

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 86/2

4693 HJUD HB 237 - HB 247 *249*

under which a person may be guilty of murder in the second degree. The offense is committed if, "under circumstances manifesting an extreme indifference to the welfare of a child under the age of 16, the person engages in a pattern or practice of abuse or gross neglect of the child that results in the death of the child." Under AS 11.41.600(4), as many as two of the three incidents of abuse or neglect required for conviction may have occurred before the effective date of the bill. Accordingly, a person may be convicted of murder in the second degree for acts which, when committed, were at most assault and possibly not criminal at all.

The argument in support of the validity of this result under the R.I.C.O. statute is that a person who has abused a child before the effective date of the bill is on notice that further abuse resulting in death will amount to murder in the second degree. The difficulty is that the final act after the effective date of the bill in and of itself is not murder in the second degree. The prior acts are an element of the offense even though they may not be independent offenses. If the court finds this to be a requirement for making the prior acts an element of the offense, it will have to find AS 11.41.600(4) unconstitutional.

The cases noted above are supportive of the questioned provisions of CSHB 237(HESS) but they are by no means conclusive. In my opinion, the validity of AS 11.41.600(4) remains an open question.

III. EX POST FACTO APPLICATION OF CHANGE IN RULES OF EVIDENCE.

Section 14 of CSHB 237(HESS) makes an amendment to Alaska Rule of Evidence 404 apply retroactively to acts and offenses committed before the effective date of the bill. That amendment, contained in sec. 13 of the bill, makes evidence of prior acts of the defendant involving the same or another victim admissible to prove the defendant's disposition to commit certain offenses. In Moor v. State, 709 P.2d 498 (Alaska App. 1985), the Alaska Court of Appeals specifically rejected the Department of Law's argument that incidents of sexual abuse with a different victim are admissible in sexual abuse cases to show "lewd disposition." Thus, the retroactive application of sec. 13 allows the state to introduce evidence in a criminal prosecution even

though the evidence would not have been admissible at the time the offense was committed.

The constitutional proscription against ex post facto laws includes laws which alter the legal rules of evidence and receive less or different testimony than was required when the offense was committed. As one commentator noted:

Changes in the law of evidence making it easier to prove guilt than was the case when an offense was committed is obviously prejudicial to the interests of the accused. Repeal of a law making certain evidence inadmissible is ex post facto to offenses committed prior to the repealing act. Sutherland, Statutory Construction, sec. 42.07 (4th ed. 1986).

Of course not all changes in the rules of evidence amount to illegal ex post facto laws. The United States Supreme Court summed up the issue this way:

. . . no ex post facto violation occurs if the change effected is merely procedural, and does "not increase the punishment nor change the ingredients of the offense or the ultimate facts necessary to establish guilt." Alteration of a substantial right, however, is not merely procedural, even if the statute takes a seemingly procedural form. Weaver v. Graham, 450 U.S. 24, 67 L.Ed.2d 17, 23, n. 12 (1981).

Thus, if sec. 13 of CSHB 237 (HESS) alters or deprives a defendant of a substantial right, it may not constitutionally be applied retroactively. As noted below, there is substantial case law supporting the argument that a seemingly procedural amendment does in fact alter a substantial right, and therefore retroactive application of such a change is unconstitutional.

In a very recent case before the Alaska Court of Appeals, an attempt by the Department of Law to limit the application of the ex post facto clauses was firmly rejected. State v. Creekpaum, File No. A-1228, ___ P.2d ___ (Alaska App. 1987). The court held that an extension of the statute of limitations under which the defendant could have been prosecuted amounted to an unconstitutional ex post facto law.

The Creekpaum case dealt with the issue of whether the statute of limitations is merely a procedural issue or

substantive right which may not be applied retroactively.
The court concluded:

. . . although we find the issue to be a close one, we are persuaded that a criminal statute of limitations is not merely procedural, but operates as a substantive right for ex post facto purposes. While such a statute does not directly establish the elements of an offense, it is closely related thereto, since it limits the circumstances under which guilt may be found and is aimed at preserving the accuracy and basic integrity of the adjudicative process in which the guilt or innocence of the accused is ultimately decided. We hold, therefore, that the ex post facto clauses of the Alaska and United States Constitutions prohibit a retrospective change in the statute of limitations in a criminal case when the change operates to the detriment of the accused. Creekpaum, at 22.

The Department of Law argued that substantive criminal law refers only to statutes which define what acts are criminal or which prescribe the penalties for criminal acts: all other aspects of the law affecting criminal proceedings are procedural. Creekpaum, at 5. If this were true, then retroactive application of sec. 13 of CSHB 237(HESS) would probably not present a constitutional problem. However, the court rejected this argument and found that it is not supported by the holdings of the United States Supreme Court. Creekpaum, at 6. Instead, the court ruled:

In our view, a substantive change in the law is one that works a disadvantage to the accused either directly, by altering the requisite elements of the offense, or indirectly, by impairing important rights that are related to the substance of the offense -- those rights meant to assure fairness in the ultimate adjudication of guilt or innocence. As the Supreme Court has held: "It is sufficient now to say that a statute belongs to the protected class which by its necessary operation and in its relation to the offense, or its consequences, alters the situation of the accused to his disadvantage." Creekpaum, at 12 - 13. (Citations omitted.)

Other jurisdictions have also found that seemingly procedural changes were in fact substantive for ex post facto purposes. State v. Schreuder, 726 P.2d 1215 (Utah 1986)

Representative Sund
Page 7
May 5, 1987

involved a statute that prohibited a conviction based solely on uncorroborated accomplice testimony. The statute was in effect at the time the defendant committed the offense, but was subsequently repealed. The court ruled that retroactive application of the statute:

. . . would lessen the amount of proof necessary to convict defendant and thereby deprive defendant of a substantial right that the law gave her at the time of the murder. Therefore, application of section 77-17-7 would fall within the classes of changes prohibited by the ex post facto clause. Schreuder, at 1218.

In State v. Edwards, 701 P.2d 508 (Wash. 1985), the Washington Supreme Court ruled unconstitutional the retroactive application of an amendment to the murder statute defining the offense to require that the victim die within three years rather than the common law requirement of one year that was in effect when the offense was committed. The court found the retroactive application of the amendment offensive in several ways and specifically stated:

. . . the amendment alters the rules of evidence by receiving different testimony than required or permitted at the time of the crime since the State may prove different facts than it had to prove when the crime was committed. * * * Such an enactment violates state and federal constitutional prohibitions against ex post facto legislation. Edwards, at 512 - 513.

All of these cases clearly indicate that there is at least a significant possibility that the Alaska Supreme Court, if faced with the question, would find the retroactive application of the amendment to the Rules of Evidence contained in secs. 13 and 14 of CSHB 237(HESS) an unconstitutional ex post facto law. Substantive evidence that was not admissible at the time a defendant committed an offense would become admissible at that defendant's trial. The case law clearly indicates that the retroactive application of such a provision raises substantial constitutional questions.

If I may be of further assistance, please advise.

KBL:mkr
m11/117

Four issues have been raised regarding this bill which I would like to address with you this afternoon. They are as follows:

1. Evidence Rule 404 changes making prior acts of physical and sexual assault admissible;
2. The unanimous jury verdict question raised by the case of Covington v. State;
3. The prior inconsistent statements by a witness being sufficient to support a conviction; and
4. The higher presumptive sentence for first degree, first offense incest offenders.

1. Changes to Evidence Rule 404.

This is a question of whether the prior acts by the defendant of sexual abuse or child abuse toward this or another victim should be admissible in a case in which the defendant is charged with child abuse or child sexual abuse. Currently in Alaska, some of this kind of evidence is permitted by the court mainly for sexual abuse cases. It demonstrates that the defendant has a pattern of conduct or a habit associated with child sexual abuse. The courts have ruled in Alaska that

within certain very narrow limits, this evidence may be admissible. I seek to clarify the Rule so as to establish this kind of evidence is admissible in physical abuse cases as well as child sexual abuse cases. The rationale is that individuals who engage in this conduct do so time after time after time: it is a way of life. It is offered and should be admissible as evidence that shows the individual's propensity, habit, pattern of committing this kind of offense. It is for that reason that the balance between whether it is too prejudicial or whether or not it is sufficiently probative to bring into court, in my opinion, resolves in favor of allowing the court to consider this evidence. Obviously, in each individual case it will be up to the trier of fact to determine whether or not it is sufficiently relevant to the individual case to be determinative. But at least it will be admissible as part of the evidence presented to the court to show the defendant's disposition to commit the offense.

2. Unanimous jury verdicts. The Constitution requires that a jury come to a unanimous decision beyond a reasonable doubt that the defendant committed a particular criminal act. In a recent Court of Appeals case in Alaska, Covington v. State, the defendant had assaulted the victim (his daughter) literally hundreds of times; because the witness was not able to identify individual incidents of abuse, however, the

Appellate Court reversed the defendant's conviction¹ saying that they could not be sure that the jury was unanimous as to each particular incident of assault. I would argue that the Constitution does not require unanimity on each particular incident, but rather that the jury is unanimous as to the criminal conduct which has been charged. For that reason, this bill changes the definition of the criminal offense from one incident of abuse or assault, to a pattern or a series of incidents; and that the jury may reach the conclusion, unanimously, that the defendant has engaged in this criminal conduct (which is broader than a particular incident by including several of them in a pattern of abuse).

3. Prior inconsistent statements. The previous law in Alaska allowed prior inconsistent statements to be admissible. The decision in Brower v. State limited this kind of evidence, holding that it is admissible but not sufficient to support a conviction. This is a considerable limitation because in some instances the trier of fact, either the judge or the jury at the trial court level, may reach the conclusion that the prior inconsistent statement is sufficiently convincing to prove beyond a reasonable doubt that the defendant has committed the offense. This Court of Appeals decision limits the trier of

¹/On rehearing, Covington's conviction was reinstated, because he had not raised the issue below, but holding applies to future cases.

fact's discretion and limits the ability of the trier of fact to reach its own conclusion about the sufficiency of the evidence. I believe that the Constitutional requirement of proof beyond a reasonable doubt is maintained in this section because we are leaving it to the trier of fact to determine whether they are convinced beyond a reasonable doubt of the guilt of the defendant. I don't believe that appellate level should decide sufficiency where it is not possible to adequately assess the credibility of witnesses or all of the circumstances of the case.

4. Should sentences be increased for multiple child sexual abuse? Objection has been raised that the presumptive term for incest offenders is higher in HB 237 than for single assault sexual abuse. To quote from the public defender's memo:

"to penalize the family offender more harshly than a bike path rapist is an illogical and unfair result."

I challenge that statement. It is both logical and fair to punish these offenders more harshly. Some suggest that the family offender only offends within the family and can be treated successfully; however, the data and the experts in the field disagree. According to testimony received in the House HESS Committee, over 60 percent of those who abuse within the

home admit to sexual abuse outside the home.² Moreover, experts also agree that the emotional impact to the victim is considerably more damaging when the sexual abuse comes from a family member or trusted friend. Finally, the evidence accumulated by those who work in the field leads one to the conclusion that there is very rarely a cure for these individuals. Treatment helps, but the most important thing that can be done is for the state to intervene through a prosecution and protect the victim and other potential victims from the offender.

²/This is the percentage of voluntary admissions; experts believe that the actual percentage of those abusing outside the home is likely to be much higher.

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: "An Act relating to murder, assault and physical abuse of children."
 Sponsor: Rep. Ulmer, Hudson
 Requestor: _____
 Agency Affected: Department of Corrections
 BRU: _____
 Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
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)

This legislation, as revised, will have minimal impact on the Department if current sentencing practices continue. If sentencing practices change and large amounts of consecutive time are imposed, there would be a substantial impact on the Department.

Prepared by: Susan E. Knighton, Director of Admin. Svcs. Phone: 465-3376
 Division: Administrative Services Date: 2/18/88
 Approved by Commissioner: Susan Humphrey-Barnett Date: 2/18/88
 Agency: Department of Corrections

Distribution (by preparer):

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

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

REQUEST: _____

Bill Version: HB 237
Publish Date: 4-1-87

Revision Date: _____
Title: "An Act relating to murder, assault and physical and sexual abuse of children"
Sponsor: Dept. Ulmer, Madson
Requestor: _____

Agency Affected: Dept. of Corrections
BRU: _____
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES				10,044.6	21,093.6	23,222.3
TRAVEL				36.8	77.2	121.5
CONTRACTUAL				787.5	1,653.8	2,604.6
SUPPLIES				1,050.0	2,205.0	3,472.8
EQUIPMENT				52.5	110.2	173.7
LAND & STRUCTURES						
GRANTS, CLAIMS				126.0	264.6	416.7
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	12,097.4	25,404.4	40,011.6
CAPITAL	0	130,500.0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	130,500.0	0	12,097.4	25,404.4	40,011.6
FEDERAL FUNDS						
OTHER						
TOTAL	0	130,500.0	0	12,097.4	25,404.4	40,011.6

POSITIONS:

FULL-TIME	0	0	0	219	438	657
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

See Attached Analysis

Prepared by: Susan E. Knighton, Research Analyst IV
Division: Statewide Programs

Phone: 465-3376
Date: 4-21-87

Approved by Commissioner: _____
Agency: Department of Corrections

Date: _____

Distribution (by preparer):

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 237

ANALYSIS

Sections 5-8 of this legislation would create three new offenses titled Repeated Sexual Abuse of a Minor (RSAM) in the First, Second and Third Degree and provide penalties for them.

The profile of Alaska's prison population shows that approximately 200 persons are incarcerated at any time for Sexual Abuse of a Minor in the First, Second, Third and Fourth Degree. The majority of the offenders have probably committed the crime several times before the victim felt sufficiently endangered and compelled to seek the assistance of others.

If this legislation is passed and this population segment is convicted of these new offenses and given the indicated sentences, it would have a large fiscal impact on the Department of Corrections.

Current Inmates - Serving Time for Sexual Abuse of Minor

Total Number of man-years to be served = 750 years.
Total Cost of Care = \$23,969,250.

Future Inmates - Repeated Sexual Abuse of Minor sanctions implemented

Total Number of man-years to be served = 1701 years.
Total Cost of Care = \$54,362,259.

