

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672

4514 HHS HB 53 - HB 55

8

LABOR REGULATIONS

49.17.190

is alleged to have occurred, or the department may utilize the procedures for collection of civil penalties as set forth in RCW 51.48.120 through 51.48.150.

Enacted by Laws 1973, ch. 80, § 18. Amended by Laws 1986, ch. 20, § 2.

Law Review Commentaries

Citations and penalties under Federal Occupational Safety and Health Act of 1970. 9 Gonzaga L.Rev. 571.

Constitutional challenges to suggested procedural deficiencies of Federal Occupational Safety and Health Act of 1970. 9 Gonzaga L.Rev. 361.

Defending employer against alleged violation of general duty clause of Federal Occupational Safety and Health Act of 1970. 9 Gonzaga L.Rev. 399.

Legal process for enforcement of Federal Occupational Safety and Health Act of 1970. 9 Gonzaga L.Rev. 349.

Sanctions against violation of Washington Industrial Safety and Health Act. 9 Gonzaga L.Rev. 457.

Library References

Labor Relations 10.

C.J.S. Labor Relations § 12.

Notes of Decisions

Where farm tractor driver, who had been assigned to drive tractor by employer, permitted plaintiff to ride on metal frame holding onto cross-bar while tractor was being driven from one area of hop field to another, where such conduct violated regulation pertaining to farm employees, and where driver's negligence in failing to determine whether plaintiff was off tractor before engaging mechanism was proximate cause of plaintiff's injury, tractor driver's employer was liable for plaintiff's injury. *Garcia v. Brulotte* (1980) 25 Wash.App. 818, 609 P.2d 976, reversed on other grounds 94 Wash.2d 794, 620 P.2d 99.

Under principle that in any conflict between statutory provisions which

treats subject in general way and another which treats subject in specific way, specific statute will prevail, notice and review procedures of State Industrial Safety and Health Act of 1973 (§ 49.17.010 et seq.) prevail, and there is no conflict, and no violation of due process, in labor and industries department's taking advantage of warrant procedures available to department as alternate means of collection. *Department of Labor and Industries v. City of Kennewick* (1982) 31 Wash.App. 777, 644 P.2d 1196, reversed on other grounds 99 Wash.2d 225, 661 P.2d 133.

Where there was only one action to determine issues, i.e., propriety of citations and assessments by department of labor and industries under State Industrial Safety and Health Act of 1973, § 49.17.010 et seq., department's warrant, which respondent characterized as new cause of action because it was given cause number as required by § 51.48.140, merely established department's right to payment and acted as lien, same as judgment in civil case duly docketed in office of county clerk, and assignment of cause number did not alone split department's cause of action, as against contention that statutory procedures in essence allowed department to split its cause of action. *Department of Labor and Industries v. City of Kennewick* (1982) 31 Wash.App. 777, 644 P.2d 1196, reversed on other grounds 99 Wash.2d 225, 661 P.2d 133.

It was not prejudicial error to refuse instruction on safety regulation where employee of subcontractor, who had been injured at construction site, failed to show general contractor's actual negligence. *Hyatt v. Sellen Const. Co., Inc.* (1985) 40 Wash.App. 893, 700 P.2d 1164.

49.17.190. Violations—Criminal penalties

(1) Any person who gives advance notice of any inspection to be conducted under the authority of this chapter, without the consent of the director or his authorized representative, shall, upon conviction be guilty of a gross misdemeanor and be punished by a fine of not more than one thousand dollars or by imprisonment for not more than six months, or by both.

(2) Whoever knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this chapter shall, upon conviction

out this chapter, or when relevant in any proceeding under this chapter. In any such proceeding the director, the board of industrial insurance appeals, or the court shall issue such orders as may be appropriate to protect the confidentiality of trade secrets.

Enacted by Laws 1973, ch. 80, § 20.

Cross References

Uniform trade secrets act, see ch. 19.108.

Library References

Witnesses §216.
C.J.S. Witnesses § 264.

49.17.210. Research, experiments and demonstrations for safety purposes—Variances

The director is authorized to conduct, either directly or by grant or contract, research, experiments, and demonstrations as may be of aid and assistance in the furtherance of the objects and purposes of this chapter. The director, in his discretion, is authorized to grant a variance from any rule or regulation or portion thereof, whenever he determines that such variance is necessary to permit an employer to participate in an experiment approved by the director, which experiment is designed to demonstrate or validate new and improved techniques to safeguard the health or safety of employees. Any such variance shall require that all due regard be given to the health and safety of all employees participating in any experiment.

Enacted by Laws 1973, ch. 80, § 21.

Library References

Labor Relations §10.
C.J.S. Labor Relations § 12.

49.17.220. Records—Reports—Notice to employee exposed to harmful materials

(1) Each employer shall make, keep, and preserve, and make available to the director such records regarding his activities relating to this chapter as the director may prescribe by regulation as necessary or appropriate for the enforcement of this chapter or for developing information regarding the causes and prevention of occupational accidents and illnesses. In order to carry out the provisions of this section such regulations may include provisions requiring employers to conduct periodic inspections. The director shall also issue regulations requiring that employers, through posting of notices or other appropriate means, keep their employees informed of their protections and obligations under this chapter, including the provisions of applicable safety and health standards.

(2) The director shall prescribe regulations requiring employers to maintain accurate records, and to make periodic reports of work-related deaths, and of injuries and illnesses other than minor injuries requiring only first aid treatment and which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job.

(3) The director shall issue regulations requiring employers to maintain accurate records of employee exposures to potentially toxic materials or harmful physical agents which are required to be monitored or measured. Such regulations shall provide employees or their representatives with an opportunity to observe such monitoring or measuring, and to have access to the records thereof. Such regulations shall also make appropriate provisions for each employee or former employee to have access to such records as will indicate his own exposure to toxic materials or harmful physical agents. Each employer shall promptly notify any employee who

has been or is being exposed to toxic materials or harmful physical agents in concentrations or at levels which exceed those prescribed by any applicable safety and health standard promulgated under this chapter and shall inform any employee who is being thus exposed of the corrective action being taken.

Enacted by Laws 1973, ch. 80, § 22.

Administrative Code References

In general, see WAC 296-27-010 et seq.

Law Review Commentaries

Washington plan constituting alternative to preemption under Federal Occu-

pational Safety and Health Act of 1970; record keeping. 9 Gonzaga L.Rev. 626.

Library References

Labor Relations ⇐10.
C.J.S. Labor Relations § 12.

49.17.230. Compliance with federal act—Agreements and acceptance of grants authorized

The director is authorized to adopt by rule any provision reasonably necessary to enable this state to qualify a state plan under section 18 of the Occupational Safety and Health Act of 1970 (Public Law 91-596, 84 Stat. 1590)¹ to enable this state to assume the responsibility for the development and enforcement of occupational safety and health standards in all work places within this state subject to the legislative jurisdiction of the state of Washington. The director is authorized to enter into agreement with the United States and to accept on behalf of the state of Washington grants of funds to implement the development and enforcement of this chapter and the Occupational Safety and Health Act of 1970.

Enacted by Laws 1973, ch. 80, § 23.

¹ 29 U.S.C.A. § 667.

Administrative Code References

Record keeping and reporting, see WAC 296-27-010 et seq.

Law Review Commentaries

Alternative to preemption under Federal Occupational Safety and Health Act of 1970: The Washington plan. 9 Gonzaga L.Rev. 615.

Constitutional challenges to suggested procedural deficiencies of Federal Occupational Safety and Health Act of 1970. 9 Gonzaga L.Rev. 361.

Defending employer against alleged violation of general duty clause of Federal Occupational Safety and Health Act of 1970. 9 Gonzaga L.Rev. 399.

Demonstrated need for agricultural standards under Federal Occupational Safety and Health Act of 1970. 9 Gonzaga L.Rev. 439.

Employee's rights and duties under Federal Occupational Safety and Health Act of 1970. 9 Gonzaga L.Rev. 543.

Employer's rights and duties under Federal Occupational Safety and Health Act of 1970. 9 Gonzaga L.Rev. 519.

Grants and loans to employers, under Federal Occupational Safety and Health Act of 1970. 9 Gonzaga L.Rev. 605.

Legal process for enforcement of Federal Occupational Safety and Health Act of 1970. 9 Gonzaga L.Rev. 349.

Legislative history of Federal Occupational Safety and Health Act of 1970. 9 Gonzaga L.Rev. 327.

Overview of Federal Occupational Safety and Health Act of 1970. 9 Gonzaga L.Rev. 477.

Standards under Federal Occupational Safety and Health Act of 1970. 9 Gonzaga L.Rev. 493.

Variations under Federal Occupational Safety and Health Act of 1970. 9 Gonzaga L.Rev. 509.

Library References

Labor Relations ⇐10.
C.J.S. Labor Relations § 12.

49.17.246. Safety and health standards

(1) The director in the promulgation of rules under the authority of this chapter shall establish safety and health standards for conditions of em-

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ployment of general and/or specific applicability for all industries, busi-
nesses, occupations, crafts, trades, and employments subject to the provi-
sions of this chapter, or those that are a national or accepted federal
standard. In adopting safety and health standards for conditions of
employment, the director shall solicit and give due regard to all recommen-
dations by any employer, employee, or labor representative of employees.

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(2) Any safety and health standard adopted by rule of the director shall,
where appropriate, prescribe the use of labels or other forms of warning to
insure that employees are apprised of all hazards to which they may be
exposed, relevant symptoms, and appropriate emergency treatment, and
proper conditions and precautions of safe use or exposure. Where appro-
priate, such rules shall so prescribe suitable protective equipment and
control or technological procedures to be used in connection with such
hazards and shall provide for monitoring or measuring employee exposure
at such locations and intervals, and in such manner as may be reasonably
necessary for the protection of employees. In addition, where appropriate,
any such rule shall prescribe the type and frequency of medical examina-
tions or other tests which shall be made available, by the employer or at his
cost, to employees exposed to such hazards in order to most effectively
determine whether the health of such employees is adversely affected by
such exposure. In the event that such medical examinations are in the
nature of research, as determined by the director, such examinations may
be furnished at the expense of the department. The results of such
examinations or tests shall be furnished only to the director, other appro-
priate agencies of government, and at the request of the employee to his
physician.

(3) Whenever the director adopts by rule any safety and health standard
he may at the same time provide by rule the effective date of such
standard which shall not be less than thirty days, excepting emergency
rules, but may be made effective at such time in excess of thirty days from
the date of adoption as specified in any rule adopting a safety and health
standard. Any rule not made effective thirty days after adoption, having a
delayed effectiveness in excess of thirty days, may only be made upon a
finding made by the director that such delayed effectiveness of the rule is
reasonably necessary to afford the affected employers a reasonable oppor-
tunity to make changes in methods, means, or practices to meet the
requirements of the adopted rule. Temporary orders granting a variance
may be utilized by the director in lieu of the delayed effectiveness in the
adoption of any rule.

Enacted by Laws 1973, ch. 80, § 24.

Law Review Commentaries

Enforcement of standards of Wash-
ington Industrial Safety and Health Act.
9 Gonzaga L.Rev. 459.

Library References

Labor Relations § 10.
C.J.S. Labor Relations § 12.

**19.17.250. Voluntary compliance program—Consultation and advisory
services**

(1) In carrying out his responsibilities for the development of a voluntary
compliance program under the authority of RCW 49.17.050(8) and the
rendering of advisory and consultative services to employers, the director
may grant an employer's application for advice and consultation, and for
the purpose of affording such consultation and advice visit the employer's
work place. Such consultation and advice shall be limited to the matters
specified in the request affecting the interpretation and applicability of

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

employment of general and/or specific applicability for all industries, businesses, occupations, crafts, trades, and employments subject to the provisions of this chapter, or those that are a national or accepted federal standard. In adopting safety and health standards for conditions of employment, the director shall solicit and give due regard to all recommendations by any employer, employee, or labor representative of employees.

(2) Any safety and health standard adopted by rule of the director shall, where appropriate, prescribe the use of labels or other forms of warning to insure that employees are apprised of all hazards to which they may be exposed, relevant symptoms, and appropriate emergency treatment, and proper conditions and precautions of safe use or exposure. Where appropriate, such rules shall so prescribe suitable protective equipment and control or technological procedures to be used in connection with such hazards and shall provide for monitoring or measuring employee exposure at such locations and intervals, and in such manner as may be reasonably necessary for the protection of employees. In addition, where appropriate, any such rule shall prescribe the type and frequency of medical examinations or other tests which shall be made available, by the employer or at his cost, to employees exposed to such hazards in order to most effectively determine whether the health of such employees is adversely affected by such exposure. In the event that such medical examinations are in the nature of research, as determined by the director, such examinations may be furnished at the expense of the department. The results of such examinations or tests shall be furnished only to the director, other appropriate agencies of government, and at the request of the employee to his physician.

(3) Whenever the director adopts by rule any safety and health standard he may at the same time provide by rule the effective date of such standard which shall not be less than thirty days, excepting emergency rules, but may be made effective at such time in excess of thirty days from the date of adoption as specified in any rule adopting a safety and health standard. Any rule not made effective thirty days after adoption, having a delayed effectiveness in excess of thirty days, may only be made upon a finding made by the director that such delayed effectiveness of the rule is reasonably necessary to afford the affected employers a reasonable opportunity to make changes in methods, means, or practices to meet the requirements of the adopted rule. Temporary orders granting a variance may be utilized by the director in lieu of the delayed effectiveness in the adoption of any rule.

Enacted by Laws 1973, ch. 80, § 24.

