT TO REPRODUCE WORKS OF ART. (a) When a
7 work of art is sold or otherwise transferred by or on behalf of the
8 artist who created it, or the heirs or personal representatives of the
9 artist, the right of reproduction is reserved to the grantor until it
10 passes into the public domain by act or operation of law, unless the
11 right is sooner expressly transferred by an instrument, note, or
12 memorandum in writing signed by the owner of the right or an author-
13 ized agent of the owner.

14 (b) When an exclusive or nonexclusive conveyance of a right of
15 reproduction is made by the holder of the right, or the holder's
16 authorized agent, ownership of the physical art work is presumed to
17 remain with and be reserved to the grantor unless expressly trans-
18 ferred in writing signed by the grantor or the grantor's authorized
19 agent.

20 (c) This section may not be construed to prohibit the fair use
21 of a work of art or to conflict with federal copyright law.

22 Sec. 45.67.100. DEFINITIONS. In this chapter, unless the con-
23 text otherwise requires,

24 (1) "artist" means the creator of a work of art or, if
25 deceased, the heirs or personal representatives of the creator;

26 (2) "art dealer" means a person engaged in the business of
27 selling works of art, other than a person exclusively engaged in the
28 business of selling goods at public auction;

29 (3) "consignment" means that no title to or estate in the

1 goods or right to possession superior to that of the consignor vests
2 in the consignee, notwithstanding the consignee's power or authority
3 to transfer and convey, to third person, all of the right, title and
4 interest of the consignor, in and to the goods;

5 (4) "creditor" has the meaning given in AS 45.01.201;

6 (5) "right of reproduction" means a right to reproduce,
7 prepare derivative works of, distribute copies of, or publicly display
8 a work of art;

9 (6) "work of art" means a painting, sculpture, drawing,
10 work of graphic art, photograph, or craft work, in any medium.

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Version #1
Ford
4/9/86

Original sponsors: Gruenberg, Goll,
Koponen, et al

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 17 a consignment under AS 45.02.326(e) or AS 45.67.010, that [WHICH] is
 18 not a security interest and who would be required to file under
 19 AS 45.09.101 - 45.09.507 by AS 45.02.326(c)(3) has priority over a
 20 secured party who is or becomes a creditor of the consignee and who
 21 would have a perfected security interest in the goods if they were the
 22 property of the consignee, and also has priority with respect to
 23 identifiable cash proceeds received on or before delivery of the goods
 24 to a buyer, if

25 (1) the consignor complies with the filing provision of
 26 AS 45.02.326(c)(3) before the consignee receives possession of the
 27 goods;

28 (2) the consignor gives notification in writing to the
 29 holder of the security interest if the holder has filed a financing

1 statement covering the same types of goods before the date of the
2 filing made by the consignor;

3 (3) the holder of the security interest receives the noti-
4 fication within five years before the consignee receives possession of
5 the goods; and

6 (4) the notification states that the consignor expects to
7 deliver goods on consignment to the consignee, describing the goods by
8 item or type.

9 * Sec. 3. AS 45.09.114 is amended by adding a new subsection to read:

10 (c) When an art dealer sells a work of art for an artist, as
11 described in AS 45.67.010, the proceeds due to the artist from the
12 sale or resale of the work of art are not subject or subordinate to a
13 claim, lien, or security interest of the art dealer's creditors.

14 * Sec. 4. AS 45 is amended by adding a new chapter to read:

15 CHAPTER 67. ARTISTS AND WORKS OF ART.

16 Sec. 45.67.010. ARTISTS AND ART DEALER RELATIONSHIPS. (a) When
17 an artist delivers or causes to be delivered a work of art of the
18 artist's own creation to an art dealer for the purpose of sale, or
19 exhibition and sale, on a commission, fee, or other basis of compen-
20 sation, the acceptance of the work of art by the art dealer is a
21 consignment, and

22 (1) the art dealer is, with respect to the work of art, the
23 agent of the artist;

24 (2) the work of art is trust property in the hands of the
25 art dealer for the benefit of the artist; and

26 (3) proceeds from the sale of the work of art are trust
27 funds in the hands of the art dealer for the benefit of the artist.

28 (b) A work of art initially received as a consignment remains
29 trust property notwithstanding the subsequent purchase of the artwork

1 by the art dealer directly or indirectly for the art dealer's own
2 account until the consignment price due to the artist is paid in full.
3 If the work of art is resold to a bona fide third party before the
4 artist has been paid in full, the proceeds of the resale are trust
5 funds in the hands of the art dealer for the benefit of the artist to
6 the extent necessary to pay any balance still due to the artist. The
7 trusteeship continues until the fiduciary obligation of the art dealer
8 with respect to the transaction is discharged in full.

9 (c) The proceeds due to the artist from a sale or resale of the
10 work of art are not subject or subordinate to a claim, lien or secur-
11 ity interest of the art dealer's creditors.

12 Sec. 45.67.020. WAIVER. (a) A provision of a contract or
13 agreement whereby the artist waives a provision of AS 45.67.010 is
14 void except as provided in this subsection. An artist may waive the
15 provisions of AS 45.67.010(a)(3) if the waiver is clear, conspicuous,
16 and agreed to in writing by the artist. A waiver under this subsec-
17 tion is not valid with respect to the proceeds of a work of art ini-
18 tially received as a consignment but subsequently purchased by the art
19 dealer directly or indirectly for the art dealer's own account.

20 (b) A waiver under (a) of this section may not inure to the
21 benefit of the art dealer's creditors in a manner that is inconsis-
22 tent with the artist's rights under AS 45.67.010.

23 Sec. 45.67.030. RETURN TO ARTIST. Unless the artist and art
24 dealer have otherwise agreed in writing, the art dealer shall return
25 an unsold work of art on demand of the artist.

26 Sec. 45.67.040. APPLICABILITY. (a) The provisions of AS 45.-
27 67.010, 45.67.020, and 45.67.030 may not be construed to have an
28 effect upon a written or oral contract or arrangement in existence on
29 the effective date of this section, except by the mutual written

1 consent of the parties.

2 (b) The provisions of AS 45.67.010 and 45.67.020 apply notwith-
3 standing the absence of, or a conflict with, a written agreement
4 between the artist and the art dealer concerning any matter covered by
5 AS 45.67.010 and 45.67.020. In the event of a conflict between
6 AS 45.67.010, 45.67.020, or 45.67.030 and AS 45.01 - AS 45.09 (Uniform
7 Commercial Code) or other provision of law, the provisions of AS 45.-
8 67.010, 45.67.020, and 45.67.030 govern.

9 Sec. 45.67.050. RIGHT TO REPRODUCE WORKS OF ART. (a) When a
10 work of art is sold or otherwise transferred by or on behalf of the
11 artist who created it, or the heirs or personal representatives of the
12 artist, the right of reproduction is reserved to the grantor until it
13 passes into the public domain by act or operation of law, unless the
14 right is sooner expressly transferred by an instrument, note, or
15 memorandum in writing signed by the owner of the right or an author-
16 ized agent of the owner.

17 (b) When an exclusive or nonexclusive conveyance of a right of
18 reproduction is made by the holder of the right, or the holder's
19 authorized agent, ownership of the physical art work is presumed to
20 remain with and be reserved to the grantor unless expressly trans-
21 ferred in writing signed by the grantor or the grantor's authorized
22 agent.

23 (c) This section may not be construed to prohibit the fair use
24 of a work of art or to conflict with federal copyright law.

25 Sec. 45.67.100. DEFINITIONS. In this chapter, unless the con-
26 text otherwise requires,

27 (1) "artist" means the creator of a work of art or, if
28 deceased, the heirs or personal representatives of the creator;

29 (2) "art dealer" means a person engaged in the business of

1 selling works of art, other than a person exclusively engaged in the
2 business of selling goods at public auction;

3 (3) "consignment" means that no title to or estate in the
4 goods or right to possession superior to that of the consignor vests
5 in the consignee, notwithstanding the consignee's power or authority
6 to transfer and convey, to third person, all of the right, title and
7 interest of the consignor, in and to the goods;

8 (4) "creditor" has the meaning given in AS 45.01.201;

9 (5) "right of reproduction" means a right to reproduce,
10 prepare derivative works of, distribute copies of, or publicly display
11 a work of art;

12 (6) "work of art" means a painting, sculpture, drawing,
13 work of graphic art, photograph, or craft work, in any medium.
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R. T. Wallen
P. O. Box 1063
Juneau, Alaska, 99802

Rep. Max Gruenberg
Pouch V
State Capitol
Juneau, Alaska, 99811

February 9, 1986

Dear Max,

I very much appreciate the efforts of the sponsors of this arts bill. I think it is going to clarify some rather vague areas concerning the rights and responsibilities of artists, art dealers and art patrons. The section of the bill in which I am most interested is 45. 67. 020, the section dealing with the right to reproduce works of art.

