

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672

4668 HJUD HB 140 - HB 143

8672

## CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB140

These changes will allow for more flexible treatment of offenders who are doing well on parole by enabling transfer to field probation supervision. They will allow the Parole Board to concentrate on more serious, at-risk offenders.

### Sections 6 - 8:

These sections amend the definitions in AS 33 to agree with the changes made in Sections 1 through 5.

### Section 9:

This amendment will allow mandatory parolees with probation sentences to follow to serve the mandatory parole and probation time concurrently.

The current population is serving an average of 6 months on mandatory parole followed by 3 years on probation supervision. This change in the statutes will reduce the period of supervision from a total of 3.5 years to 3.0 years. The savings are estimated at: 2,500 clients x .5 years x \$1,828/year, \$2,372,500 over three years or \$790,800 per year. These estimates are based on an average field supervisory cost of \$5.20 per day. The savings in staff time will allow the field probation staff to concentrate on clients needing supervision and newly assigned cases.

STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE

Bill Version: HB 140

Publish Date: \_\_\_\_\_

REQUEST

Revision Date: \_\_\_\_\_

Title: "An Act relating to parole."

Agency Affected: Public Safety

BRU: Alaska State Troopers

Sponsor: Rep. Swackhammer ....

Requestor: House HESS

Components: Detachments & CIB

EXPENDITURES/REVENUES: (Thousands of Dollars)

| OPERATING         | FY 87 | FY 88 | FY 89 | FY 90 | FY 91 | FY 92 |
|-------------------|-------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES |       |       |       |       |       |       |
| TRAVEL            |       |       |       |       |       |       |
| CONTRACTUAL       |       |       |       |       |       |       |
| SUPPLIES          |       |       |       |       |       |       |
| EQUIPMENT         |       |       |       |       |       |       |
| LAND & STRUCTURES |       |       |       |       |       |       |
| GRANTS, CLAIMS    |       |       |       |       |       |       |
| MISCELLANEOUS     |       |       |       |       |       |       |
| TOTAL OPERATING   | 0     | 0     | 0     | 0     | 0     | 0     |
| CAPITAL           | 0     | 0     | 0     | 0     | 0     | 0     |
| REVENUE           |       |       |       |       |       |       |

FUNDING: (Thousands of Dollars)

|               |   |   |   |   |   |   |
|---------------|---|---|---|---|---|---|
| GENERAL FUNDS | 0 | 0 | 0 | 0 | 0 | 0 |
| FEDERAL FUNDS |   |   |   |   |   |   |
| OTHER         |   |   |   |   |   |   |
| TOTAL         |   |   |   |   |   |   |

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact is anticipated.

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

Phone: 269-5691

Date: 2/23/87

Approved by Commissioner: William R. Nix *(Signature)*

Date: 2/25/87

Agency: Public Safety

Distribution (by preparer):

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*JMK*  
*2/25/87*

BILL NO: HB 140

DATE: March 3, 1987

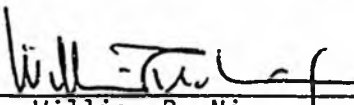
TITLE: "An Act relating to parole."

CONTACT: Maj. Walter J. Gilmour  
Acting Director  
Alaska State Troopers

DEPARTMENT OF  
PUBLIC SAFETY

POSTAGE PAID /

This bill does not impact the Department of Public Safety.

  
\_\_\_\_\_  
William R. Nix  
Acting Commissioner

ALASKA PAROLE BOARD  
MANDATORY PAROLE INFORMATION

1985 - 1986

| <u>Supplemental Conditions Set</u> |           | <u>Mandatory Parole Revocation Hearings</u> |
|------------------------------------|-----------|---|
| 1985                               | 179 Cases | 25  |
| 1986                               | 373 Cases | 57  |

April 4, 1985

No. 42

# Alaska State Legislature



House of Representatives  
House Judiciary Committee  
CSHB 141(Jud)

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

The following is a commentary and sectional analysis prepared by the Department of Law for CSHB 141(Jud) "An Act relating to the parole of offenders; and amending the sunset date for the parole board; and providing for an effective date." It was used by the House Judiciary Committee in its consideration of the bill.

A handwritten signature in black ink, appearing to read "H.M. Miller".

H.M. Miller, Chairman  
House Judiciary Committee

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Sectional Analysis and Commentary - CSHB 141 (Jud)

For the fourth consecutive legislature, legislation has been introduced to rewrite the Alaska Parole Administration Act. The original Parole Administration Act, AS 33.15, was adopted in 1960. In the ensuing 25 years the criminal justice system in Alaska has undergone radical change, yet the Parole Administration Act has only been amended on a piecemeal basis without the benefit of comprehensive research and careful analysis. Although the current operations of the board meet or exceed most nationally accepted correctional standards and court decisions, existing law does not reflect this. As noted in the 1984 Legislative Audit on the Parole Board, "[e]xisting statutes relating to the Parole Board are vague, lack specific direction in some areas and are inconsistent in other areas." The vagueness and ambiguities contained in existing law are leading to an ever increasing amount of litigation. CSHB 141 clarifies these ambiguities, while providing clear direction for parole administration in light of the evolutionary changes in the criminal justice system which have resulted from recent case decisions. The bill also embodies many professional standards of the corrections/parole field while setting parameters for the operation of a parole system in Alaska.

Article III, Section 21 of the Alaska Constitution requires that "A parole system shall be provided by law." As an integral part of the criminal justice system, parole can be an invaluable tool in rehabilitating offenders by ensuring that they are reintegrated back into society with assistance and direction. Parole can also enhance public protection by establishing and enforcing conditions of release designed to reduce risk to the public. Finally, parole can be a positive factor in reducing prison overcrowding by releasing low-risk offenders from incarceration under realistic conditions. The dictates of Article III, Section 21 necessitate legislative action to provide clear and predictable direction to the Parole Board in order to fulfill these rehabilitative and protective goals.

Section 1

This provision vests a sentencing court with the power to further restrict eligibility for discretionary parole beyond that which is provided by operation of law. Eligibility for discretionary parole may be restricted in this section up to the maximum term of imprisonment. Similar provisions have always existed in Alaska law, and constitute an appropriate sentencing tool in cases where parole is not foreclosed by presumptive sentencing. In that a court's sentencing authority is derived from statute, there must be affirmative authorization for such a sentencing order. Rovne v. State, 586 P.2d 1250 (Alaska 1978).

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Section 2

AS 33.16.010. This section sets forth the two distinct types of parole which exist in current law -- discretionary parole and mandatory parole. Consistent with current law, all state prisoners sentenced to a term of imprisonment of at least 181 days are parole eligible. Presumptively sentenced prisoners are ineligible for discretionary parole under AS 33.16.090, however they are subject to mandatory parole under this section. Under either type of parole, the released prisoner is subject to the imposition of conditions and the supervision of the parole board. Mandatory parole is currently authorized under present AS 33.20.040. See Braham v. Beirne, 675 P.2d 1297, (Alaska 1984). This section provides for uniform supervision for all parolees, whether mandatory or discretionary.

AS 33.16.020 - .040 establishes the parole board in the department of corrections, sets out guidelines and criteria for the selection and appointment of board members, and allows the rates of compensation for board members.

AS 33.16.050 codifies existing practice by setting out requirements for the frequency of board meetings, and quorum and voting requirements necessary to take official action. This section also permits the board to conduct meetings via teleconference facilities. However, this power is limited to situations where no due process considerations, such as the right to confrontation, are in issue.

AS 33.16.060 sets out the duties of the board. The primary change in existing law is the requirement to adopt regulations under the Administrative Procedures Act, AS 44.62. Currently the Board is exempt from this Act. By requiring adherence to the Administrative Procedures Act when adopting regulations, the board will be subject to a greater degree of public scrutiny and input, and information regarding board operations will be more accessible.

AS 33.16.070 authorizes the board to issue subpoenas and specifies those subpoenas as enforceable in superior court.

AS 33.16.080 enables the board to hire an executive director and sets minimum qualifications for this position.

AS 33.16.090 establishes eligibility for discretionary parole. A state prisoner must be sentenced to a term or terms over 180 days, and may not be presumptively sentenced to be eligible. The prisoner must also have served any statutory or

judicially imposed minimum sentence.

Further, this section resolves a major ambiguity present in current law. With the passage of the new criminal code in 1978 and the enactment of Alaska's presumptive sentencing scheme, offenders who were presumptively sentenced were decreed to be ineligible for discretionary parole. However, within this scheme, no statutory provision or legislative intent has defined "presumptive sentence" for the purpose of discretionary parole eligibility. A few sentencing courts have concluded that the law is ambiguous and have declared that after an offender serves one presumptive term, he is thereafter eligible for discretionary parole during subsequent consecutive presumptive terms. In addition some presumptively sentenced offenders have been made eligible for discretionary parole during the period of enhancement when the presumptive sentence was increased because the crime was an aggravated one. The same rationale employed by the courts in these instances could also be used to make a presumptively sentenced prisoner eligible for parole if the presumptive sentence was mitigated. The practice of granting discretionary parole eligibility to subsequent presumptive terms in a consecutive sentence, and to those portions of presumptive terms which are sentence enhancements because the crime was aggravated, is clearly allowed in this section. In order for an offender to be considered ineligible for discretionary parole during any term in excess of the presumptive term, the sentencing court must restrict that parole eligibility under AS 12.55.115.

Finally, this section also codifies case law to allow the board to rely on more than just the judgment of the court in determining if the prisoner is presumptively sentenced. Currently a substantial portion of the judgments entered by courts do not indicate whether a prisoner is presumptively sentenced, therefore it is necessary to review the sentencing record to determine discretionary parole eligibility.

