

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672

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Reorganization Court directed us to act on C&E's application by June 27, 1985.

C&E petitioned for waiver of the information requirements of 49 CFR Part 1180, Subpart B. It contends that the proposed purchase is a minor transaction involving terminal track that would be exempt from Commission jurisdiction under 49 U.S.C. 10907.

However, the exemption is not available because the transaction is governed by the MRR. C&E requests that we treat its proposal as if it were an exemption request and waive the information requirements of our regulations.

I will grant the waiver petition. C&E's petition contains the information required by our regulations.

A copy of verified statements must be served on the Attorney General of the United States and the United States Secretary of Transportation.

It is ordered:

1. C&E's petition for waiver is granted, and the proposal is accepted for consideration.

1. C&E's petition for waiver is granted, and the proposal is accepted for consideration.

2. Parties must comply with all provisions stated above.

3. This decision will be effective on date it is served.

Decided: June 6, 1985.

By the Commission, Fisher P. Hurdy,
Director, Office of Proceedings.

James H. Bayno,

Secretary.

[FR Doc. 85-13952 Filed 6-6-85; 10:37 am]

STANDARD CODE 7034-01-01

DEPARTMENT OF JUSTICE

Office of the Attorney General

Attorney General's Guidelines on Seized and Forfeited Property

AGENCY: Office of the Attorney General, Justice.

ACTION: Notice of Department of Procedures for Seized and Forfeited Property.

SUMMARY: This document sets forth the Department's policy under 21 U.S.C. 881(e) regarding the handling of seized and forfeited property. It is exempt from the notice and comment requirements of the Administration Procedure Act, 5 U.S.C. 553(b) by virtue of 5 U.S.C. 553(a)(2). The Department of Justice has determined that it is not a "major rule" within the meaning of Executive Order No. 12291 or a rule within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601(1).

FOR FURTHER INFORMATION CONTACT:
Director, Asset Forfeiture Office,
Criminal Division, Room 916, Federal
Triangle Building, 316 9th Street, NW.,
Washington, D.C. 20530. (202) 272-6420.

ATTORNEY GENERAL'S GUIDELINES ON SEIZED AND FORFEITED PROPERTY

I. Statement of Policy

The following guidelines are designed to implement certain asset forfeiture provisions of the Comprehensive Crime Control Act of 1984 pertaining to the disposition of forfeited property, the management and use of the Department of Justice Assets Forfeiture Fund, and the discontinuance of federal forfeiture actions to permit forfeiture by State or local procedures.

The statute directs, "The Attorney General shall ensure the equitable transfer . . . of any forfeited property to the appropriate State or local law enforcement agency so as to reflect generally the contribution of any such agency participating directly in any of the acts which led to the seizure or forfeiture of such property."

This authority is consistent with the Department of Justice's purpose of promoting cooperative law enforcement efforts in drug trafficking and other investigations. The Department intends to manage its asset forfeiture program in a manner designed to enhance this Federal, State and local cooperation.

Title 21, United States Code (U.S.C.), section 881(e), authorizes the Attorney General to dispose of forfeited property by (1) retaining the property for official use; (2) transferring custody or ownership of the property to any Federal, State or local agency pursuant to the Tariff Act of 1930, Title 19, USC, Section 1016; or (3) placing the forfeited cash or proceeds of sale of forfeited property in an appropriation called the Department of Justice Assets Forfeiture Fund (hereinafter "the Fund"). A decision of the Attorney General regarding placing the forfeited property into official use or transferred the property to another agency is not subject to judicial review.

The Law Enforcement Coordinating Committee program will inform State and local law enforcement agencies as to the procedures for requesting an equitable transfer of forfeited property, help facilitate the application for transfer of such property, and see that the spirit and letter of the forfeiture provisions of the Comprehensive Crime Control Act of 1984 are implemented in each Federal district.

II. Definitions

A. "Department of Justice investigative bureau" refers to the investigative unit within the Department of Justice that participated in the investigation and seizure of property and is responsible for the processing of the forfeiture arising from the seizure.

B. "Head of the Department of Justice investigative bureau" means the head of that bureau or his headquarters-level designee.

C. "Placing property into official use" means use of forfeited property by a Department of Justice bureau for any official purpose.

D. "Property" means tangible property and cash.

E. "Cash" means currency, negotiable instruments and securities.

F. "State and local agencies" means State and local law enforcement agencies.

G. "Appraised value" means fair market value.

III. Use and Transfer of Forfeited Property

A. Retention of Property for Official Use

a. The Attorney General has the authority to retain any civilly or criminally forfeited tangible property for official use by any Department of Justice bureau.

2. No forfeited cash, nor any proceeds from sales of forfeited property may be transferred to, or retained by, federal law enforcement agencies under the provisions of 21 U.S.C. 881(e) for disposition of forfeited property.

b. Payment of liens and mortgages pursuant to an authorization to place property into official use.

a. Liens and mortgages cumulatively amounting to less than one third of the appraised value of the asset and totalling less than \$50,000 will be paid from the Fund at the request of the head of the Department Justice investigative bureau.

b. Payments of liens or mortgages that, in the aggregate, total \$50,000 or greater or exceed one third of the appraised value of the asset, will be paid from the Fund at the request of the Department of Justice investigative bureau subject to the concurrence of the Deputy Attorney General.

B. Official Use by Department of Justice Investigative Bureau

1. The Attorney General's authority to place tangible property into official use is delegated to the head of the Department of Justice investigative bureau.

a. In making a decision concerning placing forfeited property into official

use, the head of the Department investigative bureau must consider the financial status of the Department of Justice Assets Forfeiture Fund.

b. Exercise of this delegation of authority is subject to concurrence by the Deputy Attorney General for all property appraised at \$750,000 or more.

C. Official Use by Other Department of Justice Bureaus

1. If the Department investigative bureau does not choose to place the forfeited property into official use, the Director, United States Marshals Service will determine appropriate disposal, including screening any remaining property suitable for official use by other Department of Justice bureaus.

a. A decision to place such property into official use is subject to concurrence by the Deputy Attorney General for all property appraised at \$750,000 or more.

2. If more than one Department of Justice component wants to retain for official use the same piece of seized and forfeited property, the Deputy Attorney General will determine which component may place such property in official use.

D. Transfer of Property to State or Local Law Enforcement Agencies

1. Attorney General's Authority for Equitable Transfer of Seized Property

a. The Act authorizes the Attorney General to transfer forfeited property to state or local law enforcement agencies that directly participated in the acts which led to the seizure or forfeiture.

b. Tangible property not retained for official use by the Department of Justice investigative bureau is eligible for equitable transfer.

c. Where a participating law enforcement agency petitions for a share in the forfeited property, the Attorney General shall determine an equitable transfer of the property that generally reflects the relative contribution of the participating agencies.

2. Procedure for Determining Equitable Transfer

a. Any state or local law enforcement agency that participates in the acts leading to a Department of Justice seizure for forfeiture may file a request for an equitable transfer of the property.

b. The criteria for determining the equitable transfer of the property will be the same for all requests.

c. In all cases the final decision-making authority rests with the Attorney General or his designee.

3. Requests from Participating Law Enforcement Agencies

a. Within thirty days following the seizure for forfeiture, a state or local

agency should submit a written request for an equitable transfer of the property subject to forfeiture.

b. This request must be filed with the local or regional office of the Department investigative bureau responsible for processing the forfeiture.

c. The request must include the following information:

(1) Identification of the property against which the claim is made;

(2) Details regarding the requesting agency's participation, including the amount of money and manpower expended by the state or local agency in pursuing the case;

(3) A statement of the intended use for the property;

(4) A designation of the proper fiscal officer to whom cash or check disbursements can be made;

(5) A designation of the proper official to whom transfer documents should be delivered by the United States;

(6) A designation of the proper party to whom possession should be delivered;

(7) A statement indicating that the transfer is not prohibited under the applicable state or local law;

(8) In instances of a joint application by several state or local agencies, the relative share of such state or local agency; and

(9) A statement that all fees and expenses necessary to effect transfer of title will be paid by or on behalf of the requesting agency not later than the time of transfer.

d. The requesting agency must certify that the information contained in 3(c)(4-7) above is true and correct.

e. Property will be transferred only in cases where the tangible property or cash will be credited to the budget of the state or local agency that directly participated in the seizure or forfeiture, resulting in an increase of law enforcement resources for that specific state or local agency.

f. An information copy of any request will be forwarded to the United States Attorney in the district where the transfer request originated.

4. Procedure for Processing Requests for Equitable Transfer

a. In all cases, the Department investigative bureau field unit receiving the request will prepare a written report that will evaluate the degree of assistance provided by the requesting agency or agencies in the underlying investigation.

b. The equitable share for a participating state or local agency should generally reflect the contribution of the agency participating directly in any of the acts which led to the seizure

or forfeiture of the property, including, but not limited to, the following factors:

(1) Which agency initiated the case;

(2) Which agency identified the asset;

(3) The amount of money and manpower expended by the state or local agency in pursuing the case;

(4) Whether or not the state or local agency seized other assets during the course of the same investigation and whether such seizures were made pursuant to state or local law; and

(5) Whether or not the state or local agency could have achieved forfeiture under state law, with favorable consideration given to a state or local agency which could have forfeited the asset(s) on its own but joined forces with the United States to make a more effective investigation.

c. The head of the Department investigative bureau may place tangible property forfeited administratively or judicially into official use in cases in which a state or local agency has filed a request for an equitable share of that property.

(1) In making this decision, the head of the Department investigative bureau must consider the following factors:

(a) The relative needs of both the requesting law enforcement agency and the Department investigative bureau for the particular asset;

(b) The uniqueness of the asset and the likely ability to secure such an asset by other seizures in the near future;

(c) The relative significance of the requesting law enforcement agency's participation in the case, as well as all the other factors pertinent to the determination of equitable distribution as set forth in Part III.B.4.c. above;

(d) The potential of, or likelihood that, the requesting agency will be eligible for an equitable share of property from additional seizures arising from the same investigation or from other seizures in the near future; and

(e) The impact that a decision to place the property into official use might have on Federal, state and local relations in that District.

5. Decision-Making Authority for Determining Equitable Transfer

a. The equitable distribution of an asset forfeited administratively with an appraised value of \$100,000 or less will be determined by the head of the Department investigative bureau.

(1) The Department investigative bureau's field unit shall forward its report and recommendation to the bureau head for decision.

(2) In making this decision, the head of the Department investigative bureau will consider the report and recommendation forwarded by the field

unit and issue to the requesting agency a written ruling on the request.

(3) A copy of the decision document will be forwarded to the United States Attorney, or to the Criminal Division section chief in a Criminal Division case, and to the Director, United States Marshals Service.

(4) A copy of the decision document will be made available upon request to the Director, Asset Forfeiture Office.

b. In the case of all administratively forfeited property with an appraised value greater than \$100,000 and with all judicially forfeited property, the evaluation and recommendation will be forwarded to the appropriate United States Attorney or to the Criminal Division section chief in a Criminal Division case.

(1) The equitable distribution of an asset forfeited judicially with an appraised value of \$100,000 or less will be determined by the United States Attorney or the Criminal Division section chief.

(2) In making this decision, the United States Attorney or section chief will consider the reports and recommendations forwarded by the head of the Department of Justice investigative bureau and will consult with the United States Marshals Service.

(3) A copy of the decision document will be forwarded to the Department of Justice investigative bureau, the Director, United States Marshals Service and the Director, Asset Forfeiture Office.

c. In the case of all property with an appraised value greater than \$100,000, the United States Attorney or section chief will forward the evaluation and recommendation of the Department of Justice investigative bureau, along with his own recommendation, to the Director, Asset Forfeiture Office, who will determine the equitable distribution of those assets.

(1) In making this decision, the Director will consider the reports and recommendations forwarded by the head of the Department of Justice investigative bureau and the United States Attorney or section chief and will consult with the United States Marshals Service.

(2) A copy of the decision document will be forwarded to the Department of Justice investigative bureau, the United States Marshals Service and the United States Attorney or section chief.

d. The Deputy Attorney General will make the final determination of equitable distribution of any asset with an appraised value of \$750,000 or greater.

(1) The request will be processed as in b.c. above.

(2) A copy of the decision document will be forwarded to the Director, Asset Forfeiture Office, the Director, United States Marshals Service, the United States Attorney or section chief and the Department of Justice investigative bureau.

a. In all cases in which judicially forfeited property is located in a judicial district other than where the judicial proceedings are taking place, the party determining the equitable distribution must consult with the respective United States Attorney prior to determining equitable distribution.

b. Proceeds Placed in the Department of Justice Assets Forfeiture Fund

a. If the federal forfeiture action is not deferred, and the property is not placed into official use or transferred to a state or local agency, it will be sold and the net proceeds of sale will be placed in the Assets Forfeiture Fund.

b. Forfeited cash will be placed in the Assets Forfeiture Fund.

c. All Department of Justice bureaus will promptly notify the United States Marshals Service of any facts affecting seized property. Some relevant facts would include bills, invoices, orders of mitigation and remission, orders of sharing with state or local agencies, orders of designation for official use by Department of Justice components, and appraisals. Based upon these and other factors, the United States Marshals Service should appropriately dispose of the property.

7. Disposition of Forfeited Property

a. State or local agencies may share in seized and forfeited tangible property, and seized and forfeited cash.

b. Any property that cannot be used for law enforcement purposes must be liquidated.

c. Where tangible property is transferred to qualifying state or local agencies, monies from the Assets Forfeiture Fund will not be used to pay liens or mortgages on the property, to equip the property for law enforcement purposes, or to pay salaries.

d. The recipient state or local agency must pay the valid liens and mortgages on the forfeited tangible property prior to the transfer of such property.

e. The recipient state or local agency may be required to pay direct expenses pertaining to the seizure prior to the transfer of tangible property.

f. In the event of an interlocutory sale of property pending forfeiture, the Director, United States Marshals Service first must consult with the United States Attorney, Criminal Division section chief or the Director of the Asset Forfeiture Office in the case of judicially forfeited property, or the head of the pertinent Department of Justice investigative

bureau in the case of administrative forfeitures, to determine the status of any state or local law enforcement agency requests for equitable sharing.

IV. Department of Justice Assets Forfeiture Fund

A. Administration of the Fund

1. The Attorney General delegates the administration of the Department of Justice Assets Forfeiture Fund to the United States Marshals Service. It will operate under guidelines developed by the Subcommittee on Asset Forfeiture of the Department's Forum for Cooperative Strategy and in accordance with Department of Justice financial management policy.

2. The United States Marshals Service will submit to the Deputy Attorney General on a quarterly basis a financial statement as to the current status of the fund.

3. Copies of the quarterly United States Marshals Service statement will be provided to the Federal Bureau of Investigation, Drug Enforcement Administration, Immigration and Naturalization Service and the Asset Forfeiture Office to assist the recipients in making decisions as to the use and transfer of forfeited property.

B. Payments Allowable Under Department of Justice Assets Forfeiture Fund

1. Forfeiture cash and proceeds from the sale of forfeited property are to be deposited in the Department of Justice Assets Forfeiture Fund.

2. Money from the Fund may be used for the following:

a. Payment of liens and mortgages pursuant to an order of remission or mitigation;

b. Payment of liens and mortgages pursuant to an order to place into official use.

c. Payment of liens and mortgages pursuant to court order.

d. Payment to equip, for law enforcement purposes, conveyances placed into official use by the Drug Enforcement Administration, and the Immigration and Naturalization Service.

e. Payment of awards;

f. Purchase of evidence; and

g. Reversion to the United States Treasury at the end of the fiscal year of all amounts in excess of \$5,000,000.

C. The Following, in Order of Priority Will Be the Uses of the Forfeited Cash and the Proceeds of Sale of Forfeited Property

1. Payment of expenses incurred by the Department of Justice for the care,

custody and disposal of the seized and forfeited property;

2. Payment of expenses incurred by the Department of Justice in the seizure and forfeiture of the property;

3. Payment of expenses relative to the detention, inventory, safeguarding, maintenance, or disposal of the seized and forfeited property incurred by state and local agencies which assist in the seizure and forfeiture of the property;

4. Payments of orders of mitigation or remission;

5. Payments for orders of equitable sharing with state or local law enforcement agencies;

6. Payments for liens on vehicles placed into official use;

7. Payment of awards;

8. Payment to equip, for law enforcement purposes, conveyances placed into official use by the Drug Enforcement Administration Immigration and Naturalization Service; and

9. Purchase of evidence.

D. Limitation on Use of the Fund

1. The Department of Justice Assets Forfeiture Fund cannot be used to pay any of the following:

a. Salaries; and

b. Where property is transferred to state or local law enforcement agencies, (1) liens or mortgages on the property; and

(2) Payments to equip the property for law enforcement purposes.

2. Liens and mortgages shall be paid from the Fund only pursuant to an order of remission or mitigation, an order of the court, or an order to place the property into official use.

V. Discontinuance of Federal Forfeiture Actions

A. Deferral of Federal Judicial Forfeiture Proceedings

1. A decision to forego an federal judicial forfeiture proceeding against any seized asset in favor of a state or local forfeiture proceeding requires the personal approval of the United States Attorney after review of the evaluation and recommendation of the concerned investigative bureau.

2. In making this decision, the United States Attorney must consider the status of the Department of Justice Assets Forfeiture Fund.

3. Judicial forfeitures foregone in favor of state or local proceedings are to be reported by the United States Attorney in writing, within five days, to the Director, Asset Forfeiture Office, Criminal Division, United States Department of Justice, Washington, D.C. 20530.

B. Deferral of Federal Administrative Forfeiture Proceedings

1. A decision to forego a federal administrative forfeiture proceeding against any seized asset in favor of a state or local forfeiture proceeding requires the approval of the head of the Department Investigative Bureau.

2. In making this decision, the head of the Department Investigative Bureau must consider the status of the Assets Forfeiture Fund and, where appropriate, consult with the United States Marshals Service.

3. Department of Justice investigative bureaus must develop procedures for recording these decisions and providing reports as required.

VI. United States Customs Service Forfeitures

A. Pursuant to Title 28 United States Code, section 524(c), all proceeds from the forfeiture of property under any law enforced or administered by the Department of Justice remaining after payment of expenses for forfeiture and sale authorized by law are to be deposited in the Department of Justice Assets Forfeiture Fund, except to the extent that the seizure was effected by a United States Customs Service officer or that custody was maintained by the Customs Service, in which case the provisions of 19 U.S.C. 1613a (Customs Forfeiture Fund) shall apply.

B. To the extent that the United States Marshals Service may have the capacity to do so, it may store and maintain seized property for the Customs Service.

1. Where the United States Marshals Service maintains custody of property seized by a Customs officer, the Customs Service will reimburse the Marshals Service for the expenses of such custody prior to the deposit of the net proceeds into the Customs Forfeiture Fund.