Whenever an artist creates a series of original prints, from a stone or metal plate, for example, or when he reproduces a painting with a series of prints, or makes a series of castings from a mold, the artist may elect to mark these original prints, or reproductions, or castings with the letter "c" enclosed in a circle, followed by his initials and the year date. This copyright symbol and initials and date proclaim his "intent to copyright" and proclaim his rights under Federal Copyright Law. The system functions well with works of art which appear as multiple images or forms since everyone, artist, dealer and buyer understand, by the fact of the copyright signal appearing on the art that certain rights to the reproduction of that work have been established.

Original works, however, one of a kind works, whether they be paintings, or drawings or sculptures, often do not bear the copyright symbol because the artist has not reproduced them, and does not intend that they be reproduced. In fact, the artist, although he has the option of marking the work with the copyright symbol, often will not do so because the appearance of the copyright symbol on an original work implies that it has been reproduced, or might be reproduced in the future, and the mark might thus affect the value of the work both aesthetically and commercially. As I understand Federal Copyright Law, the artist has sole rights to reproduction of an original work of his own art regardless of whether he has marked it with the copyright symbol. However, the lack of such a symbol on a work of art can create an area of uncertainty in the mind of a buyer or art dealer.

For this and other reasons I think that there is value in a state law which addresses the problem and spells out the legal rights of artists in regards to the reproduction of their works of art. I think the fairness of the theory of this section of the bill is reflected in Federal Copyright Law, in the legal rights of authors to their printed works, and in the legal rights that pertain to many kinds of design work, such as architecture, boat design and so on.

As a state law, this is close to home, and every person seriously involved in the art world here in the state will be familiar with it. As an artist who has had to deal with copyright related issues a number of times in my career, and who has business with many different art dealers, and who is often asked by patrons about their rights in regard to a work of art, I see great value in this bill and benefits to artist, dealer and buyer alike. It goes a long way in clearly establishing the ground rules.

Sincerely,

A handwritten signature in black ink, appearing to read "R. T. Wallen". The letters are bold and somewhat stylized, with a large "W" and "N".

R. T. Wallen

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

MEMORANDUM

TO: HOUSE LABOR AND COMMERCE COMMITTEE MEMBERS

FROM: REPRESENTATIVE MAX F. GRUENBERG, JR.

DATE: FEBRUARY 8, 1986

RE: HB 517 RELATING TO THE PRIVATE SALE AND CONSIGNMENT
OF WORKS OF ART

THIS BILL WAS ADAPTED FOR ALASKA LAW FROM TWO NEW YORK STATUTES PASSED IN 1966. IT IS INTENDED TO PROTECT ARTISTS IN THEIR DEALINGS WITH ART DEALERS BY PROVIDING THAT ARTWORK DELIVERED FOR SALE CONSTITUTES A TRUST FOR THE BENEFIT OF THE ARTIST AND PROTECTS SALE PROCEEDS FROM THE CREDITORS OF THE ART DEALER. THE BILL WOULD ALSO GUARANTEE REPRODUCTION RIGHTS IN STATE STATUTE.

THE PROPOSED DRAFT COMMITTEE SUBSTITUTE REFLECTS TWO CHANGES RECOMMENDED BY ARTISTS WHO HAVE REVIEWED THE BILL:

1. PAGE 2, LINES 18-20 PROVIDES THAT AN ART DEALER MUST RETURN UNSOLD ARTWORK ON DEMAND TO THE ARTIST IF CONSISTENT WITH ANY WRITTEN AGREEMENTS.
2. PAGE 4, LINE 9 REPEALS AN EXISTING SUBSECTION IN THE UNIFORM CORPORATION CODE WHICH IS SIMILAR TO PROPOSED LANGUAGE IN SECTION 1.

THE BILL HAS BEEN WIDELY DISTRIBUTED BY THE SPONSORS TO ARTISTS AND ART DEALERS IN THE STATE AND HAS RECEIVED POSITIVE FEEDBACK. IT IS SUPPORTED BY THE INSTITUTE OF ALASKA NATIVE ARTS AND THE ALASKA STATE COUNCIL ON THE ARTS.

Bill/Resolution No.: CSHB 517 (L&C)
 Title: "An Act relating to the private sale and consignment of works of art."

Agency Affected: Department of Law
 BRU: Legal Services

Sponsor: Repr. Gruenberg
 Requestor: House Labor & Commerce
 Date of Request: February 11, 1986

Components: Legal Services Operations

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-

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

REVENUE						
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FUNDING : (Thousands of Dollars)

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

POSITIONS :

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

ANALYSIS : Attach a separate page if necessary

-Please see attached analysis.-

Prepared by: Richard I. Pegues, Director
 Division: Administrative Services Division

Phone: 465-3672
 Date: 2/12/86

Approved by Commissioner: Richard I. Pegues/Fel
Harold M. Brown, Attorney General
 Agency: Department of Law

Date: 2/12/86

Distribution (by Agency preparing fiscal note):

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

This bill sets out some of the property rights of artists, providing for the sale and consignment of works of art under Title 45. The bill, which adds a new Chapter to this Title, does not contain penalty provisions. Any disputes arising from the provisions of the bill would be civil matters between private parties and would not involve the Department of Law.

(b) The delivery to seller of a proper letter of credit suspends the buyer's obligation to pay. If the letter of credit is dishonored, the seller may on reasonable notification to the buyer require payment directly from him.

(c) Unless otherwise agreed, the term "letter of credit" or "banker's credit" in a contract for sale means an irrevocable credit issued by a financing agency of good repute and, if the shipment is overseas, of good international repute. The term "confirmed credit" means that the credit must also carry the direct obligation of such an agency which does business in the seller's financial market. (§ 2.325 ch 114 SLA 1962)

Sec. 45.02.326. Sale on approval and sale or return; consignment sales and rights of creditors. (a) Unless otherwise agreed, if delivered goods may be returned by the buyer even though they conform to the contract, the transaction is

(1) a "sale on approval" if the goods are delivered primarily for use; and

(2) a "sale or return" if the goods are delivered primarily for resale.

(b) Except as provided in (c) of this section, goods held on approval are not subject to the claims of the buyer's creditors until acceptance; goods held on sale or return are subject to such claims while in the buyer's possession.

(c) If goods are delivered to a person for sale and the person maintains a place of business at which he deals in goods of the kind involved under a name other than the name of the person making delivery, then, with respect to claims of creditors of the person conducting the business, the goods are considered to be on sale or return. This subsection is applicable even though an agreement purports to reserve title to the person making delivery until payment or resale or uses such words as "on consignment" or "on memorandum." However, this subsection is not applicable if the person making delivery

(1) complies with an applicable law providing for a consignor's interest or the like to be evidenced by a sign;

(2) establishes that the person conducting the business is generally known by his creditors to be substantially engaged in selling the goods of others; or

(3) complies with the filing provisions of AS 45.09.101 - 45.09.507.

(d) An "or return" term of a contract for sale is to be treated as a separate contract for sale within the statute of frauds section (AS 45.02.201), and as contradicting the sale aspect of the contract within the provisions on parol or extrinsic evidence (AS 45.02.202).

(e) Whenever an artist delivers or causes to be delivered a work of fine art of his own creation to an art dealer for the purpose of sale, or exhibition and sale to the public on a commission or fee or other basis of compensation, the work of fine art is not subject to the claims of the art dealer's creditors. For the purposes of this subsection

(1) "art dealer" means a person other than a public auctioneer engaged in the business of selling works of fine art;

(2) "artist" means the creator of a work of fine art;

(3) "fine art" includes a painting, sculpture, drawing, photograph, or work of graphic art.

(§ 2.326 ch 114 SLA 1962; am § 1 ch 8 SLA 1979)

Effect of amendment. — The 1979 amendment added subsection (e).

Editor's note. — Subsection (e), which was added by the amendment, is not part of the official text of the Uniform Commercial Code.

Am. Jur. 2d and ALR references. — 67 Am. Jur. 2d, Sales, § 410.

Consignment transactions under the Uniform Commercial Code, 40 ALR3d 1079.

Sec. 45.02.327. Special incidents of sale on approval and sale or return. (a) Under a sale on approval, unless otherwise agreed,

(1) although the goods are identified to the contract, the risk of loss and the title do not pass to the buyer until acceptance;

(2) use of the goods consistent with the purpose of trial is not acceptance, but failure seasonably to notify the seller of election to return the goods is acceptance, and, if the goods conform to the contract, acceptance of any part is acceptance of the whole; and

(3) after due notification of election to return, the return is at the seller's risk and expense but a merchant buyer must follow reasonable instructions.

(b) Under a sale or return, unless otherwise agreed,

(1) the option to return extends to the whole or a commercial unit of the goods while in substantially their original condition, but must be exercised seasonably; and

(2) the return is at the buyer's risk and expense. (§ 2.327 ch 114 SLA 1962)

ALR reference. — Goods in "sale or return" transaction under U.C.C. § 2-327, 66 ALR3d 190.

Sec. 45.02.328. Sale by auction. (a) In a sale by auction if goods are put up in lots each lot is the subject of a separate sale.

(b) A sale by auction is complete when the auctioneer so announces by the fall of the hammer or in other customary manner. Where a bid is made while the hammer is falling in acceptance of a prior bid, the auctioneer may in his discretion reopen the bidding or declare the goods sold under the bid on which the hammer was falling.