Increased Costs - Repeated Sexual Abuse of Minor sanctions implemented

Additional number of man-years to be served = 951 years.
Additional Cost of Care = \$30,393,009
Additional Capital Costs = \$130,500,000.

The impact of HB 237 will be to quickly escalate the State's inmate population requiring the equivalent of 3 more Spring Creek facilities; one needed by FY90, another by FY91 and another by FY92. Additional costs will be incurred to operate the new institutions.

Capital construction and operational costs are based on the original estimates for the Spring Creek Correctional Center in Seward and full year cost of operation of that facility inflated by 5% per year.

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version: HB 237
Publish Date: _____

REQUEST: _____
Revision Date: 4/8/87
Title: "An Act relating to crimes against children..."
Sponsor: Ulmer, Hudson
Requestor: House Judiciary

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Brant McGee, Public Advocate *BMG* Phone: 274-1684
Division: Office of Public Advocacy Date: 4/9/87

Approved by Commissioner: Garrey Peska *GP* Date: 4/10/87
Agency: Department of Administration

Distribution (by preparer):

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

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

Bill Version: HB 237

Publish Date: _____

REQUEST: _____

Revision Date: April 8, 1987

Title: "An Act relating to crimes
against children"

Sponsor: Rep. Ulmer, Hudson

Requestor: House Judiciary

Agency Affected: Department of Administration

BRU: Public Defender Agency

Components: Third Judicial District

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-

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

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

Phone: 279-7541
 Date: April 8, 1987

Approved by Commissioner: [Signature]
 Agency: Department of Administration

Date: 4/10/87

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



STATE OF ALASKA
OFFICE OF THE GOVERNOR

BILL ANALYSIS

DEPARTMENT Health and Social Services	DIVISION Family and Youth Services	BILL NUMBER HB 237	SPONSOR Ulmer, et al.
DEPARTMENT POSITION Support concept			
PREPARED BY Yvonne M. Chase, Director <i>YMC</i>	DATE 4/22/87	COMMISSIONER'S SIGNATURE <i>Megha K. Munson</i>	DATE 4/22/87

SUMMARY

OTHER AGENCIES AFFECTED BY BILL Department of Law	CONSTITUENT GROUP(S) AFFECTED BY BILL Victims of child abuse Offenders
ORGANIZATIONAL SUPPORT FOR BILL	ORGANIZATIONAL OPPOSITION TO BILL

FISCAL IMPACT: NONE FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT

This bill is intended to return the interpretation of affected sections to what it was before recent appeals cases resulted in more narrow applications of those sections.

ANALYSIS OF BILL/PROGRAM EFFECTS

In general, this bill would make successful criminal prosecution in certain child abuse cases easier to achieve. This would be accomplished by: 1) changing the mental state required for conviction in certain cases of second degree murder and first degree assault to "knowingly" rather than "intentionally" causing the person's death or serious injury under circumstances of "extreme indifference" to human life, 2) by including within the definition of assault in the first degree a "pattern of practice" of abuse of a child under age 16 which causes serious physical injury to the child; 3) by establishing the crime of repeated sexual abuse of a minor in the first, second and third degrees based on a "pattern or practice" of sexual abuse; 4) by allowing conviction for repeated sexual abuse of a minor or assault in the first degree based on a unanimous agreement among jurors that three or more incidents of a prohibited abusive act occurred, but not requiring unanimous agreement on the three incidents which establish the pattern or practice; and 4) by allowing conviction based on a prior statement by a witness which may be inconsistent with present statements (allowing statements, such as those of child victims, later recanted under pressure to serve as the basis for conviction). This bill would address problems encountered as a result of recent criminal appeals decisions and would not have direct programmatic impact on the Department.

AMENDMENTS PROPOSED

(1) Proposed change: Sections 1 (a)(4) and (j)(a)(4) from "age 16" to age 18.

Rationale: The age in this section should be consistent with the age of majority in the children's statutes rather than with the age of consent for sexual activity because physical abuse does not involve the concept of consent.

Amendments Proposed continued:

(2) Proposed change: Section (1)(a)(4) and (3)(a)(4) from "pattern or practice of abuse" to pattern or practice of abuse or neglect.

Rationale: More children die of neglect than abuse. Situations of neglect which manifest extreme indifference for the welfare of a child and are habitual are just as lethal for the child as abusive behavior and affect more children.

(3) Proposed change: Sections 2 and 4 from "bodily impact, restraint, or confinement" to bodily impact, restraint, confinement, administration of lethal chemicals or drugs, exposure to conditions which could result in death or injury due to hypothermia, severe burns or suffocation.

Rationale: The current definition is too narrow and possibly would exclude many common forms of abuse that lead to serious injury and death.

STATE OF ALASKA

STEVE COWPER, GOVERNOR

PUBLIC DEFENDER AGENCY

900 W. 5TH AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 279-7541

April 24, 1987

John Hartle
Committee Aide
House Judiciary Committee
P.O. Box V
Juneau, Alaska 99811

RE: HB 237

Dear John:

Here are several of the cases which we have been discussing in relationship to HB 237.

Two of the cases, Burke v. State and Soper v. State, provide a clear indication that when an offender's prior bad conduct is relevant to the current charges, it can be admitted. In 1980, the Alaska Supreme Court decided in Burke v. State that prior assaults of the victim can be admitted. In Soper v. State, a 1987 Court of Appeals case, the court decided that this "lewd disposition" exception to the rule that prior bad acts should not be admitted can be extended to testimony regarding assaults of all victims in the same class as the defendant, in that case, other daughters of the defendant.

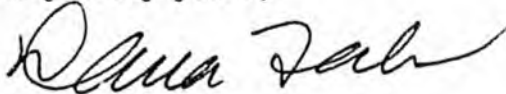
I am also enclosing Covington v. State, in which the Alaska Court of Appeals reaffirmed the defendant's right to a unanimous jury verdict. It was mentioned at the executive branch meeting on this bill that the repeated sexual abuse of a minor provision was specifically designed to "get around" Covington. In my opinion, Covington is founded upon an absolute constitutional right under Alaska's constitution as well as the federal constitution, and that right cannot be abrogated by the legislature.

Finally, I am enclosing Brower v. State, which is the case holding that although a victim's statement out-of-court can be introduced as substantive evidence in a case should the victim change his testimony, there must be some corroboration of that out of court statement to support a conviction. This case is based on a federal decision, U.S. v. Orrico, and no state has held otherwise. The basic reasoning underpinning the decision is that if the only evidence in a case is the victim's out of court statement and the victim changes his testimony on the stand, there is no ability to cross examine the victim on the statement. However, if there is any corroborating evidence, including physical evidence, psychological profiles indicating an abused victim, pressure on the victim to recant or change his testimony etc., then there is sufficient evidence to support a conviction.

I hope these are of some assistance to you. I am also enclosing a shorter memo highlighting the worst points in this bill, since my more complete memo takes a long time to read.

Thanks for your help on this. Again, Susan Orlansky is well informed on the issues involved in this bill and is available anytime next week to discuss it with you.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Dana Fabe".

Dana Fabe
Public Defender

DF:sh

Enclosures

M E M O

TO: John Hartle
Representative John Sund

DATE: April 23, 1987

FROM: Dana Fabe
Public Defender

RE: House Bill No. 237

Following is a brief analysis of the constitutional and policy issues raised by HB 237. The bill appears to be designed to overrule a variety of appellate decisions unfavorable to the state in cases involving child victims. Since many of the decisions are constitutionally based, the corresponding provisions of the bill appear to be unconstitutional. In this analysis, I will try to pinpoint the most problematical sections of the bill.

1. Repeated sexual abuse of a minor. The bill creates a new set of offenses entitled Repeated Sexual Abuse of a Minor in the First, Second and Third Degrees (Sections 5-8). These offenses, which require a "pattern and practice" of sexual abuse involving three or more incidents, will apply primarily to incest and family sexual abuse cases. As the Court of Appeals has noted in State v. Andrews, virtually all family sexual abuse cases involve repeated abuse.

A person who is convicted on the first offense of Repeated Sexual Abuse of a Minor in the First Degree, will be subject to a 13-year presumptive jail term. The current offense of Sexual Abuse of a Minor in the First Degree carries an 8-year presumptive term for a first offender, as does Sexual Assault in the First Degree. Thus, the typical family incest offender will be punished much more harshly than a person charged with a violent rape of an adult due to the repetitive nature of incest behavior. On a second felony offense a defendant would receive 25 years presumptively, even if the prior felony were a theft conviction when the defendant was a young adult.

Repeated Sexual Abuse of a Minor in the Second Degree is a Class A felony requiring an 8-year presumptive term for the first offender. The conduct proscribed in this statute is any sexual contact, including fondling conduct. Under this statute, the incest offender convicted of Repeated Sexual Abuse of a Minor in the Second Degree would receive an 8-year presumptive term. The current offense of Sexual Abuse of a Minor in the Second Degree is a Class B felony with no presumptive term for the first offender. Thus, an assailant who grabbed and fondled a child on the bike path would face no presumptive term since he would not meet the "repeated contact" requirement of Repeated Sexual Abuse of a Minor in the Second Degree, while the incest offender who fondled would receive 8 years.

In summary, the only impact of this statute is to significantly raise the presumptive term for an incest offender on his first conviction. The proposed bill is not necessary to ensure adequate punishment of incest offenders. If the state can prove three incidents under the current Sexual Abuse of a Minor statute, they are presently free to file three counts and argue for consecutive imprisonment, which could total 24 years if the judge found it to be necessary. The bill will be expensive in that it will cause higher jail populations, as well as more jury trials and appeals:

2. Non-unanimous jury verdicts. As noted above, it is an element of Repeated Sexual Abuse of a Minor that three or more incidents of the prohibited conduct have occurred. Section 8 of the bill provides that the jury need not be unanimous as to any particular incident.

This provision is in direct conflict with Covington v. State, a 1985 decision of the Alaska Court of Appeals. Covington requires that jurors must unanimously agree that the same criminal act has been proved beyond a reasonable doubt. The Covington holding is based upon the defendant's constitutional right to a unanimous verdict. No state has reached a contrary result. This proposed provision is unconstitutional.

3. Prior inconsistent statements as sole evidence at trial. Section 11 of the bill attempts to change the current state of the law as announced in Brower v. State, a 1986 Court of Appeals case. The Brower decision covers situations where an alleged victim gives a statement about an offense but later recants or fails to remember the details of the offense. Under Brower, the prior inconsistent statement can come in as substantive evidence to support a conviction. However, there must be some evidence to corroborate the statement, since there is no ability to cross examine the inconsistent statement which was made out of court.

The bill's proposal, which would allow a prior inconsistent statement to support a conviction even if it were the sole evidence at trial, is constitutionally infirm, since the federal constitution prohibits conviction except upon proof beyond a reasonable doubt. The Court of Appeals' decision in Brower took no radical or novel approach; the Brower holding is consistent with all other courts which have considered this question. The constitutional minimal standard for the proof required for a conviction cannot be reduced by legislative action.

4. Prior bad acts--changes to Evidence Rule 404. This proposed section in the bill (Section 14) states that in a prosecution for physical or sexual assault on a child, evidence of prior bad acts of the defendant involving the same victim or other victims is admissible to show the defendant's disposition to commit the offense.

This provision is arguably not constitutional, since in a very long line of cases the Alaska Appellate Courts have held that evidence of prior bad acts by a defendant are not admissible to prove the defendant's propensity to commit crimes. The rationale for these cases is rooted in the constitutional guarantee of due process and the requirement of proof beyond a reasonable doubt. This change does not appear to be necessary since the existing rules of evidence, particularly as interpreted by the Alaska Courts, broadly opened the doors to evidence of prior bad acts when that evidence is probative of sometime other than criminal disposition.

These are the most problematical of the bill's provisions. There are other problems with the bill which were outlined in greater detail in my earlier memo to you.

DF:sh

H B

245

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

House Judiciary:

1/20/88

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

March 2, 1987

The Hon. Ramona Barnes
Alaska State House
P.O. Box V
Juneau, AK 99811

Re: Proposed bill relating to incarcerated convicted felons
Our File No. 663-87-6381

Dear Representative Barnes:

In response to your memorandum of February 21, 1987, we have reviewed the draft bill proposing to make incarcerated felons ineligible for permanent fund dividends. Except for minor technical differences, this bill is the same as CSHB 575(Fin)(title am), passed by the House of Representatives in 1984. As you know, this office reviewed the 1984 bill and concluded that, although constitutional issues may exist, in our opinion the denial of permanent fund dividends to convicted, incarcerated felons is constitutional. 1984 Inf. Op. Att'y Gen. 366-525-84 (April 23). At this time, we see no reason to alter our earlier opinion, and therefore we believe your proposal would withstand a constitutional challenge.

On February 15, 1984, this office issued an informal opinion that the original version of HB 575 introduced in the House had some serious constitutional problems. 1984 Inf. Op. Att'y Gen. 366-424-84 (February 15). Most of the potential problems identified in that memorandum were corrected in subsequent versions of the bill, however, and are not present either in the bill which passed the House that year or in the bill which you submitted to us for review.

We do not, at this time, have any opinion on the merits of this proposed legislation. However, we would like to suggest a few minor changes. In sec. 1, the bill refers to individuals who are incarcerated "during all or part of the eligibility period for that year's dividend." Under AS 43.23.005(a)(2), the eligibility period for any individual is not a definite period of time, but rather is a floating six month period prior to the date the individual files an application. Since we can assume that these people will not actually submit an application, it may be difficult to decide what six month period should be utilized. We recommend that this language be changed to specify a definite

STEVE COWPER, GOVERNOR

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-3550

1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701
PHONE: (907) 452-1568

P.O. BOX K-STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

The Hon. Ramona Barnes
Alaska State House
AG File No. 663-87-0381

March 2, 1987
Page 2

period of time, such as "during all or part of the fiscal year." This change also makes some intuitive sense, because the dividends are based upon earnings during the fiscal year, and because this legislation is designed to reimburse the Department of Corrections for expenses incurred during the fiscal year in which the person is incarcerated.