AS 33.16.100(a) sets out the broad general standards that the board should follow when deciding on a grant of discretionary parole. These standards reflect the Chaney criteria and the purposes of sentencing in AS 12.55.005, particularly those concerned with rehabilitation, protection of the public and seriousness of the crime.

Subsection (b) authorizes the board to rescind or revise a grant of parole when new circumstances come to light. Currently the board reviews and approves parole release plans months prior to a prisoner's release date. Subsequently new

information on that prisoner may come to the board's attention. For example, a prospective employment plan may no longer be possible, or the prisoner is unable to immediately enter a residential treatment program upon release, or the prisoner is subsequently involved in a major disciplinary action. With this provision the board can change conditions or decide that the prisoner is not appropriate for discretionary parole, and rescind its previous action or merely delay the prisoner's release date. Due process safeguards are built in to protect the prisoner's liberty interest.

Subsections (c) and (d) set out the minimum amount of a sentence a prisoner must serve before being eligible for discretionary parole. For discretionary parole eligible prisoners, the minimum term is decreased from one-third of the sentence under current law to one-fourth of the sentence, except for an individual convicted of first or second degree murder, kidnapping, or misconduct involving a controlled substance in the first degree. With this latter group, the minimum term remains one-third or the mandatory minimum, whichever is greater. The sentencing court may further restrict parole eligibility under AS 12.55.115. Parole eligibility is reduced by this bill only for first-time non-presumptive Class B or C felony offenders and for misdemeanants.

AS 33.16.110 codifies existing practice by setting out the information which the board must consider when determining a prisoner's suitability for discretionary parole.

AS 33.16.120 was enacted in 1984 as a portion of the Victim's Rights Legislation and gives a victim the right to comment in writing on a pending discretionary parole decision. The board is required to consider those comments. The board also has a duty to notify a victim if a prisoner is released on either discretionary or mandatory parole.

AS 33.16.130 places the responsibility for requesting discretionary parole on the prisoner rather than making the board responsible for reviewing all potentially eligible prisoners. Working with institutional staff, the prisoner would prepare a parole release plan, including the prisoner's plans for employment, treatment, residence and other relevant material, for presentation to the board. A hearing on the granting of parole is required. If the board denies an application for discretionary parole, a written decision must be issued and provided to the prisoner. This section mirrors current practice, but the procedural safeguards are made more specific.

AS 33.16.140 requires the board to issue a written order of parole for any discretionary or mandatory parolee, setting forth all terms and conditions of release including the parole expiration date. This clarifies existing law by providing more specificity.

AS 33.16.150 codifies existing practice by setting out the terms and conditions which the board may impose on a discretionary or mandatory parolee. The prohibition against violating any law is a required condition for all parolees. Subsection (b) lists numerous other conditions that the board may impose in order to fashion an appropriate rehabilitative release plan and supervision for the parolee. Subparagraph (b)(7) would apply only to misdemeanants, because a convicted felon is already precluded from possessing or controlling a firearm under both state and federal law. Conditions may also be imposed by parole officers, except for certain very restrictive conditions listed in subparagraph (c), which may only be imposed by the board.

The board is also empowered under subsection (d) to set a specific time limit on any discretionary condition it imposes.

AS 33.16.160 sets out the mechanism whereby changes in a condition of parole may be accomplished. This provision sets out due process safeguards for the parolee when the condition is more restrictive, and also delineates the methods by which a condition may be changed or imposed in an emergency situation.

AS 33.16.170(a) makes records and information obtained or used by the board confidential under state law. Subsection (b) allows the board to withhold certain potentially harmful information from the parolee. When this type of information is withheld, subsection (c) requires the board to provide to the prisoner or parolee a summary of the material withheld.

AS 33.16.180 sets out the duties of the commissioner of corrections in assisting the parole board.

AS 33.16.190 reflects current law, under which the positions of parole officer and probation officer are interchangeable.

AS 33.16.200 clearly sets out that the board retains jurisdiction over a parolee until the end of the parolee's sentence and results in all parolees being equally treated. This section consolidates current law which sets out three different schemes for determining the board's jurisdiction over a parolee.

AS 33.16.210 allows the board to unconditionally discharge a parolee from parole after two years. The discharge authority would be employed when a parolee has demonstrated rehabilitation and there is no further need for supervision. There is no similar provision currently in law. Alaska is believed to be the only state where the parole board does not possess this authority.

AS 33.16.220 sets out the mechanism for revoking parole. Subsection (a) gives the board the authority to revoke parole if the parolee violates a condition of release. This mirrors current law.

Subsection (b) sets out minimal due process requirements for holding a preliminary revocation hearing. In order to avoid duplicitious proceedings, the board may rely on a judicial determination of probable cause rather than hold a separate preliminary hearing.

In subsection (c), after finding probable cause of a violation, the board then must conduct the dispositive phase, i.e., deciding whether the parolee is to be incarcerated or released pending a final revocation proceeding. If the board decides to release the parolee, additional conditions may be imposed under subsection (d).

Subsections (e) and (f) set out time frames for holding final revocation proceedings. These provisions codify case law to ensure speedy disposition of parole revocation proceedings.

Subsection (g) addresses the situation where a parolee's alleged violation is also a pending criminal charge. Before deciding to proceed to a final revocation proceeding, the board must consider any prejudice that may result to either the parolee or the state. If a decision to hold the revocation proceeding is made, the board then must consult with the Attorney General's office so that immunity issues may be resolved. This provision attempts to balance seemingly inconsistent court decisions.

Subsection (h) establishes the burden of proof necessary to show a violation. This is a codification of case law.

Subsection (i) vests the board with broad discretionary power to fashion a remedy appropriate to the violator and the violation. Numerous options are made available under this subsection. The board may revoke all of the violator's parole, returning the parolee to jail for the full term of the parole; the

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board may revoke a part of the violator's parole, returning the parolee to jail for a part of the parole term and extending the period the parolee is under the jurisdiction of the board a commensurate amount. The board may return the parolee to jail for part of the parole term and not extend the parole term. The board may also change a condition of parole to ensure that the rehabilitative goals are met. The board currently holds this power; this subsection merely restates and clarifies this power.

AS 33.16.230 allows a parolee to waive any hearing which is required under due process standards.

AS 33.16.240 sets out the procedure for arresting a parole violator. Subsection (e) precludes bail for a person arrested as a parole violator. The dispositive phase of a preliminary revocation proceeding, under AS 33.16.220(c), addresses a parole violator's release.

Subsection (f) gives credit to a parolee for time in custody toward the unexpired term of the sentence, but denies a parolee credit for street time. This provision is in current law.

AS 33.16.250 sets out how an arrest warrant for a parole violator is executed.

Section 3 amends existing good time release provisions to conform with the concept of a mandatory parole.

Section 4 provides for those situations when a mandatory parolee has a residual period of probation.

Section 5 is a technical, conforming amendment.

Section 6 provides a new sunset date for the parole board.

Section 7 repeals the existing Parole Administration Act.

Section 8 addresses the reappointment of current board members and allows for readjustment of their terms of appointment to achieve staggered terms.

Section 9 is a special application section for AS 33.16.090(b), discretionary parole eligibility during the period of an enhanced or consecutive presumptive sentence. In that some prisoners have previously been ordered to be

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discretionary parole eligible during these periods, these court orders are approved in this section. For other prisoners sentenced before the effective date of this Act who have enhanced or consecutive presumptive sentences, and where the court has not made a determination on discretionary parole eligibility, it is intended that those prisoners may petition the court under Criminal Rule 35 for this determination. Absent such a determination, AS 33.16.090(b) is to be applied prospectively.

Section 10 provides for an effective date.

Due Process Considerations

Generally, in determining the procedural safeguards that due process requires in parole proceedings, it is first necessary to distinguish the type of proceeding involved. The decision making functions in parole can be broadly designated as either granting parole or revoking parole, each of which necessitates differing level of safeguards. The question of the necessary levels of safeguards that must be provided is correlative to the liberty interest being considered or acted upon. The greater the liberty interest involved, the higher the level of safeguards mandated. In Alaska, which employs a scheme of both discretionary and mandatory parole, further distinguishment in the safeguards results from the type of parole under consideration.

Clearly, if the procedures under consideration pertain to a revocation function, safeguards are universally applicable, whether parole is mandatory or discretionary. For although parolees have forfeited their right to the full liberty enjoyed by ordinary citizens by virtue of a criminal conviction, they do possess greater freedom than persons incarcerated. This conditional liberty interest possessed by both mandatory and discretionary parolees has been recognized by the United States Supreme Court:

We see, therefore, that the liberty of a parolee, although indeterminate, includes many of the core values of unqualified liberty and its termination inflicts a "grievous loss" on the parolee and often on others. It is hardly useful any longer to try to deal with this problem in terms of whether the parolee's liberty is a "right" or a "privilege." By whatever name, the liberty is valuable and must be seen as within the protection of the Fourteenth Amendment.

Morrissey v. Brewer, 408 U.S. 471, 482 (1972).

On the other hand, the procedures which apply during the granting phase are not applicable to both classes of parolees, because mandatory parolees are released by operation of law while discretionary parolees are subject to the discretionary decision making function of the parole board. The procedures required under the parole granting function likewise differ from those required in the revocation function, as there is no recognized liberty interest, conditional or otherwise, in discretionary parole. Greenholtz v. Inmates of the Nebraska Penal and Correctional Complex, 442 U.S. 1 (1979).

#### A. Parole Granting Function

Due process safeguards in the parole granting function are only required if there is a deprivation of a protected interest held by the prospective parolee. Under the United States Constitution, states do not have a legal obligation to establish a parole system, and there is no federal constitutional or inherent right to parole. However, Greenholtz does recognize that a state may, by constitution or by statute, create such a right, and if the right is created, certain due process safeguards must be afforded the prospective parolee.

