

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672

5293 SJUD SB 7 - SB 19

865

COM'S
PLUMBING &
HEATING SUPPLY

ANCHORAGE, ALASKA 99501

MAR 28 1987

Phone 279-4586

3100 Mountain View Drive

3-25-87

Senator Paul Fisher
Panel I
Juneau, AK 99801

Dear Paul,

Let's get the capital punishment bill
forged in law today. We cannot stand
still any longer. Today is the day.
You are the Senate leader on this,
so let's get it done. I will come
down and help if I can.

We also need SB 128 and
don't need SB 148 or HB 154.

Thanks,

Sincerely,
Wagne Swenbert

Dear Senator Mitch:

- Our JAILS ARE PACKED TO THE MAX.
- Our VIOLENT CRIME RATE IS ON THE RISE
- EVERYONE I HAVE TALKED TO — QUITE
A NUMBER — ARE IN FAVOR OF
CAPITAL PUNISHMENT.

• NOW IS THE TIME TO PUT IT TO A
← VOTE, LET THE PEOPLE DECIDE.

- IF YOU WANT/NEED A PETITION,
I CAN HAVE ONE FOR YOU
IN A SHORT TIME.

• LET'S CLEAN UP OUR STATE
OF CRIME !! IT'S AN
OUTRAGE!

High School Student Found Alive; many leads reported

By KRIS CAPPS
Staff Writer

The slain body of 17-year-old Kathy R. Stockholm was found on the side of a road, in plain view, near Salcha shortly after midnight this morning, more than 30 miles from where she mysteriously disappeared Monday night.

Today, Crimestoppers offered a \$1,000 reward to anyone providing information leading to the arrest and indictment of the person responsible. Chena Kiwanis also offered a reward of up to \$10,000 for the same information.

Alaska State Trooper investigators said public response to their requests for information has been tremendous and they have many, many leads. But at this time, there are no suspects.

The cause of death was not immediately apparent, Troopers said. An autopsy is scheduled for later today.

Investigators, who worked on the case all night, released few details this morning. Someone called Troopers at 11:30 p.m. and reported finding the body, but it isn't known if that call was anonymous. Troopers have also not revealed exactly where the girl's body was found near Salcha.

The West Valley High School senior disappeared Monday night when she left home to retrieve

(See CASE, Back Page.)



RUITLESS SEARCH—This photo of 17-year-old Kathy Stockholm was distributed to searchers who combed the area surrounding West Valley High School all day Tuesday. At the command center in the high school parking lot, searchers used a map to divide the area to be searched.

Randy Robinson News-Miner

(Continued from page 1)

schoolbooks from the high school at about 8:45 p.m. She never came home. Her parents went to check on her and found the car she had been driving unlocked and running in the high school parking lot.

A popular student at West Valley, she was the daughter of Ken R. and Helen Stockholm. Her father is an assistant professor at the University of Alaska-Fairbanks.

Troopers said she didn't fit the mold of a runaway, and they began looking for her immediately.

Monday night, Troopers searched the school building and trails in surrounding woods. They checked the airport and called her friends. When she wasn't found, the volunteer Wilderness Search and Rescue group was called in and a full-scale search began Tuesday morning.

Searchers who hunted for the girl all day conducted their task with mixed emotions. They were determined to locate her if she was lying

hoped they wouldn't find her because that would mean she might still be alive.

"Most of the time, we're looking because someone is lost and we know they're lost," said Trooper Chuck Larnica, who helped direct the search. "She's missing, but we don't know why or how."

Volunteers pored over maps and coordinated the search from inside a large white Trooper van in the high school parking lot.

Searchers combed the woods around the school and even brought in a dog to track her scent.

A giant schnauzer, trained to find lost people, traced her path from the school to the edge of the walkway outside the front door. The trail ended there, leading searchers to believe she got into a car.

The dog handler said the way the dog behaved at the edge of the sidewalk indicated to her that "someone was either very angry or very upset." People give off certain chemicals when they

detect them, she said.

The girl apparently retrieved the book she came for, because it was not in her locker, Troopers said.

Initially, searchers combed the area between Geist Road, University Avenue, Fairbanks Street, and the university. But they soon expanded the search to Yankovich Road, the Parks Highway and Chena Ridge.

Meanwhile, other volunteers searched snowmachine trails and "lonely spots" nearby. Some searchers routinely checked dumpsters and other likely spots where a body might be easily disposed.

And in the back of their minds, searchers remembered that several weeks ago, a woman was raped near the Fairbanks Street bridge. "There's nothing to tie that in with this, but we're using it as a reference," said one searcher.

At 11:30 p.m., someone called Troopers and reported finding a body near Salcha, about 30 miles

TO THE EDITOR:

March 26, 1987
P.O.Box 74363
Fairbanks, AK 99707

To the family of Kathy Stockholm, my sincere sympathies. Likewise, to all all the other families who have also lost a loved one to an act of violence. It is a horrible accounting of our degenerative society. Wednesday's workday (the 25th) was filled with everyone's expressions and sorrows for yet another pointless, unexplainable murder.

Where does it end? How many more unnecessary, violent rapes/murders will we tolerate before taking the necessary steps to try to prevent future tragedies? Shall we continue to shake our heads, cry a little; all the while becoming DESENSITIZED to these crimes? What will it take for our lawmakers (or the vote of "We the People") to enact a powerful enough deterrent to put an end to this sadness?

Sadly enough, we don't feel threatened by any of it UNTIL it hits close to home. Ergo, take a moment... and just try to...

Imagine any atrocity happening to your grandmother, mother, aunt, sister, daughter, granddaughter, the little girl next door, son, brother, little boy next door.

Imagine a loved one not returning home ... the joy you shared that morning with her/him, turning to a chilling horror, a gut-wrenching sickness upon the realization...

Imagine having to go identify your daughter or mother, son or brother, a loved one at the morgue after what they've been through.

We are dealing with UNADULTERATED, PREMEDITATED, COLD-BLOODED MURDER!!

The way I see it what happened to Stephen Welch was preventable. If Harrington fit this character profile to such a "T", why was he EVER permitted PAROLE? It was ALL SO PREDICTABLE, the papers tell us!! Not to mention the fact, that once incarcerated the recidivism rate is the RULE as opposed to the exception. Check out the records. And we pay for their incarceration.

Once they catch the person responsible for Kathy Stockholm's death will there be a past police record, will there have been a period (or two or three) of incarceration, will the perpetrator fit some "Ideal" mold, also. I will be watching the papers as that is our ("J.Q.Public's") only outlet of info, if they see fit to put it all into print as selective as the papers can be with information.

Speaking of selectively informed, brings to mind the University of Alaska - Fairbanks assuming a hush-hush attitude towards the numerous rapes which occur on campus. They are all too concerned about bad publicity, bad press, I suppose. Whatever the rationale, if one rape could be prevented as a result of putting out bulletins, warnings thereof then it would be well worth it! Would-be rapists might reconsider knowing everyone was on the alert.

Perhaps if they bring the Capital Punishment bill to the ballot this session you should recall the Kathy Stockholm's, the Stephen Welch's, the Lori King's, the Doris Oehring's & on & on & on. It may sound inhumane, it may sound harsh: however, the harsh reality is innocent children and women are being raped and murdered, deprived of life because another human is not fit to live within the established norms.

In a capital punishment case a jury will make the final decision as to what the sentence should be anyway, all very democratic. Educate yourself on this bill, read up on it. Call your legislators. What it (Capital Punishment) would hope to accomplish is to act as a VERY NEEDED DETERRENT to these sickos! States that do have capital punishment don't find call to use it too often. The killers/rapists will go to a bordering State as opposed to committing the act in a State where they could face capital punishment. A bordering State to Alaska leaves Canada. By the time "would-be killer/rapist" arrived in a good-ole U.S. state again, perhaps, they'd have re-thought their motives.

It sickens me to realize that anymore a walk with my daughter through a narrow, wooded path (albeit, a short path & close to home) could bring us to a violent death as opposed to being the essence of peacefulness and beauty as it was intended to be! That we have to now fear or be wary of our fellow man rather than befriend and help someone in trouble, is a sad tale indeed. This is what it has come to.

Sincerely UPSET in
"Fairbanks... My Choice",

Becky Ringstad

cc: Senators Stevens & Murkowski
Senator Jan Faiks & Don Bennett
House Representatives
Anchorage Daily News
Alaska Women's Lobby
National Organization of Women

March 20, 1987

RECEIVED
MAR 21 1987

Senator Mitch Abood
P.O. Box V
Juneau, Alaska 99811

Dear Senator Abood:

I am so outraged by the recent murder of a woman and her two small daughters, here in Anchorage, that I am moved to communicate to you my absolute support of a death penalty for heinous crimes such as this.

As taxpayers and citizens of this fine state, we cannot and should not tolerate anything less than an immediate and final solution to the aberrant criminal element that threatens, not only our ability to live and raise our children in an environment free of fear, but our very lives.

As a life long Alaskan, I have been privileged to live my life in close proximity to the natural and wild life that coexist in this great land. Many lessons can be learned from nature, and what can be deemed cruel and terrible by some observers is nevertheless, necessary to the natural order of life.

Death and disease are integral parts of life. Individuals who engage in wanton acts of murder against innocent victims are a malignant evil that MUST be eradicated from our society. In my opinion, the death penalty serves the same purpose as medical efforts to eliminate cancer from a human body. I don't hear of any bleeding hearts crying over destroyed cancer growths.

I am fervently opposed to incarceration for this category of criminal. It is a travesty of justice to spend tax dollars to support these individuals, when we are unable to provide basic needs for the indigent among us. Also, as we all know, the judicial system will, more likely than not, eventually release these deranged criminals, to prey on more innocent victims. We must take a firm and immediate stand on this vital issue, and I beg your support.



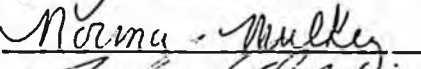
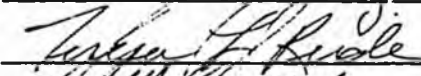
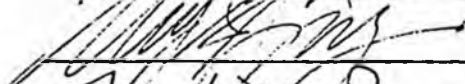

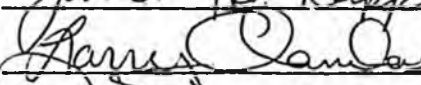
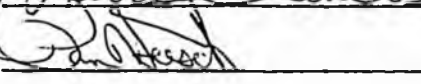
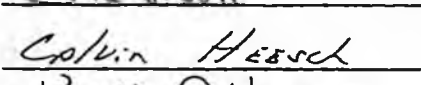
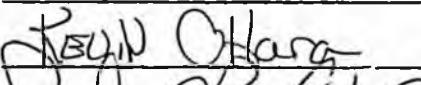
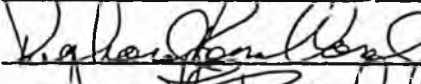

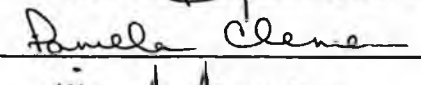
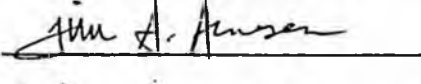
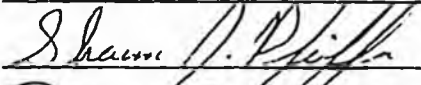
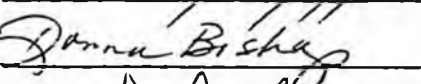
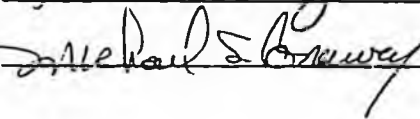
Sincerely,

Lila J. Vogt
2104 Lincoln
Anchorage, Alaska 99517

cc: Steve Cowper, Governor
Jay Kerttula, Chairman, Judiciary Committee
Arless Strugulewski, Vice-Chair, Judiciary Committee
Joe Josephson, Member, Judiciary Committee
Rick Halford, Member, Judiciary Committee
Pat Rodey, Member, Judiciary Committee

Mar. 20, 1987

I, the undersigned below, have read the attached letter to Senator Abood from Lila J. Vogt, in support of a death penalty and having read so, agree to its contents and fully support her stand on this issue.