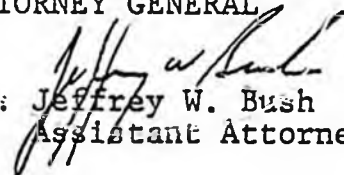
With respect to sec. 3 of the bill, proposed paragraph (5) is probably unnecessary, since this provision is already covered in sec. 2 of the bill. Also, in paragraph (6), we recommend that the words "in cooperation with the Department of Corrections" be inserted after "regulations."

Finally, with respect to the effective date of the Act (sec. 6), it might be simpler to have the Act take effect at the beginning of FY 88; this would also eliminate the need for sec. 4 of the bill.

Please contact me if you wish to discuss this further.

Sincerely,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By: 
Assistant Attorney General

JWB:lb

cc: Arthur H. Peterson
Mike Stark

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 20, 1988

SUBJECT: Permanent fund dividends of incarcerated individuals (CSHB 245 (HESS))

TO: Representative Ramona Barnes

FROM: Tamara Brandt Cook ^{TBC}
Director
Division of Legal Services

Here is the sectional analysis that you requested of a draft bill dealing with permanent fund dividends and incarcerated individuals.

Section 1. A new provision is added making a person convicted of a felony ineligible for a permanent fund dividend if, during all or part of the fiscal year ending before checks are mailed, the individual is incarcerated. This provision applies whether or not the individual has applied for the dividend.

Section 2. This is a new provision. For the purposes of calculating the amount of the dividend for a year an individual who is ineligible due to incarceration but who is otherwise eligible under residency requirements will be counted as an eligible individual whether or not the individual applies for a dividend.

Section 3. Two new requirements are added to the list of duties of the Department of Revenue: (1) to annually determine the number and identity of individuals ineligible for permanent fund dividends because of incarceration and the number of ineligible individuals counted as eligible for purposes of determining the amount of a dividend for the year; (2) to adopt regulations necessary to implement the new ineligibility provision that applies to certain incarcerated individuals.

Section 4. The bill applies only to dividends for years after 1987. Since the bill has been held over from the

Representative Ramona Barnes

Page 2

January 20, 1988

first session, thought should be given to changing this date to 1988.

Section 5. The legislature intends to appropriate from the dividend fund to the crime victim compensation fund an amount equal to money that would otherwise be paid as dividends to incarcerated individuals.

Section 6. The bill has an immediate effective date.

TFC:bb
WKB1/078

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 27, 1987

SUBJECT: Permanent fund dividends of incarcerated individuals (Work Order No. 15-0701A)

TO: Representative Ramona Barnes

FROM: Tamara Brandt Cook *TBC*
Director
Division of Legal Services

Here is the sectional analysis that you requested of a draft bill dealing with permanent fund dividends and incarcerated individuals.

Section 1. A new provision is added making a person convicted of a felony ineligible for a permanent fund dividend if, during all or part of the fiscal year ending before checks are mailed, the individual is incarcerated. This provision applies whether or not the individual has applied for the dividend.

Section 2. This is a new provision. For the purposes of calculating the amount of the dividend for a year an individual who is ineligible due to incarceration but who is otherwise eligible under residency requirements will be counted as an eligible individual whether or not the individual applies for a dividend.

Section 3. Two new requirements are added to the list of duties of the Department of Revenue: (1) to annually determine the number and identity of individuals ineligible for permanent fund dividends because of incarceration and the number of ineligible individuals counted as eligible for purposes of determining the amount of a dividend for the year; (2) to adopt regulations necessary to implement the new ineligibility provision that applies to certain incarcerated individuals.

Section 4. The bill applies only to dividends for years after 1987.

Representative Barnes
Page 2
March 27, 1987

Section 5. The legislature intends to appropriate from the dividend fund to the Department of Corrections for upkeep of inmates an amount equal to money that would otherwise be paid as dividends to incarcerated individuals.

Section 6. The bill has an immediate effective date.

TBC:csh
c7/109

April 24, 1987

Representative Niilo Koponen
P.O. Box V
Juneau, AK 99811

Dear Representative Koponen:

HB 245
I'm going to have a tough time getting anyone to listen, but I have to try. ~~HB13~~ and SB177, the proposal to use prisoners' dividend funds for something other than giving it to the prisoner, is wrong. Maybe wrong is the wrong word; how about unjust since everyone talks about being just.

First, the "sentence" imposed by the court did not say five years and \$5,000. plus your permanent fund dividend for the next five years. Secondly, the sentence imposed did not say 5 years and \$5,000. plus whatever expenses the State incurs in keeping you in prison. Third, the sentence imposed varied from individual to individual, depending on the crime committed. Let's say Sam is serving ten years for breaking into a ladie's home and raping her; Joe is serving a five-year term for driving drunk, causing an accident in which someone was seriously hurt; Jim is serving a two-year term for shoplifting an \$8,000. Rolex watch. The sentence imposed was different but is now amended by HB13 and SB177 to say they each give up their permanent fund dividend. Fourth, the legislature keeps getting into the judicial process further and further. Whatever happended to "separation of powers" theory? We have presumptive sentences, which I doubt you could get one judge in the United States to agree with, dictated by the legislative action. Now the legislative branch wants to dictate monetary penalties (that is exactly what HB13 and SB177 will do.

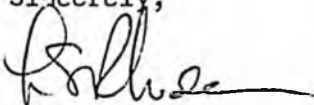
I would also wager that not more than 10 House or Senate members voting on this bill have ever visited one of our correctional facilities for more than "a guided tour". For example, what percentage of the inmates have families that bring them needed items, i.e. underwear, shirts, pants, shoes, socks, hairbrushes, deodorant, and the other things we use in our daily lives? What percentage of the inmates have more than a few dollars in their accounts to buy these things, plus cigarettes, treats, sodas, etc., on the approximately 50 cents per hour they make while in prison? What percentage of the prisoners are still wearing the same clothes they came in with? The answer to those questions should be disturbing if you knew the truth. Contrary to what you may have been told, the facility I am familiar with doesn't provide any of those things - the inmates must purchase them from the Company Store. Inmates are not allowed to borrow each other's clothes, even for a short period of time, while they wash and dry the ones they had

on. In many, many, many cases the dividend check is the year-round source of income to provide these necessities. Finally, the hope of many of these inmates is to have enough saved when they do get released to get a place to live and a means of transportation. The approximately 50 cents per hour they earn will never amount to (1) a months rent in advance (2) a deposit on the electric/telephone bill (3) the second-hand "junk" with minimum insurance to get back and forth to work. The dividend at least gives them hope.

Finally, just how much "justice" do we want? Too many of us who have never committed a crime seem to think the criminal deserves everything bad we can dish out. Prison, the loss of freedom, is only one of the penalties a criminal must pay. A felon loses his/her citizenship rights - many job opportunities are closed to them for a lifetime because of bonding requirements - many friends and relatives no longer will socialize with them - families are separated and sometimes permanently divided (especially where children are concerned) - and certainly the criminal is financially reduced to ruin with legal costs and fines assessed before prison begins. The power to dig in one more time - to deliver one more punishment - is just too great for some people to leave alone! Besides, who cares what happens to the prisoner? Even if they complain, who cares? They deserve what they get - right?

Well, I say it's WRONG and I hope someone listens!

Sincerely,



L.S. (Dusty) Rhodes

Original sponsors: Barnes, Adams,
Collins, et al.

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 245 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to permanent fund dividends for
7 individuals incarcerated after conviction for a
8 felony; and providing for an effective date."

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

10 * Section 1. AS 43.23.005 is amended by adding a new subsection to
11 read:

12 (d) Notwithstanding the provisions of (a) - (c) of this section,
13 an individual who has been convicted of a felony is not eligible for a
14 permanent fund dividend for a year when, during all or part of the
15 fiscal year ending June 30 of the current year, as a result of the
16 conviction the individual is incarcerated. This subsection applies
17 whether or not the individual has applied for the dividend.

18 * Sec. 2. AS 43.23.025 is amended by adding a new subsection to read:

19 (b) For the purpose of calculating the amount of a permanent
20 fund dividend under (a) of this section, an individual who is ineli-
21 gible to receive a dividend under AS 43.23.005(d) is counted as an
22 eligible individual whether or not the individual has applied for the
23 dividend.

24 * Sec. 3. AS 43.23.055 is amended to read:

25 Sec. 43.23.055. DUTIES OF THE DEPARTMENT. The department shall

26 (1) annually pay permanent fund dividends from the dividend
27 fund;

28 (2) adopt regulations under the Administrative Procedure
29 Act (AS 44.62) that establish procedures and time limits for claiming

1 a permanent fund dividend; the department shall set the time limit for
2 applications for permanent fund dividends so that the number of eli-
3 gible applicants is determined by October 1 of the year for which the
4 dividend is declared and permanent fund dividends for a year are paid
5 before April 30 of the year following that year;

6 (3) adopt regulations under the Administrative Procedure
7 Act (AS 44.62) that establish procedures and time limits for an indi-
8 vidual upon emancipation or upon reaching majority to apply for perma-
9 nent fund dividends not received during minority because the parent,
10 guardian, or other authorized representative did not apply on behalf
11 of the individual; [AND]

12 (4) assist residents of the state, particularly in rural
13 areas, who because of language, disability, or inaccessibility to
14 public transportation need assistance to establish eligibility and to
15 apply for permanent fund dividends;

16 (5) annually determine, in cooperation with the Department
17 of Corrections, the number and identity of individuals ineligible for
18 a permanent fund dividend under AS 43.23.005(d); and

19 (6) adopt regulations that are necessary to implement
20 AS 43.23.005(d).

21 * Sec. 4. This Act applies only to eligibility for permanent fund
22 dividends for years after 1988.

23 * Sec. 5. It is the intent of the legislature that an amount approxi-
24 mately equal to the money that would otherwise be paid as permanent fund
25 dividends to individuals determined to be ineligible under AS 43.23.005(d),
26 as enacted by sec. 1 of this Act, be appropriated annually from the divi-
27 dend fund to the crime victim compensation fund (AS 18.67.162) to carry out
28 the purposes of AS 18.67.

29 * Sec. 6. This Act takes effect immediately under AS 01.10.070(c).

Failed, H. Floor
2-15-88

A M E N D M E N T

Offered in the HOUSE

By Sund

TO: CSHB 245 (Judiciary)

Page 2, line 29:

Delete "immediately under AS 01.10.070(c)"

~~Insert~~ Insert "on the effective date of an appropriation enacted by the Fifteenth Alaska State Legislature of at least \$2,000,000 from the dividend fund (AS 43.23.045) to the victim compensation fund (AS 18.67.162)"

A M E N D M E N T

Offered in the HOUSE

BY SUND

TO: CSHB 245 (Judiciary)

Page 2, line 29:

Delete "immediately under AS 01.10.070(c)"

Insert "on the effective date of an appropriation enacted by the
Fifteenth Alaska State Legislature of at least \$2,000,000 ^{From the Permanent Fund Dividend Account} to the victim
compensation fund (AS 18.67.162)"

A M E N D M E N T # 1

Offered in the HOUSE

By Sund

TO: CSHB 245 (Judiciary)

Page 2, line 29:

Delete "immediately under AS 01.10.070(c)"

Insert "on the effective date of an appropriation enacted by the
Fifteenth Alaska State Legislature of at least ~~\$2,000,000~~^{1,400,000} from the dividend
fund (AS 43.23.045) to the victim compensation fund (AS 18.67.162)"

14
5
C. D. Hoffmann

14-26
failed

35-5
failed

JOHN SUND, REPRESENTATIVE

P.O. Box 6440
Ketchikan, Alaska 99901
(907) 225-6390

Amend 245.

Effect

- ① - Line over own pockets of 3.50 - 4.00
- ② - ~~About~~ PFD to G-F - to Victims.
- ③ - partial fund Victims fund
Remainder to G-F

④ Effect of amendments is to implement the intent of the bill -
At such time as we appropriate from PFD to ~~the~~ victims this bill
goes into effect!

Impact of 245

- ① Restitution to specific victims - ability to pay eliminated
- ② Child Support Enforcement
- ③ Child Support Voluntary
- ④ Major precedent setting move.

Precedent:

- ① ~~The~~ Identity of Groups to impact PFD.
 - a) welfare recipients - hold harmless
 - b) families - daily PFD - (line over own pockets)
 - c) elderly - give up PFD to get longevity

FISCAL NOTE

REQUEST

Revision Date: _____
Title: An act relating to permanent
fund dividends for incarcerated felons
Sponsor: HESS
Requestor: House Judiciary

Agency Affected: Revenue
BRU: Permanent Fund Dividend
Components: Permanent Fund Dividend
Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
OPERATING						
PERSONAL SERVICES	-	2.2	1.1	1.1	1.1	1.1
TRAVEL	-	-	-	-	-	-
CONTRACTUAL	-	1.1	.5	.5	.5	.5
SUPPLIES	-	-	-	-	-	-
EQUIPMENT	-	-	-	-	-	-
LANDS & STRUCTURES	-	-	-	-	-	-
GRANTS, CLAIMS	-	-	-	-	-	-
MISCELLANEOUS	-	-	-	-	-	-
TOTAL OPERATING	-	3.3	1.6	1.6	1.6	1.6
CAPITAL	-	-	-	-	-	-
REVENUE	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	-	-	-	-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER (PFD)	-	3.3	1.6	1.6	1.6	1.6
TOTAL	-	3.3	1.6	1.6	1.6	1.6

POSITIONS:

FULL-TIME	-	-	-	-	-	-
PART-TIME	-	1	1	1	1	1
TEMPORARY	-	-	-	-	-	-

ANALYSIS: See attached

Prepared By: Ervin Jones
Division: Permanent Fund Dividend Division

Phone: 465-2323
Date: January 20, 1988

Approved by Commissioner: [Signature]
Agency: Revenue

Date: 1/20/88

Distribution (by preparer):

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

Department of Revenue
Permanent Fund Dividend Division
Fiscal Note Analysis
CSHB 245 (HESS)
01/20/88

Assumptions:

1. The bill will be effective for the 1988 dividend.
2. Per the Department of Corrections, there are approximately 3,200 felons who would be incarcerated during part or all of a given fiscal year.
3. The Department of Corrections will provide the Department of Revenue with a list, via magnetic tape, which includes:
 - a. All persons, including full name, birthdate, and social security number, who were incarcerated during all or part of the previous fiscal year for a felony conviction. This list will be provided by August 1 of each year.
 - b. On a paper copy, an annotation of all persons under the Commissioner of Corrections determines are "otherwise eligible under AS 43.23.005(a)(1) and (2)," and a certification by the Commissioner or delegate that he believes those persons to be residents.