(c) A sale by auction is with reserve unless the goods are in explicit terms put up without reserve. In an auction with reserve, the auctioneer may withdraw the goods at any time until he announces completion of the sale. In an auction without reserve, after the auctioneer calls for bids on an article or lot, that article or lot cannot



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James O. Smith
Signature of Camera Operator

7/25/89
Date

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STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY
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May, 1986

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS date base CM 14. In order to save space copies of minutes have not been left in the files.

Jeanie Henry

House Judiciary	4/3/86	8AM
" "	4/8/86	8AM

James
4/4/86 ✓

Original sponsor: Rules/Governor

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 519 (Judiciary)

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 the financing, leasing, or acqui-
7 sition of facilities, goods, services, or projects;
8 and providing for an effective date."

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

10 * Section 1. AS 14.40.040 is amended to read:

11 Sec. 14.40.040. GENERAL POWERS OF THE UNIVERSITY. There is
12 created and established a corporation to be called the University of
13 Alaska. It may in that name

14 (1) sue and be sued;

15 (2) receive and hold real and personal property;

16 (3) contract and be contracted with;

17 (4) adopt, use and alter a corporate seal;

18 (5) borrow money, issue debt, or enter into long-term
19 obligations for the purchase of facilities, goods, or services, which
20 obligations secure, in whole or in part, debt issued by another party,
21 as approved by the state bond committee under AS 37.15.770 and ap-
22 proved by law; an appropriation does not constitute approval by law
23 for purposes of this paragraph;

24 (6) do and have done all matters necessary for the purpose
25 of any function set out [FORTH] in this chapter.

26 * Sec. 2. AS 14.40 is amended by adding a new section to read:

27 Sec. 14.40.255. LEASE-FINANCING. The Board of Regents may enter
28 into lease-financing agreements only with the Alaska State Housing
29 Authority acting as the Alaska State Building Authority. A lease-

1 financing agreement must provide that lease payments are subject to
2 annual appropriation. If the board intends to enter into an agreement
3 under this subsection, the board shall provide notice to the legisla-
4 ture and to the state bond committee. The notice must include the
5 anticipated annual lease payment, the anticipated principal amount of
6 the debt to be issued by the Alaska State Housing Authority acting as
7 the Alaska State Building Authority, and the anticipated total con-
8 struction or acquisition cost of the project. The board may not enter
9 into an agreement under this section unless the public building to be
10 provided has been approved by law. An appropriation for the project
11 does not constitute approval by law for purposes of this section.

12 * Sec. 3. AS 18.55.100(a)(15) is amended to read:

13 (15) acting as the Alaska State Building Authority arrange
14 or contract for the financing or [, DESIGN, CONSTRUCTION AND] acquisi-
15 tion of public buildings designed by, constructed by, or whose acquisi-
16 sition has been approved by the Department of Transportation and
17 Public Facilities for lease to the state in accordance with AS 18.55.-
18 010 - 18.55.290 and AS 37.15.770.

19 * Sec. 4. AS 18.55.140 is amended to read:

20 Sec. 18.55.140. ISSUANCE OF BONDS, NOTES, AND REFUNDING BONDS.
21 The authority may issue bonds and notes from time to time in its
22 discretion for any of its corporate purposes and may issue refunding
23 bonds for the purpose of paying or retiring bonds previously issued by
24 it. The authority may not issue bonds for public buildings until the
25 state bond committee has approved the proposal for the issuance of
26 debt under AS 37.15.770 and the building has been approved by law. An
27 appropriation for the building does not constitute approval by law for
28 purposes of this section.

29 * Sec. 5. AS 18.55.140 is amended by adding a new subsection to read:

1 (b) Bonds issued by the authority for public buildings must be
2 issued in the name of the Alaska State Building Authority and are
3 subject to AS 18.55.010 - 18.55.290.

4 * Sec. 6. AS 18.55.288 is amended by adding a new paragraph to read:

5 (4) "bond" means any bond, note, interim certificate,
6 debenture, or other obligation issued by the authority or the author-
7 ity acting as the Alaska State Building Authority under AS 18.55.010 -
8 18.55.290.

9 * Sec. 7. AS 22.05.025 is amended by adding a new subsection to read:

10 (c) The supreme court may enter into lease-financing agreements
11 only with the Alaska State Housing Authority acting as the Alaska
12 State Building Authority. A lease-financing agreement must provide
13 that lease payments are subject to annual appropriation. If the
14 supreme court intends to enter into an agreement under this subsec-
15 tion, the supreme court shall provide notice to the legislature and to
16 the state bond committee. The notice must include the anticipated
17 annual lease payment, the anticipated principal amount of the debt to
18 be issued by the Alaska State Housing Authority acting as the Alaska
19 State Building Authority, and the anticipated total construction or
20 acquisition cost of the project. The supreme court may not enter into
21 an agreement under this subsection unless the public building to be
22 provided has been approved by law. An appropriation for the project
23 does not constitute approval by law for purposes of this section.

24 * Sec. 8. AS 24.23 is amended by adding new sections to read:

25 ARTICLE 2. LEASE AGREEMENTS.

26 Sec. 24.23.100. LEASE OF SPACE. The Legislative Affairs Agency
27 may lease necessary office space, and contract for the lease of space,
28 for the use of the Alaska legislature and its employees.

29 Sec. 24.23.110. The Legislative Affairs Agency may enter into

1 lease-financing agreements only with the Alaska State Housing Author-
2 ity acting as the Alaska State Building Authority. A lease-financing
3 agreement must provide that lease payments are subject to annual
4 appropriation. If the agency intends to enter into an agreement under
5 this subsection, the agency shall provide notice to the legislature
6 and to the state bond committee. The notice must include the antici-
7 pated annual lease payment, the anticipated principal amount of the
8 debt to be issued by the Alaska State Housing Authority acting as the
9 Alaska State Building Authority, and the anticipated total construc-
10 tion or acquisition cost of the project. The agency may not enter
11 into an agreement under this section unless the public building to be
12 provided has been approved by law. An appropriation for the project
13 does not constitute approval by law for purposes of this section.

14 * Sec. 9. AS 37.05.280 is amended to read:

15 Sec. 37.05.280. LEASES. The department shall lease necessary
16 space, and contract for the lease of space, for the use of the state
17 or an agency of the state, wherever it is necessary and feasible,
18 subject to compliance with the requirements of AS 37.05.220 - 37.05.-
19 280. A [NO] lease or contract for a lease may not provide for a
20 period of occupancy greater than 40 years. A lease agreement must
21 provide that lease payments are subject to annual appropriation. An
22 agency of the state requiring office, warehouse, or other space shall
23 lease the space through the department. [NO CONTRACT OR LEASE EX-
24 ECUTED AFTER JANUARY 1, 1966, WHICH PROVIDES FOR A PAYMENT OR PAYMENTS
25 BY THE STATE IN EXCESS OF \$12,000 ANNUALLY IS VALID UNLESS THE USE OF
26 THE SPACE TO BE PROVIDED FOR BY SUCH CONTRACT OR LEASE HAS BEEN EX-
27 PRESSLY APPROVED BY THE LEGISLATURE BY CONCURRENT RESOLUTION.]

28 * Sec. 10. AS 37.05 is amended by adding a new section to read:

29 Sec. 37.05.285. LEASE FINANCING. The department may enter into

1 lease-financing agreements only with the Alaska State Housing Author-
2 ity acting as the Alaska State Building Authority. A lease-financing
3 agreement must provide that lease payments are subject to annual
4 appropriation. If the department intends to enter into an agreement
5 under this subsection, the department shall provide notice to the
6 legislature and to the state bond committee. The notice must include
7 the anticipated annual lease payment, the anticipated principal amount
8 of the debt to be issued by the Alaska State Housing Authority acting
9 as the Alaska State Building Authority, and the anticipated total
10 construction or acquisition cost of the project. The department may
11 not enter into an agreement under this subsection unless the public
12 building to be provided has been approved by law. An appropriation
13 for the project does not constitute approval by law for purposes of
14 this section.

15 * Sec. 11. AS 37.15.040 is amended to read:

16 Sec. 37.15.040. SALE OF BONDS. Before selling an issue or
17 series of bonds, the state bond committee shall give notice inviting
18 sealed bids in the [SUCH] manner [AS] it may prescribe. If satisfac-
19 tory bids are received, the bonds offered for sale shall be awarded to
20 the highest responsible bidder or bidders. If the state bond commit-
21 tee determines that the bids received are not satisfactory as to price
22 or responsibility of the bidders, it may reject all bids received.

23 * Sec. 12. AS 37.15.110 is amended to read:

24 Sec. 37.15.110. CREATION AND MEMBERSHIP OF STATE BOND COMMITTEE.
25 There is created within the Department of Revenue a committee known as
26 the "state bond committee," the members of which are the commissioner
27 of commerce and economic development, the commissioner of administra-
28 tion, and the commissioner of revenue. If a member of the committee
29 is absent or otherwise unable to act, the member's designee in the

1 department shall act as a member of the committee in the member's
2 place.