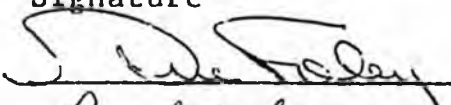

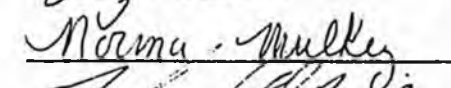
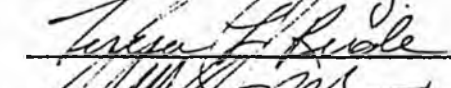
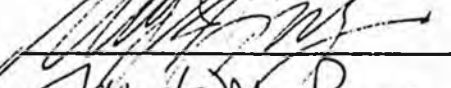


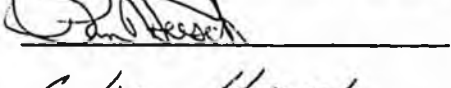
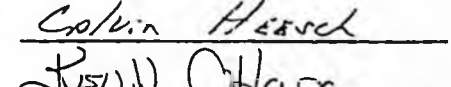
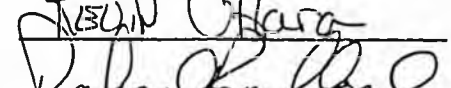
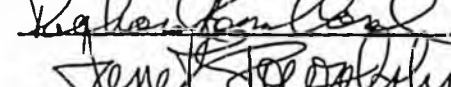

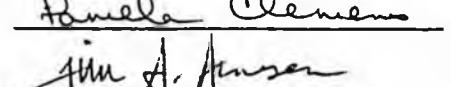
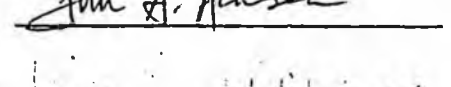
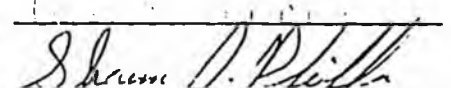
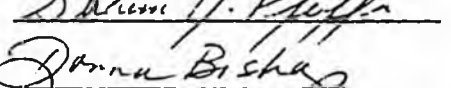
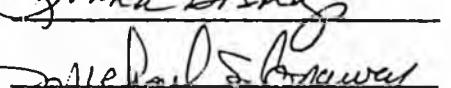
Printed Name	Signature	Address	Length of Alaskan Residency
Sue Foley		5308 Cape St.	30 years
Craig Stark		701 West 58th Anch	8 years
Norma Mulkey		100 Pacific View Dr. Anch	30 yrs.
Teresa L. Rude		2945 Seawood Dr	5 yrs
Janet M. Rupp		7402A W. 77th Anch 99503	30 years
Janet M. Rupp		1011 West 77 th 99518	7 years
LARRY CHAMBERS		1011 W. 77 th Anch 99518	5 yrs
Bum Heesch		3407 CUP #B 99503	5 yrs
Colvin Heesch		3407 Cup #B 99503	6 years
Kevin O'Hara		3307 DREBRANDT	12 YRS
Richard Romillard		1011 W 77 th	5 yrs
Janet Skowalski		1800 Shore Drive 99515	8 years
Pamela Clemens		13411 Diggins Dr 99515	32 yrs
Jim A. Arneson		1800 Shore Dr. 99515	15 yrs.
SHAUN J. PFEIFFER		7020 LINDEN CIRCLE 99502	19 yrs
DONNA BISHOP		4920 CHER 99518	8 yrs
Michael S. Conway		P.O. Box 77429 Eagle River AK	22 yrs

CORRECTION

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

Mar. 20, 1987

I, the undersigned below, have read the attached letter to Senator Abood from Lila J. Vogt, in support of a death penalty and having read so, agree to its contents and fully support her stand on this issue.

Printed Name	Signature	Address	Length of Alaskan Residency
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Colin Heesch		3407 Cuy # B 99503	6 years
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Danella Clemens		13411 Diggins Dr 99515	32 yrs
JIM A. ARNESEN		1800 Shore Dr. 99515	15 yrs.
SHAWN J. PFEIFFER		7090 LINDEN CIRCLE 99502	19 yrs
DONNA BISHOP		6920 Clark 99518	8 yrs
Michael S. Braway		P.O. Box 774429 Eagle River AK	22 yrs

LETTERS FROM THE PEOPLE

I have been a resident of this state for twenty years and have seen this town explode with criminal activities.

I fully support Sen. Mitch Abood's comment on Capital Punishment. We have demented people committing senseless murders, rapes, and burglaries at the expense of innocent peoples lives. No person should ever be allowed a second chance when they have taken another persons life, with no apparent regret or reason, short of self-defense.

How can anyone truly understand the pain and grief suffered by the loss of a family member or friend murdered or maimed by some crazed criminal? Perhaps you cannot undo that which has been done, but "Justice" can help to see that it does not happen again.

As a taxpayer, I shouldn't have to pay for the room and board of a criminal who has no respect for human life. I, as a citizen of the State of Alaska, support Sen. Mitch Abood's decision on bringing up the subject on "Capital Punishment" 100%.

Take time to review the events of the last two years. That alone should help you give serious thought about this issue. Think of the innocent people that can no longer enjoy their family, friends or relatives in this world because they lost them at the hands of someone very disturbed or simply greedy.

Linda J. Travers
701 W. 41st Avenue, Suite 201
Anchorage, Alaska 99503

Confidential:

Wk: 907-561-6866, 8-5pm.

Hm. 907-274-0040

Carla

(M)

KENAI.ALASKA.
MARCH.9.1987.

SENATOR: MR.MITCH.ABOOD.
POUCH V.JUNEAU.ALASKA.

DEAR SIR.

I WOULD LIKE TO ADDRESSE THIS LETTER TO [SB7]. A BILL ADDRESSING " CAPITOL PUNISHMENT " DEATH PENALTY.

I WHOLE HEARTEDLY SUPPORT THIS BILL. INCLOSED ARE BIBLE PASSAGES IN SUPPORT OF THIS BILL.

IF OUR NATION AND THIS STATE OF ALASKA IS EVER GOING TO PUT A STOP TO THE TERRIBLE CRIMES OF MURDER, WE MUST START TO FOLLOW GODS DIVINE LAWS. THIS [SB7] IS JUST ONE OF THE 749 DIVINE LAWS THAT MUST BE PUT INTO IMMEDIATE FORCE.

THIS NATION CANNOT LONG SURVIVE UTTERLY DISREGARDING GODS COMMANDMENTS, STATUTES, AND LAWS. BUT THE BIBLE TELLS US, THAT WE WILL FINALLY COME TO OBEY AND EXECUTE ALL, AS ABOVE MENTIONED.

BE OF STRONG HEART, AND PASS THIS [SB7]. OUR REWARDS WILL START TO MANIFEST THEMSELVES QUICKLY. THE VIOLENT CRIME RATE WILL SUBSIDE IMMENSELY.

GOD BLESS ALL OF YOU LAWMAKERS IN JUNEAU. EACH AND EVERY ONE OF YOU ARE CHARGED WITH PROTECTING OUR LIVES AND PROPERTY.

SINCERLY.

Kenneth C. Scalf
KENNETH C. SCALF.
P.O. BOX 4366.
KENAI.ALASKA.
99611.

RECEIVED
MAR 11 1987

will, man was now able to choose his course, for before him lay two roads — one the way of life, and the other the way of death.

Transgression of the Law

Many have asked the question, What is sin? The answer is simple. Sin is disobedience to the commands of God, a refusal to keep His Laws. John declared this when he said, "SIN IS THE transgression of the law." (I John 3:4)

Law, insofar as it regulates the conduct and action of men and nations, is a rule of action established by a recognized authority *with power to enforce justice and direct duty*. God is a recognized authority and He has full power to enforce His commands which must ultimately be observed, kept and obeyed; ~~for the Divine Laws cannot be altered nor removed~~ — they are a *constant* — and the passage of time has no effect upon them.

Enactments of Men

Human regulations, designated as law by men, are often but temporary acts of appeasement to counteract the result of the failure to keep and administer the Law of the Lord. By such means men have endeavored to meet their needs and to find a human solution for existing troubles which have in reality *resulted from the breaking of Divine Law*. Such man-made regulations undergo continual revision as time marches on! New generations come and changing conditions in the human experiment show the lack of foresight and wisdom in legislative enactments; for when the enactments of men are at variance with the Divine Law there can be only one result — *trouble for men*. This is true whenever men refuse to conform

with the laws of God which govern the universe; or fail to observe and keep God's moral, spiritual, and economic requirements — including the perfect laws of governmental administration.

Before considering the subject of Divine Law in its application to man, both individually and collectively, it is essential that we first settle satisfactorily the question of the entire scope and application of the Divine Laws, and man's relationship to these laws. This becomes necessary because of the prevalence of a ~~doctrinal teaching~~ which has had a definite influence upon Christian men and women to such an extent that it has led some to ignore God's injunction to observe and keep all His Laws. In thus ignoring the law such have failed to recognize the Divine plan of the operation of the Law of the Lord as it governs our physical well-being, economic security and national prosperity.

Perfection of the Law

The Psalmist, in speaking of the law, states, "The law of the Lord is perfect, converting the soul: the testimony of the Lord is sure, making wise the simple. The statutes of the Lord are right, rejoicing the heart: the commandment of the Lord is pure, enlightening the eyes." And although even this is said of the Law of the Lord, yet some ignore this declaration of the Psalmist, with its unmistakable clarity and meaning, and teach that they are free from the need of keeping His Laws. This doctrinal teaching is based on the assumption that because of Grace (the unmerited favor of God through His Son Jesus Christ), Christians have been exonerated from the need of keeping the law. If a man is free from keeping the law, however, he is at liberty then to violate that law and do so with impunity; and it would then follow that the gift of Grace be-

comes a license to be used as a cloak to cover sinning (for sin is the violation of the law), which is repugnant to all the teaching of the law and the direct commands of God as given in both the Old and the New Testaments.

Nowhere in Scripture is it stated that a Christian is free from the need of keeping the law. While the Word of God states that a Christian is not under bondage to the law, yet this freedom from bondage cannot in any sense be construed as a license to violate law. It is unfortunate that the gift of Grace has been used to perpetrate a doctrinal belief contrary to the clear teaching of the Bible. Violation of Divine Law is sin whether that law is violated by a Christian or a non-Christian, regardless of any doctrinal excuse that might be made for such violation.

Knowledge Essential

Now the scope of the Divine Law embraces all the needs, activities and requirements of men and nations; limiting, guiding and directing them in all the things that should, and should not, be done. Christians are amiss in not knowing and understanding these laws.

A knowledge of the Law of the Lord would unfold for Christians a much clearer concept of God's plans regarding His people than they have now. The possession of such information would open up before the Christian world the marvelous scope of that law in its entirety and in its application to the needs of men and nations. Such an understanding would once and for all settle the question that no one group of men, Christian or otherwise, are exempt from law observance. It would prove the absurdity of all the excuses given by men to justify their violation of the law; and would show that even to claim the right to ignore or violate Divine Law is, in itself, sin.

Definition of Sin

Sin, as defined in the dictionary, is wholly in accord with the Biblical definition of law violation. The dictionary states that sin is "Any want of conformity to or transgression of a rule of rectitude or duty, especially as made known through the conscience or the revealed Word of God: disagreement in thought, word, deed, or desire, whether by omission or commission, with the Divine Law."

This necessity of law observance must first be established, for unless this is done many Christians will continue to ignore the Divine Laws to their own hurt — thinking that in so doing they are justified because of their acceptance of the teachings of an erroneous doctrine which has belittled the need of such law observance. No man in his right mind would be so foolish as to hold for one moment that the Divine Laws of the physical universe need not be observed. The sane and intelligent Christian recognizes that he must keep them or suffer the consequences resulting from their violation. Is a man, though Christian, justified in a deliberate violation of the requirements of law as laid down in the Ten Commandments? Would he in his violation be immune from the evils resulting from their violation? Certainly not! And what is true regarding these moral laws of God is also true regarding the Divine Laws of administration with their rules and regulations governing economics, jurisprudence and the health of His people. Men or nations violating these laws will find themselves subject to the operation of punitive clauses of the law and will suffer under the curses pronounced for their violation.

Law vs. Grace

Paul is very clear in his statements regarding all this, for evidently he had in mind those in his day who were teaching

master to bring the people to Christ. Now that Christ has come, the schoolmaster is no more needed; nor is it necessary to be in bondage to the ritual, which law Paul declared he served no more.

The Added Ritual

"Confusion" is the only word which explains the condition existing in the minds of so many Christians regarding the law through the failure to recognize the ordinances as *that law which was added*. The *ritual* does not now have to be observed; but the *Commandments, Statutes, and Judgments* are still in operation and every man and nation will ultimately be compelled to observe and keep them. The day will yet come when God's people will be compelled to recognize the operation of these Divine Laws. Ezekiel prophesies of that time and says, "They shall also walk in my judgments, and observe my statutes, and do them," (Ezekiel 37:24) Let us familiarize ourselves with these Divine Laws which the nation will yet be compelled to observe, keep and obey. In that day, "The law shall go forth of Zion, and the word of the Lord from Jerusalem." (Micah 4:2)

A Need Today

As the result of God's recognition of the needs of men there have been revealed to mankind rules and regulations, the keeping of which will bring prosperity and happiness to all men everywhere. *Observance*, with the resultant peace and good will, will yet characterize all national and international relationships.

It is this recognition on the part of men and nations of the Jehovah administration as set forth in the Divine Law which is essential. It is the crying need of a world full of trouble and strife!

CHAPTER II

LAW IS THE ESSENCE OF LIFE

IT has been the continued and uninterrupted operation of the immutable laws of life that has made possible the existence of the human race. In fact, law is so essential to our very existence that life itself came into being as the result of the operation of law. But the operation of law is not confined to physical existence alone. Our very health and prosperity with every act and need of man, individually, socially and governmentally are all governed by law; and if we keep and observe these laws all their benefits will accrue unto us, while if we violate them there will follow inevitable retribution and suffering.

When men come to a full realization of these facts they will willingly apply themselves to understanding these laws so that in the knowledge of their operation and in obedience to them they may secure a blessing.

The many and varied problems of administration which have so troubled and perplexed mankind will find a solution in their observance.

Chaos in the physical, spiritual or economic life of man is evidence that there has been a failure to observe and keep the orderly laws of peace. A perusal of both past and present records of human history reveal chaotic conditions with mankind afflicted with crime, violence and war; while revolution, famine and disease have taken their toll of life. Such evil con-

edness of man was great in the earth, and that every imagination of the thoughts of his heart was only evil continually."