Program Summary:

The Department of Revenue will use the list provided in assumption 3(a) to match against the PFD file. Any person who files an application and who appears on that list will be denied their dividend. A denial notice will be sent to the applicant, with notice of right to appeal. If appeals are forthcoming, the Permanent Fund Dividend Division will hold informal conferences, and where requested by the applicant, the Commissioner will hold formal hearings and represent the Department in court. This is expected to generate approximately 2,000 additional denials in the first year, with a decreasing number in subsequent years, as felons realize that they are ineligible for the dividend.

The Department of Revenue will include in the dividend calculation the total number of incarcerated felons as provided by Corrections.

1. Positions:

1 PPT Document Processor I, R7, @ \$2158.82/mo. including salary and benefits for 1 month	=	\$2.2
---	---	-------

This position will assist in the determination of filings by felons and in the processing and mailing of denial notices, appeals, and correspondence. Reduced by half in the second and subsequent years.

2. Other Expenditures:

a. Travel: None.

b. Contractual:

Printing costs and postage for 2,000 additional denial notices, appeal forms and envelopes. Reduced by half in second and subsequent years.

= 1.1

c. Supplies: None.

d. Equipment: Use existing.

-0-

TOTAL COST

\$3.3

Adopted

Suggested Amendments:

A. Sec. 2, line 21:

". . . to receive a dividend under AS 43.23.005(d), [BUT WHO IS OTHERWISE ELIGIBLE UNDER AS 43.23.005(a)(1) AND (2),]"

B. Sec. 3, line 19:

". . . a permanent fund dividend under As 43.23.005(d); [, AND THE NUMBER OF INELIGIBLE INDIVIDUALS COUNTED AS ELIGIBLE UNDER AS 43.23.025]

C. Sec. 5, line 27:

". . . dividends to [INELIGIBLE] individuals [COUNTED AS ELIGIBLE UNDER AS 43.23.025,] determined to be ineligible under AS 43.23.005(d) as enacted by sec. [2] 1 of this Act, be appropriated annually from the dividend fund to the crime victim compensation fund (AS 18.67.162) to carry out the purpose of AS 18.67."

Question:

Is the appropriation in Sec. 5 intended to be made prior to the first year's distribution or in the next session based on actual numbers of ineligibles determined in Sec. 1?



Official Business

Alaska State Legislature

House

Pouch V
State Capitol
Juneau, Alaska 99811

M E M O R A N D U M

To: Rep. Martin

From: J. Manly *jm*

Date: March 25, 1987

RE: Prisoners receiving permanent fund dividends

You asked that I try to find out how many people incarcerated in the Alaska correctional system could be estimated to have applied for and received permanent fund dividend checks.

I spoke with Susan Knighton of the Department of Corrections at 465-3376, who gave me the following figures:

1801 Long-term inmates

1585 Short-term inmates

3386 Total resident inmate population

Of these, Ms. Knighton said that 169 had their pfd attached for one reason or another, and only 485 actually had their check pass through the Department's accounting system. In other words, most of the prisoner's checks actually did not go directly to them, but to someone else, probably to a relative.

Senator Lloyd Jones

P.O. Box V

Juneau, Alaska 99811

February 16, 1988

Senator Jones,

I have just read in the Ketchikan Daily News that HB245 has passed the House and is now going to the Senate for a vote. This disturbs me as I had no idea that this piece of legislation was even being considered by the House of Representatives. It would seem that the voters are the last to know what is being proposed in our behalf.

I strongly urge a vote against this bill for a number of reasons. Of course you are aware that I have a personal reason for my feelings due to the fact that my son is incarcerated on a felony at this time. However, personal feelings aside, I feel that this withholding of Permanent Fund Dividends from incarcerated felons may be justified for those felons who do in fact have a victim claim against them, but that in no way justifies the taking of all Permanent Fund Dividends.

First and most important is the fact that many of those incarcerated have no other means of funds to further their education and have a chance to become an acceptable part of society. Also many use these funds to help their families survive while the breadwinner is unable to provide for them. It would seem to be a much fairer system to review each case on a separate basis before making such a drastic decision.

With the welfare rolls swelling as they are, I would much prefer to have these people try to support their families as best they can rather than welfare carrying the entire load. It would also allow these people at least a small degree of dignity. This state has been more and more prone to sending the message to those incarcerated people that they are little more than a nuisance to the state as well as society. I realize that this state no longer puts any importance on rehabilitation, but it seems rather hypocritical to put out the message that our children and young people are the future of this state when so many of our young people are being thrown away by the criminal justice system and the elected officials too. Some day these very people that are treated as no-class citizens will be back in society and part of the voting public. Isn't it better to have them released with at least a little self-worth and dignity rather than bitterness and hatred for the state and the rest of society?

From the personal side I'd like to tell you exactly what my son has done with the Permanent Fund checks he has received from the State of Alaska. He has taken a number of college classes, bought his own computer and taught himself to use it, and put himself through a paralegal class. All this has been done at his own expense with only his small wages from working at the jail and his Permanent Fund. For any person to strive so hard to improve himself only to have this means snatched away from him, would certainly be

justified in turning bitter and giving up on life itself. I realize this may sound a little dramatic, however, try putting yourself or someone you love in that position and imagine how it must feel.

It is also important to point out that not all felons have victim compensation claims against them. Those that do not would end up paying the bills for those who have no Permanent Fund coming. They are already paying their debt to society with their most prized of all liberties (freedom), so why add more punishment. This almost smacks of ex post facto law.

If this state is hell bent on taking the funds away from these people, I would at the very least urge an amendment calling for a case by case review before such a drastic step be taken. Surely there must be some compassion and feelings of fairness left in mankind.

I would also like to know why pending legislation is no longer printed in the newspaper so the public may let their views be known to those who represent us. To find out about legislation after it has already been voted on does not seem to be very responsible.

Thank You,

Patricia A. Muzzana
Patricia A. Muzzana

Box 546

Ward Cove, Alaska 99928

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version: HB 245

Publish Date: _____

REQUEST _____

Revision Date: _____

Title: An act relating to permanent fund dividends for individuals.

Agency Affected: Revenue

BRU: Permanent Fund Dividend

Sponsor: Barnes, et al

Requestor: HESS

Components: Administrative Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
OPERATING						
PERSONAL SERVICES	-	2.1	1.1	1.1	1.1	1.1
TRAVEL	-	-	-	-	-	-
CONTRACTUAL	-	1.1	0.5	0.5	0.5	0.5
SUPPLIES	-	-	-	-	-	-
EQUIPMENT	-	-	-	-	-	-
LANDS & STRUCTURES	-	-	-	-	-	-
GRANTS, CLAIMS	-	-	-	-	-	-
MISCELLANEOUS	-	-	-	-	-	-
TOTAL OPERATING	-	3.2	1.6	1.6	1.6	1.6
CAPITAL	-	-	-	-	-	-
REVENUE	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	-	-	-	-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER (PFD)	-	3.2	1.6	1.6	1.6	1.6
TOTAL	-	3.2	1.6	1.6	1.6	1.6

POSITIONS:

FULL-TIME	-	-	-	-	-	-
PART-TIME	-	1	1	1	1	1
TEMPORARY	-	-	-	-	-	-

ANALYSIS: Attach a separate page if necessary

(See attached)

Prepared By: Ervin B. Jones
Division: Administrative Services

2323
Phone: 465-2313
Date: 5/4/87

Approved by Commissioner: [Signature]
Agency: Revenue

Date: 5/4/87

Distribution (by Agency preparing fiscal note):

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

Department of Revenue
Administrative Services Division
Fiscal Note Analysis
HB 245
5/4/87

Assumptions:

1. The bill will become law in 1987.
2. Per the Department of Corrections, there are approximately 3,200 felons who would be incarcerated during part or all of a given fiscal year.
3. The Department of Corrections will provide the Department of Revenue with a list, via magnetic tape, which includes:
 - a) All persons, including full name, birthdate, and social security number, who were incarcerated during all or part of the previous fiscal year for a felony conviction. This list will be provided by August 1 of each year.
 - b) On a paper copy, an annotation of all persons who the Commissioner of Corrections determines are "otherwise eligible under AS 43.23.005(a)(1) and (2)."

Program Summary:

The Department of Revenue will use the list provided in assumption 3(a) to match against the PFD file. Any person who files an application and who appears on that list will be denied their dividend. A denial notice will be sent to the applicant, with notice of right to appeal. If appeals are forthcoming, the Enforcement Division will hold informal conferences, and where requested by the applicant, the Commissioner will hold formal hearings and represent the Department in Superior Court. This is expected to generate approximately 2,000 additional denials in the first year, with a decreasing number in subsequent years, as felons realize that they are ineligible for the dividend.

Using the list prepared as described in assumption 3(b) and using denied applications filed by felons, the Enforcement Division will review all persons listed by the Commissioner of Corrections as residents. This may extend to direct contact with incarcerated felons as to their intent to remain. Those persons determined to be "otherwise eligible" will be included in the denominator under AS 43.23.025.

1. Positions:

1 PPT Document Processor I, R7,
@ \$2117.76/Mo including salary
and benefits for 1 month = \$2.1

This position will assist in the determination of filings by felons and in the processing and mailing of denial notices, appeals, and correspondence. Reduced by half in the second and subsequent years.

2. Other Expenditures:

a) Travel: None.

b) Contractual:

Printing costs and postage for 2,000 additional denial notices, appeal forms and envelopes. Reduced by half in second and subsequent years. =

1.1

c) Supplies: None.

d) Equipment: Use existing.

-0-

TOTAL COST

\$3.2

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

HB 245

Bill Version: HB 245
Publish Date: 04-03-87

REQUEST: _____

Revision Date: _____

Agency Affected: Department of Corrections

Title: "An Act relating to permanent fund dividends for individuals incarcerated"
BRU: _____

Sponsor Rep Barnes, Adams, Collins

Components: _____

Requestor: _____

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	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)

S. Knighton

Prepared by: Susan Knighton, Research Analyst IV Phone: 04-22-87
Division: Statewide Programs Date: 465-3376

Approved by Commissioner: Susan Humphrey-Barnett *SHB* Date: 04-22-87
Agency: Department of Corrections

Distribution (by preparer):

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

provision, see § 22, ch. 99, SLA 1985 in the Temporary and Special Acts.
Effect of amendments. — The 1984

amendment substituted "October" for "December" in paragraph (2).

Sec. 43.23.065. Exemption of permanent fund dividends. (a) Except as provided in (b) of this section, 50 percent of the annual permanent fund dividend payable to an individual is exempt from levy, execution, garnishment, attachment, or any other remedy for the collection of debt. This exemption applies to an eligible individual's permanent fund dividend both before and after payment is made to the individual.

(b) An exemption is not available under this section for permanent fund dividends taken to satisfy

(1) child support obligations required by court order or decision of the child support enforcement agency under AS 47.23.140 — 47.23.220;

(2) court ordered restitution under AS 12.55.045 — 12.55.051 or 12.55.100;

(3) a court ordered probation fee under AS 12.55.105; or

(4) a debt owed by an eligible individual to an agency of the state, unless the debt is contested and an appeal is pending, or the time limit for filing an appeal has not expired.

(c) Claims listed in (b) of this section have priority in the order listed over other claims on a permanent fund dividend. (§ 1 ch 102 SLA 1982; am § 1 ch 157 SLA 1984; am § 57 SLA 1985; am § 67 ch 136 SLA 1986)

Revisor's notes. — Sections 12 and 13, ch. 99, SLA 1985, amend this section and add new (b) and (c). The amendments are effective if § 1, ch. 99, SLA 1985 is repealed (see § 25, ch. 99, SLA 1985). If the amendments become law, the section will read: "(a) Fifty percent of a cash permanent fund dividend payment is exempt from levy, execution, garnishment, attachment, or any other remedy for the collection of debt. This exemption applies to an eligible individual's permanent fund dividend both before and after payment is made to the individual. An exemption is not available under this section for cash permanent fund dividend payments taken to satisfy (1) child support obligations required by court order or decision of the child support enforcement agency under AS 47.23.140 — 47.23.220; (2) a debt owed by an eligible individual to an agency of the state, unless the debt is contested and an appeal is pending, or the time limit for filing an appeal has not expired; or (3) court ordered restitution under AS

12.55.045 — 12.55.051 or 12.55.100. A child support obligation under (1) of this section has priority over a debt owed to an agency of the state, and a permanent fund dividend may not be taken to satisfy a debt under (2) of this section until any portion of the dividend necessary to satisfy a child support obligation has been taken.

"(b) The department shall require an individual to take 100 percent of the permanent fund dividend in cash if the department receives a levy, execution, garnishment, attachment or other legal remedy for the collection of a past due debt described in (a)(1) or (2) of this section.

"(c) The courts of this state may, as a condition of any civil judgment or restitution order under AS 12.55.045 — 12.55.051 or 12.55.100, require the defendant to take the defendant's permanent fund dividend in cash."

Section 22, ch. 99, SLA 1985 provides for an advisory vote to be held at the general election in 1986. For the text of that

provision, see § 22, ch. 99, the Temporary and Speciu

Effect of amendments. amendment added the last in the next-to-last sentence "An exemption is not" for "is," inserted "(1)," and added beginning with "(2) a debt" the sentence. Section 2, ch. 1 limits the application of the ment to dividends issued subsequent years.