Procedural safeguards in the discretionary parole granting process would be required if the Alaska Constitution or statutes created a sufficient expectation of parole to constitute a protected liberty interest, as the establishment of a liberty interest is a condition precedent to the applicability of due process. Sharp v. Leonard, 611 F.2d 136 (6th Cir. 1979).

Article III, Section 21 of the Alaska Constitution provides

Section 21. Executive Clemency. Subject to procedures prescribed by law, the governor may grant pardons, commutations, and reprieves, and may suspend and remit fines and forfeitures. This power shall not extend to impeachment. A parole system shall be provided by law.

This section directs the creation of a parole system by the legislature; it does not constitutionally guarantee parole, nor does it mandate the type of system of parole that could be created. Rather, it leaves to the discretion of the legislature the type of parole system, and that discretion necessarily includes determining the types of individuals eligible for parole.

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Within the context of finding a liberty interest created by statute, courts will focus on the certainty of parole release. If the board has unlimited discretion to grant or deny parole, no liberty interest is present. Conversely, if the statute requires the board to parole a particular person at a certain time, that person has an expectation of release which is a protected liberty interest. As a general rule, the more the board's discretion is limited, the more likely it is that a liberty interest will be found. If there is a presumption that a prisoner will be paroled, courts will tend to find a liberty interest. U.S. ex rel Scott v. Illinois Parole and Pardon board, 669 F.2d 1186 (7th Cir. 1982). This distinction is apparent in comparing AS 33.16.010(b) with AS 33.16.010(c), in that the certainty of parole release under the latter statute is limited only by the amount of good time the prisoner has accumulated under AS 33.20.030, while the board's discretion governs parole under the former.

Careful analysis of discretionary parole under AS 33.16 is necessary to determine whether there is a sufficient expectation of parole to find a liberty interest. AS 33.16.090(a), which discusses the eligibility of a prisoner for discretionary parole vests the board with wide discretion ("... may, in the discretion of the board, be released on discretionary parole ..."). Less certitude in a prisoner's release on discretionary parole is found in AS 33.16.100(a) ("The board may authorize the release of a prisoner on discretionary parole if ..."). This statutory language is intentionally discretionary, and does not create a liberty interest in the Alaska statutory scheme of discretionary parole.

The incertitude of a grant of discretionary parole has also been recognized by the Alaska Supreme Court, albeit in dicta. For although a prisoner must serve a minimum period before becoming eligible for discretionary parole "... it does not follow from this that there is any certainty that a prisoner ... would actually be paroled at that time." <sup>1/</sup>

Only in those situations where state legislatures have limited the parole authority's release discretion have courts found any liberty interest. This was the case in Greenholtz where the Nebraska statutes declared that the parole board

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<sup>1/</sup> Huff v. State, 568 P.2d 1014, 1019 (Alaska 1977). See also Hansen v. State, 582 P.2d 1041, 1047 n. 12 (Alaska 1978).

"shall" grant release "unless" one of four designated reasons for not doing so existed. <sup>2/</sup> See also, Williams v. Missouri board of Probation and Parole, 661 F.2d 697 (8th Cir. 1981). However, such mandatory language is a rarity among states, and doesn't exist in Alaska law.

A liberty interest in the parole granting process may also be found in the practices of the board or in administrative rule or regulation adopted under the statute. For example, if the board adopts standards which include guidelines specifying an approximate parole release date for prisoners whose crimes and personal histories fit predetermined categories then a conditional liberty interest might be found to exist. This predictive judgment process will then require procedural safeguards to reduce the risk of error in determining the factual elements and making the subject appraisals. This is the situation intended for the Alaska parole system.

By requiring the adoption of regulations which "establish standards under which the suitability of discretionary parole is determined," a minimal liberty interest is created in the parole granting process. The Parole Administration Act, AS 33.16, therefore grants certain procedural safeguards to prisoners eligible for discretionary parole. This statutory grant of procedural safeguards is intended to give prisoners the assurance of a fair proceeding.

#### Procedural Safeguards

After applying for parole, the eligible prisoner is entitled to notice and a hearing on the parole application. The prisoner is given access to most material which the board will consider in reaching its decision, and the prisoner is granted the opportunity to respond in writing to the material and present evidence to the board. AS 33.16.130(b). Absent exigent circumstances, the evidence presented by the prisoner should not include the testimonial evidence of third parties, as such evidence can be submitted by means of an affidavit.

Only if the board denies the application for discretionary parole must the basis for the decision be put in writing. A copy of this writing is provided to the prisoner AS 33.16.-130(c). If the denial of the application is a "set off",

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<sup>2/</sup> Neb. Rev. Stat. § 83-1, 114

allowing for reconsideration of parole at some future date, the written basis for denial may indicate those areas in the prisoner's proposed release plans which need to be addressed, giving the prisoner adequate notice and direction for the subsequent reconsideration.

Although a prisoner is provided the basis for a denial of parole, this action of the board is not reviewable unless there is a denial of a constitutional right. The judicial review procedures of the Administrative Procedures Act, AS 44.62.330, 560 and 570, do not apply to parole board actions.

When the board has granted an application for parole and set a release date for the prisoner, it may rescind that action before the release date, or even revise the release date. This would occur if a change in circumstances in the prisoner's parole release plan occurred or if new information concerning the prisoner came to light. AS 33.16.100(b).

Having granted a future parole release date, the expectation of parole is sufficient to find a conditional liberty interest. Therefore, certain minimal procedural safeguards are warranted. The same statutorily mandated procedures employed at the parole granting phase are required to rescind parole, as they are sufficient to satisfy constitutional due process requirements.

#### B. Imposing Conditions of Parole

When imposing conditions of release on a parolee, whether the parole is discretionary or mandatory, the board is limited to imposing conditions which are both consistent with the goals of rehabilitation and protection of the public, and necessary for the proper functioning of the parole system. Morrissey, at 483; Roman v. State, 570 P.2d 1235, 1242 (Alaska 1977). To this end, all prisoners released on parole are required to lead law abiding lives as a condition of release. AS 33.16.150(a). Additionally, the board is empowered to impose special conditions designed for the individual rehabilitative program of each paroled offender. AS 33.16.150(b). Because some of these special conditions are severe limitations on the parolee's conditional liberty interest, imposition must be rationally related to the underlying offense or the parolee's history. Roman, at 1242. Specifically, special conditions that are in the nature of a search, AS 33.16.150(b)(9) & (11), may only be imposed if warranted by the nature or the circumstances surrounding the parolee's crime or social history. For this reason, these conditions may only be imposed by the board. AS 33.16.150(c).

Imposition of two additional conditions are likewise limited, not because they impinge upon the conditional liberty interest, but rather due to the nature of the condition. Precluding a parolee from possessing or controlling a firearms is limited to misdemeanor offenders, as felons are precluded by state law (AS 11.61.200) as well as federal law (Pub. L. 90-618 § 922(h)) from doing so. Imposing this condition upon a parolee would also necessitate a relationship to the crime, e.g. assault or extreme game violations. Finally, restitution as a condition of parole may only occur if restitution was ordered by the sentencing court. Brezenoff v. State, 658 P.2d 1359 (Alaska App. 1983).

After the initial imposition of the conditions of release upon the parolee, a need may arise to change or impose additional conditions, procedural safeguards may then be required. If the parolee is determined to be at liberty on a certain conditional level, a more restrictive level of conditional liberty may be a deprivation of the current conditional liberty status; thus imposition of new conditions may only be accomplished if the parolee is provided notice of the proposed change and the opportunity to be heard on it. Whether procedural safeguards need to be employed when there is a new or changed condition depends on an analysis of whether the new or changed condition is a further infringement of the liberty interest and also whether the change is significant or insignificant. Clearly, if the new condition required the parolee to enroll in a residential treatment program for substance abuse, the current level of conditional liberty enjoyed by the parolee is being curtailed; thus procedural safeguards are warranted. Conversely, if the new condition was a requirement of the parolee to pay child support or not to open a charge account, there is no further curtailment of the current conditional liberty interest, and procedural safeguards are not necessary. Moreover, if the parole officer required the parolee to report twice a month, rather than once a month, such a change is so insignificant as to not require any due process protections.

Situations may also occur which require the immediate imposition of a new or changed condition. Specific procedures are set out which balance the state's interests in rehabilitation and protection of the public with the parolee's conditional liberty interest. AS 33.16.160(c) & (d).

#### C. Parole Revocation

In Morrissey, after recognizing the conditional liberty interest possessed by parolees, the United States Supreme Court

mandated the employment of procedural guarantees in parole revocation proceedings.

The procedures required could be informal in nature, but must include as a minimum

1) a preliminary revocation hearing at or reasonably near the place of the alleged violation and as promptly as convenient after the arrest;

2) a final revocation hearing with

a) written notice of the claimed violation;

b) disclosure of evidence to be used against the violator;

c) opportunity to be heard in person and to present witnesses and documentary evidence;

d) a limited right to confront and cross-examine adverse witnesses;

e) a neutral and detached hearing body; and

f) a written statement by the fact finders as to the evidence relied on and the reasons for revocation.

Morrissey, at 486, 489.

In essence, Morrissey requires "an informal hearing structured to assure that the finding of a parole violation will be based on verified facts and that the exercise of discretion will be by an accurate knowledge of the parolee's behavior." Morrissey, at 485.

Clearly the court did not require the full range of rights normally accorded in a criminal proceeding. Subsequent decisions have held that the revocation proceeding is not part of a criminal proceeding, Martin v. State, 517 P.2d 1389 (Alaska 1974), therefore those guarantees normally applicable in the criminal proceeding do not apply in a revocation. State v. Sears, 553 P.2d 907 (Alaska 1976) (exclusionary rule for illegally seized evidence does not apply); Martin v. State, 517 P.2d 1389 (Alaska 1974) (right to bail under Alaska Constitution does not apply); Paul v. State, 560 P.2d 754 (Alaska 1977) (Alaska speedy trial rule does not apply); Roman v. State, 570 P.2d 1235 (Alaska 1977) (warrantless searches are permissible); Davenport v. State, 568 P.2d 939 (Alaska 1977) (different requirements for parole violation arrest warrant); Avery v. State, 616 P.2d 872 (Alaska 1980) (preponderance of evidence standard of proof sufficient for revocation).