The deluge brought to an end this civilization of violence and crime. With the beginning of the new order human government was established, and to that government God issued the command, "~~Whoso sheddeth man's blood, by man shall his blood be shed: for in the image of God made he man~~" (Gen. 9:6.) Here we have the first evidence of the introduction of human government, for though man may know the law of the Lord, that law will not enforce itself! Therefore, it became necessary to delegate to human society the right of administration and judgment. Men were now enjoined to organize society and government and to curb violence. Under this command every earthly government has a right, nay it is a duty and *command* to bring to justice the murderer and subject him to the death penalty.

The Giving of the Law

Men have failed to recognize that from the very beginning of human history Divine Law has operated in the life of man. Because of this failure they have assumed that the law was first given to man at Mount Sinai. Nothing is further from the fact. God-fearing men have lived in accord with the principles of the law of the Lord centuries before the Mount Sinai experience of Israel and it is erroneous to attribute the knowledge of that law as coming to man through Moses. The revelation of Divine Law is from antiquity. Wherever men have been found, there also, for man's guidance, was a knowledge of the commandments, statutes and laws of God. True, men ignored and forgot them but, nevertheless, God saw to it that in the beginning His laws were known unto men.

Scriptural Evidence of Antiquity

The oldest record in Scripture, in which we have the account of the experiences of Job (who lived a few hundred years after the Deluge) makes mention of the laws of the Lord which were being kept by Job. Abraham was keeping these same laws four hundred and thirty years before the organization of the Israel Kingdom at Mount Sinai. This is borne out in the information given to Isaac to whom the Lord said He was performing His oath which He had sworn to Abraham, giving as one of the reasons, "Because that Abraham obeyed my voice, and kept my charge, my commandments, my statutes, and my laws." (Gen. 26:5.)

Moses Codified the Law

Thus Abraham observed the law long before Moses was born! Moses, however, had a task to perform and codified the laws of the Lord for Israel to administer at the time this people was organized into a Kingdom at Mount Sinai.

The Law vs. Ritual

Inasmuch as Abraham kept the commandments, statutes and law, then of what law is Paul speaking when he refers to the promises made to Abraham four hundred and thirty years before the law? (Gal. 3:17.) The passage is translated by Ferrar Fenton, "And I assert this—the ritual, beginning four hundred and thirty years after, could not cancel a settlement previously established by God, so as to abolish the promises."

It was not the commandments, statutes and laws of the Lord which Abraham was keeping that Paul refers to as coming four hundred and thirty years after the promise, but it was the ritual or religious service which was established or added at Mount Sinai because of sin. (Gal. 3:19.) Here Israel received their

the perfection of His laws and their administration. Thus, at Mount Sinai, was laid the foundation of the Kingdom of God upon earth.

A Kingdom without End

Mary, the mother of Jesus, was told by the Angel that this Kingdom would have no end. Daniel, the prophet, informed Nebuchadnezzar that the God of Heaven had set up a Kingdom that would have no end: a kingdom, so Daniel said, that was to be set up in the days when the foundation of the Empires of Babylon, Medo-Persia, Greece and Imperial Rome were being laid. History verifies this to have been true, for when events were taking shape that made possible the later rise of these four world empires which succeeded each other, Israel was being organized into a Kingdom at Mount Sinai. When Babylon came to power and Nebuchadnezzar became "king of countries" the government of the Kingdom of God set in the east and arose in the Isles of the sea, north and west of Palestine.

Following the receipt of the Divine Charter under which Israel was commissioned to administer His laws the nation fulfilled her agreement until after the death of Moses, Joshua and the elders of the generation that had known the Lord. Then came a falling away and ultimate failure on the part of Israel to observe and keep the oath they had taken when the people said, "All that the Lord hath spoken we will do."

Judgment upon Israel

The day finally came in the history of the Israel people when they refused altogether to observe or keep the requirements of their oath. The statement is made, "And they rejected his statutes, and his covenant that he made with their

forefathers; and his testimonies which he testified against them; and they followed vanity, and became vain . . . and they left all the commandments of the Lord . . . and sold themselves to do evil in the sight of the Lord, to provoke him to anger." (II Kings 17:15-17)

Judgment was then pronounced upon the House of Israel, "Therefore the Lord was very angry with Israel, and removed them out of his sight: and there was none left but the tribe of Judah only. . . . So was Israel carried away out of their own land to Assyria unto this day." The punitive clauses began to operate, first upon the House of Israel and later upon the House of Judah. Israel was taken into Assyrian captivity and one hundred and thirty years later Judah was taken to Babylon. These captivities began the long period of discipline to prepare His Kingdom for the day when they were to fulfill Ezekiel's prophecy, "They shall also walk in my judgments, and observe my statutes, and do them." (Ezekiel 37:24)

Physical and Spiritual Birth

Approaching the study of God's Kingdom with a preconceived idea that it has but a spiritual existence closes the mind to the actualities as taught in Scripture. The Bible definitely declares that the material or natural precedes the spiritual. Paul said, "Howbeit that was not first which is spiritual, but that which is natural; and afterwards that which is spiritual." (I Cor. 15:46.) It is a recognized fact of life that men and women must first be born physically before they can become spiritual.

Jesus gave Nicodemus instruction as to the second or spiritual birth when He said, "Except a man be born again, he cannot see the Kingdom of God." (John 3:3.) This statement puzzled Nicodemus. He therefore asked, "How can a

Then and *only then* will the Golden Rule be in full operation. In that day the jungle law of the "survival of the strongest" will give place to the law of assisting thy neighbor: when everyone will help his brother, thus instituting a *competition of service* instead of for selfish advantage as at present.

Christian and Jew

It is written, "Ye have caused many to stumble at the law." The Christian condemns the Jew for failure to recognize Jesus as the Messiah. The Jews have reason to condemn the Christians for failing to believe the Scriptures in all they teach, including the need of keeping and observing all the law. If the Jew has been blind to the fulfillment of ancient Messianic prophecies, Christians have been just as blind to the truth of the Kingdom and its laws of administration.

Division of the Law

The law can be divided into three main clauses: 1) Those laws declaring, commanding or prohibiting something. 2) The orders or injunctions from the Lord, instructing or charging the individual or nation. 3) The decisions under the statutes and commandments.

The commandments, statutes and judgments of the Lord can be classified as those laws dealing with human conduct, personal responsibility and governmental accountability to God for the administration of the affairs of His Kingdom and the meting out of justice and equity to all.

The Laws of Health

Health of body and mind is so essential to the fulfillment of every task that before Israel came to Mount Sinai where they received the law it became necessary that the people be in-

structed in the matter of health that they might be free from disease and sickness. In the journey from Egypt they came to Marah where the water was bitter. This brought murmurings against Moses who cried unto the Lord and was shown a tree which when cast into the water made it sweet. At that time the Lord made for Israel a statute and an ordinance regarding the health of His people. This law became both a statute of administration in the nation and an ordinance in the ecclesiastical order of service for the nation.

And the Lord said, "If thou wilt diligently harken to the voice of the Lord thy God, and wilt do that which is right in his sight, and wilt give ear to his commandments, and keep all his statutes, I will put none of these diseases upon thee, which I have brought upon the Egyptians; for I am the Lord that healeth thee." (Exodus 15:26.) "Later on, Moses reminds Israel that the "Lord thy God, he is God, the faithful God, which keepeth covenant and mercy with them that love him and keep his commandments to a thousand generations; And repayeth them that hate him to their face, to destroy them: he will not be slack to him that hateth him, he will repay him to his face. Thou shalt therefore keep the commandments, and the statutes, and the judgments, which I command thee this day, to do them. . . . And the Lord will take away from thee all sickness, and will put none of the evil diseases of Egypt, which thou knowest, upon thee; but will lay them upon all them that hate thee." (Deuteronomy 10:12-15.)

Reason for Sickness

Wherever there is disease and sickness among His people as a nation they are refusing to keep and administer His laws. Multitudes continue to live in pain and suffering, while countless numbers have gone to untimely graves for national failure

results of such a course is given regarding Asa, king of Israel, "And Asa in the thirty and ninth year of his reign was diseased in his feet, until his disease was exceeding great: yet in his disease he sought not to the Lord, but to the physicians. And Asa slept with his fathers." (II Chron. 16:12-13)

Health being one of man's most valuable assets — as evidenced in the fortunes continually spent by those who, having lost it, seek to regain its blessings again — has led us to deal first with the statute and ordinance received by Israel before they arrived at the foot of Mount Sinai.

CHAPTER V

OUR RELATIONSHIP TO GOD

PROTECTION of the individual in his right to freedom and liberty is the essence of Divine justice. Liberty under the law, however, can never be construed as a license to do as one pleases, disregarding the rights of others. In the exercise of personal freedom the law of the Lord protects the rights of individuals, regulating the relationship between men to insure justice for all. But there can be no true liberty nor real and lasting freedom for man unless men recognize God and Him only. God must come first in the thoughts and hearts of His people. Thus it is that His laws embrace, first of all, man's relationship to Him and afterwards man's relationship to his neighbor.

The Greatest Commandment

When Jesus was asked which was the greatest of all the commandments, He said, "And thou shalt love the Lord thy God with all thy heart, and with all thy soul, and with all thy mind, and with all thy strength." (Mark 12:30.) This same admonition had been given Israel by Moses (Deut. 6:4-5) and this instruction covered the requirements of the first half of the Ten Commandments.

Directly following His statement as to which was the first and greatest of the commandments, Jesus then said, "And the

second is like unto it, "Thou shalt love thy neighbour as thyself" (Matt. 22:39) wherein he quoted from a statement by Moses as recorded in Leviticus 19:18. This is the basic underlying principle of the last half of the Ten Commandments.

Love Fulfills the Law

Paul brings out the fact that the law will be kept if one truly loves his neighbor, saying, "For he that loveth another hath fulfilled the law, For this, Thou shalt not commit adultery, Thou shalt not kill, Thou shalt not steal, Thou shalt not bear false witness, Thou shalt not covet; and if there be any other commandment, it is briefly comprehended in this saying, namely, Thou shalt love thy neighbour as thyself. Love worketh no ill to his neighbour; therefore love is the fulfillment of the law." (Rom. 13:8-10.) Thus the *love of one's neighbor* covers the requirements as set forth in the last half of the Ten Commandments, for one who truly loves will not violate any of these requirements.

Thou Shalt Not

There are ten "Thou shalt nots" listed in the Bible and known as the Ten Commandments, and though Church leaders often refer to these commandments by name yet very few truly comprehend the full scope and meaning of the application of this codification of moral conduct as it applies to the individual relationship to God and to each other. The observance of these commandments is so important to citizenship in His Kingdom that immediately following the organization of the Kingdom the Ten Commandments were promulgated to the people of Israel. Not only is their observance essential to citizenship in the Kingdom, but no man, not even a Christian, can violate their provision and be right with God.

Importance of Pentecost

Israel received the Ten Commandments at the time of the inauguration of the very first Pentecost, fifty days after the Passover and Exodus from Egypt. It was therefore fitting that centuries later, following the Passover crucifixion of Jesus Christ, fifty days from that crucifixion at Pentecost the Holy Spirit descended and the Church was born at Jerusalem. At that time the disciples were endued with power that would enable them and all who came after them, following in their footsteps, to keep and observe the requirements of the Ten Commandments in a heart relationship to God through His Son Jesus Christ. Thus Israel, at Mount Sinai, received the law and the Church at Jerusalem the power to keep that law!

The Ten Commandments

In these laws, the very first to be promulgated at Mount Sinai for Israel to keep and administer, is the admonition that God must be supreme in the life and activities of man. Idolatry and swearing are forbidden while one day in seven is to be kept holy. Parents are to be honored and man must not commit violence or wrong his fellow man. Thus the commandments required reverence and worship of God as well as love for one's neighbor. In brief these laws are as follows:

- 1) No other gods before Him.
- 2) Shalt not bow down to graven images.
- 3) Shalt not take God's name in vain.
- 4) Keep holy every seventh day.
- 5) Honor father and mother.
- 6) Shalt not kill.
- 7) Shalt not commit adultery.
- 8) Shalt not steal.

The keeping of this fifth commandment not only will bring a blessing, but a knowledge of its requirement will instruct children in their responsibility. Modern home life is directly responsible for the lack of a knowledge of God's word. The parents who complain of neglect must bear part of the responsibility for failure to have properly instructed their children in the way of the Lord.

A Closed Book

As a nation we have fallen far below the requirements, in accordance with God's laws. The Bible has been excluded from our institutions of education; or, where allowed, has been so improperly used that its teachings are nullified. The home has failed to teach its precepts. The Church has failed to supply that true instruction so essential for an understanding of His laws.

CHAPTER VI

OUR RELATIONSHIP TO OUR NEIGHBOR

A QUESTION often asked by those who, for the first time, have come to a realization of the national need of keeping the commandments, statutes and judgments of the Lord is, What can we do about it? It is of course impossible for any individual to put into operation the statutes of national administration; but we can, insofar as national violation of such laws are concerned, point out the righteousness of the law and protest its violation, thus calling attention to the penalties being exacted from us as a nation today for such violation. Essentially it is a work of witnessing: a voice in the wilderness, as it were, calling attention to the ways of righteousness, pointing out the need of a national restoration of the administration of all His laws in order to secure the blessings of peace and prosperity.