Law Review Commentaries

Enforcement of standards of Washington Industrial Safety and Health Act.
9 Gonzaga L.Rev. 459.

Library References

Labor Relations §10.
C.J.S. Labor Relations § 12.

49.17.250. Voluntary compliance program—Consultation and advisory services

(1) In carrying out his responsibilities for the development of a voluntary compliance program under the authority of RCW 49.17.050(8) and the rendering of advisory and consultative services to employers, the director may grant an employer's application for advice and consultation, and for the purpose of affording such consultation and advice visit the employer's work place. Such consultation and advice shall be limited to the matters specified in the request affecting the interpretation and applicability of

safety and health standards to the conditions, structures, machines, equipment, apparatus, devices, materials, methods, means, and practices in the employer's work place. The director in granting any requests for consultative or advisory service may provide for an alternative means of affording consultation and advice other than on-site consultation.

(2) The director, or his authorized representative, may make recommendations regarding the elimination of any hazards disclosed within the scope of the on-site consultation. No visit to an employer's work place shall be regarded as an inspection or investigation under the authority of this chapter, and no notices or citations shall be issued, nor, shall any civil penalties be assessed upon such visit, nor shall any authorized representative of the director designated to render advice and consult with employers under the voluntary compliance program have any enforcement authority: *Provided*, That in the event an on-site visit discloses a serious violation of a health and safety standard as defined in RCW 49.17.180(6), and the hazard of such violation is either not abated by the cooperative action of the employer, or, is not subject to being satisfactorily abated by the cooperative action of the employer, the director shall either invoke the administrative restraining authority provided in RCW 49.17.130 or seek the issuance of injunctive process under the authority of RCW 49.17.170 or invoke both such remedies.

(3) Nothing in this section shall be construed as providing immunity to any employer who has made application for consultative services during the pendency of the granting of such application from inspections or investigations conducted under RCW 49.17.070 or any inspection conducted as a result of a complaint, nor immunity from inspections under RCW 49.17.070 or inspections resulting from a complaint subsequent to the conclusion of the consultative period. This section shall not be construed as requiring an inspection under RCW 49.17.070 of any work place which has been visited for consultative purposes. However, in the event of a subsequent inspection, the director, or his authorized representative, may in his discretion take into consideration any information obtained during the consultation visit of that work place in determining the nature of an alleged violation and the amount of penalties to be assessed, if any. Such rules and regulations to be promulgated pursuant to this section shall provide that in all instances of serious violations as defined in RCW 49.17.180(6) which are disclosed in any consultative period, shall be corrected within a specified period of time at the expiration of which an inspection will be conducted under the authority of RCW 49.17.070. All employers requesting consultative services shall be advised of the provisions of this section and the rules adopted by the director relating to the voluntary compliance program. The director may provide by rule for the frequency, manner, and method of the rendering of consultative services to employers, and for the scheduling and priorities in granting applications consistent with the availability of personnel, and in such a manner as not to jeopardize the enforcement requirements of this chapter.

Enacted by Laws 1973, ch. 80, § 25.

Law Review Commentaries

Washington plan constituting alternative to preemption under Federal Occupational Safety and Health Act of 1970; consultation inspection. 9 Gonzaga L.Rev. 627.

Library References

Labor Relations §10.
C.J.S. Labor Relations § 12.

49.17.260. Statistics—Investigations—Reports

In furtherance of the objects and purposes of this chapter, the director shall develop and maintain an effective program of collection, compilation, and analysis of industrial safety and health statistics. The director, or his authorized representative, shall investigate and analyze industrial catastrophes, serious injuries, and fatalities occurring in any work place subject to this chapter, in an effort to ascertain whether such injury or fatality occurred as the result of a violation of this chapter, or any safety and health standard, rule, or order promulgated pursuant to this chapter, or if not, whether a safety and health standard or rule should be promulgated for application to such circumstances. The director shall adopt rules relating to the conducting and reporting of such investigations. Such investigative report shall be deemed confidential and only available upon order of the superior court after notice to the director and an opportunity for hearing: *Provided*, That such investigative reports shall be made available without the necessity of obtaining a court order, to employees of governmental agencies in the performance of their official duties, to the injured workman or his legal representative or his labor organization representative, or to the legal representative or labor organization representative of a deceased workman who was the subject of an investigation, or to the employer of the injured or deceased workman or any other employer or person whose actions or business operation is the subject of the report of investigation, or any attorney representing a party in any pending legal action in which an investigative report constitutes relevant and material evidence in such legal action.

Enacted by Laws 1973, ch. 80, § 26.

Administrative Code References

Record keeping and reporting, see WAC 296-27-010 et seq.

Law Review Commentaries

Records and reports under Federal Occupational Safety and Health Act of 1970. 9 Gonzaga L.Rev. 589.

Library References

Labor Relations 10.
C.J.S. Labor Relations § 12.

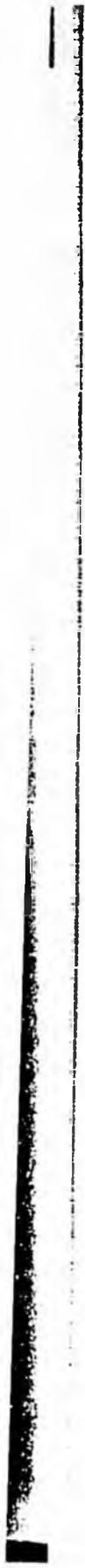
49.17.270. Administration of chapter

The department shall be the sole and paramount administrative agency responsible for the administration of the provisions of this chapter, and any other agency of the state or any municipal corporation or political subdivision of the state having administrative authority over the inspection, survey, investigation, or any regulatory or enforcement authority of safety and health standards related to the health and safety of employees in any work place subject to this chapter, shall be required, notwithstanding any statute to the contrary, to exercise such authority as provided in this chapter and subject to interagency agreement or agreements with the department made under the authority of the interlocal cooperation act (chapter 39.34 RCW) relative to the procedures to be followed in the enforcement of this chapter: *Provided*, That in relation to employers using or possessing sources of ionizing radiation the department of labor and industries and the department of social and health services shall agree upon mutual policies, rules, and regulations compatible with policies, rules, and regulations adopted pursuant to chapter 70.98 RCW insofar as such policies, rules, and regulations are not inconsistent with the provisions of this chapter.

Enacted by Laws 1973, ch. 80, § 27.

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Incidence rates of Recordable Occupational Injuries and Illnesses
 Comparison of all States - Private Sector
 1983 to 1984

	1983	1984
USA	7.6	8.0
Maine	11.0	13.2
Oregon	9.8	10.6
Alaska	10.6	10.3
Vermont	9.2	10.0
Hawaii	10.6	10.0
Washington	9.7	9.9
Oklahoma	9.9	9.8
Arizona	9.3	9.5
California	9.1	9.3
Utah	8.5	9.2
Nevada	9.0	9.0
Florida	8.7	8.9
Nebraska	8.4	8.8
New Mexico	7.8	8.7
Tennessee	7.9	8.6
Wyoming	7.9	8.6
Montana		8.5
Rhode Island	8.3	8.4
Connecticut	8.0	8.3
Alabama	7.9	8.3
Kentucky	7.6	8.3
Iowa	7.8	8.1
Arkansas	8.1	8.0
Mississippi		8.0
Missouri	7.5	8.0
Louisiana	7.4	7.9
Maryland	7.6	7.8
Minnesota	7.3	7.7
Kansas		7.7
Indiana	7.3	7.7
Virginia	7.0	7.6
Michigan	6.8	7.6
North Carolina	6.8	7.2
West Virginia	6.7	7.2
South Carolina	6.7	6.9
Delaware	5.3	5.5
Puerto Rico	4.2	3.9
American Samoa	2.5	3.0
Guam	2.7	2.8
Virgin Islands	2.8	2.4
Texas		
Illinois		
New Hampshire		
New Jersey		
Wisconsin		
Massachusetts		
Idaho		
Georgia		
Ohio		
South Dakota		
North Dakota		
Colorado		
Pennsylvania		
New York		



Alaska State Legislature

House of Representatives

COMMITTEE ON HEALTH, EDUCATION
AND SOCIAL SERVICES

GUEST SIGN IN SHEET

Date: Jan. 29, 1987

Subject of Meeting DHSS, HB 53

Name	Address / Representing	Phone	Do you want to Testify?
<i>Jeff Potter</i>	801 Lincoln St / SITKA AK Sheldon Jackson college	747-9937	NO
<i>E. Ken Plate</i>	Dept. Labor HB 53	465-2760	"
<i>Karen Pedue</i>	DHSS	3030	"
<i>Elizabeth Ward</i>	DHSS	3030	"
<i>John Tiber</i>	DHSS	3347	yes
<i>Deborah Smith</i>	DHSS	3370	no
<i>Carl Kammath</i>	Ok. Psych. Institute		yes

**STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE**

Bill Version: HB 53

Publish Date: _____

REQUEST: _____

Revision Date: _____

Agency Affected: Labor

Title: "An Act relating to penalties for violation of workplace safety laws"

BRU: Occupational Safety and Health

Sponsor: Koponen and Goll

Components: Occupational Safety and Health

Requestor: House HFSS

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL		3.2	1.7			
CONTRACTUAL		60.0	27.5			
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	63.2	29.2	0	0	0

CAPITAL						
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REVENUE	0	523.3	301.4	219.7	219.7	219.7
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FUNDING: (Thousands of Dollars)

GENERAL FUND		31.6	14.6			
FEDERAL FUNDS		31.6	14.6			
OTHER						
TOTAL	0	63.2	29.2	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

(see attached)

Prepared by: Tom Stuart, Director

Phone: 465-4870

Division: Labor Standards and Safety

Date: 1/26/87

Approved by Commissioner: Jim Sampson

Date: 1/26/87

Agency: Labor

Distribution (by preparer):

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

Fiscal Note Analysis
For House Bill 53

House Bill 53 increases penalties for violations of workplace safety and health laws and is viewed as an effective deterrent to such violations. However, it is anticipated that a two-year period will be required for the deterrent effects of the increased penalties to be fully realized. Until the deterrent effect is fully realized, it is projected that the increased penalties will result in increased contests which will temporarily result in increased expenditures. Likewise, it is expected that revenues from penalties will initially increase and then decline as the deterrent effect materializes.

The increased costs are:

Contractual:

In FY 88 an additional \$45,000 will be required for legal costs for services provided by the Department of Law in connection with contested citations, and collection of penalties. This amount will decrease in FY 89 as the increased deterrent effect of the increased penalties is realized, and by FY 90, contests will have returned to present levels.

In FY 88, an additional \$10,000 in hearing officer costs will also be incurred for the OSHA Review Board which decides contested cases. As with the Department of Law costs, this fiscal note anticipates a decline in the caseload in FY 89, and a return to present levels in FY 90.

A one-time cost of \$5,000 is also included for mailing a notice to all employers in the state to inform them of the increased penalties.

Travel:

In FY 88, an additional \$3,200 in per diem costs will be incurred for the three-member OSHA Review Board which decides contested cases. The Board will meet an additional 8 days to hear the additional cases. These costs would likewise decrease in FY 89 and dissipate in FY 90.

Following are the specific workload assumptions used in projecting costs and revenues:

1. Increased penalties will take effect July 1, 1987;
2. In FY 88, there will be a 25% reduction in the number of serious violations and the number of serious citations. In FY 89 and FY 90, there will be further reductions of 35% and 20%, respectively. After FY 90, further reductions are not anticipated.

	<u>FY 87</u>	<u>FY 88</u>	<u>FY 89</u>	<u>FY 90</u>
Number of Serious violations	250	190	125	100
Number of Serious citations	165	125	80	65

(Serious citations average $1\frac{1}{2}$ serious violations each. Therefore, the number of citations issued is less than the number of serious violations.)

3. 40% of the Serious citations issued by the Department will be contested. (This is the present contest rate for citations with penalties of \$500 or more.)

	<u>FY 87</u>	<u>FY 88</u>	<u>FY 89</u>	<u>FY 90</u>
Number of Contested citations	25	50	32	25

Additional Revenues:

The increased revenues are projected upon increases in penalties as follows:

Type of Violation	FY 87		FY 88		FY 89		FY 90	
	Violations	Penalties	Violations	Penalties	Violations	Penalties	Violations	Penalties
Repeat	30	\$10,700	20	\$142,800	10	\$71,400	5	\$35,700
Serious	250	45,000	190	684,000	125	450,000	100	360,000
Failure to Abate	1	300	2	6,000	0	0	0	0
Willful	<u>0</u>	<u>0</u>	<u>1</u>	<u>30,000</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Proposed Penalties		\$56,000		\$862,800		\$521,400		(\$395,700)
Less penalty reduction as a result of negotiated settlements and uncollect- ible penalties		(\$18,480)		(\$302,000)		(\$182,500)		(\$138,500)
Less Current Revenues		(37,520)		(37,520)		(37,520)		(37,520)
Additional Revenues		0		\$523,280		\$301,380		\$219,680

Bill No. House Bill No. 53

Date January 27, 1987

Title "An Act relating to penalties for violation of workplace safety laws."

Contact: Eileen Plate
465-2700

Richard Arab
465-4856

Under House Bill 53, the penalties assessed by the Department of Labor for violations of Alaska's Occupational Safety and Health law and regulations would be increased.

