

ALASKA LEGISLATURE COMMITTEE FILED

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REPORT CONCLUSION

This review contains policy issues raised as a result of our evaluation of the Board of Governors of the Alaska Bar Association (ABA). The final policy decisions affecting the ABA are not within the scope of this report, but require legislative consideration. In debating these issues, the oversight committees should take into consideration the findings and recommendations and other information presented in this report so the potential impact of policy changes can be evaluated.

Report Conclusion

In our opinion, the Board of Governors of the Alaska Bar Association should be reestablished. The regulation and licensing of qualified legal professionals is necessary to protect the public's safety and welfare. The Board provides this protection by reasonably assuring that persons licensed to practice law are qualified and by assuring that those licensed act in a competent and ethical manner through a sophisticated complaint investigation process.

Furthermore, nothing came to our attention during our review, that showed the public's best interest would be better served by any different regulatory method.

Overall, it is our opinion that the Board operates in an effective and economical manner. However, we have made recommendations which, if implemented, will improve the efficiency and effectiveness of the Board's operations (see the Findings and Recommendations section of this report).

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FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The Board of Governors of the Alaska Bar Association (ABA) should take prompt action to reduce both the number of back-logged disciplinary investigation cases and the length of time it takes to bring an investigation to a conclusion.

As of October 31, 1984, the ABA's discipline section had 41 cases pending disciplinary or other proceedings and an additional 165 cases under investigation.

An analysis of the status and length of time these cases have been open showed the following.

<u>Status</u>	<u>Cases</u>	<u>Avg. Days Open</u>	<u>Range of Days Open</u>
<u>Pending Proceedings:</u>			
Pending Supreme Court	5	636	396 - 853
Pending Discipline Board	6	425	230 - 783
Pending Hearing Comm.	10	720	343 - 1428
Pending Admonition	3	422	333 - 474
Pending Fee Arbitration	12	291	117 - 525
Pending Conciliation	5	332	70 - 405
<u>Total</u>	<u>41</u>		
<u>Under Investigation:</u>			
Investigator on Case	11	606	252 - 1093
Special Counsel	1	1,662	N/A
Investigation - Prelim.	113	188	7 - 607
Investigation-Formal	40	342	13 - 1097
<u>Total</u>	<u>165</u>		

In addition, an analysis of 21 cases recently dismissed showed the average days these cases were open was 317, ranging from 56 to 943 days.

The Board of Governors is well aware of the serious backlog in disciplinary cases. One of the Board's immediate goals is to take action necessary to reduce this backlog. It should be noted that the backlog and its age has resulted primarily from prior years' turnover and vacancies in the disciplinary staff.

We encourage the Board to take prompt action to reduce the case backlog. In addition, we recommend that during the

Board's deliberations of available options, consideration should also be given to the length of time taken to conclude cases. It is in the best interest of the ABA, the complainant, and the attorneys against whom the complaints were filed to take timely action in closing cases.

Therefore, we recommend that the Board's actions not only address the immediate need to reduce the case backlog, but also address the long-term staffing needs of the discipline section.

Recommendation No. 2

The ABA should comply with the public notice requirements of AS 08.08.075.

Chapter 52, SLA 1981 amended the Alaska Integrated Bar Act (AS 08.08) to bring meetings of the Board of Governors under the public meeting statutes, AS 44.62.310 and .312. More specifically, the Bar Act was amended to require that the public shall be given 30 days notice of meetings of the Board, except for emergency meetings.

The ABA has not publicly advertised meetings of the Board since enactment of this statute.

We recommend that the ABA publicly advertise the meetings of the Board in at least three major newspapers in the State.

Recommendation No. 3

The ABA should seek legislation requiring applicants for admission be fingerprinted to determine whether the applicant has a record of criminal convictions.

The standing policies of the Board of Governors require that applicants for admission to the ABA must submit completed sets of fingerprint cards with their application.

In conducting its moral character investigation of the applicants, the ABA submits the fingerprint cards to the Alaska State Troopers for a criminal records check. However, this records check is restricted to information contained in the State's information system. The Federal Bureau of Investigation's (FBI) Identification Division will not accept these fingerprint cards for processing without a specific statute authorizing the ABA to require fingerprinting as an admission requirement.

Effective January 1, 1985, the ABA will institute licensing by reciprocity in Alaska. This process will most likely bring more applicants from other states who have been practicing law for longer periods. To ensure the good moral character of these applicants, the ABA should have access

to the nationwide criminal record information maintained by the FBI.

Recommendation No. 4

The ABA should amend its bylaws to increase the quorum requirements for meetings of the Board of Governors.

In 1981, the Legislature amended the Alaska Integrated Bar Act to increase the membership of the Board of Governors from nine attorney members to twelve members by adding three non-attorney or "public" members.

Article V, Section 9 of the Association's bylaws provides that five members of the Board constitute a quorum at any meeting. This section has not been amended to reflect the statutory increase in the total membership of the Board.

We recommend that the quorum requirement be increased to seven members of the Board of Governors to ensure adequate representation of Association members at all Board meetings.

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ANALYSIS OF PUBLIC NEED

Limited Analysis

The following analyses indicate both positive and negative factors as they relate to the public need as defined in the "sunset" law. These analyses are not intended to be comprehensive, but to address those areas we were able to cover during our examination.

I. The extent to which the board, commission or program has operated in the public interest.

- A. Effective January 1, 1985, the ABA will operate under revised Alaska Bar Rules of Disciplinary Enforcement adopted by the Supreme Court. The revised rules resulted from the major undertaking and joint cooperation of the Supreme Court, the Board of Governors, the ABA staff, and a review team from the American Bar Association's Standing Committee on Professional Discipline.

The most dramatic revision is contained in Alaska Bar Rule 21 which provides for public access to disciplinary proceedings. The previous rules provided for confidential proceedings up until proceedings before the Supreme Court. Relatively few cases ever reached that stage.

In order to alleviate public concern that attorney discipline is not taken seriously by the ABA, the Board voted to open disciplinary proceedings to the public. The revised rules provide for public access at a much earlier stage of the discipline process.

The revised rules also establish procedures for a complainant to appeal the decision of the ABA discipline staff to dismiss a complainant.

- B. The ABA provides public notice of any attorney who has been disbarred or suspended.
- C. In addition to the three public members who serve on the Board of Governors, the Board has also appointed a total of 42 non-attorney individuals to serve on disciplinary hearing committees and fee arbitration panels throughout the State.
- D. If a complaint received by the ABA does not constitute misconduct on the part of an attorney, but rather is primarily concerned with a fee dispute, the ABA offers a fee arbitration process.

This process provides for the dispute to be arbitrated by a third party panel consisting of two attorneys and one public member.

Similarly, the ABA offers a conciliation process to attempt to resolve disputes between attorneys and clients where the dispute is neither fee nor misconduct related.

Failure by an attorney to participate in good faith in the conciliation process may be grounds for disciplinary action.

- E. The ABA operates an attorney referral service, funded by subscribing attorneys, whereby anyone from around the State or from outside the State can call a toll-free Zenith number and receive the names of three attorneys who practice law in certain disciplines. Subscribing attorneys agree to provide referred clients the first half hour of consultation at a reduced rate of \$35. (See Appendix D for the number of referral calls received, by discipline.)
 - F. Effective January 1, 1985, revised Alaska Bar Rules will permit licensing by reciprocity.
 - G. The ABA maintains a Client Security Fund for the purpose of making reimbursement to clients of attorneys who have suffered non-insured losses of money, property, or other things of value as a result of a dishonest act by an attorney. A portion (\$10) of each ABA member's annual dues is deposited in the Fund.
 - H. The ABA has actively supported the Conflict Resolution Center in Anchorage and the Alaska Legal Services Corporation.
- II. The extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personnel matters.
- A. The ABA is enhanced by an unprecedented involvement of the membership in its operations. A total of 250 members serve on various committees, panels or other adjunct organizations. (See Appendix E for membership and public involvement.)
 - B. The operations of the Board are enhanced by a substantial budget funded virtually entirely by

the ABA membership through dues, admission fees, continuing legal education, lawyer referral fees, conventions, and interest income. The 1984 budget totals approximately \$900,000. (See Appendix A for a schedule of ABA revenues and expenditures.)

- C. One of the public member positions of the Board of Governors was vacant from May of 1983 until the Governor made the appointment in June of 1984.

