ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672
4734 HJUD HB 445 - HB 459

STATE OF ALASKA
THE LEGISLATURE

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

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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

2-18-88

(7)

HOUSE COMMITTEE REPORT

Date referred: 2/10/88

FURTHER REFERRALS:

DATE: 2-18-88

The Judiciary Committee has considered HB 445

"An Act relating to the applicability of ch. 77, SLA 1987, relating to mandatory and discretionary parole and residual probation; and providing for an effective date."

RECOMMENDS:

[✓] replace with CS HB 445 (Jud) [ ] the same title [ ] a new title

[ ] attached amendment(s)

[ ] do pass

[ ] do not pass

[ ] no recommendation

[ ] individual recommendations

[ ] additional referral to the _____ Committee

ADOPTS: [ ] _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):

[ ] fiscal impact

[ ] zero fiscal note

[ ] zero with analysis

[ ] same as previous fiscal note published _____

[ ] same as previous zero fiscal note published _____

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

Chairman's signature

Original sponsors: Swackhammer, Gruenberg and Rieger

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 445 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the applicability of ch. 77, SLA 1987, relating to mandatory and discretionary parole and residual probation; and providing for an effective date."

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

* Section 1. The provisions of AS 33.16.010(a), 33.16.010(c), 33.16.-210, 33.16.900(7), 33.16.900(8); AS 33.20.040(a), and 33.20.040(c), as amended by ch. 77, SLA 1987, apply to prisoners incarcerated on or after September 13, 1987, irrespective of the law in effect at the time the prisoner committed the criminal offense for which the prisoner was incarcerated.

* Sec. 2. This Act is retroactive to September 13, 1987.

* Sec. 3. This Act takes effect immediately under AS 01.10.070(c).

5-1842Aa ✓
Chenoweth

Adopted
H. Jud
2-18-88

A M E N D M E N T

Offered in the HOUSE By Swackhammer

TO: HB 445

Page 1, lines 11 and 12:

Delete "33.16.100(d),"

2/18/88

THE DELETED SECTION (33.16.100(d)) WOULD INCREASE THE TIME OF PAROLE ELIGIBILITY FOR CERTAIN OFFENDERS.

This is impermissible under the constitutional prohibition against ex post facto laws, because the increased scope of prohibited conduct is broadened or the penalty is increased.

U.S. CONSTITUTION, ART 1, SEC. 10

STATE OF ALASKA

DEPARTMENT OF CORRECTIONS

BOARD OF PAROLE

STEVE COWPER, GOVERNOR

ALASKA BOARD OF PAROLE
P.O. BOX T
JUNEAU, ALASKA 99811-2000
PHONE: (907) 465-3384

February 18, 1988

Honorable C. E. Swackhammer
Representative
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

RE: H.B. 445

Dear Representative Swackhammer:

The Parole Board supports House Bill 445 for the reasons stated in my recent letter of February 8, 1988 to you. After reviewing the bill this morning, I would recommend one minor change.

I would recommend "33.16.100(d)" be removed from lines 11 and 12 of the bill. AS 33.16.100(d) is the section that deals with parole eligibility on Class A felony and the Unclassified sexual assault crimes. The Parole Board bill in 1985 inadvertently lowered parole eligibility down from one-third of the sentence to one-fourth of the sentence. H.B. 140 last year moved the eligibility back to one-third. Testimony from Corrections and the Parole Board is the actual impact of this amendment would be minimal. Applying this section retroactively would be in violation of the ex post facto provisions of the United States Constitution. Please refer to page 4 of the December 8, 1987 Attorney General's Opinion to me contained in your packet on H.B. 445. I will be most happy to explain this issue if necessary.

Except for this minor technical amendment, we fully endorse this bill and believe it will have an immediate impact on the workload of the Board and parole officers. Thanks for the opportunity to comment on this legislation.

Cordially,

Samuel H. Trivette
Executive Director

cc: Susan Humphrey-Barnett, Commissioner
Department of Corrections

Bill Parker, Special Assistant
Department of Corrections

20-08LH

REPRESENTATIVE
C.E. "SWACK" SWACKHAMMER

Alaska State Legislature

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House of Representatives

MEMORANDUM

TO: Rep. John Sund, Chair, House Judiciary

FROM: Rep. C.E. Swackhammer

DATE: February 10, 1988

TOPIC: House Bill 445

The aforementioned House Bill changes the effective date of HB 140 which passed last session to immediate applicability. Each day's delay negatively impacts the quality of supervision of those offenders with serious crime convictions.

House Bill 445 was referred to House Judiciary; your early scheduling would be greatly appreciated. Cover information is forthcoming.

Thanks.

STATE OF ALASKA

DEPARTMENT OF CORRECTIONS

BOARD OF PAROLE

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Cordially,

Samuel H. Trivette
Executive Director

cc: Susan Humphrey-Barnett, Commissioner
Department of Corrections

Bill Parker, Special Assistant
Department of Corrections

20-08LH

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U.S. CONSTITUTION, ART 1, SEC. 10

HOUSE BILL 445

COVER PACKET INDEX

Introduction Memorandum, Rep. C.E. Swackhammer

Support Letter, Sam Trivette, Exec. Dir. Parole Board

AG Opinion Re: House Bill 140

Leg. Legal Opinion Re: House Bill 445

REPRESENTATIVE
C.E. "SWACK" SWACKHAMMER

Alaska State Legislature

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House of Representatives

MEMORANDUM

TO: All Interested Parties

FROM: Rep. C.E. Swackhammer

DATE: February 10, 1988

TOPIC: House Bill 445

During the first session of the 15th Legislature, House Bill 140 passed both houses with virtually no opposition. This piece of legislation had an immediate and positive impact.

The bill changed the serving of mandatory parole from 181 day sentences to a minimum sentence of two years. It was demonstrated that this would basically impact those offenders who were guilty of misdemeanors or non-presumptive sentence felony offenses. Offenders routinely receive probation to follow their convictions.

The Alaska Board of Parole conducts approximately 1400 formal hearings a year, utilizing three professional staff and a clerk typist. In 1987, there were 135 final mandatory parole violation hearings. With only isolated exceptions, these violations could have been processed through probation. Parolees and probationers are seen by the same Probation Officers.

As stated in Sam Trivette's letter (attached), the legislation was enacted the effective date of the bill. Mr. Trivette states the positive impact was immediate, he attributes the majority of a 181 case reduction to this enactment. Approximately three months later, a Dept. of Law opinion indicated that the new legislation applied solely to those persons committing a crime after the effective date of the bill. The positive effects "ground to a halt." Consequently, they are also postponed for an extended period of time.

House Bill 445 merely establishes intent language that the effective date of House Bill 140 is immediate.

I solicit your support. The implied intent of House Bill 140 was to have it immediately effective. This bill, as in the case of HB 140, has a zero fiscal note. It simply allows more time for supervising offenders, having more serious offenses.

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF CORRECTIONS

BOARD OF PAROLE

ALASKA BOARD OF PAROLE
P.O. BOX T
JUNEAU, ALASKA 99811-2000
PHONE: (907) 465-3384

February 8, 1988

Representative C. E. Swackhammer
Alaska House of Representatives
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

RE: House Bill 140

Dear Representative Swackhammer:

You have asked our opinion on the impact House Bill 140 [Chapter 77, SLA 1987] has had on the number of mandatory parolees. The following information is provided in response.

We met with the Department of Law staff this summer after the Governor signed the bill. Law agreed any prisoner being released on the effective date of the bill, September 13, 1987 or thereafter, would be subject to the 2 year minimum to be on mandatory parole. We notified all institutional parole officers of this, and effective 9/13/87, only prisoners with sentences of 2 years or longer went out on mandatory parole. On December 10, 1987, we received the Department of Law's opinion indicating we could only apply HB 140 to those prisoners whose crimes were committed on September 13, 1987 or thereafter. After discussing this opinion thoroughly with Law, we advised Corrections' employees through memorandum on December 11 to apply HB 140 only to those prisoners whose crimes were committed 9/13/87 or thereafter.

For the first six months of 1987, we set supplemental conditions on 348 mandatory parolees. During the second six months of 1987, we set mandatory parole conditions on 167 cases. I think this drop of 181 cases in the second half of the year can be attributed primarily to HB 140. Again, I have not kept actual figures, but we believe the number of mandatory parole packets has increased significantly in the last 1 1/2 months. We had over 2 feet of files awaiting action this morning.

As you know, it take a significant amount of time to process and supervise mandatory parole cases. Even if every mandatory parolee followed all conditions, handling this additional workload of about 181 case would take a tremendous amount of time. Unfortunately, many of these mandatory parolees appear before us at violation hearings. We held about 135 final mandatory parole violation hearings in 1987. This does not include preliminary hearings. Corrections gives the parole officer credit for 12 hours for each parole violation processed. Handling these 135 cases is the equivalent to the work of

more than one full-time parole officer spread out over a years time.

As you can see, not being allowed to apply the bill to all prisoners released on September 13, 1987, is having a significant impact on the workload of the Parole Board and on the Department of Corrections. We strongly support an amendment that would allow the immediate application of HB 140 to everyone released September 13, 1987 or thereafter.

I will be glad to supply any additional information we have.

Cordially,

Samuel H. Trivette
Executive Director

cc: Susan Humphrey-Barnett, Commissioner
Department of Corrections

Bill Parker, Special Assistant
Department of Corrections

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF LAW

CRIMINAL DIVISION

REPLY TO

☒ CRIMINAL DIVISION CENTRAL OFFICE
P.O. BOX KC
JUNEAU, ALASKA 99811-0310
PHONE: (907) 465-3428

☐ OFFICE OF SPECIAL PROSECUTIONS AND APPEALS
1031 WEST 4TH AVENUE, SUITE 318
ANCHORAGE, ALASKA 99501-5993
PHONE: (907) 279-7424

December 8, 1987

The Honorable Samuel H. Trivette
Executive Director
Alaska Board of Parole
P.O. Box T
Juneau, Alaska 99811

Re: Application of changes in parole laws
Our file: 663-88-0148

Dear Mr. Trivette:

You have requested our advice regarding the application of recent changes to Alaska's parole laws. Specifically, you seek guidance as to which prisoners and parolees are covered by the amended statutes and which are covered by former statutes.

As you are aware, effective January 1, 1986, Alaska's Parole Administration Act (former AS 33.15.010 et. seq.) was repealed and reenacted in AS 33.16.010--AS 33.16.900. Additionally, the legislature further amended a number of provisions in AS 33.16 and AS 33.20 effective September 13, 1987. In light of these extensive changes, both prisoners and staff within the department of corrections have raised inquiries regarding which laws apply to which prisoners.

With one limited exception, the legislature made no mention of its intent as to the prospectivity or retrospectivity

of these newly adopted or amended provisions. 1/ Accordingly, consistent with the better policy view, persuasive case law authority, and Alaska's general saving statute, 2/ it is our opinion that the parole laws which are applicable to a particular prisoner are the ones in effect on the day the prisoner committed the criminal offense.

ANALYSIS

A. The Doctrine Of Abatement

At common law, the repeal or amendment of a criminal statute resulted in the abatement of all prosecutions under that statute which were not yet final. See, e.g., Today's Law and Yesterday's Crime: Retroactive Application of Ameliorative Criminal Legislation, 121 U.Pa.L.Rev. 120, 121-127 (1972) (hereafter referred to as "L.Rev."). This rule of abatement applied not only to statutes that defined a substantive criminal offense, but also to changes in laws that addressed sentences or penalties. 3/ Thus, an amendment to a statute which merely

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1/ AS 33.16.090(b), which became effective on January 1, 1986, was made partially retrospective. The retrospective effect of this statute is discussed infra at 14-15.

2/ AS 01.10.100.

3/ In Warden v. Marrero, 417 U.S. 653, 657-58, 41 L.Ed.2d 383, 389, 94 S.Ct. 2532 (1974), the United States Supreme Court made
(Footnote Continued)

reduced the possible maximum penalty for an offense resulted in dismissal of the action if it had not yet reached final judgment, unless the courts were able to find a specific parliamentary or legislative intent to the contrary. 4/ This result was reached by the courts as a canon of statutory construction which was based on the premise that, unless specifically stated otherwise, a legislature intended the enactment of a statute making criminal conduct noncriminal (or less criminal) to put an end to nonfinal prosecutions brought under the earlier statute. L.Rev. at 122-26 and authorities cited therein.

Thus the courts, when faced with silence or ambiguous language as to whom a statute applied, were attempting to discern and implement the intent of the legislature. Yet, the judicially created doctrine of abatement resulted in a considerable loophole whenever the legislature, in amending a statute, neglected to include a saving clause. 5/ Conviction or sentencing under the

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(Footnote Continued)
it clear that a statute addressing parole eligibility is a "penalty, forfeiture, or liability" which is saved by a general saving statute. See, discussion, infra at 4-11.

4/ L.Rev. at 123.

5/ "A saving clause refers to any language that would 'save' pending prosecutions or future prosecutions for acts committed under the repealed [or amended] statute from being abated." L.Rev. at 125 n.34.

former statute was precluded by the doctrine of abatement. Conviction under the newly amended statute for conduct which occurred before its effective date, at least where the scope of prohibited conduct was broadened or the penalty was increased, was impermissible under the constitutional prohibition against ex post facto laws. U.S. Constitution, Art. 1, § 10. 6/ Moreover, another common law rule mandated that absent specific retrospective language, amended statutes which provided for reduced or less restrictive sanctions, could only be applied to conduct which occurred after the effective date of the newly enacted legislation. L.Rev. at 124, particularly n.29.

The end result of these seemingly over-technical principles was that criminals occasionally escaped the consequences of their unlawful actions based solely on the fortuitousness of the effective date of amended legislation.

B. Saving Statutes

As indicated earlier, if legislation amending or repealing a criminal statute contained language that preserved prosecutions under the former statute, then a person charged

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6/ See, also, Weaver v. Graham, 450 U.S. 24, 67 L.Ed.2d 17, 101 S.Ct. 960 (1981). Thus, even if the legislature made such an amended statute specifically retroactive, prosecution would be barred by the prohibition against ex post facto laws.

under such a statute would not escape prosecution by virtue of the doctrine of abatement. All too often, however, legislatures, through inadvertence, neglected to provide specific saving clauses in criminal legislation, notwithstanding their intent that pending prosecutions under the former statute not be abated. L.Rev. at 126-27.

The legislative response to this inequity was the adoption, in most states and in Congress, of a general saving statute.

> [Such statutes are] applicable to all repeals, amendments, or re-enactments, and the consequent shifting of the legislative presumption from one of abatement unless otherwise specified to one of non-abatement in the absence of contrary legislative direction.

L.Rev. at 127. 7/

7/ As one court described this process,

> The history of legislation ... shows that through the inattention, carelessness and inadvertence of the law-making body, crimes and penalties have been abolished, changed or modified after the commission of the offense and before trial in such material way as to effect many legislative pardons. To prevent such mistakes and miscarriages of justice many of the states have enacted general saving statutes.

LaPorte v. State, 14 Ariz. 530, 533, 132 P. 563, 564-65 (1913).

General saving statutes vary in wording and content, but a majority of them apply in both civil and criminal actions and include a provision to the effect that an amendment to or repeal of a statute does not extinguish penalties, rights, or liabilities accrued or incurred under the former law. L.Rev. at 128. Alaska adopted such a general saving statute well before statehood. AS 01.10.100(a) presently provides:

> EFFECT OF REPEALS OR AMENDMENTS. (a) The repeal or amendment of any law does not release or extinguish any penalty, forfeiture, or liability incurred or right accruing or accrued under such law, unless the repealing or amending act so provides expressly. The law shall be treated as remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of the right, penalty, forfeiture, or liability.