Specifically, the provisions of this bill:

- (1) increase the maximum penalty for a willful or repeat violation from \$10,000 to \$25,000;
- (2) establish a \$1000 minimum penalty for a serious violation; and increase the maximum penalty for a serious or failure to abate violation from \$1,000 to \$25,000;
- (3) increase the maximum penalty for a non-serious violation from \$1,000 to \$10,000;
- (4) increase the maximum penalty for a willful or repeat violation which results in the death of a worker from \$10,000 to \$150,000; and increase from \$20,000 to \$500,000 the maximum penalty for a second conviction of a willful or repeat violation causing death;
- (5) increase from \$10,000 to \$25,000 the maximum penalty for falsifying or otherwise misrepresenting occupational safety and health records or documents; and
- (6) increase the maximum penalty for a violation of occupational safety and health posting requirements from \$1,000 to \$5,000.

The penalties in effect have not been increased since Alaska's occupational safety and health law was initially enacted in 1973.

More important than providing for an overdue inflationary increase in the penalty system, however, the increased penalties would serve as an effective deterrent to workplace safety and health violations. This, of course, will translate into safer workplaces, and a reduced risk of injury and illness to Alaska's workers.

An increased emphasis on worker safety and health is particularly important in times of economic decline, such as are presently being experienced. When cost-saving measures are implemented by employers during recessionary periods, equipment maintenance and replacement are diminished, and the need to increase worker productivity often results in unsafe "shortcuts" that would not be taken or even considered in more prosperous times. The deterrent effect of increased penalties would, therefore, assure that implementation of cost-saving measures by Alaska business is not at the expense of or to the detriment of the safety and health of Alaska's workers.

POSITION PAPER/Department of Labor

The Department of Labor supports the concept of increasing penalties for violations of Alaska's occupational safety and health law and regulations as provided in House Bill 53. However, the Department would recommend that the \$25,000 maximum penalty proposed for serious and for failure to abate violations each be reduced to \$10,000; and that the \$10,000 maximum proposed for non-serious violations be reduced to \$5,000. The Department feels that these lesser maximum penalties will still produce the desired deterrent effect.

The following specific amendments to House Bill 53 would be required to achieve this:

1. change line 20 on page 1 to read:
less than [UP TO] \$1,000 and not more than \$10,000 for each violation.
2. change line 4 on page 2 to read:
up to \$5,000 [\$1,000] for each violation.
3. change line 9 on page 2 to read:
than \$10,000 [\$1,000] for each day during which the failure to correct

APPROVED:


Jim Sampson, Commissioner
Department of Labor

Sample of Penalty Structure

Other-than-Serious:¹

Number of Employees	Present Penalty	Penalty under HB 53
3	\$60	\$600
50	\$240	\$2,400
200	\$300	\$3,000

Serious:

Number of Employees	Present Penalty	Penalty under HB 53
3	\$60	\$1,280
13	\$240	\$4,350
65	\$450	\$10,620
300	\$550	\$13,150

Repeated Violations:²

Number of Employees	Present Penalty	Penalty under HB 53
3	\$120	\$2,560
13	\$480	\$8,700
65	\$900	\$21,240
200	\$1,100	\$26,300

Willful Violations:

Number of Employees	Present Penalty	Penalty under HB 53
3	\$1,800	\$18,000
50	\$2,400	\$24,000
100	\$5,000	\$50,000

¹It is the department's current policy not to assess a penalty for "other" violations unless 10 or more violations are found at the worksite.

²If the violation is repeated a second time, the original penalty is multiplied by four and if it is repeated a third time the original penalty is multiplied by 10.

Failure to Abate Violation:³

Number of Employees	Present Penalty	Penalty under HB 53
3	\$240	\$2,400
13	\$1,680	\$30,450
65	\$4,050	\$95,580
300	\$5,500	\$131,500

Posting Violations:

	Present Penalty	Penalty under HB 53
Failure to post the "Safety and Health Protection on the Job" poster	\$60	\$300
Failure to post the "Annual Summary of Occupational Injuries and Illnesses" form	\$100	\$500
Failure to post a citation issued by the Department of Labor	\$250	\$1,250
Failure to post the "Right-to-Know" poster	\$60	\$300

³Note the maximum penalty under HB 53 for each day a violation is uncorrected is \$25,000. In calculating these penalties it is assumed that the violation was uncorrected for 10 days.

Criminal Willful:⁴

Present Penalty

\$10,000

Penalty under HB 53

\$150,000

⁴The department has never issued a criminal willful violation; however, if such a violation was found, the department would ask for the maximum penalty allowed under the law.

HPB

57

HOUSE COMMITTEE REPORT

(7)

Date referred: 1/19/87

FURTHER REFERRALS: Finance

DATE: _____

The Health, Education and Social Services Committee has considered HB 54

"An Act creating the Alaska Seismic Hazard Center."

RECOMMENDS:

- replace with CS HB 54 (HESS) the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published _____
- zero with analysis

SIGNING DO PASS:

Mark E. Rosenberg
John E. Korman
John E. Korman
Raymond M. Kelley

SIGNING OTHER RECOMMENDATIONS:

Roll E. Bell No R.

John E. Korman

 Chairman's signature



Alaska State Legislature
House of Representatives
COMMITTEE ON HEALTH, EDUCATION
AND SOCIAL SERVICES

OFFICIAL BUSINESS

POUCHV
JUNEAU, AK 99811
465-3759

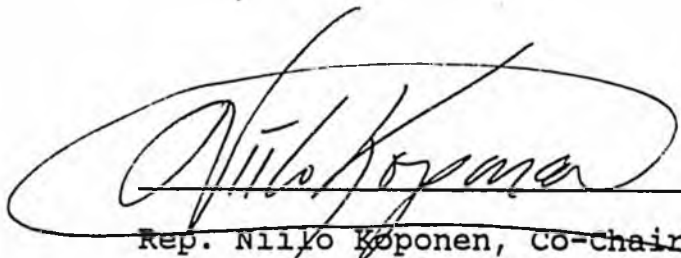
LETTER OF INTENT

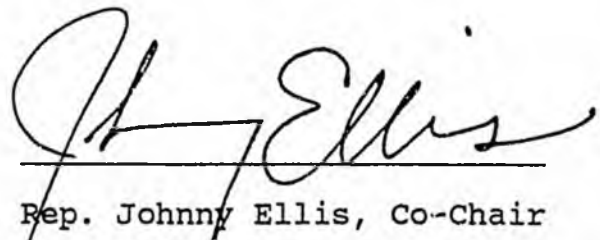
CSHB 54 (HESS)

"AN ACT CREATING AN ALASKA EARTHQUAKE AND VOLCANO HAZARDS
ASSESSMENT PROJECT"

It is the intent of the House Health, Education and Social Services Committee that a request be made for federal monies from the Federal Earthquake Hazards Reduction Act of 1977 (Public Law 95-124) and other applicable federal sources to help offset the costs of The Alaska Earthquake and Volcano Hazards Assessment Project. The amount requested should match the state funding level for this program.

In an effort to save the State both time and expense, this letter is offered in place of a resolution to Congress and shall be delivered to the members of the Alaska Congressional Delegation with appropriate backup information.


Rep. Niilo Koponen, Co-Chair


Rep. Johnny Ellis, Co-Chair

February 18, 1986

Prepared by: Brian Rogers, Director of Budget Development Phone: 907 474-6490
 Division: University of Alaska Date: February 20, 1987
 Approved by ^{Vice President} [Signature] Date: February 20, 1987
 Agency: University of Alaska

Distribution (by preparer):

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

Date _____ of _____

CONTINUATION OF FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSHB54 (HESS)

In August 1986, the UAF Geophysical Institute agreed to take over the seismic hazard program from the Alaska Department of Natural resources. The FY88 UA budget contains \$130.5 in partial funding for this program. The additional funding contained in this fiscal note provides funding of Alaska's program for collection, recording and archiving of seismic data at an annual level equivalent to the level when the program was transferred to UAF.

HB 54 -- An Act Creating an Alaska Earthquake and Volcano
Hazards Assessment Project.

File Contents

- 1) Copy of HB 54
- 2) Work Draft of Sponsor Substitute, HB 54
- 3) Position Paper
- 4) Memo to Reps. Koponen and Davis from John Davies,
2/16/87
- 5) Copy of AS 41.08.020

5-0253R
Utermohle
2/16/87

1 IN THE HOUSE

BY KOPONEN AND DAVIS

2 SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 54

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act creating an Alaska earthquake and volcano
7 hazards assessment project."

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

9 * Section 1. FINDINGS. The legislature finds that the systematic
10 collecting, recording, processing, and archiving of seismic data on earth-
11 quakes and volcanic eruptions and the evaluation of the data to identify
12 and assess potential earthquake and volcanic hazards throughout the state
13 are in the public interest and necessary to orderly, safe, and cost-effec-
14 tive economic development and land-use planning.

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

16 Sec. 14.40.075. ESTABLISHMENT OF ALASKA EARTHQUAKE AND VOLCANIC
17 HAZARDS ASSESSMENT PROJECT. (a) The University of Alaska shall
18 establish an Alaska earthquake and volcano hazards assessment project
19 within the seismology program of the geophysical institute. The
20 project shall

21 (1) collect, record, process, and archive seismic data on
22 earthquakes and volcanic eruptions in the state;

23 (2) conduct seismological studies relating to earthquake
24 and volcano hazards assessment;

25 (3) evaluate earthquake and volcanic seismic data to assist
26 in the identification and assessment of earthquake and volcanic haz-
27 ards that may pose a significant risk to lives and property in the
28 state;

29 (4) inform public officials, industry, and private citizens

1 of potential earthquake or volcanic risks and assist in planning to
2 reduce risks to lives and property; and

3 (5) coordinate its activities with other organizations and
4 agencies that monitor, collect, assess, and conduct research on earth-
5 quake and volcano hazards in order to avoid duplication of effort.

6 (b) The administration and management of the project is under a
7 university employee designated the state seismologist. The state
8 seismologist shall provide timely information concerning earthquake
9 and volcano hazards to public officials, industry, and private citi-
10 zens and serve as liaison to state and federal agencies in the event
11 of emergencies due to seismic and volcanic activities.

12 * Sec. 3. AS 41.08.017(b) is repealed and reenacted to read:

13 (b) Systematic collecting, evaluation, archiving, and distribu-
14 tion of geologic data and information on earthquakes, volcanic erup-
15 tions, and engineering geology and identification of potential seis-
16 mic, volcanic, and other geological hazards throughout the state are
17 in the public interest and necessary to orderly, safe, and cost-effec-
18 tive development.

19 * Sec. 4. AS 41.08.020(b) is amended to read:

20 (b) In addition, the division of geological and geophysical
21 surveys shall:

22 (1) collect, record, evaluate, and distribute data on the
23 quantity, quality, and location of underground, surface, and coastal
24 water of the state;

25 (2) publish or have published data on the water of the
26 state;

27 (3) require the filing with it of the results and findings
28 of surveys of water quality, quantity, and location;

29 (4) require of water well contractors, the filing with it

1 of basic water and aquifer data normally obtained, including but not
 2 limited to well location, estimated elevation, well driller's logs,
 3 pumping tests and flow measurements, and water quality determinations;

4 (5) accept and spend funds for the purposes of this sec-
 5 tion, AS 41.08.017, and 41.08.035 and enter into agreements with
 6 individuals, public or private agencies, communities, private indus-
 7 try, state agencies, and agencies of the federal government;

8 (6) collect, [RECORD,] evaluate, [ARCHIVE] and distribute
 9 geologic data on seismic events and engineering geology of the state;

10 (7) identify potential seismic hazards that might affect
 11 development in the state;

12 (8) inform public officials and industry about potential
 13 seismic hazards that might affect development in the state.
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Alaska State Legislature
Representative Niilo Koponen

Pouch V
Juneau, Alaska 99811
(907) 465-4992

542 4th Avenue, Suite C
Fairbanks, Alaska 99701
(907) 456-8161

POSITION PAPER
HB 54 "AN ACT CREATING AN ALASKA EARTHQUAKE
AND VOLCANO HAZARDS ASSESSMENT PROJECT"
FEBRUARY 17, 1987

From the International impact of the 1912 Katmai explosion and 1964 earthquake to the more recent eruptions of Mount St. Augustine last year and in 1976, the State of Alaska has been noted for its seismic activity.

The purpose of this legislation is to ensure that the State maintains a viable seismographic network to record Alaska's earthquake and volcanic eruptions, by establishing the Alaska earthquake and volcanic hazards assessment project within the University of Alaska's Geophysical Institute's seismology program.

To implement this project, the Department of Geological and Geophysical Survey has agreed to transfer to this project the money for seismic monitoring and seismic hazard mitigation for the state of Alaska. DGGS will continue to be responsible for the geological aspects of seismic hazard mitigation.

HB 54 amends AS.14.40 (University of Alaska and Community Colleges) by adding the Alaska Earthquake and Volcanic Hazards Assessment project within the University. AS 41.08.020 (Geological and Geophysical Survey) will maintain it's same responsibilities except for section (6) which will now read "collect, evaluate and distribute geologic data on seismic events and engineering geology of the state".

The creation of the hazards assessment project will place the state of Alaska at the forefront of seismic studies within the nation and the world and provide the data necessary to protect lives and property and preserve safe, cost-effective economic development and land use planning.

MEMO February 16, 1987

TO: Niilo Koponen and Mike Davis

FROM: John Davies

SUBJECT: Background for HB 54

Background: In 1981 I was hired by DGGS to create a Seismic Hazards Mitigation Program. In February, 1982 DGGS sponsored a workshop in Wasilla to suggest the scope of such a program. Resolution 1 from that workshop called for DGGS to establish a seismic program to:

- a) Ensure the operation of a statewide seismographic network, including instrumentation to record strong ground motion in areas of significant earthquake potential;
- b) Establish a statewide seismic-data center; and
- c) Coordinate the collection and dissemination of seismic data for Alaska.