2. In instances where proceeds are to be deposited in the Department of Justice Assets Forfeiture Fund and the Customs Service, as a substitute custodian, has maintained custody of property seized by the Department of Justice, the Department of Justice will reimburse the Customs Service for the expenses of such custody.

C. Requests for transfers of forfeited property by participating state and local law enforcement agencies in forfeitures where the seizure was effected by a Customs officer of custody was maintained by the Customs Service should be directed pursuant to 19 U.S.C. 1616 to the Customs Service for evaluation and forwarding to the Assistant Secretary of Treasury for Enforcement and Operations with an

information copy to the United States Attorney in the district of seizure.

D. In the event of an unresolved dispute concerning whether a given forfeiture constitutes a Customs or Department of Justice forfeiture for purposes of cash or proceeds disposition, or for state and local transfers, the Deputy Attorney General and the Assistant Secretary of Treasury for Enforcement and Operations shall resolve the issue. Where appropriate, they may submit the issue to the Organized Crime Drug Enforcement Task Force Working Group for recommendation.

Dated May 24, 1985

Edwin Meese III,

Attorney General

[FR Doc. 85-11041 Filed 6-6-85; 8:45 am]

BILLING CODE 4410-01-M

[Order No. 1095-86]

President's Commission on Organized Crime; Meetings

AGENCY: Department of Justice.

ACTION: Notice.

SUMMARY: This notice announces four forthcoming meetings of the President's Commission on Organized Crime. This notice also sets forth a summary of the agenda for the four meetings, together with an explanation of why the first meeting will be closed to the public. Notice of these meetings is required by the Federal Advisory Committee Act, 5 U.S.C. App. I, section 10(a)(2).

DATE:

June 24, 25, and 26, 1985, 10:00 a.m. to

12:00 noon; 1:00 p.m. to 3:00 p.m.

(public hearing).

June 23, 1985, 4:00 p.m. to 6:00 p.m.

(closed meeting).

ADDRESS:

Appellate Courtroom, U.S. Court of International Trade, Second Floor, 1 Federal Plaza, New York, New York 10007 (public hearing);

Empire Room B, New York Penta Hotel, 401 Seventh Avenue, New York, New York 10007 (closed meeting).

FOR FURTHER INFORMATION CONTACT:

James D. Harmon, Jr., Executive Director and Chief Counsel, President's Commission on Organized Crime, 1425 K Street, N.W., Suite 700, Washington, D.C. 20005; (202) 780-3500.

SUPPLEMENTARY INFORMATION: The closed meeting on June 23 will be conducted to discuss several matters. The Commission will be briefed concerning the investigation by the Commission staff of the organized

Situations not requiring warrants

(c) A warrant under this section shall not be required for the inspection of books and records pursuant to an administrative subpoena issued in accordance with section 876 of this title, nor for entries and administrative inspections (including seizures of property)—

- (1) with the consent of the owner, operator, or agent in charge of the controlled premises;
- (2) in situations presenting imminent danger to health or safety;
- (3) in situations involving inspection of conveyances where there is reasonable cause to believe that the mobility of the conveyance makes it impracticable to obtain a warrant;
- (4) in any other exceptional or emergency circumstance where time or opportunity to apply for a warrant is lacking; or
- (5) in any other situations where a warrant is not constitutionally required.

Administrative inspection warrants; issuance; execution; probable cause

(d) Issuance and execution of administrative inspection warrants shall be as follows:

(1) Any judge of the United States or of a State court of record, or any United States magistrate, may, within his territorial jurisdiction, and upon proper oath or affirmation showing probable cause, issue warrants for the purpose of conducting administrative inspections authorized by this subchapter or regulations thereunder, and seizures of property appropriate to such inspections. For the purposes of this section, the term "probable cause" means a valid public interest in the effective enforcement of this subchapter or regulations thereunder sufficient to justify administrative inspections of the area, premises, building, or conveyance, or contents thereof, in the circumstances specified in the application for the warrant.

(2) A warrant shall issue only upon an affidavit of an officer or employee having knowledge of the facts alleged, sworn to before the judge or magistrate and establishing the grounds for issuing the warrant. If the judge or magistrate is satisfied that grounds for the application exist or that there is probable cause to believe they exist, he shall issue a warrant identifying the area, premises, building, or conveyance to be inspected, the purpose of such inspection, and, where appropriate, the type of property to be inspected, if any. The warrant shall identify the items or types of property to be seized, if any. The warrant shall be directed to a person authorized under subsection (b)(2) of this section to execute it. The warrant shall state the grounds for its issuance and the

name of the person or persons whose affidavit has been taken in support thereof. It shall command the person to whom it is directed to inspect the area, premises, building, or conveyance identified for the purpose specified, and, where appropriate, shall direct the seizure of the property specified. The warrant shall direct that it be served during normal business hours. It shall designate the judge or magistrate to whom it shall be returned.

(3) A warrant issued pursuant to this section must be executed and returned within ten days of its date unless, upon a showing by the United States of a need therefor, the judge or magistrate allows additional time in the warrant. If property is seized pursuant to a warrant, the person executing the warrant shall give to the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property taken or shall leave the copy and receipt at the place from which the property was taken. The return of the warrant shall be made promptly and shall be accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the person executing the warrant and of the person from whose possession or premises the property was taken, if they are present, or in the presence of at least one credible person other than the person making such inventory, and shall be verified by the person executing the warrant. The judge or magistrate, upon request, shall deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

(4) The judge or magistrate who has issued a warrant under this section shall attach to the warrant a copy of the return and all papers filed in connection therewith and shall file them with the clerk of the district court of the United States for the judicial district in which the inspection was made.

(Pub. L. 91-513, Title II, § 510, Oct. 27, 1970, 84 Stat. 1274)

1 So in original. Probably should be "paragraph (1)".

Code of Federal Regulations

Administrative policies, practices, and procedures, see 21 CFR 1316.01 et seq.

§ 881. Forfeitures

Property subject

(a) The following shall be subject to forfeiture to the United States and no property right shall exist in them:

(1) All controlled substances which have been manufactured, distributed, dispensed, or acquired in violation of this subchapter.

(2) All raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this subchapter.

(3) All property which is used, or intended for use, as a container for property described in paragraph (1) or (2).

(4) All conveyances, including aircraft, vehicles, or vessels, which are used, or are intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession, or concealment of property described in paragraph (1) or (2), except that—

(A) no conveyance used by any person as a common carrier in the transaction of business as a common carrier shall be forfeited under the provisions of this section unless it shall appear that the owner or other person in charge of such conveyance was a consenting party or privy to a violation of this subchapter or subchapter II of this chapter; and

(B) no conveyance shall be forfeited under the provisions of this section by reason of any act or omission established by the owner thereof to have been committed or omitted by any person other than such owner while such conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States, or of any State.

(5) All books, records, and research, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this subchapter.

(6) All moneys, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance in violation of this subchapter, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of this subchapter, except that no property shall be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner.

(7) All real property, including any right, title, and interest in the whole of any lot or tract of land and any appurtenances or improvements, which is leased, or intended to be used, in any manner or part, to commit, or to facilitate the

commission of, a violation of this title punishable by more than one year's imprisonment, except that no property shall be forfeited under this paragraph, to the extent of an interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner.

(8) All controlled substances which have been possessed in violation of this subchapter.

Seizure pursuant to Supplemental Rules for Certain Admiralty and Maritime Claims

(b) Any property subject to civil or criminal forfeiture to the United States under this subchapter may be seized by the Attorney General upon process issued pursuant to the Supplemental Rules for Certain Admiralty and Maritime Claims by any district court of the United States having jurisdiction over the property, except that seizure without such process may be made when—

(1) the seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

(2) the property subject to seizure has been the subject of a prior judgment in favor of the United States in a criminal injunction or forfeiture proceeding under this subchapter;

(3) the Attorney General has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(4) the Attorney General has probable cause to believe that the property is subject to civil or criminal forfeiture under this subchapter.

In the event of seizure pursuant to paragraph (3) or (4) of this subsection, proceedings under subsection (d) of this section shall be instituted promptly.

Custody of Attorney General

(c) Property taken or detained under this section shall not be repleviable, but shall be deemed to be in the custody of the Attorney General, subject only to the orders and decrees of the court or the official having jurisdiction thereof. Whenever property is seized under any of the provisions of this subchapter, the Attorney General may—

(1) place the property under seal;

(2) remove the property to a place designated by him; or

(3) require that the General Services Administration take custody of the property and remove it, if practicable, to an appropriate location for disposition in accordance with law.

Other laws and proceedings applicable

(d) The provisions of law relating to the seizure, summary and judicial forfeiture, and condemnation of property for violation of the customs laws; the disposition of such property or the proceeds from the sale thereof; the remission or mitigation of such forfeitures; and the compromise of claims shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under any of the provisions of this subchapter, insofar as applicable and not inconsistent with the provisions hereof; except that such duties as are imposed upon the customs officer or any other person with respect to the seizure and forfeiture of property under the customs laws shall be performed with respect to seizures and forfeitures of property under this subchapter by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General, except to the extent that such duties arise from seizures and forfeitures effected by any customs officer.

Disposition of forfeited property

(e) Whenever property is civilly or criminally forfeited or under this subchapter the Attorney General may—

(1) retain the property for official use or transfer the custody or ownership of any forfeited property to any Federal, State, or local agency pursuant to section 616 of Title 19;

(2) sell any forfeited property which is not required to be destroyed by law and which is not harmful to the public;

(3) require that the General Services Administration take custody of the property and dispose of it in accordance with law; or

(4) forward it to the Drug Enforcement Administration for disposition (including delivery for medical or scientific use to any Federal or State agency under regulations of the Attorney General).

*The Attorney General shall ensure the equitable transfer pursuant to paragraph (1) of any forfeited property to the appropriate State or local law enforcement agency so as to reflect generally the contribution of any such agency participating directly in any of the acts which led to the seizure or forfeiture of such property. A decision by the Attorney General pursuant to paragraph (1) shall not be subject to review. The proceeds from any sale under paragraph (2) and any moneys forfeited under this subchapter shall be used to pay all proper expenses of the proceedings for forfeiture and sale including expenses of seizure, maintenance of custody, advertising, and court costs. The Attorney General shall forward to the Treasurer of the United States for deposit in accordance

with section 524(c) of Title 28 any amounts of such moneys and proceeds remaining after payment of such expenses.

Forfeiture of schedule I substances

(f) All controlled substances in schedule I that are possessed, transferred, sold, or offered for sale in violation of the provisions of this subchapter shall be deemed contraband and seized and summarily forfeited to the United States. Similarly, all substances in schedule I, which are seized or come into the possession of the United States, the owners of which are unknown, shall be deemed contraband and summarily forfeited to the United States.

Plants

(g)(1) All species of plants from which controlled substances in schedules I and II may be derived which have been planted or cultivated in violation of this subchapter, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily forfeited to the United States.

(2) The failure, upon demand by the Attorney General or his duly authorized agent, of the person in occupancy or in control of land or premises upon which such species of plants are growing or being stored, to produce an appropriate registration, or proof that he is the holder thereof, shall constitute authority for the seizure and forfeiture.

(3) The Attorney General, or his duly authorized agent, shall have authority to enter upon any lands, or into any dwelling pursuant to a search warrant, to cut, harvest, carry off, or destroy such plants.

(h) All right, title, and interest in property described in subsection (a) of this section shall vest in the United States upon commission of the act giving rise to forfeiture under this section.

(i) The filing of an indictment or information alleging a violation of this subchapter or subchapter II of this chapter which is also related to a civil forfeiture proceeding under this section shall, upon motion of the United States and for good cause shown, stay the civil forfeiture proceeding.

(j) In addition to the venue provided for in section 1395 of Title 28 or any other provision of law, in the case of property of a defendant charged with a violation that is the basis for forfeiture of the property under this section, a proceeding for forfeiture under this section may be brought in the judicial district in which the defendant owning such property is found or in the judicial district in which the criminal prosecution is brought.

(Pub. L. 91-513, Title II, § 511, Oct. 27, 1970, 84 Stat. 1276; Pub. L. 95-633, Title III, § 301(a), Nov. 10, 1978, 92 Stat. 3777; Pub. L. 96-132, § 14, Nov. 30, 1979, 93 Stat. 1048; Pub. L. 98-473, Title II, §§ 306, 309, 518, Oct. 12, 1984, 98 Stat. 2050, 2051, 2075.)

References in Text. Subchapter II of this chapter, referred to in subsec. (a)(1)(A), was in the original "Title III", meaning Title III of Pub. L. 91-513, Oct. 27, 1970, 84 Stat. 1285. Part A of Title III comprises subchapter II of this chapter. For classification of Part B, consisting of sections 1101 to 1105 of Title III, see U.S.C.A. Tables volume.

The criminal laws of the United States, referred to in subsec. (a)(1)(B), are classified generally to Title 18, U.S.C.A., Crimes and Criminal Procedure, set out Ante.

The Supplemental Rules for Certain Admiralty and Maritime Claims, referred to in subsec. (b), are set out in Title 28, U.S.C.A., Judiciary and Judicial Procedure, and Federal Rules of Civil Procedure pamphlet, 1982 ed.

The customs laws, referred to in subsec. (d), are classified generally to Title 19, U.S.C.A., Customs Duties,

Schedules I and II, referred to in subsecs. (f) and (g)(1), are set out in section 812(c) of this title.

Codification. "Drug Enforcement Administration" was substituted for "Bureau of Narcotics and Dangerous Drugs" in subsec. (b)(4) to conform to congressional intent manifest in amendment of section 802(4) of this title by Pub. L. 96-132, § 16(a), Nov. 30, 1979, 93 Stat. 1049, now defining term "Drug Enforcement Administration" as used in this subchapter.

Code of Federal Regulations

Administrative policies, practices, and procedures, see 21 CFR 1316.01 et seq.

Inspection, search, and seizure, see 19 CFR 162.0 et seq.

§ 882. Injunctions

(a) The district courts of the United States and all courts exercising general jurisdiction in the territories and possessions of the United States shall have jurisdiction in proceedings in accordance with the Federal Rules of Civil Procedure to enjoin violations of this subchapter.

(b) In case of an alleged violation of an injunction or restraining order issued under this section, trial shall, upon demand of the accused, be by a jury in accordance with the Federal Rules of Civil Procedure.

(Pub. L. 91-513, Title II, § 512, Oct. 27, 1970, 84 Stat. 1278.)

References in Text. The Federal Rules of Civil Procedure, referred to in text, are set out in Title 28, U.S.C.A., Judiciary and Judicial Procedure, and Federal Rules of Civil Procedure pamphlet, 1982 ed.

§ 883. Enforcement proceedings

Before any violation of this subchapter is reported by the Administrator of the Drug Enforcement Administration to any United States attorney for institution of a criminal proceeding, the Administrator may require that the person against whom such proceeding is contemplated be given appropriate notice and an opportunity to present his views,

either orally or in writing, with regard to such contemplated proceeding.

(Pub. L. 91-513, Title II, § 513, Oct. 27, 1970, 84 Stat. 1278; Pub. L. 96-132, § 16(c), Nov. 30, 1979, 93 Stat. 1049.)

Code of Federal Regulations

Administrative policies, practices, and procedures, see 21 CFR 1316.01 et seq.

§ 884. Immunity and privilege

Refusal to testify

(a) Whenever a witness refuses, on the basis of his privilege against self-incrimination, to testify or provide other information in a proceeding before a court or grand jury of the United States, involving a violation of this subchapter, and the person presiding over the proceeding communicates to the witness an order issued under this section, the witness may not refuse to comply with the order on the basis of his privilege against self-incrimination. But no testimony or other information compelled under the order issued under subsection (b) of this section or any information obtained by the exploitation of such testimony or other information, may be used against the witness in any criminal case, including any criminal case brought in a court of a State, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order.

Order of United States district court

(b) In the case of any individual who has been or may be called to testify or provide other information at any proceeding before a court or grand jury of the United States, the United States district court for the judicial district in which the proceeding is or may be held shall issue, upon the request of the United States attorney for such district, an order requiring such individual to give any testimony or provide any other information which he refuses to give or provide on the basis of his privilege against self-incrimination.

Request by United States attorney

(c) A United States attorney may, with the approval of the Attorney General or the Deputy Attorney General, or any Assistant Attorney General designated by the Attorney General, request an order under subsection (b) of this section when in his judgment—

(1) the testimony or other information from such individual may be necessary to the public interest; and

(2) such individual has refused or is likely to refuse to testify or provide other information on

SB

107

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY
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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:

4-24-87

5-2-87

5-4-87

HOUSE COMMITTEE REPORT

Date referred: 4/8/87

FURTHER REFERRALS:

DATE: 5-4-87

CSSB 107 (Jud)

The Judiciary Committee has considered

"An Act making corrective amendments to the Alaska Statutes as recommended by the revisor of statutes; providing for an effective date."

RECOMMENDS:

replace with HCS CS SB107 (Jud) the same title

attached amendment(s) a new title

do pass

do not pass

no recommendation

individual recommendations

additional referral to the _____ Committee

DOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

fiscal impact

same as previous fiscal note published _____

zero fiscal note

same as previous zero fiscal note published _____

zero with analysis

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

[Handwritten signatures]

[Handwritten signature]
Chairman's signature

5-0070L
Dierdorff
4/30/87

Original sponsor: Rules/Legislative Council

1 IN THE SENATE BY THE JUDICIARY COMMITTEE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 107 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act making corrective amendments to the Alaska
7 Statutes as recommended by the revisor of statutes;
8 and providing for an effective date."

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

10 * Section 1. AS 04.16.010(c) is amended to read:

11 (c) A licensee, an agent, or employee may not permit a person to
12 enter and a person may not enter premises licensed under this title
13 between the hours of 5:00 a.m. and 8:00 a.m. each day. This sub-
14 section does not apply to common carriers [, AS DEFINED IN AS 42.10.-
15 420(2),] or to an employee of the licensee who is on the premises to
16 prepare for the next day's business. A person may enter or remain on
17 the premises of a bona fide restaurant or eating place licensed under
18 this title to consume food or nonalcoholic beverages.

19 * Sec. 2. AS 06.25.085 is amended to read:

20 Sec. 06.25.085. APPLICATION OF GENERAL BANKING LAWS. The pro-
21 visions of AS 06.05.005 - 06.05.085, 06.05.090 06.05.270, 06.05.307,
22 06.05.320 - 06.05.327, [06.05.405 - 06.05.425,] 06.05.440 - 06.05.445,
23 06.05.462, 06.05.465 - 06.05.510, [06.05.465 - 06.05.515] and 06.05.-
24 525 - 06.05.545 apply to all trust companies engaged in any phase of
25 the business of banking as that term is defined by AS 06.05.540(3) or
26 AS 06.25.100.