Individually we do not have to wait until the nation makes that restoration before complying with the law and coming under its benefits. Many of the requirements of the law can now be kept by individuals, such as the rules for health as well as the required attitude towards God and towards our fellow man. Thus while it is impossible to have the perfection of administration and peace promised as the result of the nation administering the commandments, statutes and judgments as the law of the land yet, insofar as the law applies to the individual, we can conform with its requirements. It is self-evident that

cause the death of another are confined in a city of refuge until the death of the High Priest. In some cases this might amount to life imprisonment. Such a law certainly produced respect for life and made a man careful of the life of his fellowman. This law in operation today would reduce automobile accidents to a minimum. A driver of a car would be as careful of the life of another's husband, wife, daughter and son as he would be of his own loved ones, for none would want to forfeit his freedom.

Swiftness of Justice

It has been a fact of our history that when crime becomes intolerable the Anglo-Saxon mind unconsciously reverts to the ancient Israel laws of administration. This was in evidence in the early days of the west, in the organization of vigilant committees to deal with crime. The swiftness with which justice was executed soon restored law and order to a troubled community. This swiftness of justice was the method God inaugurated in the handling and punishment of the criminal. The case was tried and before sunset of the day following the verdict the murderer was dead. The man or woman who feels such swiftness of justice will not have a law-abiding effect fails in an understanding of human nature. A man desires to live, not to die. God knows this and therefore gave laws and judgments which would deter men from committing crimes. In the swiftness of judgment He said, "So shalt thou put evil away from among you; and all Israel shall hear, and fear."

Specific Judgments

Certain cases would be difficult to decide so judgments were rendered. "Whoever assails a man and he dies; he shall be put

to death. But if he did not lie in wait, but his stroke came from God, then you shall provide a place where he may fly. If, however, a man plans against his neighbour to murder him; then you shall take him from my altar to kill him." (Ex. 21: 12-14, *Ferrar Fenton Translation.*)

When two men strive together, if one be injured and is in bed and the one responsible is uninjured, then the uninjured shall pay for the loss of the injured man's time and bear the expense necessary to effect a cure (Ex. 21: 18-19).

If an ox gore a man or a woman the ox shall be killed and the owner be free except in the case where he knew the ox was vicious. If he had such knowledge the death penalty would be passed upon him, but in this case he could redeem his life by paying substantial damages.

When a thief is found breaking and entering at night and if killed it would not be murder (Ex. 22: 2). If in the daytime the thief can redeem his blood and if he has nothing, then he can be sold for stealing. These and sundry other judgments were passed to guide in the matter of administration.

There would be cases where a murder has been committed and the perpetrator of the crime is not detected. In such cases the city in which the crime was committed, or if in the country the nearest city is to make atonement (Deut. 21: 12-13). Here we have community guilt established when the individual responsible for the crime is not detected and punished.

We cannot leave this subject without referring to the New Testament. Jesus made hatred of a brother without cause the equivalent to murder. Thus the inward desire to destroy another is murder in the sight of God.

Exclusion from the Holy City, which is emblematical of the coming new order, is pronounced upon "The fearful, and un-

the keeping of every requirement of the Ten Commandments brings its specific blessing and an inward spiritual peace. This, then, is the answer for those who — having heard of the need of keeping the law and of its national administration — voice the question as to what individuals can do about it!

Already we have shown what is required of man in his relationship to God. This relationship is set forth in the first half of the Ten Commandments. There can be no orderly society where these requirements are ignored, for unless men place God first, and recognize their proper relationship to Him, men are incapable of keeping a proper relationship to their neighbor. Immediately following the requirements governing man's relationship to God the Lord sets forth the relationship of men — one to the other.

Domestic tranquillity is impossible in any community which ignores these laws. Thus, while the greatest of all commandments is to love the Lord thy God with all thy heart, the second is like unto it: "Thou shalt love thy neighbour as thyself."

The Sixth Commandment

No man can violate the last five commandments (beginning with the sixth) and love his neighbor as himself. The sixth commandment is, "Thou shalt not kill."

But there will be men who will violate this law, for unless authority is vested in some organization with power to enforce its observance, society will suffer from the result of violence and crime. Because this is so, God authorized the establishment of governments, delegating to man the power to administer His laws and authorizing the bringing to justice of the individual who violates His commandments.

Individuals have no right to set up a standard of personal conduct! That has already been done by God through the Ten Commandments. It is equally true that no nation has a

right to say what type of punishment shall be meted out to those who violate any of the commandments. The punishments have already been declared by the statutes and judgments of the Lord.

Capital Punishment Mandatory?

The original statute, "Whoso sheddeth man's blood, by man shall his blood be shed," was enlarged upon by a statute of judgment given to Israel at Mount Sinai. Here it is, "The congregation (i.e., the governmental assembly of Israel) shall judge between the slayer (the one who has taken life) and the revenger of blood (the executioner) . . . These things shall be for a statute of judgment unto you throughout your generations in all your dwellings. Whoso killeth any person, the murderer shall be put to death. . . . Moreover ye shall take no satisfaction for the life of a murderer which is guilty of death (not even the substitution of life imprisonment). . . . So ye shall not pollute the land wherein ye are; for blood it defileth the land: and the land cannot be cleansed of the blood that is shed therein, but by the blood of him that shed it."

(Num. 35:24-33)

Under this law every nation is justified in executing the murderer. This law makes such execution mandatory and the nation that refuses to carry out this law is guilty of failure to administer justice in the land. Such failure will result in a land filled with violence and crime.

In order to protect the man whose duty it is to execute the criminal, a judgment was rendered under this sixth commandment: "And the revenger of blood (the executioner) kill the slayer; he shall not be guilty of blood." (Num. 35:27.)

Contrary to popular belief the Bible does not hold life cheaply. It is a serious thing to take life, and for the taking of life the murderer forfeits his life. But those who accidentally



Alaska Court System
State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

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February 3, 1987

Senator Paul Fischer
Chair, Senate HESS Committee
P. O. Box V
Juneau, Alaska 99811

Dear Senator Fischer:

I writing with regard to Senate Bill 7 and Senate Bill 31, both relating to capital punishment.

The court system anticipates submitting fiscal notes on these two measures. To some extent, the fiscal impact will reflect the impact on the Department of Law, since the court's workload would depend on the number of capital punishment cases which are filed. However, the court's fiscal note will also reflect costs incurred separately by the court system in processing these cases, such as the cost of increased courtroom security.

Once the administrative office has an opportunity to review executive branch fiscal notes on these measures, we will prepare appropriate fiscal notes and forward them to the Legislature. In the meantime, if you have any questions or need additional information from the court system, please let me know.

Sincerely,

Karla L. Forsythe
Staff Counsel

KLF:bs

cc: Senator Tim Kelly
Senator Jan Faiks
Senator Mitchell Abood
Senator Jay Kerttula
Arthur H. Snowden, II, Administrative Director
Robert Fisher, Fiscal Officer

2/3/87-9

SIMILAR LANGUAGE

DIFFERENT LANGUAGE

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 2, 1987

SUBJECT: Comparison of SB 7 and SB 31, relating
to capital punishment

TO: Senator Paul Fischer
Chairman, Senate Health, Education, and
Social Services Committee

FROM: Keith B. Levy *KBL*
Legislative Counsel

You have requested a sectional analysis of SB 7 and a comparison of that bill to SB 31, both of which relate to capital punishment. Both bills are substantially similar; the differences between the two are detailed below. The sectional analysis of SB 31, prepared for you January 30, 1987, may be used as a reference to compare that bill with SB 7. Please note that a sectional analysis should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Sections 1, 2, and 4 of SB 7 are identical to sections 1, 2, and 4 of SB 31. These sections make technical amendments to existing provisions of law to refer to the new capital punishment provisions added by other sections of the bill.

Section 3 of SB 7 adds a new provision, AS 12.55.117. Subsection (a) of that section is identical to subsection (a) of AS 12.55.117 in section 3 of SB 31.

Subsection (b) is similar to subsection (b) of SB 31 except that SB 7 requires the date of execution to be set between 30 and 60 days after the death warrant is issued.

Subsection (c) of SB 7 is substantively the same as subsection (f) of SB 31.

Subsection (d) of SB 7 gives the Department of Corrections the authority to adopt regulations governing the procedures

for executions. In contrast, SB 31 sets those details out in other subsections of AS 12.55.117.

Section 5 of SB 7 adds AS 12.55.177, setting out the sentencing procedures for capital felonies. Subsections (a) and (b) are substantively identical to subsections (a) and (b) of AS 12.55.177 as added by section 5 of SB 31.

Subsection (c) of SB 7 is substantively similar to AS 12.55.178 in section 5 of SB 31, except that under SB 7 the jury renders a "recommended sentence" and under SB 31 the jury renders an "advisory sentence."

AS 12.55.179 in SB 7 provides that the court must follow the jury's recommendation. If the jury makes certain findings and recommends the death penalty, the court must impose that penalty. If the jury recommends a sentence of imprisonment, the court may not impose the death penalty. In contrast, SB 31 does not require the court to follow the jury's advisory sentence. - If the court makes certain findings regarding aggravating and mitigating factors in SB 31 (see AS 12.55.180 and 12.55.181), it may impose a death sentence independent of the jury's findings.

AS 12.55.180 in SB 7 sets out the aggravating factors the sentencing court may consider. They differ from the factors set out in AS 12.55.180 of SB 31. The SB 7 aggravating factors include:

- (1) the defendant's conduct manifested deliberate cruelty in that it involved sexual assault in the first degree, kidnapping, or assault in the first degree;
- (2) the defendant's conduct caused the death of two or more persons, other than accomplices;
- (3) the defendant had a prior conviction for murder;
- (4) the defendant's conduct was directed at the President of the United States or the Governor of Alaska;
- (5) the defendant's conduct was directed at a law enforcement, judicial, or correctional officer;
- (6) the defendant killed a child nine years of age or younger;
- (7) the offense was committed under an agreement that the defendant pay or be paid for the commission of the offense;

add
function →

add
factors →

add
factors →

yes →

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factor →

take
out
yes →

E

Put in Subsection 5 of Fischer

7 Take out
(8) the defendant committed the offense while avoiding lawful arrest or escaping from lawful confinement;

Take out
(9) the defendant committed the offense after escaping from lawful custody of a peace officer or place of lawful confinement.

AS 12.55.181 in SB 7 sets out the mitigating factors the court must consider; these are identical to the mitigating factors set out in AS 12.55.181 of SB 31.

AS 12.55.182 of SB 7 deals with incompetency and pregnancy of persons sentenced to death and is substantively the same as AS 12.55.182 of SB 31.

Section 6 of SB 7 is substantively the same as section 6 of SB 31.

K
Section 7 of SB 7 is a technical amendment dealing with the lack of jurisdiction of the Court of Appeals in death sentence appeals. This section is not found in SB 31, but probably should be added for clarity.

Take out
Section 8 of SB 7 requires the Commissioner of Corrections to establish a procedure for execution of the death penalty. This provision is not contained in SB 31.

Put in Sec. 8
Section 7 of SB 31 puts the question of the desirability of the death penalty on the ballot as an advisory question in 1988. This provision is not contained in SB 7.

Put in Sec. 9
Section 8 of SB 31 makes the bill effective August 15, 1989, giving the legislature the opportunity to respond to the advisory vote before the bill takes effect. In contrast, SB 7 has no effective date provision, and would take effect 90 days after the governor signs it.

KBL:csh
c7/039

SB

15

Alaska State Legislature

PRESIDENT
907-465-3755

JAN FAIKS
POST OFFICE BOX V
JUNEAU, ALASKA 99811

Senate

March 4, 1987

MAR 9 1987

MEMORANDUM

Bett

TO: Senator Jay Kerttula, Chairman
Senate Judiciary Committee

FROM: Senator Jan Faiks *Jan Faiks*
President of the Senate

SUBJECT: Committee Hearings on Senate Bill 15

I would appreciate your scheduling hearings before your committee on Senate Bill 15, an Act relating to trade secrets.

This bill has already been passed out of the Labor and Commerce Committee, with an amendment which exempts investigations or actions by the Attorney General under the Unfair Trade Practices and Consumer Protection Act.

Enclosed is a memo which gives background information on this bill. Should you or the committee members need additional information, please let me know.

Your consideration of my request will be appreciated.

OUT OF SESSION

6060 YUKON DRIVE ANCHORAGE, ALASKA 99516 907-274-6611

Alaska State Legislature

PRESIDENT

907-465-3755

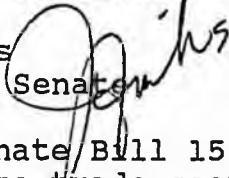
J. N. FAIKS
POST OFFICE BOX V
JUNEAU, ALASKA 99811

Senate

March 4, 1987

MEMORANDUM

TO: Senator Jay Kerttula, Chairman
Senate Judiciary Committee

FROM: Senator Jan Faiks 
President of the Senate

SUBJECT: Background on Senate Bill 15
An Act relating to trade secrets

Senate Bill 15 has been referred to your committee for consideration. This bill proposes the enactment of the Uniform Trade Secrets Act in Alaska.

The purpose of the act is to provide statutory protection for persons who develop and own trade secrets in Alaska. By protecting trade secrets, the person who develops and owns them obtains a competitive advantage which is different from, but in addition to, protection allowed under the federal patent and copyright laws.

Trade secrets are identified by an element of secrecy. A trade secret is not merely the privacy in which an ordinary commercial business is carried on; rather, it is something known to only one or a few, which is kept from the general public, and not susceptible of general knowledge. The nature of a trade secret is such that so long as it remains a secret it is valuable property to its possessor, who can exploit it commercially to his own advantage.