III. The extent to which the board, commission, or agency has recommended statutory changes which are generally of benefit to the public interest.

- A. In the transmittal letter accompanying its 1982-1983 Annual Report to the Legislature, the Board requested legislative support for statutory authority to require the fingerprinting of ABA applicants. See Recommendation No. 3 of this report.

IV. The extent to which the board, commission, or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service which it has provided.

- A. The ABA publicly displays information and forms regarding complaint avenues available through ABA's disciplinary section.

V. The extent to which the board, commission, or agency has encouraged public participation in the making of its regulations and decisions.

- A. The ABA has not publicly advertised meetings of the Board of Governors as required by statute.

VI. The efficiency with which public inquiries or complaints regarding the activities of the board, commission, or agency filed with it, with the department to which a board or commission is administratively assigned, or with the Office of the Omdudsman have been processed and resolved.

- A. As of October 31, 1984, the ABA's discipline section had 41 cases pending disciplinary or other proceedings and an additional 165 cases under investigation. In addition, an analysis of 21 cases recently dismissed showed the average number of days these cases were open was 317, ranging from 56 to 943 days. (See Recommendation No. 1 of this report.)

VII. The extent to which a board or commission which regulates entry into an occupation or profession has presented qualified applicants to serve the public.

- A. We found no instances where the Board had licensed unqualified applicants.
- B. Although many complaints are filed against attorneys, few have been found to be misconduct resulting in formal disciplinary action. (See Appendix B for a summary of disciplinary statistics.)
- C. The ABA offers a continuing legal education program to its membership and also maintains an education library.

VIII. The extent to which State personnel practices, including affirmative action requirements, have been complied with by the board, commission, or agency to its own activities and the area of activity of interest.

- A. Nothing came to our attention that showed the Board was in violation of any affirmative action or hiring requirements.

IX. The extent to which statutory, regulatory, budgeting, or other changes are necessary to enable the agency, board, or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

Please refer to the previous section, Findings and Recommendation.

APPENDIXES

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APPENDIX A

BOARD OF GOVERNORS
ALASKA BAR ASSOCIATION
REVENUES COMPARED WITH EXPENSES
For the Calendar Years 1982, 1983, and 1984
(Note 1)

	<u>1982</u>	<u>1983</u>	<u>1984</u> (Note 2)
<u>Revenues</u>			
Membership Dues	\$481,834	\$515,281	\$506,239
Admission Fees	89,595	88,883	96,664
Continuing Legal Education	113,188	58,205	27,476
Lawyer Referral Fees	47,703	52,203	49,869
Interest on Investments	51,979	45,746	45,135
Annual Meeting	37,105	34,157	43,686
Other	<u>31,344</u>	<u>38,314</u>	<u>58,940</u>
<u>Total Revenues</u>	<u>852,748</u>	<u>832,789</u>	<u>828,009</u>
<u>Expenses</u>			
Admissions	77,632	109,983	106,895
Board of Governors	18,376	22,513	28,996
Discipline/Bar Counsel	110,439	132,875	208,939
Administration	226,343	243,607	248,204
Lawyer Referral Service	28,459	37,987	31,300
Continuing Legal Education	146,975	101,063	54,376
Annual Meeting	37,533	28,350	41,238
The Bar Rag	14,505	13,330	10,259
Alaska Law Review	9,774	11,198	10,000
Other	<u>15,886</u>	<u>13,323</u>	<u>43,478</u>
<u>Total Expenses</u>	<u>685,922</u>	<u>714,229</u>	<u>783,685</u>
<u>Excess of Revenue over Expenses</u>	<u>\$166,826</u>	<u>\$118,560</u>	<u>\$ 44,324</u>

Note 1: The 1982 and 1983 revenue and expense information was taken from audited financial statements of the ABA. The 1984 information was obtained from the accounting records of the ABA and has not been audited.

Note 2: The 1984 amounts are as of November 30, 1984.

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APPENDIX B

BOARD OF GOVERNORS
ALASKA BAR ASSOCIATION
DISCIPLINE STATISTICS
(Note 1)

Disposition of Cases Closed
during 1982, 1983, and 1984

<u>Disposition</u>	<u>1982</u>	<u>1983</u>	<u>1984</u> (Note 2)
Disbarment by Supreme Court	0	0	1
Suspension by Supreme Court	0	2	1
Public Censure by Supreme Court	1	3	0
Private Informal Admonition	7	6	15
Dismissed by Disciplinary Counsel	<u>61</u>	<u>72</u>	<u>130</u>
<u>Total Cases Closed</u>	<u>69</u>	<u>83</u>	<u>147</u>

Status of Cases Open
as of October 31, 1984

<u>Status</u>	<u>Cases</u>
Suspension in Effect	4
Pending Supreme Court	5
Pending Disciplinary Board	6
Pending Hearing Committee	10
Pending Informal Admonition	3
Pending Fee Arbitration	12
Pending Conciliation	5
Held in Abeyance	3
Investigator on Case	11
Special Counsel	1
Preliminary Investigation	113
Formal Investigation	<u>40</u>
<u>Total Open Cases</u>	<u>213</u>

Note 1: The information in this Appendix was obtained from statistical summaries prepared by the ABA's discipline section.

Note 2: The 1984 statistics are as of October 31, 1984.

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APPENDIX C

BOARD OF GOVERNORS
ALASKA BAR ASSOCIATION
BAR EXAMINATION STATISTICS
For Calendar Years 1982, 1983, and 1984

	<u>Number Taking Exam</u>	<u>Number Passing Exam</u>	<u>Percent Passing Exam</u>
<u>February 1982 Exam</u>			
General Applicants	126	89	70.6%
Attorney Applicants	10	5	50.0%
<u>Total</u>	<u>136</u>	<u>94</u>	<u>69.1%</u>
<u>July 1982 Exam</u>			
General Applicants	119	83	69.7%
Attorney Applicants	7	5	71.4%
<u>Total</u>	<u>126</u>	<u>88</u>	<u>69.8%</u>
<u>February 1983 Exam</u>			
General Applicants	106	80	75.5%
Attorney Applicants	15	10	66.7%
<u>Total</u>	<u>121</u>	<u>90</u>	<u>74.4%</u>
<u>July 1983 Exam</u>			
General Applicants	122	86	70.5%
Attorney Applicants	9	6	66.7%
<u>Total</u>	<u>131</u>	<u>92</u>	<u>70.2%</u>
<u>February 1984 Exam</u>			
General Applicants	108	72	66.7%
Attorney Applicants	16	8	50.0%
<u>Total</u>	<u>124</u>	<u>80</u>	<u>64.5%</u>
<u>July 1984 Exam</u>			
General Applicants	118	73	61.9%
Attorney Applicants	8	6	75.0%
<u>Total</u>	<u>126</u>	<u>79</u>	<u>62.7%</u>
<u>Total 1982 through 1984</u>	<u>764</u>	<u>523</u>	<u>68.5%</u>

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APPENDIX D

BOARD OF GOVERNORS
ALASKA BAR ASSOCIATION
ATTORNEY REFERRAL CALLS RECEIVED
For Calendar Years 1982, 1983, and 1984
(Note 1)

<u>Discipline</u>	<u>1982</u>	<u>1983</u>	<u>1984</u> (Note 2)
Administrative	232	368	278
Admiralty	30	40	37
Arts	30	14	5
Bankruptcy	153	167	174
Commercial	1,254	1,389	1,126
Consumer	47	184	212
Community Legal Asst.	7	7	-0-
Criminal	498	751	549
Discrimination	51	59	61
Eminent Domain	11	17	22
Environmental	1	2	1
Family	1,987	2,295	1,962
Foreign Speaking	8	12	3
Immigration	74	85	50
Labor Relations	154	243	170
Landlord/Tenant	239	295	251
Mining	17	23	16
Negligence	971	1,241	601
Patent/Copyright	50	92	103
Public Interest	-0-	-0-	2
Tax	54	103	70
Traffic	427	273	398
Trust/Wills/Estates	274	265	215
Worker's Compensation	<u>N/A</u>	<u>N/A</u>	<u>135</u>
<u>Total</u>	<u>6,569</u>	<u>7,924</u>	<u>6,441</u>
<u>Total Projected for 1984:</u>			<u>8,600</u>

Note 1: The information in this Appendix was obtained from statistical summaries prepared by the ABA.

Note 2: The 1984 statistics are as of September 30, 1984.