27 * Sec. 3. AS 06.30.720 is amended to read:

28 Sec. 06.30.720. PETITION BY COMMISSIONER. The commissioner,
29 acting through the attorney general, may apply to the superior court

1 for the appointment of a receiver, if in the [HIS] judgment of the
2 commissioner the public interest requires it and [EITHER]

3 (1) irregularities complained of in an order of the commis-
4 sioner under AS 06.01.030 [AS PROVIDED IN SEC. 660 OF THIS CHAPTER]
5 are not corrected; [, OR]

6 (2) irregularities complained of in a petition for the
7 appointment of a conservator are not corrected; [,] or

8 (3) an [IN THE CASE OF ANY] emergency exists.

9 * Sec. 4. AS 08.03.010(a) and (b) are repealed.

10 * Sec. 5. AS 08.04.500(a) is amended to read:

11 (a) A person may not assume or use the title or designation
12 "certified public accountant" or the abbreviation "CPA" or any other
13 title, designation, word, letter, abbreviation, sign, card, or device
14 tending to indicate that person is a certified public accountant,
15 unless the person has received a certificate, holds a live permit
16 [ISSUED UNDER AS 08.04.390 - 08.04.440, HEREINAFTER REFERRED TO AS A
17 "LIVE" PERMIT], and all of the person's offices in this state for the
18 practice of public accounting are maintained and registered as re-
19 quired by AS 08.04.350 - 08.04.380.

20 * Sec. 6. AS 08.04.510(b) is amended to read:

21 (b) A partnership or corporation of certified public accountants
22 in good standing in any state, not registered as a partnership or
23 corporation of certified public accountants under AS 08.04.240 [AND
24 08.04.250] but holding a permit under AS 08.04.420, may use the title
25 or designation "certified public accountants."

26 * Sec. 7. AS 08.04.680 is amended to read:

27 Sec. 08.04.680. DEFINITIONS. In this chapter [AS USED IN
28 AS 08.04.010 - 08.04.690]

29 (1) "board" means the Board of Public Accountancy;

1 (2) "certificate" means certificate as a certified public
2 accountant;

3 (3) "license" means license as a public accountant;

4 (4) "live permit" means a permit issued under AS 08.04.-
5 390 - 08.04.430 [REPEALED].

6 * Sec. 8. AS 08.62.020 is amended to read:

7 Sec. 08.62.020. APPOINTMENT AND TERM OF OFFICE. The governor
8 shall appoint the pilot and agent or manager members of the board,
9 subject to confirmation by a majority of the members of the legisla-
10 ture in joint session, for terms of four years, or until their succes-
11 sors are appointed. A [THE FIRST MEMBERS SHALL BE INITIALLY APPOINTED
12 FOR ONE, TWO, THREE AND FOUR YEAR TERMS. NO] person, with the excep-
13 tion of the commissioner or the commissioner's designee, may not be
14 appointed to the board for more than two consecutive terms.

15 * Sec. 9. AS 08.62.180 is amended to read:

16 Sec. 08.62.180. EXEMPTIONS. This chapter does not apply to

17 (1) vessels under enrollment, except as provided in AS 08.-
18 62.185;

19 (2) fishing vessels registered in the United States or in
20 British Columbia, Canada;

21 (3) vessels propelled by machinery and not more than 65
22 feet in length over deck, except tugboats and towboats propelled by
23 steam [MOTORBOATS AS DEFINED IN SEC. 1 OF THE FEDERAL MOTOR BOAT ACT
24 OF 1940 (54 STAT. 163; 46 U.S.C., SEC. 526 ET SEQ.)];

25 (4) vessels of United States registry of less than 300
26 gross tons and tow boats of United States registry and vessels owned
27 by the State of Alaska, engaged exclusively

28 (A) on the rivers of Alaska, or

29 (B) in the coastwise trade on the west coast of the

1 United States including Alaska, Hawaii, and British Columbia,
2 Canada;

3 (5) vessels of Canada, including Canadian cruise ships,
4 engaged in frequent trade between British Columbia and Alaska, if
5 reciprocal exemptions are granted by Canada to vessels owned by the
6 State of Alaska and those of United States registry; and

7 (6) pleasure craft.

8 * Sec. 10. AS 08.64.205 is amended to read:

9 Sec. 08.64.205. QUALIFICATIONS FOR OSTEOPATH APPLICANTS. Each
10 osteopath applicant shall meet the qualifications prescribed in
11 AS 08.64.200(4) and (5) [AS 08.64.200(1), (4) AND (5)] and shall

12 (1) submit a certificate of graduation from the legally
13 chartered school of osteopathy approved by the board;

14 (2) submit a certificate from a hospital approved by the
15 American Medical Association or the American Osteopathic Association
16 which certifies that the osteopath has satisfactorily completed and
17 performed the duties of intern or resident physician for one year;

18 (3) take the examination required by AS 08.64.210 or be
19 certified to practice by the National Board of Examiners for Osteo-
20 pathic Physicians and Surgeons.

21 * Sec. 11. AS 08.64.209(a) is amended to read:

22 (a) Each applicant who desires to practice podiatry shall meet
23 the qualification [QUALIFICATIONS] prescribed in AS 08.64.200(4)
24 [AS 08.64.200(1) AND (4)] and shall

25 (1) submit a certificate of graduation from a legally
26 chartered school of podiatry approved by the board;

27 (2) take the examination required by AS 08.64.210; the
28 State Medical Board shall call to its aid a podiatrist of known abil-
29 ity who is licensed to practice podiatry to assist in the examination

1 and licensure of applicants for a license to practice podiatry;

2 (3) meet other qualifications of experience or education
3 which the board may require.

4 * Sec. 12. AS 08.64.225 is amended to read:

5 Sec. 08.64.225. FOREIGN MEDICAL GRADUATES. Applicants who are
6 graduates of medical colleges not accredited by the American Medical
7 Association or one of its agencies shall meet the requirements of
8 AS 08.64.200(3), (4) and (5) [AS 08.64.200(1), (3), (4) AND (5)] and
9 must have passed an examination and be certified by the Education
10 Council on Foreign Medical Graduates, or be licensed by examination in
11 another state or territory of the United States or province of Canada.

12 * Sec. 13. AS 08.64.272 is amended to read:

13 Sec. 08.64.272. RESIDENCY AND INTERNSHIP. For the limited
14 purpose of doing residency or internship work, the board may issue a
15 temporary permit to an applicant without examination if the applicant
16 meets the requirement [REQUIREMENTS] of AS 08.64.200(2) [AS 08.64.-
17 200(1) AND (2)], pays the required fee, and has been accepted by an
18 eligible institution in the state for the purpose of doing residency
19 or internship work.

20 * Sec. 14. AS 08.88.500 is repealed.

21 * Sec. 15. AS 09.17.080(a) is amended to read:

22 (a) In all actions involving fault of more than one party to the
23 action, including third-party defendants and persons who have been
24 released under AS 09.16.040 [AS 09.17.090], the court, unless other-
25 wise agreed by all parties, shall instruct the jury to answer special
26 interrogatories or, if there is no jury, shall make findings, indicat-
27 ing

28 (1) the amount of damages each claimant would be entitled
29 to recover if contributory fault is disregarded; and

1 (2) the percentage of the total fault of all of the parties
2 to each claim that is allocated to each claimant, defendant, third-
3 party defendant, and person who has been released from liability under
4 AS 09.16.040 [AS 09.17.090].

5 * Sec. 16. AS 09.17.080(c) is amended to read:

6 (c) The court shall determine the award of damages to each
7 claimant in accordance with the findings, subject to a reduction under
8 AS 09.16.040 [AS 09.17.090], and enter judgment against each party
9 liable. The court also shall determine and state in the judgment each
10 party's equitable share of the obligation to each claimant in accor-
11 dance with the respective percentages of fault.

12 * Sec. 17. AS 09.17.090 is repealed.

13 * Sec. 18. AS 09.38.115(b) is amended to read:

14 (b) The dollar amounts change on October [JULY] 1 of each even-
15 numbered year if the percentage of change, calculated to the nearest
16 whole percentage point, between the index for January [NOVEMBER] of
17 that [THE PRECEDING] year and the most recent [REFERENCE BASE] index
18 used to change the exemption amount, is 10 percent or more, but

19 (1) the portion of the percentage change in the index in
20 excess of a multiple of 10 percent is disregarded and the dollar
21 amounts change only in multiples of 10 percent of the amounts appear-
22 ing in this chapter on August 26, 1982; and

23 (2) the dollar amounts do not change if the amounts re-
24 quired by this section are those currently in effect as a result of
25 earlier application of this section.

26 * Sec. 19. AS 09.38.115(d) is amended to read:

27 (d) The Department of Labor shall adopt a regulation announcing

28 (1) on or before June [APRIL] 30 of each year in which
29 dollar amounts are to change, the changes in dollar amounts required

1 by (b) of this section; and

2 (2) promptly after the changes occur, changes in the index
3 required by (c) of this section, including, if applicable, the numer-
4 ical equivalent of the reference base index under a revised reference
5 base index and the designation or title of any index superseding the
6 index.

7 * Sec. 20. AS 11.66.280(4) is amended to read:

8 (4) "gambling enterprise" means a gambling business that
9 [WHICH]

10 (A) includes five or more persons who conduct, fi-
11 nance, manage, supervise, direct, or own all or part of the
12 business;

13 (B) has been or remains in substantially continuous
14 operation for a period in excess of 30 days or has a gross income
15 of \$2,000 or more in any single day; and

16 (C) is not a municipality or a qualified organization
17 under AS 05.15.210 [AS 05.15.210(15)], except that, for purposes
18 of this paragraph, no application for a license under AS 05.15
19 [AS 05.15.210(15)] is required to be considered a qualified
20 organization;

21 * Sec. 21. AS 14.07.058(f) is repealed.

22 * Sec. 22. AS 14.17.140(b) is amended to read:

23 (b) Motor vehicles subject to the motor vehicle registration tax
24 under AS 28.10.431 [AS 28.10.255] shall be treated as taxable property
25 for purposes of (a) of this section.

26 * Sec. 23. AS 14.20.420(a) is amended to read:

27 (a) The term of office for each member of the commission is
28 three years and until a successor is appointed [, EXCEPT THAT MEMBERS
29 OF THE FIRST COMMISSION SHALL BE APPOINTED AS FOLLOWS: THREE MEMBERS

1 FOR ONE YEAR, THREE MEMBERS FOR TWO YEARS, AND THREE MEMBERS FOR THREE
2 YEARS. MEMBERS OF THE FIRST COMMISSION SHALL DRAW BY LOT FOR THE
3 INITIAL TERM OF APPOINTMENT].

4 * Sec. 24. AS 14.42.030(b) is amended to read:

5 (, The commission shall

6 (1) develop a comprehensive statewide plan for coordinated
7 postsecondary education in the state and serve as the state commission
8 on postsecondary education required under sec. 1202 of Title XII of
9 the Higher Education Act of 1965, as amended by the Education Amend-
10 ments of 1972 (PL 92-318, sec. 196; 86 Stat. 324);

11 (2) establish a state advisory council on community col-
12 leges and develop a comprehensive statewide plan for the expansion and
13 improvement of the community colleges under sec. 1001 of Title X of
14 the Higher Education Act of 1965, as amended by the Education Amend-
15 ments of 1972 (PL 92-318, sec. 186; 86 Stat. 312, 313);

16 (3) serve as the state agency required under secs. 105 of
17 Title I (Community Service and Continuing Education), 603 of Title VI
18 (Financial Assistance for Undergraduate Education), [AND] 704 of Title
19 VII (Construction of Academic Facilities), and Part B of Title IV
20 (Guaranteed Student Loan Program) of the Higher Education Act of 1965
21 (PL 89-329; 79 Stat. 1220, 1262; 20 U.S.C. 1005, 1123) as authorized
22 by sec. 1202(c) of Title XII of the Higher Education Act of 1965, as
23 amended by the Education Amendments of 1972 (PL 92-318, sec. 196; 86
24 Stat. 324);

25 (4) administer the provisions of AS 14.43.090 - 14.43.160
26 (student loan program), and serve as the student financial aid commit-
27 tee;

28 (5) administer the provisions of AS 14.48 (regulation of
29 postsecondary educational institutions);

1 (6) resolve any disputes that exist or arise under a con-
2 sortium or other cooperative agreement between institutions of public
3 and private higher education in the state.

4 * Sec. 25. AS 15.13.100 is amended to read:

5 Sec. 15.13.100. EXPENDITURES BEFORE FILING. A [NO] political
6 campaign expenditure may not be made or incurred by a person in an
7 election or by a person or group with the person's [HIS] knowledge and
8 on the person's [HIS] behalf before the date upon which the person [HE
9 OR SHE] files for nomination for the office which the person seeks,
10 except for personal travel expenses or for opinion surveys or polls.
11 These expenditures must [SHALL BE CHARGED AGAINST THE SPENDING LIMITA-
12 TION THAT APPLIES TO THE OFFICE FOR WHICH HE SUBSEQUENTLY FILES, AND
13 SHALL] be included in the first report required under this chapter
14 after filing for office.

15 * Sec. 26. AS 15.13.120(a)(2) is amended to read:

16 (2) making a campaign contribution that [OR EXPENDITURE
17 WHICH] exceeds the limitations of AS 15.13.070 [AS 15.13.070(f)].

18 * Sec. 27. AS 16.05.390(b) is amended to read:

19 (b) Each agent authorized to sell licenses or tags under AS 16.-
20 05.380 shall, as directed by the commissioner of revenue, transmit the
21 proceeds from the sales of licenses and tags, except the amount autho-
22 rized to be retained, together with a report of the sales, to the
23 commissioner for deposit in the fish and game fund or the general
24 fund. [FEES IMPOSED UNDER AS 16.05.340(e) SHALL BE COLLECTED AND
25 TRANSMITTED IN THE SAME MANNER.]

26 * Sec. 28. AS 16.05.430(a) is amended to read:

27 (a) A person who violates AS 16.05.330 - 16.05.420 or a regula-
28 tion adopted under AS 16.05.330 - 16.05.420 is guilty of a misdemeanor
29 and upon conviction is punishable by a fine of not more than \$1,000,

1 or by imprisonment for not more than six months, or by both.

2 * Sec. 29. AS 16.05.860 is amended to read:

3 Sec. 16.05.860. PENALTY FOR VIOLATING FISHWAY AND HATCHERY
4 REQUIREMENTS. (a) The owner of a dam or obstruction who fails to
5 comply with AS 16.05.840 or 16.05.850 or a regulation adopted under
6 AS 16.05.840 or 16.05.850 within a reasonable time specified by writ-
7 ten notice from the commissioner is guilty of a misdemeanor, and is
8 punishable by a fine of not more than \$1,000. Each day the owner
9 fails to comply constitutes a separate offense.

10 (b) In addition to the fine, the dam or other obstruction
11 managed, controlled, or owned by a person violating AS 16.05.840 or
12 16.05.850 or a regulation adopted under AS 16.05.840 or 16.05.850 is a
13 public nuisance and is subject to abatement.

14 * Sec. 30. AS 16.05.925 is amended to read:

15 Sec. 16.05.925. PENALTY FOR VIOLATIONS. Except as provided in
16 AS 16.05.430, 16.05.720, 16.05.831, and 16.05.860, a [A] person who
17 violates AS 16.05.920, or a regulation adopted under this chapter or
18 AS 16.20, is guilty of a class A misdemeanor. [HOWEVER, A PERSON WHO
19 VIOLATES A REGULATION ADOPTED UNDER THIS CHAPTER FOR THE REGULATION OF
20 COMMERCIAL FISHERIES IS SUBJECT TO THE PENALTIES SET OUT IN AS 16.05.-
21 720.]

22 * Sec. 31. AS 16.10.470(b) is amended to read:

23 (b) A person who holds a permit for the operation of a salmon
24 hatchery under AS 16.10.400 - 16.10.470 and each regional association
25 levying a voluntary [ROYALTY] assessment under AS 16.10.540 [AS 16.-
26 10.530] shall submit an annual financial report to the Department of
27 Commerce and Economic Development on a form to be provided by the
28 Department of Commerce and Economic Development.

29 * Sec. 32. AS 16.10.475 is repealed.

1 * Sec. 33. AS 16.10.540 is amended to read:

2 Sec. 16.10.540. VOLUNTARY ASSESSMENT ON SALE OF SALMON. (a) An
3 [IN PLACE OF OR IN ADDITION TO AN ASSESSMENT LEVIED UNDER AS 16.10.-
4 530, AN] association of persons who hold entry permits under AS 16.43,
5 which consists of at least 51 percent of the persons holding entry
6 permits and actively participating in a fishery to be benefited by a
7 hatchery program, may levy and collect an assessment from among its
8 members for the purpose of securing and repaying a loan made under
9 AS 16.10.510.

10 (b) Upon satisfactory demonstration to the commissioner that an
11 assessment levied under this section may reasonably be relied upon to
12 secure and repay a loan to be made under AS 16.10.510, the commis-
13 sioner may make the loan [WITHOUT REQUIRING AN ASSESSMENT UNDER
14 AS 16.10.530].

15 (c) [IF AN ASSESSMENT MADE UNDER THIS SECTION FAILS TO SATISFY
16 THE PAYMENTS REQUIRED ON THE PRINCIPAL AND INTEREST DUE ON THE LOAN
17 THE COMMISSIONER MAY NEGOTIATE WITH THE REGIONAL ASSOCIATION TO LEVY
18 AN ASSESSMENT UNDER AS 16.10.530.]

19 * Sec. 34. AS 16.30.030(3) is repealed.

20 * Sec. 35. AS 16.43.030(a) is amended to read:

21 (a) The members of the commission shall be appointed for terms
22 of four years. [INITIAL APPOINTMENTS SHALL BE AS FOLLOWS: ONE MEMBER
23 FOR TWO YEARS, ONE MEMBER FOR THREE YEARS, AND ONE MEMBER FOR FOUR
24 YEARS.]

25 * Sec. 36. AS 16.43.182 is repealed.

26 * Sec. 37. AS 16.43.980(b) is repealed.

27 * Sec. 38. AS 18.55.570(c) is amended to read:

28 (c) Bonds and notes of the authority issued under AS 18.55.480 -
29 18.55.960 shall be authorized by its resolution and may be issued in

1 one or more series and shall bear the date or dates, be payable upon
2 demand or mature at the time or times, bear interest at the rate or
3 rates provided [FOR BONDS AND NOTES OF THE AUTHORITY UNDER AS 18.55.-
4 190], be in the denomination or denominations, be in the form either
5 coupon or registered, carry the conversion or registration privileges,
6 have the rank or priority, be executed in the manner, be payable in
7 the medium of payment, at the place or places, and be subject to the
8 terms of redemption, with or without premium, which the resolution,
9 its trust indenture or mortgage provides.