The classic example of a trade secret is the formula for Coca-Cola. Had the company sought a patent on the formula, it would have been kept a secret from the public for a period of

OUT OF SESSION

6060 YUKON DRIVE ANCHORAGE, ALASKA 99516 907-274-6611



seventeen years. Upon the expiration of the patent, all the world would have access to the formula, thus extinguishing the monopoly that the Coca-Cola Company has had to produce its beverage. Instead, by keeping the formula a trade secret, the company has had exclusive use of it for almost one hundred years.

A patent is best described as a contract between the inventor and the public, providing a seventeen-year monopoly for disclosure of the idea.

The protection of ideas depends on the nature of the idea. If the product itself can be used to determine the invention, then protection by patent should be used. For example, if the invention contained in a marketed product can be ascertained by taking the product apart, then patent law will provide the inventor with a monopoly of his idea for a period of seventeen years. To properly qualify for patent protection, the material must merit such monopoly.

However, if the idea can be kept a secret even if it is marketed, as in the example of Coca-Cola, then trade secret protection should be sought.

Technical innovation and its development into marketable products can take place only in surroundings that encourage the development of new ideas and protect the right of developers to grow and profit from their work. The protection provided by trade secret legislation is essential to an innovative society.

Given the unusual geographical and climatic conditions in our state, Alaskans have historically been innovative in developing unique means and methods to solve unusual and challenging construction and industry problems. As such, Alaskans should be afforded protection from misappropriation of their efforts, which are of value to the public at large.

Senate Bill 15 proposes the following:

Section 1. AS 45.50 is amended to add the Alaska Uniform Trade Secrets Act (AS 45.50.910 - 45.50.945)

AS 45.50.910 (a). A court may enjoin actual or threatened misappropriation of trade secrets. An injunction will be terminated when the trade secret has ceased to exist, or within a reasonable time thereafter to eliminate commercial advantage that would otherwise be derived from such misappropriation.

AS 45.50.910 (b). The court may issue an injunction which conditions future use of a trade secret upon payment of a reasonable royalty, should it determine that it would be unreasonable to prohibit such future use.

AS 45.50.910 (c). The court may order affirmative acts to protect a trade secret.

AS 45.50.915 (a) The complainant may recover for unjust enrichment and damages for the actual losses caused by the misappropriation.

AS 45.50.915 (b). Exemplary damages in an amount up to twice the actual damages may be awarded for willful and malicious misappropriation.

AS 45.50.920. The court shall preserve the secrecy of an alleged trade secret by reasonable means.

AS 45.50.925. An act for misappropriation must be brought within three years of discovery of the misappropriation.

AS 45.50.930(a). This act displaces conflicting tort, restitutionary, and other state laws which effect civil liability for misappropriation of a trade secret.

AS 45.50.930 (b). This act does not affect contractual or other civil liability or relief that is not based upon misappropriation of a trade secret, or criminal liability which may arise from such misappropriation.

AS 45.50.935. This act shall be applied and construed to make the laws consistent with respect to trade secret legislation enacted by other states.

AS 45.50.940. Definitions of relevant terms.

AS 45.50.945. This act shall be named the Alaska Uniform Trade Secrets Act.

Note: The attached amendment prepared by the Senate Labor and Commerce Committee adds a new subsection to Section 45.50.930 (b) (2) which will exempt the investigation and prosecution of antitrust and consumer protection cases by the Attorney General, as the Department of Law felt that this legislation might have an adverse effect on its enforcement in these areas.

SENATE AMENDMENT

BY: Labor & Commerce Committee

TO: _____ SENATE BILL NO. SB 15

TO: _____ HOUSE BILL NO. _____

On page 2, line 22, following "secret."; add a new subsection to read:

(c) AS 45.50.910 - 45.50.945 do not apply to investigations or actions by the Attorney General under the Unfair Trade Practices and Consumer Protection Act, AS 45.50.471 - 45.50.561, or under the Restraint of Trade Act, AS 45.50.562 - 45.50.596.

(TURN IN ORIGINAL AMENDMENT TO SENATE SECRETARY'S OFFICE.
THE AMENDMENT WILL BE NUMBERED, COPIED AND DISTRIBUTED.)

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

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

February 3, 1987

The Honorable Tim Kelly
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Re: SB 15 (Trade Secrets)

Dear Senator Kelly:

Mark Johnson of your office asked the Department of Law to propose language which would alleviate our concerns about the application of SB 15 to the Alaska Consumer Protection Act, AS 45.50.471 et seq. and the Alaska Restraint of Trade Act, AS 45.50.462 et seq.

Our suggestion would be to add another subsection to proposed AS 45.50.930, "Effect on Other Laws," to read:

(c) AS 45.50.910 - 45.50.945 do not apply to investigations or actions by the Attorney General under the Unfair Trade Practices and Consumer Protection Act, AS 45.50.471 -- 45.50.561, or under the Restraint of Trade Act, AS 45.50.562 -- 45.50.596.

Thank you for your consideration of this proposed language.

Sincerely,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By: 

Richard D. Monkman
Assistant Attorney General

RDM:nb

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: _____

Bill Version: SB15

Publish Date: _____

Revision Date: _____

Title: "An Act relating to trade secrets."

Agency Affected: Department of Law

BRU: Legal Services, Consumer Protection

Sponsor: Senator Faiks

Components: Antitrust, Consumer Protection

Requestor: Senate Labor and Commerce

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

CAPITAL						
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REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Please see attached analysis.

Richard I. Pegues

Prepared by: Richard I. Pegues, Director

Phone: 465-3672

Division: Administrative Services of Senate Staff

Date: Jan. 27, 1987

Ronald W. Lorensen, V

Approved by Commissioner: Acting Attorney General

Date: Jan. 27, 1987

Agency: Department of Law

Distribution (by preparer):

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB15

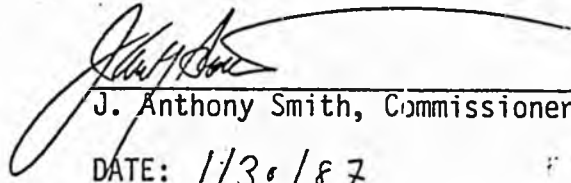
This legislation could have an adverse impact on the Department of Law's enforcement of both the Restraint of Trade Act (AS 45.50.562) and the Consumer Protection Act (AS 45.50.471). Under both of these statutes, the attorney general routinely subpoenas information which could be classified as "trade secret" under SB15. Consequently, prospective defendants could use SB15 to block or delay our investigations.

The cost of investigations and prosecution of antitrust and consumer protection cases could go up as a result. Because it is difficult to quantify increased cost, any estimate on our part would be speculative at best. More importantly, enactment of the bill in its present form could seriously delay the state's ongoing antitrust activities. It is therefore recommended that the bill be amended by adding a clause exempting investigations and prosecutions by the attorney general.

SB 15 An Act relating to trade secrets.

The Department of Commerce and Economic Development has no position on this bill.

Although the bill amends Title 45, which generally applies to the department, Section 50 does not contain a stipulation of responsibility for the department. Sec. 45.50.910(a) stipulates that a court may provide relief. Under this circumstance, the department defers to the Department of Law.



J. Anthony Smith, Commissioner
DATE: 1/30/87 _____

Alaska State Legislature



PRESIDENT

907-465-3755

JAN FAIKS
POST OFFICE BOX V
JUNEAU, ALASKA 99811

Senate

January 30, 1987

MEMORANDUM

TO: Senator Tim Kelly, Chairman
Senate Labor and Commerce Committee

FROM: Senator Jan Faiks
President of the Senate *Jan Faiks*

SUBJECT: Background on Senate Bill 15
An Act relating to trade secrets

Senate Bill 15 has been referred to your committee for consideration. This bill proposes the enactment of the Uniform Trade Secrets Act in Alaska.

The purpose of the act is to provide statutory protection for persons who develop and own trade secrets in Alaska. By protecting trade secrets, the person who develops and owns them obtains a competitive advantage which is different from, but in addition to, protection allowed under the federal patent and copyright laws.

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OUT OF SESSION

7060 YUKON DRIVE ANCHORAGE, ALASKA 99510 907-263-1111

AS 45.50.910 (b). The court may issue an injunction which conditions future use of a trade secret upon payment of a reasonable royalty, should it determine that it would be unreasonable to prohibit such future use.

AS 45.50.910 (c). The court may order affirmative acts to protect a trade secret.

AS 45.50.915 (a) The complainant may recover for unjust enrichment and damages for the actual losses caused by the misappropriation.

AS 45.50.915 (b). Exemplary damages in an amount up to twice the actual damages may be awarded for willful and malicious misappropriation.

AS 45.50.920. The court shall preserve the secrecy of an alleged trade secret by reasonable means.

AS 45.50.925. An act for misappropriation must be brought within three years of discovery of the misappropriation.

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AS 45.50.930 (b). This act does not affect contractual or other civil liability or relief that is not based upon misappropriation of a trade secret, or criminal liability which may arise from such misappropriation.

AS 45.50.935. This act shall be applied and construed to make the laws consistent with respect to trade secret legislation enacted by other states.

AS 45.50.940. Definitions of relevant terms.

AS 45.50.945. This act shall be named the Alaska Uniform Trade Secrets Act.

seventeen years. Upon the expiration of the patent, all the world would have access to the formula, thus extinguishing the monopoly that the Coca-Cola Company has had to produce its beverage. Instead, by keeping the formula as a trade secret, the company has had exclusive use of it for almost one hundred years.

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Senate Bill 15 proposes the following:

Section 1. AS 45.50 is amended to add the Alaska Uniform Trade Secrets Act (AS 45.50.910 - 45.50.945)

AS 45.50.910 (a). A court may enjoin actual or threatened misappropriation of trade secrets. An injunction will be terminated when the trade secret has ceased to exist, or within a reasonable time thereafter to eliminate commercial advantage that would otherwise be derived from such misappropriation.

Original sponsors: Faiks and Kerttula

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 CS FOR SENATE BILL NO. 15 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to trade secrets."

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

8 * Section 1. AS 45.50 is amended by adding new sections to read:

9 ARTICLE 8. ALASKA UNIFORM TRADE SECRETS ACT.

10 Sec. 45.50.910. INJUNCTIVE RELIEF FOR MISAPPROPRIATION OF TRADE
11 SECRETS. (a) A court may enjoin actual or threatened misappropria-
12 tion of trade secrets. Upon application to the court, an injunction
13 shall be terminated when the trade secret has ceased to exist, but the
14 injunction may be continued for an additional reasonable period of
15 time in order to eliminate commercial advantage that otherwise would
16 be derived from the misappropriation.

17 (b) If the court determines that it would be unreasonable to
18 prohibit future use of a trade secret, an injunction may condition
19 future use upon payment of a reasonable royalty for no longer than the
20 period of time the use could have been prohibited.

21 (c) In appropriate circumstances, affirmative acts to protect a
22 trade secret may be compelled by court order.

23 Sec. 45.50.915. DAMAGES. (a) In addition to or in lieu of
24 injunctive relief, a complainant may recover damages for the actual
25 loss caused by misappropriation. A complainant also may recover for
26 the unjust enrichment caused by misappropriation that is not taken
27 into account in computing damages for actual loss.

28 (b) If wilful and malicious misappropriation exists, the court
29 may award exemplary damages in an amount not exceeding twice the

1 damages awarded under (a) of this section.

2 Sec. 45.50.920. PRESERVATION OF SECRECY. In an action under
3 AS 45.50.910 - 45.50.945, a court shall preserve the secrecy of an
4 alleged trade secret by reasonable means, which may include granting
5 protective orders in connection with discovery proceedings, holding
6 in-camera hearings, sealing the records of the action, and ordering
7 any person involved in the litigation not to disclose an alleged trade
8 secret without prior court approval.

9 Sec. 45.50.925. LIMITATION OF ACTIONS. An action for misappro-
10 priation must be brought within three years after the misappropriation
11 is discovered or by the exercise of reasonable diligence should have
12 been discovered. For the purposes of this section, a continuing
13 misappropriation constitutes a single claim.

14 Sec. 45.50.930. EFFECT ON OTHER LAWS. (a) AS 45.50.910 -
15 45.50.945 displace conflicting tort, restitutionary, and other state
16 laws pertaining to civil liability for misappropriation of a trade
17 secret.

18 (b) AS 45.50.910 - 45.50.945 do not affect

19 (1) contractual or other civil liability or relief that is
20 not based upon misappropriation of a trade secret; or

21 (2) criminal liability for misappropriation of a trade
22 secret.

23 (c) AS 45.50.910 - 45.50.945 do not apply to investigations or
24 actions by the attorney general under AS 45.50.477 (unfair
25 trade practices and consumer protection) or under AS 45.50.562 -
26 45.50.596 (restraint of trade).

27 Sec. 45.50.935. UNIFORMITY OF APPLICATION AND CONSTRUCTION.
28 AS 45.50.910 - 45.50.945 shall be applied and construed to make the
29 law uniform with respect to trade secrets among states enacting

1 similar provisions.

2 Ser. 45.50.940. DEFINITIONS. In AS 45.50.910 - 45.50.945,
3 unless the context otherwise requires,

4 (1) "improper means" includes theft, bribery, misrepresen-
5 tation, breach or inducement of a breach of a duty to maintain secre-
6 cy, or espionage through electronic or other means;

7 (2) "misappropriation" means

8 (A) acquisition of a trade secret of another by a
9 person who knows or has reason to know that the trade secret was
10 acquired by improper means; or

11 (B) disclosure or use of a trade secret of another
12 without express or implied consent by a person who

13 (i) used improper means to acquire knowledge of
14 the trade secret; or

15 (ii) at the time of disclosure or use, knew or had
16 reason to know that knowledge of the trade secret was de-
17 rived from or through a person who had utilized improper
18 means to acquire it or who owed a duty to the person seeking
19 relief to maintain its secrecy or limit its use, or was
20 acquired under circumstances giving rise to a duty to main-
21 tain its secrecy or limit its use; or

22 (iii) before a material change of the person's
23 position, knew or had reason to know that it was a trade
24 secret and that disclosure was the result of an independ-
25 ent or mistake.