Thus, ameliorative legislation (i.e., amendments to laws which make criminal sanctions or penalties 8/ less harsh) which fails to specifically provide for its retrospective application clearly applies prospectively only. 9/ See, e.g., AS 01.10.090 which states "no statute is retrospective unless

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8/ Penalties or sanctions include statutes addressing parole eligibility. See, n.3 supra.

9/ As already stated, legislation which increases penalties or sanctions may only be applied prospectively because of the prohibition against ex post facto laws. Cf., Elstad v. State, 599 P.2d 137, 140 (Alaska 1979).

expressly declared therein." Hence the critical question is the meaning of prospective application or, in the context of your specific request for advice, how ameliorative changes in Alaska's parole laws should be applied. The courts have adopted three responses to this kind of question.

The first view, taken by a number of jurisdictions including the federal courts, is that a statute that either ameliorates or repeals penalty provisions applies only to conduct that occurs after the change in law becomes effective. 10/ Under that view, a person who violated federal narcotics laws was not entitled to the benefit of a change in the sentencing laws which, five days before conviction and sentencing, had been amended to permit suspended sentences and parole eligibility and to do away with a mandatory minimum jail sentence. United States v. Bradley, 455 F.2d 1181, 1190 (1st Cir. 1972), aff'd, 410 U.S. 605, 35 L.Ed.2d 528, 93 S.Ct. 1151 (1973) (see, particularly, concurring opinion of Brennan and White, Justices, 410 U.S. at 611-12). The court in Bradley found that the specific saving statute in the legislative act that amended federal narcotics

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10/ Reported cases from more than 10 states reflect an adherence to this view. L.Rev. at 134-38.

laws and the general federal saving statute 11/ both required "that narcotics offenses committed prior to May 1, 1971, are to be punished according to the law in force at the time of the offense." 455 F.2d at 1190. 12/ See also, United States v. Brier, 813 F.2d 212, 215 (9th Cir. 1987) (no statutory retrospectivity unless specifically provided for).

A second view, and one that is apparently followed in only four states, is that any ameliorative changes to punishment statutes which become effective prior to the date of final appellate action inure to the benefit of a criminal defendant. See, e.g., In re Estrada, 408 P.2d 948 (Cal. 1965); People v. Roper, 181 N.E.88 (N.Y. 1932); L.Rev. at 132-33. Two principal criticisms may be made of this application of general saving statutes. Initially, it is disruptive to the criminal justice system in that it often takes months, and occasionally years,

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11/ The federal general saving statute, 1 U.S.C. § 109, is nearly identical to Alaska's general saving statute.

12/ Similarly, a person sentenced before the May 1, 1971, effective date of the federal narcotics statute does not, by virtue of having served a third of his sentence (the minimum necessary term to be eligible for parole under the May 1, 1971, Act) become eligible for parole. Warden v. Marrero, 417 U.S. 653, 41 L.Ed.2d 383, 94 S.Ct. 2532 (1974).

before a criminal appeal becomes final. 13/ Any mitigatory change to sentencing laws which may have occurred in the interim would then require resentencing. Secondly, this minority view results in inequities and encourages dilatory tactics by criminal defendants. If two co-defendants commit the same crime, then the one who flees the jurisdiction or otherwise evades apprehension for a period of time, is more likely to be brought to trial later and to have his appeal resolved later. That person would then benefit from a mitigatory change in law if it becomes effective prior to the finalization of his appeal. However, the co-defendant whose conviction and appeal is processed in a timely manner would not benefit from the change in law if it became effective after the time his appeal was resolved. Similarly, if the first person pled guilty, but the second went to trial and appealed his conviction, even on a meritless or frivolous point, only the second would benefit from any mitigatory change in the law which occurred prior to the finalization of his appeal.

13/ This amount of time is often needed simply to exhaust all possible appellate review within a state court system. Some prisoners spend years pursuing habeas corpus remedies in the federal court system. It took nine years from the date one prisoner in the Alaska prison system was convicted and sentenced before the federal courts finally foreclosed the possibility of habeas corpus relief. McCracken v. Corey, No. F77-6 (D. Alaska).

A third, and intermediate position, has been taken by a number of courts, largely dictated by the specific language of the general saving statutes in those jurisdictions. L.Rev. at 136. Under this view, the crucial date is the date of sentencing in the trial court. Any mitigatory change in sentencing or penalty provisions which becomes effective prior to the date a defendant is sentenced inures to the benefit of the defendant. Like the minority view however, this view is subject to inequities and encourages dilatory tactics by defendants.

For instance, in Belt v. Turner, 479 P.2d 791, aff'd on rehearing, 483 P.2d 425 (Utah 1971), a defendant pled guilty to an offense for which he received a suspended imposition of sentence. After violating his probationary conditions, he was sentenced to the maximum term of five years. The defendant failed to appear at the time his sentencing was originally scheduled, however, and a mitigatory change in the law which occurred after his original sentencing date, but prior to the date he was actually sentenced resulted in the appellate court remanding the case for resentencing under the more lenient statute. However, another person, who committed the same offense at approximately the same time, failed to receive the benefit of the mitigatory change in law. The appellate court ruled that the

general saving statute mandated that the higher penalty was proper. State v. Miller, 464 P.2d 844 (Utah 1970). 14/

It is helpful to remember that general saving statutes are only utilized when the legislature fails to indicate its intent as to whether a mitigatory change in law should apply retrospectively. Any specific indication by the legislature that a change in law should apply retrospectively results in the new law's application to those persons intended to be covered. AS 01.10.090. Absent any statement of intent to apply a mitigatory change in penalty provisions to persons who have already committed criminal offenses, we believe the most equitable application of a general saving statute is the view that looks at the date a criminal offense was committed.

Because Alaska's general saving statute is relevant to the question you raise, we now will review Alaska case law and policy to determine which view is the most appropriate to apply in this state.

14/ A dissenting opinion in Belt argued that the defendant in that case was improperly rewarded for failing to appear for sentencing, while the defendant in Miller, who properly appeared for sentencing received the higher penalty. 483 P.2d at 427.

C. Case Law In Alaska

Case law in Alaska follows the general rule that, absent specific retrospective intent language in new legislation, savings statutes are effective to preserve the law as it existed before a legislative change. Alaska Public Utilities v. Chugach Elec. Ass'n, 580 P.2d 687, 692 (Alaska 1978), overruled on other grounds; City and Borough of Juneau v. Thibodeau, 595 P.2d 626 (Alaska 1979), quoting Territory of Alaska v. American Can Company, 137 F.Supp. 181, 16 Alaska 71, 76 (1956), aff'd, 246 F.2d 493, 17 Alaska 280 (9th Cir. 1957), rev'd on other grounds, 358 U.S. 224, 79 S.Ct. 274, 3 L.Ed.2d 257 (1959). See, also, Brice v. State, Div. of Forest, Land & Water, 669 P.2d 1311, 1315 (Alaska 1983) (holding that, when a repeal is not accompanied by a specific saving provision, it is presumed that the legislature intended the general saving statute to apply).

Although the Alaska appellate courts have not explicitly chosen among the three views for determining at what point an amended penal statute is prospectively applied, 15/ there are

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15/ In Davenport v. State, 522 P.2d 1140 (Alaska 1974), the Alaska Supreme Court held that a mitigatory change in law which occurred shortly after a juvenile was committed to the custody of the Department of Health and Social Services did not benefit the litigant in that case. The court acknowledged that there were two views as to the appropriate date for determining whether a
(Footnote Continued)

strong indications that the Alaska courts would adopt the majority view that is based on the date an offense was committed.

For example, in P.H. v. State, 504 P.2d 837 (Alaska 1972), the supreme court held that the phrase "under 18 years of age" in juvenile delinquency statutes referred to the age of the accused at the time of the offense. The court went on to note that "as a general rule, the punishment for an offense is governed by the law in effect at the time the offense is committed." Id. at 841.

Similarly, in Parker v. State, 667 P.2d 1272 (Alaska App. 1983), the court of appeals acknowledged that the significant event for purposes of judging the ex post facto effect of a statute was the date of the offense, rather than the date of conviction, and stated that "[a] similar conclusion, in our view, is applicable to determinations of retroactivity under AS 01.10.-100(a)." 667 P.2d at 1274. As pointed out earlier, this is the view that avoids the inequities described in the previous section, infra at 10-11. Cf., Endell v. Johnson, 738 P.2d 769,

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(Footnote Continued)
defendant is entitled to the benefit of a new law--the date of commission of the offense or the date of final appellate action--but did not choose between the two because both had already occurred in that case. 522 P.2d at 1142. The court did not mention the intermediate view which is based on the date of sentencing.

771 (Alaska App. 1987) (interpreting credit for time served requirement in AS 12.55.025(c) to avoid inequities for persons similarly situated (i.e., persons sentenced for multiple charges where some remain incarcerated prior to trial and others are released on bail)).

In conclusion, we believe that the result that would be reached by the Alaska appellate courts and the one supported by the better policy view is that punishment, including parole laws, is based on the law which existed at the time of the commission of the offense.

D. Alaska's Parole Statutes

As discussed earlier, Alaska's parole statutes were totally rewritten effective January 1, 1986. Part of this revision resulted in specifically making certain persons eligible for parole who were sentenced under the presumptive sentencing scheme, albeit only during an aggravated portion of a presumptive sentence 16/ or during a consecutive sentence. AS 33.16.090(b). While persons in this category were not previously eligible for parole, section 9 of this legislative act (§ 9, ch. 88, SLA 1985) made this provision partially retrospective by permitting its

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16/ An aggravated portion of a presumptive sentence is that portion of a sentence which has been enhanced due to one or more of the aggravating factors set out in AS 12.55.155(c).

application to prisoners whose crimes occurred before the effective date, if the sentencing court so ordered.

Nowhere else in the act (ch. 88, SLA 1985) or in any of the provisions in the 1987 amendments (ch. 77, SLA 1987) is there any indication of the legislature's intent to apply the various other provisions retrospectively. The common law maxim, expressio unius est exclusio alterius, 17/ adds support to our view that, with this one exception, changes to Alaska's parole laws should be applied prospectively only. The fact that the legislature specifically expressed its intentions as to retrospectivity in one provision only, is strong evidence that it could have done so as to other provisions, but chose not to. Thus, for example, although the amount of time to be served prior to parole eligibility was reduced from one-third of a sentence to one-fourth for certain offenders (AS 33.16.100(c) and (d)), these provisions, by virtue of AS 01.10.090, AS 01.10.100(a), and the interpretation we believe the Alaska appellate courts would adopt, do not apply to prisoners whose offenses were committed before the effective date of the new law.

17/ When certain things are specified in a law, an intention to exclude all others from its operation may be inferred. Sutherland Statutory Construction § 47.23 (4th Ed. 1984).

Although it is our opinion that the applicable parole laws are those in effect at the time a person commits a criminal offense, that opinion is limited to those laws that affect substantive rights, such as parole eligibility or the length of time on parole. Any changes in laws that are solely procedural, e.g., the setting of parole conditions (AS 33.16.150 or AS 33.16.160) or the information that must be considered by the Parole Board in considering suitability for parole (AS 33.16.110), should be applied to all parolees irrespective of the date of their offenses.

Conclusion

In determining whether to apply mitigatory changes in parole laws to persons who committed criminal acts prior to the effective date of the new laws, you must be guided by the intent of the legislature. When the legislature is silent as to who is intended to be covered by the new laws, the general saving statute, AS 01.10.100(a) controls.

The most evenhanded and equitable application of AS 01.10.100(a) mandates that the law in effect at the time a person committed a criminal offense is the law that should be applied to that individual. The advice given in this opinion is intended to apply to penal statutes only. Any question of the retrospective application of changes to non-penal statutes requires a separate analysis.

If this opinion raises any questions, or we may otherwise assist in its application, please contact us at your convenience.

Very truly yours,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By: Michael J. Stark
Michael J. Stark
Assistant Attorney General

MJS:so-04

cc: Susan Humphrey-Barnett
Commissioner
Department of Corrections

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

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

MEMORANDUM February 8, 1988

SUBJECT: Applicability of Ch. 77, SLA 1987
(Work Order 5-1842)

TO: Representative C.E. Swackhammer

FROM: Jack Chenoweth
Legislative Counsel

The December 8, 1987, Opinion of the Attorney General guides the Department of Corrections and the Parole Board in the administration of those provisions of AS 33.16 and AS 33.20 that were amended by ch. 77, SLA 1987. I am of the view that the opinion reaches a defensible conclusion and contains no obvious error that might prompt a request for its reconsideration.

While the testimony before one or more legislative committees probably supports the contention that the provisions of the bill were to apply to all prisoners, there is simply nothing in the record of the drafting file maintained by this office to confirm your assertion that the Legislature intended HB 140 to apply to persons incarcerated on the effective date of the Act.

As your request states, the Legislature may set aside the effect of the opinion by clarifying legislative intent in passing the 1987 legislation. Please do not assume that a committee report or letter of intent will do that. A draft of a bill to accomplish the effect you intended accompanies this memorandum.

If this memorandum and the accompanying legislation prompt questions, please contact me.