The first 1985 amendment

Sec. 43.23.075. Eliq

Revisor's notes. — Sectio SLA 1985, amends this amendment is effective if § 1 1985 is repealed (see § 25, 1985). If the amendment beco section will read: "(a) In det eligibility of an individual u assistance program adminis Department of Health and S in which eligibility for assist on financial need, the De Health and Social Services sider a permanent fund div come or resources received l ent of public assistance or by the recipient's household un to do so by federal law or re Department of Health and S shall notify all recipients of tance of the effec' a per: dividend credit or .as. pay: "(b) An individual who is cal assistance under 42 U.S 1396p (Social Security Act. solely because of the credit o permanent fund dividend by ual or by a member of the household is eligible for state ical assistance under the gen assistance program (AS 4'

Sec. 43.23.095. Defi

Revisor's notes. — Sectio SLA 1985, amends (6) of this amendment is effective if § 1. 1985 is repealed (see § 25, 1985). If the amendment beco paragraph will read: "(6) 'per dividend' means a credit to ar count or a cash payment und ter;"

In addition, § 16, ch. 99, SL

Original sponsors: Barnes, Adams,
Collins, et al.

1 IN THE HOUSE

BY THE HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

2

CS FOR HOUSE BILL NO. 245 (HESS)

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 permanent fund dividends for
7 individuals incarcerated after conviction for a
8 felony; and providing for an effective date."

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

10 * Section 1. AS 43.23.005 is amended by adding a new subsection to
11 read:

12 (d) Notwithstanding the provisions of (a) - (c) of this section,
13 an individual who has been convicted of a felony is not eligible for a
14 permanent fund dividend for a year when, during all or part of the
15 fiscal year ending June 30 of the current year, as a result of the
16 conviction the individual is incarcerated. This subsection applies
17 whether or not the individual has applied for the dividend.

18 * Sec. 2. AS 43.23.025 is amended by adding a new subsection to read:

19 (b) For the purpose of calculating the amount of a permanent
20 fund dividend under (a) of this section, an individual who is ineli-
21 gible to receive a dividend under AS 43.23.005(d), but who is other-
22 wise eligible under AS 43.23.005(a)(1) and (2), is counted as an
23 eligible individual whether or not the individual has applied for the
24 dividend.

25 * Sec. 3. AS 43.23.055 is amended to read:

26 Sec. 43.23.055. DUTIES OF THE DEPARTMENT. The department shall
27 (1) annually pay permanent fund dividends from the dividend
28 fund;
29 (2) adopt regulations under the Administrative Procedure

1 the purposes of AS 18.67.

2 * Sec. 6. This Act takes effect immediately under AS 01.10.070(c).

HB

247

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

House Judiciary:

4-28-87

4-29-87

Secs. 15.57.010 — 15.57.060.

Repealed by § 232 ch 100 SLA 1980.

Cross references. — For present provisions, see AS 15.58.010 — 15.58.090.

Editor's notes. — The repealed chapter derived from § 2, ch. 76, SLA 1974; § 2,

ch. 10, SLA 1975; §§ 4 — 7, ch. 87, SLA 1975; §§ 27, 28, ch. 197, SLA 1975; §§ 23, 24, ch. 12, SLA 1980.

Chapter 58. Election Pamphlet.

Section

- 10. Election pamphlet
- 20. Contents of pamphlet
- 30. Material to be filed by candidate
- 40. Material to be filed by political parties
- 50. Information and recommendations on judicial officers

Section

- 60. Charges for space in pamphlet
- 70. Organization of material
- 80. Distribution
- 90. Delegation by lieutenant governor

Collateral references. — 26 Am. Jur. 2d, Elections, §§ 193-199.

29 C.J.S., Elections, §§ 117, 118(1).

Doctrine of privilege or fair comment as applicable to misstatements of fact in publication (or oral communication) relating to public officer or candidate for office. 110 ALR 412; 150 ALR 358.

Statement regarding cost of proposed public improvement in ballot for special election in that regard. 117 ALR 892.

Validity of special election as affected by publication or dissemination of matter or information, extrinsic to the question as submitted, regarding nature or effect of the proposal. 122 ALR 1142.

Sec. 15.58.010. Election pamphlet. Before each state general election, the lieutenant governor shall prepare, publish and mail an election pamphlet to every registered voter. The pamphlet shall be prepared on a regional basis as determined by the lieutenant governor. (§ 206 ch 100 SLA 1980)

Sec. 15.58.020. Contents of pamphlet. Each election pamphlet shall contain

- (1) photographs and campaign statements submitted by eligible candidates for elective office in the region;
- (2) information and recommendations filed under AS 15.58.050 on judicial officers subject to a retention election in the region;
- (3) a map of the election district or districts of the region;
- (4) sample ballots for election districts of the region;
- (5) an absentee ballot application;
- (6) for each ballot proposition submitted to the voters by initiative or referendum petition or by the legislature,
 - (A) the full text of the proposition specifying constitutional or statutory provisions proposed to be affected;

(B) the ballot title and the summary of the proposition prepared by the director or by the lieutenant governor;

* (C) a neutral summary of the proposition prepared by the Legislative Affairs Agency;

(D) statements submitted which advocate voter approval or rejection of the proposition not to exceed 500 words;

(7) for each bond question, a statement of the scope of each project as it appears in the Bond Authorization Act;

(8) a maximum of two pages of material submitted by each political party;

(9) additional information on voting procedures that the lieutenant governor considers necessary. (§ 206 ch 100 SLA 1980)

Sec. 15.58.030. Material to be filed by candidate. (a) No later than 75 days before the state general election, candidates for the offices of the United States President and Vice-President may file with the lieutenant governor photographs and statements advocating their candidacy.

(b) No later than 75 days before the state general election, a candidate for the office of United States senator, United States representative, governor, lieutenant governor, justice or judge, state senator, or state representative may file with the lieutenant governor a photograph and a statement advocating his candidacy.

(c) Each candidate for an office designated under (a) or (b) of this section is allowed one page of space in the pamphlet for a photograph and statement.

(d) Pages on which candidates' photographs or statements appear must be clearly identified with the words "paid for by the candidate."

(e) A candidate's statement must be typewritten and is limited to a position statement of 250 words or less and a biographical statement of 150 words or less.

(f) A candidate's photograph must be a 5" x 7" black and white glossy print taken within the past five years. The photograph must be limited to the head, neck and shoulders of the candidate. (§ 206 ch 100 SLA 1980)

Sec. 15.58.040. Material to be filed by political parties. (a) No later than 75 days before the state general election, a political party may file with the lieutenant governor a maximum of two pages of material.

(b) Each page purchased must be clearly identified with the words "paid for by" followed by the name of the political party, the name of the state chairman of the party, and the name of the party treasurer. (§ 206 ch 100 SLA 1980)

Sec. 15.58.050. Information and recommendations on judicial officers. No later than 75 days before the state general election, the judicial council shall file with the lieutenant governor a statement

including information about each supreme court justice, court of appeals judge, superior court judge, and district court judge who will be subject to a retention election. The statement shall reflect the evaluation of each justice or judge conducted by the judicial council according to law. A statement may not exceed 600 words. (§ 206 ch 100 SLA 1980)

Sec. 15.58.060. Charges for space in pamphlet. (a) Each general election candidate shall pay to the lieutenant governor at the time of filing material under this chapter the following:

(1) President or Vice-President of the United States, United States senator, United States representative, governor, lieutenant governor, supreme court justice and court of appeals judge, \$150 each;

(2) superior court judge, district court judge, \$75 each;

(3) state senator, and state representative, \$50 each.

(b) The state chairman or executive committee of a political party shall pay to the lieutenant governor at the time of filing material under this chapter \$300 for each page purchased.

(c) There is no charge for statements and recommendations submitted by the judicial council or for statements advocating approval or rejection of a proposition submitted to the voters for approval. (§ 206 ch 100 SLA 1980)

Sec. 15.58.070. Organization of material. Material in the election pamphlet shall be organized to the extent possible in the same manner and form in which it will appear on the ballot. The decision of the lieutenant governor on the form of material is final. (§ 206 ch 100 SLA 1980)

Sec. 15.58.080. Distribution. (a) Not less than 30 days before the general election, the lieutenant governor shall mail to every registered voter one copy of the pamphlet prepared for the region in which the voter resides. Additional pamphlets may be obtained from the director, the office of the lieutenant governor, and the area election offices.

(b) The state library shall make a recording of the appropriate regional pamphlet available to a blind voter without cost. The lieutenant governor shall assist with the preparation of recording each regional pamphlet. (§ 206 ch 100 SLA 1980)

NOTES TO DECISIONS

Exception to time requirement for 1978 election. — See *Hammond v. Hickel*, Sup. Ct. Order (File Nos. 4281, 4282, 4283, 4284, 4285, 4291), 588 P.2d 256 (1978), cert. denied, 441 U.S. 907, 99 S. Ct. 1998, 60 L. Ed. 2d 376 (1979), decided under former AS 15.57.050.

Sec. 15.58.090. Delegation by lieutenant governor. The lieutenant governor may delegate the duties imposed on him by this chapter to the director. (§ 206 ch 100 SLA 1980)

FLESCH FORMULA

The Flesch formula is based to compute scores for "reading ease" and "human interest". Although this method has been criticized, no better system seems to have been developed to this time for quick evaluation of adult reading materials. Flesch has a chart inside the cover of his book, The Art of Readable Writing, which is a short-cut to determining readability and will eliminate the need to compute the formula. This chart can be used in place of steps 6 and 7 in the procedure outlined below. For those who do not have access to his book, the procedure he follows to determine readability is:

1. Count the words in the article (mark each 50th word).
2. Count the sentences.
3. Count the syllables in the article.
4. Divide the number of words by the number of sentences to obtain the average sentence length.
5. Divide the number of syllables by the number of words and multiply by 100 to obtain the average number of syllables per 100 words.
6. Multiply the average sentence length in words by 1.015.
7. Multiply the average number of syllables per 100 words by .846, then add the totals of steps 6 and 7, then subtract the total from 206.835 to obtain the readability score for the article.
8. Convert the readability score to reading ability level given below to determine usability.

<i>Description of Style</i>	<i>Average Sentence Length</i>	<i>Average No. of Syll. per 100 Wds.</i>	<i>Reading Ease Score.</i>	<i>Estimated Reading Grade</i>
Very Easy	8 or less	123 or less	90 to 100	5th grade
Easy	11	131	80 to 90	6th grade
Fairly Easy	14	139	70 to 80	7th grade
Standard	17	147	60 to 70	8th and 9th grade
Fairly Difficult	21	155	50 to 60	10th to 12th grade (high school)
Difficult	25	167	30 to 50	13th to 16th grade (college)
Very Difficult	29 or more	192 or more	0 to 30	college graduate

BALLOT MEASURE NO. 3

Advisory Vote on Longevity Bonus Annuity Program Ch. 99 SLA 85 (SB56)

BALLOT LANGUAGE

(As it will appear on the November 4, 1986, General Election Ballot)

The Fourteenth Alaska State Legislature considered two alternatives to the present longevity bonus program. Both were adopted into law, but neither will take effect unless the legislature chooses one of them. The legislature has asked for an advisory vote of the public on the annuity option which is described below.

The annuity option provides that every individual who reaches age 65 by January 1, 1988, including those already receiving the bonus, would receive a longevity bonus payment of \$250 per month. In addition, a person under age 65 on January 1, 1988, could participate in an optional annuity program by depositing all or part of his or her permanent fund dividends in an account held by the state. Upon reaching age 65, a person would receive a monthly payment in an amount determined by how much was contributed to the account. The annuity payments would be supplemented with declining longevity bonus payments paid for with general funds until the annuity accounts were large enough to provide monthly payments of \$250 a month.

The second option provides that every individual who is 65 years old by January 1, 1988, including those already receiving the bonus, will receive a longevity bonus payment of \$250 per month, but that anybody younger than age 65 by January 1, 1988, would not be eligible for benefits.

Should the legislature adopt the annuity option? YES NO

This proposition scored 30.3 under the formula contained in HB 247.

Procedures:

- (1) disregarded numbers
- (2) counted 8 sentences and 205 words
average sentence length, 25.6 words
 $25.6 \times 1.015 = 26.00$
- (3) counted 365 syllables in 205 words
 $365/205 = 178/100$
 $178 \times .846 = 150.58$
- (4) $26 + 150.58 = 176.58$
 $206.835 - 176.58 = 30.25$

LEGISLATIVE AFFAIRS AGENCY SUMMARY

(Ch. 9 SLA 85 CCSSB 56)

This question is advisory to the legislature as to whether an annuity program should be adopted to replace the longevity bonus program.

Under the proposed program, a person could elect to receive his or her permanent fund dividend in cash, as a credit in an annuity account, or a combination of the two. A person who is 65 years old on or before January 1, 1988, or persons with certain debts could only receive the dividend in cash.

Upon reaching the age of 65, a person with credit in an annuity account would receive an annuity in the form of a monthly payment based upon the principal and accrued interest in the person's annuity account. If a person dies before age 65, a lump sum payment could be made to a designated beneficiary or to the decedent's estate.

Persons 65 years of age on or before January 1, 1988, who otherwise qualify would continue to receive a monthly longevity bonus payment of \$250. Otherwise, the monthly longevity bonus payment would be equal to \$250 minus the maximum possible straight life annuity for a person 65 years of age under the annuity program.

If the annuity program is rejected, the legislature will consider limiting the existing longevity bonus program to people who are 65 years of age on or before January 1, 1988.