26 (3) "trade secret" means information that

27 (A) derives independent economic value, actual or
28 potential, from not being generally known to, and not being
29 readily ascertainable by proper means by, other persons who can

1 obtain economic value from its disclosure or use, and

2 (B) is the subject of efforts that are reasonable
3 under the circumstances to maintain its secrecy.

4 Sec. 45.50.945. SHORT TITLE. AS 45.50.910 - 45.50.945 may be
5 cited as the Alaska Uniform Trade Secrets Act.
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SB

16

STATE OF ALASKA



Handwritten signatures and initials, including "TK" and "HK".

SENATE JUDICIARY COMMITTEE

#2

SEN. JAY KERTTULA
SEN. ARLISS STURGULEWSKI
SEN. RICK HALFORD
SEN. JOE JOSEPHSON
SEN. PAT RODEY

P.O. BOX V
STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-3717
(907) 465-3771

2-3-87

MEMO: TO SENATE JUDICIARY COMMITTEE MEMBERS

FROM: SENATE JUDICIARY COUNSEL

RE: CSSB-16 AS RE-DRAFTED 2-3-87

There are four changes to CSSB-16 as drafted 1-27-87.

1. Section 1 is changed back to original statute form except for a drafting error. This is simply a section to tell people where to look in the statutes to find information and the statute will be clearer if substantive information is put in one place. There is a drafting error in the statute and that has been changed in the CS.

2. The time in which DNR has to act on escheated property has been cut down from 180 days to 90. DNR Director Tom Hawkins says that this is the minimum time in which DNR can act given notice requirements.

3. Instead of writing a new notice requirement as the original CS did this CS will require notice as given in AS 38.05.945. It should be noted that notice is required under the State Constitution, Article 8, Sec. 10.

4. A section has been added to change AS 38.05.945 to note that it now applies to escheated property and to note that when notice under it is given concerning escheated property the exceptions to the notice requirement (sections e and f, covering mining) do not apply.

5-0098B

Bannister

2/3/87

#2

Original sponsor: Faiks

Passed out of Judiciary
 Recommendation
 2-3-87

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 CS FOR SENATE BILL NO. 16 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the disposition of unclaimed real
7 property interests."

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

9 * Section 1. AS 13.16.381 is amended to read:

10 Sec. 13.16.381. DISPOSITION OF UNCLAIMED ESTATE BY PERSONAL
11 REPRESENTATIVE. When there is no taker of an intestate estate, or if
12 an heir, devisee, or claimant cannot be found and the missing person
13 has no conservator, the personal representative shall handle the14 (1) unclaimed personal property of the estate in accordance
15 with AS 34.45.280 - 34.45.780; and16 (2) unclaimed real property of the estate in accordance
17 with AS 38.95 [AS 38.05].

18 * Sec. 2. AS 38.05.945(a) is amended to read:

19 (a) This section establishes the requirements for notice given
20 by the department for the following actions:21 (1) classification or reclassification of state land under
22 AS 38.05.300 and the closing of land to mineral leasing or entry under
23 AS 38.05.185;

24 (2) zoning of land under applicable law;

25 (3) a decision under AS 38.05.035(e) regarding the sale,
26 lease, or disposal of an interest in state land or resources; [AND]27 (4) a competitive disposal of an interest in state land or
28 resources after final decision under AS 38.05.035(e); and29 (5) proposed transfer of escheated real property by the

1 department under AS 38.95.230.

2 * Sec. 3. AS 38.05.945 (e) is amended to read:

3 (e) Except for (a)(5) of this section, the [THE] provisions of
4 this section do not apply to a lease issued under AS 38.05.205.

5 * Sec. 4. AS 38.05.945(f) is amended to read:

6 (f) Except for (a)(5) of this section, the [THE] provisions of
7 this section do not apply to a production license issued under AS
8 38.05.207.

9 * Sec. 5. AS 38.95.230 is repealed and reenacted to read:

10 Sec. 38.95.230. TRANSFER OF ESCHEATED REAL PROPERTY BY DEPART-
11 MENT. Within 90 days after a judgment of escheat under AS 38.95.220
12 and after notice has been given as required under AS 38.05.945, the
13 department shall sell, lease, exchange, or otherwise transfer the
14 escheated real property unless the department issues a written finding
15 that the sale, lease, exchange, or other transfer is not in the best
16 interest of the state.

17 * Sec. 6. AS 38.95.240 is repealed and reenacted to read:

18 Sec. 38.95.240. CLAIMS TO ESCHEATED REAL PROPERTY. (a) Within
19 seven years after a judgment of escheat under AS 38.95.220, a person
20 who is not a party to the escheat proceeding may bring an action in
21 the superior court to prove the person's claim to the real property.
22 If the plaintiff establishes the claim and that the plaintiff had no
23 knowledge of the prior escheat proceeding, the court shall award the
24 plaintiff

25 (1) the property if the state still owns the property; or

26 (2) an amount equal to the

27 (A) net proceeds from the sale of the real property
28 under AS 38.95.230;

29 (B) the appraised fair market value of the property

1 less the expenses of appraisal, if the property has been trans-
2 ferred other than by sale or lease.

3 (b) A person who is awarded property under (a) of this section
4 is not entitled to the rents, profits, interest, or dividends that
5 accrue to the state during the state's possession of the property.

6 (c) The time limitation of seven years does not apply to a minor
7 or an incapacitated person, but the person must bring an action to
8 prove the person's claim to the real property within one year after
9 the person reaches the age of eighteen years or the incapacity ceases.
10 In this subsection, "incapacitated person" has the meaning given in
11 AS 13.26.005.

12 (d) This section does not prevent the state from transferring
13 escheated real property to a person who provides proof satisfactory to
14 the department that the person is the owner of the real property, if

15 (1) the department determines the transfer to be appropri-
16 ate; and

17 (2) the transfer occurs within seven years after the judg-
18 ment of escheat under AS 38.95.220.

19 * Sec. 7. AS 38.95.250 is repealed and reenacted to read:

20 Sec. 38.95.250. PROCEEDS OF SALE. The department shall deposit
21 the net proceeds from the sale of real property in an escheated real
22 property trust account. The department shall maintain the proceeds in
23 the account for a period of at least seven years after the date of the
24 judgment of escheat. The department may use money in the trust ac-
25 count to pay claims made under AS 38.95.240.

26 * Sec. 8. AS 38.95.270 is amended to read:

27 Sec. 38.95.270. DEFINITIONS. In AS 38.95.200 - 38.95.270[,]

28 (1) "department" means the Department of Natural Resources;

29 (2) "net proceeds" means the proceeds from a sale under

1 AS 38.95.230 after deduction of the costs of the sale, including
2 attorney fees and publication costs;

3 (3) "real property" includes an interest in real property.

4 * Sec. 9. This Act applies to real property that is the subject of an
5 escheat proceeding begun on or after the effective date of this Act.
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STATE OF ALASKA



SENATE JUDICIARY COMMITTEE

SEN. JAY KERTTULA
SEN. ARLISS STURGULEWSKI
SEN. RICK HALFORD
SEN. JOE JOSEPHSON
SEN. PAT RODEY

P.O. BOX V
STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-3717
(907) 465-3771

Jan. 27, 1987

#1

To: Senate Judiciary Members
From: Senate Judiciary Counsel
Re: CS for SB-16 "An Act Relating to the disposition of unclaimed real property interests"

During the first hearing on SB-16 a number of concerns were raised by Committee members and witnesses. We have sought to address these concerns in a proposed Committee Substitute, which is attached for your perusal and comment.

There are four changes in the CS.

First (Page 1, Lines 16-21): This section adds a requirement that the personal representative of an unclaimed estate notify not only DNR, but also notify the BIA, the municipality where the property is located, and, if applicable, the CR&A office that handles municipal trust land. This change was made to cover the concerns expressed by Mr. Michael DeMan, Principal Planner of SEACAP.

Second (Page 1, Lines 22-28): This section manifests an intent that DNR sell the land as proposed by the original bill, but also sets a 180-day time limit in which DNR must act (proposed by Senator Halford) and allows an historic exception along with a "best interest" exception as requested by the Commissioner of DNR.

Third (Page 2, Lines 12-14): This section was added to deal with the situation that could arise if an unknown heiress" shows up and her property has been disposed of other than by sale or lease. It requires an appraisal so the heiress can get her fair market value out of the state. This was a drafting change-not a committee suggestion.

Fourth (Page 2, Line 29-Page 3, Line 1): This section incorporates Senator Faiks' suggestion that there be a time limit on how long DNR has in which to transfer escheated real property to an unknown heiress. (Note-under the current law there is no time limit on this with DNR while there is a seven-year limit on the courts-therefore the law actually gives DNR significantly more lee-way than the courts in transferring land to an unknown heiress.)

5-0098B
Bannister
1/27/87

#1

Original sponsor: Faiks

1 IN THE SENATE BY THE JUDICIARY COMMITTEE
 2 CS FOR SENATE BILL NO. 16 (Judiciary)
 3 IN THE LEGISLATURE OF THE STATE OF ALASKA
 4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the disposition of unclaimed real
 7 property interests."

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

9 * Section 1. AS 13.16.381 is amended to read:

10 Sec. 13.16.381. DISPOSITION OF UNCLAIMED ESTATE BY PERSONAL
 11 REPRESENTATIVE. When there is no taker of an intestate estate, or if
 12 an heir, devisee, or claimant cannot be found and the missing person
 13 has no conservator, the personal representative shall

14 (1) handle the [(1)] unclaimed personal property of the
 15 estate in accordance with AS 34.45.280 - 34.45.780; and

16 (2) report the unclaimed real property of the estate to the
 17 Department of Natural Resources, the federal Bureau of Indian Affairs
 18 office that handles trust land, each municipality where the property
 19 is located, and, if applicable, the state Department of Community and
 20 Regional Affairs office that handles municipal trust land [IN ACCOR-
 21 DANCE WITH AS 38.05].

22 * Sec. 2. AS 38.95.230 is repealed and reenacted to read:

23 Sec. 38.95.230. TRANSFER OF ESCHEATED REAL PROPERTY BY DEPART-
 24 MENT. Within 180 days after a judgment of escheat under AS 38.95.220,
 25 the department shall sell, lease, exchange, or otherwise transfer the
 26 escheated real property unless the department issues a written finding
 27 that the sale, lease, exchange, or other transfer is not in the best
 28 interest of the state.

29 * Sec. 3. AS 38.95.240 is repealed and reenacted to read:

Handwritten notes:
 18-20: {
 24: interests
 25: shall
 26: unless
 27: that
 28: interest
 29: *
 30: However, all
 31: better would
 32: be appeals of
 33: content of state

1 Sec. 38.95.240. CLAIMS TO ESCHEATED REAL PROPERTY. (a) Within
 2 seven years after a judgment of escheat under AS 38.95.220, a person
 3 who is not a party to the escheat proceeding may bring an action in
 4 the superior court to prove the person's claim to the real property.
 5 If the plaintiff establishes the claim and that the plaintiff had no
 6 knowledge of the prior escheat proceeding, the court shall award the
 7 plaintiff

8 (1) the property if the state still owns the property; or

9 (2) an amount equal to the

10 (A) net proceeds from the sale of the real property

11 under AS 38.95.230;

12 (B) the appraised fair market value of the property

13 less the expenses of appraisal, if the property has been trans-
 14 ferred other than by sale or lease.

15 (b) A person who is awarded property under (a) of this section
 16 is not entitled to the rents, profits, interest, or dividends that
 17 accrue to the state during the state's possession of the property.

18 (c) The time limitation of seven years does not apply to a minor
 19 or an incapacitated person, but the person must bring an action to
 20 prove the person's claim to the real property within one year after
 21 the person reaches the age of eighteen years or the incapacity ceases.
 22 In this subsection, "incapacitated person" has the meaning given in
 23 AS 13.26.005.

24 (d) This section does not prevent the state from transferring
 25 escheated real property to a person who provides proof satisfactory to
 26 the department that the person is the owner of the real property, if

27 (1) the department determines the transfer to be appropri-

28 ate; and

29 (2) the transfer occurs within seven years after the

*Added to
 AS 38.95.240
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 AS 38.95.240*

CSSB 16(Jud)

1 judgment of escheat under AS 38.95.220.

2 * Sec. 4. AS 38.95.250 is repealed and reenacted to read:

3 Sec. 38.95.250. PROCEEDS OF SALE. The department shall deposit
4 the net proceeds from the sale of real property in an escheated real
5 property trust account. The department shall maintain the proceeds in
6 the account for a period of at least seven years after the date of the
7 judgment of escheat. The department may use money in the trust ac-
8 count to pay claims made under AS 38.95.240.

9 * Sec. 5. AS 38.95.270 is amended to read:

10 Sec. 38.95.270. DEFINITIONS. In AS 38.95.200 - 38.95.270[,]

11 (1) "department" means the Department of Natural Resources;

12 (2) "net proceeds" means the proceeds from a sale under
13 AS 38.95.230 after deduction of the costs of the sale, including
14 attorney fees and publication costs;

15 (3) "real property" includes an interest in real property.