#### 1. Preliminary Revocation Hearing

The Morrissey case set the broad standards for the

preliminary revocation hearing in order "to determine whether there is probable cause or reasonable ground to believe that the arrested parolee has committed acts that would constitute a violation of parole." <sup>3/</sup> The hearing needs to be conducted by an independent decision maker, i.e., some person other than one initially dealing with the case.

The finding of probable cause or reasonable grounds may be based on a finding in another forum, as the parolee would be collaterally estopped from relitigating issues previously determined. A criminal conviction, <sup>4/</sup> with the higher "beyond a reasonable doubt" standard of proof, or a finding of probable cause after a preliminary hearing in a pending criminal case, would both constitute conclusive proof of a parole violation. AS 33.16.220(b).

Although there is case law intimating a grand jury indictment may be used in a like manner, <sup>5/</sup> the due process requirement of Morrissey, which grants the parolee the opportunity to refute or explain the alleged violation, would tend to negate use in this way. However, given the standard for a grand jury indictment in Alaska (the evidence presented, if unexplained or uncontradicted, would warrant a trier of fact to find beyond a reasonable doubt that the accused committed the crime charged), the requirements of the prosecutor to disclose exculpatory evidence to the grand jury, <sup>6/</sup> and safeguards of Criminal Rule 6(q), a grand jury indictment does constitute prima facie evidence of a violation. In this situation, the burden is shifted to the alleged violator to disprove the charges in the indictment.

When probable cause or reasonable grounds for a violation are found, the preliminary revocation hearing becomes a

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<sup>3/</sup> Morrissey, at 486.

<sup>4/</sup> Moody v. Daggett, 429 U.S. 78, 86 n.7 (1976)

<sup>5/</sup> See Inmates Councilmatic Voice v. Rogers, 541 F.2d 633 (6th Cir. 1976); Hall v. State, 535 F.Supp. 1121 (S.D. Ohio 1982).

<sup>6/</sup> See Tookak v. State, 648 P.2d 1018 (Alaska App. 1982); Frink v. State, 597 P.2d 154 (Alaska 1979).

bifurcated process. Just as in the final revocation process there is an adjudicatory phase (to determine probable cause) and a dispositive phase (where the hearing officer must then determine whether the violator should be released pending a final revocation hearing). The hearing officer is required to consider four factors in making this determination. AS 33.16.220(c). As there is no constitutional right to bail in a parole revocation proceeding, Martin v. State, 517 P.2d 1389 (Alaska 1974), release pending the final revocation hearing may only occur under this subsection. (Bail release is also statutorily denied. AS 33.16.240(e)). The hearing officer, in determining that release is appropriate, may also impose additional conditions on the violator. AS 33.16.220(d). Necessary procedural safeguards, if the additional conditions are more restrictive of the parolee's liberty, are satisfied in the two phases of the bifurcated preliminary revocation hearing process.

## 2. Final Revocation Hearing

As previously noted, Morrissey set out six specific requirements for a final revocation hearing necessary to meet minimal due process safeguards. These minimal procedures have not been significantly expanded, either in subsequent case law, or by statute. The burden on whether to have a final revocation hearing has been shifted from the parolee: Morrissey implies the parolee must request a final revocation hearing (although the parolee must be notified of the right to such a hearing); by statute, a final revocation will be held unless specifically waived in writing by the parolee. AS 33.16.230. Additionally, the "within a reasonable time" requirement for holding a final revocation proceeding has been established by statute -- within 20 working days after a parolee's arrest and incarceration if no preliminary revocation hearing is held, 7/ or within 120 days after the arrest if a preliminary revocation hearing has been held. 8/ Special safeguards for both the parolee and the state are available in the event the alleged violation is based on a pending criminal charge. AS 33.16.220(g).

If a violation is found, the board is granted significant discretion in fashioning an appropriate remedy. Additional conditions of parole may be imposed upon the violator, who is

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7/ AS 33.16.220(e)

8/ AS 33.16.220(f)

then re-released on parole; the violator may also have the parole revoked in full, or in part, AS 33.16.220(i). A parolee is not given credit towards the original sentence, for time spent on parole, AS 33.16.240(f), so that a revocation may result in reincarceration for the amount of the prisoner's original term not previously served in jail. A partial revocation would result when the board decided the seriousness of the violation did not warrant reincarceration for the remainder of the term, but that some reincarceration was necessary.

#### Other Considerations

##### A. Arrest of Parole Violators

Alleged parole violators may be arrested with or without a warrant. A warrant may be issued by the board or a member of the board based upon a probable cause standard. Unlike the standards applicable to arrest warrants in criminal cases, a parole violator warrant does not need to be supported by a written affidavit or complaint. Davenport v. State, 568 P.2d 939 (Alaska 1977). However, to avoid unnecessary litigation on the issue of whether the warrant is supported by probable cause, the warrant is intended to be supported either by a written or recorded statement of the parole officer. Davenport, at 948, n.21.

Likewise, exigent circumstances may exist requiring the immediate arrest of a parolee. However, rather than leaving these exigent circumstances to subsequent court interpretation, the circumstances are enumerated in statute AS 33.16.240(c). If a warrantless arrest occurs, strict reporting requirements on the circumstances of the arrest are mandated. AS 33.16.240(d).

##### B. Confidential Information

###### 1. Public Disclosure

During the decision making aspects of its duties, the board will be relying upon information derived from a variety of sources. Although some of this information may be public information if it is derived from the original source under AS 09.25.110, other portions of this information are confidential, e.g., presentence reports. In order to relieve the board of the responsibility to determine whether this information is otherwise confidential under law, all the information compiled by the board is made confidential. AS 33.16.170(a). This provision therefore exempts that information from the provisions of AS 09.25.110 and AS 09.25.120; however, if the information is otherwise public information, this section does not preclude public inspection and

copying of that material at its original source.

## 2. Disclosure to the Parolee

In the main, information which is used by the board must be disclosed to the parolee. The due process requirements which attach to the liberty interests held by parolees or potential parolees, dictate that the parolee be given not only notice of a proposed action, but also the opportunity to be heard. To be meaningful, the opportunity to be heard requirement should afford the parolee or prisoner the ability to refute or explain adverse information as well as to ensure that the board considers information which the parolee or prisoner believes is relevant to the decision making function under consideration by the board. As succinctly stated in Morrissev, at 485, the procedural safeguards should be designed to ensure "that the exercise of discretion will be by an accurate knowledge of the parolee's behavior." There are, however, instances and situations wherein full disclosure of all information under consideration is neither appropriate nor required.

The first type of information where disclosure is neither appropriate nor required is the address of a victim who has commented upon a pending discretionary parole under AS 33.16.120. In this instance, the state has undertaken a duty to protect the victim from harm or harassment. AS 12.61.010(a)(3). By not disclosing the victim's residence or location, the state is taking one small measure to protect that victim in the event the prisoner, or any of the prisoner's relatives or associates decides to act in vengeance if the victim has commented adversely on a prospective parole. Furthermore, there is no reason, under due process requirements or otherwise, for the prisoner to have access to that piece of information. Therefore, this information is not disclosed to the parolee. AS 33.16.120(b).

The second type of information that is not appropriate to disclose is previously undisclosed diagnostic reports, confidential informant reports and any other information which, if disclosed, may result in harm to any person. AS 33.16.170(b). The state's interest in the rehabilitation of the prisoner, whether discretionary parole is granted or not, is of paramount importance. In some instances a psychiatric evaluation of the prisoner, if it has not been previously disclosed, may severely undermine the institutional therapy program in which the prisoner is currently enrolled. Although it is rare that such a diagnosis has occurred and has not been subsequently disclosed to the prisoner, a few instances of subsequent disclosure by the board and an attendant disruption of the prisoner's therapeutic program

would lead to the board either not being given access to that information, or to that type of information not being generated. Either alternative would negatively impact the rehabilitative goals of the state.

Furthermore, disclosure of confidential information or any other information which may result in harm to any other person is contrary to the state's duties to properly administer prisons and to protect society.

Although non-disclosure of these types of information, is permitted, due process does mandate the opportunity for the prisoner or parolee to contradict or explain adverse information. In balancing this interest with the state's interest in protecting other members of society from harm and ensuring rehabilitation, the board is therefore required to summarize the information which it does not disclose. This summary will vary with the types of information being considered by the board, but it nonetheless must be capable of conveying to the prisoner or parolee, as completely and as accurately as possible, the content of the information. This will enable the prisoner or parolee to adequately respond. AS 33.16.170(c).

### C. Remedial Actions

Numerous duties are required of the board during the parole process. The Parole Administration Act does not set out specific remedies that may result if the board fails to discharge those duties.

#### 1. Parole/Prisoner Remedies

Absent the denial of a constitutional right, the actions of the parole board when it is exercising its discretionary functions are not reviewable in court. Therefore, when in its predictive judgment, the board decides a prisoner is not suitable for discretionary parole, an aggrieved prisoner may not have that decision reviewed. However, in that the Parole Administration Act, and its requirement for the adoption of regulations establishing standards for the determination of the suitability for discretionary parole, grant a perspective parolee a limited liberty interest, review of the board's action for a denial of due process safeguards is more readily available than is apparent. Similarly, revocation of parole which is a recognized liberty interest may give rise to judicial review of the procedures employed to ensure the necessary level of due process procedural safeguards.