In July of 1983 the Governor signed into law HB 379 which established a seismic hazard program within DNR. The projects specifically outlined in the proposed objectives for HB 379(1983) were:

- 1) Cook Inlet - Seismic Network;
- 2) Interior Alaska Seismic Network;
- 3) Stations in SE, SC, and SW Alaska;
- 4) Seismic Instrumentation in Anchorage Buildings;
- 5) Cook Inlet Volcano Observatory;
- 6) Alaska Seismological Data Center; and
- 7) Engineering Geological Studies in Municipal Areas

The total budget proposed for these projects was \$503K, \$300K was approved for FY 84.

In August of 1986 the UAF and the Institute agreed to take over the seismic hazard program from DGGS, effective October 1, 1986 I resigned from DGGS and was hired as a research associate by the Institute. After my arrival here Syun, Merritt, Mike Davis, Niilo Koponen and I met to discuss how to fund the program at UAF. We agreed that legislation or

an executive order would be required to "create" the program at UAF and to eliminate any resulting duplication in the DNR statutes. Syun coordinated this with O'Rourke and they agreed that we would seek line-item funding for the program. Mike Davis and Niilo Koponen drafted a proposed bill to establish an "Alaskan Seismic Hazard Center" at UAF and to delete responsibility for the collection, recording and archiving of seismic data by DNR.

The question was raised as to exactly what did DGGGS intend to transfer to the UAF. To resolve this issue Merritt and I met with Pedro Denton (then Director of DGGGS) and Dick Reger in October. We asked them if the understanding that Syun had communicated to us was correct; i.e., DGGGS intended to transfer to us not only the money for seismic monitoring in the restricted sense, but also the responsibility for the state of Alaska for seismic hazards mitigation in the larger sense. This was correct, they only asked that they be allowed to have early input on the language of any proposed legislation since they wished to retain statutory responsibility for certain geological aspects of seismic hazard mitigation. We agreed to a division of responsibility whereby we would in general restrict ourselves to seismological aspects and they would focus on geological aspects. The details of who will do what can be left to an MOU.

Budget: The history of State of Alaska Support for DNR seismic hazard mitigation is summarized in the following table:

FISCAL YEAR	AUTHORIZED BUDGET	EFFECTIVE BUDGET	NOTES
82	\$ 59K	\$ 59K	a
83	108	108	
84	300	560	b
85	440	444	b, c
86	256	230	c
87	116	104	c, d
88	(75)	(54)	e, f

- Notes:
- a) partial year
 - b) salary in Eng. Geol.
 - c) minus 10% internal overhead
 - d) later further reduced to 74K
 - e) proposed DNR C-4 transfer to UAF
 - f) adjusted for GI 40% overhead

The total budget proposed for FY 88 is as follows:

C-4 transfer from DNR	130,000
new general fund money	100,000
capital re-appropriation	80,000
TOTAL	310,000

Proposed Budget for The Alaska Earthquake and Volcanic
Hazards Assessment Project

February 16, 1987

TASK A Maintain Remote Seismic Stations

	Operating	Capital
Fairbanks VHF (6 @ 1300)	9,000	
Fairbanks local (2 @ 250)	500	
Northern AK (2 @ 500)	1,500	
Highway sys. (20 @ 500)	5,000	30,000
Cook Inlet/Aug. (12 @ 2000)	24,000	
Kodiak (9 @ 2,500)	22,500	20,000
Staff Benefits	2,800	
Juneau (3 @ 1000)	<u>3,000</u>	<u>30,000</u>
Subtotal A	68,300	80,000

TASK B Maintain Seismic Lab/Process Routine Data

Supervisor (3mo @ 4800)	14,400
Programmer (3mo @ 3200)	9,600
Grad. Student (12mo @ 1850)	22,200
Electronics (4mo @ 7500)	30,200
Staff Benefits (@ 19%)	4,600
Supplies	12,000
Software maint.	9,000
Hardware maint.	<u>14,400</u>
Subtotal B	116,400

TASK C Seismic and Volcanic Hazard Analysis

Seismologist (3mo @ 4800)	28,800
Travel	6,000
Supplies, services	5,000
Staff benefits	<u>5,500</u>
Subtotal C	45,300

TOTAL (A-C) 230,000

public interest and necessary to orderly, safe and cost-effective development in the state. (§ 1 ch 41 SLA 1977; am § 1 ch 101 SLA 1983)

Effect of amendments. — The 1983 amendment designated the former provision as subsection (a) and added subsection (b).

Sec. 41.08.020. Powers and duties. (a) The state geologist shall conduct geological and geophysical surveys to determine the potential of Alaskan land for production of metals, minerals, fuels, and geothermal resources; the locations and supplies of groundwater and construction materials; the potential geologic hazards to buildings, roads, bridges and other installations and structures; and shall conduct such other surveys and investigations as will advance knowledge of the geology of Alaska. With the approval of the commissioner, the state geologist may acquire, by gift or purchase, geological and geophysical reports, surveys and similar information.

(b) In addition, the division of geological and geophysical surveys shall:

(1) collect, record, evaluate, and distribute data on the quantity, quality and location of underground, surface and coastal water of the state;

(2) publish or have published data on the water of the state;

(3) require the filing with it of the results and findings of surveys of water quality, quantity, and location;

(4) require of water well contractors, the filing with it of basic water and aquifer data normally obtained, including but not limited to well location, estimated elevation, well driller's logs, pumping tests and flow measurements and water quality determinations;

(5) accept and spend funds for the purposes of this section, AS 41.08.017 and 41.08.035 and enter into agreements with individuals, public or private agencies, communities, private industry, state agencies and agencies of the federal government;

(6) collect, record, evaluate, archive and distribute data on seismic events and engineering geology of the state;

(7) identify potential seismic hazards that might affect development in the state;

(8) inform public officials and industry about potential seismic hazards that might affect development in the state. (§ 1 ch 93 SLA 1972; am § 2 ch 41 SLA 1977; am § 7 ch 176 SLA 1980; am § 2 ch 101 SLA 1983)

Cross references. — For declaration of legislative policy on geothermal resources, see § 1, ch. 176, SLA 1980, in the Temporary and Special Acts.

Effect of amendments. — The 1980 amendment added "geothermal resources"

to the first clause of subsection (a). The 1983 amendment added paragraphs (6), (7) and (8) of subsection (b).

Sec. 41.08.030. Printing and distribution of reports. The state geologist shall print and publish an annual report and such other special and topical reports and maps as may be desirable for the benefit of the state, including the printing or reprinting of reports and maps made by other persons or agencies, where authorization to do so is obtained. Reports and maps may be sold and all money received from these sales shall be paid into the general fund. (§ 1 ch 93 SLA 1972)

Sec. 41.08.035. Regulations by Department of Natural Resources. The Department of Natural Resources may adopt regulations relating to and providing for the systematic collection, recording, and distribution of data on the water of the state. (§ 3 ch 41 SLA 1977)

Sec. 41.08.040. Cooperation with other agencies. The state geologist, with the consent of the commissioner, may enter into cooperative agreements with federal, state, and local governmental agencies to perform geological and geophysical surveys, studies, investigations, and services. (§ 1 ch 93 SLA 1972)

Chapter 10. Soil Conservation District Law.

Section	Section
10. Declaration of policy	80. Vacancies
20. Creation and boundaries of soil conservation district	90. Compensation and per diem
30. Purpose of chapter	100. Duty of board to advise commissioner of natural resources
40. Soil and water conservation board	110. Powers of commissioner of natural resources relating to soil and water conservation
45. Executive director	120. Approval of land user
50. Appointment	130. Creation and boundaries of soil and water conservation districts
60. Qualifications of board members	140. Definitions
65. Major land areas of the state	
70. Term of office	
75. Board meetings	

Collateral references. — 3 Am. Jur. 2d, Agriculture, §§ 16, 22, 34 — 37. 3 C.J.S., Agriculture, §§ 3, 5 — 7. Measure of damages for wrongful removal of earth, sand, or gravel from land. 1 ALR3d 801.

Sec. 41.10.010. Declaration of policy. The farm, forest and grazing land of the state is a basic asset of the state. It is the policy of this chapter, in the interest of the health, safety, and general welfare of the people of the state, to provide for the development, use and conservation of this land in accordance with its capabilities. (§ 47-4-2 ACLA 1949)

Sec. 41.10.020. Creation and boundaries of soil conservation district. (Repealed, § 14 ch 69 SLA 1983.)

H B

55

**STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE**

Bill Version: HB 55
Publish Date:

REQUEST: _____

Revision Date:
Title: An act relating to marijuana

Agency Affected: Alaska Court System
BRU: Trial Courts

Sponsor: Martin
Requestor:

Components:

EXPENDITURES/REVENUES:		(Thousands of Dollars)				
	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
OPERATING						
Personal Services	143.6	143.6	143.6	143.6	143.6
Travel
Contractual
Supplies
Equipment	11.5	. . . .	. . . .	. . . .	. . . .
Land & Structures
Grants & Claims
TOTAL OPERATING	0.0	155.1	143.6	143.6	143.6	143.6
CAPITAL
REVENUE

FUNDING:		(Thousands of Dollars)				
	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
General Funds	0.0	155.1	143.6	143.6	143.6	143.6
Federal Funds	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Other	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
TOTAL	0.0	155.1	143.6	143.6	143.6	143.6

POSITIONS:						
	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
Full-time	4.0	4.0	4.0	4.0	4.0
Part-time	1.0	1.0	1.0	1.0	1.0
Temporary

ANALYSIS: (Attach a separate page if necessary)

See attached fiscal analysis.

Prepared by: Karla Forsythe, General Counsel
Division: Alaska Court System
Stephanie J. Cole
Approved by: Stephanie J. Cole, Deputy Director
Agency: Alaska Court System

Phone: 264-8228
Date: 4-23-87
Date: 4-23-87

- Distribution (by preparer):
- Legislative Finance
 - Legislative Sponsor
 - Requestor
 - Office of Management & Budget
 - Impacted Agency(ies)
 - Senate Secretary

ALASKA COURT SYSTEM
HB 55 - Fiscal Analysis

The Court System's fiscal note is based on the assumption that this bill will be enforced if enacted into law. The fiscal note submitted by the Department of Law reports that enforcement personnel anticipate several thousand new cases. This figure does not include prosecution resulting from municipal enforcement. Municipal police will generate a significant volume of cases for the courts, since they are responsible for enforcement in Alaska's urban communities and are more likely to arrest a large number of individuals than state troopers who focus on organized drug activity.

Using a conservative estimate of 2,000 cases annually, it appears that the increased caseload could be absorbed with existing judicial resources, but additional clerical support would be needed to process the high volume of paperwork attributable to these new criminal offenses which will be entering the criminal justice system.

ALASKA COURT SYSTEM
HB 55 - Fiscal Analysis

Personal Services:

	Salary	Benefits	Total
2 - Court Clerk II, Range 10B, Anchorage, PFT - 12 months	\$45,672	\$16,580	\$62,252
1 - Court Clerk II, Range 10B, Fairbanks, PFT - 12 months	25,740	8,936	34,676
1 - Court Clerk II, Range 10B, Juneau, PFT - 12 months	22,836	8,290	31,126
1 - Court Clerk II, Range 10B, Ketchikan, PPT - 6 months	11,418	4,145	15,563 -----
Total Personal Services			143,617

Equipment: (one-time cost)

Desk, chair, typewriter, and filing cabinet for each new position	11,540 -----
Total First-Year Cost	\$155,157 =====

JOHN SUND, REPRESENTATIVE

*2504 2nd Avenue
Ketchikan, Alaska 99901
(907) 225-5552*

*While in Juneau
P. O. Box V
Juneau, Alaska 99811
(907) 465-4919*

TO: Members of the House and Senate HESS committees
FROM: Rep. John Sund *JS*
DATE: March 23, 1987
RE: HB 55 and SB 32

The attached article by the Pennsylvania Attorney General was forwarded to me by a Ketchikan constituent. I thought the committees would be interested in this information.

11/25/86
A

SPECIAL
REPORT
STATE

P

B

TO LOCAL POLICE FROM ATTORNEY GENERAL ROY ZIMMERMAN

Office of Attorney General, Strawberry Square, Harrisburg, PA 17120

November 25, 1986

SPEAKING OF DRUGS: MAKING SURE KIDS GET THE RIGHT MESSAGE



The purpose of this bulletin is to provide you, Pennsylvania's law-enforcement officers, with our newly promulgated Attorney General's Drug Abuse Policy on Drug Abuse Messages to Youth.

All of us in law-enforcement have seen, and welcomed, society's increasingly serious response to the drug abuse issue. Today's concern is a far cry from the permissive atmosphere that existed 21 years ago when I first became a district attorney.

Yet we continue to see mixed and misleading messages regarding drug use being presented to Pennsylvania's young people -- messages ranging from the portrayal of marijuana as a "soft" drug to the suggestion that drugs can have a "recreational use."

These messages are not only confusing to our children, they are detrimental and often contradictory to law enforcement interests. Often they are communicated unintentionally by well-meaning individuals.

The policy statement which follows is intended to help put an end to such unintentional endorsements of drug use. I am pleased to inform you that it has already won the support of two leading national parent organizations, PRIDE (the National Parents' Resource Institute) and the Committee of Correspondence, and has also been endorsed by the state drug and alcohol coalition, Pennsylvanians Aware.