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* Sec. 6. This Act applies to real property that is the subject of an
escheat proceeding begun on or after the effective date of this Act.

Alaska State Legislature



PRESIDENT
907-465-3755

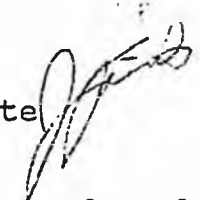
JAN FAIKS
POST OFFICE BOX V
JUNEAU, ALASKA 99811

Senate

January 22, 1987

MEMORANDUM

TO: Senator Jay Kerttula, Chairman
Senate Judiciary Committee

FROM: Jan Faiks, President of the Senate 

SUBJECT: Background on Senate Bill 16
An Act relating to the disposition of unclaimed
real property

Senate Bill 16 has been referred to your committee for consideration. This bill seeks to simplify the procedures for the disposition of escheated real property by requiring the State to sell such property, thereby creating revenue for the State and returning property to the private sector.

The Fourteenth Legislature adopted House Bill 182 relating to a Uniform Unclaimed Property Act. The Governor subsequently signed the bill and it became Chapter 133 of the Session Laws of 1986. This legislation is now codified in AS 13.16.381, and AS 38.95.200-270.

This bill, and the statutes it seeks to replace, concern escheated real property. "Escheat" refers to property which reverts to the State in situations where there is no one to inherit it.

AS 13.16.381 concerns the disposition of unclaimed estates by personal representatives. That statute currently specifies that where there is no taker of an intestate estate, or if an heir, devisee, or claimant cannot be found and the missing person has no conservator, the personal representative shall handle the ...unclaimed real property of the estate in

OUT OF SESSION

6060 YUKON DRIVE ANCHORAGE, ALASKA 99516 907-274-6611

accordance with AS 38.05. [Note: This statute contains a typographical error. The statute should properly refer to AS 38.95.]

AS 38.95.200-270 concern real property escheated to the State, and enumerate the steps which must be followed by the Department of Natural Resources (herein after referred to as the Department). My concern is that these steps are inefficient and costly. The steps are as follows:

1. The Department must first be informed or have reason to believe that real property has escheated to the State. (AS 38.95.210)
2. The Department must then bring an action in Superior Court to establish whether the property has escheated to the State, or it may maintain an action to recover the possession of escheated property, or the enforcement of the State's right to the property. (AS 38.95.210)
3. The Department must then get a court judgment of escheat. (AS 38.95.220)
4. The Department has two years from the judgment of escheat to determine the proper disposition of the property by making a "best interest finding". The Department may, at its option, sell, lease, exchange, assign, or otherwise manage the property. (AS 38.95.230) The method of disposition selected determines the procedures to be followed by the Department.
5. A series of procedural and valuation steps must then be consulted in the event that a claim to the property is filed within seven years from the judgment of escheat. (AS 38.95.240)

Senate Bill 16 has two significant effects on these statutes. First, it facilitates the disposition of escheated real property by requiring the Department to sell it. By eliminating the disposition options currently available, several procedural and valuation steps are also eliminated. Specifically, the two-year lag period for disposition, need for a written "best interest" finding, and the property appraisal requirements of AS 38.95.230 would be eliminated. Awards to plaintiffs would also be simplified by eliminating the present variables of AS 38.95.240, since the courts could award the property or an amount equal to the net proceeds of the sale.

Additionally, since the Department must then sell the escheated property by public auction, the property is returned to the private sector and revenue is created for the State. The current system allows the State, at its option, to sell, lease, exchange, assign, or otherwise manage the property, thus taking more time for disposition, costing more money to maintain, and not effectively utilizing the property.

Since this bill was pre-filed, further research was conducted by my staff. I ask that the committee consider these additional changes to the current statute which are of concern.

AS 38.95.240 (d) needs to either be amended or eliminated altogether. This section allows the State to transfer escheated real property to a person who provides proof satisfactory to the Department that the person is the owner of the real property. This gives the Department the opportunity and responsibility to determine the rightful ownership of real property, a function which I feel would be better served by an action in Superior Court.

In the alternative, this statute should be amended to place a limit on the time period in which an individual could present a claim to the Department. The current statute provides that claims brought in Superior Court must be within seven years from judgment of escheat, yet no time restraint is placed on those claims which are brought before the Department.

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 21, 1987

SUBJECT: Sectional analysis of SB 16
TO: Senator Jay Kerttula, Chair
Senate Judiciary Committee
FROM: Theresa L. Bannister *TB*
Legislative Counsel

You have requested a sectional analysis of the above described bill.

As a preliminary matter, please note that a sectional analysis or summary of a bill should not be considered an authoritative interpretation of the bill, and the bill itself is the best statement of its contents.

Section 1 requires the personal representative of an intestate estate to report the unclaimed real property of the estate to the Department of Natural Resources.

Section 2 requires the Department of Natural Resources to sell escheated real property by public auction in the manner provided by the auction sale procedures in AS 38.05.055.

Section 3. Sec. 38.95.240(a) establishes certain procedures and criteria for bringing and maintaining a claim to real property that has escheated to the state, and indicates the types of awards that the court may make.

Sec. 38.95.240(b) states that a successful claimant under Sec. 38.95.240(a) is not entitled to certain benefits that accrue to the state from the real property during the state's possession of the property.

Sec. 38.95.240(c) establishes a special time frame within which minors and incapacitated persons may assert a claim to escheated real property, and defines "incapacitated person".

Senator Kerttula
January 21, 1987
Page 2

Sec. 38.95.240(d) states that the other provisions of sec. 3 don't prevent the state from transferring escheated real property when appropriate to a person who proves to be the owner.

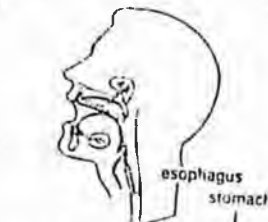
Section 4 requires the Department of Natural Resources to deposit and maintain the net proceeds from the sale of escheated real property in a trust account for seven years after the judgment of escheat, and allows the department to use the money in the trust account to pay escheated real property claims.

Section 5 defines "net proceeds".

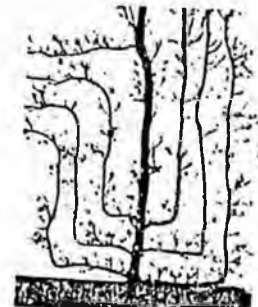
Section 6 states the real property to which the bill applies.

If I can be of further assistance, please advise.

TLB:mkr
m8/032



esophagus



espalier

'ka-pād') *n.* 1. A breaking loose from restraint, flouting rules. 2. A carefree or reckless adventure. [French, from Old French, from Old Italian *scappare* the feminine past participle of *scappare*, to Vulgar Latin *escappare* (unattested), to ESCAPE.] *v.* -capod, -caping, -capes. Also archaic. —*intr.* 1. To break loose from confinement, to issue from confinement or an enclosure; leak or to succeed in avoiding capture, danger, or harm to memory or sight; slip away; vanish. 5. To grow in an area or a condition of cultivation. Used of 1. To break loose from; get free of (confinement). See Usage note below. 2. To succeed in avoiding (peril, or harm). 3. To be unnoticed or not recalled. 4. To be the meaning of this cryptic note escapes me voluntarily from: A regretful sigh escaped her lips. 5. To act or an instance of escaping. 2. A means of a. Temporary freedom from worry, care, or trouble. b. A means of obtaining this: Television is his ally. 4. A gradual effusion from an enclosure. 5. A cultivated plant that has become established in a wild area. —*adj.* 1. Affording a means of escape. 2. Providing a legal basis for avoiding liability: an escape clause. [Middle English *escaper* with French *escaper*, "to take off one's cloak," "to restrain, escape, from Vulgar Latin *escappare* etc., out, off + Late Latin *cappa*, cloak, hood + *capere*, to take. —*as-cap*' or *n.* *escape*, *avoid*, *shun*, *eschew*, *evade*, *elude*. They can mean to get away from persons or things or to get away from confinement by fleeing untouched or unaffected by something unwanted, punishment, or notice. The second sense does not imply flight or even conscious effort to keep away. It always involves such an effort to keep away from or things considered a source of danger or difficulty. *eschew* involves deliberately keeping clear of persons or things. *eschew* refers to staying clear of things that otherwise would be unwise or morally wrong. *elude* both to getting clear of persons by adroit means or avoiding distasteful things by similar means. In the latter term sometimes implies dishonesty or irreverence. *elude* is to get away from artfully or by a method metaphorically, to escape another's understanding or perplexing. *escape* (verb), in the sense of breaking out of confinement, used with *from*: Three prisoners escaped from the prison. In modern usage, *escape* in that sense is used with a direct object, though it is used transitively. The preceding example, with *from* deleted (see *escape* (v.)), is unacceptable to 74 per cent of the test group.

es-kā'pē, ē-skā'pē, i-skā'pē) n. One that has escaped, especially, an escaped prisoner.

es-kā'p'mēnt, i-skā'p'mēnt) n. 1. An escape. 2. A mechanism consisting in general of a spring and anchor, used especially in timepieces to control movement and to provide periodic energy to a pendulum or balance. 3. The mechanism in a train that controls the lateral movement of the carriage. 4. The minimum velocity that a body must have to overcome the gravitational attraction of another body.

es-kā'p'ōl, i-skā'p'ōl) n. The rotating notched wheel periodically engaged by the anchor in an escapement.

es-kā'p'iz'm, i-skā'p'iz'm) n. The habit or tendency to avoid unpleasant realities in self-deceiving fantasy.

es-kā'p'ist, i-skā'p'ist) adj. Indulging in or characterized by escapism.

es-kār-gō' n., pl. -gots (-gō'). An edible mushroom when cooked. [French, a snail, from Old French *estragoli*, from Vulgar Latin *estragoli*.]

es-kā-rōl' n. A variety of *Cichorium endivia* with irregular, frilled edges, used in salads. [French, from Late Latin *escariola*, from Vulgar Latin *escariola*, from *escare*, to eat. See *escarole*.]

es-char (ēs'kār, -kōr) n. A dry scab or slough formed on the skin as a result of a burn or by the action of a corrosive or caustic substance. [Middle English *escare*, scab, SCAR.]

es-cha-rōt'ic (ēs'kō-rōt'ik) adj. Producing or capable of producing an eschar; caustic; corrosive. —*n.* A caustic or corrosive substance or drug.

es-cha-tō-lō-gy (ēs'kō-tō-lō-jē) n. The branch of theology that is concerned with the ultimate or last things, such as death, judgment, heaven, and hell. [Greek *eschatos*, last, extreme see *eschs* in Appendix*) + *-logy*.] —*es'cha-tō-log'i-cal (-tō-lō-j'kal) adj.* —*es'cha-tō-lō-gist n.*

es-cheat (ēs-chē't) n. 1. The reversion of land held under feudal tenure to the manor in the absence of legal heirs or claimants. 2. The reversion of property to the state in the absence of legal heirs or claimants. 3. a. Property reverted to the state when no legal heirs or claimants exist. b. The right of the state to acquire such property. —*v.* escheated, -cheating, -cheats. —*intr.* To revert to the state by escheat. [Middle English *eschete*, from Old French *eschete*, *eschiteite*, from *escholt*, past participle of *escholre*, to fall out, from Vulgar Latin *excadere* (unattested); *excadere*, out + *cadere*, to fall (see *cad-* in Appendix*).] —*es-cheat'able adj.*

es-cheat-ago (ēs-chē'tij) n. The right of the state to acquire property by escheat.

es-chew (ēs-chō'v) tr. v. -chewed, -chewing, -chews. To take care to avoid; shun. See Synonyms at *escape*. [Middle English *eschien*, *eschieren*, from Old French *eschier*, *eschuiver*, to shun, to avoid, from Vulgar Latin *scivare* (unattested), from Germanic *schivan* (unattested), from *skiuhan* (unattested), *sihv*.] —*es-chew'al n.*

es-chef'ior (ēs-kō'fyā'), Augusta. 1847?-1935. French chef and actor.

es-cō-lar (ēs'kō-lār) n., pl. -lars or oscolar. Any of several smaller fishes of the family Gempylidae; especially, *Lepidion flavobrunneum*, of warm marine waters. [Spanish, *escolar* (from the spectaclelike rings around its eyes), from Latin *scholaris*, SCHOLAR.]

es-cō-nal (ēs-skōr'ē-əl, -skōr'ē-əl, i-skōr', i-skōr'-; Spanish ē-s-kō-nal'). Also *Es-cu-rí-al (ēs-kyōr'ē-əl)*. A monastery, historical residence, and major architectural complex, in central Spain, 36 miles northwest of Madrid.

es-cort (ēs'kōrt') n. 1. One or more persons accompanying another to give guidance or protection or to pay honor. 2. One or more guards, often armed, traveling with important persons. 3. A man who acts as the companion of a woman. 4. One or more vehicles accompanying another vehicle to protect, or honor its passengers. —*tr. v.* (ēs-kōrt') escorted, -corting, -corts. To accompany as an escort: "He used to escort flies and moth millers out the door as if they were John Cheever." See Synonyms at *accompany*. [French *escort*, from Old French *escorte*, from Old Italian *scorta*, escort, as escorting, from the feminine past participle of *scortare*, to show, to guide, from Vulgar Latin *excorrigere* (unattested), to conduct, guide, escort: Latin *ex-*, out + *corrigere*, to set right, CORRECT.]

es-crit (ēs'kri-twār') n. A desk or table suitable for writing; a study. [French, from Old French *escritoire*, a study, from Medieval Latin *scriptorium*, SCRIPTORIUM.]

es-crow (ēs'krō, ē-skro', i-skro') n. 1. A written agreement, deed or bond, put into the custody of a third party to take effect until certain conditions are fulfilled by the party. 2. The condition of being ineffective until certain conditions are fulfilled: a deed held in escrow until the heir reaches his twenty-first birthday. [Old French *escroe*, strip of parchment scroll, from Frankish *scrōda* (unattested), piece. See *escrow* in Appendix*.]

es-cudo (ēs'kōdō, i-skōdō'; Portuguese ish-kōd'ō; Spanish ē-s-kōdō). 1. a. The basic monetary unit of Portugal, equal to 200 réis. b. The basic monetary unit of Chile, equal to 100 centavos. See table of exchange rates at *currency*. 2. A small shield. [Portuguese and Spanish, "shield," from *escudo*, shield. See *skoi-* in Appendix*.]

es-cu-lent (ēs'ky-lent) adj. Suitable for eating; edible. —*n.* A vegetable, as a vegetable. [Latin *esculentus*, from *escare*, to eat. See *ed-* in Appendix*.]

es-cu-ch'on (ēs-skūch'on, i-) n. Also *search-son (skūch'on)*. A shield-shaped emblem bearing a coat of arms, especially, a heraldic shield-shaped emblem; especially, a plate bearing the keystone of a dome.

es-ōr'ino (ēs'a-rēn', -rīn) n. Biochemistry. Physostigmine [see]. [Eser-, native African name + *-ine*.] *ES-fa-han*. See *Istahan*.