10 * Sec. 39. AS 18.56.900(9) is amended to read:

11 (9) "mortgage" or "mortgage loan" means a mortgage loan for
12 residential housing insured or guaranteed by the United States or an
13 instrumentality of the United States or for which there is a commit-
14 ment by the United States or an instrumentality of the United States
15 to insure or guarantee such a mortgage, or if not so insured or guar-
16 anteed or if there is no such commitment, that is [WHICH THE CORPO-
17 RATION DETERMINES MEETS THE CONDITIONS DESCRIBED IN AS 18.56.100(k) OR
18 WHICH SHALL BE] secured upon such terms and conditions as the corpo-
19 ration considers necessary or practicable to insure all repayments;

20 * Sec. 40. AS 18.67.101 is amended to read:

21 Sec. 18.67.101. INCIDENTS AND OFFENSES TO WHICH AS 18.67.010 -
22 18.67.180 APPLY. The board may order the payment of compensation in
23 accordance with the provisions of this chapter for personal injury or
24 death that resulted from

25 (1) an attempt on the part of the applicant to prevent the
26 commission of crime, or to apprehend a suspected criminal, or aiding
27 or attempting to aid a police officer to do so, or aiding a victim of
28 crime; or

29 (2) the commission or attempt on the part of one other than

1 the applicant to commit any of the following offenses: murder in any
2 degree, manslaughter, criminally negligent homicide, assault in the
3 first or second degree, kidnapping, sexual assault in any degree,
4 sexual abuse of a minor, robbery in any degree, [CONTRIBUTING TO THE
5 DELINQUENCY OF A MINOR UNDER AS 11.51.130(a)(4),] threats to do bodily
6 harm, or driving while intoxicated or another crime resulting from the
7 operation of a motor vehicle, boat, or airplane when the offender is
8 intoxicated.

9 * Sec. 41. AS 21.09.210(b) is amended to read:

10 (b) Each insurer, and each formerly authorized insurer with
11 respect to premiums received while an authorized insurer in this
12 state, shall pay tax on the total direct premium income received
13 during the year ending on the preceding December 31 and paid for the
14 insurance of property or risks resident or located in the state other
15 than wet marine and transportation insurance, after deducting from the
16 total direct premium income the applicable cancellations, returned
17 premiums, the unabsorbed portion of any deposit premium, all policy
18 dividends, unabsorbed premiums refunded to policyholders, refunds,
19 savings, savings coupons and other similar returns paid or credited to
20 policyholders with respect to their policies. No deductions may be
21 made of cash surrender value of policies. Considerations received on
22 annuity contracts are not included in the direct premium income and
23 are not subject to tax. The tax shall be paid to the director annual-
24 ly before April 1, and [, EXCEPT AS PROVIDED IN AS 21.69.390(c),] is
25 computed at the rate of

26 (1) for domestic and foreign insurers, except hospital and
27 medical service corporations, 2.7 percent;

28 (2) for hospital and medical service corporations, six
29 percent of their gross premiums less claims paid.

1 * Sec. 42. AS 21.69.390(c) is repealed.

2 * Sec. 43. The revisor of statutes shall substitute "director" for
3 "commissioner" where the latter appears in the following provisions of
4 AS 21.80 (Alaska Guaranty Association Act): AS 21.80.050(a) and (b);
5 21.80.060(a)(5) and (6); 21.80.070(a), (c)(7) and (8), and (d); 21.80.080;
6 21.80.110; 21.80.120; 21.80.150; and 21.80.170(a) and (b).

7 * Sec. 44. AS 21.80.170(c) is amended to read:

8 (c) If the operation of the Alaska Insurance Guaranty Associa-
9 tion is terminated as to all kinds of insurance otherwise within its
10 scope, the association, as soon as possible thereafter, shall distrib-
11 ute the balance of money and assets remaining after discharge of the
12 functions of the association with respect to prior insurer insol-
13 vencies not covered by the other plan, together with related expenses,
14 to the insurers which are then writing in this state policies of the
15 kinds of insurance covered by this chapter and which had made payments
16 to the association, pro rata upon the basis of the aggregate of the
17 payments made by the respective insurers during the period of five
18 years next preceding the date of the termination order. Upon comple-
19 tion of this distribution with respect to all of the kinds of insur-
20 ance covered by this chapter, the director shall certify that fact to
21 the legislature together with the director's recommendations for the
22 amendment or repeal of this chapter [SHALL BE CONSIDERED TO HAVE
23 EXPIRED].

24 * Sec. 45. AS 21.80.180(5) is amended to read:

25 (5) "insolvent insurer" means an insurer

26 (A) authorized to transact insurance in this state,
27 except an assessable reciprocal insurer formed by and insuring
28 only municipalities or nonprofit public utilities, a reciprocal
29 insurer formed under AS 21.75 to provide marine insurance, a

joint insurance arrangement formed under AS 21.76, and the Medical Indemnity Corporation of Alaska, [AND THE HEALTH CARE PROVIDERS JOINT UNDERWRITING ASSOCIATION ESTABLISHED UNDER AS 21.-88,] either at the time the policy was issued or when the insured event occurred, and

(B) determined to be insolvent by a court of competent jurisdiction;

* Sec. 46. AS 21.80.180(6) is amended to read:

(6) "member insurer" means a person, except an assessable reciprocal insurer formed by and insuring only municipalities or nonprofit public utilities, a reciprocal insurer formed under AS 21.75 to provide marine insurance, a joint insurance arrangement formed under AS 21.76, and the Medical Indemnity Corporation of Alaska, [AND THE HEALTH CARE PROVIDERS JOINT UNDERWRITING ASSOCIATION ESTABLISHED UNDER AS 21.88,] who

(A) writes insurance to which this chapter applies under AS 21.80.020 including the exchange of reciprocal or inter-insurance contracts, and

(B) is licensed to transact insurance in the state;

* Sec. 47. AS 22.15.240(c) and 22.15.240(d) are repealed.

* Sec. 48. AS 24.45.116 is amended to read:

Sec. 24.45.116. DISCLOSURE OF CONTRIBUTIONS. A [BEFORE A CIVIC LEAGUE OR ORGANIZATION MAY BE ELIGIBLE FOR THE BENEFITS OF AS 43.20.-031(f), IT MUST AGREE TO COMPLY WITH THE REQUIREMENTS OF THIS SECTION. THE] civic league or organization shall report the total amount of contributions received for the reporting period and for any contribution over \$100, the name of the contributor and the amount contributed. The civic league or organization may establish a separate fund to account for receipts and expenditures arising out of activities to

1 influence legislative action. Reports shall be made on a form pro-
2 vided by the commission on February 10, April 25, and July 10 of each
3 year, listing contributions received during the period that ended 10
4 days earlier.

5 * Sec. 49. AS 29.10.200(43) is amended to read:

6 (43) AS 29.45.700(d) (sales and use tax) [AS 29.45.700(a)
7 (POWER OF LEVY)]

8 * Sec. 50. AS 29.45.230(e) is amended to read:

9 (e) In this section "disaster" means a major disaster declared
10 by the President of the United States under [THE PROVISIONS OF 42
11 U.S.C. SEC. 1855 - 1855g (FEDERAL DISASTER ACT OF 1950), OR OTHER]
12 federal law [,] or a disaster declared by the governor under AS 26.-
13 23.010 - 26.23.110.

14 * Sec. 51. AS 29.45.700(a) is amended to read:

15 (a) A city in a borough that levies and collects areawide sales
16 and use taxes may levy sales and use taxes on all sources taxed by the
17 borough in the manner provided for boroughs. Except as provided in
18 (d) of this section, the [THE] assembly may by ordinance authorize a
19 city to levy and collect sales and use taxes on other sources [EXCEPT
20 PURCHASES MADE WITH FOOD COUPONS, FOOD STAMPS, OR OTHER TYPE OF CER-
21 TIFICATE ISSUED UNDER 7 U.S.C. 2011 - 2025 (FOOD STAMP ACT). THIS
22 SUBSECTION APPLIED TO HOME RULE AND GENERAL LAW MUNICIPALITIES].

23 * Sec. 52. AS 29.45.700 is amended by adding a new subsection to read:

24 (d) A city that levies and collects sales and use taxes under
25 (a) of this section may not levy and collect a sales tax on a purchase
26 made with food coupons, food stamps, or other type of certificate
27 issued under 7 U.S.C. 2011 - 2025 (Food Stamp Act). This subsection
28 applies to home rule and general law municipalities.

29 * Sec. 53. Sections 49, 51, and 52 of this Act are retroactive to

1 October 1, 1986.

2 * Sec. 54. AS 33.30 is amended by adding a new section to read:

3 Sec. 33.30.026. CONTRACTS. Contracting for services under this
4 chapter is governed by AS 36.30 (State Procurement Code).

5 * Sec. 55. AS 33.30.031(c) is amended to read:

6 (c) Notwithstanding AS 36.30.300 [AS 37.05.230(1)(B)], an agree-
7 ment with a private agency to provide necessary facilities under (a)
8 of this section must be based on competitive bids.

9 * Sec. 56. AS 35.15.060 is repealed.

10 * Sec. 57. AS 35.27.030(1) and AS 35.30.040(1) are repealed.

11 * Sec. 58. AS 36.25.020(c) is amended to read:

12 (c) A suit brought under this section shall be brought in the
13 name of the state or the political subdivision of the state for the
14 use of the person suing in the [SUPERIOR] court with jurisdiction. A
15 suit under this section is subject to AS 08.18.151. A [NO] suit may
16 not be started after the expiration of one year after the date of
17 final settlement of the contract. The state or political subdivision
18 of the state is not liable for costs or expenses of the suit.

19 * Sec. 59. AS 36.30.730 is amended by adding a new subsection to read:

20 (f) The commissioner shall separately account for fees collected
21 under (c) and (d) of this section and deposited in the general fund.
22 The annual estimated balance in the account may be used by the legis-
23 lature to make appropriations to the department to carry out the
24 purposes of (c) and (d) of this section.

25 * Sec. 60. AS 36.30.900 is amended to read:

26 Sec. 36.30.900. PREFERENCE FOR ALASKA PRODUCTS. This chapter
27 does not modify, amend, or alter AS 36.15.010 and 36.15.020 regarding
28 preference for Alaska forest products, or AS 36.15.050 and 36.15.060
29 regarding preference for Alaska agricultural and fisheries products

1 [AS 36.20.010 REGARDING PREFERENCE TO PRODUCERS OR DEALERS IN ALASKA]
2 except as provided in AS 36.30.170(b) and (c).

3 * Sec. 61. AS 36.90.050(b) is amended to read:

4 (b) The competitive bid provisions of AS 36.30 [AS 37.05.230 AND
5 THE COMPETITIVE BIDDING PROVISIONS OF ANY OTHER LAW] do not apply to a
6 contract for the maintenance or repair of a marine vessel owned by the
7 state if the contract is awarded to a facility in the state.

8 * Sec. 62. AS 37.05.157, 37.05.158, and AS 37.07.062(c)(4) are re-
9 pealed.

10 * Sec. 63. AS 37.10.088(b) is amended to read:

11 (b) The [UNTIL JUNE 30, 1980, THE TOTAL OF ADVANCES IN ANY
12 FISCAL YEAR MAY NOT EXCEED 20 PER CENT OF THE TOTAL OF GRANTS AND
13 CONTRACTS FROM FEDERAL AND PRIVATE SOURCES APPROPRIATED TO THE UNIVER-
14 SITY FOR THAT FISCAL YEAR. AFTER JUNE 30, 1980, THE] total of ad-
15 vances in a [ANY] fiscal year may not exceed 10 percent of the total
16 of grants and contracts from federal and private sources appropriated
17 to the university for that fiscal year. The amounts advanced in a
18 [ANY] fiscal year shall be repaid in full to the department within 120
19 days following the close of that fiscal year. If the repayment is not
20 made on a timely basis, the department may withhold amounts due from
21 state fund appropriations for the university.

22 * Sec. 64. AS 37.20.040 is repealed.

23 * Sec. 65. AS 37.25.030 is repealed.

24 * Sec. 66. AS 38.09.100 is amended to read:

25 Sec. 38.09.100. LESSEES OF REMOTE PARCELS. (a) A lessee of a
26 remote parcel under former AS 38.05.077 may elect to obtain title to
27 the remote parcel under AS 38.09.050. If a lessee of a remote parcel
28 elects to obtain title under AS 38.09.050, July 28, 1983, shall be
29 considered the date of the issuance of the homestead entry permit.

1 (b) Except as provided in (a) of this section, nothing in
2 this chapter affects the rights and obligations of lessees of remote
3 parcels under former AS 38.05.077.

4 * Sec. 67. AS 39.05.060(a)(6) is repealed.

5 * Sec. 68. AS 39.05.100(a) is amended to read:

6 (a) A person appointed to a board or commission of the state
7 government [,] shall be and have been before the last general elec-
8 tion, (1) a registered voter in the state, if the appointment is made
9 at large or (2) a registered voter from the judicial district, if the
10 appointment is made from a specific judicial district. The student
11 member of the Board of Regents of the University of Alaska appointed
12 under AS 14.40.150(b) and the student member of the Alaska Commission
13 on Postsecondary Education appointed under AS 14.42.015(e) are exempt
14 from the requirement of this subsection if the member was not old
15 enough to be a registered voter in the last general election.

16 * Sec. 69. AS 39.25.110(11)(C) and AS 39.50.200(b)(43) are repealed.

17 * Sec. 70. AS 43.05.210 is repealed.

18 * Sec. 71. AS 43.70.020(b) is amended to read:

19 (b) Application for a renewal of a license and payment of the
20 annual [INITIAL] fee under AS 43.70.030 shall be made before Febru-
21 ary 1 of each year.

22 * Sec. 72. AS 43.70.030(d), 43.70.040, and 43.70.110(2) and (3) are
23 repealed.

24 * Sec. 73. AS 43.70.090 is amended to read:

25 Sec. 43.70.090. REGULATIONS. The department may adopt regula-
26 tions necessary to determine and collect the fees imposed by this
27 chapter [AND MAY ADOPT REGULATIONS DEFINING THE NECESSARY METHODS OF
28 COMBINATION AND APPORTIONMENT FOR MULTISTATE FINANCIAL INSTITUTIONS
29 REQUIRED TO FILE UNDER THIS CHAPTER].

1 * Sec. 74. AS 43.80.015(b) is amended to read:

2 (b) The receipt of land or an interest in it under the federal
3 Act or of cash in order to equalize the values of property exchanged
4 under sec. 22(f) of that Act or AS 38.50 [AS 38.95.060] is not subject
5 to any form of state or local taxation. The basis for computing gain
6 or loss on subsequent sale or other disposition of this land or inter-
7 est in land for purposes of a state or local tax imposed on or mea-
8 sured by income is the fair value of the land or interest in land at
9 the time of receipt.

10 * Sec. 75. AS 43.80.015(c) is amended to read:

11 (c) A real property interest conveyed under the federal Act,
12 AS 38.50, or AS 38.95.050 [OR 38.95.060], including land received in
13 an exchange under sec. 22(f) of the federal Act or AS 38.50 [AS 38.-
14 95.060], to a Native individual or corporation incorporated under
15 Alaska law pursuant to the federal Act, which interest is not devel-
16 oped or leased to third parties, is exempt from state and local real
17 property taxes and local assessments until December 18, 1991. How-
18 ever, municipal taxes, local real property taxes, or local assessments
19 may, under the laws of the state, be imposed upon leased or developed
20 real property within the jurisdiction of any governmental unit or-
21 ganized under the laws of the state. Easements, rights-of-way, lease-
22 holds, and similar interests in real property may be taxed in accor-
23 dance with state or local law. All rents, royalties, profits, and
24 other revenues or proceeds derived from property interests are taxable
25 to the same extent as these revenues or proceeds are taxable when
26 received by a non-native individual or corporation. In sec. 21(d) of
27 the federal Act, the exemption of real property interests from local
28 real property taxes includes exemption from local assessments and
29 extends to land received in an exchange under sec. 22(f) of the

1 federal Act or AS 38.50 [AS 38.95.060].

2 * Sec. 76. AS 44.62.175(a)(4) is amended to read:

3 (4) notices of state agency requests for proposals issued
4 under AS 18.55.255, 18.55.320; AS 36.30.210; AS 37.05.316; AS 38.05.-
5 120; and AS 43.40.010;

6 * Sec. 77. AS 44.62.330(a)(46) is repealed.

7 * Sec. 78. AS 45.55.040(b) is amended to read:

8 (b) The administrator may by regulation or order require an
9 applicant for initial registration to publish an announcement of the
10 application in one or more specified newspapers published in this
11 state. If no denial order is in effect and no proceeding is pending
12 under AS 45.55.060, registration becomes effective at noon on the 30th
13 day after an application is filed [, EXCEPT THAT REGISTRATION BECOMES
14 EFFECTIVE UPON FILING OF THE APPLICATION BY ANY OF THE PERSONS SUBJECT
15 TO THIS CHAPTER WHO WERE DOING BUSINESS IN THIS STATE ON MAY 9, 1959].
16 The administrator may by regulation or order specify an earlier effec-
17 tive date, and the administrator may by order defer the effective date
18 until noon of the 30th day after the filing of an amendment.

19 * Sec. 79. AS 45.55.090(b) is amended to read:

20 (b) A registration statement under this section shall contain
21 the following information and be accompanied by the following docu-
22 ments in addition to the information specified in AS 45.55.110(c) and
23 the consent to service of process required by AS 45.55.260(g):

24 (1) one copy [THREE COPIES] of the latest form of prospec-
25 tus filed under the Securities Act of 1933;

26 (2) if the administrator requires, copies of the articles
27 of incorporation and bylaws (or their substantial equivalent) cur-
28 rently in effect, a copy of an agreement with or among underwriters, a
29 copy of an indenture or other instrument governing the issuance of the

1 security to be registered, and a specimen or copy of the security;

2 (3) if the administrator requests, any other information,
3 or copies of any other documents, filed under the Securities Act of
4 1933; and

5 (4) an undertaking to forward all future amendments to the
6 federal prospectus, other than an amendment which merely delays the
7 effective date of the registration statement, promptly and in any
8 event not later than the first business day after the day they are
9 forwarded to or filed with the Securities and Exchange Commission,
10 whichever first occurs.

11 * Sec. 80. AS 45.88.030(d) is amended to read:

12 (d) All principal and interest payments on loans made under this
13 chapter shall be paid into the alternative [TECHNOLOGY AND] energy
14 revolving loan fund.

15 * Sec. 81. AS 45.88.030(e) is amended to read:

16 (e) [THE RATE OF INTEREST FOR A LOAN UNDER THIS SECTION, OTHER
17 THAN A LOAN FOR AN ALTERNATIVE ENERGY SYSTEM, MAY NOT EXCEED NINE AND
18 ONE-HALF PERCENT A YEAR ON THE UNPAID BALANCE OF THE LOAN.] The rate
19 of interest for a loan for an alternative energy system is five per-
20 cent for the first \$15,000 of the loan and 15 percent for the amount
21 of the loan that exceeds \$15,000.