Enclosure

JC:gc
WKG1:072

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: HB 445
PUBLISH DATE: 2/10/88

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act relating to the applicability of ch77, SLA 1987."
Sponsor: Rep. Swackhammer, Gruenberg & Rieger
Requestor: _____

Agency Affected: Department of Corrections
BRU: Parole Board
_____
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						

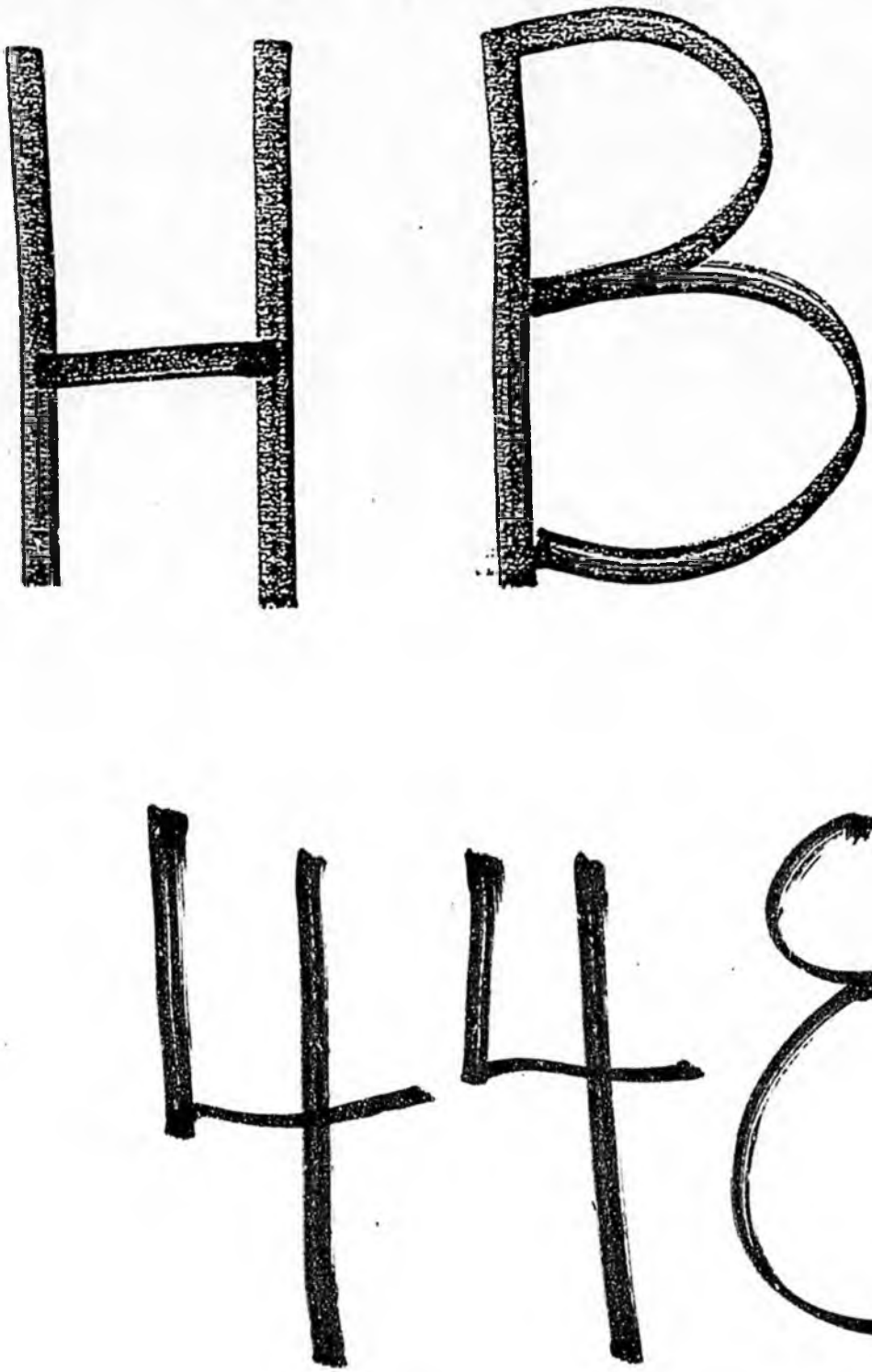
ANALYSIS: (Attach a separate page if necessary)

Susan E. Knighton

Prepared by: Susan Knighton, Director of Admin. Services
Phone: 465-3376
Division: Administration
Date: 2/18/88

Susan Humphrey-Barnett
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)



Dept. of Transportation & Public Facilities

POSITION PAPER

BILL NO: House Bill No. 448

TITLE: An act relating to outdoor Political Advertising

APPROVED: Mark S. Hickey
Commissioner

DATE:

The Department of Transportation and Public Facilities supports this bill as control of political signs has become a controversial and increasing problem within the state. This bill would assist in the enforcement of political signs in that:

(1) The candidate must acknowledge that they are familiar with the provisions of law regulating outdoor political advertising.

(2) Responsibility has been identified as the candidate or group owning the signs.

(3) The 30 day notice ordering the owner to remove an unlawful political sign is eliminated, thereby making enforcement more effective.

(4) The penalty for a violation is increased from $50 to $250.

For further information call Susan Fleischhauer at 465-3900

HOUSE BILL NO. 448
NEUTRAL SUMMARY
Prepared by the Division of Elections

The Division of Elections has reviewed House Bill No. 448, "An Act relating to outdoor political advertising," that would require a political candidate to be familiar with the provisions of the law that regulates outdoor political advertising, and to simultaneously file a statement to that fact at the time he or she files a declaration of candidacy. The Division is neutral on the intent of HB 448.

Sandra J. Stout
Director
Division of Elections

IMPORTANT INFORMATION ABOUT CAMPAIGN TREASURERS AND POLITICAL SIGNS

The Alaska Public Offices Commission and the Department of Transportation and Public Facilities are responsible for administering Alaska law with regard to the subjects below. Should you have any questions about these requirements or wish additional information, please contact the appropriate office as indicated.

APOC, Anchorage, 276-4176

Section 15.13.060. CAMPAIGN TREASURERS.

(a) Each candidate and group shall appoint a campaign treasurer who is responsible for receiving, holding, and disbursing all contributions and expenditures, and for filing all reports and statements required by law. A candidate may be a campaign treasurer.

(b) Each group shall file the name and address of its campaign treasurer with the commission at the time it registers with the commission under §.050 of this chapter.

(c) Each candidate for state office shall file the name and address of the campaign treasurer with the commission, or submit, in writing, the name and address of the campaign treasurer to the lieutenant governor for filing with the commission, no later than 15 days after the date of filing his declaration of candidacy or his nominating petition. Each candidate for municipal office shall file the name and address of the campaign treasurer with the commission no later than seven days after the date of filing his declaration of candidacy or his nominating petition. If the candidate does not designate a campaign treasurer, the candidate is the campaign treasurer.

(d) In the case of the death, resignation or removal of a campaign treasurer, the candidate shall appoint a successor as soon as practicable and file his name and address with the commission within 48 hours of the appointment. The candidate is disqualified when he has been found to have been in wilful violation of this subsection.

(e) A campaign treasurer may appoint as many deputy campaign treasurers as he considers necessary. The candidate shall file the names and addresses of the deputy campaign treasurers with the commission.

(f) The candidate is responsible for the performance of his campaign treasurer, and any default or violation by the treasurer also shall be considered a default or violation by the candidate if he knew or had reason to know of the default or violation. (§ 1 ch 76 SLA 1974; am § § 16-19 ch 189 SLA 1975; am § 1 ch 133 SLA 1977)

Section 15.13.090. IDENTIFICATION OF COMMUNICATION (Effective January 1, 1981). All advertisements, billboards, handbills, paid-for television and radio announcements and other communications intended to influence the election of a candidate or outcome of a ballot proposition or question shall be clearly identified by the words "paid for by" followe by the name and address of the candidate, group or individual paying for the advertising. In addition, candidates and groups must identify the name of their campaign chairman. (§ 1 ch 76 SLA 1974; am § 22 ch 189 SLA 1975; am § 36 ch 100 SLA 1980)

Department of Transportation & Public Facilities

AS 19.25.080-180, AS 19.25-200-250 and 17 AAC 20.010 govern the placement of political signs. Political signs placed within 660 feet of the right-of-way of primary or secondary highways are illegal. Political signs placed more than 660 feet outside the right-of-way with the purpose of the message being read from the traveled way of a primary or secondary highway are illegal.

The placing of a sign in violation of the state statutes is a misdemeanor and upon conviction is punishable by a fine of not less than $50 nor more than $1,000 (Sec. 19.25.130). Political signs placed within the right-of-way of highways are illegal encroachments under AS 19.25.220 and 17 AAC 20.010, and may be summarily removed pursuant to AS 19.25.240, Outdoor Advertising.

Private landowners placing signs, allowing signs to be placed, or allowing signs to remain on property along State primary or secondary highway rights-of-way are in violation of the law and could also have civil liability. Private landowners could find themselves in court and liable for damages caused by a sign on their property which contributed to a vehicle accident.

Confiscated signs may be recovered from the nearest field maintenance facility after payment for man and equipment hours expended in the removal. In all cases the minimum charge will not be less than $50. Confiscated signs not recovered will be destroyed after thirty (30) days.

If you are in doubt concerning the state right-of-way in a given area, please contact the appropriate regional office of the Department of Transportation and Public Facilities for information: Anchorage Regional Office - 266-1440; Fairbanks regional Office - 451-2294; Juneau Regional Office - 789-6221.

Candidates should check with municipal officials for local ordinances regarding sign placement.

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

LEGISLATIVE REFERENCE LIBRARY

May, 1988

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

Mary Van Nimwegen

H. JUD.	4-7-88	1:30p.m.
H. JUD.	3-24-88	1:30p.m.

(7)

HOUSE COMMITTEE REPORT

Date referred: 3/11/88 FURTHER REFERRALS: Finance

DATE: March 7, 1988

The Judiciary Committee has considered HB 448

"An Act relating to outdoor political advertising."

RECOMMENDS:

[✓] replace with C.S. HB 448 (Jud) [✓] the same title

[ ] attached amendment(s) [ ] a new title

- [✓] do pass
- [ ] do not pass
- [ ] no recommendation
- [ ] individual recommendations
- [ ] additional referral to the _____ Committee

ADOPTS: [ ] _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):

- [ ] fiscal impact
- [ ] zero fiscal note
- [ ] zero with analysis
- [ ] same as previous fiscal note published _____
- [✓] same as previous zero fiscal note published 3/11/88

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

Greenberg no rec.

Chairman's signature

Original sponsors: Frank, Miller,
Boyer, et al.

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 448 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to outdoor political advertising; and providing for an effective date."

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

* Section 1. AS 15.25.030(b) is amended to read:

(b) A person filing a declaration of candidacy under this section shall simultaneously file a statement

(1) of income sources and business interests which complies with the requirements of AS 39.50;

(2) that the candidate is familiar with the provisions of law regulating outdoor political advertising as prepared by the Department of Transportation and Public Facilities.

* Sec. 2. AS 19.25 is amended by adding a new section to read:

Sec. 19.25.115. OUTDOOR POLITICAL ADVERTISING. (a) A candidate for public office in the state and a group supporting or opposing a candidate for public office in the state or supporting or opposing a ballot proposition or question may erect temporary posters or signs on private property to reflect their views if the posters and signs are not in violation of AS 19.25.105(a).

(b) The department shall immediately remove posters or signs placed on public property or placed in violation of AS 19.25.105(a) and shall bill the candidate or group advertised on the sign or poster for its actual costs involved in the removal of the posters or signs.

* Sec. 3. AS 19.25.130 is amended to read:

Sec. 19.25.130. PENALTY FOR VIOLATION. Except as provided in

(b) of this section, a [A] person who violates AS 19.25.080 - 19.25.180 [,] or a regulation adopted under them [,] is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than $50 nor more than $1,000.

* Sec. 4. AS 19.25.130 is amended by adding a new subsection to read:

(b) A person who knowingly violates AS 19.25.115 or a regulation adopted under it is guilty of a violation and upon conviction is punishable by a fine of not less than $250 nor more than $1,000.

* Sec. 5. AS 19.25.150 is amended to read:

Sec. 19.25.150. UNLAWFUL ADVERTISING. A nonpolitical [AN] advertising sign, display or device that [WHICH] violates the provisions of AS 19.25.080 - 19.25.180 [THIS CHAPTER] is a public nuisance. The department shall give 30 days' notice, by certified mail, to the owner of the land on which the nonpolitical advertising sign, display or device is located, ordering its removal if it is prohibited by AS 19.25.080 - 19.25.180 [THIS CHAPTER] or ordering the owner to cause it to conform to regulations if it is authorized by AS 19.25.080 - 19.25.180 [THIS CHAPTER]. If the owner of the property fails to comply within 30 days of [AS REQUIRED IN] the notice, the department shall remove the outdoor advertising sign, display or device at the expense of the owner of the land or the person who erected it.

* Sec. 6. AS 19.25.160(1) is amended to read:

(1) "outdoor advertising" includes any nonpolitical outdoor sign, display or device used to advertise, attract attention or inform and which is visible to a person on the main-traveled way of a highway of the interstate, primary, or secondary systems in this state, whether by printing, writing, painting, picture, light, drawing, or whether by the use of figures or objects, or a combination of these, or any other thing designed, intended or used to advertise, inform or attract

attention;

* Sec. 7. Section 1 of this Act takes effect January 1, 1989.

* Sec. 8. Sections 2 - 6 of this Act take effect immediately under AS 01.10.070(c).

5-0633X
Bradley
4/5/88

Original sponsors: Frank, Miller, Boyer, et al.

Adopted

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 448 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to outdoor political advertising; and providing for an effective date."

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

* Section 1. AS 15.25.030(b) is amended to read:

(b) A person filing a declaration of candidacy under this section shall simultaneously file a statement

(1) of income sources and business interests which complies with the requirements of AS 39.50;

(2) that the candidate is familiar with the provisions of law regulating outdoor political advertising as prepared by the Department of Transportation and Public Facilities.

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Sec. 19.25.115. OUTDOOR POLITICAL ADVERTISING. (a) A candidate for public office in the state and a group supporting or opposing a candidate for public office in the state or supporting or opposing a ballot proposition or question may erect temporary posters or signs on private property to reflect their views if the posters and signs are not in violation of AS 19.25.105(a).

(b) The department shall immediately remove posters or signs placed on ~~public property~~ or placed in violation of AS 19.25.105(a) and shall bill the candidate or group advertised on the sign or poster for its actual costs involved in the removal of the posters or signs.

* Sec. 3. AS 19.25.130 is amended to read:

Sec. 19.25.130. PENALTY FOR VIOLATION. Except as provided in

(b) of this section, a [A] person who violates AS 19.25.080 - 19.25.180 [,] or a regulation adopted under them [,] is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than $50 nor more than $1,000.

* Sec. 4. AS 19.25.130 is amended by adding a new subsection to read:

(b) A person who knowingly violates AS 19.25.115 or a regulation adopted under it is guilty of a violation and upon conviction is punishable by a fine of not less than $250 nor more than $1,000.

* Sec. 5. AS 19.25.150 is amended to read:

Sec. 19.25.150. UNLAWFUL ADVERTISING. A nonpolitical [AN] advertising sign, display or device that [WHICH] violates the provisions of AS 19.25.080 - 19.25.180 [THIS CHAPTER] is a public nuisance. The department shall give 30 days' notice, by certified mail, to the owner of the land on which the nonpolitical advertising sign, display or device is located, ordering its removal if it is prohibited by AS 19.25.080 - 19.25.180 [THIS CHAPTER] or ordering the owner to cause it to conform to regulations if it is authorized by AS 19.25.080 - 19.25.180 [THIS CHAPTER]. If the owner of the property fails to comply within 30 days of [AS REQUIRED IN] the notice, the department shall remove the outdoor advertising sign, display or device at the expense of the owner of the land or the person who erected it.

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(1) "outdoor advertising" includes any nonpolitical outdoor sign, display or device used to advertise, attract attention or inform and which is visible to a person on the main-traveled way of a highway of the interstate, primary, or secondary systems in this state, whether by printing, writing, painting, picture, light, drawing, or whether by the use of figures or objects, or a combination of these, or any other thing designed, intended or used to advertise, inform or attract

attention;

* Sec. 7. Section 1 of this Act takes effect January 1, 1989.

* Sec. 8. Sections 2 - 6 of this Act take effect immediately under AS 01.10.070(c).

Offered: 3/11/88 5-0633L
Referred: Judiciary and
Finance

Original sponsors: Frank, Miller,
Boyer, et al.

IN THE HOUSE BY THE TRANSPORTATION COMMITTEE

CS FOR HOUSE BILL NO. 448 (Transportation)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to outdoor political advertising; and providing for an effective date."

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

* Section 1. AS 15.25.030(b) is amended to read:

(b) A person filing a declaration of candidacy under this section shall simultaneously file a statement

(1) of income sources and business interests which complies with the requirements of AS 39.50;

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* Sec. 2. AS 19.25 is amended by adding a new section to read:

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(b) The department shall immediately remove posters or signs placed on public property or placed in violation of AS 19.25.105(a) and shall bill the candidate or group advertised on the sign or poster for its actual costs involved in the removal of the posters or signs.

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Sec. 19.25.130. PENALTY FOR VIOLATION. Except as provided in

(b) of this section, a [A] person who violates AS 19.25.080 - 19.25.-180 [,] or a regulation adopted under them [,] is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than $50 nor more than $1,000.