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APPENDIX E

BOARD OF GOVERNORS
ALASKA BAR ASSOCIATION
MEMBERSHIP ON ABA COMMITTEES
December 15, 1984

<u>Committee</u>	<u>Attorney Members</u>	<u>Public Members</u>	<u>Total Members</u>
<u>Board of Governors</u>	<u>9</u>	<u>3</u>	<u>12</u>
<u>Standing Committees</u>			
Bar Polls and Elections	9	-	9
Continuing Legal Education	12	-	12
Ethics	9	-	9
Historians	13	-	13
Law Related Education	15	-	15
Legal Education Opportunities	10	-	10
Status, Bylaws & Rules	12	-	12
<u>Total Standing Committees</u>	<u>80</u>	<u>-</u>	<u>80</u>
<u>Bar Rule Committees</u>			
<u>Conciliation Panels:</u>			
First District	3	-	3
Second & Fourth Districts	3	-	3
Third District	6	-	6
<u>Discipline Hearing:</u>			
First District	8	3	11
Second & Fourth Districts	8	4	12
Third District	24	12	36
<u>Fee Arbitration:</u>			
First District	14	5	19
Second & Fourth Districts	12	6	18
Third District	28	12	40
Law Examiners	20	-	20
<u>Total Bar Rule Committees</u>	<u>126</u>	<u>42</u>	<u>168</u>
<u>Other Adjunct Involvement</u>			
American Bar Assoc. Delegate	1	-	1
AK Assoc. of Legal Assistance	1	-	1
AK Bar Foundation	3	-	3
AK Code Revision Commission	1	-	1
AK Judicial Council	3	-	3
AK Comm. on Judicial Conduct	3	-	3
AK Law Review	3	-	3
AK Legal Services Corp.			
Board of Directors	17	-	17
Ninth Circuit Judicial Conf.	2	-	2
Rocky Mountain Mineral			
Law Foundation	1	-	1
<u>Total Other Adjunct Involvement</u>	<u>35</u>	<u>-</u>	<u>35</u>
<u>Total Committee Membership</u>	<u>250</u>	<u>45</u>	<u>295</u>

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CHIEF JUSTICE
JAY A. RABINOWITZ

ROOM 418 504 BARNETTE ST
FAIRBANKS, ALASKA 99701
(907) 452-9300

JUSTICES
EDMOND W. BURKE
WARREN W. MATTHEWS JR.
ALLEN T. COMPTON
DANIEL A. MOORE

Supreme Court State of Alaska

January 28, 1985

R E C E I V E D
FEB 1 - 1985
LEGISLATIVE
AUDIT

Gerald L. Wilkerson
Legislative Auditor
Division of Legislative Audit
Pouch W
Juneau, Alaska 99811

Dear Mr. Wilkerson:

This letter is written to respond to the recommendations contained in the Division of Legislative Audit's preliminary performance report on the Board of Governors of the Alaska Bar Association. It is my understanding that the Division's recommendations and this response will be contained in your final report to the Alaska Legislature's Budget and Audit Committee. The Supreme Court appreciates the opportunity to respond on behalf of the Alaska Bar Association.

As you are aware, the powers and duties of the Board of Governors of the Alaska Bar are conferred by both statute and Court rule. The Supreme Court works actively to provide guidance to the Bar Association through the on-going administrative process of the adoption of and amendment to Alaska Bar Rules. In addition, through published opinions, this Court also provides "guidance" to the Bar when lawsuits against the Bar or Association discipline matters come before us for decision.

Not surprisingly, the Supreme Court's major areas of supervision involve the Alaska Bar's two most important public functions: the admission of attorneys to the practice of law in Alaska and the discipline of those attorneys who are admitted to the Bar. Since 1981, in part as a response to issues raised by the Bar's first sunset review, the Board of Governors, with the support of this Court, has been actively engaged in implementing improvements in both of those areas.

In 1982, after two years of study (and the further prod of California's withdrawal of support), the Bar instituted the "All-Alaska" Bar Exam, which included substantially revised essay drafting and grading procedures, revised score computation procedures, and the first essay practicum in the country. Having created what many consider a model exam, the Board of Governors turned its attention in 1983 to the Bar's discipline process.

At the joint invitation of the Alaska Supreme Court and the Bar Association, a three member evaluation team from the Center for Professional Responsibility of the American Bar Association's Standing Committee on Professional Discipline came to Anchorage in June of 1983. The team was here for a week interviewing the Bar's staff, attorney and non-attorney members of area discipline hearing committees, members of the Board of Governors, judges, and Justice Edmond Burke of this Court. The discipline team's final report was issued in late December of 1983 and the Board and the Court, in a special session in mid-January of 1984, met to discuss implementation of the many recommendations for improvements contained in that report.

It was during that mid-January meeting, just over a year ago now, that the Board instructed the staff of the Association's discipline section to focus its attention on the backlogged disciplinary investigation cases. The staff was asked to review all pre-1983 cases and determine their status by the Board's mid-March (1983) meeting. This staff review was to specifically address which cases should be dismissed; which cases required additional investigation prior to a determination as to the appropriate action; and which cases could be immediately filed as petitions for formal hearing. The Board also gave authority for the employment of a part-time investigator to assist discipline counsel in their efforts.

In addition, Bar staff was asked to prepare an entire rewrite of the Rules of Disciplinary Enforcement (Alaska Bar Rules 9 - 33), incorporating both the recommendations for change contained in the study done by the ABA's discipline evaluation team and the many suggestions for improvements to the procedures recommended by the discipline staff and the Board itself.

The Board of Governors acknowledges that its current staff has, for the most part, inherited a backlog resulting from two years of significant personnel changes within the Bar's discipline section. Although the Board, recognizing the growing backlog, had doubled the number of staff assigned to the discipline section beginning in 1983, it was not until late

1983, after the resignation of both of the discipline counsel on staff at the outset of the year, that the Bar Association was actually able to fully track its caseload. I know the Board of Governors appreciates the reference in the preliminary report to the fact that the backlog was primarily an inherited problem. As the Bar's quarterly discipline reports additionally indicate, coupled with the unfortunate and somewhat debilitating discipline personnel changes, there has been a significant increase in the number of complaints filed by the public in the last few years. Taken together, the personnel matters and the increased filings go far in explaining the existence of the backlog.

The Board's decision in January of 1984 to request a full review of the discipline caseload therefore resulted from a desire to have a comprehensive picture of the problem it faced. The Board also requested that the reports prepared by staff for both the Board and this Court be presented in a far more comprehensible format. A comparison of reports prepared prior to this year and the reports now presented to this Court shows that the new format makes clear the status of each discipline case, the age of each case, the person to whom each case is assigned, and the age of the case at each particular stage of its movement through the discipline process. The new report is now a very useable tool for effective case management.

The result of all these efforts by the Bar Association to solve its backlog problem is demonstrable. At the beginning of 1982 there were sixty-seven (67) cases pending and carried forward from 1981. During 1982 new Requests for Investigation (i.e., complaints) totalled 121, for a total caseload of 188 cases in 1982. Of those cases, 61 were dismissed, 7 were closed after the administration of a private informal admonition (PIA) by discipline counsel, and 8 petitions for formal hearing were filed.

At the beginning of 1983 there were 120 cases pending and carried forward. There were 148 complaints filed during 1983, for a total load of 268 cases for 1983. Of those cases, 72 were dismissed; 6 were closed after administration of a PIA; 3 were closed after this Court publicly censured the attorneys involved; and 2 cases were closed after this Court suspended the attorneys involved from the practice of law for varying lengths of time. In addition, 4 petitions for formal hearing were filed.

At the beginning of 1984, there were 185 cases pending and carried forward. As of December 31, 1984, 206 complaints were filed during 1984, for a total caseload of 391. Of those cases, 170 were dismissed; 18 were closed after administration of a

PIA; 1 was closed after the attorney was reprimanded by the Disciplinary Board; 3 were closed after this Court suspended the attorneys involved; and 9 cases involving a single attorney were closed after the attorney was disbarred. At the end of 1984, there were 170 open cases. During 1984, 19 cases were moved to formal hearing. A copy of the Bar's fourth quarter 1984 report is enclosed for your review.

As you can see, even though the number of grievances filed has substantially increased each year, in 1984 the Bar finally turned the corner on its backlog. In 1984 incoming cases were handled as expeditiously as possible, and discipline staff attempted, where possible, to see that complaints that had no merit were dismissed promptly, so that such cases were not simply put at the bottom of the stack, to be held for a number of months and then closed. At the same time, the staff worked hard to process its oldest cases.