I encourage each police department in Pennsylvania to adopt this policy, either formally or informally, as a guideline for statements issued by the department regarding drug use. In addition, I am urging the media and other groups involved in the drug-abuse issue, both public and private, to support the law enforcement community's effort to provide a clear, no-nonsense, no toleration message regarding drug use.

Roy Zimmerman
Attorney General

ATTORNEY GENERAL'S POLICY - *State of Pennsylvania*
ON DRUG ABUSE MESSAGES TO YOUTH

*Drug prevention is the responsibility of everyone. Each of us should be intolerant of drug abuse and take a strong stand to oppose it. There is a need to be outspoken and inflexible when it comes to illegal drugs.

*Drug abuse is wrong and unacceptable. Each individual has a responsibility to society to keep our state strong and free from drug abuse.

*Individuals who abuse drugs should be helped to become drug free and treatment should be encouraged, but they should not be excused from personal responsibility for illegal actions.

*Drug prevention and education go hand in hand with strict drug law enforcement. The message must be clear and consistent - drugs have a destructive impact on society as well as the individual, and the law is a direct expression of society's intolerance towards drugs. Drug education should inform young people of the drug laws and legal consequences of drug use.

*Marijuana use/possession should be strongly opposed and remain a criminal offense. Recent research has revealed increasing evidence of marijuana's destructive effects on the brain, immune system, lungs and reproductive system of humans. Marijuana is the single best predictor of other future illegal drug use.

*There is no such thing as responsible use of illegal drugs. Admittedly, there are "occasional abusers" or "irregular abusers" who risk criminal prosecution and further addiction and destruction

*There is no such thing as responsible use of alcohol for anyone under the legal drinking age. Such use is illegal and is never responsible. Alcohol is a drug and its use among minors and abuse among adults should be confronted and never excused.

*Certain terms are misleading, detrimental and should be avoided. These include:

"Experimental Use" - drug users do not experiment with drugs as a scientist experiments with substances in a laboratory, drug users risk their very lives and futures with no control over drug purity, type, or drug effects. Such use might better be described as "gambling with drugs."

"Social Use" - drugs are anti-social and destroy families and friendships.

"Recreational Use" - using drugs is not an acceptable form of recreation - it is a chemical version of Russian Roulette.

"Mood Altering" - drugs affect brain chemistry in order to operate and are "mind altering," not just mood altering.

"Soft drug(s)" - no illegal drug is "soft" on the human body or condition; each drug has its own destructive impact on individuals and society.

"Victimless Crime" - drug abuse victimizes everyone - users and their loved ones, taxpayers, drug-related crime victims and employers. Drug proceeds often feed organized crime and international terrorists.

POSITION PAPER

HB 55

The Alaska Public Defender Agency and the Office of Public Advocacy are totally reactive agencies which provide representation to indigent persons when appointed by the court. These agencies do not make policy nor do they initiate litigation. Only proposed legislation with fiscal or program ramifications for these agencies can be said to have a direct agency impact. Thus, the Public Defender Agency and Office of Public Advocacy submit position papers for legislation which will affect these agencies fiscally or programatically or will require these agencies to litigate constitutional issues raised by the legislation.

Fiscal impact: _____ None See attached fiscal note X

Program impact: _____ None See analysis below X

Constitutional impact: _____ None See analysis below X

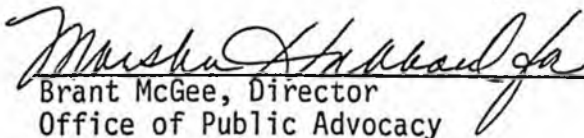
This bill recriminalizes the use of marijuana in the home.

This bill appears to be violative of the Alaska Supreme Court's holding in Ravin v. State and will certainly lead to extensive trial and appellate court hearings on the issue of its constitutionality.

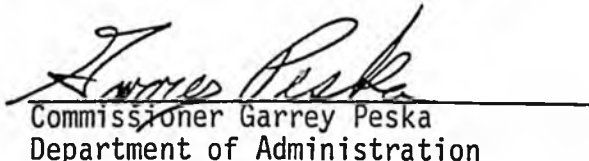
Furthermore, in a time of declining revenues, this bill may divert costly law enforcement, prosecution, defense and court resources from more serious cases.


Dana Fabe, Director
Public Defender

3/5/87
Date


Brant McGee, Director
Office of Public Advocacy

3/5/87
Date


Commissioner Garrey Peska
Department of Administration

3/6/87
Date

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version: HB 55
Publish Date: _____

REQUEST _____

Revision Date: _____
Title: An Act relating to
marijuana . . .
Sponsor: Fischer, Faiks
Requestor: Senate Judiciary

Agency Affected: Administration
BRU: Office of Public Advocacy
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
OPERATING						
PERSONAL SERVICES	0.0	93.4	97.1	101.0	105.0	109.2
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	60.0	62.4	64.9	67.5	70.2
SUPPLIES	0.0	2.0	2.1	2.2	2.3	2.4
EQUIPMENT	0.0	9.3	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	164.7	161.6	168.1	174.8	181.8
CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
REVENUE	0.0	0.0	0.0	0.0	0.0	0.0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	164.7	161.6	168.1	174.8	181.8
FEDERAL FUNDS	0.0	0.0	0.0	0.0	0.0	0.0
OTHER	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	164.7	161.6	168.1	174.8	181.8

POSITIONS:

FULL-TIME	0.0	2.0	2.0	2.0	2.0	2.0
PART-TIME	0.0	0.0	0.0	0.0	0.0	0.0
TEMPORARY	0.0	0.0	0.0	0.0	0.0	0.0

ANALYSIS: Attach a separate page if necessary

See attached.

Prepared By: Brant McGee, Public Advocate *BMG* Phone: 274-1684
Division: Office of Public Advocacy Date: February 23, 1987
Approved by Commissioner: Garrey Peska *GP* Date: 2/16/87
Agency: Department of Administration

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)
Senate Secretary

FISCAL NOTE ANALYSIS

HB 55

This will will recriminalize the use or possession of marijuana at any location and would result in a significant increase in the number of prosecutions for such offenses.

The Department of Law has requested 2.5 attorneys in Anchorage and Fairbanks in order to enforce this statute. The constitutionality of the statute, which appears to directly conflict with the Supreme Court's 1975 holding in Raven v. State, will undoubtedly be tested in extensive trial and appellate court proceedings.

The Office of Public Advocacy requests one new Attorney III position for Anchorage--where the greatest number of prosecutions is likely to arise--and \$60,000 in contractual funds to pay for representation in other areas and for expert witness fees necessary for trial proceedings.

Personal Services

Anchorage

Attorney III			
Salary and Benefits	=	\$63,198	\$ 63.2
Legal Secretary I			
Salary and Benefits	=	\$30,184	<u>30.2</u>
		Subtotal Personal Services	\$ 93.4

Contractual

Contract attorneys in rural areas and expert witnesses	=	\$60,000	\$ 60.0
--	---	----------	---------

Supplies

Stationary and library supplies for two new positions at \$1,000 per position	=	\$ 2,000	\$ 2.0
---	---	----------	--------

Equipment

Office furniture and equipment for one professional position at \$2,429 and one secretary at \$6,838	=	\$ 9,267	<u>\$ 9.3</u>
--	---	----------	---------------

Total \$164.7

Position Title Legal Secretary I		No. of Positions 1	Range/Step 10/A	Barg. Unit G
Time Status PFT	Staff Months 12	Location EBA-Anchorage		Election District 8
Type of Expenditure		Amount		
1	2	3		
Salary	22,020			
Benefits	8,164			
Premium Pay				
Other				
Total Personal Services		30,184		
Travel				
Contractual				
Commodities				
Equipment				
Other				
Total Cost		30,184		
Funding Source for Total Cost				
Federal Receipts	1002			
G. F. Match	1003			
General Fund	1004	30,184		
I-A Receipts	1006			
CIP Receipts	1061			
Other				
<p>Justification</p> <p>The Anchorage OPA office presently has 3 legal secretary positions providing clerical support to 12 professional positions, 2 vista volunteers, and the VGAL program. The addition of an attorney with a full caseload necessitates the addition of a legal secretary. The present ratio of 4 professionals to each secretary is the maximum that each secretary can handle. The additional workload created by an additional attorney carrying a full caseload cannot be absorbed by the present secretarial staff.</p>				

**Request For
New Position**

Agency Administration
 DRU Office of Public Advocacy
 Component _____

Page 4 of 4
 Revised Date _____

FY 88

Position Title Attorney III		No. of Positions 1	Range/Step 22/A	Barg. Unit X																																				
Time Status PFT	Staff Months 12	Location EBA-Anchorage		Election District 8																																				
<table border="1"> <thead> <tr> <th>Type of Expenditure</th> <th></th> <th>Amount</th> </tr> <tr> <th>1.</th> <th>2</th> <th>3</th> </tr> </thead> <tbody> <tr> <td>Salary</td> <td>49,140</td> <td rowspan="4"></td> </tr> <tr> <td>Benefits</td> <td>14,058</td> </tr> <tr> <td>Premium Pay</td> <td></td> </tr> <tr> <td>Other</td> <td></td> </tr> <tr> <td colspan="2">Total Personal Services</td> <td>63,198</td> </tr> <tr> <td colspan="2">Travel</td> <td></td> </tr> <tr> <td colspan="2">Contractual</td> <td></td> </tr> <tr> <td colspan="2">Commodities</td> <td></td> </tr> <tr> <td colspan="2">Equipment</td> <td></td> </tr> <tr> <td colspan="2">Other</td> <td></td> </tr> <tr> <td colspan="2">Total Cost</td> <td>63,198</td> </tr> </tbody> </table>		Type of Expenditure		Amount	1.	2	3	Salary	49,140		Benefits	14,058	Premium Pay		Other		Total Personal Services		63,198	Travel			Contractual			Commodities			Equipment			Other			Total Cost		63,198	Justification <p>The Anchorage OPA office presently has 3 attorney positions devoted to criminal defense. These attorneys are also handling several major cases outside the Anchorage area as staff coverage and travel is more cost effective than contracting major cases to private attorneys in rural areas. Current caseloads indicate that these three attorneys cannot absorb the additional cases which would result from this legislation. It is necessary that an additional attorney be added to the Anchorage staff to cover the resultant increased caseload.</p>		
Type of Expenditure		Amount																																						
1.	2	3																																						
Salary	49,140																																							
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**Request For
New Position**

Agency Administration
 DRU Office of Public Advocacy
 Component _____

Page 3 of 4
 Revised Date _____

FY 88

**STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE**

REQUEST: _____

Bill Version: HB55

Publish Date: _____

Revision Date: _____
Title: "An Act relating to marijuana..."

Agency Affected: Dept. of Administration
BRU: Public Defender Agency

Sponsor: Rep. Martin
Requestor: Judiciary

Components: Third Judicial District
Fourth Judicial District

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES		140.9	146.5	152.3	158.4	164.7
TRAVEL		-0-				
CONTRACTUAL		27.5	10.4	10.8	11.2	11.6
SUPPLIES		2.0	2.1	2.2	2.3	2.4
EQUIPMENT		3.0				
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	173.4	159.0	165.3	171.9	178.7

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

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

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	173.4	159.0	165.3	171.9	178.7
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	173.4	159.0	165.3	171.9	178.7

POSITIONS:

FULL-TIME	-0-	2.0	2.0	2.0	2.0	2.0
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

See attached analysis

Prepared by: Dana Fabe, Public Defender
Division: Public Defender Agency

Phone: 279-7541

Date: Feb. 20, 1987

Approved by Commissioner: Harvey Pestka
Agency: _____

Date: 3/6/87

Distribution (by preparer):

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB55

This bill would re-institute the prosecution of offenses relating to the possession of marijuana in any amount or location and would result in a significant number of new cases for the Department of Law, the Public Defender Agency and the Office of Public Advocate. The Department of Law is requesting 2.5 new attorney positions while the Public Defender Agency is requesting an Attorney III in Anchorage and an Attorney III in Fairbanks for a total of 173.4.

BUDGET ANALYSIS

100	Attorney III - Anchorage	66.1	
	Attorney III - Fairbanks	74.8	140.9
200	Travel		-0-
300	Contractual - Space, phone, etc.	10.0	
	Litigation, one time	17.5	27.5
400	Supplies - Law Library, office, etc.		2.0
500	Equipment - One time		<u>3.0</u>
		Total	173.4

Position Title Attorney III			No. of Positions 1	Range/Step 22A	Barg. Unit PX	Gov.	Approv.	Disapp.
Time Status PFT	Staff Months 12.0	RP Number	Location Anchorage		Election District 92	Leg.		
Type of Expenditure			Justification					
Amount			<p>This bill would result in a significant increase in criminal prosecutions as it would apply to any amount of marijuana in any location. The Public Defender Agency is requesting an Attorney III for Anchorage plus an additional 17.5 (one time) in contractual to litigate the constitutionality of this bill.</p>					
1	2	3						
Salary	49,140							
Benefits	16,980							
Premium Pay								
Other								
Total Personal Services		66,120						
Travel		-0-						
Contractual		22,500						
Commodities		1,000						
Equipment		1,500						
Other								
Total Cost		91,120						
Receipt Code	Funding Source							
	Federal Receipts	1002						
	G. F. Match	1003						
	General Funds	1004	91,120					
	I-A Receipts	1005						
	Program Receipts	1028						
	CIP Receipts	1061						
	Other							
For B&M Use Only								
Key Number								

**Request For
New Position**

Agency Dept. of Administration
 BRU Public Defender Agency
 Component Third Judicial District

Page 3 of 4
 Revised Date

FY 87

PRIME SPONSOR'S SYNOPSIS

HB 55

"An Act relating to marijuana; efd."