* Sec. 4. AS 19.25.130 is amended by adding a new subsection to read:

(b) A person who violates AS 19.25.115 or a regulation adopted under it is guilty of a ~~misdemeanor~~ and upon conviction is punishable by a fine of not less than $250 nor more than $1,000.

~~* Sec. 5. AS 19.25.150 is amended to read:~~

Sec. 19.25.150. UNLAWFUL ADVERTISING. A nonpolitical [AN] advertising sign, display or device that [WHICH] violates the provisions of AS 19.25.080 - 19.25.180 [THIS CHAPTER] is a public nuisance. The department shall give 30 days' notice, by certified mail, to the owner of the land on which the nonpolitical advertising sign, display or device is located, ordering its removal if it is prohibited by AS 19.25.080 - 19.25.180 [THIS CHAPTER] or ordering the owner to cause it to conform to regulations if it is authorized by AS 19.25.-080 - 19.25.180 [THIS CHAPTER]. If the owner of the property fails to comply within 30 days of [AS REQUIRED IN] the notice, the department shall remove the outdoor advertising sign, display or device at the expense of the owner of the land or the person who erected it.

* Sec. 6. AS 19.25.160(1) is amended to read:

(1) "outdoor advertising" includes any nonpolitical outdoor sign, display or device used to advertise, attract attention or inform and which is visible to a person on the main-traveled way of a highway of the interstate, primary, or secondary systems in this state, whether by printing, writing, painting, picture, light, drawing, or whether by the use of figures or objects, or a combination of these, or any other thing designed, intended or used to advertise, inform or attract

attention;

* Sec. 7. Section 1 of this Act takes effect January 1, 1989.

* Sec. 8. Sections 2 - 6 of this Act take effect immediately under AS 01.10.070(c).

Alaska State Legislature

STEVE FRANK
DISTRICT 20A
Finance Committee

1125 Sunset Drive
Fairbanks, Alaska 99701

While in Juneau
P.O. Box V
Juneau, Alaska 99811
(907) 465-3709

House of Representatives

TO: House Judiciary Committee

FROM: Rep. Steve Frank

RE: House Bill 448 - "An Act relating to outdoor political advertising signs and providing for an effective date."

DATE: March 24, 1988

House Bill 448 would change the law and stiffen the penalties for illegal placement of political advertising signs.

Each election year a large number of political campaign signs can be found along most of our major roadways. Existing statutes prohibit signs along federal aid highways as well as primary and secondary roads. Under current law, the Department of Transportation gives 30 days for compliance to the owner of the land where the sign in violation is placed. If, at the end of 30 days the sign is still in violation, "...the department shall remove it at the expense of the owner of the land."

This bill would change the existing statute in four (4) ways. It would:

1) require candidates filing for political office to sign a statement acknowledging that they are aware of the law related to political advertising signs;

2) eliminate the 30 day period that a sign can be illegally placed and charge the department with immediate removal upon discovery of that sign;

3) increase the minimum penalty for violation from $50 to $250 per count; and

4) shift the burden of responsibility from the owner of the land to the person or group advertising.

This bill is aimed at violations by candidates who knowingly place their political advertising signs in prohibited areas and "buy time" through the notice period which allows the sign to remain fixed for 30 days after the owner of the land is asked to remove it. It would <u>not</u> change existing laws regarding other types of signs, nor would it change setbacks, etc. for placement of signs.

Thank you for your consideration.

"Beauty Act"

Public Law 89-285
89th Congress, S. 2084
October 22, 1965

An Act

79 STAT. 1028

To provide for scenic development and road beautification of the Federal-aid highway systems.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Highway Beautification Act of 1965.

TITLE I

SEC. 101. Section 131 of title 23, United States Code, is revised to read as follows: 72 Stat. 904.

"§ 131. Control of outdoor advertising

"(a) The Congress hereby finds and declares that the erection and maintenance of outdoor advertising signs, displays, and devices in areas adjacent to the Interstate System and the primary system should be controlled in order to protect the public investment in such highways, to promote the safety and recreational value of public travel, and to preserve natural beauty.

"(b) Federal-aid highway funds apportioned on or after January 1, 1968, to any State which the Secretary determines has not made provision for effective control of the erection and maintenance along the Interstate System and the primary system of outdoor advertising signs, displays, and devices which are within six hundred and sixty feet of the nearest edge of the right-of-way and visible from the main traveled way of the system shall be reduced by amounts equal to 10 per centum of the amounts which would otherwise be apportioned to such State under section 104 of this title, until such time as such State shall provide for such effective control. Any amount which is withheld from apportionment to any State hereunder shall be reapportioned to the other States. Whenever he determines it to be in the public interest, the Secretary may suspend, for such periods as he deems necessary, the application of this subsection to a State. 72 Stat. 889.

"(c) Effective control means that after January 1, 1968, such signs, displays, and devices shall, pursuant to this section, be limited to (1) directional and other official signs and notices, which signs and notices shall include, but not be limited to, signs and notices pertaining to natural wonders, scenic and historical attractions, which are required or authorized by law, which shall conform to national standards hereby authorized to be promulgated by the Secretary hereunder, which standards shall contain provisions concerning the lighting, size, number, and spacing of signs, and such other requirements as may be appropriate to implement this section, (2) signs, displays, and devices advertising the sale or lease of property upon which they are located, and (3) signs, displays, and devices advertising activities conducted on the property on which ~~they are located~~.

"(d) In order to promote the reasonable, orderly and effective display of outdoor advertising while remaining consistent with the purposes of this section, signs, displays, and devices whose size, lighting and spacing, consistent with customary use is to be determined by agreement between the several States and the Secretary, may be erected and maintained within six hundred and sixty feet of the nearest edge of the right-of-way within areas adjacent to the Interstate and primary systems which are zoned industrial or commercial under authority of State law, or in unzoned commercial or industrial areas as may be determined by agreement between the several States and the Secretary. The States shall have full authority under their own zoning laws to zone areas for commercial or industrial purposes, and the actions of the States in this regard will be accepted for the

purposes of this Act. Nothing in this subsection shall apply to signs, displays, and devices referred to in clauses (2) and (3) of subsection (c) of this section.

"(e) Any sign, display, or device lawfully in existence along the Interstate System or the Federal-aid primary system on September 1, 1965, which does not conform to this section shall not be required to be removed until July 1, 1970. Any other sign, display, or device lawfully erected which does not conform to this section shall not be required to be removed until the end of the fifth year after it becomes nonconforming.

"(f) The Secretary shall, in consultation with the States, provide within the rights-of-way for areas at appropriate distances from interchanges on the Interstate System, on which signs, displays, and devices giving specific information in the interest of the traveling public may be erected and maintained. Such signs shall conform to national standards to be promulgated by the Secretary.

Amended by '74 act "upon the removal of any outdoor advertising sign, display or device lawfully erected under State law."

"(g) Just compensation shall be paid upon the removal of the following outdoor advertising signs, displays, and devices—

"(1) those lawfully in existence on the date of enactment of this subsection,

"(2) those lawfully on any highway made a part of the interstate or primary system on or after the date of enactment of this subsection and before January 1, 1968, and

"(3) those lawfully erected on or after January 1, 1968.

The Federal share of such compensation shall be 75 per centum. Such compensation shall be paid for the following:

"(A) The taking from the owner of such sign, display, or device of all right, title, leasehold, and interest in such sign, display, or device; and

"(B) The taking from the owner of the real property on which the sign, display, or device is located, of the right to erect and maintain such signs, displays, and devices thereon.

"(h) All public lands or reservations of the United States which are adjacent to any portion of the Interstate System and the primary system shall be controlled in accordance with the provisions of this section and the national standards promulgated by the Secretary.

Information centers.

"(i) In order to provide information in the specific interest of the traveling public, the State highway departments are authorized to maintain maps and to permit informational directories and advertising pamphlets to be made available at safety rest areas. Subject to the approval of the Secretary, a State may also establish information centers at safety rest areas for the purpose of informing the public of places of interest within the State and providing such other information as a State may consider desirable.

Bonus payments.

"(j) Any State highway department which has, under this section as in effect on June 30, 1965, entered into an agreement with the Secretary to control the erection and maintenance of outdoor advertising signs, displays, and devices in areas adjacent to the Interstate System shall be entitled to receive the bonus payments as set forth in the agreement, but no such State highway department shall be entitled to such payments unless the State maintains the control required under such agreement or the control required by this section, whichever control is stricter. Such payments shall be paid only from appropriations made to carry out this section. The provisions of this subsection shall not be construed to exempt any State from controlling outdoor advertising as otherwise provided in this section.

"(k) Nothing in this section shall prohibit a State from establishing standards imposing stricter limitations with respect to signs, displays, and devices on the Federal-aid highway systems than those established under this section.

"(l) Not less than sixty days before making a final determination to withhold funds from a State under subsection (b) of this section, or to do so under subsection (b) of section 136, or with respect to failing to agree as to the size, lighting, and spacing of signs, displays, and devices or as to unzoned commercial or industrial areas in which signs, displays, and devices may be erected and maintained under subsection (d) of this section, or with respect to failure to approve under subsection (g) of section 136, the Secretary shall give written notice to the State of his proposed determination and a statement of the reasons therefor, and during such period shall give the State an opportunity for a hearing on such determination. Following such hearing the Secretary shall issue a written order setting forth his final determination and shall furnish a copy of such order to the State. Within forty-five days of receipt of such order, the State may appeal such order to any United States district court for such State, and upon the filing of such appeal such order shall be stayed until final judgment has been entered on such appeal. Summons may be served at any place in the United States. The court shall have jurisdiction to affirm the determination of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the United States court of appeals for the circuit in which the State is located and to the Supreme Court of the United States upon certiorari or certification as provided in title 28, United States Code, section 1254. If any part of an apportionment to a State is withheld by the Secretary under subsection (b) of this section or subsection (b) of section 136, the amount so withheld shall not be reapportioned to the other States as long as a suit brought by such State under this subsection is pending. Such amount shall remain available for apportionment in accordance with the final judgment and this subsection. Funds withheld from apportionment and subsequently apportioned or reapportioned under this section shall be available for expenditure for three full fiscal years after the date of such apportionment or reapportionment as the case may be.

Notice of final determination.

62 Stat. 928.

"(m) There is authorized to be appropriated to carry out the provisions of this section, out of any money in the Treasury not otherwise appropriated, not to exceed $20,000,000 for the fiscal year ending June 30, 1966, and not to exceed $20,000,000 for the fiscal year ending June 30, 1967. No part of the Highway Trust Fund shall be available to carry out this section."

Appropriation.

SEC. 102. The table of sections of chapter 1 of title 23 of the United States Code is amended by striking out

"131. Areas adjacent to the Interstate System."

and inserting in lieu thereof

"131. Control of outdoor advertising."

TITLE II

SEC. 201. Chapter 1 of title 23, United States Code, is amended to add at the end thereof the following new section:

23 USC 101 et seq.

"§ 136. Control of junkyards

"(a) The Congress hereby finds and declares that the establishment and use and maintenance of junkyards in areas adjacent to the Interstate System and the primary system should be controlled in order to protect the public investment in such highways, to promote the safety and recreational value of public travel, and to preserve natural beauty.

"(b) Federal-aid highway funds apportioned on or after January 1, 1968, to any State which the Secretary determines has not made pro-

Apportioned funds, withholding.

To Amendments to the Beauty Act.

Public Law 93-643
93rd Congress, S. 3934
January 4, 1975

An Act

To authorize appropriations for the construction of certain highways in accordance with title 23 of the United States Code, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Federal-Aid Highway Amendments of 1974."

Federal-Aid Highway Amendments of 1974.
23 USC 101 note.

HIGHWAY AUTHORIZATIONS

SEC. 101. For the purpose of carrying out the provisions of title 23, United States Code, the following sums are hereby authorized to be appropriated:

23 USC 101 et seq.

(1) For the Federal-aid primary system in rural areas, out of the Highway Trust Fund, an additional $100,000,000 for the fiscal year 1976. For the Federal-aid secondary system in rural areas, out of the Highway Trust Fund, an additional $50,000,000 for the fiscal year 1976. Sums authorized by this paragraph are in addition to the authorizations for fiscal year 1976 for these systems in section 104(a)(1) of the Federal-Aid Highway Act of 1973.

87 Stat. 251.

(2) For control of outdoor advertising under section 131 of title 23, United States Code, $50,000,000 for the fiscal year 1975.

(3) For control of junkyards under section 136 of title 23, United States Code, $15,000,000 for the fiscal year 1975.

(4) For landscaping, the scenic enhancement under section 319(b) of title 23, United States Code, $10,000,000 for the fiscal year 1975.

(5) Nothing in paragraph (1) or (6) of this section shall be construed to authorize the appropriation of any sums to carry out section 131, 136, 319(b), or chapter 4 of title 23, United States Code.

(6) For off-system roads under section 219, title 23, United States Code, $200,000,000 for the fiscal year 1976.

INDIAN RESERVATION ROADS AND BRIDGES

SEC. 102. (a) Paragraph (9) of subsection (a) of section 104 of the Federal-Aid Highway Act of 1973 is amended to read as follows:

87 Stat. 252.

"(9) For Indian reservation roads and bridges, $83,000,000 for the fiscal year ending June 30, 1974, $84,000,000 for the fiscal year ending June 30, 1975, and $83,000,000 for the fiscal year ending June 30, 1976.".

(b) The definition of the term "Indian reservation roads and bridges" in subsection (a) of section 101 of title 23, United States Code, is amended to read as follows:

"Indian reservation roads and bridges."

"The term 'Indian reservation roads and bridges' means roads and bridges, including roads and bridges on the Federal-aid systems, that are located within or provide access to an Indian reservation or Indian trust land or restricted Indian land which is not subject to fee title alienation without the approval of the Federal Government, or Indian and Alaska Native villages, groups, or communities in which Indians and Alaskan Natives reside, whom the Secretary of the Interior has determined are eligible for services generally available to Indians under Federal laws specifically applicable to Indians.".

(c) Section 208 of title 23, United States Code, is amended by relettering subsections (c) and (d) as (d) and (e), respectively, and adding a new subsection (c) as follows:

"(c) Before approving as a project on an Indian reservation road or bridge any project on a Federal-aid system in a State, the Secretary must determine that obligation of funds for such project is supplementary to and not in lieu of the obligation, for projects on Indian

ENFORCEMENT

SEC. 107. (a) Chapter 1 of title 23 of the United States Code is amended by inserting after section 140 the following new section:

23 USC 101.

23 USC 141.

"§ 141. Enforcement of requirements

"Each State shall certify to the Secretary before January 1 of each year that it is enforcing all State laws respecting maximum vehicle size and weights permitted on the Federal-aid primary, the Federal-aid urban system and the Federal-aid secondary system, including the Interstate System in accordance with section 127 of this title, and all speed limits on public highways in accordance with section 154 of this title. The Secretary shall not approve any project under section 106 of this title in any State which has failed to certify in accordance with this section.".

23 USC 127.

23 USC 154.

23 USC 106.

(b) The analysis of chapter 1 of title 23 of the United States Code is amended by striking out

"141. Real property acquisition policies."

and inserting in lieu thereof the following:

"141. Enforcement of requirements.".