If a prisoner or parolee challenges the procedure of the board as a violation of due process safeguards (usually through an action under Criminal Rule 35) the remedy that is nearly universally applied is for the board to redo the proceeding, ensuring that the parolee's or prisoner's due process rights are recognized. Newell v. State, 620 P.2d 680 (Alaska 1980). The courts have recognized that they possess "only limited power to review Parole Board decisions, and cannot usurp the authority of the Board." 9/ This remedy is generally appropriate if the board has violated one of the procedural guarantees set out in Morrissev, at 486, 489, whether it occurs at the preliminary or final revocation stage. See Ford v. Wainwright, F.2d 981 (5th Cir. 1977); Hahn v. Burke, 430 F.2d 100 (7th Cir. 1980); Petition of Haverty, 618 P.2d 1011 (Wash. 1980). Similarly, a denial of procedural safeguards during the parole granting phase should be entitled to no more severe remedy than an order to redo the faulty hearing.

If the procedural safeguard denied a parolee in a revocation proceeding is the untimeliness of the hearing, the exceptional remedy applied is the reinstatement of the parolee to parole. See State v. Chavez, 607 P.2d 640 (N. Mex. App. Ct. 1979). By statute, Alaska has set specific time limits in which to hold a preliminary revocation hearing, within 15 working days after a parolee's arrest and incarceration for the violation; 10/ in which to hold a final revocation hearing, 20 days if the parolee is arrested, incarcerated and no preliminary revocation hearing on the violation is held; 11/ and in which to hold a final revocation proceeding, 120 days after the parolee's arrest, subject to recognized exceptions. 12/

If the board was to deny a timely hearing under the statute, the resultant remedy should be proportionate to the violation. The purpose underlying the requirement for a timely

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9/ Newell, at 683.

10/ AS 33.16.220(b). A preliminary revocation hearing is not necessary for a parolee charged with a violation who is not arrested and incarcerated if there is no additional deprivation of the parolee's conditional liberty interest.

11/ AS 33.16.220(e).

12/ AS 33.16.220(f).

hearing is to enable the alleged violator to respond to the alleged violation while contrary evidence may still be available and the issue is fresh in everyone's mind. A short delay in the revocation proceeding would result in little prejudice to the parolee, so release from incarceration pending the hearing is an appropriate remedy. However, where the delay is significant and prejudice to the parolee as shown, reinstatement to parole status may be appropriate. This is the exceptional situation. Naturally, in that the prejudice to the parolee is the availability of evidence and the freshness of the incident, even a significant delay of a final revocation hearing pending resolution of pending criminal charges is not prejudicial.

The extraordinary remedy of unconditional release would only result if there was a due process violation and the term of the parolee's sentence would have expired had not the due process violations occurred. See ex rel. Hahn v. Review, 520 F.2d 632 (7th Cir. 1975); Lawrence v. Smith, 451 F. Supp. 1979 (W.D.N.Y. 1978).

2. Third Party Remedies

If the board fails to notify a victim of its consideration of discretionary parole and the right of the victim to comment on the proceeding under AS 33.16.120(a) this does not invalidate any parole decision. The purpose of this section is to give victims a voice in (as opposed to a veto power over) the parole process, and to provide the board with additional information in considering discretionary parole and special conditions if parole is granted. Therefore any remedy for the victim would have to lie in a tort action.

PWC:eja:Sectional

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# STATE OF ALASKA

## DEPARTMENT OF CORRECTIONS

### BOARD OF PAROLE

STEVE COWPER, GOVERNOR

ALASKA BOARD OF PAROLE  
POUCH T  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-3384

March 6, 1987

Representative Swackhammer  
Rm. 106  
Capital Building  
Juneau, AK

Re: House Bill #140

Dear Rep. Swackhammer:

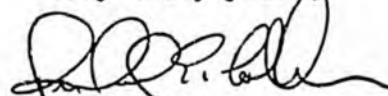
I strongly support passage of H.B. #140. As you are aware this legislation will return our Parole Supervision caseloads to a level comparable to 1985, before the comprehensive Revision of the Parole Laws effective January 1, 1986.

From an administration point of view it is very difficult to supervise misdemeanants because the periods of supervision are very short and the individual has very little to lose for non-compliance. Their attitude is that they have earned the Good Time and it shouldn't be subject to be taken away. The felons that fall into this less than two year sentence category are often subject to a residual period of probation to follow release anyway, certainly the ones the Judge thought were in need of supervision have probation to follow. We could better utilize our resources and manpower by concentrating on supervising serious felons. I believe that closer supervision of this higher risk group would provide better public protection.

The second section of this bill changes Parole Eligibility back to one-third for Class A felons. They were subject to this minimum from 1974 to 1985 and I believe it was changed in 1986 only due to a misunderstanding or a drafting error. However, to my knowledge, no one has been paroled by the Board, even since the Law was changed to one-quarter, before they completed at least one-third of their term. So a statutory change now will not have a fiscal impact but would be good public policy in my opinion.

Thank you for your efforts on this legislation and I appreciate the opportunity to provide you with my comments.

Very truly yours,



Richard E. Collum  
Parole Board Officer

REC:rs

February 27, 1987

Representative C.E. Swackhammer  
P.O. Box 417  
Soldotna, Alaska 99669

re: House Bill 140

Dear Representative Swackhammer:

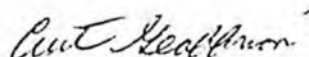
Thank you for your letter of 02-20-87, reference House Bill 140. I support the bill 100%, as I believe all probation officers do.

I will not attempt to explain each and every detail, nor offer examples as to why I disagree with present statutes. Simply stated, probation officers are wasting their time supervising clients with six months supervision or less. Precious resources such as time, man power and money are being wasted by requiring probation officers to supervise short term felons and misdemeanants. We must be allowed to concentrate our efforts where they are needed. At the present time, probation officers are over-loaded with burdensome paperwork, high caseloads and needless supervision of clients. House Bill 140 would assist in allowing probation officers to focus their attention where it belongs i.e., with individuals convicted of serious offenses and who received sentences of two years or more.

Legislators should scrutinize the role of probation officers within the state of Alaska. Careful review will demonstrate the cost effective nature of releasing inmates to probation/parole supervision. This includes intensive supervision which offers a tremendous savings and alleviates over-crowding as well. House Bill 140 would allow probation officers to supervise the more serious offender. It would also incorporate concurrent supervision of probationers/parolees which would assist probation officers in the course of their duties.

In conclusion, legislators should request testimony from individuals such as Sam Trivette, if they desire a comprehensive over-view of the nature of this bill. Additionally, myself and others will be willing to offer our assistance as requested, in an effort to secure passage.

Sincerely,



Curt Geoffrion  
Probation/Parole Officer III

# MEMORANDUM

# State of Alaska

TO: Tom Wright  
Legislation Aide  
Rep. Swackhammer's Office

DATE: March 9, 1987

FILE NO.:

THRU:

TELEPHONE NO.: 907-465-3384

SUBJECT: Mandatory Parole

FROM: Samuel H. Trivette  
Executive Director  
Parole Board

Per your request of March 7, 1987, I researched out files and also contacted the National Institute of Corrections Information Center to obtain additional information on mandatory parole in other jurisdictions. Unfortunately no national data is being gathered on mandatory parole. However, I did discuss this issue at length with Brian Bemus at the Information Center. He has extensive knowledge in this area. He only knows of two states that have abolished mandatory parole supervision. Some other states require the Parole Board to parole prisoners prior to "flat-time" dates but don't call it mandatory parole.

Mr. Bemus stated that most states have a system similar to ours. That is, prisoners with only longer sentences go on supervision subject to conditions set by the Parole Board. At least one state has the supervision lengths tied to the seriousness of the crime. So he agrees House Bill 140 is fairly typical of mandatory parole laws.

Another point I think is important. Alaska is fairly unique in having "split sentences", that is a prison sentence with probation to follow. In most states a judge can impose only a short county jail sentence as a condition of probation. Otherwise the judge sends the offender to prison, and there is no probation to follow. I checked two of our larger correctional facilities today and over 95% of the felons sentenced for classified felony crimes have split sentences, i.e.; have jail time and probation to follow. The importance is most felons will be supervised on probation without mandatory parole, so the public will be protected.

H B

143

# STATE OF ALASKA THE LEGISLATURE

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

## LEGISLATIVE AFFAIRS AGENCY LEGISLATIVE REFERENCE LIBRARY

May, 1988

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

Mary Van Nimwegen

H. JUD. 4-6-87 1:30p.m.

# HOUSE COMMITTEE REPORT

(7)

Date referred: 3/13/87

FURTHER REFERRALS:

4/8  
Finance

DATE: 4-6-87

The Judiciary Committee has considered HB 143

"An Act relating to the assessment of civil penalties under the Alaska Securities Act; and providing for an effective date."

**RECOMMENDS:**

- replace with CS H3143 (L+C)  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 2/20/87
- zero with analysis

**SIGNING DO PASS:**

**SIGNING OTHER RECOMMENDATIONS:**

\_\_\_\_\_  
*[Handwritten signatures]*  
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 Chairman's signature

1 proxy solicitations required under AS 45.55.139 with the adminis-  
2 trator for examination and review 10 working days before a dis-  
3 tribution to shareholders; and

4 (C) voiding the proxies obtained by a person required  
5 to file under AS 45.55.139, including their future exercise or  
6 actions resulting from their past exercise, if the proxies were  
7 solicited by means of an untrue or misleading statement pro-  
8 hibited under AS 45.55.160; or

9 (2) bring an action in the superior court to enjoin the  
10 acts or practices and to enforce compliance with this chapter or  
11 regulation or order under this chapter, and upon a proper showing, the  
12 appropriate remedy must be granted and a receiver or conservator may  
13 be appointed for the defendant or the defendant's assets; the court  
14 may not require the administrator to post a bond.