3 * Sec. 13. AS 37.15.130 is amended to read:

4 Sec. 37.15.130. OFFICERS, RECORDS AND PROCEEDINGS. The commis-
5 sioner of commerce and economic development is the chairman of the
6 state bond committee and the commissioner of revenue is the secretary.
7 A majority of the members of the committee constitute a quorum. The
8 committee shall keep a full, complete, and permanent record of its
9 proceedings. All records and correspondence of the committee shall
10 be kept in the office of the commissioner of revenue. For the purpose
11 of this chapter and AS 44.62.310, public notice of 24 hours or more is
12 adequate notice of a meeting of the committee at which the issuance of
13 bonds is authorized.

14 * Sec. 14. AS 37.15.140 is amended to read:

15 Sec. 37.15.140. DUTIES OF STATE BOND COMMITTEE. The state bond
16 committee shall adopt the resolution and prepare the documents neces-
17 sary for the issuance, sale, and delivery of state general obligation
18 bonds.

19 * Sec. 15. AS 37.15.140 is amended by adding new subsections to read:

20 (b) The state bond committee shall prepare an annual report to
21 be submitted to the governor and legislature before March 31 of each
22 year. The report must show

23 (1) all outstanding debt of debt-issuing entities of the
24 state;

25 (2) the anticipated effect on the finances and credit of
26 the state, including the effect on long-term debt capacity and credit-
27 worthiness, resulting from that debt;

28 (3) which long-term debt is state supported and which is
29 supported only by revenue attributable to the project being financed

1 by the debt;

2 (4) all long-term capital lease obligations of the state;

3 (5) the volume of short-term debt issued and retired during
4 the year by debt-issuing entities of the state;

5 (6) specific identification of each issue for which the
6 state has pledged some form of indirect support for the debt, includ-
7 ing any moral obligation of the state to support the debt;

8 (7) future bonding and debt capacity implications of legis-
9 lation enacted in the previous legislative session; and

10 (8) the recommended debt issuance capacity of the state for
11 the next two years following the year of the report.

12 (c) The state bond committee may develop written policies con-
13 cerning debt of the state.

14 * Sec. 16. AS 37.15.150 is amended to read:

15 Sec. 37.15.150. STAFF AND [COMMITTEE MAY EMPLOY] SPECIAL SER-
16 VICES. The state bond committee may appoint an executive director who
17 may, with approval of the committee, select and employ additional
18 staff as necessary. Employees of the committee are in the partially
19 exempt service under AS 39.25.120. If the [STATE BOND] committee
20 considers it necessary and advisable, it may procure architectural or
21 engineering, fiscal agent or municipal investment, legal, and other
22 expert or specialized services at reasonable and customary fees to
23 assist it in accomplishing the most advantageous sale of the bonds.
24 The fees may be paid from the proceeds of the sale or advanced from
25 the contingency fund in the Office [OFFICE] of the Governor [GOVERNOR]
26 or otherwise.

27 * Sec. 17. AS 37.15.450(a) is amended to read:

28 (a) The bonds shall be sold in the manner, price or prices,
29 [SUCH] amounts or series, and at the [SUCH] time or times [AS]

1 determined by the committee at either public or private sale. [BEFORE
2 SELLING A SERIES OF BONDS, THE COMMITTEE SHALL GIVE NOTICE INVITING
3 SEALED BIDS IN SUCH MANNER AS IT MAY PRESCRIBE. IF SATISFACTORY BIDS
4 ARE RECEIVED, THE BONDS OFFERED FOR SALE SHALL BE AWARDED TO THE
5 HIGHEST RESPONSIBLE BIDDER. IF THE COMMITTEE DETERMINES THAT THE BIDS
6 RECEIVED ARE NOT SATISFACTORY AS TO PRICE OR RESPONSIBILITY OF THE
7 BIDDERS, IT MAY REJECT ALL BIDS RECEIVED.] The bonds, or each series
8 of them, shall be sold at such a price so that the effective interest
9 rate over the life of the bonds does not exceed 11 percent per year or
10 that rate of interest which is 125 percent of the rate of the Bond
11 Buyer Index of 20 Municipal Bond Average Yields for the week previous
12 to the date of sale of the bonds, whichever is higher. Interest shall
13 be payable annually or semiannually.

14 * Sec. 18. AS 37.15.460 is amended to read:

15 Sec. 37.15.460. BOND RESOLUTION. The committee is authorized
16 and directed to adopt the bond resolution and prepare all other docu-
17 ments and proceedings necessary for the issuance, sale and delivery of
18 the bonds or any part or series of them. The bond resolution shall
19 fix the principal amount, denomination, date, maturities, place or
20 places of payment, rights of redemption, if any, terms, form, condi-
21 tions and covenants of the bonds or each series of them. The commit-
22 tee shall also determine and provide for the date and manner of sale
23 of the bonds, and shall provide where a [WHETHER THE] notice of sale,
24 if any, is to be published [ELSEWHERE IN ADDITION TO THE PUBLICATION
25 REQUIRED BY AS 37.15.450].

26 * Sec. 19. AS 37.15.650(a) is amended to read:

27 (a) The toll facilities bonds are sold in the manner, price or
28 prices, amounts or series, and at the time as determined by the com-
29 mittee, at either public or private sale. [BEFORE SELLING A SERIES OF

1 BONDS, THE COMMITTEE SHALL GIVE NOTICE INVITING SEALED BIDS. IF
2 SATISFACTORY BIDS ARE RECEIVED, THE BONDS OFFERED FOR SALE ARE AWARDED
3 TO THE HIGHEST RESPONSIBLE BIDDER. IF THE COMMITTEE DETERMINES THAT A
4 BID RECEIVED IS NOT SATISFACTORY AS TO PRICE OR RESPONSIBILITY OF THE
5 BIDDER, THE COMMITTEE MAY REJECT THE BID RECEIVED.] Bonds, or a
6 series of bonds, may not be sold if the effective interest rate over
7 the life of the bonds exceeds 11 percent per year or that rate of
8 interest that is 125 percent of the rate of the Bond Buyer Index of 20
9 Municipal Bond Average Yields for the week previous to the date of
10 sale of the bonds, whichever is higher. Interest is payable annually
11 or semiannually.

12 * Sec. 20. AS 37.15.660 is amended to read:

13 Sec. 37.15.660. BOND RESOLUTION. The committee is authorized
14 and directed to adopt the bond resolution and prepare all other docu-
15 ments and proceedings necessary for the issuance, sale, and delivery
16 of the bonds or any part or series of them. The bond resolution shall
17 fix the principal amount, denomination, date, maturities, place or
18 places of payment, rights of redemption, if any, terms, form, condi-
19 tions, and covenants of the bonds or each series of them. The commit-
20 tee shall also determine and provide for the date and manner of sale
21 of the bonds, and shall provide where a [WHETHER THE] notice of sale,
22 if any, is to be published [ELSEWHERE IN ADDITION TO THE PUBLICATION
23 REQUIRED BY AS 37.15.650].

24 * Sec. 21. AS 37.15 is amended by adding new sections to read:

25 ARTICLE 5. STATE-SUPPORTED DEBT.

26 Sec. 37.15. . . . STATE AGENCY DEBT. (a) The state bond commit-
27 tee shall review proposals for the issuance of debt by or on behalf of
28 (1) the Alaska State Housing Authority acting as the Alaska
29 State Building Authority for the purpose of providing public

1 buildings; and

2 (2) the University of Alaska.

3 (b) The committee shall review the general programs and financ-
4 ing plans of the agency that proposes to issue the debt as well as the
5 specific aspects of the proposed debt issue, including

6 (1) amounts;

7 (2) times;

8 (3) maturities;

9 (4) debt structure and security features;

10 (5) credit enhancements;

11 (6) use of proceeds;

12 (7) official documents;

13 (8) planned rating agency presentations; and

14 (9) selection, retention, or compensation of financial
15 advisors, bond counsel, trustees, underwriters, and other profession-
16 als.

17 (c) The state bond committee shall consider approval of the
18 amount and time of sale of the debt. The committee shall approve the
19 issuance of the debt if, in its judgment, the debt management aspects
20 of the issue reviewed under (b) of this section are in the best inter-
21 ests of the state. The committee may limit approval of the issuance
22 of debt upon compliance with terms established by the committee.

23 (d) At the time of sale of the debt, the state bond committee
24 shall review the bids or pricing of the debt, including discounts,
25 underwriting spreads, and interest rates. If the committee determines
26 that the bids or prices are not satisfactory or that the bidders are
27 not responsible, the agency may not sell the debt.

28 Sec. 37.15.790. MUNICIPAL SCHOOL DEBT. If, at any time, the
29 state bond committee, in its judgment, determines that the amount or

1 retirement of debt issued by municipalities and subject to reimburse-
2 ment by the state under AS 14.11.100 is not in the best interest of
3 the state, the committee may

4 (1) establish an amount or amounts, for any or all years
5 before the maturity of all of that municipal debt, that may not be
6 exceeded by the Department of Education in approving requests under
7 AS 14.11.103; or

8 (2) establish, under AS 14.11.100(j)(3), a term required
9 for the maturities of municipal debt authorized by local voters after
10 March 31, 1986.