22 * Sec. 82. AS 46.15.200 is amended to read:

23 Sec. 46.15.200. TERM OF OFFICE. The term of office for members
24 of the board is four years. [THE FIRST MEMBERS APPOINTED SERVE AS
25 FOLLOWS: TWO MEMBERS SERVE FOR ONE YEAR, THREE FOR TWO YEARS AND TWO
26 FOR THREE YEARS.] If a vacancy occurs, the governor shall fill it by
27 appointment for the unexpired term. The appointment shall be submit-
28 ted to the legislature for confirmation at the next regular or special
29 session.

1 * Sec. 83. Section 65, ch. 106, SLA 1986 is amended to read:

2 Sec. 65. REPORT. By December 1, 1988, the commissioner of
3 administration and the commissioner of transportation and public
4 facilities shall report to the legislature concerning procurements by
5 state agencies during fiscal year 1988 [1987]. The report must in-
6 clude

7 (1) a summary of the information required under AS 36.30.-
8 510 [THE RECORDS PREPARED UNDER AS 36.30.510(4)];

9 (2) recommendations for changes in AS 36.30 or other laws
10 based on implementation of AS 36.30 in those 12 months; and

11 (3) a description of any matters that involved litigation
12 concerning AS 36.30 during those 12 months.

13 * Sec. 84. Sections 54, 55, 59 - 61, 76, and 83 of this Act take effect
14 on the effective date of sec. 2, ch. 106, SLA 1986.

15 * Sec. 85. Except for secs. 54, 55, 59 - 61, 76, and 83, this Act takes
16 effect immediately under AS 01.10.070(c).

STATE OF ALASKA
THE LEGISLATURE

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

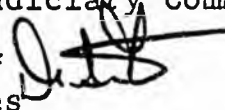
LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 30, 1987

SUBJECT: HCS CSSB 107(Judiciary)

TO: Representative John Sund
Chairman, House Judiciary Committee

FROM: David R. Dierdorff 
Revisor of Statutes

This memorandum discusses the draft committee substitute prepared for the consideration of the Judiciary Committee. The draft incorporates my additions and corrections and the amendments suggested by Representative Gruenberg and staff.

Summary of Changes

The draft contains 17 new sections. They are: 1, 2, 25, 31, 33, 38-42, 44-46, 48, 67, 74, and 75. One section that was in CSSB 107(Jud) has been deleted. That was sec. 34. Its provisions have been included in sec. 47 of the draft HCS.

In addition, six sections have been modified. Those sections are: sec. 7, which was sec. 5 in CSSB 107(Jud); sec. 26, which was sec. 23; sec. 47, which was sec. 33; sec. 58, which was sec. 44; sec. 83, which was sec. 66; and former sec. 67, which is now secs. 84 and 85.

Finally, one section was split into two sections for technical reasons. Former sec. 28 is now in secs. 32 and 34.

Summary of Effect

To assist you in understanding the draft, I have summarized the contents by grouping sections that have similar effects.

Sections that delete obsolete provisions:

The following sections delete or repeal provisions that have become obsolete either through the passage of time or other legislative action: 1, 2, 6, 8, 10-13, 21, 23, 25-27, 31,

33, 35-42, 45, 46, 48, 50, 56, 63-65, 67, 69, 72, 73, 78 and 80-82.

Sections that update obsolete provisions:

The following sections substitute new provisions for provisions that are obsolete or otherwise outdated, and make conforming changes in related provisions: 3, 5, 7, 9, 18-20, 22, 44, 55, 60, 61, 66, 71, 74, and 75.

Sections that repeal redundant provisions:

The following sections repeal provisions that are duplicated by other applicable law, and make conforming changes in related provisions: 14-17, 32, 34, and 57.

Sections that eliminate conflicts with other laws:

The following sections resolve conflicts with other statutes, the constitution, court decisions, opinions of the attorney general, or the Rules of Court: 24, 47, 58, 62, 68, 70, and 79.

Sections that correct errors or oversights in drafting:

The following sections correct errors or oversights in drafting, or make conforming amendments to harmonize laws passed during the same legislative session that could not be harmonized editorially: 28-30, 43, 49, 51-54, 59, 76, 77, and 83.

Sectional Analysis

Section 1. The section referred to, and proposed for deletion, was repealed by initiative in 1984.

Sec. 2. The statutory references proposed for deletion are to provisions repealed in 1978.

Sec. 3. Section 3 of the bill corrects a statutory reference and makes other form and style changes in AS 06.30.720. AS 06.30.660 was repealed by sec. 54, ch. 169, SLA 1978. The same 1978 Act, in sec. 42, enacted AS 06.01.030, with substantially the same provisions as former AS 06.30.660. Requested by the Division of Banking and Securities.

Sec. 4. All of the former paragraphs of the two subsections proposed for repeal (relating to sunset review of certain agencies) have been repealed, leaving only irrelevant introductory text in the subsections.

Sec. 5. See analysis of sec. 7.

Sec. 6. AS 08.04.250 was repealed in 1976, making the reference obsolete.

Sec. 7. This section and sec. 5 conform the usages to current style for defined terms. The term "live permit" is used in several sections of AS 08.04, but the only definition has been the archaic reference in AS 08.04.500(a), proposed for amendment in sec. 5. The definition proposed for enactment in sec. 7 replaces the archaic reference.

Sec. 8. The deleted material is obsolete.

Sec. 9. The federal law which defined "motorboats" for the purpose of AS 08.62.180 has been repealed. The proposed amendment substitutes the substance of the former federal law.

Secs. 10 - 13. AS 08.64.200(i) was repealed in 1983, making the references obsolete.

Sec. 14. The definition in the section proposed for repeal duplicates a definition of the same term ("commission") in AS 08.88.431.

Secs. 15 - 17. The section proposed for repeal in sec. 17, AS 09.17.090, was enacted in the "tort reform" bill last session (ch. 139, SLA 1986). It is identical to the existing provisions of AS 09.16.040, which was enacted in 1970 and is part of the Uniform Contribution among Tortfeasors Act. Because the enactment of AS 09.17.090 did not add anything to the substantive law of Alaska and because the state's courts have had several occasions to interpret and enforce the existing statute, it is recommended that the legislature repeal the new provision to avoid confusion in the future. (An earlier version of the tort reform bill would have repealed AS 09.16, making the enactment of AS 09.17.090 necessary.) Sections 15 and 16 make changes in AS 09.17.080(a) and (c) required if AS 09.17.090 is repealed.

Secs. 18 and 19. Sections 18 and 19 make changes to AS 09.38.115 to reflect changes made by the federal government in the timing of issuance of the Anchorage CPI and to clarify the mandate of AS 09.38.115(b). The change was requested by the Department of Labor. The change of date in AS 09.38.115(b) from July 1 to October 1 was requested by the Court System to ensure adequate lead time in the preparation of related forms and to allow the efficient utilization of existing form inventories.

Sec. 20. This section updates a part of the definition of "gambling enterprise" to include a reference to municipalities, which were added in 1982 to the entities that may be licensed under AS 05.15 to conduct certain gambling activities. The internal references are also updated to current style for such references.

Sec. 21. The subsection proposed for repeal is obsolete. It was operative only during 1976.

Sec. 22. AS 28.10.255 was repealed in 1978. The current provisions relating to the motor vehicle registration tax are found in AS 28.10.431, and this section proposes that the reference to those laws in AS 14.17.140(b) be updated.

Sec. 23. The material proposed for deletion is obsolete.

Sec. 24. An April 22, 1986, memo from Assistant Attorney General Gary Amendola to Assistant Attorney General Art Peterson discussed the authority of the Alaska Commission on Postsecondary Education to adopt regulations related to the Guaranteed Student Loan Program. The commission desired to adopt the regulations to implement its role as the state guaranty agency for the federal loans. The memo concluded that the commission has the implied authority to adopt the regulations, but urged that the authority be made express through an amendment to AS 14.42.030(b)(3). Section 24 of this draft would accomplish that.

Sec. 25. The proposed amendment to AS 15.13.100 deletes language related to the former expenditure limitations, which were held unconstitutional (and repealed in 1986). It also makes necessary substitutions for personal pronouns.

Sec. 26. The proposed amendment to AS 15.13.120(a)(2) deletes a reference to the former expenditure limitations and corrects an apparent error in a related statutory

reference by deleting a reference to a repealed subsection and substituting the correct reference to the provisions on contribution limitations.

Sec. 27. This section deletes a sentence that was rendered obsolete by the repeal of AS 16.05.340(e) in 1986. The repealed subsection had established additional fees for big game taken on a guided hunt.

Secs. 28 - 30. The amendments proposed by secs. 28 - 30 of the draft would correct an apparent oversight in ch. 132, SLA 1984. When enacting AS 16.05.925, the legislature intended to make uniform the penalty for violations of regulations adopted under the fish and game laws. However, the new provision failed to take into account the existence of certain specific penalties in AS 16.05.430, 16.05.831, and 16.05.860, with the result that the penalty for violating a regulation adopted under one of those sections would carry a stiffer penalty than a violation of the section itself. That result could not be legally enforced, of course, but the oversight leads to confusion and uncertainty. The proposed amendments assume that the legislature did not intend to impliedly repeal the referenced penalty provisions, but, rather, that the lesser penalties for certain sport hunting and fishing violations should remain. The problem was brought to our attention by Jim Parker, director of magistrate services for the Court System, and Karla Forsythe, staff counsel for the system.

Secs. 31 and 33. These sections update provisions to reflect the repeal of AS 16.10.530 in 1984. In sec. 32, the reference to the repealed assessment is replaced by a reference to the existing voluntary assessment. In sec. 33, the references are simply deleted.

Secs. 32 and 34. These provisions were formerly combined in sec. 28 of CSSB 107(Jud). The division into two sections is required to conform to the drafting manual. The sections repeal redundant definitions.

Sec. 35. The material proposed for deletion is obsolete, relating only to the initial appointments to the entry commission.

Sec. 36. The section proposed for repeal related to the personal income tax repealed in 1980. It provided that the

purchase of an entry permit is a deductible business expense under that tax. Should the legislature reinstate a personal income tax, the treatment of deductible expenses should be enacted within the tax laws rather than within the laws relating to state programs.

Sec. 37. The subsection proposed for repeal deals solely with a report that was to have been made to the legislature in 1975 and is now obsolete.

Sec. 38. AS 18.55.190 was repealed in 1977, making the reference to it obsolete.

Sec. 39. AS 18.56.100(k) was repealed in 1982, making the reference to it obsolete.

Sec. 40. AS 11.51.130(a)(4) was repealed in 1983. Conduct formerly prohibited by the repealed provision is presently prohibited under the sexual assault and sexual abuse of a minor statutes.

Secs. 41 and 42. Section 42 repeals a provision that was made obsolete by legislative action last year that established a uniform taxation rate for foreign and domestic insurers. Section 41 deletes a reference to the provision proposed for repeal in sec. 42.

Sec. 43. The Alaska Guaranty Association Act (AS 21.80), enacted in 1970, was based on a Model Act promulgated by the National Association of Insurance Commissioners. Because the title of the administrative official regulating insurance in almost every state is "commissioner," the Model Act used that term and Alaska enacted it without change. In Alaska, the corresponding official is the director of the division of insurance, reporting to the commissioner of commerce and economic development (see AS 21.06). Although the use of the term "commissioner" in AS 21.80 presents no substantive legal problems, because the commissioner of commerce and economic development has the authority to delegate all responsibility to the director, it does cause some confusion. The division of insurance requested that the change of name be proposed in the revisor's bill. Section 43 of the draft would accomplish the desired result.

Sec. 44. AS 21.80.170(c) contains an unusual, somewhat ambiguous provision that would cause AS 21.80 to "expire." The proposed amendment would replace that language with a

requirement that the director of the division of insurance notify the legislature upon the happening of certain events, and include with the report the director's recommendations as to the repeal or amendment of AS 21.80.

Secs. 45 and 46. AS 21.88.110 - 21.88.180, providing for the health care providers joint underwriting association, were repealed in 1978. These sections delete obsolete references to the association.

Sec. 47. Repeals two subsection that relate to appeals from district to superior courts. Subsection (c) conflicted with the Rules of Court governing the same subject, and because the Rules of Court supersede the statutes in these matters, the subcommittee recommended repealing the provision rather than amending it to refer to the Rules of Court as was done in the Senate. Subsection (d) was proposed for repeal in the Senate version because it added nothing to the law. It provided simply that "the supreme court shall prescribe further rules for the procedure for appeals from district court".

Sec. 48. AS 43.20.031(f) was repealed in 1980, making the reference to it obsolete.

Secs. 49 and 51 - 53. Chapter 38, SLA 1986, which was intended solely to exempt purchases made with food stamps from municipal sales and use taxes, amended AS 29.45.700(a) and made a related amendment to AS 29.10.200. Unfortunately, a drafting error in ch. 38 led to an unintended result. Instead of the narrow result contemplated by the legislature, and reflected in the title of CSHB 697 (HESS), the amended law could be construed to require a home rule city in a borough that levies and collects an areawide sales tax to levy and collect a sales or use tax only in a manner identical to that of the borough in which the city is located. The amendments proposed in secs. 49, 51 and 52 of this draft would correct the error. Section 53 of the draft would make the amendments retroactive to October 1, 1986, the effective date of ch. 38, SLA 1986. The amendments were requested by the Department of Community and Regional Affairs and the City of Ketchikan.

Sec. 50. The referenced federal law was repealed by P.L. 91-606, making the reference obsolete.

Sec. 54. As a part of the new procurement code, AS 33.30.050, dealing with medical services for prisoners, and AS 33.30.062,

dealing with privately operated correctional facilities, were amended to incorporate express provisions subjecting the covered activities to AS 36.30. In ch. 88, SLA 1986, the corrections code was substantially rewritten and AS 33.30.050 and 33.30.062 were repealed. The proposed addition of a section to AS 33.30 making contracting activities under AS 33.30 subject to AS 36.30 is probably not required as a matter of law (AS 36.30 governs all state contracting activities unless expressly excluded), but the section is proposed to carry out the legislature's intent in enacting the 1986 amendments to the two repealed sections.

Sec. 55. The section amends AS 33.30.031(c) to reflect the repeal of AS 37.05.230(1)(B) and the adoption of corresponding provisions (relating to sole source procurements) in AS 36.30. This would continue the requirement that contracts for confinement and care of prisoners must be competitively bid.

Sec. 56. The section proposed for repeal is obsolete, relating only to construction contracts entered into before April 1, 1957. It exempted those contracts from procedures enacted in 1957.

Sec. 57. The two provisions proposed for repeal are definitions of "department" that are redundant to a definition in AS 35.25.020 that applies to all of AS 35.

Sec. 58. In 1985, jurisdiction in actions involving contractors' bonds under AS 08.18 was transferred from the superior court to the district court (sec. 1, ch. 77, SLA 1985). The change proposed in the first sentence of AS 36.25.020 would give the district and superior courts jurisdiction, depending on the amount in controversy, over suits involving bonds posted under Alaska's "little Miller Act" by contractors on public projects. Thus, the amount sought by the plaintiff would determine whether the suit would be filed in district or superior court. The proposed amendment would also add language codifying the rule of State v. Tyonek Timber, Inc., 680 P.2d 1148 (1984), in which the supreme court held that a contractor or subcontractor suing under AS 36.25 is subject to the registration requirements of AS 08.18 and, consequently, the penalty provisions of AS 08.18.151. The amendments were suggested by the Court System.

Sec. 59. Adds a provision to the procurement code to conform to the program receipts Act (ch. 138, SLA 1986). A similar former provision had been amended by ch. 138, SLA 1986, but was repealed by ch. 106, SLA 1986.

Sec. 60. The section proposed for amendment was enacted as part of the new procurement code, but was derived from CSHB 679(SA), which was merged into the procurement bill. The proposed amendment would delete a reference to a provision repealed by the procurement Act and add a reference to similar provisions enacted by ch. 16, SLA 1986.

Sec. 61. The amendment conforms the subsection to the new procurement code, which repealed AS 37.05.230 and contains all of the relevant competitive bidding provisions of state law.

Sec. 62. The two sections in AS 37.05 that are proposed for repeal establish the reserve for capital outlay account and the reserve for energy facilities development account in the general fund. The paragraph in AS 37.07.062 proposed for repeal relates to the reserve for capital outlay account and needs to be repealed if the account is repealed. The attorney general has determined that both accounts violate the prohibition against dedicated funds contained in art. IX, sec. 7 of the state constitution. On the advice of the attorney general, no deposits have ever been made to the accounts, and neither has an outstanding balance.

Sec. 63. The material proposed for deletion is time-dated and now obsolete.

Sec. 64. The statute proposed for repeal, AS 37.20.040, is obsolete. The state's obligation to pay into the Alaska Native Fund under sec. 9 of ANCSA was extinguished when the state paid a total of \$500 million to the fund. The last payment was made under an appropriation in ch. 120, SLA 1980. The Department of Revenue requested the repeal.

Secs. 65 and 69. The provisions proposed for repeal were made obsolete by the repeal of the Alaska Energy Center last year.

Sec. 66. AS 38.05.077 was repealed when AS 38.09 was enacted. The two references to the repealed section should have been drafted to read as proposed by this amendment.

Sec. 67. The paragraph proposed for repeal was made obsolete by the repeal of the Tourism Advisory Board last year in ch. 97, SLA 1986.

Sec. 68. Without the amendment proposed by this section, it is arguable that a student member of the Board of Regents or the Commission on Postsecondary Education is not eligible to serve unless the student was old enough to have voted in the last general election. This is inconsistent with the laws creating the student positions, which have no age requirements for the student member appointees. The amendment was requested by the Department of Law.

Sec. 70. The repeal of AS 43.05.210 would eliminate an old dedication of certain federal mineral leasing revenues. The dedication was required by the federal law, which has since been amended to eliminate the required dedication. In any event, the state has never identified this dedicated revenue stream as a fund source in the budget process. The Department of Revenue requested the repeal.

Sec. 71. The amendment clarifies the language of AS 43.70.-020(b) to reflect changes made in the business license tax in 1978 and 1984.

Sec. 72. The provisions proposed for repeal were rendered obsolete by the repeal of AS 43.70.030(b) in 1984 and the change from a "gross receipts" tax to an annual license in 1978. All businesses now pay a flat \$25 per year business license fee.

Sec. 73. The material proposed for deletion was rendered obsolete by the repeal of AS 43.70.030(b) in 1984.

Secs. 74 and 75. AS 38.95.060 was repealed in 1976, when the legislature enacted AS 38.50 to cover the same subject. The two sections substitute references to AS 38.50 for the references to the repealed provision.

Sec. 76. This corrects an oversight in ch. 106, SLA 1986 (the procurement code) by listing RFP's issued under AS 36.30.210 among those actions that must be published in the Alaska Administrative Journal. Publication of the RFP's is required by AS 36.30.210(c) and 36.30.130.