ALASKA FERRY OPERATIONS

SEC. 108. Paragraph (5) of subsection (g) of section 129 of title 23, United States Code, is amended to read as follows:

"(5) Such ferry may be operated only within the State (including the islands which comprise the State of Hawaii) or between adjoining States. Except with respect to operations between the islands which comprise the State of Hawaii and operations between any two points in Alaska and between Alaska and Washington, including stops at appropriate points in the Dominion of Canada, no part of such ferry operation shall be in any foreign or international waters.".

CONTROL OF OUTDOOR ADVERTISING

SEC. 109. (a) The first sentence of subsection (b) of section 131 of title 23, United States Code, is amended by inserting after "main traveled way of the system," the following: "and Federal-aid highway funds apportioned on or after January 1, 1975, or after the expiration of the next regular session of the State legislature, whichever is later, to any State which the Secretary determines has not made provision for effective control of the erection and maintenance along the Interstate System and the primary system of those additional outdoor advertising signs, displays, and devices which are more than six hundred and sixty feet off the nearest edge of the right-of-way, located outside of urban areas, visible from the main traveled way of the system, and erected with the purpose of their message being read from such main traveled way,".

(b) Subsection (c) of section 131 of title 23, United States Code, is amended to read as follows:

Effective control.

"(c) Effective control means that such signs, displays, or devices after January 1, 1968, if located within six hundred and sixty feet of the right-of-way and, on or after July 1, 1975, or after the expiration of the next regular session of the State legislature, whichever is later, if located beyond six hundred and sixty feet of the right-of-way, located outside of urban areas, visible from the main traveled way of the system, and erected with the purpose of their message being read

from such main traveled way, shall, pursuant to this section, be limited to (1) directional and official signs and notices, which signs and notices shall include, but not be limited to, signs and notices pertaining to natural wonders, scenic and historical attractions, which are required or authorized by law, which shall conform to national standards hereby authorized to be promulgated by the Secretary hereunder, which standards shall contain provisions concerning lighting, size, number, and spacing of signs, and such other requirements as may be appropriate to implement this section, (2) signs, displays, and devices advertising the sale or lease of property upon which they are located (3) signs, displays, and devices advertising activities conducted on the property on which they are located, and (4) signs lawfully in existence on October 22, 1965, determined by the State, subject to the approval of the Secretary, to be landmark signs, including signs on farm structures or natural surfaces, of historic or artistic significance the preservation of which would be consistent with the purposes of this section." Signs and notices.

(c) Subsection (g) of section 131 of title 23, United States Code, is amended by striking out the first sentence and inserting the following in lieu thereof: Compensation.

"Just compensation shall be paid upon the removal of any outdoor advertising sign, display, or device lawfully erected under State law."

CONTROL OF JUNKYARDS

SEC. 110. Subsection (j) of section 136 of title 23, United States Code, is amended by striking out the first sentence and inserting in lieu thereof the following: Compensation.

"(j) Just compensation shall be paid the owner for the relocation, removal, or disposal of junkyards lawfully established under State law.".

ADVANCE CONSTRUCTION

SEC. 111. (a) Subsection (a) of section 115 of title 23, United States Code, is amended by striking out "including the Interstate System," each of the two places it appears and inserting in lieu thereof at each such place the following: "other than the Interstate System.".

(b) Section 115 of title 23, United States Code, is amended by redesignating subsection (b) as subsection (c) and by adding immediately after subsection (a) the following new subsection:

"(b) When a State proceeds to construct any project on the Interstate System without the aid of Federal funds, as that System may be designated at that time, in accordance with all procedures and all requirements applicable to projects on such System, except insofar as such procedures and requirements limit a State to the construction of projects with the aid of Federal funds previously apportioned to it, the Secretary, upon application by such State and his approval of such application, is authorized to pay to such State the Federal share of the cost of construction of such project when additional funds are apportioned to such State under section 104 of this title if— 23 USC 104.

"(1) prior to the construction of the project the Secretary approves the plans and specifications therefor in the same manner as other projects on the Interstate System, and

"(2) the project conforms to the applicable standards under section 109 of this title.". 23 USC 109.

EXPLANATION OF "HIGHWAY BEAUTIFICATION ACT OF 1965"
(Public Law 89-285, October 22, 1965)

THE LAW PROVIDES FOR CONTROL OF OUTDOOR ADVERTISING

— control of outdoor advertising along the Interstate System and the primary system is to be achieved by January 1, 1968.

-- effective control under this law means that

(1) on premise advertising, (i.e., advertising activities on the premises on which the sign is located) is not subject to Federal regulation.

(2) outdoor advertising in commercial or industrial areas, zoned or unzoned, is authorized, with criteria as to size, spacing, and lighting of signs to be agreed to by the States and the Secretary of Commerce, taking into account customary use.

(3) except for on premise advertising and advertising in commercial or industrial areas, whether zoned or unzoned, billboards are prohibited within 660 feet of the edge of the right-of-way along the Interstate and primary systems.

-- the exercise of zoning authority is left with the States and local governments.

-- in any event, signs lawfully in existence as of September 1, 1965 are not required to be removed until July 1, 1970 even though they are in "control areas."

— just compensation is authorized to be paid to the owners of signs which have to be removed and to owners of property on which the signs are located.

-- the compensation costs are to be shared between States and the Federal Government with the Federal Government paying 75 percent.

-- those States which entered into agreements to control outdoor advertising under the previous law would continue to receive the Federal bonus payment if the States continue to maintain the control as required under those agreements or under the terms of the new legislation, whichever control is stricter.

-- motels, restaurants, service stations and other businesses catering to the motoring public will be assisted by signs erected at appropriate places on the Interstate System giving specific information, including names and brands, of interest to the traveling public. These signs would be provided in consultation with the States and in conformity with standards issued by the Secretary.

THE LAW PROVIDES FOR CONTROL OF JUNKYARDS

-- control of establishment and maintenance of junkyards along the Interstate and primary systems is to be achieved by January 1, 1968. The control area is 1,000 feet from the edge of the right-of-way.

-- effective control may be obtained by screening through the use of plantings, fences or other appropriate means.

-- junkyards which cannot be screened do not have to be removed until July 1, 1970.

-- junkyards located in zoned or unzoned industrial areas do not have to be screened or removed as these are not subject to control.

-- just compensation is authorized to be paid for the screening of junkyards where needed, and for the removal of junkyards where required, and the costs are to be shared by the States and Federal Government, with the Federal Government paying 75 percent.

THE LAW PROVIDES FOR PUBLIC HEARINGS BEFORE STANDARDS, RULES AND REGULATIONS ARE PUBLISHED

-- the Secretary of Commerce is required to hold public hearings in each State before making conclusions on the standards, rules, and regulations covering outdoor advertising and junkyards.

-- the Secretary is required to report to Congress in January 1967 on detailed cost estimates and on the standards and regulations to be applied in carrying out the Act.

THE LAW PROVIDES FOR REDUCTION IN APPORTIONMENTS TO STATES WHICH HAVE NOT MADE PROVISION FOR EFFECTIVE CONTROL

-- Federal-aid funds apportioned to any State on or after January 1, 1968 shall be reduced by 10 percent if the State has not made provision for effective control of outdoor advertising or junkyards. However, the Secretary may waive reduction in apportionments if he determines such action to be in the public interest.

THE LAW PROVIDES FOR JUDICIAL REVIEW

-- before the Secretary may reduce a State's apportionment of highway funds by 10 percent for failure to control billboards and junkyards, he is required to give the State at least 60 days notice and an opportunity for a hearing.

-- if the decision on the 10 percent reduction is adverse to the State, the State may appeal the matter to any Federal District Court for that State, for full judicial review of the Secretary's decision.

-- the decision of the District Court is subject to review by the Court of Appeals and then by the Supreme Court.

-- while the court action is pending, the Secretary may not reapportion the 10 percent amount withheld from the State in question but is required to hold this available for later apportionment or reapportionment in accordance with the final judgment of the courts.

THE LAW PROVIDES FOR LANDSCAPING AND SCENIC ENHANCEMENT

-- the States would be allocated an amount equal to 3 percent of apportioned Federal-aid highway funds. This allocation would be used for landscape and roadside development, and for scenic preservation and enhancement. These funds may be used in areas adjacent to and within the right-of-way.

-- this amount does <u>not</u> have to be matched by the States.

-- in most cases the cost of landscaping right-of-way and providing roadside rest areas within the right-of-way will continue to be a part of the "cost of construction" on the highway project, as is the case under the present and long established law providing for matching funds.

-- eminent domain authority will not be used to force a person to sell his dwelling for scenic strips adjacent to the right-of-way.

THE COSTS OF THIS BEAUTIFICATION PROGRAM

-- costs of this program will be from the General Fund, not the Highway Trust Fund.

-- the law authorizes appropriations of $120 million for landscape and scenic enhancement for each of the fiscal years 1966 and 1967.

-- the law authorizes appropriations of $20 million each for control of billboards and junkyards for each of the fiscal years 1966 and 1967.

federal register

TUESDAY, SEPTEMBER 16, 1975

PART III:

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

HIGHWAY BEAUTIFICATION, OUTDOOR ADVERTISING CONTROL

Title 23—Highways

CHAPTER I—FEDERAL HIGHWAY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

SUBCHAPTER H—RIGHT-OF-WAY AND ENVIRONMENT

PART 750—HIGHWAY BEAUTIFICATION

Outdoor Advertising Control

Purpose: This document publishes regulations of the Federal Highway Administration (FHWA) prescribing policies and requirements relating to the effective control of outdoor advertising in areas adjacent to Interstate and Federal-aid highways. The regulations will appear as Subpart G of this part.

A notice of proposed rulemaking was issued by the Administrator of the Federal Highway Administration and published in the FEDERAL REGISTER on October 10, 1974, at 39 FR 36490. A correction of this notice of proposed rulemaking was published on December 13, 1974, at 39 FR 43409. Finally, an Amended Notice of proposed rulemaking was published on March 11, 1975, at 40 FR 11361. This amendment was necessitated by changes made in 23 U.S.C. 131 under the Federal-Aid Highway Amendments of 1974, Pub. L. 93-643, January 4, 1975. A substantial number of comments were received on these three notices from the outdoor advertising industry, environmental groups, and other interested parties. In addition, comments were received from the Advisory Commission on Intergovernmental Relations (ACIR) and State members of the American Association of State Highway and Transportation Officials (AASHTO) pursuant to the clearance process required by Office of Management and Budget Circular A-85.

The proposed regulations have been modified as a result of some of the comments received, as a result of additional consultation with the States, and after further consideration of the regulations within the FHWA.

The following is a section-by-section analysis of comments received and modifications resulting from the notices of proposed rulemaking:

§ 750.703 DEFINITIONS

Two comments suggested the addition of a definition of an "abandoned" sign. The suggestion was not adopted because the regulations now provide that each State shall develop criteria defining this term.

A definition of "unzoned commercial or industrial area" has been included as a result of comment.

The definition of "State law" has been revised to omit reference to political subdivision ordinances or regulations pursuant to a comment that the original definition was too broad.

The definition of "lease" has been revised to indicate that it must be a valid contract under State law. This was done pursuant to comment that such an addition would accommodate differences in State law.

The definition of "illegal sign" has been revised to include those which are illegal under local law or ordinance as a result of comment received.

The definition of a double-faced, back-to-back, or "V" type sign has been deleted as a definition. The subject is now addressed in § 750.706, Sign Control in Zoned and Unzoned Commercial and Industrial Areas.

The definition of "visible" has been revised by substituting the word "readable" for "legible." The definition of "legible" has been omitted.

Two comments took exception to the definition of "urban areas." This is defined in 23 U.S.C. 101(a), and was a quote. The regulations now refer the reader to the law.

§ 750.704 STATUTORY REQUIREMENTS

Two comments took exception to the use of the term "visible" in § 750.704(a) relative to those signs within 660 feet of the right-of-way. One stated that "visible" seemed entirely too far-reaching and that something more in accord with their State law should be used. The suggestion was not adopted because 23 U.S.C. 131 uses the term "visible."

One comment objected to directional signs as being discriminatory against certain tourist-oriented businesses, and also stated that the National Standards regulating such signs should be established in this regulation rather than at a later date. These standards were issued in January, 1969, pursuant to policies and provisions expressed in 23 U.S.C. 131, and are currently found in Subpart B, Part 750, Chapter I, 23 CFR.

§ 750.705 EFFECTIVE CONTROL

A comment recommended the inclusion of just compensation requirements in § 750.705. The recommendation was accepted, and § 750.705(e) was revised accordingly.

Section 750.705(g) has been revised. The suggested criteria for determining which signs have been erected with the purpose of their message being read from the main-traveled way has been moved to a nonregulatory part of this regulation. One additional item concerning use of data from an independent audit agency was added pursuant to a comment.

A recommendation was made to include the following statement in § 750.705(g):

"If the sign was erected prior to construction of the controlled highway, and is adjacent to another highway, it should not be considered as having been erected with the purpose of its message being read from the main-traveled way (of the controlled highway)."

If adopted, this provision would have the effect of creating a class of exempt signs not subject to control or removal simply because they predated the construction of a highway. We believe this is contrary to the intent of 23 U.S.C. 131. Construction of a new Interstate or primary highway may have the effect of creating new nonconforming signs in the same manner as the system reclassification of a highway from secondary to primary.

Section 750.705(i), which concerns the State enforcement procedures relative to illegally erected or maintained signs has been revised by the deletion of certain detailed requirements. However, the basic requirement of prompt discovery and removal has not been changed.

New § 750.705(j) concerning FHWA approval of State operating procedures has been added.

§ 750.706 SIGN CONTROL IN ZONED AND UNZONED COMMERCIAL AND INDUSTRIAL AREAS

Section 750.706(c)(2) would allow local zoning authorities to establish less restrictive regulations than those contained in the State-Federal agreement unless State law prohibits this. Several comments were received which took exception to the provision for less restrictive regulations. This provision was not revised because 23 U.S.C. 131(d) allows bona fide State, county, or local zoning authorities to make a determination of "customary use," which determination will be accepted in lieu of controls by agreement in the zoned commercial and industrial areas within the geographic jurisdiction of such authority. Thus, "customary use" in a particular community may be less restrictive than the agreement criteria and would have to be accepted.

Section 750.706(c)(5) has been revised to make clear that where local controls have been certified within commercial and industrial zones, pursuant to 23 U.S.C. 131(d), the State remains responsible for the control of those areas within the local jurisdiction which are outside of the commercial and industrial zones. This was done pursuant to a comment that the previous language was too broad.

§ 750.707 NONCONFORMING SIGNS

One comment recommended the deletion of this entire section, and revising it to make three distinctions: (1) Nonconforming signs; (2) pre-existing signs; and (3) abandoned signs. This suggestion was not adopted. Pre-existing signs are those covered under a so-called "grandfather clause" in certain State-Federal agreements. Although not required to be removed, they are subject to the same rules as non-conforming signs and should not be singled out for special treatment. Abandonment is only one category in a large number of events which would terminate the right to maintain and continue a nonconforming sign.

One comment strongly objected to the concept that lack of copy should be the clue used by the States to presume a sign is abandoned unless the owner can prove such is not the case. The comment recommended the following be used in determining abandonment:

1. Is the sign owner in compliance with governmental license or permit requirements?

2. Is the sign owner continuing efforts to secure a user for the space?

3. Is the sign owner in default of his current agreement with the site owner?

While it is agreed that the three tests may be used as evidence of abandonment,

these regulations relate not only to abandonment but to voluntary discontinuance of a nonconforming use as well. It is well established in land use law that if a nonconforming use is discontinued or abandoned, it may not again be resumed. Further, a discontinuance of a nonconforming use acts as a bar to resumption of such use even though there may be no evidence of intended abandonment.