At the beginning of 1984, 78 complaints which had been filed prior to 1983 were still pending before the Bar Association [10 of those cases were pre-1981, the rest (59) were 1982 cases], and the other 116 open cases were complaints filed during 1983. At the beginning of 1984, 39% of the cases under investigation were more than one year old. That figure was reduced by the end of 1984 to 18%. At the end of 1984, only 7 cases filed prior to 1983 were still under investigation. The Bar's reduction in that serious backlog of pre-1983 cases, not to mention its actions in processing so many of the 1983 and 1984 cases, speaks well of its desire to conquer its backlog.

As a further note, the Bar, which employed a part-time investigator throughout most of 1984, has made that position full-time beginning January 1 of this year. This third attorney position will handle both in-take and investigations.

The Board, as you point out in your audit findings, is well aware of the backlog and has clearly made real and substantial progress towards solving that problem. By mid-March of this year, the Board has directed staff to have again reviewed each case and to have dismissed every case that should be dismissed so that the Association can focus its efforts on investigating those complaints filed that the Bar believes contain allegations that an attorney acted unethically.

As the record reflects, in 1984 more hearings were held before the Disciplinary Board and area discipline hearing committees than in any previous year. Currently, this Court has 8 matters under consideration. In the last three years the Alaska Bar Association, with the agreement of this Court, has publicly censured, suspended or disbarred a total of 9

attorneys; issued 31 admonitions; and reprimanded 4 attorneys. Through advertisements in this State's major newspapers, Alaska's citizenry has been apprised of the Bar's disciplinary actions. It does without saying that the Bar's membership is certainly aware of the Board's and this Court's increased attention in the area of discipline. All of this attention focused by the Bar Association on disciplinary enforcement is to the good and done in the public interest.

The public's interest has been further served by the Board of Governor's request for, and this Court's recent approval of, totally revised discipline rules. Of prime importance is the opening up of the discipline process to the public. Until recently the process was entirely confidential unless this Court was asked to take action upon a recommendation for public discipline by the Board. Under the new rules, which took effect January 1 of this year, the entire procedure becomes public once a petition for formal hearing is filed. The hearings before the area discipline committees and the Disciplinary Board itself, which used to be held in closed session, are now open to the public, so that the public -- if it so chooses -- may observe the process at first hand.

The decision by the Board and this Court to implement open hearings goes to the heart of the Association's goal to improve the discipline process. The Bar takes very seriously its responsibility to protect the public from the unethical acts of its members, and it sincerely believes its hard work to this end deserves public scrutiny. If it believed it had any skeletons in the closet, I sincerely doubt the Bar Association would have come forward with a request that this Court approve open discipline hearings.

In addition, the new rules provide for an appeal process for complainants. Previously, the rules did not provide for recourse, should a complainant disagree with a decision by discipline counsel to dismiss his or her complaint. The new rules provide for a review of counsel's decision, should a complainant so request.

What I think the above demonstrates is an evolving, highly competent discipline system that has resulted from over two years of study and constant vigilance by the Association. The Board of Governors, during its upcoming March, 1985 meeting, based on the result of the discipline staff's work to dispose of all cases not involving unethical conduct, will then evaluate the remaining caseload. If, after staff's concentrated work, it appears that a serious backlog problem remains, then the Board will at that time evaluate staffing needs. With this Court's willing support, additional staff will be hired, if necessary, to bring an end to the problem.

Clearly, this Court and the Bar do not take exception to your audit finding as concerns the discipline case backlog. We are aware of the problem. The above lengthy response is provided only to place in context the evolution of the problem and the Alaska Bar Association's obvious actions to successfully manage its caseload.

Recommendations No. 2 and No. 3 will be implemented immediately. As you are aware, meetings of the Board of Governors are open to the public and are often attended. The recent controversy over the nomination of Stephen Cooper of Fairbanks to a U. S. District Court judgeship in Alaska, for instance, saw many members of the public, Bar, and press present during a Board meeting, so it is clearly not the intent of the Association to preclude attendance at its meetings. Rather, the Executive Director simply failed to fully comply with this statutory requirement. The Board obviously has no difficulty in advertising its meetings in advance. The Board's schedule of meetings is generally published in the Alaska Bar Rag, and notices of the Board's regularly scheduled meetings will from here on in be published in the State's major newspapers.

I wish to reassure you, however, that the Board of Governors has not acted in a vacuum over the past several years. Since 1981, through lengthy newsletters and in the Alaska Bar Rag, the staff of the Association has kept the membership well apprised of the activities, decisions, and policies of the Board. In addition, whenever a bar rule or bylaw change was being considered, in accordance with Bar Rule 62, the Board published the proposed rule or bylaw amendment for comment by the Association's membership. And, for instance, when the Board sought guidance from the membership on the specific issues of reciprocity and mandatory malpractice insurance, a special letter from the Bar's President was sent to every member. Further, the membership meets annually during the Alaska Bar Convention. During that business meeting reports are presented, the Bar's financial position discussed, and votes taken on resolutions placed in front of the membership for its action.

Notice of proposed rule changes, the annual business meeting agenda, and all items of general interest concerning Board activities have been published well in advance for the sole purpose of hearing the membership's viewpoint on relevant issues. I know the Board believes it has basically complied with the spirit and intent of the publication requirement.

The recommendation that the bylaws of the Association be amended to reflect a seven member quorum is also not a problem. The Board of Governors currently considers seven members to be its necessary quorum. Indeed, the recently revised discipline

rules which this Court just approved make it clear that a quorum of the Board is a "majority of the appointed and elected members of the Board." The old rules had set five as the quorum.

The Bar's bylaws have been in need of serious review and revision for some time now, and it is my understanding that this project has been assigned to the Bar's "Statute, Bylaws and Rules" Committee. One of the many recommendations by the Board for revision of the Bar's bylaws includes the matter of the quorum. In the meantime, please be assured that the Board is aware that it cannot meet and conduct business with less than a quorum of seven members.

Recommendation No. 3 parallels a request made of the Legislature by the Bar Association during the last session of the Alaska Legislature. In filing its 1982 and 1983 Annual Report in the spring of 1984, the Bar requested the support of the Legislature for statutory authority to require the fingerprinting of Bar applicants. The matter was not taken up by the Legislature during its last session, and it is my understanding that the Bar Association does in fact intend to again ask for such legislation from the upcoming Fourteenth Legislature. The Bar obviously supports this recommendation, and hopes this audit finding by the Division of Legislative Audit will assist the Bar in finding legislative support for such an amendment to the Integrated Bar Act.

In closing, on behalf of the Alaska Supreme Court and the Board of Governors of the Alaska Bar Association, let me take this opportunity to express my appreciation for the manner in which your Division conducted the performance audit. Randall Burns, the Bar's former Executive Director, has reported to both myself and the members of the Board that he believed the audit went well and that Randy Welker, the Anchorage office Audit Manager and the individual who actually conducted the performance audit, asked the kinds of questions about the same areas that he would have asked had the roles been reversed! I hope your Division has found the Bar's staff cooperative and that you were provided ready access to all that you requested.

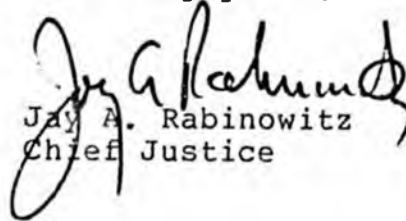
Gerald L. Wilkerson

- 8 -

January 28, 1985

Should you have any questions concerning this response, please do not hesitate to contact me or the Bar Association directly.

Sincerely yours,


Jay A. Rabinowitz
Chief Justice

cc: Harold M. Brown
President
Alaska Bar Association

Deborah O'Regan
Acting Executive Director
Alaska Bar Association

Randy Welker
Anchorage Audit Manager
Division of Legislative Audit

JAR/th

Alaska State Legislature



House of Representatives House Judiciary Committee

Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-4990

MEMORANDUM

To: Rep. Ben Grussendorf
Speaker of the House

From: M.M. Miller, Chairman
House Judiciary Committee


Re: Board of Governors of the Alaska Bar Association

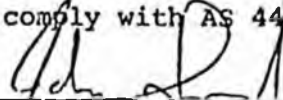
Date: March 8, 1985

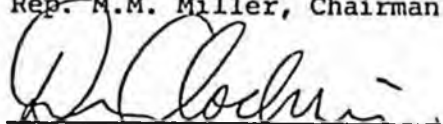
Pursuant to your referral under AS 44.66.050 and AS 08.03.010, the House Judiciary Committee has had under consideration for "sunset review" the Board of Governors of the Alaska Bar Association.