Sec. 77. The Department of Commerce and Economic Development currently manages 11 different state loan programs, using identical procedures for all of the programs. The procedures include an administrative appeal process. See 3 AAC 77 - 87. When the Fisheries Enhancement Loan Program was established in 1976, the hearing provisions of the Administrative Procedure Act were made applicable to that loan program. None of the other 10 programs were included under the APA, and, in fact, DCED was not aware that the fisheries loan program was included until an assistant attorney general recently discovered the inclusion. Both DCED and the Department of Law believe that the 1976 inclusion was the result of an error rather than an intentional legislative decision. The repeal of AS 44.62.330(a)(46) as proposed in sec. 77 of the bill would remove this anomaly.

Sec. 78. The material proposed for deletion is obsolete.

Sec. 79. The amendment proposed by this section would conform the requirements of AS 45.55.090(b)(1) to those of AS 45.55.100(b)(12) (dealing with a closely related matter) and eliminate an unnecessary requirement. The amendment was requested by the division of banking, securities and corporations and the Department of Law.

Sec. 80. The deleted material is obsolete.

Sec. 81. The deleted material is obsolete.

Sec. 82. The material proposed for deletion is obsolete.

Sec. 83. The version of the procurement code that became law did not contain the paragraph (4) referenced in sec. 65(1) of ch. 106. The proposed amendment substitutes the substance of proposed AS 36.30.510(4), which was included in earlier versions of the procurement code bill, for the obsolete reference. The amendment also corrects an erroneous reference to fiscal year 1987.

Sec. 84. This section provides that the sections of the bill that either amend or reference AS 36.30 take effect when AS 36.30 takes effect. Under present law, that will be July 1, 1987, but there are at least two bills under consideration that would change that date. The balance of the bill is given an immediate effective date by sec. 85.

DRD:csh
c8/016

cc: Art Peterson
Department of Law

Karla Forsythe
Court System

STATE OF ALASKA THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

April 27, 1987

SUBJECT: Proposed Amendments to CSSB 107(Judiciary)

TO: Representative John Sund
Chairman, House Judiciary Committee

FROM: David R. Dierdorff
Revisor of Statutes

Following the initial hearing on CSSB 107(Judiciary) (the 1987 revisor's bill), your staff requested that I prepare an amendment that would add to the bill any "newly discovered" material. The enclosed amendment incorporates the proposed solutions for statutory problems identified after the original bill was introduced.

All but four of the 16 new sections deal with references to repealed provisions. Two of the new sections correct an oversight, one section amends an unusual provision that might lead to confusion as to whether a law had been repealed, and the last new section adds a special effective date for those sections of the bill related to the new procurement code.

Sectional Analysis

Section 1. The section referred to, and proposed for deletion, was repealed by initiative in 1984.

Sec. 2. The statutory references proposed for deletion are to provisions repealed in 1978.

Secs. 30 and 32. These sections update provisions to reflect the repeal of AS 16.10.530 in 1984. In sec. 30, the reference to the repealed assessment is replaced by a reference to the existing voluntary assessment. In sec. 32, the references are simply deleted.

Secs. 31 and 33. These provisions were formerly combined in sec. 28 of CSSB 107(Jud). The division into two sections is

Representative Sund
Page 2
April 27, 1987

required to conform to the drafting manual. The sections repeal redundant definitions.

Sec. 37. AS 18.55.190 was repealed in 1977.

Sec. 38. AS 18.56.100(k) was repealed in 1982.

Sec. 39. AS 11.51.130(a)(4) was repealed in 1983. Conduct formerly prohibited by the repealed provision is presently prohibited under the sexual assault and sexual abuse of a minor statutes.

Secs. 40 and 41. Section 41 repeals a provision that was made obsolete by legislative action last year that established a uniform taxation rate for foreign and domestic insurers. Section 40 deletes a reference to the repealed provision.

Sec. 43. AS 21.80.170(c) contains an unusual, somewhat ambiguous provision that would cause AS 21.80 to "expire." The proposed amendment would replace that language with a requirement that the director of the insurance division notify the legislature upon the happening of certain events, and include with the report the director's recommendations as to the repeal or amendment of AS 21.80.

Secs. 44 and 45. AS 21.88.110 - 21.88.180, providing for the health care providers joint underwriting association, were repealed in 1978.

Sec. 48. AS 43.20.031(f) was repealed in 1980. It may be more appropriate to repeal AS 24.45.116 than to amend it.

Secs. 73 and 74. AS 38.95.060 was repealed in 1976, when the legislature enacted AS 38.50 to cover the same subject. The two sections substitute references to AS 38.50 for the references to the repealed provision.

Sec. 83. This section provides that the sections of the bill that either amend or reference AS 36.30 take effect when AS 36.30 takes effect. Under present law, that will be July 1, 1987, but there are at least two bills under consideration that would change that date. The balance of the bill is given an immediate effective date.

DRD:lmb
M11/078
Enclosure

A M E N D M E N T

Offered in the HOUSE JUDICIARY COMMITTEE

TO: CSSB 107(Judiciary)

Page 1, following line 9:

Insert new bill sections to read:

"* Section 1. AS 04.16.010(c) is amended to read:

(c) A licensee, an agent, or employee may not permit a person to enter and a person may not enter premises licensed under this title between the hours of 5:00 a.m. and 8:00 a.m. each day. This subsection does not apply to common carriers [, AS DEFINED IN AS 42.10.-420(2),] or to an employee of the licensee who is on the premises, to prepare for the next day's business. A person may enter or remain on the premises of a bona fide restaurant or eating place licensed under this title to consume food or nonalcoholic beverages.

* Sec. 2. AS 06.25.085 is amended to read:

Sec. 06.25.085. APPLICATION OF GENERAL BANKING LAWS. The provisions of AS 06.05.005 - 06.05.085, 06.05.090 06.05.270, 06.05.307, 06.05.320 - 06.05.327, [06.05.405 - 06.05.425,] 06.05.440 - 06.05.445, 06.05.462, 06.05.465 - 06.05.510, [06.05.465 - 06.05.515] and 06.05.-525 - 06.05.545 apply to all trust companies engaged in any phase of the business of banking as that term is defined by AS 06.05.540(3) or AS 06.25.100."

Page 1, line 10:

Delete "* Section 1."

Insert "* Sec. 3."

Renumber succeeding bill sections accordingly.

Page 9, line 21:

Delete all material and insert new bill sections to read:

"* Sec. 30. AS 16.10.470(b) is amended to read:

(b) A person who holds a permit for the operation of a salmon hatchery under AS 16.10.400 - 16.10.470 and each regional association levying a voluntary [ROYALTY] assessment under AS 16.10.540 [AS 16.-10.530] shall submit an annual financial report to the Department of Commerce and Economic Development on a form to be provided by the Department of Commerce and Economic Development.

* Sec. 31. AS 16.10.475 is repealed.

* Sec. 32. AS 16.10.540 is amended to read:

Sec. 16.10.540. VOLUNTARY ASSESSMENT ON SALE OF SALMON. (a) An [IN PLACE OF OR IN ADDITION TO AN ASSESSMENT LEVIED UNDER AS 16.10.-530, AN] association of persons who hold entry permits under AS 16.43, which consists of at least 51 percent of the persons holding entry permits and actively participating in a fishery to be benefited by a hatchery program, may levy and collect an assessment from among its members for the purpose of securing and repaying a loan made under AS 16.10.510.

(b) Upon satisfactory demonstration to the commissioner that an assessment levied under this section may reasonably be relied upon to

secure and repay a loan to be made under AS 16.10.510, the commissioner may make the loan [WITHOUT REQUIRING AN ASSESSMENT UNDER AS 16.10.530].

(c) [IF AN ASSESSMENT MADE UNDER THIS SECTION FAILS TO SATISFY THE PAYMENTS REQUIRED ON THE PRINCIPAL AND INTEREST DUE ON THE LOAN THE COMMISSIONER MAY NEGOTIATE WITH THE REGIONAL ASSOCIATION TO LEVY AN ASSESSMENT UNDER AS 16.10.530.]

* Sec. 33. AS 16.30.030(3) is repealed."

Renumber succeeding bill sections accordingly.

Page 9, following line 28:

Insert new bill sections to read:

"* Sec. 37. AS 18.55.570(c) is amended to read:

(c) Bonds and notes of the authority issued under AS 18.55.480 - 18.55.960 shall be authorized by its resolution and may be issued in one or more series and shall bear the date or dates, be payable upon demand or mature at the time or times, bear interest at the rate or rates provided [FOR BONDS AND NOTES OF THE AUTHORITY UNDER AS 18.55.-190], be in the denomination or denominations, be in the form either coupon or registered, carry the conversion or registration privileges, have the rank or priority, be executed in the manner, be payable in the medium of payment, at the place or places, and be subject to the terms of redemption, with or without premium, which the resolution, its trust indenture or mortgage provides.

* Sec. 38. AS 18.56.900(9) is amended to read:

(9) "mortgage" or "mortgage loan" means a mortgage loan for residential housing insured or guaranteed by the United States or an instrumentality of the United States or for which there is a commitment by the United States or an instrumentality of the United States to insure or guarantee such a mortgage, or if not so insured or guaranteed or if there is no such commitment, that is [WHICH THE CORPORATION DETERMINES MEETS THE CONDITIONS DESCRIBED IN AS 18.56.100(k) OR WHICH SHALL BE] secured upon such terms and conditions as the corporation considers necessary or practicable to insure all repayments;

* Sec. 39. AS 18.67.101 is amended to read:

Sec. 18.67.101. INCIDENTS AND OFFENSES TO WHICH AS 18.67.010 - 18.67.180 APPLY. The board may order the payment of compensation in accordance with the provisions of this chapter for personal injury or death that resulted from

(1) an attempt on the part of the applicant to prevent the commission of crime, or to apprehend a suspected criminal, or aiding or attempting to aid a police officer to do so, or aiding a victim of crime; or

(2) the commission or attempt on the part of one other than the applicant to commit any of the following offenses: murder in any degree, manslaughter, criminally negligent homicide, assault in the first or second degree, kidnapping, sexual assault in any degree, sexual abuse of a minor, robbery in any degree, [CONTRIBUTING TO THE DELINQUENCY OF A MINOR UNDER AS 11.51.130(a)(4),] threats to do bodily harm, or driving while intoxicated or another crime resulting from the operation of a motor vehicle, boat, or airplane when the offender

is intoxicated.

* Sec. 40. AS 21.09.210(b) is amended to read:

(b) Each insurer, and each formerly authorized insurer with respect to premiums received while an authorized insurer in this state, shall pay tax on the total direct premium income received during the year ending on the preceding December 31 and paid for the insurance of property or risks resident or located in the state other than wet marine and transportation insurance, after deducting from the total direct premium income the applicable cancellations, returned premiums, the unabsorbed portion of any deposit premium, all policy dividends, unabsorbed premiums refunded to policyholders, refunds, savings, savings coupons and other similar returns paid or credited to policyholders with respect to their policies. No deductions may be made of cash surrender value of policies. Considerations received on annuity contracts are not included in the direct premium income and are not subject to tax. The tax shall be paid to the director annually before April 1, and [, EXCEPT AS PROVIDED IN AS 21.69.390(c),] is computed at the rate of

(1) for domestic and foreign insurers, except hospital and medical service corporations, 2.7 percent;

(2) for hospital and medical service corporations, six percent of their gross premiums less claims paid.

* Sec. 41. AS 21.69.390(c) is repealed."

Renumber succeeding bill section accordingly.

Page 10, following line 4:

Insert new bill sections to read:

"* Sec. 43. AS 21.80.170(c) is amended to read:

(c) If the operation of the Alaska Insurance Guaranty Association is terminated as to all kinds of insurance otherwise within its scope, the association, as soon as possible thereafter, shall distribute the balance of money and assets remaining after discharge of the functions of the association with respect to prior insurer insolvencies not covered by the other plan, together with related expenses, to the insurers which are then writing in this state policies of the kinds of insurance covered by this chapter and which had made payments to the association, pro rata upon the basis of the aggregate of the payments made by the respective insurers during the period of five years next preceding the date of the termination order. Upon completion of this distribution with respect to all of the kinds of insurance covered by this chapter, the director shall certify that fact to the legislature together with the director's recommendations for the amendment or repeal of this chapter [SHALL BE CONSIDERED TO HAVE EXPIRED].

* Sec. 44. AS 21.80.180(5) is amended to read:

(5) "insolvent insurer" means an insurer

(A) authorized to transact insurance in this state, except an assessable reciprocal insurer formed by and insuring only municipalities or nonprofit public utilities, a reciprocal insurer formed under AS 21.75 to provide marine insurance, a joint insurance arrangement formed under AS 21.76, and the

Medical Indemnity Corporation of Alaska, [AND THE HEALTH CARE PROVIDERS JOINT UNDERWRITING ASSOCIATION ESTABLISHED UNDER AS 21.88,] either at the time the policy was issued or when the insured event occurred, and

(B) determined to be insolvent by a court of competent jurisdiction;

* Sec. 45. AS 21.80.180(6) is amended to read:

(6) "member insurer" means a person, except an assessable reciprocal insurer formed by and insuring only municipalities or nonprofit public utilities, a reciprocal insurer formed under AS 21.75 to provide marine insurance, a joint insurance arrangement formed under AS 21.76, and the Medical Indemnity Corporation of Alaska, [AND THE HEALTH CARE PROVIDERS JOINT UNDERWRITING ASSOCIATION ESTABLISHED UNDER AS 21.88,] who

(A) writes insurance to which this chapter applies under AS 21.80.020 including the exchange of reciprocal or inter-insurance contracts, and

(B) is licensed to transact insurance in the state;"

Renumber succeeding bill sections accordingly.

Page 10, following line 9:

Insert a new bill section to read:

"* Sec. 48. AS 24.45.116 is amended to read:

Sec. 24.45.116. DISCLOSURE OF CONTRIBUTIONS. A [BEFORE A CIVIC LEAGUE OR ORGANIZATION MAY BE ELIGIBLE FOR THE BENEFITS OF AS 24.20.-

031(f), IT MUST AGREE TO COMPLY WITH THE REQUIREMENTS OF THIS SECTION. THE] civic league or organization shall report the total amount of contributions received for the reporting period and for any contribution over \$100, the name of the contributor and the amount contributed. The civic league or organization may establish a separate fund to account for receipts and expenditures arising out of activities to influence legislative action. Reports shall be made on a form provided by the commission on February 10, April 25, and July 10 of each year, listing contributions received during the period that ended 10 days earlier."

Renumber succeeding bill sections accordingly.

Page 11, line 5:

Delete "35, 37, and 38"

Insert "49, 51, and 52"

Page 14, following line 4:

Insert new bill sections to read:

"* Sec. 73. AS 43.80.015(b) is amended to read:

(b) The receipt of land or an interest in it under the federal Act or of cash in order to equalize the values of property exchanged under sec. 22(f) of that Act or AS 38.50 [AS 38.95.060] is not subject to any form of state or local taxation. The basis for computing gain or loss on subsequent sale or other disposition of this land or interest in land for purposes of a state or local tax imposed on or

measured by income is the fair value of the land or interest in land at the time of receipt.

* Sec. 74. AS 43.80.015(c) is amended to read:

(c) A real property interest conveyed under the federal Act, AS 38.50, or AS 38.95.050 [OR 38.95.060], including land received in an exchange under sec. 22(f) of the federal Act or AS 38.50 [AS 38.-95.060], to a Native individual or corporation incorporated under Alaska law pursuant to the federal Act, which interest is not developed or leased to third parties, is exempt from state and local real property taxes and local assessments until December 18, 1991. However, municipal taxes, local real property taxes, or local assessments may, under the laws of the state, be imposed upon leased or developed real property within the jurisdiction of any governmental unit organized under the laws of the state. Easements, rights-of-way, leaseholds, and similar interests in real property may be taxed in accordance with state or local law. All rents, royalties, profits, and other revenues or proceeds derived from property interests are taxable to the same extent as these revenues or proceeds are taxable when received by a non-native individual or corporation. In sec. 21(d) of the federal Act, the exemption of real property interests from local real property taxes includes exemption from local assessments and extends to land received in an exchange under sec. 22(f) of the federal Act or AS 38.50 [AS 38.95.060]."

Renumber succeeding bill sections accordingly.

Page 16, following line 14:

Insert a new bill section to read:

"* Sec. 83. Sections 54, 55, 59 - 61, 75, and 82 of this Act take effect on the effective date of sec. 2, ch. 106, SLA 1986."

Renumber remaining bill section accordingly.

Page 16, line 15:

Delete "This"

Insert "Except for secs. 54, 55, 59 - 61, 75, and 82, this"

Delete "July 1, 1987"

Insert "immediately under AS 01.10.070(c)"

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

• POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 2800

M E M O R A N D U M

April 6, 1987

SUBJECT: CSSB 107 (Judiciary), 1987 Revisor's Bill
TO: Representative John Sund
Chair, House Judiciary Committee
FROM: David R. Dierdorff
Revisor of Statutes

The Senate passed the revisor's bill today, and I assume that it will be referred to your committee on Wednesday.

Enclosed is a copy of the memorandum that accompanied the committee substitute. You will note that it summarizes the changes made from the bill as introduced, categorizes the provisions by effect, and contains a sectional analysis.

I would appreciate very much your cooperation in giving this bill expeditious treatment so that it does not "get lost" in the closing days of session. Last year in the House, and this year in the Senate, the revisor's bill was referred to a subcommittee of two that gave the bill very careful scrutiny. That procedure seems to work very well for a bill that is as technical as this.

I would be pleased to meet with you or your staff at your convenience to discuss this year's bill.

DRD:mkr
m10/107

Enclosure

COPY

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
957 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 26, 1987

SUBJECT: CSSB 107(Judiciary)

TO: Senator Jalmar Kerttula
Chairman, Senate Judiciary Committee

FROM: David R. Dierdorff
Revisor of Statutes

This memorandum discusses the draft committee substitute prepared for the consideration of the Judiciary Committee. The draft incorporates my additions and corrections and the amendments suggested by Senators Sturgulewski and Josephson.

Summary of Changes

The draft contains 10 new sections. They are: 18, 24, 28, 29, 30, 34, 42, 43, 51, and 54. Three sections that were in the printed bill have been deleted. The deleted sections were numbered 36, 37, and 39.

In addition, three sections have been substantially modified. Those sections are: sec. 33, which was sec. 28 in the printed bill; sec. 41, which was sec. 35, and sec. 46, which was sec. 41.

Summary of Effect

To assist you in understanding the draft, I have summarized the contents by grouping sections that have similar effects.

Sections that delete obsolete provisions:

The following sections delete or repeal provisions that have become obsolete either through the passage of time or other legislative action: 2, 4, 6, 8 - 11, 19, 21, 23, 24, 29 - 31, 36, 42, 49, 50, 51, 54, 57, 58, 61, and 63 - 65.

Sections that update obsolete provisions:

The following sections substitute new provisions for provisions that are obsolete or otherwise outdated, and make conforming changes in related provisions: 1, 3, 5, 7, 16 - 18, 20, 41, 46, 47, 52, and 56.