There has been some controversy as to when and under what circumstances a sign should be treated as abandoned or discontinued. Thus, these regulations provide that each State shall develop criteria to define abandonment and discontinuance, and that such criteria may provide that a sign with obsolete advertising matter or without advertising matter, each for a designated period of time, may constitute abandonment or discontinuance.

Another comment stated that it is severely damaging to sign owners to treat pre-existing signs in legal areas, which subsequently became controlled, as if they were nonconforming signs subject to easy forfeiture for a mere lack of copy, and to provide that such forfeiture deprives the sign owners of the right thereafter to operate such signs and receive compensation. Further, with regard to true nonconforming signs, regulations which provide for a forfeiture of the right to operate as a nonconforming use (and of the right to compensation) on the grounds of a mere lack of copy would be illegal because Congress itself provided to the contrary.

The foregoing assumes that Federal law guarantees compensation upon the removal of every sign that predated the Federal or State law whether or not the sign was lawfully in existence under State law at the time the State acts to remove it. Such is not the case. There is no vested right to future just compensation based on conditions once but no longer existing at the time of acquisition. The conditions which establish a right to payment of just compensation must be in existence at the time of acquisition. Thus, signs which become illegal are no longer required to be acquired under the law of eminent domain. A sign does not lose its nonconforming status by "mere lack of copy" because customary maintenance and change of message is permitted, and does not terminate nonconforming rights. Rather, the lack of copy must endure for a period of time which constitutes a cessation of the nonconforming use or an abandonment of the nonconforming use.

Several comments were made to the effect that § 750.707(d)(2) should be revised because owners of small signs should have the same right to compensation as the owners of larger signs with substantial value. "Substantial value" should have no bearing. This was not intended, and the regulation has been revised to require that there must be existing property rights in the sign without regard to value.

Comments were made with regard to § 750.707(d)(6) that the exceptions allowed should also include acts of God as they too constitute events beyond the sign owner's control. No change has been made. The exceptions made for vandalism and other criminal or tortious acts were due solely to the fact that the Highway Beautification Act of 1965, Pub. L. 89-295, October 22, 1965, created an impetus for unauthorized persons to deliberately chop down or vandalize signs as a part of the environmental movement. Such a practice is not condoned. However, nonconforming uses are terminated by natural attrition in the normal course of events. Thus, a nonconforming sign destroyed or substantially damaged by an act of God is terminated because it would need to be rebuilt or a new sign would have to be erected in its place. New signs, or substantially new signs, must be located in conforming areas. To allow new signs to be erected in a nonconforming area only to be later acquired by the State would unduly burden the taxpayers with an unwarranted cost.

A comment stated that while the provisions of § 750.707(d) closely follow zoning law as it relates to nonconforming uses, and although it might be agreed that zoning law should be applied to nonconforming uses which are allowed to remain indefinitely in commercial or industrial areas, the equity or legality of applying such rules to nonconforming signs scheduled for acquisition is open to serious question. It was urgently requested that the regulations differentiate between nonconforming signs to be acquired, and nonconforming signs allowed to remain under a "grandfather clause." Further, it was suggested that § 750.707(d) be changed to permit alteration or enlargement of a nonconforming sign to be acquired, as well as its rebuilding or reerection if damaged or destroyed by forces not under the owner's control.

The foregoing recommendations were not accepted. All nonconforming signs must be treated alike under police power rules. 23 U.S.C. 131 calls for the States to exercise their police power in controlling signs, with compensation provided for those signs which will not be allowed to remain, on the premise that the police power should not be applied retroactively to deprive an owner of his nonconforming use. The owner has a vested right, and forced removal in such cases constitutes a taking requiring compensation. Thus, if Federal funds are not made available in connection with this program, nonconforming signs in prohibited areas would be allowed to remain in the same manner as "grandfathered" signs. See 23 U.S.C. 131(m). Federal law does not provide compensation prospectively so as to cover new sign improvements made in the future, nor does it render once existing sign sites forever compensable and exempt from control.

A comment suggested that the regulation be revised to permit enlarging a nonconforming sign if it does not exceed State law or regulation limits. This suggestion was not adopted. State size limits apply only to conforming signs. A nonconforming sign must remain substantially the same as it was on the effective date of State law or regulation, or its nonconforming status is terminated.

A comment stated that the section concerning destruction of a nonconforming sign was ambiguous, and should be clarified. The regulation has been revised to require each State to develop criteria concerning destruction, and that such criteria may provide that a sign damaged in excess of a certain percentage of its replacement cost may be considered destroyed.

Several comments recommended that former § 750.707(d)(7)(i) be revised so that where new content is not put on a structure within an established period of time, such a structure would not be allowed to remain standing indefinitely. The regulation has been revised, and provides that each State shall establish a time period, after expiration of which, such signs are to be considered abandoned or voluntarily discontinued, and subject to removal.

Section 750.707(d)(6)(ii) has been revised pursuant to comment to make it clear that the rule is based on customary State enforcement practice and not industry practice. The actual time limit to be imposed is left to the States' discretion with a condition if it exceeds one year.

§ 750.708 Acceptance of State Zoning.

One comment recommended revision of § 750.708(b), because it could be interpreted as requiring constant review of all zoning actions whether they pertain to outdoor advertising control or not. The recommendation was accepted.

A comment recommended deletion of § 750.708(d) because it is covered by § 750.708(b). This recommendation was not accepted. Section 750.708(b) requires that zoning actions must be taken in accordance with basic legislative authority, and that certain actions are not recognized as zoning for outdoor advertising control purposes. However, § 750.708(d) makes the point that zones, such as agricultural or residential, which permit limited commercial or industrial activities incidental to the primary land use, are not considered commercial or industrial zones for outdoor advertising control purposes.

Another comment recommended deletion of § 750.708(d) as being contrary to 23 U.S.C. 131. This recommendation was not accepted. The law provides signs may be allowed in commercial and industrial zones. Sections 750.708 (b) and (d) are essential to assure the recognition of only bona fide commercial and industrial zones, rather than rural or residential zoning classifications or attempts to circumvent the intent of Congress.

§ 750.709 On-Property or On-Premise Advertising.

One comment recommended the deletion of this section in its entirety, and amending § 750.705 by adding a new paragraph as follows:

"Assure that signs erected under § 750.704(a)(3) are in fact legitimate on-property signs and not outside the scope of 23 U.S.C. 131."

The foregoing recommendations were not accepted. The primary purposes of this section are to provide for general uniformity of implementation in the several States and to curb attempts to circumvent the intent of the law.

A comment suggested revision of this section to clarify the point that on-property signs are subject to regulation only if they are located along Interstate highways in those States which have entered into an agreement under the Federal-Aid Highway Act of 1958, adding section 131, Title 23, U.S.C., Pub. L. 85-767, August 27, 1958, as amended, and often referred to as the 1958 Bonus Program. The regulation has been revised in accordance with this suggestion.

In addition to the regulations issued today, the Federal Highway Administration has provided its field personnel non-regulatory guidelines designed to aid them in administering the Subpart G, Part 750, and in advising the States on the outdoor advertising control program.

The first part of these guidelines deals with States which have adopted controls along the Interstate System pursuant to the 1958 Bonus Program. The present law, while permitting no further expansion of the program to other States, preserves the Bonus payments to those States which had adopted such controls before June 30, 1965. The guidelines explain the relationship between the present law and 1958 Bonus Program.

Bonus payments are provided in accordance with an agreement between the State and the United States Secretary of Transportation (or his predecessor, the Secretary of Commerce). The Highway Beautification Act of 1965 (the 1965 Act), as amended, and the regulations issued pursuant to it have substantially changed control requirements. These new requirements supersede the requirement of the Bonus Agreements where the new requirements are stricter. In order to continue to receive bonus payments, however, a "bonus State" must continue to enforce its Bonus Agreement. The most important aspects of the dual control requirements are:

(1) The Bonus Program applies only to the Interstate System.

(2) Bonus Agreements exempted areas adjacent to an Interstate Highway where any part of the right-of-way for the highway was acquired before July 1, 1956. Such areas are often called "Cotton Areas." Cotton areas are no longer exempted and must be effectively controlled.

(3) The Bonus Agreements also exempted areas adjacent to an Interstate Highway traversing a commercial or industrial zone located within the boundaries of incorporated municipalities as such boundaries existed on September 21, 1959, provided such areas are subject to the control or regulation of the municipality, or other commercial or industrial areas where the land use was clearly established by State law as commercial or industrial on September 21, 1959. Such areas are called "Kerr Areas." Under the 1965 Act, signs are permitted in zoned and unzoned commercial or industrial areas subject to a size, lighting and spacing agreement between the State and the Secretary. The Bonus Agreement is controlling with respect to the number and size of commercial or industrial zones or areas recognized, but signs in such zones or areas are subject to provisions of the size, lighting, and spacing agreements made pursuant to the 1965 Act.

(4) The 1958 Bonus Agreement National Standards permitted four classes of signs in protected areas. See Subpart A, Part 750, Chapter I, 23 CFR. These are affected as follows:

(a) *Class 1*—Directional and official signs were subject to regulation, but were not, in fact, regulated under the 1958 National Standards. Signs of this category are subject to National Standards under the 1965 Act (Subpart B, Part 750, Chapter I, 23 CFR) and therefore these provisions are controlling.

(b) *Class 2*—On-premise (on-property) signs are exempt from control under the 1965 Beautification Act, but are subject to control under the 1958 Bonus Agreement National Standards. However, the 1958 National Standards exclude such signs from control if they are located in Cotton or Kerr areas.

(c) *Class 3*—Signs within 12 air-miles of the advertised activity are not permitted unless they are located in commercial or industrial areas or qualify as official or directional signs permitted under 23 U.S.C. 131(c) because the 1965 Act does not permit such a category.

(d) *Class 4*—Signs in the specific interest of the traveling public are not permitted unless they are located in commercial or industrial areas or qualify as official or directional signs permitted under 23 U.S.C. 131(c) because the 1965 Act does not permit such a category.

(5) On-premise signs located more than 50 feet from the advertised activity are subject to control in bonus States in accordance with Subpart A, Part 750, Chapter I, 23 CFR.

The second part of the guidelines deals with the destruction of trees and shrubs in the right-of-way in order to increase or enhance the visibility of outdoor advertising signs. It also deals with instances of the erection or maintenance of signs adjacent to Interstate highways and freeways by unlawful access.

The State highway department is urged to take all legal and administrative action at its disposal to abate these practices, including action to recover damages to landscaping, caulking, fences, and other appurtenances to the highway. Additionally, it is recommended that the States consider the following administrative remedies:

(1) Revocation of permits for any signs so involved;

(2) Denial of permits for signs which can only be erected or maintained as a practical matter from the highway right-of-way or which could not be seen from the highway due to existing landscaping on the right-of-way;

(3) Certification on permits or licenses to the effect that the sign owner will not engage in these practices;

(4) Performance bonds in permit or licensing procedures to guarantee compliance; and

(5) A specific prohibition in State outdoor advertising control regulations.

The third part of the guidelines suggests the type of factors the States might consider in developing the criteria for determining when a sign is erected with the purpose of its message being read from the main-traveled way of an Interstate or primary highway. Such criteria are required by § 750.705(g). These factors are:

(a) Traffic counts, sign angle and size, message content, physical obstructions, and similar factors;

(b) Distance from the controlled highway in relation to the size of the sign;

(c) Exposure time (for example, would signs permitting glance views of a few seconds on highways with speed limits of 55 miles per hour be deemed readable?) and,

(d) The sales value of the sign attributable to advertising circulation on the controlled highway under the criteria of an independent circulation audit agency where such is available.

The fourth, and last, part of the guidelines suggests measuring techniques which the States may wish to adopt.

The regulations here published will become effective on the 9th day of September, 1975.

Issued on: September 9, 1975.

Norbert T. Tiemann,
Federal Highway Administrator.

Chapter I of Title 23 is amended by adding Part 750, Subpart G as follows:

Subpart G—Outdoor Advertising Control

Sec.
750.701 Purpose.
750.702 Applicability.
750.703 Definitions.
750.704 Statutory Requirements.
750.705 Effective Control.
750.706 Light Control in Zoned and Unzoned Commercial and Industrial Areas.
750.707 Nonconforming Signs.
750.708 Acceptance of State Zoning.
750.709 On-Property or On-Premise Advertising.
750.710 Landmark Signs.
750.711 Structures Which Have Never Displayed Advertising Material.
750.712 Reclassification of Signs.
750.713 Bonus Provisions.

Authority: 23 U.S.C. 131 and 315; 49 CFR 1.48.

Subpart G—Outdoor Advertising Control

§ 750.701 Purpose.

This subpart prescribes the Federal Highway Administration (FHWA) policies and requirements relating to the effective control of outdoor advertising under 23 U.S.C. 131. The purpose of these policies and requirements is to assure that there is effective State control of outdoor advertising in areas adjacent to Interstate and Federal-aid primary highways. Nothing in this subpart shall be construed to prevent a State from establishing more stringent

outdoor advertising control requirements along Interstate and Primary Systems than provided herein.

§ 750.702 Applicability.

The provisions of this subpart are applicable to all areas adjacent to the Federal-aid Interstate and Primary Systems, including toll sections thereof, except that within urban areas, these provisions apply only within 660 feet of the nearest edge of the right-of-way. These provisions apply regardless of whether Federal funds participated in the costs of such highways. The provisions of this subpart do not apply to the Federal-Aid Secondary or Urban Highway System.

§ 750.703 Definitions.

The terms as used in this subpart are defined as follows:

(a) Commercial and industrial zones are those districts established by the zoning authorities as being most appropriate for commerce, industry, or trade, regardless of how labeled. They are commonly categorized as commercial, industrial, business, manufacturing, highway service or highway business (when these latter are intended for highway-oriented business), retail, trade, warehouse, and similar classifications.

(b) Erect means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish.

(c) Federal-aid Primary Highway means any highway on the system designated pursuant to 23 U.S.C. 103(b).

(d) Interstate Highway means any highway on the system defined in and designated, pursuant to 23 U.S.C. 103(e).

(e) Illegal sign means one which was erected or maintained in violation of State law or local law or ordinance.

(f) Lease means an agreement, license, permit, or easement, oral or in writing, by which possession or use of land or interests therein is given for a specified purpose, and which is a valid contract under the laws of a State.

(g) Maintain means to allow to exist.

(h) Main-traveled way means the traveled way of a highway on which through traffic is carried. In the case of a divided highway, the traveled way of each of the separate roadways for traffic in opposite directions is a main-traveled way. It does not include such facilities as frontage roads, turning roadways, or parking areas.

(i) Sign, display or device, hereinafter referred to as "sign," means an outdoor advertising sign, light, display, device, figure, painting, drawing, message, placard, poster, billboard, or other thing which is designed, intended, or used to advertise or inform, any part of the advertising or informative contents of which is visible from any place on the main-traveled way of the Interstate or Primary Systems, whether the same be permanent or portable installation.

(j) State law means a State constitutional provision or statute, or an ordinance, rule or regulation enacted or adopted by a State.

(k) Unzoned area means an area where there is no zoning in effect. It does not include areas which have a rural zoning classification or land uses established by zoning variances or special exceptions.