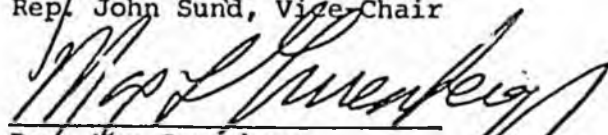
As required by statute, a public hearing was held on the review of this board. The committee considered the findings and recommendations of the Legislative Audit Division and examined the proposed budget for the board.

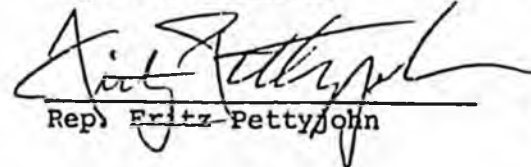
After careful analysis the committee, on February 6, 1985, approved CSSB 2(Jud) which extends the Board of Governors of the Alaska Bar Association for another four years. This report was not submitted with the bill at that time, but is being submitted now in order to comply with AS 44.66.050(d).

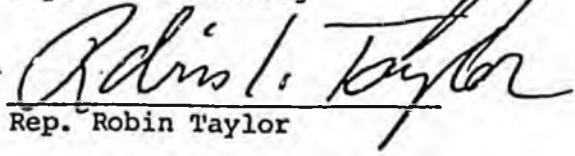

Rep. M.M. Miller, Chairman

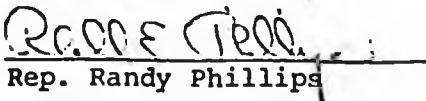

Rep. John Sund, Vice Chair


Rep. Don Clocksin


Rep. Max Gruenberg


Rep. Fritz Pettyjohn


Rep. Robin Taylor


Rep. Randy Phillips

OBERMEYER & ASSOCIATES

3000 Dartmouth Drive
Anchorage, Alaska 99508
(907) 278-9455

*Letty Denny was a
judicial clerk
see 2/25/85
was a
judicial clerk
see 2/25/85*

Thomas S. Obermeyer
J.D., M.B.A.

March 26, 1985

Honorable Richard Shultz
Pouch V
Juneau, Alaska 99811

RE:Legislative Performance Audit of the Alaska Bar Exam

Dear Mr. Shultz:

The Alaska Bar Association, which is created by Alaska State statute, has denied me entry into the legal profession on wholly arbitrary standards which offend the dictates of reason. Not only does this violate the due process and equal protection clauses of the United States and Alaska Constitutions, but it violates the public trust and legislative mandate of the people. The Alaska Legislature is the only forum without vested interests to investigate and resolve this judicial derogation of duty.

A performance audit would determine if:

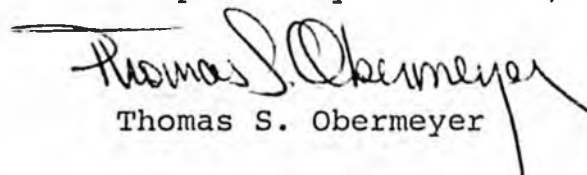
1. The Alaska Bar Examination is a test of exclusion rather than competency. The passage rate of Alaska applicants to the Bar Association is consistently below the national average of states which have an "integrated bar," which means all applicants for admission have to graduate from an American Bar Association accredited law school in order to sit for the exam.
2. Most practicing attorneys could not pass this examination which is the litmus test of any profession or trade. Many Alaska attorneys have not taken an exam of this difficulty, nor have some even graduated from law school. What has developed is an arbitrary standard which requires more of an applicant than is required of practicing attorneys. This exam is not only discriminatory between resident attorneys and applicants, but the exam has allowed preferential treatment for out of state attorney applicants.

Page 2
March 26, 1985

3. A court rule or statute is required to allow review of the Multistate Bar Exam (MBE) by the failing applicants.
4. The scoring of the exam is arbitrary and unreasonable. There are no marks on the returned essay papers and the 1-5 grading scale is used in no other state. The complicated mathematical formula for weighting essay and objective portions of the exam is unverifiable. The objective MBE is not returned at all, nor are the results sent directly to the applicants' homes. The statewide three day exam is controlled and graded exclusively by Anchorage attorneys. These attorneys have no qualifications to grade the essay portion of the Bar Exam.

In conclusion, I hope that you will investigate the above areas of concern as soon as possible. Please contact me at the address or phone on the letterhead if you would like further explanation or clarification of any point.

Respectfully submitted,


Thomas S. Obermeyer

Obermeyer asks examination of procedures for bar exam

by Christopher Jarvis
Times Writer

A management consultant who has failed the Alaska State Bar examination twice and is awaiting the results of his third attempt has asked the Alaska Bar Association Board of Governors to examine how the test is administered and graded.

Appearing before the Alaska Bar Association Board of Governors last week, Thomas Obermeyer said he believes the bar examination is open to abuse.

"It's a test of exclusion, not competence," Obermeyer told the board.

Bar association President Harold Wilson defended the test and said it appears Obermeyer is just one of several who complain about the test after failing.

Obermeyer, however, is more vocal than others, Brown said, but "there is little substance to his complaints."

"You just can't imagine the the imagination of some of the complaints we deal with," Brown said.

A law school graduate must pass the bar examination to be allowed by the Alaska Supreme Court to practice law.

Obermeyer claims no assurance exists that the computerized multiple-choice section of the bar examination is scored properly, but bar association disciplinary counsel Stephen Van Goor said applicants may ask for hand scoring if they have any doubts.

Because the results of the standardized test are put into a local computer and combined with other sections of the test, the results could be in error, Obermeyer believes. Because the completed exam is not returned to him, he says he can't check to make sure the results are correct.

The results of the standardized section of the examination, Van Goor said, often relate closely to an applicant's performance in the law school entrance examination and the law school grade point average.

Obermeyer also claims that because Alaska has no law school with expertise of law professors, those who grade the essay portion of the test might not be as qualified as they should be.

Van Goor, however, said members of the 31-person committee that drafts and grades examination papers were selected because of their demonstrated expertise in the particular field of law they test on.

"It's not a 'hey, you' kind of process," to select committee members, Van Goor said.

About four failed applicants appeal the results of each examination, Van Goor said, but "you have to compare that to the numbers of people taking the exam."

Obermeyer's arguments "have been made before," Van

Goor said.

"Our appeal rate is certainly not out of the ordinary," Van Goor said.

Obermeyer has spent more than \$2,000 preparing and studying for the examinations, he said. Applicants pay \$500 each time they take the test.

The essay portion of the exam also worries Obermeyer, who claims that because no markings are made on the test papers, there's "no proof that the paper was ever read."

Van Goor, however, said each essay answer is read by two graders who compare the answer with one of five form answers that range from poor to good on a one to five scale.

"They are tested by people who know what they are talking about," Van Goor said.



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

S B

4

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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	4/25/85	1:30 pm
"	5/9/85	1:00 pm

COMMITTEE REPORT
HOUSE

(7)

FURTHER: FINANCE

4/12/85

Date: 4/12/85

The Committee on JUDICIARY has had CSSB 4 (Fin) am

"An Act relating to confinement of offenders and to restitution centers."

under consideration and recommends:

- do pass do not pass
- do pass with attached amendments(s)
- replace with HCS for SB 4 (JUD) same title
 new title
- and recommends _____
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation Zero Fiscal Note Attached
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

MEMBERS HAVING
OTHER RECOMMENDATIONS:

[Signature]

CHAIRMAN

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: April 16, 1985

REQUEST:

Bill/: HCS CS SB 4 (HESS)
 Title: "An Act relating to confinement of
 and to restitution centers."
 Sponsor: Senator Kelly
 Requestor: (H) Judiciary
 Date of Request: April 16, 1985

FISCAL DETAIL:

Agency Affected: DEPARTMENT OF CORRECTIONS
 Program Category Affected: _____
 Administration of Justice _____
 BRU, Program or Subprogram(s) Affected: Statewide Programs

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL		1074.7	1128.4	1184.8	1244.0	1306.2
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	1074.7	1128.4	1184.8	1244.0	1306.2

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE	-0-	117.0	122.9	129.0	135.5	142.3
----------------	-----	-------	-------	-------	-------	-------

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	1074.7	1128.4	1184.8	1244.0	1306.2
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	1074.7	1128.4	1184.8	1244.0	1306.2

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary.