15 (b) The administrator may issue an order against an applicant,  
16 registered person, or other person who knowingly or intentionally vio-  
17 lates this chapter or a regulation or order of the administrator under  
18 this chapter, imposing a civil penalty of not more than \$2,500 for a  
19 single violation, or not more than \$25,000 for multiple violations, in  
20 a single proceeding or a series of related proceedings.

21 (c) For violations not covered by (b) of this section, the  
22 administrator may issue an order against an applicant, registered per-  
23 son, or other person who violates this chapter or a regulation or  
24 order of the administrator under this chapter, imposing a civil  
25 penalty of not more than \$500 for a single violation, or not more than  
26 \$5,000 for multiple violations, in a single proceeding or a series of  
27 related proceedings.

28 (d) Before issuing an order under (a)(1), (b), or (c) of this  
29 section, the administrator shall give reasonable notice of and an

# **CORRECTION**

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

Original sponsor: Rules/Governor

1 IN THE HOUSE

BY THE LABOR AND  
COMMERCE COMMITTEE

2

CS FOR HOUSE BILL NO. 143 (L&C)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act relating to the Alaska Securities Act; and  
7 providing for an effective date."

8

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

9

\* Section 1. AS 45.55.140(a)(5) is amended to read:

10

(5) a security [AN INVESTMENT CONTRACT] issued in connec-

11

tion with an employee's stock purchase, savings, pension, profit-

12

sharing, or similar employee's benefit plan [IF THE ADMINISTRATOR IS

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NOTIFIED IN WRITING 30 DAYS BEFORE THE INCEPTION OF THE PLAN OR, WITH

14

RESPECT TO PLANS WHICH ARE IN EFFECT ON MAY 9, 1959, WITHIN 60 DAYS

15

THEREAFTER, OR WITHIN 30 DAYS BEFORE THEY ARE REOPENED IF THEY ARE

16

CLOSED ON MAY 9, 1959];

17

\* Sec. 2. AS 45.55.200 is repealed and reenacted to read:

18

Sec. 45.55.200. ORDERS, INJUNCTIONS, AND CIVIL PENALTIES. (a)

19

If it appears <sup>there is probable cause to believe</sup> to the administrator that a person has engaged or is

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about to engage in an act or practice in violation of a provision of

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this chapter or regulation or order under this chapter, the adminis-

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trator may

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(1) in the public interest or for the protection of inves-

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tors, issue an order

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(A) directing the person to cease and desist from

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continuing the act or practice;

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(B) directing the person, for a period not to exceed

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three years, to file the annual reports, proxies, consents or

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authorizations, proxy statements, or other materials relating to

1 proxy solicitations required under AS 45.55.139 with the adminis-  
2 trator for examination and review 10 working days before a dis-  
3 tribution to shareholders; and

4 (C) voiding the proxies obtained by a person required  
5 to file under AS 45.55.139, including their future exercise or  
6 actions resulting from their past exercise, if the proxies were  
7 solicited by means of an untrue or misleading statement pro-  
8 hibited under AS 45.55.160; or

9 (2) bring an action in the superior court to enjoin the  
10 acts or practices and to enforce compliance with this chapter or  
11 regulation or order under this chapter, and upon a proper showing, the  
12 appropriate remedy must be granted and a receiver or conservator may  
13 be appointed for the defendant or the defendant's assets; the court  
14 may not require the administrator to post a bond.

15 (b) The administrator may issue an order against an applicant,  
16 registered person, or other person who knowingly or intentionally vio-  
17 lates this chapter or a regulation or order of the administrator under  
18 this chapter, imposing a civil penalty of not more than \$2,500 for a  
19 single violation, or not more than \$25,000 for multiple violations, in  
20 a single proceeding or a series of related proceedings. *uniform act*

21 (c) For violations not covered by (b) of this section, the  
22 administrator may issue an order against an applicant, registered per-  
23 son, or other person who violates this chapter or a regulation or  
24 order of the administrator under this chapter, imposing a civil  
25 penalty of not more than \$500 for a single violation, or not more than  
26 \$5,000 for multiple violations, in a single proceeding or a series of  
27 related proceedings.

28 (d) Before issuing an order under (a)(1), (b), or (c) of this  
29 section, the administrator shall give reasonable notice of and an

*clear and convincing evidence.*

1 opportunity for a hearing. However, the administrator may issue a  
2 temporary order under (a)(1) of this section pending the hearing,  
3 which remains in effect until 10 days after the hearing is held and  
4 which becomes final if the person to whom notice is addressed does not  
5 request a hearing within 15 days after the receipt of notice.

6 \* Sec. 3. AS 45.55.210(a) is amended to read:

7 (a) In addition to the civil penalties assessed under AS 45.55.-  
8 200, a [A] person who wilfully violates a provision of this chapter  
9 except AS 45.55.160, or who wilfully violates a regulation or order  
10 under this chapter, or who wilfully violates AS 45.55.160 knowing the  
11 statement made to be false or misleading in a material respect or the  
12 omission to be misleading by any material respect, upon conviction, is  
13 punishable by a fine of not more than \$5,000, or by imprisonment for  
14 not less than one year nor more than five years, or both. Upon con-  
15 viction of an individual for a felony under this chapter, imprisonment  
16 for not less than one year is mandatory. However, an individual may  
17 not be imprisoned for the violation of a regulation or order if the  
18 individual proves that the individual had no knowledge of the regu-  
19 lation or order. An indictment or information may not be returned  
20 under this chapter more than five years after the alleged violation.

21 \* Sec. 4. AS 45.55.260(c) is amended to read:

22 (c) For the purpose of this section, an offer to sell or to buy  
23 is made in this state, whether or not either party is then present in  
24 this state, when the offer

25 (1) originates from this state; [OR]

26 (2) is directed by the offeror to this state and received at  
27 the place to which it is directed, or at a post office in this state  
28 in the case of a mailed offer;

29 (3) is for an interest or participation in an oil, gas, or

1 mining right, title, or lease on land in the state, including sub-  
2 merged land, regardless of where the offer is made;

3 (4) is for an interest or participation in payments out of  
4 production under an oil, gas, or mining right, title or lease on land  
5 in the state, including submerged land, regardless of where the offer  
6 is made; or

7 (5) is for an interest or participation in real property  
8 located in the state, or in a domestic corporation or a domestic  
9 limited partnership; jurisdiction under this paragraph may be ex-  
10 ercised only when the exercise is not inconsistent with the consti-  
11 tution of this state or of the United States.

12 \* Sec. 5. This Act takes effect immediately under AS 01.10.070(c).

Adopted L<sup>m</sup>  
L+C CS

A M E N D M E N T

Offered in the HOUSE

By Gruenberg

TO: HB 143

Page 1, line 6:

Delete: "assessment of civil penalties under the"

Page 1, following line 9, insert a new bill section to read:

"\* Section 1. AS 45.55.140(a)(5) is amended to read:

(5) a security [AN INVESTMENT CONTRACT] issued in connection with an employee's stock purchase, savings, pension, profit-sharing, or similar employee's benefit plan [IF THE ADMINISTRATOR IS NOTIFIED IN WRITING 30 DAYS BEFORE THE INCEPTION OF THE PLAN OR, WITH RESPECT TO PLANS WHICH ARE IN EFFECT ON MAY 9, 1959, WITHIN 60 DAYS THEREAFTER, OR WITHIN 30 DAYS BEFORE THEY ARE REOPENED IF THEY ARE CLOSED ON MAY 9, 1959];"

Page 1, line 10:

Delete "\* Section 1."

Insert "\* Sec. 2."

Renumber the following bill section accordingly.

Page 3, following line 11, insert a new bill section to read:

"\* Sec. 4. AS 45.55.260(c) is amended to read:

(c) For the purpose of this section, an offer to sell or to buy

is made in this state, whether or not either party is then present in this state, when the offer

(1) originates from this state; [OR]

(2) is directed by the offeror to this state and received at the place to which it is directed, or at a post office in this state in the case of a mailed offer;

(3) is for an interest or participation in an oil, gas, or mining right, title, or lease on land in the state, including submerged land, regardless of where the offer is made;

(4) is for an interest or participation in payments out of production under an oil, gas, or mining right, title, or lease on land in the state, including submerged land, regardless of where the offer is made; or

(5) is for an interest or participation in real property located in the state, or in a domestic corporation or a domestic limited partnership; jurisdiction under this paragraph may be exercised only when the exercise is not inconsistent with the constitution of this state or of the United States."

Renumber the following bill section accordingly.

# HOUSE AMENDMENT #1

TO: CS HB 143 (L+C)

BY: Pettyjohn

Page 3 Line 5

After "notice." insert:

Any order issued or upheld at a hearing under this section must be supported by ~~evidence~~ clean and convincing evidence

~~Adopted~~  
Failed

Submit original amendment to the Chief Clerk.  
It will then be numbered and duplicated.

# HOUSE AMENDMENT #2

TO: CS HTB 143 CTC

BY: Pettyjohn

Page 1 Line 19

delete: "... it appears to the administrator..."

insert: "...there is probable cause to believe..."

Failed

Submit original amendment to the Chief Clerk.  
It will then be numbered and duplicated.