11 * Sec. 22. AS 39.25.120(c) is amended by adding a new paragraph to
12 read:

13 (19) employees of the state bond committee.

14 * Sec. 23. Projects approved by law before January 1, 1986, are exempt
15 from this Act.

16 * Sec. 24. This Act takes effect immediately in accordance with AS 01.-
17 10.070(c).

DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER - HB 554

February 20, 1986

HB 554 "An Act relating to sentencing."

The Council on Domestic Violence and Sexual Assault would like to add some concerns, comments and questions about certain sections of HB 554 to the discussion of these very important issues.

Sec. 5. AS 12.55.125(i). This section proposes to abolish presumptive terms for first felony convictions of sexual assault in the first degree and sexual abuse of a minor in the first degree. This section also reduces presumptive sentences for second and third felony convictions.

The Council on Domestic Violence and Sexual Assault would like to insure that serious discussion occurs prior to abolishing presumptive terms for first felony convictions of sexual assault in the first degree and sexual abuse of a minor in the first degree. When the Legislature classified first degree sexual assaults as unclassified felonies, they recognized the seriousness of these crimes. Except for homicide, rape is the most serious violation of a person's body because it deprives the victim of both physical and emotional privacy and autonomy. When rape occurs, the victim's ego or sense of self as well as her body is penetrated and used without consent. She has lost a basic human need and right: control of physical and emotional self. Although in many cases of child sexual assault physical force is not an issue, the damage to the victim is as serious and can be longer lasting because emotional damage is not as easily repaired as broken bones or bruises. Victims of child molestation are affected more severely by the crime than are victims of most crimes as supported by statistics relating to these victims. Studies have revealed that a majority of prostitutes were molested as children. Female molestation victims often become abusers of alcohol or drugs and a large proportion of female patients in mental hospitals were molested as children. One researcher has estimated that "upwards of 80% of kids at juvenile hall had been sexually molested regardless of the reasons that placed them there". Also of great concern is the probability that an overwhelming majority (75% according to one study) of child molesters and most rapists reported they were molested during childhood. The consequences of child sexual assault plus the ongoing trauma suffered by victims confirm the seriousness of the crime.

Research has shown that molestation by a parent or step parent is more traumatic to the child than cases involving non-family members because the child has been harmed repeatedly by a person whom he or she loves, trusts and regards as a protector. Treatment experts find little difference in the behavioral characteristics and patterns of offending behavior of an incest offender and a non-family child molester. In one of the few

empirical studies of child molesters, it was shown that incest offenders often commit sexual assault upon other individuals. Forty-four per cent of the incestuous males studied reported molesting non-family female children as well as their daughters; 11% of these incestuous men reported sexually abusing their sons as well as their daughters; 11% of these incestuous men reported molesting non-family boys as well as their daughters; and 18%, or nearly one out of five, of incest offenders also reported that they were violent rapists of adult women. Another stunning piece of information from this study was that the 411 non-incarcerated offenders studied reported committing 219,000 completed crimes involving thousands of victims over many years.

Besides the seriousness of these crimes, and the need to protect victims from further harm, other important aspects of this issue need to be scrutinized. A rationale has been presented that first time offenses should not be subject to presumptive sentences because first time offenders are more amenable to treatment. A study conducted at Atascadero State Hospital in California revealed that almost 85% of the hospitalized child molesters admitted to prior separate undetected molestations. Two thirds of these molesters were officially considered to be first time offenders. It is highly unlikely that someone convicted for the first time is really a first time offender.

Although a great deal of discussion has centered around the conflict of long prison terms versus the need for treatment of offenders to assure rehabilitation, there is little empirical evidence that treatment is effective. Reputable sex offender therapists admit that there is no guarantee for cures and, in fact, they recommend long term monitoring of known sex offenders to prevent reoffending. Also, most treatment specialists recognize that imprisonment is necessary so offenders recognize the severity of the crime and society's sanction against it.

There is a need to appreciate the chronicity and dangerousness of this population, the damage that is done by their offenses and have some knowledge of victims and victimology. Discussion of this complicated issue must weigh all factors before actions are taken. The most important factor is our responsibility to protect the community and prevent future victims.

Sec. 7.AS 12.55.155(d). This section adds mitigating factors to presumptive terms. The Council on Domestic Violence and Sexual Assault has serious questions and concerns about the following mitigating factors in the HB 554:

(17) "the defendant is under the age of 25"

Why is the fact that the defendant is under age 25 seen as a mitigating factor?

(18) "the defendant has demonstrated good potential for rehabilitation"

Who would judge that the defendant has demonstrated good potential for rehabilitation? How would someone "demonstrate potential"? It is recognized that sex offender treatment is a highly specialized area of

psychology with few experts. Although there are therapists without a sex offender speciality who may feel they can assess rehabilitation potential, the consequences are too serious to be left to non-specialists. Mental health professionals without specialized expertise are more prone to errors such as undercalling risk, inattention or oversimplification of the variables that are relevant and making unrealistic or dangerous recommendations. This issue is particularly important in Alaska where there is a dearth of sex offender specialists.

Even specialized sex offender therapists have not developed and tested a treatment model for minority cultures. Assessment and treatment would therefore be biased and could add to the over-representation of Alaskan Natives in prisons and denial of appropriate treatment services.

- (19) "the defendant has no record of criminal law violations"

If the presumptive terms in HB 554 are only for defendants with prior convictions, how is this factor relevant?

- (20) "the defendant has demonstrated sincere remorse for the offense"

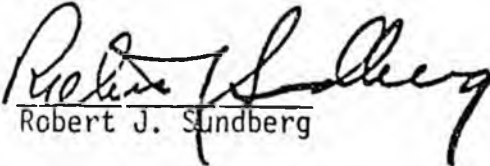
It is difficult to judge remorse. Even if there is remorse, it is not sufficient to assure that the offender will not reoffend. In the case of sex offenders, frequently after the offender has sexually abused a child, he will go through a period of feeling depressed and terrible about what he has done. He will swear to himself that he will never repeat the behavior again. This will eventually be overcome again by the rationalizations he used in the behavior and once again, the behavior will occur. Also, it would be possible and, in fact, very likely for skilled manipulators to appear remorseful. Therapists who have been working in the field for many years assert that very few sex offenders are sincerely remorseful.

- (22) "the defendant's capacity to formulate the requisite culpable mental state for the offense was diminished to a degree insufficient to constitute a complete offense"

It is not clear what factors diminish a defendant's culpable mental state. Does this include being under the influence of alcohol or drugs? If this is true, is this sufficient justification to mitigate a serious crime? What about the offender who purposefully uses alcohol and drugs to lower inhibitions against committing sexual and other violent crimes?

Sec. 11. AS 33.15.180(a). This section makes prisoners who are given presumptive terms eligible for parole. Because of the severity of the crimes addressed by presumptive sentencing, issues and concerns listed for Section 5 in this position paper should be considered for this section of HB 554 also.

The Council recognizes the serious fiscal questions facing Alaska because of the increased and costly demands placed upon the criminal justice system. However, we understand that other reforms of the correctional system could be implemented that are less controversial and that would also have a negative fiscal impact. All these issues should be considered before actions are taken. We also know that solutions to these problems are complex and may not be to everyone's satisfaction. There is a great deal that is unknown about sex offenders and less that is understood. As the primary state agency representing victims of domestic violence and sexual assault, the Council thinks it is imperative that actions taken consider the protection of victims and that the State do all it reasonably can to prevent further victimization.


Robert J. Sundberg

STATE OF ALASKA

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

BILL SHEFFIELD, GOVERNOR

POUCH 5
JUNEAU, ALASKA 99811
PHONE: (907) 465-2300

April 2, 1986

The Honorable Mike M. Miller
Chairman
House Judiciary Committee
P.O. Box V
Juneau, AK 99811

Dear Representative Miller:

Committee Substitute for House Bill 519 (Loans) is an essential ingredient in the debt management package of legislation introduced by Governor Sheffield. The legislation, for the first time, would provide an orderly, structured process for the issuance of lease-financing obligations of the State and would institute control over the authorization of such debt through approval by law as well as control over debt management aspects of such financings through the State Bond Committee.

Given the downturn in State petroleum revenues, it has become imperative that the State get a firm grasp on all debt that is paid from the General Fund. One of these types of debt is lease-financing. Control of lease-financing, along with all other debt supported by the State's General Fund, is necessary to preserve the State's credit rating as well as budgetary flexibility.

The bill designates a single agency, the Alaska State Housing Authority (ASHA) acting under the name of the Alaska State Building Authority, as the issuer of debt and lessor for State buildings. ASHA was selected to perform this function due to its experience and existing expertise with this role. Utilization of a single agency will improve accountability, efficiency, and control.

The bill also makes debt issued by or on behalf of the University of Alaska subject to approval by law and the State Bond Committee. This is another category of debt that is paid, in part, from the State General Fund.