See attached.

Prepared By: William W. Ladwig *William W. Ladwig*
 Division: Deputy Commissioner - Administration

Phone: 465-3376
 Date: April 16, 1985

Approved by Commissioner: *[Signature]*
 Agency: DEPARTMENT OF CORRECTIONS

Date: April 16, 1985

Distribution (by Agency preparing fiscal note):

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

ANALYSIS

Assumptions:

Department of Corrections will develop a pilot Correctional Restitution Center by changing the mission of the Ridgeview Correctional Center. Ridgeview will be converted from a 60 person holding facility to a 100 person Correctional Restitution Center.

The Department of Corrections will continue to lease the Ridgeview facility and will contract for operation of the Correctional Restitution Center. This contract will include all administrative, security, program, culinary, clerical, and maintenance operations.

It can be assumed that approximately 50% of the 100 inmates will be employed immediately while the remaining inmates are developing resumes' and other work search skills. The Department would retain 25% of a prisoner's income to off-set the cost of care. Most of those employed will earn close to the minimum wage, although some may be expected to earn slightly more.

Therefore, we calculate 50 inmates working full-time (40 hours per week) at \$4.50 per hour (the minimum wage of \$4.35 per hour plus a \$.15 adjustment for the few that could earn more) would mean a total cost of care reimbursement to the state of \$117,000.00.

50 inmates X 40 hours X 52 weeks = 104,000
104,000 hours X \$4.50 per hour = \$468,000.00
\$468,000.00 X .25 = \$117,000.00

A cost of living increase of 5% per year was assume to increase revenues in subsequent years.

Program Summary

The Department of Corrections estimates that a contract to operate this Correctional Restitution Center would cost \$1,074,701. These costs were calculated using FY 85 costs for similar services and adding a 5% inflation factor to estimate FY 86 costs. A break down of these costs follows:

Personal Services

1 - Director	= \$ 29.5
1 - Assistant Director	= 24.2
12 - Security Staff @ \$17,825	= 213.9
5 - Counselors @ \$20,700	= 103.5
2 - Job Development Specialists @ \$23,00	= 46.0
1 - Education Coordinator	= 23.0
4 - Security Supervisors @ \$23,460	= 93.8
2 - Cooks @ \$19,550	= 39.1
2 - Clerk Typists @ \$12,000	= 24.0
1 - Maintenance/Janitorial	= <u>19.6</u>
TOTAL	\$616.6

Care

Food (\$7.50 per day X 100 = \$750.00 X 365)	=	\$273.8
Supplies	=	22.0
Lab Expenses	=	12.0
Miscellaneous Resident Needs	=	<u>3.0</u>
TOTAL		\$310.8

Maintenance and Operation

Utilities	=	\$ 31.2
Telephone	=	9.0
Insurance (liability, auto, bonding)	=	12.0
Equipment/Maintenance (vehicles)	=	16.5
Travel (local)	=	27.4
(250 miles/day X .30 miles = \$75.00 X 365)		<u>27.4</u>
TOTAL	=	\$ 96.1

Total Costs (FY 85)	=	\$1,023.5
+ 5% Inflation	=	<u>51.2</u>

TOTAL CONTRACTUAL COSTS (FY86)		\$1,074.7
--------------------------------	--	-----------

Cost Comparison

Institution \$85 X 365 X 100	=	\$3,102.5
Correctional Restitution Center	=	<u>1,074.0</u>
Savings for Confinement		\$2,028.5
Revenues		<u>117.0</u>
TOTAL COST SAVINGS		\$2,145.5

HCS CS SB 4 (HESS)

Prisoner Profile Summary of the 180 prisoners who meet the criteria of offenses not involving violence or use of force.

Work History at time of arrest

165 (92%) Felony	119 (66%) Unemployed
<u>15 (8%) Misdemeanor</u>	38 (21%) Employed by business or agency
	<u>23 (13%) Self-employed</u>
180 (100%)	180 (100%)

Employment Skills

58 (32%) General Labor
17 (9%) Mechanics
17 (9%) Fishermen
19 (11%) Carpenters
53 (30%) Misc. other skills
<u>16 (9%) No job skills</u>
180 (100%)

Place of Residence

59 (33%) Anchorage
29 (16%) Fairbanks
9 (5%) Juneau
<u>83 (46%) Other</u>
180 (100%)

Projected population profiles and growth rates indicated that the population of sentenced offenders who meet this criteria will remain constant at 15%. This will result in the following population being eligible for Correctional Restitution Center placement.

December '84 - 180
December '85 - 220
December '86 - 250
December '87 - 280
December '88 - 310
December '89 - 340

MEMORANDUM

TO: HOUSE HESS COMMITTEE MEMBERS
FROM: NANCY BENNETT, COMMITTEE STAFF
DATE: APRIL 11, 1985
RE: HOUSE CS FOR CSSB 4 - RESTITUTION CENTERS

THE FOLLOWING CHANGES WERE MADE IN THE COMMITTEE SUBSTITUTE

1. Sections 1 and 2, relating to unlawful evasion, were added to the bill. These sections were taken from HB 188.
2. Page 2, line 22: "section" was changed to "subsection", to specify that competitive bidding procedures shall apply to agreements with the private sector for confinement of prisoners and not to public agencies owned by the state or federal government.
3. Page 3, lines 15-17: These two subsections from HB 188 were added to the bill to specify that the commissioner shall adopt regulations to set standards for classifying prisoners and for mandatory employment and community work services.
4. Page 5, lines 1 and 2 specify that child support payments for dependent children will be given a priority over all wage garnishments according to AS 09.65.132.
5. Page 5, line 12: a new subsection (5) was added to specify that a prisoner may be absent from a center for a furlough approved by the commissioner.
6. Page 5, line 13 adds "or furlough" to subsection (b) to be consistent with the change on line 12.
7. Page 5, lines 18-22: adds a definition for "community service" from HB 188.

SECTIONAL ANALYSIS OF CSSB 4 (Finance) am
PREPARED BY SENATOR TIM KELLY

Section 1

Amends AS 12.55.015, relating to authorized sentences that may be imposed by a sentencing court, to permit the court to recommend that individuals ordered to serve a term of imprisonment serve all or part of the sentence in a correctional restitution center. While a sentencing court may recommend that an individual serve a sentence in a restitution center, the final authority for placing an individual in a center rests with the Commissioner of Corrections under AS 33.30.100.

Section 2

Amends AS 12.55.086 (a), relating to imprisonment as a condition of suspended imposition of sentence, to permit a sentencing court to recommend that individuals ordered to serve a term of imprisonment as a condition of suspending imposition of sentence serve all or part of the time at a correctional restitution center. As is the case in section 1, while a sentencing court may recommend that the offender serve the time in a restitution center, the final authority for placing an individual in a center rests with the Commissioner of Corrections. See AS 33.30.100.

Section 3

Repeals and reenacts AS 33.30.060, relating to the authority of the Commissioner of Corrections to contract for the confinement and care of prisoners, to permit the Commissioner to contract with privately operated facilities for confinement of individuals on work and rehabilitation furloughs (AS 33.30.250-260), in restitution centers (AS 33.30.282-288), or for individuals convicted of misdemeanors. Under current law, the Commissioner already has the authority to contract with the Federal government and other state and local governments for the care and confinement of prisoners. This section would permit contracts with private facilities within Alaska and would require that such contracts be subject to competitive bidding.

Section 4

Amends AS 33.30, relating to prison facilities and prisoners, by adding a new article establishing correctional restitution centers, eligibility of individuals for placement in restitution centers, community advisory committees, provides for contracts for operation of centers, distribution of the earnings of prisoners and rules for confinement of individuals to centers.

The proposed AS 33.30.282 requires the Commissioner of Corrections to establish correctional restitution centers and establishes the purposes of the centers. This section requires the Commissioner to adopt regulations for the operation of restitution centers and specifically requires that regulations be adopted governing: (1) security and safety; (2) discipline; (3) emergency absences; and (4) review of prisoner performance.