Sec. 1. provides legislative findings regarding the psychological and physiological effects of marijuana on human beings. These findings are substantiated by scientifically-valid studies conducted over the past decade by a variety of research groups.

Sec. 2. amends AS 11.71.060(a) - misconduct involving a controlled substance in the sixth degree - to accomplish the following:

- would classify the use, display or possession of any amount of marijuana up to 1/2 pound as a class B misdemeanor. Class B misdemeanors are punishable by a fine of up to \$1000 and imprisonment up to 90 days. The use, display or possession of more than 1/2 pound of marijuana would remain a class A misdemeanor, with a fine of up to \$5000 and up to a year in jail.

- deletes language relating to possession in public; possession while operating a propelled vehicle; possession by persons under 19 years old; and possession of more than 4 ounces. These specific offenses would no longer need to be delineated in law, as they are superceded by the above change.

Sec. 3. repeals AS 11.71.070 - misconduct involving a controlled substance in the seventh degree. This section currently provides that misconduct...in the seventh degree is a "violation", and is punishable by a fine up to \$100.

Sec. 4. provides an immediate effective date.

PRIME SPONSOR'S SYNOPSIS

Effect of amendments. — The 1986 amendment, effective June 11, 1986, deleted "or AS 17.35" following "AS 17.30" in the introductory language of subsection (a).

Sec. 11.71.070. Misconduct involving a controlled substance in the seventh degree. (a) Except as authorized in AS 17.30, a person commits the offense of misconduct involving a controlled substance in the seventh degree if the person

(1) manufactures or delivers, or possesses with the intent to manufacture or deliver, one or more preparations, compounds, mixtures, or substances of an aggregate weight of less than one-half ounce of a schedule VIA controlled substance; or

(2) possesses one or more preparations, compounds, mixtures, or substances of an aggregate weight of less than one ounce containing a schedule VIA controlled substance on a public street or sidewalk or on the premises of a public carrier or business establishment or in any other public place.

(b) Misconduct involving a controlled substance in the seventh degree is a violation and is punishable as authorized in AS 12.55, except that if a fine is imposed it shall not be more than \$100. (§ 2 ch 45 SLA 1982; am § 12 ch 146 SLA 1986)

Effect of amendments. — The 1986 amendment, effective June 11, 1986, deleted "or AS 17.35" following "AS 17.30" in the introductory language of subsection (a).

Sec. 11.71.080. Aggregate weight of live marijuana plants.

NOTES TO DECISIONS

Applicability of definition. — The definition in this section did not apply where the marijuana was already dried and processed. Gibson v. State, Ct. App. Op. No. 621 (File No. A-917), 719 P.2d 687 (1986).

Article 2. Standards and Schedules.

Section

120. Authority to schedule controlled substances

Sec. 11.71.120. Authority to schedule controlled substances. (a) If, after considering the factors set out in (c) of this section, the committee decides to recommend that a substance should be added to, deleted from, or rescheduled in a schedule of controlled substances under AS 11.71.140 — 11.71.190, the governor shall introduce legislation in accordance with the recommendation of the committee.

(b) If a substance is added as a controlled substance under federal law, the governor shall introduce legislation in accordance with the federal law.

TO BE REPEALED

STATUTE TO BE REPEALED



KETCHIKAN GATEWAY BOROUGH SCHOOL DISTRICT

Darroll Hargraves
SUPERINTENDENT

Resolution No. 210
Ketchikan Gateway Borough School District

A REQUEST FOR CHANGING THE STATE STATUTES TO MAKE THE POSSESSION AND USE OF MARIJUANA ILLEGAL

WHEREAS, the State of Alaska allows legal private possession and use of marijuana,

WHEREAS, Alaska's present statutes regarding possession and use of marijuana appear to be in conflict with the laws of the United States, and

WHEREAS, the problem of drug and alcohol abuse in our schools and our society appears to be on the rise, and

WHEREAS, the President of the United States initiated a national crusade to counter the current drug problem, and

WHEREAS, many students find easy access to illegal drugs, particularly marijuana, and

WHEREAS, Alaska statutes present a mixed message by currently allowing the use and possession of marijuana in the home, and

WHEREAS, current research and medical opinion concerning marijuana indicates that marijuana is harmful and does present a serious health problem, and

WHEREAS, the utilization of marijuana possession in Alaska sends the message to outside suppliers that Alaska is an open state which condones the "personal use" of marijuana, and

WHEREAS, a show of community resolve against the legal possession and use of marijuana sends a message to the state legislature and the governor's office,

THEREFORE BE IT RESOLVED by the Ketchikan Gateway Borough School District that:

1. The School District encourages and supports the reenactment of statutes which will recriminalize the possession of marijuana.
2. The School District makes this position one of public record so that all in the community, in other school districts, and across the state will understand our position that the present statutes in Alaska governing marijuana are not in the best interest of its citizens.
3. The School District requests our legislators, locally and across the state, to give the recriminalization of marijuana immediate attention during the 1st session of the 15th legislature so that effective July 1, 1987 the possession and use of marijuana will be illegal and carry consequences.

PASSED, APPROVED, AND ADOPTED BY THE BOARD OF EDUCATION OF THE KETCHIKAN GATEWAY BOROUGH SCHOOL DISTRICT OF KETCHIKAN, ALASKA THIS _____ DAY OF _____, 1987.

President of the Board

Clerk-Treasurer of the Board

AMENDED AND APPROVED

Date: 12-9-86

Submitted by: Assemblyman
Brad Bradley

Prepared by: Assemblyman
Brad Bradley

For Reading: November 25, 1986

AR No. 86-284

A RESOLUTION OF THE MUNICIPALITY OF ANCHORAGE SUPPORTING REPEAL
OF AS 11.71.070 AND AMENDMENT OF AS 11.71.060(a) TO MAKE
MARIJUANA ILLEGAL

WHEREAS, Alaska is the only state in the union with a permissive statute for personal possession of marijuana, and

WHEREAS, findings of local, state and federal authorities conclude that marijuana is detrimental to the health, welfare and public safety of all people, and

WHEREAS, the Supreme Courts of other states and the U.S. Supreme Court have upheld state statutes prohibiting the use and possession of marijuana, and

WHEREAS, current Alaska state statutes are not in conformity with federal drug enforcement laws controlling drug abuse, and

WHEREAS, the conflict between federal and state law pertaining to marijuana causes unnecessary barriers for local police and Alaska State Troopers in protecting the public from drug abusers, and

WHEREAS, the Anchorage Crime Commission has for the past three years concluded that Alaska's permissive laws on marijuana should be repealed, and

ANCHORAGE ASSEMBLY

WHEREAS, representatives of 60 Alaskan high schools at the Alaska Association of School Governments' Annual Fall Conference on October 18 of this year unanimously passed a resolution to repeal the current marijuana law and make the drug in all its forms illegal in Alaska.

NOW THEREFORE, the Anchorage Assembly resolves:

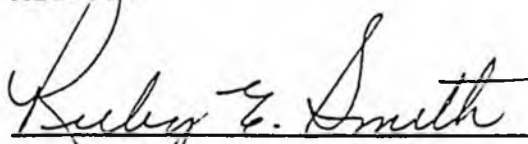
That the Governor of the State of Alaska, the Alaska State Legislature and the Alaska Supreme Court ^{are} ~~is~~ petitioned to take immediate steps to repeal / ~~AS-11-71-079~~ ^{statutory and constitutional protections} ~~and~~ ^{for the} ~~amend~~ ~~AS-11-71-060~~ ~~to make~~ use and possession of marijuana illegal ^{in order} ~~illegal~~ in the State of Alaska/to promote the general health, welfare and public safety of the citizens of Anchorage and the State of Alaska.

PASSED AND APPROVED by the Anchorage Assembly this
9th day of December, 1986.

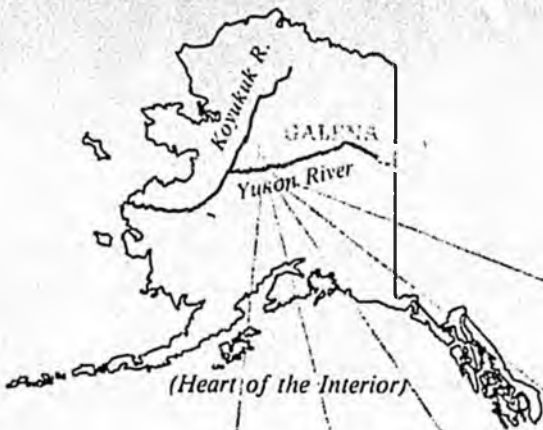


Chairman

ATTEST:



Municipal Clerk



GALENA CITY SCHOOL DISTRICT

GALENA, ALASKA 99741
PHONE (907) 656-1205

SUPERINTENDENT'S
OFFICE

January 7, 1987

Representative Terry Martin
P.O. Box V
Mail Stop 3100
Juneau, Alaska 99811

Dear Representative Martin:

The Board of Education for the Galena City School District is appalled at the free uncontrolled flowing use of controlled drugs including marijuana.

We are aware of the detrimental effect that drugs have on the education of students who use drugs and that schools are held accountable for the learning that should take place. Therefore, it is very important that those negative effects on learning be eliminated.

One of the big reasons that larger and larger numbers of students are failing in school is the use of drugs and marijuana.

Our School Board strongly encourages you to support stricter laws on possession, sale and use. Further, we would ask for your support laws that will facilitate the arrest and conviction of dealers.

We appreciate your positive attitude and support.

Sincerely,

Carole C. Huntington, President
Board of Education

CCH/elb
069/87

cc: School Board Members
Galena City School District

GALENA SCHOOL DIST



Alaska Association of School Governments

RESOLUTION: ALASKA ASSOCIATION OF SCHOOL GOVERNMENTS
FALL CONFERENCE
DIAMOND HIGH SCHOOL
October 18, 1986

Whereas the student leaders of Alaska recognize that there is a severe Drug and Alcohol problem in Alaska,

Whereas the student leaders of Alaska recognize this problem exists in the Alaskan elementary, junior and senior high schools,

Whereas the students believe it is necessary for them to take a united stand against Drugs and Alcohol,

Therefore, be it resolved that the students representing the Alaska Association of School Governments (AASG), endorse the nationally known "Just Say No" Drug Prevention Program

Be it further resolved the AASG students will present a flag to Governor Sheffield to be flown over the capitol building that states: "Alaska Students/Just Say No" and

Be it further resolved the AASG students request the Governor and the Alaska Legislature to repeal the current marijuana law and make marijuana illegal in this state.

Resolution passed unanimously by 60 Alaskan high schools in attendance at the AASG fall conference.

ALASKA ASSOCIATION OF STUDENT GOV'TS.



ANCHORAGE
SCHOOL DISTRICT

4600 DeBarr Avenue - Anchorage, Alaska

99504

AREA CODE 907-333-9561

2508 Blueberry Phone #276-1992

October 23, 1986

Ms. Alyce Hanley
Representative
1024 E. 6th Ave., Suite 200 A
Anchorage, Ak 99501

Dear Rep. Hanley:

I have enclosed for your information the names of the schools that were in attendance at the Alaska Association of School Governments fall conference held at Dimond High school. The list also contains the name of the student that was designated by their school to serve as the spokesperson on business items.

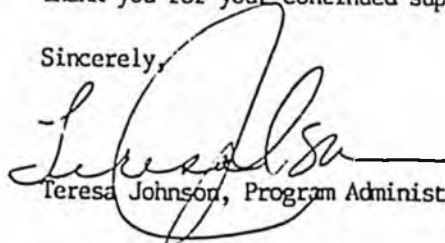
The students did finish the just say no flag and have made arrangements for the flag to be sent to Juneau and presented to the governor. The students also passed a resolution during their business meeting to support the establishment of Just say No clubs in schools, support for additional Drug Education Programs and unanimous support for repealing the current marijuana statute for the state of Alaska. I have taken the liberty of enclosing a copy of the resolution for you. I think it would be wonderful if you would present this resolution to the house for the students. Likewise, if you could recommend a senator, perhaps Jan Faiks, that would like to do the same in the senate, I would be interested in your recommendation.

Please let me know if it is possible for you to present the resolution on behalf of the students. If I can be of any further assistance to you, please let me know.

Also for your information, the Alaska Association of Secondary School Principals passed a resolution for repeal of the marijuana statute. Larry Graham would be the contact person for information about that resolution.

Thank you for your continued support of students & education.

Sincerely,



Teresa Johnson, Program Administrator

TJ:svr

cc: Dennis Johnson
St. Dir. AASG

ANCHORAGE SCHOOL DISTRICT

Anchorage Chamber of Commerce

Crime Commission.

RECRIMINALIZATION OF MARIJUANA



The Anchorage Crime Commission is a public group that wishes to present information on the issue of recriminalization of marijuana.

In 1985 the Anchorage Crime Commission compiled a bibliographical summary of numerous professional evaluations and opinions regarding the health hazards associated with marijuana usage. Based on this data the 1985 Crime Commission strongly endorsed the recriminalization of marijuana.

The 1986 Anchorage Crime Commission (with the generous support of the Anchorage Times and Carr's Quality Centers) conducted an area wide public opinion survey dealing with public attitudes on a wide range of crime related issues.

Although the final survey analysis and subsequent recommendations are not scheduled for release until early 1987, an extract of the survey provides statistical information regarding public attitude on two relevant questions directly related to the issue of marijuana recriminalization.