(l) Unzoned commercial or industrial areas are unzoned areas actually used for commercial or industrial purposes as defined in the agreements made between the Secretary, U.S. Department of Transportation (Secretary), and each State pursuant to 23 U.S.C. 131(d).

(m) Urban area is as defined in 23 U.S.C. 101(a).

(n) Visible means capable of being seen, whether or not readable, without visual aid by a person of normal visual acuity.

§ 750.704 Statutory Requirements.

(a) 23 U.S.C. 131 provides that signs adjacent to the Interstate and Federal-aid Primary Systems which are visible from the main-traveled way and within 660 feet of the nearest edge of the right-of-way, and those additional signs beyond 660 feet outside of urban areas which are visible from the main-traveled way and erected with the purpose of their message being read from such main-traveled way, shall be limited to the following:

(1) Directional and official signs and notice which shall conform to national standards promulgated by the Secretary in Subpart B, Part 750, Chapter I, 23 CFR, National Standards for Directional and Official Signs;

(2) Signs advertising the sale or lease of property upon which they are located;

(3) Signs advertising activities conducted on the property on which they are located;

(4) Signs within 660 feet of the nearest edge of the right-of-way within areas adjacent to the Interstate and Federal-aid Primary Systems which are zoned industrial or commercial under the authority of State law;

(5) Signs within 660 feet of the nearest edge of the right-of-way within areas adjacent to the Interstate and Federal-aid Primary Systems which are unzoned commercial or industrial areas, which areas are determined by agreement between the State and the Secretary; and

(6) Signs lawfully in existence on October 22, 1965, which are determined to be landmark signs.

(b) 23 U.S.C. 131(d) provides that signs in § 750.704(a) (4) and (5) must comply with size, lighting, and spacing requirements, to be determined by agreement between the State and the Secretary.

(c) 23 U.S.C. 131 does not permit signs to be located within zoned or unzoned commercial or industrial areas beyond 660 feet of the right-of-way adjacent to the Interstate or Federal-aid Primary System, outside of urban areas.

(d) 23 U.S.C. 131 provides that signs not permitted under § 750.704 of this regulation must be removed by the State.

§ 750.705 Effective Control.

In order to provide effective control of outdoor advertising, the State must:

(a) Prohibit the erection of new signs other than those which fall under § 750.704(a) (1) through (6);

(b) Assure that signs erected under § 750.704(a) (4) and (5) comply, at a minimum, with size, lighting, and spacing criteria contained in the agreement between the Secretary and the State;

(c) Assure that signs erected under § 1750.704(a) (1) comply with the national standards contained in Subpart B, Part 750, Chapter I, 23 CFR;

(d) Remove illegal signs expeditiously;

(e) Remove nonconforming signs with just compensation within the time period set by 23 U.S.C. 131 (Subpart D, Part 750, Chapter I, 23 CFR, sets forth policies for the acquisition and compensation for such signs);

(f) Assure that signs erected under § 750.704(a)(6) comply with § 750.710, Landmark Signs, if landmark signs are allowed;

(g) Establish criteria for determining which signs have been erected with the purpose of their message being read from the main-traveled way of an Interstate or primary highway, except where State law makes such criteria unnecessary. Where a sign is erected with the purpose of its message being read from two or more highways, one or more of which is a controlled highway, the more stringent of applicable control requirements will apply;

(h) Develop laws, regulations, and procedures to accomplish the requirements of this subpart;

(i) Establish enforcement procedures sufficient to discover illegally erected or maintained signs shortly after such occurrence and cause their prompt removal; and

(j) Submit regulations and enforcement procedures to FHWA for approval.

§ 750.706 Sign Control in Zoned and Unzoned Commercial and Industrial Areas.

The following requirements apply to signs located in zoned and unzoned commercial and industrial areas within 660 feet of the nearest edge of the right-of-way adjacent to the Interstate and Federal-aid primary highways.

(a) The State by law or regulation shall, in conformity with its agreement with the Secretary, set criteria for size, lighting, and spacing of outdoor advertising signs located in commercial or industrial zoned or unzoned areas, as defined in the agreement, adjacent to Interstate and Federal-aid primary highways. If the agreement between the Secretary and the State includes a grandfather clause, the criteria for size, lighting, and spacing will govern only those signs erected subsequent to the date specified in the agreement. The States may adopt more restrictive criteria than are presently contained in agreements with the Secretary.

(b) Agreement criteria which permit multiple sign structures to be considered as one sign for spacing purposes must limit multiple sign structures to signs which are physically contiguous, or connected by the same structure or cross-bracing, or located not more than 15 feet apart at their nearest point in the case of back-to-back or "V" type signs.

(c) Where the agreement and State law permits control by local zoning authorities, these controls may govern in lieu of the size, lighting, and spacing controls set forth in the agreement, subject to the following:

(1) The local zoning authority's controls must include the regulation of size, of lighting, and of spacing of outdoor advertising signs, in all commercial and industrial zones.

(2) The regulations established by local zoning authority may be either more restrictive or less restrictive than the criteria contained in the agreement, unless State law or regulations require equivalent or more restrictive local controls.

(3) If the zoning authority has been delegated extraterritorial jurisdiction under State law, and exercises control of outdoor advertising in commercial and industrial zones within this extraterritorial jurisdiction, control by the zoning authority may be accepted in lieu of agreement controls in such areas.

(4) The State shall notify the FHWA in writing of those zoning jurisdictions wherein local control applies. It will not be necessary to furnish a copy of the zoning ordinance. The State shall periodically assure itself that the size, lighting, and spacing control provisions of zoning ordinances accepted under this section are actually being enforced by the local authorities.

(5) Nothing contained herein shall relieve the State of the responsibility of limiting signs within controlled areas to commercial and industrial zones.

§ 750.707 Nonconforming Signs.

(a) *General.* The provisions of § 750.707 apply to nonconforming signs which must be removed under State laws and regulations implementing 23 U.S.C. 131. These provisions also apply to nonconforming signs located in commercial and industrial areas within 660 feet of the nearest edge of the right-of-way which come under the so-called grandfather clause contained in State-Federal agreements. These provisions do not apply to conforming signs regardless of when or where they are erected.

(b) *Nonconforming Signs.* A nonconforming sign is a sign which was lawfully erected but does not comply with the provisions of State law or State regulations passed at a later date or later fails to comply with State law or State regulations due to changed conditions. Changed conditions include, for example, signs lawfully in existence in commercial areas which at a later date become non-commercial, or signs lawfully erected on a secondary highway later classified as

(c) *Grandfather Clause.* At the option of the State, the agreement may contain a grandfather clause under which criteria relative to size, lighting, and spacing of signs in zoned and unzoned commercial and industrial areas within 660 feet of the nearest edge of the right-of-way apply only to new signs to be erected after the date specified in the agreement. Any sign lawfully in existence in a commercial or industrial area on such date may remain even though it may not comply with the size, lighting, or spacing criteria. This clause only allows an individual sign at its particular location for the duration of its normal life subject to customary maintenance. Preexisting signs covered by a grandfather clause, which do not comply with the agreement criteria have the status of nonconforming signs.

(d) *Maintenance and Continuance.* In order to maintain and continue a nonconforming sign, the following conditions apply:

(1) The sign must have been actually in existence at the time the applicable State law or regulations became effective as distinguished from a contemplated use such as a lease or agreement with the property owner. There are two exceptions to actual existence as follows:

(i) Where a permit or similar specific State governmental action was granted for the construction of a sign prior to the effective date of the State law or regulations and the sign owner acted in good faith and expended sums in reliance thereon. This exception shall not apply in instances where large numbers of permits were applied for and issued to a single sign owner, obviously in anticipation of the passage of a State control law.

(ii) Where the State outdoor advertising control law or the Federal-State agreement provides that signs in commercial and industrial areas may be erected within six (6) months after the effective date of the law or agreement provided a lease dated prior to such effective date was filed with the State and recorded within thirty (30) days following such effective date.

(2) There must be existing property rights in the sign affected by the State law or regulations. For example, paper signs nailed to trees, abandoned signs and the like are not protected.

(3) The sign may be sold, leased, or otherwise transferred without affecting its status, but its location may not be changed. A nonconforming sign removed as a result of a right-of-way taking or for any other reason may be relocated to a conforming area but cannot be re-established at a new location as a nonconforming use.

(4) The sign must have been lawful on the effective date of the State law or regulations, and must continue to be lawfully maintained.

(5) The sign must remain substantially the same as it was on the effective date of the State law or regulations. Reasonable repair and maintenance of the sign, including a change of advertising message, is not a change which would terminate nonconforming rights. Each State shall develop its own criteria to determine when customary maintenance ceases and a substantial change has occurred which would terminate nonconforming rights.

(6) The sign may continue as long as it is not destroyed, abandoned, or discontinued. If permitted by State law and restored in kind, exception may be made for signs destroyed due to vandalism and other criminal or tortious acts.

(7) Each State shall develop criteria to define destruction, abandonment and discontinuance. These criteria may provide that a sign which for a designated period of time has obsolete advertising matter or is without advertising matter or is in need of substantial repair may constitute abandonment or discontinuance. Similarly, a sign damaged in excess of a certain percentage of its replacement cost may be considered destroyed.

(8) Where an existing nonconforming sign ceases to display advertising matter, a reasonable period of time to replace advertising content must be established by each State. Where new content is not put on a structure within the established period, the use of the structure as a nonconforming outdoor advertising sign is terminated and shall constitute an abandonment or discontinuance. Where a State establishes a period of more than one (1) year as a reasonable period for change of message, it shall justify that period as a customary enforcement practice within the State. This established period may be waived for an [illegible] discontinuance such as the closing of a highway for repair in front of the sign.

(e) *Just Compensation.* The State is required to pay just compensation for the removal of nonconforming [illegible] existing signs in accordance with the terms of 23 U.S.C. 131 and the provisions of Subpart D, Part 750, Chapter I, 23 CFR. The conditions which establish a right to maintain a nonconforming sign and therefore the right to compensation must pertain at the time it is acquired or removed.

§ 750.708 Acceptance of State Zoning.

(a) 23 U.S.C. 131(d) provides that signs "may be erected and maintained within 660 feet of the nearest edge of the right-of-way within areas . . . which are zoned industrial or commercial under authority of State law." Section 131(d) further provides, "The States shall have full authority under their own zoning laws to zone areas for commercial or industrial purposes, and the actions of the States in this regard will be accepted for the purposes of this Act."

(b) State and local zoning actions must be taken pursuant to the State's zoning enabling statute or constitutional authority and in accordance therewith. Action which is not a part of comprehensive zoning and is created primarily to permit outdoor advertising structures, is not recognized as zoning for outdoor advertising control purposes.

(c) Where a unit of government has not zoned in accordance with statutory authority or is not authorized to zone,

the definition of an unzoned commercial or industrial area in the State-Federal agreement will apply within that political subdivision or area.

(d) A zone in which limited commercial or industrial activities are permitted as an incident to other primary land uses is not considered to be a commercial or industrial zone for outdoor advertising control purposes.

§ 750.709 On-Property or On-Premise Advertising.

(a) A sign which consists solely of the name of the establishment or which identifies the establishment's principal or accessory products or services offered on the property is an on-property sign.

(b) When a sign consists principally of brand name or trade name advertising and the product or service advertised is only incidental to the principal activity, or if it brings rental income to the property owner, it shall be considered the business of outdoor advertising and not an on-property sign.

(c) A sale or lease sign which also advertises any product or service not conducted upon and unrelated to the business or selling or leasing the land on which the sign is located is not an on-property sign.

(d) Signs are exempt from control under 23 U.S.C. 131 if they solely advertise the sale or lease of property on which they are located or advertise activities conducted on the property on which they are located. These signs are subject to regulation (Subpart A, Part 750, Chapter I, 23 CFR) in those States which have executed a bonus agreement, 23 U.S.C. 131(j). State laws or regulations shall contain criteria for determining exemptions. These criteria may include:

(1) A property test for determining whether a sign is located on the same property as the activity or property advertised; and

(2) A purpose test for determining whether a sign has as its sole purpose the identification of the activity located on the property or its products or services, or the sale or lease of the property on which the sign is located.

(3) The criteria must be sufficiently specific to curb attempts to improperly qualify outdoor advertising as "on-property" signs, such as signs on narrow strips of land contiguous to the advertised activity when the purpose is clearly to circumvent 23 U.S.C. 131.

§ 750.710 Landmark Signs.

(a) 23 U.S.C. 131(c) permits the existence of signs lawfully in existence on October 22, 1965, determined by the State, subject to the approval of the Secretary, to be landmark signs, including signs on farm structures or natural surfaces, of historic or artistic significance, the preservation of which is consistent with the purpose of 23 U.S.C. 131.

(b) States electing to permit landmark signs under 23 U.S.C. 131(c) shall submit a one-time list to the Federal Highway Administration for approval. The list should identify each sign as being in the original 1966 inventory. In the event a sign was omitted in the 1966 inventory, the State may submit other evidence to support a determination that the sign was in existence on October 22, 1965.

(c) Reasonable maintenance, repair, and restoration of a landmark sign is permitted. Substantial change in size, lighting, or message content will terminate its exempt status.

§ 750.711 Structures Which Have Never Displayed Advertising Material.

Structures, including poles, which have never displayed advertising or informative content are subject to control or removal when advertising content visible from the main-traveled way is added or affixed. When this is done, an "outdoor advertising sign" has then been erected which must comply with the State law in effect on that date.

§ 750.712 Reclassification of Signs.

Any sign lawfully erected after the effective date of a State outdoor advertising control law which is reclassified from legal-conforming to nonconforming and subject to removal under revised State statutes or regulations and policy pursuant to this regulation is eligible for Federal participation in just compensation payments and other eligible costs.

§ 750.713 Bonus Provisions.

23 U.S.C. 131(j) specifically provides that any State which had entered into a bonus agreement before June 30, 1965, will be entitled to remain eligible to receive bonus payments provided it continues to carry out its bonus agreement. Bonus States are not exempt from the other provisions of 23 U.S.C. 131. If a State elects to comply with both programs, it must extend controls to the Primary System, and continue to carry out its bonus agreement along the Interstate System except where 23 U.S.C. 131, as amended, imposes more stringent requirements.

[FR Doc.75-24523 Filed 9-15-75;8:45 am]

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 February 8, 1988

SUBJECT: Outdoor political advertising
(Work Order No. 5-0633)

TO: Representative Steve Frank

FROM: Richard A. Bradley
Legislative Counsel

Rick Solie has requested a sectional analysis of the above described bill.

As a preliminary matter, note that a sectional analysis or summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1 amends AS 15.25.030(b). It provides that at the same time that a candidate for the elective political office files a declaration of candidacy, the candidate will file a statement prepared by the Department of Transportation and Public Facilities that the candidate is familiar with the provisions of law regulating "outdoor political advertising."

Section 2 of the bill adds a new Sec. 19.25.115. Sec. 19.-25.115(a) provides that a candidate or group may place advertising on private property so long as the private property is not within the zone where advertising is prohibited under AS 19.25.105(a): "within 660 feet of the nearest edge of the right- of-way and visible from the main-traveled way of the interstate, primary, or secondary highways in this state".

Section 19.25.115(b) directs the Department of Transportation and Public Facilities to remove summarily posters or signs erected in violation of AS 19.25.105(a) and bill the

candidate or group named on the poster or sign for its actual costs from the removal.