Sections that repeal redundant provisions:

The following sections repeal provisions that are duplicated by other applicable law, and make conforming changes in related provisions: 12 - 15, 28, and 43.

Sections that eliminate conflicts with other laws:

The following sections resolve conflicts with other statutes, the constitution, court decisions, opinions of the attorney general, or the Rules of Court: 22, 33, 34, 44, 48, 53, 55, and 62.

Sections that correct errors or oversights in drafting:

The following sections correct errors or oversights in drafting, or make conforming amendments to harmonize laws passed during the same legislative session that could not be harmonized editorially: 25 - 27, 32, 35, 37 - 40, 45, 59, 60, and 66.

Sectional Analysis

Section 1. Section 1 of the bill corrects a statutory reference and makes other form and style changes in AS 06.30.720. AS 06.30.660 was repealed by sec. 54, ch. 169, SLA 1978. The same 1978 Act, in sec. 42, enacted AS 06.01.030, with substantially the same provisions as former AS 06.30.660. Requested by the Division of Banking and Securities.

Sec. 2. All of the former paragraphs of the two subsections proposed for repeal (relating to sunset review of certain agencies) have been repealed, leaving only irrelevant introductory text in the subsections.

Sec. 3. See analysis of sec. 5.

Sec. 4. AS 08.04.250 was repealed in 1976, making the reference obsolete.

Sec. 5. This section and sec. 3 conform the usages to current style for defined terms. The term "live permit" is used in several sections of AS 08.04, but the only definition has been the archaic reference in AS 08.04.500(a), proposed for amendment in sec. 3. The definition proposed for enactment in sec. 5 replaces the archaic reference.

Sec. 6. The deleted material is obsolete.

Sec. 7. The federal law which defined "motorboats" for the purpose of AS 08.62.180 has been repealed. The proposed amendment substitutes the substance of the former federal law.

Secs. 8 - 11. AS 08.64.200(1) was repealed in 1983, making the references obsolete.

Sec. 12. The definition in the section proposed for repeal duplicates a definition of the same term ("commission") in AS 08.88.431.

Secs. 13 - 15. The section proposed for repeal in sec. 15, AS 09.17.090, was enacted in the "tort reform" bill last session (ch. 139, SLA 1986). It is identical to the existing provisions of AS 09.16.040, which was enacted in 1970 and is part of the Uniform Contribution among Tortfeasors Act. Because the enactment of AS 09.17.090 did not add anything to the substantive law of Alaska and because the state's courts have had several occasions to interpret and enforce the existing statute, it is recommended that the legislature repeal the new provision to avoid confusion in the future. (An earlier version of the tort reform bill would have repealed AS 09.16, making the enactment of AS 09.17.090 necessary.) Sections 13 and 14 make changes in AS 09.17.080(a) and (c) required if AS 09.17.090 is repealed.

Secs. 16 and 17. Sections 16 and 17 make changes to AS 09.38.115 to reflect changes made by the federal government in the timing of issuance of the Anchorage CPI and to clarify the mandate of AS 09.38.115(b). The change was requested by the Department of Labor. The change of date in AS 09.38.115(b) from July 1 to October 1 was requested by the Court System to ensure adequate lead time in the preparation of related forms and to allow the efficient utilization of existing form inventories.

Sec. 18. This section updates a part of the definition of "gambling enterprise" to include a reference to municipalities, which were added in 1982 to the entities that may be licensed under AS 05.15 to conduct certain gambling activities. The internal references are also updated to current style for such references.

Sec. 19. The subsection proposed for repeal is obsolete. It was operative only during 1976.

Sec. 20. AS 28.10.255 was repealed in 1978. The current provisions relating to the motor vehicle registration tax are found in AS 28.10.431, and this section proposes that the reference to those laws in AS 14.17.140(b) be updated.

Sec. 21. The material proposed for deletion is obsolete.

Sec. 22. An April 22, 1986, memo from Assistant Attorney General Gary Amendola to Assistant Attorney General Art Peterson discussed the authority of the Alaska Commission on Postsecondary Education to adopt regulations related to the Guaranteed Student Loan Program. The commission desired to adopt the regulations to implement its role as the state guaranty agency for the federal loans. The memo concluded that the commission has the implied authority to adopt the regulations, but urged that the authority be made express through an amendment to AS 14.42.030(b)(3). Section 22 of this draft would accomplish that.

Sec. 23. Last year AS 15.13.070(f) was repealed. The related provision in AS 15.13.120(a)(2) providing that "making a campaign contribution or expenditure which exceeds the limitations of AS 15.13.070(f)" is a crime, was not repealed. This section of the draft bill corrects that oversight. AS 15.13.070(f) had set out the permissible total expenditures by a candidate and groups controlled by a candidate.

Sec. 24. This section deletes a sentence that was rendered obsolete by the repeal of AS 16.05.340(e) in 1986. The repealed subsection had established additional fees for big game taken on a guided hunt.

Secs. 25 - 27. The amendments proposed by secs. 25 - 27 of the draft would correct an apparent oversight in ch. 132, SLA 1984. When enacting AS 16.05.925, the legislature intended to make uniform the penalty for violations of

regulations adopted under the fish and game laws. However, the new provision failed to take into account the existence of certain specific penalties in AS 16.05.430, 16.05.831, and 16.05.860, with the result that the penalty for violating a regulation adopted under one of those sections would carry a stiffer penalty than a violation of the section itself. That result could not be legally enforced, of course, but the oversight leads to confusion and uncertainty. The proposed amendments assume that the legislature did not intend to impliedly repeal the referenced penalty provisions, but, rather, that the lesser penalties for certain sport hunting and fishing violations should remain. The problem was brought to our attention by Jim Parker, director of magistrate services for the Court System, and Karla Forsythe, staff counsel for the system.

Sec. 28. The provisions proposed for repeal are definitions that became redundant when the definitions in AS 16.05.940 were made applicable to AS 16.10 - AS 16.40 in 1984.

Sec. 29. The material proposed for deletion is obsolete, relating only to the initial appointments to the entry commission.

Sec. 30. The section proposed for repeal related to the personal income tax repealed in 1980. It provided that the purchase of an entry permit is a deductible business expense under that tax. Should the legislature reinstate a personal income tax, the treatment of deductible expenses should be enacted within the tax laws rather than within the laws relating to state programs.

Sec. 31. The subsection proposed for repeal deals solely with a report that was to have been made to the legislature in 1975 and is now obsolete.

Sec. 32. The Alaska Guaranty Association Act (AS 21.80), enacted in 1970, was based on a Model Act promulgated by the National Association of Insurance Commissioners. Because the title of the administrative official regulating insurance in almost every state is "commissioner," the Model Act used that term and Alaska enacted it without change. In Alaska, the corresponding official is the director of the division of insurance, reporting to the commissioner of commerce and economic development (see AS 21.06). Although the use of the term "commissioner" in AS 21.80 presents no substantive legal problems, because the commissioner of

commerce and economic development has the authority to delegate all responsibility to the director, it does cause some confusion. The division of insurance requested that the change of name be proposed in the revisor's bill. Section 32 of the draft would accomplish the desired result.

Sec. 33 and 34. Section 33 amends AS 22.15.240(c) to provide that the Rules of Appellate Procedure govern appeals from district to superior court. The Court System had requested that the subsection be amended so that the time of filing provided in the statute be the same as that in the rules of court in order to avoid confusion. Because the Rules of Appellate Procedure supersede the statutes, and because the legislature cannot amend rules of procedure, the subcommittee recommended that the statute be amended to simply refer to the rules. This will avoid future conflicts and confusions, or the need to continually amend the statute to reflect changes in the rules. Section 34 would repeal AS 22.15.240(d), which provides simply that "the supreme court shall prescribe further rules for the procedure for appeals from district court."

Secs. 35 and 37 - 39. Chapter 38, SLA 1986, which was intended solely to exempt purchases made with food stamps from municipal sales and use taxes, amended AS 29.45.700(a) and made a related amendment to AS 29.10.200. Unfortunately, a drafting error in ch. 38 led to an unintended result. Instead of the narrow result contemplated by the legislature, and reflected in the title of CSHB 697 (HESS), the amended law could be construed to require a home rule city in a borough that levies and collects an areawide sales tax to levy and collect a sales or use tax only in a manner identical to that of the borough in which the city is located. The amendments proposed in secs. 35, 37 and 38 of this draft would correct the error. Section 39 of the draft would make the amendments retroactive to October 1, 1986, the effective date of ch. 38, SLA 1986. The amendments were requested by the Department of Community and Regional Affairs and the City of Ketchikan.

Sec. 36. The referenced federal law was repealed by P.L. 97-606, making the reference obsolete.

Sec. 40. As a part of the new procurement code, AS 33.30.050, dealing with medical services for prisoners, and AS 33.30.062, dealing with privately operated

correctional facilities, were amended to incorporate express provisions subjecting the covered activities to AS 36.30. In ch. 88, SLA 1986, the corrections code was substantially rewritten and AS 33.30.050 and 33.30.062 were repealed. The proposed addition of a section to AS 33.30 making contracting activities under AS 33.30 subject to AS 36.30 is probably not required as a matter of law (AS 36.30 governs all state contracting activities unless expressly excluded), but the section is proposed to carry out the legislature's intent in enacting the 1986 amendments to the two repealed sections.

Sec. 41. The section amends AS 33.30.031(c) to reflect the repeal of AS 37.05.230(1)(B) and the adoption of corresponding provisions (relating to sole source procurements) in AS 36.30. This would continue the requirement that contracts for confinement and care of prisoners must be competitively bid.

Sec. 42. The section proposed for repeal is obsolete, relating only to construction contracts entered into before April 1, 1957. It exempted those contracts from procedures enacted in 1957.

Sec. 43. The two provisions proposed for repeal are definitions of "department" that are redundant to a definition in AS 35.25.020 that applies to all of AS 35.

Sec. 44. In 1985, jurisdiction in actions involving contractors' bonds under AS 08.18 was transferred from the superior court to the district court (sec. 1, ch. 17, SLA 1985). The change proposed in the first sentence of AS 36.25.020 would give the district and superior courts concurrent jurisdiction over suits involving bonds posted under Alaska's "little Miller Act" by contractors on public projects. Thus, the amount sought by the plaintiff would determine whether the suit would be filed in district or superior court. The proposed amendment would also add language codifying the rule of State v. Tyonek Timber, Inc., 680 P.2d 1148 (1984), in which the supreme court held that a contractor or subcontractor suing under AS 36.25 is subject to the registration requirements of AS 08.18 and, consequently, the penalty provisions of AS 08.18.151. The amendments were suggested by the Court System.

Sec. 45. Adds a provision to the procurement code to conform to the program receipts Act (ch. 138, SLA 1986). A

similar former provision had been amended by ch. 138, SLA 1986, but was repealed by ch. 106, SLA 1986.

Sec. 46. The section proposed for amendment was enacted as part of the new procurement code, but was derived from CSHB 679(SA), which was merged into the procurement bill. The proposed amendment would delete a reference to a provision repealed by the procurement Act and add a reference to similar provisions enacted by ch. 16, SLA 1986.

Sec. 47. The amendment conforms the subsection to the new procurement code, which repealed AS 37.05.230 and contains all of the relevant competitive bidding provisions of state law.

Sec. 48. The two sections in AS 37.05 that are proposed for repeal establish the reserve for capital outlay account and the reserve for energy facilities development account in the general fund. The paragraph in AS 37.07.062 proposed for repeal relates to the reserve for capital outlay account and needs to be repealed if the account is repealed. The attorney general has determined that both accounts violate the prohibition against dedicated funds contained in art. IX, sec. 7 of the state constitution. On the advice of the attorney general, no deposits have ever been made to the accounts, and neither has an outstanding balance.

Sec. 49. The material proposed for deletion is time-dated and now obsolete.

Sec. 50. The statute proposed for repeal, AS 37.20.040, is obsolete. The state's obligation to pay into the Alaska Native Fund under sec. 9 of ANCSA was extinguished when the state paid a total of \$500 million to the fund. The last payment was made under an appropriation in ch. 120, SLA 1980. The Department of Revenue requested the repeal.

Secs. 51 and 54. The provisions proposed for repeal were made obsolete by the repeal of the Alaska Energy Center last year.

Sec. 52. AS 38.05.077 was repealed when AS 38.09 was enacted. The two references to the repealed section should have been drafted to read as proposed by this amendment.

Sec. 53. Without the amendment proposed by this section, it is arguable that a student member of the Board of Regents or

the Commission on Postsecondary Education is not eligible to serve unless the student was old enough to have voted in the last general election. This is inconsistent with the laws creating the student positions, which have no age requirements for the student member appointees. The amendment was requested by the Department of Law.

Sec. 55. The repeal of AS 43.05.210 would eliminate an old dedication of certain federal mineral leasing revenues. The dedication was required by the federal law, which has since been amended to eliminate the required dedication. In any event, the state has never identified this dedicated revenue stream as a fund source in the budget process. The Department of Revenue requested the repeal.

Sec. 56. The amendment clarifies the language of AS 43.70.020(b) to reflect changes made in the business license tax in 1978 and 1984.

Sec. 57. The provisions proposed for repeal were rendered obsolete by the repeal of AS 43.70.030(b) in 1984 and the change from a "gross receipts" tax to an annual license in 1978. All businesses now pay a flat \$25 per year business license fee.

Sec. 58. The material proposed for deletion was rendered obsolete by the repeal of AS 43.70.030(b) in 1984.

Sec. 59. This corrects an oversight in ch. 106, SLA 1986 (the procurement code) by listing RFP's issued under AS 36.30.210 among those actions that must be published in the Alaska Administrative Journal. Publication of the RFP's is required by AS 36.30.210(c) and 36.30.130.

Sec. 60. The Department of Commerce and Economic Development currently manages 11 different state loan programs, using identical procedures for all of the programs. The procedures include an administrative appeal process. See 3 AAC 77 - 87. When the Fisheries Enhancement Loan Program was established in 1976, the hearing provisions of the Administrative Procedure Act were made applicable to that loan program. None of the other 10 programs were included under the APA, and, in fact, DCED was not aware that the fisheries loan program was included until an assistant attorney general recently discovered the inclusion. Both DCED and the Department of Law believe that the 1976 inclusion was the result of an error rather than an intentional

legislative decision. The repeal of AS 44.62.330(a)(46) as proposed in sec. 60 of the bill would remove this anomaly.

Sec. 61. The material proposed for deletion is obsolete.

Sec. 62. The amendment proposed by this section would conform the requirements of AS 45.55.090(b)(1) to those of AS 45.55.00(b)(12) (dealing with a closely related matter) and eliminate an unnecessary requirement. The amendment was requested by the division of banking, securities and corporations and the Department of Law.

Sec. 63. The deleted material is obsolete.

Sec. 64. The deleted material is obsolete.

Sec. 65. The material proposed for deletion is obsolete.

Sec. 66. The version of the procurement code that became law did not contain the paragraph (4) referenced in sec. 65(1) of ch. 106. The proposed amendment substitutes the substance of proposed AS 36.30.510(4), which was included in earlier versions of the procurement code bill, for the obsolete reference.

Sec. 67. The bill is given a specific effective date, rather than the usual immediate effective date, in order to have it take effect on the same date that the procurement code takes effect.

DRD:mkr
m9/057

cc: Art Peterson
Department of Law

Karla Forsythe
Court System

S B

117

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY
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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:

10-23-87 (Ketchikan City Council Chambers)

3-22-88

4-18-88

4-19-88

SKA STATE LEGISLATURE

Legislature 1ST..... Session

BILL..... NO. 117.....

RULES COMMITTEE BY.....
REQUEST OF THE GOVERNOR

relating to child
enforcement."

passed in the Senate 2/10 87....., 19.....

HISTORY IN THE SENATE

1987		Read first time and referred to Committee on
2	10	JUDICIARY AND FINANCE
3	27	Reported back with recommendation that <i>Judiciary</i> <i>Adopted Con. for 4th</i> <i>to Finance</i>
5	13	<i>Encl. 5 to pass, per 4th</i> <i>Judiciary & the Int. to it</i> <i>Rules</i> <i>Rules:</i>
5	14	Read second time and
5	14	Read third time and <i>In Intent adp</i> <i>as Senate letter</i> <i>letter</i>
5	14	PASS Effective Date
		Yeas - 14 Yeas
		Nays - 0 Nays
		Absent - 6 Absent
		Excused - 0 Excused
		Reconsideration
		PASS Effective Date
		Yeas Yeas
		Nays Nays
		Absent Absent
		Excused Excused
5	14	Reported correctly engrossed
5	14	Signed by President
5	14	Sent to House

Don Mulligan

HISTORY IN THE HOUSE

1987		Read first time and referred to Committee on
May 15		<i>Judiciary</i> <i>Finance</i>
		Reported back with recommendation that
		Read second time and
		Read third time and
		PASS Effective Date
		Yeas Yeas
		Nays Nays
		Absent Absent
		Excused Excused
		Reconsideration
		PASS Effective Date
		Yeas Yeas
		Nays Nays
		Absent Absent
		Excused Excused
		Reported correctly engrossed
		Signed by Speaker
		Returned to Senate

FISCAL NOTE

REQUEST:

Revision Date: February 11, 1988
Title: An Act Relating to Child Support Enforcement
Sponsor: Rules
Requestor: Governor

Agency Affected: Revenue
ERU: Child Support Enforcement
Components: Operating

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
OPERATING						
PERSONAL SERVICES	-	-	-	-	-	-
TRAVEL	-	-	-	-	-	-
CONTRACTUAL	-	-	-	-	-	-
SUPPLIES	-	-	-	-	-	-
EQUIPMENT	-	-	-	-	-	-
LANDS & STRUCTURES	-	-	-	-	-	-
GRANTS, CLAIMS	-	-	-	-	-	-
MISCELLANEOUS	-	-	-	-	-	-
TOTAL OPERATING	-	-	-	-	-	-
CAPITAL	-	-	-	-	-	-
REVENUE	*	*	*	*	*	*

(see Note below)

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

Note on Fiscal Analysis

* Estimated annual income generation of one hundred thousand by imposing fee structure.

Prepared By: Holli Ploog, Director Phone: 263-6270
Division: Child Support Enforcement Division Date: February 11, 1988
Approved by Commissioner: Hugh Malone Date: February 11, 1988
Agency: Department of Revenue

Distribution (by preparer):

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

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

SB 117

Revision Date: _____

REQUEST

Bill/Resolution No. : _____
 Title : An Act Relating to Child Support Enforcement
 Sponsor : Department of Revenue
 Requestor : _____
 Date of Request : December 1, 1986

FISCAL DETAIL

Agency Affected : Department of Revenue
 BRU : Child Support Enforcement Division
 Components : Operating

EXPENDITURES/REVENUES : (Thousands of Dollars)

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

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

REVENUE	*	*	*	*	*	*
---------	---	---	---	---	---	---

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

* Estimated annual income generation of \$100,000 - 1,000,000 by imposing fee structure.