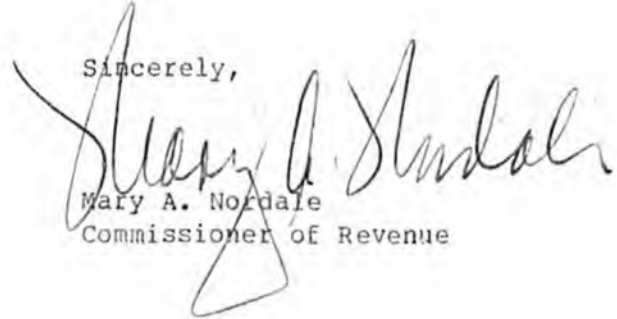
Finally, the bill includes several changes affecting the State Bond Committee. One is to require an annual State debt report which should assist the Legislature in considering approval of State-supported debt and generally provide for more informed decision-making in the management of State and municipal debt. Another provision would authorize negotiated sales for the issuance of international airports or toll facilities revenue bonds. Under certain circumstances, such as use of a different

The Honorable Mike M. Miller
April 2, 1986
Page 2

security structure or under uncertainty of impending Congressional tax reform legislation, a negotiated sale would prove more advantageous to the State than public sale.

Thank you for your consideration of this bill. I urge your prompt approval of this important legislation.

Sincerely,

A handwritten signature in cursive script, appearing to read "Mary A. Nordale". The signature is written in dark ink and is positioned above the typed name and title.

Mary A. Nordale
Commissioner of Revenue

MAN/MB/gb
86-78

CS HB 519

CSHB 519 makes the following changes with respect to the original bill:

1. requires approval by law of University of Alaska bond issues in Sec. 1 of CS HB 519 and ASHA bond issues for public buildings in Sec. 4 of CS HB 519;
2. deletes the requirement for State Bond Committee approval of ASHA debt issuance before lease-financing agreements may be entered into (sections 2, 7, 8, and 10 of CS HB 519); however, the State Bond Committee still must approve ASHA debt before it can be issued (section 4 of CS HB 519);
3. requires approval of public buildings by law before lease-financing agreements may be entered into (sections 2, 7, 8, and 10 of CS HB 519);
4. includes construction or acquisition cost in addition to lease payment and bond amount, in notice to legislature and bond committee (sections 2, 7, 8, and 10);
5. deletes the requirement in Sec. 7 of HB 519 that the Legislative Affairs Agency adopt regulations for space leasing;
6. makes new subsection (b) in Sec. 8 of HB 519 of the bill into a separate section, Sec. 10 of CS HB 519, so that it is not repealed in the event SB 341, the procurement bill, passes; amendments have been prepared for SB 341 which would delete all authority in that bill for lease-purchase financing, so that the subject is dealt with only in HB 519; this is to avoid enactment of conflicting provisions;
7. amends international airports and toll facilities statutes to permit negotiated bond sales in addition to public bid (sections 17, 18, 19, and 20).

BILL SHEFFIELD
GOVERNOR

cc 1/27



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

~~HB 518~~
HB 519
+
HB 520

January 27, 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 two bills that provide for improved state debt management. One relates to control of state-supported school debt, the other to lease-financing transactions by the various branches of government.

These two bills are each cornerstones of a comprehensive proposal designed to monitor and control more effectively the issuance of debt instruments that harbor substantial credit implications for the state. (Some citations in each bill are to provisions in the other bill. The two bills go together.) Alaska's remarkable wealth has facilitated tremendous economic growth in all areas of the state's economy and at all levels of government. Many of these worthy projects and programs have been funded directly by the state. In other instances, however, funding has been obtained through the issuance of debt instruments, either by the state or by local governments. Where government activities are funded through the issuance of debt, maintenance of a favorable credit rating for the state assumes critical importance. Simply stated, actions detrimental to the state's credit standing are injurious to the Alaska economy.

Unlike past years, we approach an era where the state's vast wealth is not, in and of itself, sufficient to support a favorable credit rating. In my discussions with representatives of the national financial community, the constant theme stated was the need for Alaska to demonstrate its ability to effectively manage its resources. One critical

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attribute of responsible state management is an effective debt management program.

Any discussion of maintenance of a favorable credit rating for the state must reflect the broad array of financial obligations encompassed within the term "state-supported debt." It is critical to bear in mind that state general obligation bonds are but one type of debt instrument that affects the state's credit standing. The financial community also looks to other recurring, long-term financial obligations which are paid from the general fund, such as those which arise under a lease-financing agreement. In a similar vein, the state's commitment to support school debt issued by municipalities is a type of long-term financial commitment with substantial credit implications.

Debt management concerns must further reflect the impact of excessive or improvident municipal debt issuance on the state's credit standing. I initially observe that responsible state debt management policies must necessarily include a degree of state supervision of municipal debt issuance. While I am, of course, cognizant and supportive of the prerogatives of local government, problems with municipal debt issuance inevitably burden the state as well. For that reason, I previously introduced a bill that relates directly to the issuance of municipal debt. Last session I proposed the establishment of a Municipal Financial Emergency Commission to assist municipalities that have defaulted in bonded indebtedness (HB 293). I am also proposing legislation that imposes reasonable limitations on a municipality's authority to issue general obligation debt. As noted in the transmittal letters accompanying each of those bills, responsible state management of municipal debt is necessary to assure the continued investment community support of and confidence in municipal and state debt issues.

The two bills attached to this letter today are intended to assure proper state oversight before the state enters into the type of recurring, long-term financial commitments that might have an impact on the state's credit standing. Where the state issues general obligation bonds, the constitutional requirement of voter approval offers an appropriate opportunity for the electorate and for elected officials to gauge any adverse effect that issuance of the debt may have on the state. Under present law, however, neither the statutory reimbursement formula for school debt nor the unrestricted authority to enter lease-financing agreements

offers comparable mechanisms to assure that state credit implications are adequately addressed. As the decline of available revenues further exacerbates the sensitivity of the state's credit standing, it is of critical importance to assure that each project is viewed not only on its own merits but also with consideration of how the issuance of additional state-supported debt will affect broader state interests. I believe that these two bills offer a responsible way of meeting the needs of the state to obtain office facilities and of municipalities to provide necessary educational facilities -- a way that best preserves the state's favorable credit standing.

I.

The shorter bill implements the recommendations of the State Office Complex Financing Task Force, a body whose membership brought together the views of executive-branch officials, two legislators, and several members of the public with substantial financing expertise. The task force conducted extensive hearings to consider the most appropriate method to provide state office facilities in the most cost-efficient manner possible. After review of the available financing alternatives, the task force recommended the enactment of legislation to facilitate the acquisition of state office facilities through lease-financing agreements. The bill designates the Alaska State Housing Authority as the appropriate financing entity, but provides that when the authority issues debt for this purpose, it do so as the Alaska State Building Authority. The name change is intended to prevent confusion in national financing markets.

Sections 1, 6, 7 and 8 provide that the university and each branch of government, respectively, have legal authority to enter into lease-financing agreements with the Alaska State Housing Authority acting as the Alaska State Building Authority. The state has previously executed lease-financing agreements under existing lease authority, and these sections are thus intended to remove any ambiguities regarding the legal authority to enter into lease-financing agreements. The cost of building acquisition or development would be provided by the sale of revenue bonds by the Alaska State Building Authority. In all instances, a lease-financing agreement preserves legislative prerogatives through the requirement that lease payments be subject to annual appropriation.

While the bill recognizes the desirability of the lease-financing technique, the bill also imposes effective debt

management controls. First, lease-financing agreements may only be executed with the Alaska State Building Authority, a limitation that ensures uniformity and continuity in the state's lease-financing programs.

More importantly, secs. 9 -- 16 expand the responsibilities of the state bond committee (AS 37.15) to ensure that the broader credit implications are adequately assessed before the state enters into a lease-financing agreement. Under sec. 15, for example, proposed AS 37.15.770 authorizes the state bond committee to review any proposed lease-financing in detail and to prohibit or condition the sale of the debt instruments if it is in the best interests of the state to do so.

I observe that sec. 8 of this bill is similar to legislation that I proposed last session in the wake of the controversy surrounding the Anchorage Office Complex. The bill proposed last session (HB 392 and the identical SB 293) provided for project-specific legislative approval before execution of a lease-financing agreement. In the transmittal letter accompanying the initial bill, dated April 19, 1985 (1985 H.J., p. 1001, and 1985 S.J., p. 856), I noted that the provision of project-specific legislative approval posed substantial constitutional problems. Both the constitutional doctrine of separation of powers and the constitutional prohibition against special and local legislation place in serious legal doubt any statutory requirement to seek project-specific approval. And public finance is the worst forum to interject such a substantial legal uncertainty. Accordingly, the present bill does not propose project-specific approval. To do so, in my view, would impermissibly intrude upon the constitutional prerogatives of future governors. Although I believe it inappropriate to require project-specific approval as a matter of law, I reaffirm my personal commitment to seek legislative approval before the executive branch enters into any lease-financing agreement.

II.

The longer of these two bills that I am transmitting makes several changes to the state's support of public school construction. Most notable of the significant changes proposed under this bill is a cap is placed upon the amount of municipal debt obligations for which the state will provide reimbursement. Municipalities issuing debt to finance school construction will pay the interest costs, while the state will pay the principal in equal payments up

to an aggregate amount of \$10,000,000 in any year for debt approved by local voters after March 31, 1986.