The citizens of Anchorage indicated their strong desire for the recriminalization of marijuana.

The Anchorage Crime Commission extends its support to the Municipal Assembly in accepting the challenges related to addressing this issue. Should further support or definition be needed, we would be happy to assist.

Harold C. Heinze

Harold C. Heinze
Chairman

A Committee of the
Anchorage Chamber
of Commerce

415 F Street
Anchorage AK 99501
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ANCHORAGE CRIME COMMISSION

Anchorage Chamber of Commerce Crime Commission



November 15, 1985

Dear Reader:

The material contained herein was compiled from various sources by the Anchorage Chamber of Commerce Crime Commission in support of our recommendation to recriminalize marijuana in the state of Alaska.


Because of a State Supreme Court Decision on this subject, it will be necessary for the Legislature to hold extensive hearings to determine if, in fact, marijuana is harmful to one's health.

It is the Crime Commission's contention that since the decriminalization of small amounts of marijuana in Alaska approximately ten years ago, much new information has been developed concerning this issue.

We feel that this scientific evidence substantiates the Commission's position that marijuana is a harmful substance. We further believe that if the Legislature were to hold the same type of hearings that were held ten years ago, the preponderance of evidence would result in outlawing the possession of marijuana for health reasons, an act which should then stand up to any further Supreme Court reviews.

We ask the reader to review the material carefully and draw his own conclusions as the Crime Commission has.

Sincerely yours,


Pat Wellington
Vice Chairman

nm

A Committee of the
Anchorage Chamber
of Commerce

George N. Nelson Chairman

415 F Street
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Pat Wellington Vice Chairman
Don Patterson Secretary/Treasurer
George King Law Enforcement

Craig Hesser Prosecution
Chris Watkins Courts
Sue McCauley Corrections

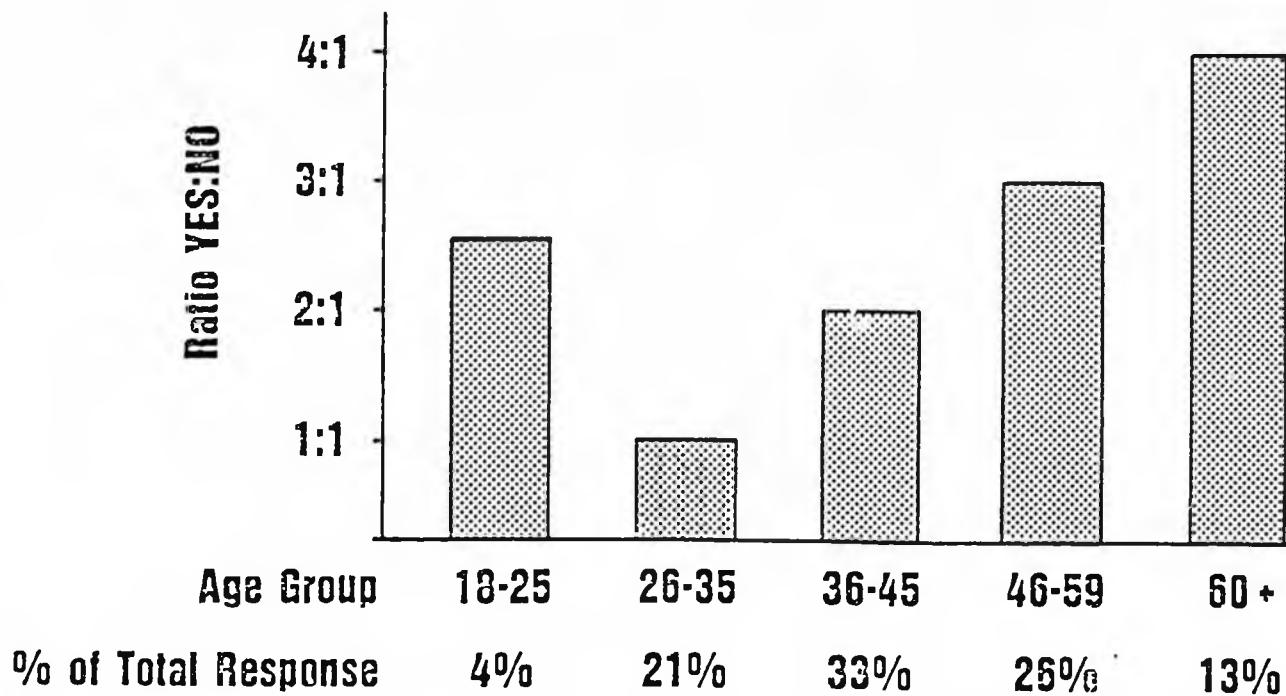
Vicki Swank Prevention
Tom Obermeyer Legislation
Ron Moore Publicity

ANCHORAGE CRIME COMMISSION PUBLIC OPINION SURVEY

QUESTION: Should marijuana in any quantity be considered an illegal substance ?

YES 324

NO 162



QUESTION: To what degree do illegal drugs affect the crime rate ?

HIGH 78%

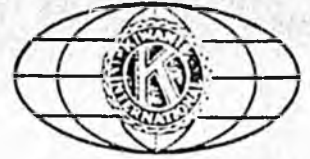
MEDIUM 5%

LOW 15%

NONE 1%



KIWANIS CLUB OF ANCHORAGE
P.O. BOX 101404
ANCHORAGE, ALASKA 99510



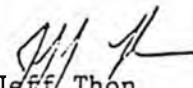
Anchorage Assembly

Whereas, it is a major emphasis of Kiwanis International to enrich the lives of our youth, and

Whereas, the Kiwanis Club Of Anchorage is currently participating in a nationally promoted activity of drug abuse prevention and education through the Just Say No Foundation, and

Whereas, the current laws in Alaska do not consider it a crime to possess certain combinations of controlled substances in certain amounts, which is counterproductive to our efforts in the Just Say No [to drugs] Program,

Now therefore, be it resolved that the Kiwanis Club of Anchorage hereby encourages the Anchorage Municipal Assembly to adopt a resolution in support of changing our statutes to make possession of a controlled substance, other than by prescription, a crime.


Jeff Thon
President

KIWANIS RESOLUTION

FROM: NATIONAL CONFERENCE OF STATE LEGISLATURES

The War on Drug Abuse. Both the Congress and the Administration have stepped up efforts to combat the nation's perceived drug abuse epidemic. The breadth of support and the swiftness of action demonstrated thus far this summer make final passage of a bill highly likely yet this session.

By a wide 392-16 vote margin, the House of Representatives last Friday approved H.R. 5484, a massive three-year \$6 billion package of criminal code reforms, enforcement enhancements, interdiction schemes, and drug education/prevention/treatment programs prepared by twelve different House committees. During the upcoming 1987 fiscal year, the bill would make available \$1.6 billion with the remainder of the funds to be spread over the following three-year period. The scope and cost of the program, however, can be expected to be pared significantly in the Senate, where the majority leadership is preparing a separate proposal based on the President's recommendations. Democratic Senators have already put forth their legislative package on this topic, S. 2798.

During House floor debate on this legislation, several key amendments were adopted by wide margins. Among those were:

- o authorization of the death penalty in drug related murder cases;
- o changes in the exclusionary rule which bars illegally gathered evidence from use in court (Evidence would be admissible if the officer involved "acted in good faith" in seizing the evidence, a practice not currently allowed.); and
- o deployment of U.S. military forces along the nation's borders to halt drug smuggling activities. "Continuous aerial radar coverage of the southern border of the U.S." would be required, as would be the pursuit and seizure of any intruding aircraft thought to be carrying illegal drugs.

Drug enforcement programs would receive a major infusion of federal dollars, increasing by \$1 billion (to \$1.3 billion) federal antidrug grants to state and local law enforcement agencies in the next two years. Matching fund requirements for state-local governments would be dropped from 50 percent to 10 percent. Furthermore, the federal funds could be used to finance state and local prison construction.

EXERPT FROM NCSL NEWSLETTER

School drug abuse education and prevention programs would be eligible for federal grants financed from a new \$350 million annual appropriation. Community organizations and colleges could also receive grant monies for drug abuse education from this pool of funds.

In addition, the package would:

- o provide an additional \$100 million for treatment programs;
- o finance the construction of additional federal prisons, providing perhaps an additional \$1 billion for this purpose;
- o cut-off foreign aid to or impose economic sanctions upon nations which are sources of illegal drugs if they fail to cooperate in U.S. enforcement programs;
- o set a minimum 20-year prison sentence for large-scale drug smugglers;
- o mandate life prison sentences without parole for adults convicted a second time of selling drugs to a minor on or near school grounds;
- o enhance the enforcement capabilities of the Coast Guard and the Customs Service; and
- o expand the tools available to combat money laundering.

President Reagan unveiled his own plan on Monday. His strategy calls for:

- o the expenditure of \$100 million during fiscal year 1987 and appropriate amounts in the succeeding four years for drug education programs;
- o authorization of \$490 million in fiscal year 1988 and additional sums as necessary during fiscal years 1989 through 1992 for alcohol, drug and mental health programs administered by the Alcohol, Drug Abuse and Mental Health Administration, with elimination of existing set-aside requirements;
- o appropriation of an additional \$100 million for state operated drug abuse treatment centers;
- o increased penalties (including mandatory jail terms and fines) for possession of illegal drugs and for drug trafficking and related offenses, with a maximum of life imprisonment to be imposed upon individuals convicted for a second time of large-scale drug trafficking;
- o imposition of the death penalty upon individuals convicted of murder committed during a continuing criminal enterprise;
- o reform of the exclusionary rule regarding illegally seized evidence (as provided in the House bill); and

- o enhanced enforcement powers of the Coast Guard and the Customs Service.

NCSL officers are now being polled about an emergency policy position on this issue. A copy of that policy proposal is enclosed for your review. (Staff contacts: Bill Waren--criminal code reforms and prison construction; Joy Wilson--drug abuse treatment programs; Ron Field--drug abuse education and prevention programs; and Michael Bird--money laundering provisions.)

Reauthorization of the "Higher Education Act." Members of a House-Senate conference committee have finally concluded negotiations on legislation, S. 1965, to extend the "Higher Education Act," the primary funding source for student aid programs.

As approved by the conferees, the bill would extend the Act for five years and would authorize \$10.2 billion in spending during the coming fiscal year (compared with the current annual authorization of approximately \$12 billion and outlays of approximately \$8.5 billion). Spending would rise 5 percent annually for the following four years. From these funds, the Guaranteed Student Loan (GSL) program would be given up to \$3.2 billion annually.

In resolving their thorniest dispute, conferees agreed that poor students attending school part-time could qualify for some assistance, beginning in fiscal year 1988. Other noteworthy provisions of the final agreement are as follows:

- o a change in the present rule which bars schools from receiving money for low-interest National Direct Student Loans if their alumni default rate exceeds 20 percent (down from the present 25 percent level);
- o an increase in the maximum Pell Grant for needy students to \$3,100 per year by 1991 (up from a current \$2,100 cap);
- o a rise in the maximum amount which can be borrowed by a student through the GSL program;
- o a requirement that all students pass a financial needs test in order to qualify for a guaranteed student loan (At present, only those from families with incomes in excess of \$30,000 must meet such a qualifying standard.);
- o adoption of new conditions for the continued receipt of student aid (i.e., a "C" average at the end of the second year in school or academic standing consistent with the college's graduation requirements);
- o reductions in the subsidies paid to banks to compensate for the difference in market and student loan interest rates;
- o the imposition of new fees upon state agencies which assist in the administration of the GSL program, with higher fees to be charged to agencies whose borrowers maintain a high default rate;



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

P.O. Box Y, State Capitol
Juneau, Alaska 99811-3100
Mail Stop 3100
(907) 465-3991

December 3, 1986

MEMORANDUM

TO: Representative Alyce Hanley

ATTN: Cassie Russell

FROM: Penelope Weyhrauch *PW*
Legislative Analyst

RE: Recriminalization of Marijuana
Research Request 87.047

You requested a discussion of federal and State law criminalizing marijuana, and were interested in which states had amended their constitutions to conform with federal drug law. You also asked for information on recriminalizing marijuana in Alaska by constitutional amendment and/or legislation.

Federal Law

The Comprehensive Drug Abuse Prevention and Treatment (CDAPT) Act of 1970 (also known as the Controlled Substances Act) criminalizes the possession and distribution of marijuana. Under the act, possession of any amount of marijuana is a criminal offense. Both a fine and incarceration can be imposed on a person possessing marijuana, subject to a court's discretion. Any offense other than simple possession (first offense) is a felony. Attachment A contains a copy of applicable sections of the CDAPT Act.

The Anti Drug Abuse Act of 1986 set mandatory sentences for simple possession of marijuana and for possession with intent to distribute. Penalties are specified in Table 1. The act also specified penalties for distributing drugs to juveniles and pregnant women, distributing drugs near schools and appropriated funds for states to improve narcotics control.

Federal drug laws may be enforced in any state by federal agents. State law enforcement officers may also enforce federal drug laws. According to Gretchen Derr, Special Assistant to the Alaska Commissioner of Public Safety, Alaska State Police usually will not pursue a federal offense until the U.S. Attorney's office authorizes such action.