VOTES CAST BY MEMBERS OF THE 14TH ALASKA LEGISLATURE ON FINAL PASSAGE

House:	Yeas	30
	Nays	10
	Absent or Not Voting	0
Senate:	Yeas	19
	Nays	0
	Absent or Not Voting	1

1980 U.S. Census of Alaska

Table 66. Educational Characteristics: 1980

(Data are estimates based on a sample; see Introduction. For meaning of symbols, see Introduction. For definitions of terms, see appendices A and B)

**The State
Urban and Rural and Size of Place
Inside and Outside SMSA's**

SCHOOL ENROLLMENT AND TYPE OF SCHOOL

	The State	Total	Urban			Rural		Rural farm	Inside SMSA's	Outside SMSA's	
			Total	Inside urbanized areas		Outside urbanized areas					
				Central cities	Urban fringe	Places of 10,000 or more	Places of 2,500 to 10,000				
Persons 3 years old and over enrolled in school	113 692	72 104	47 682	47 682	10 854	13 548	41 588	8 034	221	48 740	64 952
Nursery school	5 195	3 324	2 111	2 111	519	694	1 871	378	14	2 160	3 035
Public	3 137	1 701	980	980	277	444	1 436	261	6	987	2 150
Church-related	647	573	409	409	68	96	74	32	-	415	232
Other private	1 411	1 050	722	722	174	154	361	85	8	758	653
Kindergarten	7 007	4 348	2 746	2 746	750	872	2 659	532	23	2 765	4 242
Public	6 529	4 051	2 515	2 515	690	846	2 478	481	18	2 534	3 995
Church-related	236	177	140	140	16	21	59	24	-	140	96
Other private	242	120	91	91	24	5	122	27	5	91	151
Elementary (1 to 8 years)	55 520	33 700	22 690	22 690	4 995	6 015	21 820	4 136	82	23 222	32 298
Public	53 948	32 778	22 055	22 055	4 826	5 897	21 170	4 089	77	22 567	31 381
Church-related	1 229	736	479	479	154	103	493	37	5	493	736
Other private	343	186	156	156	15	15	157	10	-	162	181
High school (11 to 14 years)	27 192	16 458	10 976	10 976	2 463	3 019	10 734	2 182	79	11 230	15 962
Public	26 410	15 999	10 653	10 653	2 346	3 000	10 411	2 159	68	10 907	15 503
Church-related	542	330	213	213	104	13	212	12	11	213	329
Other private	240	129	110	110	13	6	111	11	-	110	130
College	18 778	14 274	9 159	9 159	2 147	2 968	4 504	806	23	9 363	9 415
Public	17 654	13 452	8 526	8 526	2 041	2 885	4 202	761	23	8 730	8 924

Persons 3 years old and over enrolled in school	3 and 4 years old	5 and 6 years old	7 to 13 years old	14 and 15 years old	16 and 17 years old	18 and 19 years old	20 and 21 years old	22 to 24 years old	25 to 34 years old	35 years old and over
113 692	4 454	11 810	47 292	13 785	13 357	5 431	2 424	2 497	7 485	5 157
72 104	7 314	29 193	19 752	8 132	8 173	3 522	1 902	1 975	5 450	3 682
47 682	4 388	19 752	19 752	5 375	5 489	2 185	1 157	1 177	3 481	2 642
47 682	4 688	19 752	19 752	5 375	5 489	2 185	1 157	1 177	3 481	2 642
10 854	1 693	4 496	5 116	1 222	1 208	382	191	266	1 046	565
13 548	1 434	4 496	5 116	1 535	1 476	955	554	532	923	475
41 588	1 693	4 496	5 116	1 535	1 476	955	554	532	923	475
8 034	302	959	3 504	1 142	1 009	347	91	93	350	237
221	14	16	20	38	34	8	6	7	7	9
48 740	1 778	4 750	20 204	5 505	5 601	2 234	1 163	1 200	3 570	2 735
64 952	2 676	7 060	27 088	8 280	7 756	3 197	1 261	1 297	3 915	2 422

Percent enrolled in school	3 and 4 years old	5 and 6 years old	7 to 13 years old	14 and 15 years old	16 and 17 years old	18 and 19 years old	20 and 21 years old	22 to 24 years old	25 to 34 years old
31.2	85.0	97.6	96.9	87.3	37.5	14.2	8.9	8.2	29.4
30.7	86.2	97.8	97.6	87.2	36.7	15.8	10.1	9.1	29.4
29.4	84.2	97.8	97.1	87.1	35.5	15.9	9.2	8.7	29.4
29.4	84.2	97.8	97.1	87.1	35.5	15.9	9.2	8.7	29.4
31.5	87.8	98.5	98.3	84.1	29.2	8.9	8.4	10.6	34.8
34.8	91.8	97.4	98.5	90.2	44.5	20.8	15.1	8.9	34.8
32.1	83.2	97.3	95.9	81.2	39.0	6.8	6.0	6.6	32.1
28.2	69.6	97.6	97.7	81.2	29.6	6.8	4.4	5.3	28.2
41.2	100.0	97.8	96.9	87.2	50.0	33.3	-	6.4	41.2
29.5	84.2	97.8	96.8	87.4	35.6	15.8	9.2	8.7	29.5
32.5	85.5	97.5	96.8	87.4	38.9	13.0	8.6	7.8	32.5

SCHOOL ENROLLMENT AND LABOR FORCE STATUS											
Persons 16 to 19 years old											
	The State	Total	Urban	Urban fringe	Outside urbanized areas	Places of 10,000 or more	Places of 2,500 to 10,000	Rural	Inside SMSA's	Outside SMSA's	
Persons 16 to 19 years old	29 792	18 976	12 452	12 452	2 743	3 781	10 816	2 417	54	12 699	17 093
Armed forces	1 674	1 444	729	729	214	501	230	133	-	729	945
Civilian, enrolled in school	18 670	11 599	7 643	7 643	1 572	2 384	7 071	1 345	42	7 804	10 856
Employed	6 023	4 239	2 756	2 756	678	805	1 784	474	16	2 803	3 220
Unemployed	1 222	800	475	475	138	187	422	49	-	482	740
Not in labor force	11 425	6 560	4 412	4 412	756	1 392	4 865	822	26	4 519	6 906
Civilian, not enrolled in school	9 448	5 933	4 080	4 080	957	896	3 515	939	14	4 166	5 282
High school graduates	5 830	3 789	2 608	2 608	673	508	2 041	598	8	2 654	3 176
Employed	3 587	2 557	1 828	1 828	427	302	1 030	341	8	1 856	1 731
Unemployed	670	428	260	260	109	59	242	59	-	267	403
Not in labor force	1 573	804	520	520	137	147	769	198	-	531	1 042
Not high school graduates	3 618	2 144	1 472	1 472	284	388	1 474	341	6	1 512	2 106
Employed	1 241	785	543	543	108	134	456	118	5	550	691
Unemployed	653	452	304	304	73	75	201	67	1	313	340
Not in labor force	1 724	907	625	625	103	179	817	156	-	649	1 075

YEARS OF SCHOOL COMPLETED											
Males, 25 years old and over											
	The State	Total	Urban	Urban fringe	Outside urbanized areas	Places of 10,000 or more	Places of 2,500 to 10,000	Rural	Inside SMSA's	Outside SMSA's	
Males, 25 years old and over	113 432	71 766	46 974	46 974	12 116	12 676	41 666	8 510	273	48 324	65 108
Elementary: 0 to 4 years	3 554	836	389	389	186	261	2 718	280	5	389	3 165
5 to 7 years	2 852	1 189	620	620	277	292	1 663	256	4	624	2 228
8 years	3 842	1 601	807	807	287	507	2 241	497	36	823	3 019
High school: 1 to 3 years	9 211	5 350	3 302	3 302	844	1 204	3 861	817	6	3 367	5 844
4 years	42 307	26 949	17 668	17 668	4 435	4 846	15 358	3 271	101	18 016	24 291
College: 1 to 3 years	25 382	17 163	11 565	11 565	2 662	2 936	8 219	1 785	58	12 049	13 333
4 years	12 469	9 093	6 341	6 341	1 478	1 274	3 376	801	27	6 503	5 966
5 or more years	13 815	9 585	6 282	6 282	1 947	1 356	4 230	803	36	6 553	7 262
Percent high school graduates	82.8	87.5	89.1	89.1	86.8	82.1	74.8	78.3	81.3	89.2	78.1

Females, 25 years old and over											
	The State	Total	Urban	Urban fringe	Outside urbanized areas	Places of 10,000 or more	Places of 2,500 to 10,000	Rural	Inside SMSA's	Outside SMSA's	
Females, 25 years old and over	97 965	65 131	43 632	43 632	10 937	10 562	32 834	7 118	222	44 696	53 269
Elementary: 0 to 4 years	3 041	798	431	431	184	183	2 243	266	2	454	2 587
5 to 7 years	2 646	1 070	662	662	138	270	1 576	296	12	662	1 984
8 years	3 078	1 573	912	912	287	374	1 505	349	27	928	2 150
High school: 1 to 3 years	8 717	5 382	3 510	3 510	835	1 037	3 335	819	11	3 592	5 125
4 years	39 873	27 392	18 570	18 570	4 476	4 546	12 281	2 791	80	18 854	21 019
College: 1 to 3 years	22 340	15 945	10 984	10 984	2 559	2 402	6 395	1 542	46	11 278	11 062
4 years	10 221	7 413	5 038	5 038	1 364	1 011	2 808	596	14	5 230	4 991
5 or more years	8 049	5 358	3 525	3 525	1 094	739	2 691	459	30	3 698	4 351
Percent high school graduates	82.2	86.5	87.4	87.4	86.8	82.4	73.6	75.7	76.6	87.4	77.8

Persons 25 years old and over											
	The State	Total	Urban	Urban fringe	Outside urbanized areas	Places of 10,000 or more	Places of 2,500 to 10,000	Rural	Inside SMSA's	Outside SMSA's	
Persons 25 years old and over	211 397	136 897	90 606	90 606	23 053	23 238	74 500	15 628	495	93 020	118 377
Percent: Less than 5 years of elementary school	3.1	1.2	0.9	0.9	1.6	1.9	6.7	3.5	1.4	0.9	4.9
High school graduates	82.5	87.0	88.3	88.3	86.8	82.2	74.3	77.1	79.2	88.3	78.0
4 or more years of college	21.1	23.0	23.4	23.4	25.5	18.8	17.6	17.0	21.6	23.6	19.1
Median years of school completed	12.8	12.9	13.0	13.0	13.0	12.8	12.7	12.7	12.8	13.0	12.7

Males, 18 to 24 years old											
	The State	Total	Urban	Urban fringe	Outside urbanized areas	Places of 10,000 or more	Places of 2,500 to 10,000	Rural	Inside SMSA's	Outside SMSA's	
Males, 18 to 24 years old	59 654	41 116	26 165	26 165	6 424	8 327	18 538	4 629	69	26 610	33 044
Percent: High school graduates	79.2	82.5	82.5	82.5	83.4	81.7	71.9	78.1	89.9	82.4	76.7
4 or more years of college	3.5	3.5	3.3	3.3	3.7	3.8	3.6	3.4	13.9</		

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800


LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

April 16, 1987

SUBJECT: Comprehension by the voter of election
propositions and materials
[CSHB 247(State Affairs)]

TO: Representative Fran Ulmer
Chairman, House State Affairs Committee

FROM: Richard A. Bradley
Legislative Counsel 

I have prepared a committee substitute responsive to the request from Dennis Burns.

But it could not be done as simply as the League of Women Voters suggested.

The provisions of HB 247 [as introduced] address only the preparation of the election pamphlet; the material suggested by the League addresses the format of the propositions prepared for various ballot propositions [AS 15.60.010(23)] or ballot questions [AS 15.60.010(26)] as they actually go on the ballot.

As such, other portions of the election code that direct the preparation of these provisions were more properly amended.

And since it was not "readability" that was the issue any more, I have suggested that the title be broadened.

If I may be of further assistance, please advise.

RAB:mkr
m11/036

Enclosure

STATE OF ALASKA

P O BOX AA
JUNEAU 99811
(907) 465-3520

M E M O R A N D U M

OFFICE OF THE LIEUTENANT GOVERNOR

TO: Grace Schaible
Attorney General
Department of Law

FROM: Stephen McAlpine
Lieutenant Governor

DATE: March 4, 1987

SUBJECT: Attached Proposed Legislation

Attached please find information given to me by the League of Women Voters. I am in favor of legislation similar to this and would appreciate your review of their proposal. It is my understanding that this legislation will be introduced this session. However, if it is not introduced or does not pass the Legislature, I would like to see this become the policy for ballot propositions, etc. for the Division of Elections.

Attachment

cc: Sandi Stout, Division of Elections



February 18, 1987

Representative Mike Davis
P.O. Box V
Juneau, AK 99801

Dear Representative Davis:

This letter is a follow-up to our conversation at the League of Women Voters' luncheon in December when we were discussing the ballot language issue. After much discussion, you indicated interest in working with league in formulating legislation that would encourage(force) the legislature/Dept. of Law to have the language of ballot propositions at a grade level and readability level that could be understood by at least the average voter in Alaska. We continue to get so much public demand for improvement in the readability of the ballot propositions that we are eager to see progress on this matter.

League first became aware of this issue three years ago when the Literacy Council sent a representative to the state league board to make us aware of the seriousness of this issue. They brought analyses of 1976 ballot propositions that showed that the grade level of the propositions was in the range of 12th grade through college graduate level. I am enclosing copies of these analyses. A Literacy Council representative is analyzing the 1986 state propositions now, and I hope to have those with me when I am in Juneau next week. From trying to interpret the ballot propositions and the neutral summaries given in the Election Pamphlet to the public, I feel certain that the 1986 propositions were on a readability level far above the average Alaskan reader.

Once we became aware of the issue, we started working with the Division of Elections Office in Juneau and the Dept. of Law to see what be done. We spent several months of the summer and fall of 1986 working with Linda Edgeworth of Division of Elections and Jim Baldwin of Dept. of Law. Linda sent us the ballot propositions as soon as they were available and Literacy Council volunteers reworded the propositions in simplified language using simple Literacy Council criteria to do so. We had hoped that the Division of Elections would

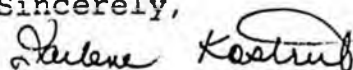
put these simplified versions in the Official Election Pamphlet with a note that they had been supplied by the League of Women Voters and the Literacy Council. After our spending months on this, the Division of Elections decided at the last minute that they would not include our simplified versions. The reason they gave us was that if they included our simplified versions, they would have to include other versions given by other groups. We were very frustrated because the official language in the propositions and the neutral summaries included in the Official Election Pamphlet were not easily understandable by the general public.

I feel that your suggestion that some type of legislation address this issue is our best hope. The aim of the legislation would be to insure that all ballot propositions be worded so that they are easily read and understood by the average Alaskan voter. There is no precise statistic to tell us the reading level of the average voter, but from talks with the Literacy Council, we are agreed that an eighth grade reading level would be desirable for ballot language. An eleventh grade level is mentioned in the Literacy Council sheet as that of the average adult, but only 62% of the population can read at the eleventh grade level. In Alaska where we are having difficulty with the Voting Rights Act because of so many Natives for whom English is a second language. I think that we need to do all we can to make ballot language on a level understood by these people also.