The state presently provides, in addition to its municipal grant program, three forms of aid for school construction. Under AS 14.11.010 all school districts may apply to the Department of Education for an appropriation for school construction projects for which the department may request, in order of priority, appropriations from the legislature. If an appropriation for a school construction project is made, the school district may, under AS 14.11.020, request the assumption of the state's responsibility to plan, design, and construct the particular project. The department provides for the assumption of the responsibility by executing a grant agreement with the school district.

AS 14.11.100 provides two additional forms of state aid for public school construction which are only available to municipal school districts. The state reimburses municipal debt service payments in varying percentages which, because of amendments made in ch. 78, SLA 1985, are at least 80 percent. The state also reimburses a municipality for at least 80 percent of its cash payments used for school construction. To receive reimbursement of either debt service or cash payments, the municipality must first quantify the need for the project and provide a description of the project and an estimate of its cost. The Department of Education reviews the project and its justification, and, when appropriate, grants its approval of the project and its estimated costs. The next step is approval of the municipality's voters to sell the bonds. If the local voters approve the sale of the bonds, the state will reimburse the costs of debt service by requesting money in each year's budget.

There are several weaknesses in the state's present programs of financing school construction.

First, there are inadequate procedures to ensure that the estimates of project costs are reasonable. Before 1982, the administration of the school construction grant program was shared by the Department of Education and the Department of Transportation and Public Facilities. Chapter 92, SLA 1982 transferred all responsibility for the state's construction grant program to the Department of Education. This same weakness exists under AS 14.11.100.

The second major failing is that there is no ceiling for the amount of money which the state will be requested to reim-

burse under AS 14.11.100. In the proposed FY 1987 state budget, approximately \$106,000,000 in municipal debt service payments is requested to continue existing level of debt.

During the last session of this legislature, the percentage of reimbursement for debt service costs was increased to 80 percent, although allowable projects were limited to facilities necessary for increased enrollment or to correct health and safety problems. The result of last session's amendments to AS 14.11.100 has been an identification of required projects with approval of the projects closely followed by local bond elections. These recent municipal elections have authorized approximately \$312,500,000 of new municipal debt for which local communities will seek reimbursement from the state for debt service costs. I anticipate, if all of this newly authorized debt is incurred in the near term, that the impact on the debt retirement program could be as much as an additional \$45,000,000 in requested reimbursements in FY 1987. I intend to support this additional funding as soon as the amount is determined and necessary debt management legislation is passed.

I, of course, recognize that there are municipalities in the state which have experienced significant population increases, and which therefore need the construction of new schools. I believe that these existing needs should be met at the current levels of state support. However, the future of state revenues and the need for new schools are uncertain. Consequently, I believe that different approaches need to be applied to the way the state considers all school construction in the state.

With discipline and altered approaches to the school construction, I believe that the state and its municipalities can contain state-supported debt and still allow for adequate state support of school construction.

This bill changes procedures for reviewing and approving school projects.

Section 1 amends AS 14.08.151. These amendments are desirable to clarify the manner in which the state conveys title for school sites to regional education attendance areas.

Section 2 amends AS 14.11.010(b) by requiring the Department of Education to request cost estimates from the Department of Transportation and Public Facilities and to base its

project approval upon that cost estimate. This same requirement is found in sec. 11 in amendments to AS 14.11.102, which relates to project approval for the debt retirement program. Section 14 contains new authority for DOT/PF to estimate construction costs for all school projects financed by appropriations and debt retirement. Included within that authority is the responsibility to establish design standards.

Section 3 of the bill amends AS 14.11.010(c) by adding new criteria, relating to population trends and the condition of facilities, which the Department of Education will consider when approving projects for appropriation. These amendments are also applicable to the debt retirement program under language found in sec. 11.

Section 4 proposes new language that will require school districts requesting state aid to inventory and inspect the schools in their districts and to revise that inventory on a yearly basis. The provisions of this section also require that school districts provide information relating to maintenance and operation costs. This information regarding existing school facilities will enable the state to better analyze new projects that the state will be asked to finance by appropriation or by debt reimbursement.

Sections 5 and 6 limit the state's reimbursement of school debt to principal only for approved projects financed by new municipal debt authorized by local voters after March 30, 1986. If the debt was authorized by local voters before April 1, 1986, the state's reimbursement continues as before. The state's reimbursement of cash payments by municipalities ends for payments made after June 30, 1986.

Section 7 amends AS 14.11.100(b) by offsetting the amount that the municipality receives for debt reimbursement by the amount of interest earned on the proceeds of bonds sold for a particular project. This amendment parallels existing law found in AS 14.11.100(k), which is repealed in sec. 16.

Sections 8, 9, and 10 contain a number of amendments to AS 14.11.100(h), (i), and (j), respectively, which are necessary to reflect the new class of reimbursement under the language proposed in AS 14.11.100(a)(6) in sec. 6 of the bill. Section 10 has a fiscal impact. It amends AS 14.11.100(j)(2) to allow refunding of bonds only in those situations where there is at least a five percent saving in debt service costs. It also amends AS 14.11.100(j)(3) by requiring that the principal on bonds be reimbursed in equal

annual payments over a period of 10 years or a term set by the state bond committee.

Under sec. 12, the Department of Education will continue to allocate money to reimburse municipal debt. However, a cap on reimbursement is placed upon debt authorized by local voters after April 1, 1986. The department may only allocate money for the reimbursement of principal paid on new debt if the new payments, when combined with all other reimbursements under this class of debt, do not exceed the \$10,000,000 or an amount set by the state bond committee. This mechanism will have two results. It puts a cap on state-supported debt, but, with discipline, it will enable municipalities to construct needed school projects in addition to those that are financed by bonds authorized by local voters before April 1, 1986.

Section 13 amends AS 14.11.135(3) by changing the definition of school construction costs. It excludes all financing costs for debt authorized by local voters after March 31, 1986.

Section 14 adds three new sections to AS 35.15. Under the proposed language, the Department of Transportation and Public Facilities will estimate the costs of all school construction projects under common design standards that it will develop.

Section 15 amends AS 37.15 to give the state bond committee the ability to manage state-supported school debt, which is accomplished under two different mechanisms. First, it may establish a higher or lower ceiling for allocations for reimbursement of new authorizations of school debt under AS 14.11.100(a)(6) (found in sec. 6), depending on the state's credit standing as well as on the needs for school construction. Second, it may control the term of the obligations to ensure that their maturity structure does not adversely affect the state's credit standing. While a 10-year term is allowed by the proposed provisions of AS 14.11.100(j)(2) (found in sec. 10), the committee is accorded the ability to set a different term when it is in the state's best interest.

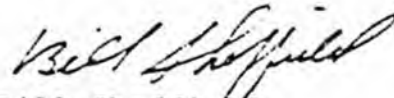
It is our intent with the language in sec. 17 to develop a long range plan for the state's school construction through the end of the century. The necessary components of this plan would include projected enrollments under reasonable population projections, construction costs, design parameters, and financing techniques. It is our hope that,

after the completion of the plan, a rational mechanism can be put in place to provide for the state's public school construction needs which is within the state's ability to pay.

III.

Continued economic prosperity for all sectors of the Alaska economy is in part inextricably tied to more rigorous state debt management. These two bills, as well as legislation relating to responsible limitation on municipal debt, promote more responsible state debt management. Alaska's credit standing is, of course, in part dependent on factors beyond our control. That the state cannot control all relevant factors is no excuse, however, for the inadequate management of those factors within our control. I believe that it is critical that the state become more sensitive to the long-term credit implications of each isolated funding decision. These two bills provide for responsible yet flexible state debt management, and I urge your prompt consideration and approval of these measures.

Sincerely,



Bill Sheffield
Governor

ce
1/27

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

REQUEST HB 519
 Bill/Resolution No. : _____
 Title : An Act relating to Public Finance
 Sponsor : Rules Committee at the request
 Requestor : of the Governor
 Date of Request : 1/27/86

Revision Date : _____

FISCAL DETAIL
 Agency Affected : Revenue
 BRU : Treasury
 Components : Operating

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-
CAPITAL						
REVENUE						

FUNDING : (Thousands of Dollars)

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

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : Phil Barber Phone : 465-2350
 Division : Treasury Date : 1/27/86
 Approved by Commissioner : [Signature] Date : 1/27/86
 Agency : Dept. of Revenue

Distribution (by Agency preparing fiscal note):

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

Briefing Materials

Debt Management Plan

February, 1986

State of Alaska
Office of the Governor

Back up for
HB 519 - 521
exp when available

February 1986

DEBT MANAGEMENT PLAN

Governor Bill Sheffield

Through careful management, the State of Alaska has maintained the best credit rating we've ever had. That AA rating, in turn, has allowed local governments across Alaska to keep their investment grade ratings as well. This good credit rating translates into lower property taxes for Alaskans.

With dropping world oil prices, however, Alaska's annual debt payments automatically become a larger part of our expenses.

So, I have asked the 14th Alaska Legislature to approve a package of new laws which, viewed as a whole, will give our young state a plan for comprehensive debt management for the first time. None of these proposed improvements in our laws is flashy or exciting, but as a package they are vital to the continued financial health of Alaska. I encourage you to read the enclosed information.