Section 3 amends AS 19.25.130, PENALTY FOR VIOLATION. The amendment leaves the existing penalty ($50 to $1,000) in place for existing violations of the section covered. It signals that there is a different penalty for a violation of Sec. 19.25.115.

Section 4 establishes a new Sec. 19.25.130(b). The section adds a new penalty of $250 to $1,000 for a violation of the new section on political advertising, Sec. 19.25.115.

Section 5 of the bill amends AS 19.25.150 to carve out from the application of this section the political advertising; the political advertising is covered under Sec. 19.25.115 added at bill sec. 2.

Section 6 of the bill amends AS 19.25.160(1). The existing law section defines "outdoor advertising." The amendment to the definition excludes political advertising.

The bill contains no effective date clause. It is, therefore, effective 90 days after enactment. Art. II, sec. 18, Alaska Constitution.

RAB;bb
wkb2/058

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: House Bill No. 448
PUBLISH DATE:

REQUEST: **FISCAL NOTE**

Revision Date:
Title: Act relating to outdoor advertising

Agency Affected: DOT&PF
BRU: Engineering and Operations Standards

Sponsor: Frank, Miller, Boyer, Davis, Sund, and Brown
Requestor: CATO

Components:

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTURAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
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	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

Sec. 2. (b) of this bill should reduce general fund expenditures.

Prepared by: Milton H. Lentz
Division: Engineering and Operations Standards

Phone: 465-2985
Date: 3/4/88

Approved by Commissioner: _____
Agency: Department of Transportation and Public Facilities

Date: _____

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

(7)

HOUSE COMMITTEE REPORT

Date referred: 2/10/88 FURTHER REFERRALS: Judiciary
Finance

DATE: March 9, 1988

The Transportation Committee has considered HB 448

"An Act relating to outdoor political advertising."

RECOMMENDS:

[X] replace with CS HB 448 (Trsp) [ ] the same title
[X] a new title

[ ] attached amendment(s)

- [ ] do pass
- [ ] do not pass
- [X] no recommendation
- [ ] individual recommendations
- [ ] additional referral to the _____ Committee

ADOPTS: [ ] _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):

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

SIGNING DO PASS:

Mike Miller

Heinrich Springer

SIGNING OTHER RECOMMENDATIONS:

Bill Hudson - NORec.

Time Kaul - No Rec

Bettie Cato - No Rec

Bettie Cato
Chairman's signature

HB

459

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

LEGISLATIVE REFERENCE LIBRARY

May, 1988

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

Mary Van Nimwegen

H. JUD. 3-23-88 1:30p.m.

Alaska State Legislature

Representative Mike Davis District 19

P.O. Box V
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MEMORANDUM

TO: House Resources Committee

FROM: Rep. Mike Davis

RE: Strict liability for hazardous substance releases

DATE: February 24, 1988

Attached is a bill which would strengthen the Alaska statutes in regard to liablility and more clearly define the responsibility for hazardous substance releases.

Many times the state and local communities are paying the cost of clean-up of hazardous substance releases. This is because the state statutes presently in effect do not clearly attach liability to anyone except the person who owns or operates the facility at the time of the release. If the release occurs after the site is abandoned or a contractor improperly handles or disposes the waste, the original owner or producer may escape responsibility.

The intent of this bill is to more directly tie the responsible parties ie: the owner, operator, transporter, or disposer of waste to the release and encourage proper disposal of waste.

The bill is modeled after the Federal Comprehensive Environmental Response Compensation and Liability Act (CERCLA) which is the law that created the federal superfund in 1980. This will provide the same laws used in Federal Court to be used in State courts.

STATE OF ALASKA

DEPT. OF ENVIRONMENTAL CONSERVATION

STEVE COWPER, GOVERNOR

POSITION PAPER
HB 459 HAZARDOUS SUBSTANCE CLEANUP LIABILITY

FEBRUARY 24, 1988

Effect of the bill

The bill would make the state's requirements for liability for hazardous substance spills explicit. The current statute refers to a "person owning or having control over a hazardous substance which enters in or upon the waters, surface or subsurface lands of the state . . ." The bill would explicitly expand the coverage of this liability provision to include other parties that have responsibility for hazardous substances, including those who generate them, those who have control over the site where they are spilled or disposed of, and those who transport them in cases where the transporters select the destination. These parties are currently liable under the common law, but the proposed statute would clarify this liability and reduce the need for litigation.

Department position

The Department supports the bill. We believe that this clarification is appropriate and would be helpful. This will would assist us in carrying out the mandates of HB 470, passed two years ago to establish the Oil and Hazardous Substance Release Response Fund. The bill provides a proper scope of liability. The bill would affect generators and transporters who allow their wastes to be taken to improper or marginal operators who do not provide for proper disposal.

Fiscal effect

The Department has provided a zero fiscal note on this bill. Over time, this bill could reduce litigation costs and probability of recovery of cleanup and related costs.

Dennis D. Kelso, Commissioner

NOTES ON CONCERNS VOICED ABOUT HB 346

All this bill does is to authorize the Board of Fisheries to grant fishing areas for children/elderly if proposals are brought forth. The bill does not actually establish the areas.

There is an interest in this in Unalakleet for elderly people, primarily from people who have participated in the subsistence fishery. There has also been an interest in Southcentral in doing one for children.

ADAMS: Wants to authorize the boards to grant these areas in order to address concerns from elderly people in his district.

DAVIDSON: Thought there had been discussion about handicapped. (It was not clear whether he was actually trying to include this)>

Martha from Adams office: Probably wouldn't be a problem, but might want to define handicap.

SPRINGER: Disagreed to including handicap.

SUND: Need more legislative findings on why age 60 and age 12. Indicated he wanted to talk with AAG Larri Spengler on this.

[Staff had consulted with AAG about the letter of intent prior to the committee meeting but this did not come up in the committee]

NAVARRE: Indicated that kids he knows are not inexperienced and would love the additional fishing time, but don't need separate area.
Was not clear whether he would actually oppose giving board authority to set aside these areas.

Martha from Adams office: Explained that Age 60 comes from other Fish and Game Statutes, and the AAG had recommended that this age be used for consistency.

SPRINGER: Explained on record the general thinking about why age 60, why a retirement age, and spoke in strong support of this concept.

HERRMANN: Indicated that the bill would be held to address these concerns and get more legislative findings.

[Note: Staff from Rep. Herrmann's, and Rep. Adams office spoke with Larri Spengler, Assistant Attorney General on the letter of intent prior to the committee hearing. She noted that these age cut-offs are similar t age cut-offs such as driving age, drinking age, and voting age. There is a history that supports the legality of these age cut-offs. Accordingly, the purpose of the letter of intent is to help explain what it is about people over age 60, (and children under age 12), that distinguishes them from other individuals, and why this should allow them to have separate fishing areas. Ms. Spengler indicated that the letter of intent was sufficient.]

JOINT AND SEVERAL LIABILITY

ABOLITION OR MODIFICATION AS OF

JULY 1987

ALABAMA

Contributory no changes

ALASKA

1986 - any defendant less than 50 % at fault cannot be held jointly liable for more than two times the percentage of fault.

ARIZONA

1987 - Abolished except for:

1. intentional torts
2. hazardous waste

ARKANSAS

No changes

CALIFORNIA

1986 - Abolished for non-economic damages (Prop. 51).

COLORADO

1986 - Total abolition
1987 - Except in cases in which the defendants:

1. acted in concert
2. conspired to commit a wrongful act.

CONNECTICUT

1986 - Total abolition except where the defendants share of judgment is uncollectable.
1987 - Except for economic damages.

DELAWARE

No changes

CORRECTION

THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY

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DELAWARE

No changes

NORTH CAROLINA

Contributory no changes

NORTH DAKOTA

1987 - Abolished except for:

1. intentional torts
2. cases in which defendants acted in concert

OHIO

1980 - Total abolition (Ohio Rev Code)

OKLAHOMA

1978 and 1981 - Case law which limits the rule to cases where damages cannot be apportioned or when plaintiff is not at fault.

✓ OREGON

1987 - Limits the doctrine to defendants who are 15 percent or more responsible. The doctrine applies in full in pollution, hazardous waste and radioactive waste cases.

PENNSYLVANIA

No changes

RHODE ISLAND

No changes

SOUTH CAROLINA

Contributory no changes

SOUTH DAKOTA

1987 - Limited joint for those who are 50 % or less responsible for a wrongful action. Defendants pay no more than twice their percentage of fault.

TENNESSEE

Contributory - No changes

NEBRASKA

No changes

✓ NEVADA

1987 - Abolished except for:

1. product liability cases
2. toxic wastes
3. intentional torts
4. cases in which defendants acted in concert

NEW HAMPSHIRE

1981 - Abolished the doctrine in favor of several liability. N.H. Rev Stat. Ann. Sec. 507.7-a.

NEW JERSEY

No changes.

NEW MEXICO

1981 - Abolished by case law. Abolition with exceptions.

1987 - Abolished except for:

1. intentional torts
2. situations not found in the main text of the legislation and "having sound basis in public policy"
3. among defendants who have a relationship imposing vicarious liability
4. defendants held strictly liable for the manufacture and sale of a defective product

✓ NEW YORK

1986 - Abolished in non-economic damages cases except for:

1. a defendant who is more than 50 % at fault
2. administrative hearings
3. in workers' compensation cases which implead third parties
4. intentional torts
5. toxic torts
6. product liability cases where the responsibility cannot be joined to the action
7. construction cases
8. contract cases
9. motor vehicle cases

Alaska Environmental Lobby, Inc.

907-586-2345

HB 459: Strict Liability for Hazardous Substance Release

The problems and risks associated with hazardous wastes in Alaska have only gradually begun to surface in recent years. Serious human health effects, surface and ground water contamination, and air pollution problems have resulted from improper disposal or abandonment of hazardous substances. In many cases it is difficult to assign liability.

The most recent development in Alaska's long-term strategy for hazardous waste was the introduction of legislation by Representative Mike Davis requiring strict liability for hazardous substance release. The bill would strengthen Alaska statutes in regard to liability, and more clearly define the responsibility for hazardous substance release. Current statutes do not clearly attach liability to anyone except the person who owns or operates the facility at the time of release. This allows the original owner or producer of the waste to escape responsibility, in which case the state or local community may incur the cost of clean-up.

The intent of this bill is to more directly connect the responsible parties, the owner, operator, transporter, or disposer of waste, to the release, in order to encourage proper disposal. The bill is modeled after the federal Comprehensive Environmental Response Compensation and Liability Act (CERCLA), which is the law that created the federal Superfund in 1980. This legislation will allow the same laws used in federal court to be applied to state courts.

Alaska faces unique problems with hazardous wastes and there is still much to be learned about the impacts of hazardous substances in arctic and subarctic environments. The Alaska Environmental Lobby supports the proposed legislation and believes this is an important step toward developing safeguards and regulations necessary for preventive solutions.

Issue paper prepared by Kelly Kavanaugh 2/12/88

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PHONE (907) 262-4441

DON GILMAN
MAYOR

POSITION PAPER
HB 459 - Hazardous Substance Clean-up Liability

The administration of the Kenai Peninsula Borough supports HB 459. We believe this bill will provide the necessary incentive for proper disposal of hazardous wastes, by attaching clear responsibility to generators and transporters of wastes as well as owners and operators of disposal sites.

As you are aware, the occurrence of hazardous waste problems on the Kenai Peninsula is rapidly increasing, as evidenced by the Governor's recent request for $955,000 in his supplemental appropriation bill.

In many of those cases the parties responsible for the release of hazardous substances are either bankrupt or no longer in business. Because current law does not allow for the attachment of liability to generators, other than those who own or operate the facility at the time of release, the original owner or producer may escape responsibility for clean-up. In these instances, the state or local governments many times have to bear that cost and responsibility.

A specific example is the Sterling special waste site on the Kenai Peninsula. The site was originally permitted by DEC as a special waste site for the disposal of drilling muds and other special wastes. The land is owned the the Kenai Peninsula Borough and was leased by a private company who contracted with producers of special wastes for disposal. After a number of years of operation, the contractor filed bankruptcy and abandoned the pit. The Kenai Peninsula Borough now bears total cost and responsibility for closure and clean-up of the site. It is uncertain exactly what has been disposed of in the pits, and now must be treated and closed as a hazardous waste site.

(7)

HOUSE COMMITTEE REPORT

Date referred: 3/23/88

FURTHER REFERRALS:

DATE: March 23, 1988

The Judiciary Committee has considered HB 459

"An Act relating to liability for releases of hazardous substances."

RECOMMENDS:

[✓] replace with CS HB 459 (Res) [✓] the same title

[ ] attached amendment(s) [ ] a new title

[✓] do pass

[ ] do not pass

[ ] no recommendation

[ ] individual recommendations

[ ] additional referral to the _____ Committee

ADOPTS: [ ] _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):

[ ] fiscal impact

[ ] zero fiscal note

[ ] zero with analysis

[ ] same as previous fiscal note published _____

[✓] same as previous zero fiscal note published 3/23/88

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

Chairman's signature

Offered: 3/23/88
Referred: Judiciary

5-1465B

= New in CS

Original sponsors: Davis, Koponen,
Navarre, et al.

IN THE HOUSE BY THE RESOURCES COMMITTEE

CS FOR HOUSE BILL NO. 459 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to liability for releases of hazardous substances."

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

* Section 1. AS 46.03.822 is repealed and reenacted to read:

Sec. 46.03.822. STRICT LIABILITY FOR THE RELEASE OF HAZARDOUS SUBSTANCES. (a) The following persons are strictly liable, jointly and severally, for damages to persons or property, public or private, including damage to the natural resources of the state and the costs of response, containment, removal, or remedial action incurred by the state or a municipality, resulting from a release of a hazardous substance or, with respect to response costs, the substantial threat of a release of a hazardous substance:

(1) the owner and the person having control over the hazardous substance at the time of the release or threatened release;

(2) the owner and the operator of the facility or vessel from which the release occurred or was threatened to occur; in the case of an abandoned facility or vessel, the owner, the operator, and any other person who controlled activities at the facility or on the vessel immediately before the abandonment;

(3) a person who owned or operated the facility or vessel from which the release occurred or was threatened to occur at the time the hazardous substance was received by the facility or vessel;

(4) a person who owned the hazardous substance and who arranged for disposal or treatment of the substance by another party

Key words: arranged for disposal of a hazardous substance. So a person who sells a hazardous substance would not be liable for someone who improperly disposes that substance.

or entity, or arranged with a transporter to transport the substance for disposal or treatment by another party or entity, at a facility or incineration vessel that contained the substance and that was owned or operated by the party or entity; and

(5) a person who transported or accepted the hazardous substance for transport to the facility, vessel, or site from which the release occurred or was threatened to occur, if the person selected the facility, vessel, or site.

(b) In an action to recover damages, a person otherwise liable is relieved from strict liability if the person proves by clear and convincing evidence

(1) that the release or threatened release of the hazardous substance to which the damages relate occurred solely as a result of

(A) an act of war;

(B) an intentional or negligent act of a third party, other than a party or its employees in privity of contract with, or employed by, the person, and that the person

(i) exercised due care with respect to the hazardous substance; and

(ii) took reasonable precautions against the act of the third party and against the consequences of the act; or

(C) an act of God; and

(2) in relation to (1)(B) or (C) of this subsection, that the person, within a reasonable period of time after the act occurred,

(A) discovered the release or threatened release of the hazardous substance; and

(B) began operations to contain and clean up the hazardous substance.