Several of us from the state league board will be meeting with you on Monday, March 2, at 10 a.m. in your office, and we will want to discuss this issue with you then. I will have with me analyses of the 1986 ballot proposition language. My concern is the filing deadline for legislation. Is there still a possibility that we could have legislation formulated and meet the March deadline?

If you have questions or could suggest other material that would be helpful for me to bring to Juneau on March 2, please contact me before I leave for Juneau on Feb. 27. Thanks for your interest and concern in this area. We look forward to talking with you on March 2.

Sincerely,



Darlene Kostrub
Vice-President
4209 York Ave.
Fairbanks, AK 99709
479-7535



April 1987

Representatives Mike Davis and Niilo Koponen have introduced House Bill 247 which would require ballot propositions and neutral summaries in voter's pamphlets to be worded on an eighth grade reading level or lower.

The Fairbanks League of Women Voters and the Literacy Council have been working for about three years on trying to ensure that these propositions and summaries are easier to read. Currently there are no standards for readability being used by the state, with the result that ballot propositions and neutral summaries are usually worded on a 12th grade through college graduate level.

According to the Literacy Council only 62% of the population can read at the 11th grade level. For many Alaskans English is a second language.

The standard proposed in HB 247 has been adopted in many states. It would require little extra staff time, and the result is that people would understand exactly what they were voting on.

The League of Women Voters of Alaska is pleased that the Fairbanks representatives have taken this step to ensure an informed voting population. We urge you to vote in favor of this bill which is so important to maintenance of a truly democratic process.



Alaska State Legislature

Representative Mike Davis

P.O. Box V
Juneau, Alaska 99811
(907) 465-4930/4941

Interim Office:
P.O. Box 81435
Fairbanks, Alaska 99708

TO: House Judiciary Committee
FROM: Rep. Mike Davis
DATE: April 27, 1987
RE: CSHB 247 (State Affairs)

HB 247(SA) aims to ensure that all ballot propositions and election pamphlet summaries are worded so they can be easily read by the average Alaskan.

There are no precise statistics on the reading ability of Alaskan adults. Nationally, 14% of adults are functionally illiterate, reading below the fourth grade level. According to the 1980 U.S. census, 18% of Alaskans over 24 have not graduated from high school or received a G.E.D. Many who do graduate lack strong reading skills. However, Alaska's ballot propositions are frequently written in college level English.

The readability formula used in this bill is the Flesch test. This test is used by several states with insurance policy readability laws, and in Maine's election law. A Flesch score of 65 approximately corresponds to an eighth grade reading level. As the score increases, the difficulty of the reading material decreases.

CSHB 247(SA) further requires that each ballot proposition contain language clearly stating that a "yes" vote is a vote in favor of the initiative, referendum, or constitutional amendment under consideration. This provision is intended to prevent a situation in which a "yes" vote would be required to maintain the status quo.

Finally, CSHB 247(SA) states that a court may not enjoin the conduct or results of an election for failing to comply with the legislation. The intent of this bill is to encourage participation in elections, and to assist informed decision-making by voters. CSHB 247(SA) would not increase the likelihood of lawsuits, further complicating the election process.

The bill would not influence the content of a referendum, initiative, or constitutional amendment. It would affect only the abbreviated form appearing on the ballot, and the neutral summary in the election pamphlet. The responsibility for preparing propositions and summaries is clearly assigned in current statute, and would remain unchanged.

Original sponsors: Davis, Koponen
and Boucher

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 247 (Judiciary)

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 preparation of election
7 propositions and materials."

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

9 * Section 1. AS 15.45.180 is amended by adding a new subsection to
10 read:

11 (b) The proposition prepared under (a) of this section shall
12 comply with AS 15.60.005 and shall be worded so that a "Yes" vote on
13 the proposition is a vote to enact the proposed law.

14 * Sec. 2. AS 15.45.410 is amended by adding a new subsection to read:

15 (b) The proposition prepared under (a) of this section shall
16 comply with AS 15.60.005 and shall be worded so that a "Yes" vote on
17 the proposition is a vote to reject the act referred.

18 * Sec. 3. AS 15.50.010 is amended by adding a new subsection to read:

19 (b) The proposition prepared under (a) of this section shall
20 comply with AS 15.60.005 and shall be worded so that a "Yes" vote on
21 the proposition is a vote to adopt the proposed constitutional amend-
22 ment.

23 * Sec. 4. AS 15.60 is amended by adding a new section to read:

24 Sec. 15.60.005. READABILITY OF CERTAIN ELECTION MATERIALS. (a)
25 The policy of the state is to prepare a ballot proposition that is
26 clear, concise, and easily readable. The form of each ballot proposi-
27 tion shall be scored under (c) of this section. The policy of the
28 state is to prepare a ballot proposition that is scored at approxi-
29 mately 65.

1 (b) Each neutral summary prepared for the voter's pamphlet shall
2 be scored under (c) of this section. The policy of the state is to
3 prepare a neutral summary that is scored at approximately 65.

4 (c) A ballot proposition or neutral summary shall be scored
5 using the following procedures:

6 (1) disregard numbers;

7 (2) multiply the average sentence length in words by 1.015;

8 (3) multiply the average number of syllables for each 100
9 words by .846;

10 (4) subtract the total of (2) and (3) from 206.835.

11 (d) A court may not enjoin the conduct or results of an election
12 for a failure to comply with (a) or (b) of this section.
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5-0743X
Bradley
4/28/87

Original sponsors: Davis and Koponen

1 IN THE HOUSE

2 CS FOR HOUSE BILL NO. 247 ()
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 preparation of election
7 propositions and materials."

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

9 * Section 1. AS 15.45.180 is amended by adding a new subsection to
10 read:

11 (b) The proposition prepared under (a) of this section shall
12 comply with AS 15.60.005 and shall be worded so that a "Yes" vote on
13 the proposition is a vote to enact the proposed law.

14 * Sec. 2. AS 15.45.410 is amended by adding a new subsection to read:

15 (b) The proposition prepared under (a) of this section shall
16 comply with AS 15.60.005) and shall be worded so that a "Yes" vote on
17 the proposition is a vote to reject the act referred. *ix*

18 * Sec. 3. AS 15.50.010 is amended by adding a new subsection to read:

19 (b) The proposition prepared under (a) of this section shall
20 comply with AS 15.60.005 and shall be worded so that a "Yes" vote on
21 the proposition is a vote to adopt the proposed constitutional amend-
22 ment.

23 * Sec. 4. AS 15.60 is amended by adding a new section to read:

24 Sec. 15.60.005) READABILITY OF CERTAIN ELECTION MATERIALS. (a)
25 The form of each ballot proposition shall be scored under (c) of this
26 section. The policy of the state is to prepare a ballot proposition
27 that is *(clear, concise, and easily readable, and that is* scored at 65 or more.

28 (b) Each ~~neutral summary prepared for the voter's pamphlet~~ shall
29 be scored under (c) of this section. The policy of the state is to

1 prepare a neutral summary that is scored at 65 or more.

2 (c) A ballot proposition or neutral summary shall be scored
3 using the following procedures:

4 (1) disregard numbers;

5 (2) multiply the average sentence length in words by 1.015;

6 (3) multiply the average number of syllables for each 100
7 words by .846;

8 (4) subtract the total of (2) and (3) from 206.335.

9 (d) A court may not enjoin the conduct or results of an election
10 for a failure to comply with (a) or (b) of this section.
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MEMORANDUM
TO: SUND
FROM: HARTLE
5/15/87

JH

RE: HB 247 - Preparation of election propositions and materials.

Judiciary CS:

Rewrote section 4 to make it clear that the primary policy is to have a ballot proposition that is clear, concise, and easily readable, and that the score on the Flesche test is of secondary concern. (Something could score 99 on the Flesche test and still be garbage...)

5-0743B
Bradley
4/16/87

Original sponsors: Davis and Koponen

1 IN THE HOUSE

BY THE STATE AFFAIRS COMMITTEE

2 CS FOR HOUSE BILL NO. 247 (State Affairs)

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 comprehension by the voter of
7 election propositions and materials."

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

9 * Section 1. AS 15.45.180 is amended by adding a new subsection to
10 read:

11 (b) The proposition prepared under (a) of this section shall be
12 worded so that a "Yes" vote on the proposition is a vote to enact the
13 proposed law.

14 * Sec. 2. AS 15.45.410 is amended by adding a new subsection to read:

15 (b) The proposition prepared under (a) of this section shall be
16 worded so that a "Yes" vote on the proposition is a vote to reject the
17 act referred. *Referendum*

18 * Sec. 3. AS 15.50.010 is amended by adding a new subsection to read:

19 (b) The proposition prepared under (a) of this section shall be
20 worded so that a "Yes" vote on the proposition is a vote to adopt the
21 proposed constitutional amendment.

22 * Sec. 4. AS 15.58 is amended by adding a new section to read:

23 Sec. 15.58.025. READABILITY OF CERTAIN ELECTION MATERIALS. (a)
24 The form of each ballot proposition shall be scored under (c) of this
25 section. The policy of the state is to prepare a ballot proposition
26 that is scored at 65 or more.

27 (b) Each neutral summary prepared for the voter's pamphlet shall
28 be scored under (c) of this section. The policy of the state is to
29 prepare a neutral summary that is scored at 65 or more.

1 (c) A ballot proposition or neutral summary shall be scored
2 using the following procedures:

- 3 (1) disregard numbers;
4 (2) multiply the average sentence length in words by 1.015;
5 (3) multiply the average number of syllables for each 100
6 words by .846;
7 (4) subtract the total of (2) and (3) from 206.835.

8 (d) A court may not enjoin the conduct or results of an election
9 for a failure to comply with (a) or (b) of this section.
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STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

April 28, 1967

Honorable John Sund, Chair
House Judiciary Committee
Alaska State Legislature
Room 122, Capitol Building
Juneau, Alaska 99811

Re: CSHB 247(SA) -- readability
of election materials

Dear Representative Sund:

HB 247 and CSHB 247(SA) seek to make certain election materials more "readable." The Department of Law believes that the policy is excellent, but that it is inadvisable to set in the statutes, as the bill does, a readability formula with a specific score that must be attained.

The bill itself is clear and well-written. It is very readable. But it does not, itself, attain the score that it would establish for election materials. My calculations, possibly in error but probably not too far off, give the bill a score of 52.263. My point in mentioning this is not to criticize the bill or the test set out in it, but to illustrate the fact that a clear and well-written ballot proposition could still be unacceptable if this bill were to pass. And it goes without saying that a piece of writing could attain the target score of 65, with short sentences and short words, but still be pure gibberish.

As Dr. Rudolph Flesch, the creator of the formula in this bill (hence, the "Flesch test") stated in the preface to his The Art of Plain Talk (Harper & Row, publishers, 1946):

[the book's] main feature is, of course, the formula. I almost wish it were not. Some readers, I am afraid, will expect a magic formula for good writing and will be disappointed with my simple yardstick. Others, with a passion for accuracy, will wallow in the little rules and computations but lose sight of the principles of plain English. What I hope for are readers who won't take the formula too seriously and won't expect from it more than a rough estimate. [Emphasis added.]

Granted the bill includes, in CSHB 247(SA)'s AS 15.58..025(e), a protection against enjoining the conduct or results of

an election for failure to comply with the formula. However, that very protection provides something of an inconsistency in the bill. The Department of Law would recommend that the laudatory policy of the bill be expressed in less compulsory language. For example, subsec. (a) could be reworded to read as follows:

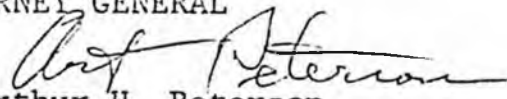
The policy of the state is to prepare a ballot proposition that is clear, concise, and easily readable. In preparing each ballot proposition, the formula set out in (c) of this section shall be considered, with a score of 65 or more being the target.

A similar rewording should then be done for subsec. (b). The objective is to convey the policy without imposing a requirement of slavish adherence to a formula that will not itself guarantee good, clear, easily understood writing in election materials. This wording is offered as something of a compromise. A statement of the policy, without any reference to the Flesch test formula, would actually be preferable.

Thank you for this opportunity to comment on this bill.

Very truly yours,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By: 
Arthur H. Peterson
Assistant Attorney General

AHP:md

cc: Hon. Mike Davis
House of Representatives
Alaska State Legislature

Hon. Steven McAlpine
Lieutenant Governor

George Sullivan
Legislative Liaison
Governor's Office

Sec. 15.45.150. Review of petition. Within not more than 60 days of the date the petition was filed, the lieutenant governor shall review the petition and shall notify the initiative committee whether the petition was properly or improperly filed, and at which election the proposition shall be placed on the ballot. (§ 9.15 ch 83 SLA 1960)

Sec. 15.45.160. Bases for determining the petition was improperly filed. The lieutenant governor shall notify the committee that the petition was improperly filed if he determines (1) that there is an insufficient number of qualified subscribers, or (2) that the subscribers were not resident in at least two-thirds of the election districts of the state. (§ 9.16 ch 83 SLA 1960)

Sec. 15.45.170. Submission of supplementary petition. Upon receipt of notice that the filing of the petition was improper, the initiative committee may amend and correct the petition by circulating and filing a supplementary petition within 30 days of the date that notice was given. (§ 9.17 ch 83 SLA 1960)

Initiative



Sec. 15.45.180. Preparation of ballot title and proposition. If the petition is properly filed, the lieutenant governor, with the assistance of the attorney general, shall prepare a ballot title and proposition. The ballot title shall, in not more than six words, indicate the general subject of the proposition. The proposition shall, in not more than 100 words, give a true and impartial summary of the proposed law. (§ 9.18 ch 83 SLA 1960)

Sec. 15.45.190. Placing proposition on ballot. The lieutenant governor shall direct the director to place the ballot title and proposition on the election ballot of the first statewide general, special, or primary election that is held after (1) the petition and any supplementary petition have been filed, (2) a legislative session has convened and adjourned, and (3) a period of 120 days has expired since the adjournment of the legislative session. (§ 9.19 ch 83 SLA 1960; am § 35 ch 69 SLA 1970; am § 174 ch 100 SLA 1980)

Effect of amendments. — The 1980 amendment inserted "direct the director to" near the beginning of the section.

report on ch. 69, SLA 1970 (HB 564), see 1970 House Journal Supplement No. 2, p. 7.