The proposed AS 33.30.283 establishes eligibility criteria for the placement of offenders in a correctional restitution center. Under AS 33.30.100, the Commissioner of Corrections has the authority to designate the facility where the sentence of the offender is to be carried out. Only individuals meeting the requirements of this section may be placed in a correctional restitution center by the Commissioner. To be eligible to be placed in a center an individual must: (1) be employable or eligible to work on community service projects or agree to seek employment or participation in a community service project; (2) may not have been convicted of any crime involving violence or the use of force; and (3) may not have been convicted of any sexual offense under the Alaska criminal code, including sexual assault, sexual abuse of a minor, incest or indecent exposure. In this section, violence or the use of force includes possession of a firearm, whether or not the firearm was actually used in the commission of the offense.

The proposed AS 33.30.284 requires the Commissioner of Corrections to establish community advisory committees for each correctional restitution center. The committee may consider complaints against prisoners confined to the center and make recommendations to the Commissioner regarding the operation of the center.

The proposed AS 33.30.286 requires that the earnings of an offender confined to a restitution center shall be paid to the Commissioner of Corrections for placement in an account to be paid over to the offender upon release following deductions for: (1) room and board expenses while at the center; (2) travel and incidental expenses; (3) support for the dependents of the offender and (4) payment of fines to the court or restitution to the victims of the crime.

The proposed AS 33.30.288 requires that an offender committed to a restitution center shall be confined to the center at all times except when: (1) at work or traveling to work; (2) while working on or traveling to a community serve project; (3) on emergency leave; or (4) at or traveling to a job interview. A period of absence from a restitution center shall not exceed 12 hours in any 24 hour period.

Section 5

Amends AS 33.30.900, relating to definitions under Chapter 30, prison facilities and prisoners, by adding a new paragraph to define "center" as a correctional restitution center.

Original sponsors: Kelly, Sturgulewski,
Faiks, et al

1
2 IN THE SENATE

BY THE HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

3 HOUSE CS FOR CS FOR SENATE BILL NO. 4 (HESS)

4 IN THE LEGISLATURE OF THE STATE OF ALASKA

5 FOURTEENTH LEGISLATURE - FIRST SESSION

6 A BILL

7 For an Act entitled: "An Act relating to confinement of offenders and to
8 restitution centers."

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

10 * Section 1. AS 11.56.340(a) is amended to read:

11 (a) A person commits the crime of unlawful evasion in the first
12 degree if the person fails to return to official detention on a charge
13 of a felony following temporary leave granted for a specific purpose
14 or limited period, including privileges granted under AS 33.30.150,
15 33.30.250, [OR] 33.30.260, or 33.30.288.

16 * Sec. 2. AS 11.56.350(a) is amended to read:

17 (a) A person commits the crime of unlawful evasion in the second
18 degree if the person fails to return to official detention on a charge
19 of a misdemeanor following temporary leave granted for a specific
20 purpose or limited period, including privileges granted under AS 33.-
21 30.150, 33.30.250, [OR] 33.30.260, or 33.30.288.

22 * Sec. 3. AS 12.55.015 is amended by adding a new subsection to read:

23 (e) If the defendant is ordered to serve a definite term of
24 imprisonment, the court may recommend that the defendant serve all or
25 part of the term in a correctional restitution center.

26 * Sec. 4. AS 12.55.086(a) is amended to read:

27 (a) When the imposition of sentence is suspended under AS 12.-
28 55.085, the court may require, as a special condition of probation,
29 that the defendant serve a definite term of continuous or periodic im-
prisonment, not to exceed the maximum term of imprisonment that could

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2 have been imposed. The court may recommend that the defendant serve
3 all or part of the term in a correctional restitution center.

4 * Sec. 5. AS 33.30.060 is repealed and reenacted to read:

5 Sec. 33.30.060. COMMISSIONER MAY CONTRACT FOR CONFINEMENT AND
6 CARE OF PRISONERS. (a) The commissioner shall determine the avail-
7 ability of state prison facilities suitable for the detention and
8 confinement of persons held under authority of state law. If the
9 commissioner determines that suitable state prison facilities are not
10 available, the commissioner may enter into an agreement with a public
11 agency to provide necessary facilities. Correctional facilities
12 provided through agreement may be in this state or another state. The
13 commissioner may not enter into an agreement with an agency unable to
14 provide a degree of custody, care, and discipline similar to that
15 required by the laws of the state.

16 (b) The commissioner may enter into an agreement with a private-
17 ly operated correctional facility, but only if the facility is located
18 in the state and if the purpose of the agreement is to involve prison-
19 ers in a program established under AS 33.30.250 - 33.30.260, to pro-
20 vide necessary facilities under AS 33.30.282 - 33.30.288, or to con-
21 fine prisoners convicted of a misdemeanor. Notwithstanding AS 37.05.-
22 230(1)(B), an agreement awarded under this subsection shall be based
23 on competitive bids.

24 (c) Earnings of a prisoner who is employed while confined in a
25 privately operated correctional facility under (b) of this section are
26 subject to AS 33.30.286.

27 * Sec. 6. AS 33.30 is amended by adding new sections to read:

28 ARTICLE 3A. CORRECTIONAL RESTITUTION CENTERS.

29 Sec. 33.30.282. CORRECTIONAL RESTITUTION CENTERS. (a) The
commissioner shall establish correctional restitution centers in the

1
2 state. The purpose of the centers is to provide certain nonviolent
3 offenders with rehabilitation through community service and employment
4 while protecting the community through partial incarceration of the
5 offender, and to create a means to provide restitution to victims of
6 crimes.

7 (b) The commissioner shall adopt regulations setting standards
8 for the operation of the centers including

9 (1) requirements that the centers be secure and in compli-
10 ance with state and local safety laws;

11 (2) standards for disciplinary rules to be imposed on
12 prisoners confined to the centers;

13 (3) standards for the granting of emergency absence to
14 prisoners confined to the centers;

15 (4) standards for classifying prisoners to centers;

16 (5) standards for mandatory employment and participation in
17 community service programs in each center; and

18 (6) standards for periodic review of the performance of
19 prisoners confined to the centers.

20 Sec. 33.30.283. ELIGIBILITY TO SERVE TIME IN A CORRECTIONAL
21 RESTITUTION CENTER. (a) The commissioner may not allow a prisoner to
22 serve time in a correctional restitution center unless the commis-
23 sioner specifically finds that the prisoner meets the eligibility
24 requirements imposed by this section.

25 (b) To be eligible to serve time in a correctional restitution
26 center, the prisoner

27 (1) must be employable or eligible to work on community
28 service projects approved by the commissioner and agree to secure
29 employment or participate in community service projects and obey the
rules of the center;

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2 (2) may not have been convicted of an offense, in this
3 state or another jurisdiction, involving violence or the use of force,
4 as defined in AS 11.81.900; in this section, violence or the use of
5 force includes possession of a firearm, as defined in AS 11.81.900, in
6 the commission of an offense, whether or not the firearm was actually
7 used; and

8 (3) may not have been convicted of an offense under AS 11.-
9 41.410 - 11.41.470 or an offense in the state or another jurisdiction
10 having elements substantially identical to an offense under AS 11.41.-
11 410 - 11.41.470.

12 Sec. 33.30.284. COMMUNITY ADVISORY COMMITTEES. The commissioner
13 shall appoint a community advisory committee for each center, to
14 consist of five members of the community in which the center is locat-
15 ed. The committee shall consider complaints made against prisoners
16 confined to a center and shall make recommendations to the commis-
17 sioner.

18 Sec. 33.30.286. DISTRIBUTION OF PRISONER'S EARNINGS. The em-
19 ployer of a prisoner confined to a center shall pay the prisoner's
20 earnings to the commissioner. The commissioner shall deposit the
21 earnings in a fund to be paid to the prisoner upon release from con-
22 finement after making and distributing deductions for

23 (1) an amount determined by the commissioner for the cost
24 of the housing, food, and clothing provided to the prisoner; the
25 deduction under this paragraph shall be the same percentage of each
26 prisoner's earnings, but may not exceed the actual cost of services
27 provided;

28 (2) necessary travel expenses to and from work and other
29 incidental expenses of the prisoner;

(3) an amount determined by the commissioner to be

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2 necessary for the support of the prisoner's dependents and for child
3 support payments as required under AS 09.65.132; and

4 (4) a fine or restitution ordered by the court.