In short, the debt management plan I have placed before the Alaska Legislature will keep the commitments voters have made to our future, particularly in regards to local school construction. The plan also will guarantee we can continue to incur a reasonable amount of debt for school construction and other improvements in the future, while we preserve our good credit rating.

Debt Management Plan

"We've borrowed a considerable amount of money to help build Alaska. We can manage that debt, but it takes planning...lest that debt manage us in the future."

Governor Bill Sheffield

January 14, 1986

DEBT MANAGEMENT PLAN

An Overview

Without firm control of public debt the credit rating of all debt issuers in Alaska could be in jeopardy. Right now the State has an AA rating, the highest it's ever had, and all issuers within the State are rated as investment grade. But as oil prices decline, the share of revenues devoted to debt service will become an increasingly heavier burden. The State of Alaska cannot control the price of oil. What we can and must control is the amount of public debt.

Proper stewardship of public debt in Alaska can be accomplished through enactment of legislation covering four distinct needs. Taken separately, each of the four bills brings reasonableness to a different aspect of public debt. But viewed as a whole, this legislation provides a plan for comprehensive debt management for the first time. It assures that all State-supported debt, which is any debt paid from the State general fund, is subject to the control of the State Bond Committee. It is this total of State supported debt which the rating agencies look to in establishing the State's credit rating.

The first bill, House Bill 293, provides for orderly financial management in the event of a default by a municipality of its debt obligations. This legislation protects both issuers of public debt in Alaska and creditors.

House Bill 519 provides for the lease financing of public buildings through the Alaska State Housing Authority, acting as

the Alaska State Building Authority. The bill gives the State Bond Committee control over issuance of this debt as well as debt of the University of Alaska.

House Bill 520 gives the State Bond Committee control over the total amount and maturity of municipal school debt to be reimbursed by the State. The investment community needs to see some control on this fast-growing part of State supported debt.

The fourth bill, House Bill 521 places a limit on the issuance of general obligation debt by municipalities. Even with this limit some municipalities in Alaska will have some of the highest debt ratios in the United States. This legislation does not limit the ability to issue revenue bonds.

As background, Alaska's combined debt (State, municipal and school district) through the issuance of general obligation bonds was \$2.9 billion as of June 30, 1985. That amounts to about \$5,500 per Alaskan. When the amount of G.O. Bond debt for veterans' housing is included in the total, Alaska's per capita debt load is \$7,000.

That debt is manageable, but it takes planning. The State of Alaska has not had a bond authorization since 1980. Yet, the per capita interest on the State's general obligation bond debt is 20 times the national average. State policy limits debt service to five percent of unrestricted revenues, but that ratio is about 10 percent now and could climb to 16 percent by fiscal year 1989.

Again, this is a result of a combination of factors. World oil markets have seriously eroded the revenue Alaska receives from oil and gas production. At the same time, Alaska voters have authorized new debts, including \$325.0 million in school construction bonds so far in fiscal year 1985 alone. That translates into a possible 30 percent increase in State

reimbursement for local school debt--added costs which show up in the State operating budget.

These and other construction commitments are viewed by the nation's financial markets in different ways. On one hand, Alaska's rating agencies know this is a unique state, with enormous potential for generating public revenues and a young, dynamic workforce; on the other hand, the rating agencies look at all of Alaska's debt together, and while they are concerned about how much we borrow, they are more concerned that Alaska have controls on the growth of debt statewide.

To tackle that issue, Governor Sheffield is asking the Legislature to take the following initiatives:

- ° For school construction, honor all existing debt (as of March 31, 1986) under the current 80 percent reimbursement law, and limit the growth of future State reimbursement to \$10 million per year for school construction in the future.
- ° Set standards for school construction to guarantee more schools can be built with the funds available.
- ° Reimburse 100 percent of principal only for bonds authorized after April 1, 1986. This will encourage local districts to shop for the lowest interest rates.
- ° For local governments, limit debt to seven percent of assessed property values.
- ° Designate the Alaska State Housing Authority, acting as the Alaska State Building Authority, as the issuer of lease revenue bonds to finance public buildings. This

change was recommended by a citizens task force appointed by the Governor to study the issue in 1985.

• Designate the State Bond Committee as overseer of lease revenue bond issues and the total of State reimbursement for school debt (after March 31, 1987).

DEBT MANAGEMENT PLAN

Questions and Answers

QUESTION: Why do we need a debt management package?

ANSWER: The State has achieved a AA rating for its general obligation debt. However, the burden of paying the State's debt becomes heavier as revenues shrink. Now, with oil prices falling, the State must demonstrate to the rating agencies that it has the procedures, checks, and balances necessary to manage its debt obligations, if the State is to retain its high credit rating.

QUESTION: Why does the State have to be concerned about lease-purchase financing, University of Alaska, and municipal school debt? (HB 519, HB 520)

ANSWER: All or a major portion of the payments on this debt come from the State's general fund. These types of debt obligations are referred to as State supported debt. The total of State supported debt and State general obligation debt is the figure that Moody's and Standard and Poor's uses as the measure of the State's debt burden. As of June 30, 1985, this total was \$1,610.3 million, of which less than half, \$752.7 million, was State general obligation debt. Even the State's share of school debt alone, \$753.6 million, exceeded State general obligation debt.

QUESTION: Why should the State seek to limit municipal debt generally? (HB 521)

ANSWER: Because of high levels of State support to municipalities, they may be tempted to issue more debt than they could reasonably expect tax payers to support without the State aid. With State revenues declining, State support for municipalities eventually may suffer budget cuts along with other programs. The State needs to insure that such developments do not create avoidable financial difficulties for municipalities.

QUESTION: Is one reason for the State's concern with municipal debt levels that municipal credit ratings affect the State's ratings? (HB 521)

ANSWER: No. The State's rating is not affected by the rating of any or all municipalities. Even a municipal financial emergency or default would not ordinarily affect the State's rating. However, an emergency or default would be likely to tarnish all Alaska issuers somewhat, much as the New York City default affected all municipal debt issuers and the WPPSS (Whoops) default affected Northwestern U.S. and public power supply issues. This could significantly raise, for some period of time, the interest rates the State and other municipalities have to pay on bonds.

QUESTION: Is the WPPSS (Whoops) syndrome the reason for the introduction of the Municipal Financial Emergency Commission legislation? (HB 293)

ANSWER: It's one reason. However, a more important reason is to establish a mechanism that ensures satisfactory and early resolution of a municipal financial crisis so that provision of public services is impeded. Unlike nuclear power plants, municipalities cannot be mothballed. A mechanism for

satisfactory and early resolution also provides a valuable assurance to bond buyers.

QUESTION: What is the State's debt capacity and how is it determined?

ANSWER: In recent years, the State's debt policy has been that the State had capacity to issue additional general obligation debt if the debt service on the new bonds, combined with the debt service on outstanding bonds, would not exceed 5 percent of the State's unrestricted revenues. 5 percent is a level which few states with a AA credit rating exceed.

QUESTION: What is the current level of debt service relative to unrestricted revenues?

ANSWER: Considering only State general obligation bonds, the level for fiscal year 1987 is 5.7%. However, inclusion of all State supported debt which the rating agencies look at boosts the percentage to 11.5%. Falling State revenues will push the debt service to a level of 16.4% of revenues in fiscal year 1989.

QUESTION: Does this mean the State can't issue any more debt in the near future?

ANSWER: No. In the first place, the State could issue additional debt if it were willing to sacrifice its credit rating and that of State agencies and municipalities, whose ratings generally are tied to the State's. More to the point, additional issuance in modest amounts with a AA rating might be possible if the rating agencies were assured total debt obligations will remain limited. The limits and controls in Governor Sheffield's debt management package are an essential step in providing these assurances.

QUESTION: What happens to the State's reimbursement of municipal school debt that was authorized last fall? (HB 520)

ANSWER: That debt and all municipal school debt authorized before April 1, 1986, will be grandfathered under current law. This means State reimbursement for that debt will be under the current formula of 80% of principal and interest.

QUESTION: Does the Governor's budget contain the funds necessary for the State to reimburse the grandfathered bonds? (HB 520)

ANSWER: The amount required is contained in the Department of Education's fiscal note for HB 520. The estimated amount required for fiscal year 1987 is \$43 million. The Governor plans to support the \$43 million appropriation if the legislation is passed.

QUESTION: How much additional school debt could be reimbursed by the State under HB 520?

ANSWER: HB 520 would permit State reimbursement of \$10 million per year for debt authorized after March 31, 1986. Since the legislation establishes reimbursement at 100% of principal and requires the debt to have a 10 year term and constant principal payments, the \$10 million State reimbursement could support as much as \$100 million initially.

QUESTION: How does 100% of principal compare to 80% of principal and interest? (HB 520)

ANSWER: It depends on how much the interest is in relation to principal, which depends on the interest rates at the time the bonds are sold. At current interest rates, 100% of principal is approximately 89% of the current formula for reimbursement (80% of principal and interest). Thus, the new formula would provide