TABLE 1
FEDERAL PENALTIES FOR THE POSSESSION OF MARIJUANA

	First Offense		Second Offense	
	Fine (000)	Incarceration (Years)	Fine (000)	Incarceration (Years)
<u>Simple Possession</u>	\$5	1 or probation	\$1 to \$5*	1*
<u>Possession with Intent to Distribute</u>				
Quantity (kilograms):				
0 to 50				
individual	250	5	500	10
corporation	1,000		2,000	
50 to 99				
individual	1,000	20	2,000	30
corporation	5,000		10,000	
100 to 999				
individual	2,000	5 to 40*	4,000	10 to life*
corporation	5,000		10,000	
1000 and up				
individual	5,000	10 to life*	8,000	20 to life*
corporation	10,000		20,000	
<u>Cultivation:</u>				
< 100 plants & 0-50 kg	250	5	500	10
> 100 plants & 0-99 kilograms	1,000	20	2,000	30

NOTES:

*--Mandatory Sentencing.

Simple possession by quantity is not defined in federal law. A first offender of simple possession will often be put on probation, with the record expunged after the completion of probation. If the offense is repeated, courts then apply either the first or second offense penalties.

Possession with intent to distribute can be inferred by the quantity of marijuana in possession, even if a sale has not occurred. Distribution of a small amount of marijuana for no remuneration is often treated as simple possession.

Cultivation of more than 100 plants with a weight greater than 99 kilograms, carries the same penalties, according to the quantity, as possession with intent to distribute.

"Corporation" includes any organization, association, or group of drug traffickers.

Prepared by the House Research Agency, December 1986.

Representative Hanley
December 3, 1986
Page 3

According to Jim Walsh, Assistant Attorney with the U.S. Department of Justice Controlled Substance Unit, the federal government has no interest in prosecuting for possession of small amounts of marijuana. Federal enforcement agencies are interested in the smuggling and trafficking of large amounts and rarely pursue or prosecute small-scale possessors.

State Law

Although most states have traditionally followed the federal lead regarding drug legislation, a state is not in violation of federal law because its prohibitions on the possession and distribution of marijuana differ from federal law. Adoption of federal provisions in this area is not mandatory, and states may develop their own policies regarding marijuana within their state boundaries. No state has amended its constitution in order to conform with federal drug legislation. The Uniform Controlled Substance Act of 1970--model legislation drafted by the National Conference of Commissioners on Uniform State Laws--was designed to make state laws more compatible with federal law. Between 35 and 40 states have adopted the Uniform Act.

State marijuana laws are listed on Table 2. As shown on this table, eleven states--Alaska, California, Colorado, Maine, Minnesota, Mississippi, Nebraska, New York, North Carolina, Ohio, and Oregon--have decriminalized marijuana. Decriminalization means that the possession of marijuana is considered a civil offense or a criminal infraction and is not punishable by incarceration. In states which have decriminalized marijuana, a citation and a small fine are the usual penalties for violations. None of the states that have decriminalized marijuana have recriminalized it.

Twenty-eight states allow for a conditional discharge for first-time, simple possession violators; defendants are released, generally without an adjudication of guilt, on condition that they satisfy certain requirements, such as participation in a drug education program. In Massachusetts, a first offense possessor of any amount of marijuana is subject only to probation.

State laws relating to subsequent violation of simple possession provisions and for cultivation and selling marijuana vary greatly. In a majority of states, cultivation is punished as heavily as the sale of marijuana.

TABLE 2
STATE MARIJUANA LAWS

State	Amount	Possession	Cultivation	Sale
Alabama	up to 80 gms	0.1 yr * & \$5,000	0.1 yr & \$5,000	0.1 yr & \$5,000
	over 80 gms	0.2 yrs & \$10,000	0.2 yrs & \$10,000	0.2 yrs & \$10,000
Alaska	any amount	0.6 mos * & \$2,500	0.5 yrs & \$2,500	0.5 yrs & \$10,000
Kansas	any amount	0.1 yr * & \$2,500	0.1 yr & \$2,500	1.10 yrs & \$10,000
Kentucky	up to 8 oz	0.90 days* & \$200	0.90 days & \$250 ¹	0.1 yr & \$500
	8 oz - 5 lbs	0.1 yr & \$500	see footnote ¹ below	1.5 yrs & \$5,000
	over 5 lbs	0.1 yr & \$500	1.5 yrs & \$5,000 ¹	5-10 yrs & \$10,000
Louisiana ²	up to 100 lbs	0.6 mos * & \$500	0.10 yrs. & \$15,000	0.10 yrs & \$15,000
	100-2,000 lbs	5-15 yrs & \$50,000	5-15 yrs. & \$50,000	5-15 yrs & \$50,000
	2,000-10,000 lbs	15-25 yrs & \$200,000	15-25 yrs & \$200,000	15-25 yrs & \$200,000
	over 10,000 lbs	25-35 yrs. & \$500,000	25-35 yrs & \$500,000	25-35 yrs & \$500,000
Malpelt	any amount for personal use	\$0-\$200	\$0-\$200	0.1 yr & \$1,000
	up to 1.5 oz.	\$0-\$200	\$0-\$200	0.1 yr & \$1,000
	1.5 oz - 2 lbs	0.1 yr & \$1,000	0.1 yr & \$1,000	0.1 yr & \$1,000
	2-1,000 lbs	0.5 yrs & \$2,500	0.5 yrs & \$2,500	0.5 yrs & \$2,500
	over 1,000 lbs	0.10 yrs & \$10,000	0.10 yrs & \$10,000	0.10 yrs & \$10,000
Maryland	any amount for personal use	0.1 yr * & \$1,000	0.1 yr & \$1,000	0.5 yrs & \$15,000
	any other amount	0.5 yrs & \$15,000	0.5 yrs & \$15,000	0.5 yrs & \$15,000
	import over 100 lbs interstate	0.25 yrs & \$50,000		0.25 yrs & \$100,000
Massachusetts	any amount	probation*	0.2 yrs & \$5,000	0.2 yrs & \$5,000
Michigan ³	any amount	0.1 yr * & \$1,000	0.4 yrs & \$5,000	0.1 yrs & \$1,000
	use	0.90 days & \$100		
Minnesota ⁴	up to 1.5 oz.	\$0-\$100 ⁵	0.5 yrs & \$30,000	0.5 yrs & \$30,000
	over 1.5 oz	0.5 yrs & \$1,000	0.5 yrs & \$40,000	0.5 yrs & \$30,000
Mississippi	up to 1 oz. not in vehicle	\$100-\$250	0.4 yrs & \$1,000	0.4 yrs & \$1,000
	1 gm - 1 oz in vehicle	0.90 days & \$1,000	0.3 yrs & \$1,000	0.3 yrs & \$1,000
	1 oz - 2.2 lbs	0.2 yrs & \$3,000	0.20 yrs & \$10,000	0.20 yrs & \$10,000
	over 2.2 lbs	0.20 yrs & \$1 million	0.30 yrs & \$1 million	0.30 yrs & \$1 million
Texas ⁶	up to 2 oz	0.6 mos * & \$1,000	0.6 mos & \$1,000	2.30 yrs & \$5,000
	2-1 oz	0.1 yr & \$2,000	0.1 yr & \$2,000	2.10 yrs & \$5,000
	over 1 oz	2.30 yrs & \$5,000	2.10 yrs & \$5,000	2.30 yrs & \$10,000
Utah	any amount	0.6 mos * & \$500	0.5 yrs & \$5,000	0.5 yrs & \$10,000
Vermont ⁷	up to 1 oz	0.6 mos & \$500	0.7 yrs & \$5,000	0.5 yrs & \$5,000
	1-2 oz	0.3 yrs & \$1,000	0.5 yrs & \$5,000	0.5 yrs & \$5,000
	over 2 oz	0.5 yrs & \$5,000	0.5 yrs & \$5,000	0.5 yrs & \$5,000
Virginia ⁸	up to 5 oz	0.30 days & \$500	0.30 days & \$500	0.1 yr & \$1,000
	5 oz - 5 lbs	0.30 days & \$500	0.30 days & \$500	0.10 yrs & \$1,000
	over 5 lbs	0.30 days & \$500	5.30 yrs	5.30 yrs
Washington ⁹	up to 30 gms	0.90 days & \$250	0.5 yrs & \$10,000	0.5 yrs & \$10,000
	over 30 gms	0.5 yrs & \$10,000	0.5 yrs & \$10,000	0.5 yrs & \$10,000
West Virginia ¹⁰	up to 15 gms	discharge*	1.5 yrs & \$15,000	1.5 yrs & \$15,000
	over 15 gms	90 days 6 mos & \$1,000	1.5 yrs & \$15,000	1.5 yrs & \$15,000
Wisconsin ¹¹	any amount	0.30 days* & \$500	0.5 yrs & \$15,000	0.5 yrs & \$15,000
Wyoming	any amount	0.6 mos * & \$1,000	0.6 mos & \$1,000	0.10 yrs & \$10,000

Note: This chart contains the penalties for first offense possession, sale, and cultivation of marijuana.

The 11 states which have decriminalized possession are shaded and indicated as follows: Alaska.

Many states have increased penalties for subsequent offenses. A number of states also have separate penalties for offenses not included in this summary chart, including possession with intent to distribute.

The penalties set out above are the maximum authorized by law. When the penalty is a prison term and a fine, both can be imposed unless the chart specifically indicates otherwise. For example, the penalty for possession in Alabama can be up to 1 year in prison and/or a fine of up to \$1,000.

* Conditional discharge is authorized for first offense possession. This permits judges to release defendants, generally without an adjudication of guilt, on condition that they satisfy certain requirements, such as participation in a drug education program. If the conditions of the program are satisfied, the criminal case will then be dismissed.

¹ These states have enacted laws allowing for the medical use of marijuana, generally for patients being treated for glaucoma and cancer. Marijuana helps counteract the nausea associated with chemotherapy treatment.

² Many state laws have different penalties for possession or sale of different amounts of marijuana. Some of these statutes distinguish by ounce (oz.) weights, and others by gram (gm.) weights. For comparative purposes:

1 oz. = 28.35 gms.

1 lb = 453.59 gms

2.2 lbs = 1 kilogram

³ In 1975, the Supreme Court of Alaska held that the constitutional Right of Privacy protects the possession of marijuana for personal use in the home by adults.

⁴ Cultivation of under 25 plants is punishable as possession; cultivation of 25 or more plants is punishable by 1-5 yrs. and a \$5000 fine.

⁵ There is a rebuttable presumption that possession of more than 1.5 ozs. is with intent to distribute, which has the same penalty as sale

Alaska Law

In Ravin v. State, the Supreme Court of Alaska held that the possession of marijuana for personal use in the home by adults is protected by the right to privacy clause in the Alaska Constitution.¹ Decriminalization of marijuana, however, applies only to the possession of marijuana in the home, as the Ravin case states. Possession outside the home in any amount is a criminal violation.

Under Alaska law, penalties for the possession of marijuana increase as the quantity involved increases. It is a criminal violation to possess up to one ounce of marijuana in a public area (AS 11.71.070). It is a class B misdemeanor to possess one ounce or more in a public area or to possess more than four ounces of marijuana anywhere (AS 11.71.060). According to Gayle Horetski, Assistant Attorney General with the Criminal Division of the Alaska Attorney General's office, AS 11.71.060 could apply to the possession of more than four ounces in a private home. Alaska statutes prohibiting the possession and distribution of marijuana are Attachment B of this memorandum.

Recriminalizing Marijuana

Recriminalization of marijuana in Alaska could occur by amending the Alaska Constitution or by repealing existing legislation and enacting new legislation. If the Alaska Constitution were amended to exempt the possession of marijuana from the right to privacy clause, State statutes would still have to be amended in order to criminalize possession of small amounts of marijuana. If State statutes were amended to criminalize marijuana and the constitution were not amended, the amended statutes would probably be challenged under the Ravin decision.

Amending the Alaska Constitution requires a two-thirds vote of the legislature and a majority vote by the people [Article 13, Section 1 of the constitution (Attachment C)]. Ms. Horetski suggests that language to exempt the possession of marijuana from the constitutional right to privacy might be: "Rights embodied in this section do not extend to the possession of controlled substances (or marijuana)." In 1985, a Senate resolution was proposed to exempt the possession of controlled substances from the constitutional right to privacy (Attachment D).

¹The Ravin decision is unique among states. Of the nine states which have right to privacy clauses in their constitutions, California and Hawaii have also addressed the clause in regard to possession of marijuana. In both states, the courts found the claim to be untenable.

Representative Hanley
December 3, 1986
Page 7

Amending State statutes would involve redesigning the structure of the current drug statutes. This would include the repeal of AS 11.71.070, amending statutes which specify penalties for possession of marijuana, and cross referencing statutes to amend all statutes that relate to marijuana. According to Ms. Horetski, if the constitution were not amended to exclude marijuana from the right to privacy clause, statutes criminalizing marijuana could be struck down at the trial court level and the case would probably be appealed to the Supreme Court. According to a fiscal note prepared by the Attorney General's office, convincing the trial court to reverse the Ravin ruling would require that the prosecutor present scientific evidence that the effects of marijuana use are so injurious to a person's mental and physical health as to justify the legislative decision to prohibit the use of marijuana by anyone at any time.

On appeal, the Supreme Court would decide whether the State has proved that there is a "compelling State interest" in prohibiting the use of marijuana which outweighs an individual's right to privacy under the State Constitution. The fiscal note also stated that to prove a compelling State interest, the State must show that the legislature's consideration of the recriminalization of marijuana included extensive public hearings, debate on the merits of recriminalization and discussions of the most recent studies regarding the physical, emotional, and social effects of marijuana usage.

* * * *

I hope this information is helpful to you. Please contact us if you have any questions or if we can be of further assistance.

PW

Attachments