Legislative history reports. — For

Sec. 15.45.200. Display of proposed law. The director shall provide each election board with 10 copies of the proposed law being initiated, and the election board shall display three copies of the proposed law in a conspicuous place in the room where the election is held. (§ 9.20 ch 83 SLA 1960; am § 175 ch 100 SLA 1980)

Effect of amendments. — The 1980 amendment substituted "director" for

"lieutenant governor" at the beginning of the section.

* **Sec. 15.45.410. Preparation of ballot title and proposition.** The lieutenant governor, with the assistance of the attorney general, shall prepare a ballot title and proposition if he determines that the petition is properly filed. The ballot title shall, in not more than six words, indicate the general subject area of the act. The proposition shall, in not more than 100 words, give a true and impartial summary of the act being referred. (§ 9.47 ch 83 SLA 1960)

Sec. 15.45.420. Placing proposition on ballot. The lieutenant governor shall direct the director to place the ballot title and proposition on the election ballot for the first statewide general, special, or primary election held more than 180 days after adjournment of the legislative session at which the act was passed. (§ 9.48 ch 83 SLA 1960; am § 36 ch 69 SLA 1970; am § 180 ch 100 SLA 1980)

Effect of amendments. — The 1980 amendment inserted "direct the director to" near the beginning of the section. report on ch. 69, SLA 1970 (HB 564), see 1970 House Journal Supplement No. 2, p. 7.

Legislative history reports. — For

Sec. 15.45.430. Display of act being referred. The director shall provide each election board with 10 copies of the act being referred, and the election board shall display three copies of the act in a conspicuous place in the room where the election is held. (§ 9.49 ch 83 SLA 1960; am § 181 ch 100 SLA 1980)

Effect of amendments. — The 1980 amendment substituted "director" for "lieutenant governor" at the beginning of the section.

Sec. 15.45.440. Rejection of act. If a majority of the votes cast on the referendum proposition favor the rejection of the act referred, the act is rejected, and the lieutenant governor shall so certify. The act rejected by referendum is void 30 days after certification. (§ 9.50 ch 83 SLA 1960)

NOTES TO DECISIONS

Section adopts language of Constitution. — This section adopted almost verbatim the language of Alaska Constitution, art. XI, § 6, for establishing the time when an act rejected by referendum shall become void. *Walters v. Cease*, Sup. Ct. Op. No. 182 (File No. 447), 388 P.2d 263, aff'd, Sup. Ct. Op. No. 182, 394 P.2d 670 (1964).

Sec. 15.45.450. Insufficiency of application or petition. No referendum submitted to the voters shall be held void because of the insufficiency of the application or petition by which the submission was procured. (§ 9.51 ch 83 SLA 1960)

Sec. 15.45.460. Judicial review. Any person aggrieved by any determination made by the lieutenant governor under AS 15.45.250 — 15.45.450 may bring an action in the superior court to have the deter-

bring an action in the superior court to have the determination reviewed within 30 days of the date on which notice of determination was given. (§ 9.96 ch 83 SLA 1960; am § 199 ch 100 SLA 1980)

Effect of amendments. — The 1980 amendment substituted "director under AS 15.45.470 — 15.45.710" for "lieutenant governor" near the beginning of the section, inserted "in the superior court" near

the middle of the section, and deleted "by any appropriate remedy in the superior court" following "was given" at end of the section.

Chapter 50. Constitutional Amendments and Conventions.

Article

1. Constitutional Amendments (§§ 15.50.010 — 15.50.060)
2. Constitutional Conventions (§§ 15.50.070 — 15.50.100)
3. Delegation by Lieutenant Governor (§ 15.50.110)

Article 1. Constitutional Amendments.

Section

10. Preparation of proposition for constitutional amendment
20. Description of ballot title and proposition
25. Objection to proposed ballot title and proposition

Section

27. Judicial review.
30. Placing proposition on ballot
40. Display of resolution
50. Certification of vote
60. Effective date

Collateral references. — 16 Am. Jur. 2d, Constitutional Law, §§ 18, 29-57; 25 Am. Jur. 2d, Elections, §§ 185-192.
 16 C.J.S., Constitutional Law, §§ 7-11; 29 C.J.S., Elections, § 170.
 Number of amendments that may be submitted under an initiative and referendum clause. 62 ALR 1350.

Proposition submitted to people as covering one or more than one proposed constitutional amendment. 94 ALR 1510.
 Basis for computing majority essential to the adoption of a constitutional or other special proposition submitted to voters. 131 ALR 1382.

* **Sec. 15.50.010. Preparation of proposition for constitutional amendment.** The lieutenant governor shall prepare a proposed ballot title and proposition for each amendment to the state constitution proposed by the legislature or by a constitutional convention. Each amendment shall be confined to one subject. Within 30 days of the date of adjournment of a legislative session or of the date of adjournment of a constitutional convention, the lieutenant governor shall provide one copy of the proposed ballot title and proposition for each amendment to each member of the legislature and shall make copies available to the public. (§ 10.01 ch 83 SLA 1960; am § 1 ch 99 SLA 1978)

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

April 28, 1987

Honorable John Sund, Chair
House Judiciary Committee
Alaska State Legislature
Room 122, Capitol Building
Juneau, Alaska 99811

Re: CSHB 247(SA) -- readability
of election materials

Dear Representative Sund:

HB 247 and CSHB 247(SA) seek to make certain election materials more "readable." The Department of Law believes that the policy is excellent, but that it is inadvisable to set in the statutes, as the bill does, a readability formula with a specific score that must be attained.

The bill itself is clear and well-written. It is very readable. But it does not, itself, attain the score that it would establish for election materials. My calculations, possibly in error but probably not too far off, give the bill a score of 52.263. My point in mentioning this is not to criticize the bill or the test set out in it, but to illustrate the fact that a clear and well-written ballot proposition could still be unacceptable if this bill were to pass. And it goes without saying that a piece of writing could attain the target score of 65, with short sentences and short words, but still be pure gibberish.

As Dr. Rudolph Flesch, the creator of the formula in this bill (hence, the "Flesch test") stated in the preface to his The Art of Plain Talk (Harper & Row, publishers, 1946):

[the book's] main feature is, of course, the formula. I almost wish it were not. Some readers, I am afraid, will expect a magic formula for good writing and will be disappointed with my simple yardstick. Others, with a passion for accuracy, will wallow in the little rules and computations but lose sight of the principles of plain English. What I hope for are readers who won't take the formula too seriously and won't expect from it more than a rough estimate. [Emphasis added.]

Granted the bill includes, in CSHB 247(SA)'s AS 15.58.-025(e), a protection against enjoining the conduct or results of

an election for failure to comply with the formula. However, that very protection provides something of an inconsistency in the bill. The Department of Law would recommend that the laudatory policy of the bill be expressed in less compulsory language. For example, subsec. (a) could be reworded to read as follows:

The policy of the state is to prepare a ballot proposition that is clear, concise, and easily readable. In preparing each ballot proposition, the formula set out in (c) of this section shall be considered, with a score of 65 or more being the target.

A similar rewording should then be done for subsec. (b). The objective is to convey the policy without imposing a requirement of slavish adherence to a formula that will not itself guarantee good, clear, easily understood writing in election materials. This wording is offered as something of a compromise. A statement of the policy, without any reference to the Flesch test formula, would actually be preferable.

Thank you for this opportunity to comment on this bill.

Very truly yours,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By: 
Arthur H. Peterson
Assistant Attorney General

AHP:md

cc: Hon. Mike Davis
House of Representatives
Alaska State Legislature

Hon. Steven McAlpine
Lieutenant Governor

George Sullivan
Legislative Liaison
Governor's Office

Dana - TV Valley Fair - Sheets - Fight -

The policy of the State is to prepare a ballot proposition that is clear, concise, and easily readable. The form of each ballot proposition shall be scored under (c) of this section. The policy of the state is to prepare a ballot proposition that is scored at approximately 65.



C

OFFICIAL GENERAL ELECTION BALLOT

GENERAL ELECTION NOVEMBER 4, 1986

THIS STUB TO BE REMOVED BY ELECTION BOARD

STATE OF ALASKA
General Election November 4, 1986

OFFICIAL BONDING
AND MEASURES BALLOT

BONDING PROPOSITION A

STATE GUARANTEED VETERANS RESIDENTIAL
MORTGAGE BONDS \$600,000,000
(Ch.134, SLA 1986)

This proposition would authorize the Alaska Housing Finance Corporation to issue up to \$600,000,000 in revenue bonds which are unconditionally guaranteed by the state for the payment of principal and interest. Bonds would be issued for the purpose of purchasing residential mortgages of qualifying veterans. A "qualified veteran" is defined by law.

Shall the State of Alaska unconditionally guarantee as a general obligation of the state, the payment of principal of and interest on revenue bonds of the Alaska Housing Finance Corporation issued in the principal amount of not more than \$600,000,000 for the purpose of purchasing mortgages made for residences for qualifying veterans, as defined by law?

BO. 134-1986
BONDS - 134-1986

BALLOT MEASURE NO. 1
RECONSIDERATION OF
CONSTITUTIONAL AMENDMENT
LIMITING INCREASE IN APPROPRIATIONS
(2d FCCSSJR 4; Leg. Res. 1, FSSLA 1981)

In 1982 the voters adopted an amendment to the Alaska Constitution which limits the amount of money that the legislature may appropriate. The 1982 amendment provided for reconsideration of the limit by the voters at this general election. Article IX, sec. 16, of the Alaska Constitution limits appropriations for a fiscal year to \$2.5 billion, adjusted annually for changes in population and inflation since 1981. At least one-third of the limitation amount is reserved for appropriations for capital projects and state loan programs. The remainder (up to two-thirds) may be spent for governmental operations. Appropriations to the Alaska Permanent Fund and appropriations or bond authorizations for capital projects may exceed this limit if they are not vetoed by the governor and are approved by the voters. The limit could also be exceeded to meet a state of disaster declared by the governor. The limit would not apply to appropriations for permanent fund dividends, general obligation bond payments, or for appropriations from revenue bond proceeds.

A vote "FOR" retains the limit.

A vote "AGAINST" repeals the limit.

FOR
AGAINST

AK301

VOTE BOTH SIDES

C

I HAVE VOTED



HAVE YOU?

BALLOT MEASURE NO. 2

Constitutional Amendment
LEGISLATIVE ANNULLMENT OF
ADMINISTRATIVE REGULATIONS

(1986 Legislative Resolve No. 60, HCS SJR 40 [Jud] am H)

This amendment of the Alaska Constitution would permit the legislature to annul executive branch regulations by passing a resolution that is not subject to veto by the governor or repeal by referendum. The annulment would become effective 30 days after passage by the legislature, unless the resolution sets a different date. The resolution must have three readings in each house on separate days, except that it may be advanced from second to third reading on the same day by a three-fourths vote of the house considering it. The resolution must receive approval of a majority of the membership of each house. The yeas and nays on final passage must be entered in the legislative journals.

A vote "FOR" adopts the amendment.

FOR
AGAINST

A vote "AGAINST" rejects the amendment.

BALLOT MEASURE NO. 3

ADVISORY VOTE ON
LONGEVITY BONUS ANNUITY PROGRAM
(Ch. 99 SLA 85, SB56)

The Fourteenth Alaska State Legislature considered two alternatives to the present longevity bonus program. Both were adopted into law, but neither will take effect unless the legislature chooses one of them. The legislature has asked for an advisory vote of the public on the annuity option which is described below.

The annuity option provides that every individual who reaches age 65 by January 1, 1988, including those already receiving the bonus, would receive a longevity bonus payment of \$250 per month. In addition, a person under age 65 on January 1, 1988, could participate in an optional annuity program by depositing all or part of his or her permanent fund dividends in an account held by the state. Upon reaching age 65, a person would receive a monthly payment in an amount determined by how much was contributed to the account. The annuity payments would be supplemented with declining longevity bonus payments paid for with general funds until the annuity accounts were large enough to provide monthly payments of \$250 a month.

The second option provides that every individual who is 65 years old by January 1, 1980, including those already receiving the bonus, will receive a longevity bonus payment of \$250 per month, but that anybody younger than age 65 by January 1, 1988, would not be eligible for benefits.

Should the legislature adopt the annuity option?

YES
NO

AK302

VOTE BOTH SIDES

C

(19.20)

(41.53)

(28.42)

(26.93)

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

REQUEST: _____

Bill Version: HB #247
Publish Date: 4/6/87

Revision Date: _____
Title: "An Act relating to the readability
of certain election materials"
Sponsor: Davis
Requestor: Davis

Agency Affected: Office of the Governor
BRU: Division of Elections
Components: II

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PAK-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: *Le* Linda Edgeworth
Division: Elections

Phone: 465-4611
Date: 2-24-87

Approved by Commissioner: *Carol P. Kertcher*
Agency: Office of the Governor / Division of Elections

Date: 4/13/87

Distribution (by preparer):

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- Senate Secretary

STATE OF ALASKA

P O BOX AA
JUNEAU 99811
(907) 465-3520

M E M O R A N D U M

OFFICE OF THE LIEUTENANT GOVERNOR

TO: Grace Schaible
Attorney General
Department of Law

FROM: Stephen McAlpine
Lieutenant Governor

DATE: March 4, 1987

SUBJECT: Attached Proposed Legislation

Attached please find information given to me by the League of Women Voters. I am in favor of legislation similar to this and would appreciate your review of their proposal. It is my understanding that this legislation will be introduced this session. However, if it is not introduced or does not pass the Legislature, I would like to see this become the policy for ballot propositions, etc. for the Division of Elections.

Attachment

cc: Sandi Stout, Division of Elections