STATE OF ALASKA 1986 LEGISLATIVE SESSION  
FISCAL NOTE

No. 1

Bill Version: HB 143  
Publish Date: HOUSE 2/20/87

REQUEST

Bill/Resolution No. : \_\_\_\_\_  
 Title : An Act assessing civil penalties  
under the Alaska Securities Act.  
 \_\_\_\_\_  
 Sponsor : Rules Committee  
 Requestor : Governor  
 Date of Request : \_\_\_\_\_

FISCAL DETAIL

Agency Affected : Commerce & Econ. Dev.  
BRU: Banking, Securities & Corporations  
 \_\_\_\_\_  
 Components : Consumer Protection  
 \_\_\_\_\_

EXPENDITURES/REVENUES : (Thousands of Dollars)

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

FUNDING : (Thousands of Dollars)

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

POSITIONS :

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

ANALYSIS : Attach a separate page if necessary

Prepared by: Edward C. Watkins  
 Division : Banking, Securities & Corporations  
 Approved by Commissioner : \_\_\_\_\_  
 Agency : Commerce & Economic Development

Phone : 465-2521  
 Date : November 20, 1986  
 Date : 11/19/86

Distribution (by Agency preparing fiscal note):

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

713143

STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

February 18, 1987

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

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill to amend the penalty provisions of the Alaska Securities Act.

The bill provides that the administrator of securities, generally known as the director of the division of banking, securities and corporations, Department of Commerce and Economic Development, may assess civil fines of up to \$5,000 against a person who violates the Alaska Securities Act, and up to \$25,000 if the violations are done knowingly or intentionally. These provisions of the bill are based on sec. 602(b)(4) of the Revised Uniform Securities Act, promulgated in 1985 by the National Conference of Commissioners on Uniform State Laws.

Although current Alaska law permits criminal prosecution of individuals who wilfully violate the Act (AS 45.55.210), by authorizing the department to assess civil penalties the state will be able to avoid the substantial time and expense of criminal investigation and prosecution in many cases. On a number of occasions, individuals have wilfully violated the Act and then ignored orders issued by the administrator to stop the practice, because these individuals recognized that the administrator has no authority to enforce his or her own orders. Passage of this bill would correct this problem.

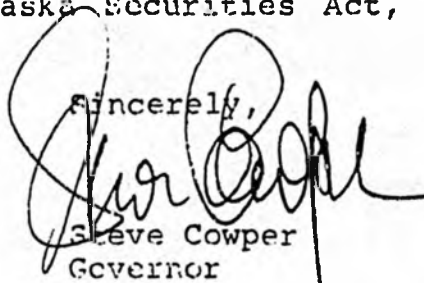
It should be noted that the assessment of civil fines is not without precedent in Alaska. For example, AS 21.09.260 and AS 21.36.320 provide that the director of the division of insurance may assess civil fines of up to \$25,000 for violations of the Alaska Insurance Code. Similarly, I am proposing legislation to provide that the commissioner of the Department of Revenue may assess a civil fine against a person who attempts to obtain permanent fund dividends by means of fraud.

Hon. Ben Grussendorf

Page 2

This bill represents a valuable tool for the Department of Commerce and Economic Development to prevent wilful violations of the Alaska Securities Act, and I urge your support of it.

Sincerely,



Steve Cowper  
Governor

STATE OF ALASKA 1986 LEGISLATIVE SESSION  
FISCAL NOTE

No. 1

Bill Version: HB 143  
Publish Date: HOUSE 2/20/87

REQUEST

Bill/Resolution No. : \_\_\_\_\_  
Title: An Act assessing civil penalties  
under the Alaska Securities Act.  
Sponsor: Rules Committee  
Requestor: Governor  
Date of Request: \_\_\_\_\_

FISCAL DETAIL

Agency Affected: Commerce & Econ. Dev.  
BRU: Banking, Securities & Corporations  
Components: Consumer Protection

EXPENDITURES/REVENUES : (Thousands of Dollars)

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

FUNDING : (Thousands of Dollars)

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

POSITIONS :

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

ANALYSIS : Attach a separate page if necessary

Prepared by: Edward C. Watkins  
Division: Banking, Securities & Corporations

Phone: 465-2521  
Date: November 20, 1986

Approved by Commissioner: \_\_\_\_\_  
Agency: Commerce & Economic Development

Date: 11/19/86

Distribution (by Agency preparing fiscal note):

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

**Sec. 45.55.200. Orders and injunctions.** (a) Whenever it appears to the administrator that a person has engaged or is about to engage in an act or practice in violation of any provision of this chapter or regulation or order under this chapter, the administrator may

(1) in the public interest or for the protection of investors, issue an order

(A) directing the person to cease and desist from continuing the act or practice;

(B) directing the person, for a period not to exceed three years, to file the annual reports, proxies, consents or authorizations, proxy statements, or other materials relating to proxy solicitations required under AS 45.55.139 with the administrator for examination and review 10 working days before a distribution to shareholders; and

(C) voiding any proxies obtained by a person required to file under AS 45.55.139, including their future exercise or actions resulting from their past exercise, if the proxies were solicited by means of an untrue or misleading statement prohibited under AS 45.55.160; or

(2) bring an action in the superior court to enjoin the acts or practices and to enforce compliance with this chapter or regulation or order under this chapter, and upon a proper showing, the appropriate remedy shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets; the court may not require the administrator to post a bond.

(b) Before issuing an order under (a)(1) of this section the administrator shall give reasonable notice of and an opportunity for a hearing. However, the administrator may issue a temporary order pending the hearing which order shall remain in effect until 10 days after the hearing is held and which shall become final if the person to whom notice is addressed does not request a hearing within 15 days after the receipt of notice. (§ 308 ch 198 SLA 1959; am § 1 ch 126 SLA 1968; am § 1 ch 65 SLA 1981; am § 107 ch 16 SLA 1982)

Effect of amendments. The 1982 from the beginning of paragraph (1) of amendment deleted "if it is considered" subsection (a).

**Sec. 45.55.210. Criminal penalties.** (a) A person who wilfully violates a provision of this chapter except AS 45.55.160, or who wilfully violates a regulation or order under this chapter, or who wilfully violates AS 45.55.160 knowing the statement made to be false or misleading in a material respect or the omission to be misleading by any material respect, upon conviction, is punishable by a fine of not more than \$5,000, or by imprisonment for not less than one year nor more than five years, or both. Upon conviction of an individual for a felony under this chapter, imprisonment for not less than one year is mandatory. However, an individual may not be imprisoned for the violation of a regulation or order if the individual proves that the individual had no knowledge of the regulation or order. An indictment or information may not be returned under this chapter more than five years after the alleged violation.

HB143

ACTION  
THE FIRST TIME - REFERRAL(S)  
GOVERNOR'S TRANSMITTAL LETTER  
FISCAL NOTE/ANALYSIS HSE SUPPL 8  
7DP  
REFERRAL WAIVED  
TO CALENDAR  
THE SECOND TIME  
ED TO THIRD READING UNAN CONSENT  
THE THIRD TIME HB124  
Y15 N- X3  
IVE DATE SAME AS PASSAGE  
TTED TO (S)  
E FIRST TIME - REFERRAL(S)  
SCS 4DP INR  
4DP INR  
CALENDAR TODAY  
SECOND TIME  
TTED Y12 N6 A2  
TTED UNAN CONSENT  
TO THIRD READING UNAN CONSENT  
THIRD TIME SCSHB 124 SA AM S  
N- A1

HB 126  
CSHB 126 JUD  
AN ACT AMENDING THE ALASKA SECURITIES ACT.

PRIME SPONSOR: RULES COMMITTEE BY REQ OF THE GOVERNOR  
CO-SPONSORS:

CURRENT STATUS: (S) FIN

| DATE         | PAGE | ACTION                                 |
|--------------|------|--|
| 01/25/85 (H) | 155  | READ THE FIRST TIME - REFERRAL(S)      |
| 01/25/85 (H) | 155  | GOVERNOR'S TRANSMITTAL LETTER          |
| 01/25/85 (H) | 155  | 2 FISCAL NOTES HSE SUPPL 8             |
| 02/15/85 (H) | 358  | L&C RPT 6DP                            |
| 03/20/85 (H) | 638  | JUD RPT CS(JUD) 5DP                    |
| 04/08/85 (H) | 838  | FIN RPT CS(JUD) 7DP                    |
| 04/08/85 (H) | 838  | FISCAL NOTE HSE SUPPL 43               |
| 04/17/85 (H) | 961  | REVISED FISCAL NOTE HSE SUPPL 49       |
| 04/17/85 (H) | 961  | PLS TO CALENDAR                        |
| 04/17/85 (H) | 965  | READ THE SECOND TIME                   |
| 04/17/85 (H) | 965  | JUD CS ADOPTED UNAN CONSENT            |
| 04/17/85 (H) | 965  | ADVANCED TO THIRD READING UNAN CONSENT |
| 04/17/85 (H) | 965  | READ THE THIRD TIME CSHB 126(JUD)      |
| 04/17/85 (H) | 971  | RET TO 2ND FOR AM 1 UNAN CONSENT       |

|              |      |                                   |
|--------------|------|-----------------------------------|
| 04/17/85 (H) | 972  | AM NO 1 FAILED Y11 N25 X3 A1      |
| 04/17/85 (H) | 972  | AUTOMATICALLY IN THIRD READING    |
| 04/17/85 (H) | 972  | PASSED Y16 N- X3 A1               |
| 04/17/85 (H) | 973  | TRANSMITTED TO (S)                |
| 04/18/85 (S) | 838  | READ THE FIRST TIME - REFERRAL(S) |
| 04/30/85 (S) | 979  | L&C RPT 4DP INR                   |
| 04/01/86 (S) | 2194 | JUD RPT SCS 4DP                   |
|              |      | FINANCE                           |
|              |      | RULES                             |

HB 127

AN ACT RELATING TO NOTARIES PUBLIC.