Prepared by: Holli Ploog
 Division: Child Support Enforcement Division

Phone: 276-3441
 Date: 12/1/86

Approved by Commissioner: Walter B. Barber
 Agency: Department of Revenue

Date: 12-1-86

Distribution (by Agency preparing fiscal note):

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

MEMORANDUM

State of Alaska

TO: The Honorable Fran Ulmer
House Judiciary Committee
Alaska State Legislature

DATE: March 16, 1988

FILE NO:

TELEPHONE NO: 263-6270

FROM: Holli I. Ploog *HP*
Director
Child Support Enforcement Division

SUBJECT: Comments on Amendments
to SB 117

You have asked for my comments on the amendments to SB 117 which have been drafted in response to concerns raised by testimony given at the October Judiciary Committee hearing as well as on individual constituent cases. I fully support these changes and believe they will help achieve more equity in the administration of the child support program.

The first amendment excludes from unemployment garnishment the dependent allowance for children living in the home of the absent parent. By excluding these benefits from attachment, we will be recognizing the financial needs of the children living with the unemployed absent parent.

The second amendment provides for a definition of changed circumstances for purposes of prospectively modifying a child support obligation. The standard would be based on the adoption or amendment of guidelines by the court, the legislature or the agency. This would provide an easier mechanism for either the custodial or absent parent to adjust the obligation upward or downward without protracted and costly litigation. It would also limit modification petitions to once in two years.

The third amendment eliminates interest charges on late payments if the absent parent is under a wage withholding order and the sole reason the payment is late is due to a delay by a third party such as an employer or the Department of Labor on unemployment payments. This would rectify current law which does not distinguish payments late as a result of the absent parent's delinquency from payments late due to conditions outside the absent parent's control.

The final amendment provides specific criteria for terminating an income withholding order. The current statute allows only the court to terminate a withholding order not the Division nor does it specify under what conditions terminations should occur. This amendment establishes criteria of timely payments for a minimum of twelve months and all arrearages paid to justify termination of the withholding order.

HIP:tmr

88-77

RECEIVED
ALASKA DEPARTMENT OF REVENUE

MAR 17 1988

OFFICE OF THE COMMISSIONER

HOUSE COMMITTEE REPORT

(7)

Date referred: 5/15/87

FURTHER REFERRALS: Finance

DATE: April 19, 1988

The Judiciary Committee has considered SB 117

"An Act relating to child support enforcement."

RECOMMENDS:

- replace with HCS & SB117 (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 same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published _____
- zero with analysis

SIGNING DO PASS:

[Handwritten signatures]

SIGNING OTHER RECOMMENDATIONS:

[Handwritten signatures]

[Handwritten signature]

Chairman's signature

SENATE

LETTER OF INTENT

SENATE BILL NO. 117

Under this bill, as requested by the governor, the Division of Child Support Enforcement in the Department of Revenue is allowed to bill for the services provided in collecting child support payments. Attorney time will be billed at the full rate for attorney services. The committee estimates that there would be major cost savings for those seeking child support payments due them if attorneys from the Department of Law were not assigned on a case-by-case basis but rather were assigned full-time to the division. That way they could build expertise in the field of child support enforcement and be able to deal with the cases expeditiously, thus saving money for the clients. Savings for the clients would be in the best interests of the children for whom the money is collected. It is therefore the intent of the Senate Judiciary Committee that the Department of Law assign one or two staff attorneys full-time to the Division of Child Support Enforcement.

Adopted 5/14/87.

February 2, 1988

FEB 07 1988

Dear Representative SUND



Attached are the 1988 Legislative Goals of DADS AGAINST DISCRIMINATION Political Action Committee (DADS PAC).

Goals 1 and 2 have been agreed to by the Director of Child Support Enforcement Division, Holli I. Ploog. We are in a negotiation process with her to obtain her support, neutrality or opposition stances on the remaining eight goals.

We have a legislative sponsor for Goal one. We are meeting daily with legislative members and staff. We seek sponsors for the remaining goals.

Our involvement began with the interim House Judiciary Committee in October 1987, where 17 obligors or their wives testified to a wide variety of child custody and support problems.

Please contact me in Juneau for further information at 780-4684. I am looking forward to working with you this session.

We will be sending you a follow-up questionnaire next week. Thank You for your assistance.

Sincerely

Robert R. Armstrong, President DADS PAC
5974 North Street
Juneau, Alaska 99801
Phone: 780-4604

1988 Legislative Goals for DADS

Alaska DADS AGAINST DISCRIMINATION (DADS) and its DADS PAC have formed legislative goals for the 1988 legislative session by polling its nearly 100 men and women members from all over Alaska. These legislative goals seek to establish fairness and justice in the law for fathers, their children and the members of the fathers family, primarily. We also advocate for women who are receiving no child support.

1. Problem: CSED is charging interest on support cases where the support is being paid under an income garnishment and and being remitted then to CSED by an employer or state agency. The employer or state agency most often remits the support to CSED late, generating an interest charge to the obligor, when the obligor has timely paid the support through the income garnishment at the first of the month.

Solution: Stop interest charges on income garnishments by amending statutes which give CSED authority to charge interest. (AS 47.23.025)

2. CSED is garnishing 50% of the dependent allowance that is provided for by the legislature to children living in the home of an unemployed worker, who is receiving unemployment compensation. This takes food out of one child's mouth, and in over 50% of CSED cases goes to reimburse the federal government for the welfare cost of another child. CSED should not be allowed to hurt any children.

Solution: Exempt the dependent allowance from garnishment by CSED in the statutes. (AS 23.20.350 (f) and (g))

3. Problem: A sworn statement by the obligee, with no proof whatsoever offered, that an amount of back child support is owed, initiates all manner of collection tools by CSED against the obligor. False swearing of false and over-stated amounts of back support owed occurs. Fathers are reluctant to seek criminal enforcement for false swearing, because of the harm that would come to the children if the mother is prosecuted, even though father is damaged by erroneous collection.

Solution: Establish a civil fine for false-sworn-to amounts of back child support, in an amount equal to the falsely sworn to amount.

4. Problem: The adversary divorce process destroys the minds of the children and the possibility of a positive working relationship between former spouses on behalf of the children.

Solution: Pass SB 302.

1988 Legislative Goals for DADS

5. Problem: Garnishment by CSED of the maximum 50% of unemployment compensation for child support, leaves an unemployed obligor with one child, only \$424 per month to live on...without the ability to survive economically. If you destroy the obligor's ability to survive in the process of collecting justly owed child support, you destroy any willingness by the obligor to cooperate with CSED; you destroy marriages due to extreme financial hardship; and you create a third poverty class BELOW welfare.

Solution: Prohibit CSED from garnishing any income source to the extent that an obligor is left with less to live on than the basic welfare grant for the same number of persons in the household. NO ONE should be forced by an action of any government to live on less than the basic welfare grant.

6. Court-ordered visitation between father and his children is frequently denied, by the custodial parent. This stops an important relationship post-divorce in the lives of the children involved. According to a California mental health study of 400 children, those children denied an ongoing post divorce relationship with their fathers have 27% more mental health problems. The loss of father, grand parents and aunts and uncles to a child because of a revenging custodial parent is destructive to the children involved. Contempt of court findings lack effectiveness in compelling visitation previously ordered by the court.

Solution: Make denial of court-ordered visitation a felony---psychologically to child and father's family this act is equal to kidnapping of the child. Michigan has a felony law and access mediators to enforce court-ordered visitation. They have the nation's highest child support income versus outlay of state dollars:to collect child support ratio over every other state. Michigan collects \$8.33 in support for every state dollar spent. Psychologically, there is a connection between paying child support and having an ongoing parental relationship with his child. In Alaska, vast amounts of public resources are spent to collect child support, and no public resources are spent to enforce the other part of a divorce court order---visitation---an unjust, discriminatory imbalance in the use of public resources.

7. Problem: CSED fails consistently to negotiate with an obligor a reasonable payment schedule for arrears owed, and instead most often garnishes at the maximum rate allowed under federal law---55% of an obligors income. If you destroy an obligor's ability to survive economically, you defeat and provide disincentive for payment of support. Children living with the father (step children, his own children during visitation, children of a second marriage) are suffering extreme economic hardship at the hands of CSED's frequent practice of garnishing maximum rates, rather than negotiating a survival amount with the obligor,

7. Solution: Direct CSED employees to negotiate in good faith with obligors with new statute language, so that collection of arrears owed does not result in severe economic hardship of the obligor to the point of financial collapse of his life. We would agree that CSED should receive from the obligor proof of income and proof of household bills to verify hardship.
8. Problem: CSED is executing multiple garnishment instruments against an obligor's income for child support accounts which are CURRENT, where no arrearages exist! Each of 59 CSED caseworkers carries a caseload of about 2,500 cases. There is no way the state could afford to reduce that caseload by funding enough caseworker positions to provide a workable caseload of about 200 per caseworker, the maximum ratio in social services today for accurate handling. The state legislative finance committee must look to cutting out unnecessary casework activity. Garnishment of income should be used only in cases where support is in arrears. Casework time, paper, computer time, postage, unavoidable telephone contact time subsequent to execution of an income garnishment could be reduced significantly if income garnishment was only executed by caseworkers for cases where arrearages exist.
- Solution: Direct CSED to stop garnishing for current monthly child support payments.
9. CSED is not coordinating multiple income withholding orders outstanding for the same current monthly payment. This results frequently in the garnishment of the current monthly support payment twice, double collecting, from two different income sources. The most common two examples are:
a. Independent payment by the obligor of his monthly obligation and the garnishing of that same amount from his permanent fund dividend; b. the garnishment of the current monthly obligation from an obligor's pay check and the garnishment of that same amount from his permanent fund dividend. CSED is spending lots in refunded double collection amounts; and is open to suit for double collection.
Solution: Remove every obligor's name from the CSED computer tape transmitted to the Permanent Fund Dividend section of the Dept. of Revenue, who is either paying independently or who is under an income garnishment for the current monthly child support payment.
10. Problem: When a child support account goes into arrears, CSED is not mailing the statutory notice of liability which must precede an initial garnishment by CSED by certified mail. Alaska has a work force made up in large part of "away from home workers", such as fishermen, loggers, tug boat operators, remote site construction workers, North Slope workers. Alaska law used to require certified notice, but changed it. Now remote workers are coming home to find a "taking" of property has already occurred by CSED, sometimes for over-stated and false balances, because the 30 days between notice and taking had already expired, giving the worker no chance to

10. Problem: (continued) negotiate a reasonable payment schedule for arrears in addition to the ongoing monthly obligation; to correct over-stated amounts claimed that are owed.

Solution: Change state statutes to require certified mailing of Notices of Liability. Then a remote worker would have to sign for the notice and would receive actual 30 day notice, prior to a "taking" of his income or property. We believe the State of Alaska has opened itself to a lawsuit on due process grounds brought by the remote worker class, because no effective notice is now being given, prior to a "taking" of property.

OTHER ISSUES OF CONCERN TO DADS:

Summer visitation credits against child support, welfare fraud, establishment of an obligor/obligee complaint officer within CSED, limited telephone hours for fathers to reach CSED and respond as required by law to all manner of notices, CSED not honoring Superior Court orders, failure of CSED to monitor weekly income garnishments so that over-collection does not result, accounting integrity of the CSED computer system resulting in balances-owed figures wildly fluctuating over short periods of time, CSED placing the power to deny court-ordered summer visit credits in the hands of obligees, CSED refusing to accept obligors documentation that an extended visitation between father and children has taken place, failure of the courts to consider fathers as fit custodial parents on an equal footing with mothers, lack of provision in the law for grandparent visitation rights affecting many Alaska seniors, failure of CSED to provide any notice of a garnishment or lien at all due to its one-notice-per-child-support-case policy.

SENATE
LETTER OF INTENT
SENATE BILL NO. 117

Under this bill, as requested by the governor, the Division of Child Support Enforcement in the Department of Revenue is allowed to bill for the services provided in collecting child support payments. Attorney time will be billed at the full rate for attorney services. The committee estimates that there would be major cost savings for those seeking child support payments due them if attorneys from the Department of Law were not assigned on a case-by-case basis but rather were assigned full-time to the division. That way they could build expertise in the field of child support enforcement and be able to deal with the cases expeditiously, thus saving money for the clients. Savings for the clients would be in the best interests of the children for whom the money is collected. It is therefore the intent of the Senate Judiciary Committee that the Department of Law assign one or two staff attorneys full-time to the Division of Child Support Enforcement.

Adopted 5/14/87.

REC'D
3/20/87
EK

Box 241
Juneau, Alaska 99802
March 17, 1987

Senator Jalmar Kertulla
Capital Building
Juneau, Alaska 99811

Dear Senator Kertulla:

Senate Bill 117 concerning child support enforcement is currently in your Judiciary Committee and may pass out on March 19, 1987. Before it does, please consider amending it.

Several major constitutional problems result from existing statute. Senator Duncan has received complaints from his constituents over them.

Foremost among the problems is a violation of due process right to a hearing consistent with "fairness." A fair hearing of an agency decision affords the aggrieved party the opportunity to have a record made of proceedings, call witnesses, testify under oath as to the truth of evidence, call the opposing party to testify under oath, and have at least an attorney preside as the hearing officer.

Presently, the child support agency allows an "informal hearing" at which the obligor may only present cancelled checks for child support payments made. The obligor may not testify as to payments made, subpoena the obligee bank statements for proof of deposit, or in any other way present non-documentary proof of payment.

If a spouse motivated through multiple forms of animosity wants to put the other spouse through the wringer, existing statute provides the machinery. Existing statute requires the obligor to search up to 18 years of cancelled checks. If the checks are not produced, a debt is established even if the obligor has made payment.

Even if the obligor has years of cancelled checks and refutes the affidavit of non payment of the other spouse, the agency can do nothing under existing statute to penalize her for making fraudulent accusations or committing perjury. Thus a spouse can claim non payment of \$7,000, be found to have lied to the agency, and the agency will not and cannot do anything to collect for wasting the resources of the agency or harrasing the obligor. The agency represents the obligee.

This representation of the obligee is the source of the second major problem which needs change. An obligee who makes \$20,000 can force the obligor to hire an attorney to appeal to Superior Court a fraudulent claim. The burden the obligee has of hiring an attorney even if he cannot afford one can result in settlement of an unfair fraudulent claim in order to avoid the expense of hiring an attorney. Statute creates this unfair advantage. While indigent parties should retain the representation of the attorney general, there is no reason a non-indigent party should retain the free state funded services which can be used to harrass the other spouse.

Further specific changes follow.

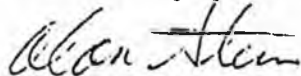
1. 47.23.100 should allow the agency to charge for any fraudulent claim of non-payment that the obligee makes in a sworn affidavit to agency. The discretion to assess a fine should be sufficiently broad to prevent fraudulent claims. The language should explicitly allow for assessment of fraudulent claims.

2. 47 23 105 should require the agency to complete the audit within 30 days. After 110 days, no audit was performed after I submitted cancelled checks. The language should state the agency must perform the audit within the time limit. The audit should be made on all payments made not merely to those made to the agency. Many individuals make payments directly to spouses. The agency should have the authority under this section to subpoena records of the obligee to ascertain if payments have been deposited. The audit should be performed more than once a year upon good cause such as providing newly discovered proof of past payment. Interest adjustments should reflect payment from the date the payment was made. ~~27~~

47 23 226 should be changed to allow a notice period and response time to the court of 30 days. Obligor are often out of state or in remote locations. They are often separated from records of payment by at least a 1000 miles eg fishermen in Bering Sea, loggers in Oregon. To require them to make sworn statements about specific detailed lengthy transactions without opportunity to conduct a search for an accurate sworn response on 15 day time limit is grossly unfair. For good cause, the agency should have power to extend the time limit.

The place of hearing should not be in court which requires the obligor to hire an attorney but by an agency hearing officer. Fairness requires the state absorb the cost of providing a hearing at the first stage that affords all due process protections to both parties.

Sincerely yours,



Alan Stein

cc Senator Eliason
Duncan

sh 117

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 9, 1987

The Honorable Jan Faiks
President of the Senate
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Senator Faiks:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the duties and authority of the child support enforcement division of the Department of Revenue. This bill amends statutory provisions concerning the collection of child support. The amendments will enhance the expeditious handling of child support enforcement matters and will permit the division to charge fees for the services that it provides.

Section 1 of the bill, which amends AS 47.23.020(a)(7), makes clear that child support orders from other jurisdictions may be enforced administratively as well as through the judicial process.

Section 2 of the bill, which amends AS 47.23.020(b), requires the division to credit the obligor with payments made directly to the obligee only if the payments are made before the obligor is ordered to make payments through the child support enforcement division. Currently the division must credit all direct payments, regardless of when they were made. This requirement causes an extra cost to the state in two ways: (1) the division may not, under federal law, report these direct payments to the federal authorities as income, and therefore the state does not receive federal incentive payments for these direct payments; and (2) the division's computer is not programmed to make adjustments for direct payments made after the division is involved, requiring manual audits to be performed. These manual audits are time-consuming and take time away from other enforcement activities. Because of the cost of reprogramming the computer, that alternative is not cost-effective, especially after taking into consideration the fact that manual input would still be required.

Section 3 of the bill, which amends AS 47.23.100, gives the division authority to impose a fee for services provided under AS 47.23.010 -- 47.23.280. Currently, the division is prohibited from charging a fee other than an application fee that is mandated by federal law. The authority to charge fees would allow the division to pursue cost recovery, including attorney time and court costs incurred in the establishment (of support orders) and enforcement activities.

Section 4 of the bill, which amends AS 47.23.105, allows the division to process an obligor's request for an audit within 30 days rather than the currently mandated 10 days. The division does not have sufficient staff to process audit requests within the 10-day time frame without neglecting other areas of concern, particularly audits needed for court enforcement actions.

Section 5 of the bill, which amends AS 47.23.226, provides that the division may seek a judgment without the necessity of filing a motion before the court to do so. The action would be brought before the court on the basis of an affidavit, supplied by either the child's custodian or the division, and notice to the obligor that the action had been commenced. If a motion is not required, the division would not have to use attorney time for this function. The division currently obtains income withholding orders from the court using an affidavit rather than a motion.

Section 6 of the bill amends AS 47.23.250(e) to correspond with federal law and AS 47.23.062(e), which mandate that an obligor's employer begin withholding money from the obligor's wages 14 days after the mailing date on the notice regarding the withholding, or on the first day of the next pay period if that is earlier. Currently, because of the inconsistent time periods, the division does not receive payments on administrative withholding orders for a period of 30 days.

Section 7 amends AS 47.23.250(i) to correspond to the provisions of AS 47.23.062(g). AS 47.23.062(g) gives priority to court-ordered child support garnishments over all other attachments against the same money, unless ordered otherwise by the court. The amendment would require that administrative orders be treated in the same fashion.

Section 8 of the bill, which repeals AS 47.23.180(c), clarifies the procedure for appeal from administrative