5 Sec. 33.30.288. CONFINEMENT TO THE CENTER. (a) A prisoner
6 shall be confined to the center at all times except while

7 (1) at work and traveling to and from work;

8 (2) at and traveling to and from a community service pro-
9 ject approved by the commissioner;

10 (3) on emergency absence;

11 (4) at and traveling to and from a job interview; or

12 (5) on a furlough approved by the commissioner.

13 (b) Except for an emergency absence or furlough, a prisoner may
14 not be absent from a center under this section for more than 12 hours
15 in a 24-hour period.

16 * Sec. 7. AS 33.30.900 is amended by adding new paragraphs to read:

17 (10) "center" means a correctional restitution center;

18 (11) "community service" means work on projects designed to
19 reduce or eliminate environmental damage, protect the public health,
20 or improve public services, land, forests, parks, roads, highways,
21 facilities, or education; community service may not confer a private
22 benefit on a person except as may be incidental to the public benefit.

Edwards
4/26/85 ✓

Original sponsors: Kelly, Sturgulewski,
Faiks, et al

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IN THE SENATE

BY THE JUDICIARY COMMITTEE

HOUSE CS FOR CS FOR SENATE BILL NO. 4 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to confinement of offenders and to
restitution centers."

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

* Section 1. AS 11.56.340(a) is amended to read:

(a) A person commits the crime of unlawful evasion in the first degree if the person fails to return to official detention on a charge of a felony following temporary leave granted for a specific purpose or limited period, including privileges granted under AS 33.30.150, 33.30.250, [OR] 33.30.260, or 33.30.288.

* Sec. 2. AS 11.56.350(a) is amended to read:

(a) A person commits the crime of unlawful evasion in the second degree if the person fails to return to official detention on a charge of a misdemeanor following temporary leave granted for a specific purpose or limited period, including privileges granted under AS 33.-30.150, 33.30.250, [OR] 33.30.260, or 33.30.288.

* Sec. 3. AS 12.55.015 is amended by adding a new subsection to read:

(e) If the defendant is ordered to serve a definite term of imprisonment, the court may recommend that the defendant serve all or part of the term in a correctional restitution center.

* Sec. 4. AS 12.55.086(a) is amended to read:

(a) When the imposition of sentence is suspended under AS 12.-55.085, the court may require, as a special condition of probation, that the defendant serve a definite term of continuous or periodic imprisonment, not to exceed the maximum term of imprisonment that could

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2 have been imposed. The court may recommend that the defendant serve
3 all or part of the term in a correctional restitution center.

4 * Sec. 5. AS 33.30.060 is repealed and reenacted to read:

5 Sec. 33.30.060. COMMISSIONER MAY CONTRACT FOR CONFINEMENT AND
6 CARE OF PRISONERS. The commissioner shall determine the availability
7 of state prison facilities suitable for the detention and confinement
8 of persons held under authority of state law. If the commissioner
9 determines that suitable state prison facilities are not available,
10 the commissioner may enter into an agreement with a public agency to
11 provide necessary facilities. Correctional facilities provided
12 through agreement may be in this state or another state. The
13 commissioner may not enter into an agreement with an agency unable to
14 provide a degree of custody, care, and discipline similar to that
15 required by the laws of the state.

16 * Sec. 6. AS 33.30 is amended by adding a new section to read:

17 Sec. 33.30.062. CONTRACTS WITH PRIVATELY OPERATED FACILITIES.

18 (a) The commissioner may enter into an agreement with a privately
19 operated correctional facility, but only if the facility is located in
20 the state and if the purpose of the agreement is to involve prisoners
21 in a work or rehabilitation furlough program established under this
22 chapter, to provide necessary facilities under AS 33.30.282 -
23 33.30.288, or to confine prisoners convicted of a misdemeanor.
24 Notwithstanding AS 37.05.230(1)(B), an agreement awarded under this
25 subsection shall be based on competitive bids.

26 (b) Earnings of a prisoner who is employed while confined in a
27 privately operated correctional facility under (a) of this section are
28 subject to AS 33.30.286.

29 * Sec. 7. AS 33.30 is amended by adding new sections to read:

ARTICLE 3A. CORRECTIONAL RESTITUTION CENTERS.

1
2 Sec. 33.30.282. CORRECTIONAL RESTITUTION CENTERS. (a) The
3 commissioner shall establish correctional restitution centers in the
4 state. The purpose of the centers is to provide certain nonviolent
5 offenders with rehabilitation through community service and employment
6 while protecting the community through partial incarceration of the
7 offender, and to create a means to provide restitution to victims of
8 crimes.

9 (b) The commissioner shall adopt regulations setting standards
10 for the operation of the centers including

11 (1) requirements that the centers be secure and in compli-
12 ance with state and local safety laws;

13 (2) standards for disciplinary rules to be imposed on
14 prisoners confined to the centers;

15 (3) standards for the granting of emergency absence to
16 prisoners confined to the centers;

17 (4) standards for classifying prisoners to centers;

18 (5) standards for mandatory employment and participation in
19 community service programs in each center; and

20 (6) standards for periodic review of the performance of
21 prisoners confined to the centers.

22 Sec. 33.30.283. ELIGIBILITY TO SERVE TIME IN A CORRECTIONAL
23 RESTITUTION CENTER. (a) The commissioner may not allow a prisoner to
24 serve time in a correctional restitution center unless the commis-
25 sioner specifically finds that the prisoner meets the eligibility
26 requirements imposed by this section.

27 (b) To be eligible to serve time in a correctional restitution
28 center, the prisoner

29 (1) must be employable or eligible to work on community
service projects approved by the commissioner and agree to secure

1
2 employment or participate in community service projects and obey the
3 rules of the center;

4 (2) may not have been convicted of an offense, in this
5 state or another jurisdiction, involving violence or the use of force,
6 as defined in AS 11.81.900; in this section, violence or the use of
7 force includes possession of a firearm, as defined in AS 11.81.900, in
8 the commission of an offense, whether or not the firearm was actually
9 used; and

10 (3) may not have been convicted of an offense under AS 11.-
11 41.410 - 11.41.470 or an offense in the state or another jurisdiction
12 having elements substantially identical to an offense under AS 11.41.-
13 410 - 11.41.470.

14 (c) Unless the commissioner determines otherwise for good cause
15 shown, a person sentenced to less than five days who is serving time
16 in a correctional restitution center is required to participate in a
17 community service project when available.

18 Sec. 33.30.284. COMMUNITY ADVISORY COMMITTEES. The commissioner
19 shall appoint a community advisory committee for each center, to
20 consist of five members of the community in which the center is locat-
21 ed. The committee shall act as a liaison between the community and
22 the department regarding community concerns with the center.

23 Sec. 33.30.286. DISTRIBUTION OF PRISONER'S EARNINGS. The earn-
24 ings of a prisoner confined to a center shall be paid to the commis-
25 sioner. The commissioner shall deposit the earnings in a fund to be
26 paid to the prisoner upon release from confinement after making and
27 distributing deductions for

28 (1) an amount determined by the commissioner for the cost
29 of the housing, food, and clothing provided to the prisoner; the
deduction under this paragraph shall be the same percentage of each

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2 prisoner's earnings, but may not exceed the actual cost of services
3 provided;

4 (2) necessary travel expenses to and from work and other
5 incidental expenses of the prisoner;

6 (3) an amount determined by the commissioner to be neces-
7 sary for the support of the prisoner's dependents and for child sup-
8 port payments as required under AS 09.65.132; and

9 (4) a fine or restitution ordered by the court.

10 Sec. 33.30.288. CONFINEMENT TO THE CENTER. (a) A prisoner
11 shall be confined to the center at all times except while

12 (1) at work and traveling to and from work;

13 (2) at and traveling to and from a community service pro-
14 ject approved by the commissioner;

15 (3) on emergency absence;

16 (4) at and traveling to and from a job interview; or

17 (5) on a furlough approved by the commissioner.

18 (b) Except for an emergency absence or furlough, a prisoner may
19 not be absent from a center under this section for more than 12 hours
20 in a 24-hour period.

21 * Sec. 8. AS 33.30 is amended by adding a new section to read:

22 Sec. 33.30.902. SUPPLEMENTAL DEFINITIONS. In this chapter,

23 (1) "center" means a correctional restitution center;

24 (2) "community service" means work on projects designed to
25 reduce or eliminate environmental damage, protect the public health,
26 or improve public services, lands, forests, parks, roads, highways,
27 facilities, or education; community service may not confer a private
28 benefit on a person except as may be incidental to the public benefit.