PRIME SPONSOR: RULES COMMITTEE BY REQ OF THE GOVERNOR  
CO-SPONSORS:

CURRENT STATUS: (H) JUD

| DATE         | PAGE | ACTION                            |
|--------------|------|-----------------------------------|
| 01/25/85 (H) | 156  | READ THE FIRST TIME - REFERRAL(S) |
| 01/25/85 (H) | 156  | GOVERNOR'S TRANSMITTAL LETTER     |
| 01/25/85 (H) | 156  | FISCAL NOTE HSE SUPPL 8           |
|              |      | JUDICIARY                         |
|              |      | FINANCE                           |
|              |      | RULES                             |

HB 128  
CSHB 128

AN ACT RELATING TO INTERIM MANAGEMENT OF MENTAL HEALTH TRUST LAND;  
AND PROVIDING FOR AN EFFECTIVE DATE.

PRIME SPONSOR: SIGNALBERT  
CO-SPONSORS: GRUENBERG, HOCHEK, JENKINS, KUPONEN, SZYMANSKI, MILLER, MM, COLL

CURRENT STATUS: (H) FIN

| DATE         | PAGE | ACTION                            |
|--------------|------|-----------------------------------|
| 01/25/85 (H) | 158  | READ THE FIRST TIME - REFERRAL(S) |
| 03/22/85 (H) | 661  | RES RPT JDP 3DP JAMRD             |
| 03/22/85 (H) | 661  | FISCAL NOTE HSE SUPPL 33          |
| 02/17/86 (H) | 2128 | SPONSOR SUBSTITUTE INTRODUCED     |
| 03/26/86 (H) | 2488 | RES RPT CS(RES) 3DP 4NR           |
| 03/26/86 (H) | 2488 | FISCAL NOTE HSE SUPPL 102         |
| 04/18/86 (H) | 2772 | JUD RPT CS(JUD) 5DP 2NR           |
|              |      | FINANCE                           |
|              |      | RULES                             |

HB 129

AN ACT RELATING TO COMPENSATION OF LEGISLATORS; ESTABLISHING A COMMISSION  
ON LEGISLATIVE COMPENSATION; AND PROVIDING FOR AN EFFECTIVE DATE.

PRIME SPONSOR: SIGNALBERT

HOUSE CALENDAR: April 17, Wednesday

BILL HB0126  
PAGE 00155  
DATE 01/25/85  
CHAMBER HOUSE  
TEXT HOUSE BILL NO. 126 by the Rules Committee by request of the Governor, entitled:

"An Act amending the Alaska Securities Act."

was read the first time and referred to the Labor & Commerce, Judiciary and Finance Committees.

Two fiscal notes were attached and appear in House Journal Supplement No. 8.

The Governor's transmittal letter, dated January 25, 1985, appears below:

"Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that amends the Alaska Securities Act (AS 45.55) by extending its scope to include offers to buy or sell interests in oil, gas, or mining rights on land in the state, regardless of where the offer or sale occurs.

The bill was jointly prepared by the division of banking, securities and corporations of the Department of Commerce and Economic Development and the consumer protection section of the Department of Law in response to numerous complaints of fraudulent oil and gas lease schemes. These schemes typically involve solicitations by firms located outside Alaska who acquire an interest in oil or gas leases through bid offerings of the Department of Natural Resources or the federal Bureau of Land Management.

The lease tracts these firms acquire are often the least likely to contain valuable oil, gas, or mineral resources. However, these firms conduct massive high pressure telephone sales and media advertising aimed at would-be investors in the lower 48 states, promising them high returns if they "invest" in a portion of one of these Alaskan oil or gas leases. The offering firms often falsely represent that they have expertise in oil, gas or mineral exploration or development. What is especially offensive to our state is that these slick operators often use names such as "Alaska Oil and Gas Exploration" or "Alaska Petroleum Investments," and set up empty "shell" corporations with Alaska addresses.

This bill would broaden the Alaska Securities Act to cover these business firms even if the "investment" sales are not made in our state or to Alaska residents. Essentially, the bill would do this by extending the jurisdiction of our state securities regulators and of our courts over these fraudulent schemes. The state would be able to take legal action against these out-of-state sellers of Alaska mineral rights. By amending the Securities Act, Alaska can require these firms to file securities registrations regarding their sales, and to give prospective purchasers truthful information about the likelihood of realizing a gain on such investments.

This legislation will not affect legitimate companies engaged in oil, gas, or mineral exploration or production, as they are already exempted from the Alaska Securities Act by AS 45.55.140(b)(17).

This bill should be supported by consumer groups as well as by the legitimate members of the oil and gas industry. Therefore, I urge your prompt action on this bill to prevent further damage to the commercial image, nationwide, of Alaska.

Sincerely,  
/s/  
Bill Sheffield  
Governor"

HB0126  
00358  
02/15/85  
HOUSE

The Labor & Commerce Committee has considered HOUSE BILL NO. 126 (amending the Alaska Securities Act) and reports it back as follows: Navarre (Chairman), Koponen, Hanley, Pearce, Collins and Davis recommend do pass. The previous fiscal notes appearing in House Journal Supplement No. 8 were approved.

HB 126 was referred to the Judiciary Committee.

HB0126  
00638  
03/20/85  
HOUSE

The Judiciary Committee has considered HOUSE BILL NO. 126 (amending the Alaska Securities Act), recommends it be replaced with COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 126 (Judiciary) (same title) and reports it back as follows: M.M. Miller (Chairman), Phillips, Pettyjohn, Taylor and Gruenberg recommend do pass.

HB 126 was referred to the Finance Committee.

HB0126  
00838  
04/08/85  
HOUSE

The Finance Committee has considered HOUSE BILL NO. 126 (amending the Alaska Securities Act), recommends it be replaced with COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 126 (Judiciary) (page 638) and reports it back as follows: Adams (Chairman), Duncan, Larson, Uehling, Rieger, Frank and Cotten recommend do pass.

A new fiscal note was attached and appears in House Journal Supplement No. 43.

HB 126 was referred to the Rules Committee for placement on the calendar.

*18 do pass  
p other rec.*

# State of Alaska

House Majority Leader

COMMITTEES

HOUSE HEALTH, EDUCATION  
AND SOCIAL SERVICES  
HOUSE JUDICIARY  
HOUSE RULES



P.O. BOX V  
JUNEAU, ALASKA 99811  
(907) 465-3718  
465-4968/4986

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

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

## MEMORANDUM

April 6, 1987

TO: Members of the House Judiciary Committee

FROM: Max F. Gruenberg, Jr. *MFG*

RE: HB 143, "An Act relating to the Alaska Securities Act;  
and providing for an effective date."

### Section 1

AS 45.55.140(a)(5) Exempts securities issued in connection with an employee benefit plan from the registration requirements of the Alaska Securities Act.

### Section 2

AS 45.55.200 Allows the state to assess civil penalties for violations of the Alaska Securities Act in addition to the present civil sanctions which may be imposed.

### Section 3

AS 45.55.210(a) Allows the state to impose civil penalties in addition to the criminal penalties which can presently be imposed for violations of the Alaska Securities Act.

### Section 4

AS 45.55.260(c) Allows the state to prosecute fraudulent out-of-state sales of Alaskan oil, gas, mining rights and other interest in Alaskan land or mineral production rights.

### Section 5

Provides for an immediate effective date.

SECTIONAL ANALYSIS  
CSHB 143(L&C)

Section 1

AS 45.55.140(a)(5) Exempts securities issued in connection with an employee benefit plan from the registration requirements of the Alaska Securities Act.

Section 2

AS 45.55.200 Allows the state to assess civil penalties for violations of the Alaska Securities Act in addition to the present civil sanctions which may be imposed.

Section 3

AS 45.55.210(a) Allows the state to impose civil penalties in addition to the criminal penalties which can presently be imposed for violations of the Alaska Securities Act.

Section 4

AS 45.55.260(c) Allows the state to prosecute fraudulent out-of-state sales of Alaskan oil, gas, mining rights and other interest in Alaskan land or mineral production rights.

Section 5

Provides for an immediate effective date.

# State of Alaska

House Majority Leader

COMMITTEES

HOUSE HEALTH, EDUCATION  
AND SOCIAL SERVICES  
HOUSE JUDICIARY  
HOUSE RULES



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

P.O. BOX V  
JUNEAU, ALASKA 99811  
(907) 465-3718  
465-4963/4986

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

## MEMORANDUM

DATE: April 27, 1987  
TO: ALL HOUSE MEMBERS  
FROM: Max F. Gruenberg, Jr. *MFG*  
RE: CSHB 143(L&C), "An Act relating to the Alaska Securities Act."

HB 143 will be considered tomorrow on the House floor. It will allow the state to assess civil penalties for violations of the Alaska Securities Act in addition to, or as an alternative to, the present criminal sanctions in the act.

HB 143 was amended in the House Labor and Commerce Committee to include last year's House Bill 126. As a result, HB 143 will allow the state to prosecute fraudulent investment schemes in Alaskan oil and gas leases, land, and mineral rights as well as Alaskan corporations and limited partnerships.

HB 143 has zero fiscal notes from the Department of Law and the Department of Commerce. It will be enforced to the extent that present resources allow.

In 1985 HB 126 passed the House 36-0. HB 143 received unanimous "Do-Pass" recommendations from the Labor and Commerce Committee and the Judiciary Committee. It received ten "Do-Passes" and one "No Recommendation" from the Finance Committee.

If you have any questions, please contact my legislative assistant, Mark Handley at x3718 or myself.

# HOUSE COMMITTEE REPORT

(7)

Date referred: 2/20/87

FURTHER REFERRALS: Judiciary  
Finance

DATE: 3/10/87

The Labor & Commerce Committee has considered HB 143

"An Act relating to the assessment of civil penalties under the Alaska Securities Act; and providing for an effective date."

**RECOMMENDS:**

- replace with CS HB143 (LTC)  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:**

David Douley  
[Signature]  
[Signature]  
[Signature]  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**SIGNING OTHER RECOMMENDATIONS:**

[Signature] W. Furnace  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

David Douley  
 Chairman's signature