Esh-kōl (ēsh'kōl, ēsh-kōl'), Levi. Original surname, Shkolnik. 1895-1969. Russian-born premier of Israel (1963-69). *ESK.* Eskimo.

es-kōr (ēs'kōr) n. Also *es-car (ēs'kār, -kōr)*. A long, narrow ridge of coarse gravel deposited by a stream flowing in an ice-walled valley or tunnel in a decaying glacial ice sheet. Also called "os." [Irish *escir*, ridge, from Old Irish *escir*.]

Es-ki-mo (ēs'kō-mō) n., pl. -mos or Eskimo. Also *Es-qui-mau pl. -maux (-mōz')*. *Abbr.* *Esk.* 1. One of a people native to the Arctic coastal regions of North America and to parts of Greenland and northeastern Siberia. 2. The language spoken by these people. —*adj.* Also *Es-qui-mau*. *Abbr.* *Esk.* Of, pertaining to, or concerning the Eskimos or their language. [Earlier *Esquimaux*, perhaps from Micmac *eskamege*, to eat raw fish: Proto-Algonquian *ask-* (unattested), "raw" + *-amekw-* (unattested), "fish."]

Es-ki-mo-Al-o-ut (ēs'kō-mō'āl'ē-ōōt') n. A family of languages spoken chiefly among peoples native to the Arctic coastal regions of North America, Greenland, the Aleutian Islands, and the northeastern tip of Siberia.

Es-ki-mo-an (ēs'kō-mō'an) adj. Eskimo.

Eskimo dog. A large dog of a breed used in Arctic regions as a sled dog, having a thick coat and a plumed tail.

Es-ki-sē-hir (ēs'ki-shē-hir'). A city in west-central Turkey, an early capital of the Ottoman Turks; site of the defeat of the Turks by the crusaders in 1097. Population, 153,000.

es-soph-a-gus (i-sōf'a-gas) n., pl. -gi (-jī') Also *es-soph-a-gus*. A muscular, membranous tube for the passage of food from the pharynx to the stomach; gullet. [Middle English *ysophagus*, from Greek *oisophagos*, gullet.] —*es'so-phag'e-al (ē'sō-fāj'ē-əl, i-sōf'a-jē'əl) adj.*

es-o-ter'ic (ēs'a-tēr'ik) adj. 1. Intended for or understood by only a small group: *To the esoteric Hellenic mystery cults. Christianity opposed an esoteric religion.* Compare *exoteric*. 2. Difficult to understand; abstruse: *The theory remained esoteric despite efforts to popularize it.* 3. Not publicly disclosed; confidential. —*See* Synonyms at *mysterious*. [Late Latin *esōtericus*, from Greek *esōterikos*, from *esōterō*, comparative of *esō*, within. See *on* in Appendix*.] —*es'o-ter'ic-al-ly adv.*

ESP extrasensory perception.

esp. especially.

es-pa-drillo (ēs'pā-dril') n. A sandal having a rope sole and a canvas upper part. [French, variant of *espadille*, from Provençal *espadillo*, diminutive of *espart*, *esparto*, from Latin *spartum*, ESPARTO.]

es-pal'ier (ē-spāl'yār, -yā, i-spāl'-) n. 1. A fruit tree or ornamental shrub that is trained to grow in a flat plane against a wall, often in a symmetrical pattern. 2. A trellis or other framework upon which such a plant is grown. —*tr. v.* *espaliered, -lering, -lars*. 1. To train (a plant) on an espalier. 2. To provide with an espalier or espaliers. [French, from Italian *spalliera*, applied to shoulder supports, hence stakes of that height, from *spalla*, shoulder, from Latin *spatula*, broad piece, flat piece. See *spatula*.]

Es-pa-ña. The Spanish name for Spain.

Es-pa-ña-la. The Spanish name for Hispaniola.

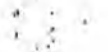
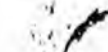
es-par-to (ē-spār'tō, i-spār'-) n. A tough, wiry grass, *Stipa tenacissima*, of northern Africa, yielding a fiber used in making paper and as cordage. Also called "esparto grass." [Spanish, from Latin *spartum*, from Greek *sparton*, rope, cable, *esparto*. See *spar-* in Appendix*.]

es-pa-cial (ē-spēsh'əl, i-spēsh'-) adj. 1. Standing above or apart from others; exceptional. 2. Pertaining uniquely to one person or thing; particular. —*See* Usage note at *special*. [Middle English, from Old French, from Latin *specialis*, from *speciēs*, a view, appearance. See *spok-* in Appendix*.]

es-pa-cial-ly (ē-spēsh'əl-ē, i-spēsh'-) adv. *Abbr.* *esp.* To an extent or degree deserving of special emphasis; particularly. See Usage note at *special*.

es-per-ance (ēs'pār-əns) n. *Obsol.* Hope. [Middle English *esperance*, from Old French *esparance*, from Vulgar Latin *sperantia* (unattested), from Latin *sperans*, present participle of *sperare*, to hope. See *spōi-* in Appendix*.]

Es-pē-ran-to (ēs'pār-rānt'ō, -rānt'ō) n. An artificial international language invented in 1887, characterized by



38.95.080

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§ 12 ch 45

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meanors
and permit
required in
§ 40 ch
12 (1984)

§ 38.95.200

PUBLIC LANDS

§ 38.95.230

1936

Article 5. Real Property Escheated to State.

Section

200. Real property subject to escheat
 210. Enforcement of rights by department
 220. Judgment of escheat
 230. Management of escheated real prop-
 erty by department
 240. Time within which to claim es-
 cheated real property

Section

250. Proceeds of sale or redemption
 260. Disposition of sale proceeds seven
 years after the judgment of escheat
 270. Definition

Sec. 38.95.200. Real property subject to escheat. (a) Real prop-
 erty in an intestate estate for which no taker can be found and real
 property devised by will for which no devisee, heir, or other claimant
 can be found escheats to the state.

(b) Real property of a defunct organization or corporation, for which
 no proceeding for distribution instituted has been instituted within
 four years after the organization becomes defunct, escheats to the
 state. (§ 12 ch 133 SLA 1986)

Sec. 38.95.210. Enforcement of rights by department. (a) When
 the Department of Natural Resources is informed or has reason to
 believe that real property has escheated to the state, the depart-
 ment shall bring an action in superior court to establish whether the prop-
 erty has escheated to the state.

(b) The department may maintain an action to recover the posses-
 sion of escheated property, or for the enforcement of the state's right to
 the property. (§ 12 ch 133 SLA 1986)

Sec. 38.95.220. Judgment of escheat. (a) If the superior court
 determines that the real property has escheated to the state, the supe-
 rior court shall issue a judgment of escheat.

(b) A court order approving settlement of an estate that distributes
 real property to the state is a judgment of escheat. (§ 12 ch 133 SLA
 1986)

MAIN CHANGE W/ SB 16

**Sec. 38.95.230. Management of escheated real property by de-
 partment.** (a) After a judgment of escheat under AS 38.95.220, the
 department may sell, lease, exchange, assign, or otherwise manage
 real property that has escheated to the state. In determining the
 proper disposition of escheated real property the department shall,
 within two years after the judgment of escheat under AS 38.95.220,
 make a written finding that it is in the best interests of the state
 either to

(1) obtain an appraisal of the fair market value of the real property
 and sell, lease, exchange, assign, or otherwise manage the property,
 including retention in state management; or

(2) retain the real property in state management without obtaining an appraisal.

(b) The appraised value of property handled under (a)(1) of this section, or the selling price from a sale under AS 38.05.055 if it is lower, less the expenses of sale or appraisal, is the established value of the property for purposes of redemption by an heir or other taker under AS 38.95.240(c).

(c) Seven years after the judgment of escheat, real property that has not been otherwise disposed of by the department becomes general state land for classification, disposal, and use. (§ 12 ch 133 SLA 1986)

Sec. 38.95.240. Time within which to claim escheated real property. (a) Within seven years after a judgment of escheat under AS 38.95.220, a person who is not a party to the escheat proceeding may bring an action in the superior court to prove the person's claim to the real property. If the plaintiff establishes the claim and establishes that the plaintiff had no knowledge of the prior escheat proceeding, the court shall award the plaintiff the property if it has been managed under AS 38.95.230(a)(2), or the appraised value of the property under AS 38.95.230(b) if the property has been managed under AS 38.95.230(a)(1).

(b) If it is determined that the plaintiff is entitled to the property, the department shall deliver the property to the plaintiff. The rents, profits, interest, or dividends that accrue to the state during its possession of the property are the property of the state and may not be recovered.

(c) If it is determined that the plaintiff is entitled to the appraised value of property that has been disposed of under AS 38.95.230(a)(1), at the department's discretion it may offer to the plaintiff land owned by the state and available for disposal that is of comparable value to the appraised value under AS 38.95.230(a)(1). If the department does not offer land of comparable value, or if the plaintiff refuses the department's offer, the plaintiff is entitled to the established value of the property under AS 38.95.230(b).

(d) The time limitation of seven years does not apply to a minor or an incapacitated person as defined by AS 13.26.005, but such a person must bring an action to prove the person's claim to the real property within one year after the incapacity ceases.

(e) This section does not prevent the state from transferring escheated real property to a person who provides proof satisfactory to the department that the person is the owner of the real property when the department determines the transfer to be appropriate. (§ 12 ch 133 SLA 1986)

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

400 WILLOUGHBY AVE.
JUNEAU, ALASKA 99801
PHONE: (907) 465-2400

January 22, 1987

The Honorable Jalmar Kerttula
Chair, Senate Judiciary Committee
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Senator Kerttula:

Subject: SB 16 relating to the management of unclaimed real property or escheat land.

Response: Generally okay with me. I would appreciate an inch of leeway to make some exceptions for historic sites or other extraordinary reasons.

Background: During the 13th Session of the Legislature the state's escheat real property statutes were amended to accomplish two primary objectives: (1) management authority was transferred from the Department of Revenue to the Department of Natural Resources. This transfer consolidated land management functions with resultant cost savings. (2) the legislation subjected management proposals for escheated land to a written best interest finding to establish highest and best use.

A telling point in the testimony received during consideration of the legislation was recognition that the Legislature was appropriating funds to purchase land from itself.

On December 31, 1986 the department listed nine escheat properties in its inventory with an approximate value of \$215,000 (see Appendix). Eventual sale of some or all of these parcels may be appropriate. However, as the Legislature recognized last year, the escheat process does turn up parcels that may be more appropriately kept in public ownership. For instance, the Harry C. Robb tract is a 8,000 square foot acre parcel in Talkeetna containing an historic log cabin that has been nominated to the Historic Register by the local community. Sale of this parcel may well not be in the public interest.

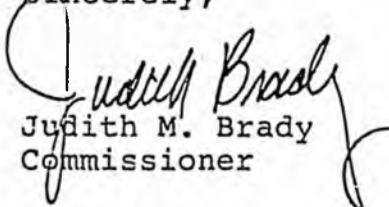
The Honorable Jalmar Kerttula -2-

January 22, 1987

Recommendation: Specifically, the department endorses Sections 1, 4, 5 and 6 of SB 16. We would request that Section 2 be redrafted to state that the legislative intent would be to return these once privately owned parcels to private ownership, but that the Commissioner would retain the discretion to determine when such an action would not be in the public interest. The department supports Section 3 in the main, but again requests that the Commissioner be allowed the discretion to offer substitute parcels of comparable value when appropriate.

Please let me know if I can provide further information or assistance.

Sincerely,


Judith M. Brady
Commissioner

cc: Senator Jan Faiks

DIVISION OF LAND AND WATER MANAGEMENT
ESCHEAT REAL PROPERTY QUARTERLY REPORT
AS OF DECEMBER 31, 1988

INVENTORY REPORT

<u>ESC #</u>	<u>JUDGEMENT DATE</u>	<u>REGION</u>	<u>FUND CATEGORY</u>	<u>BEST INTEREST REFERRAL DATE</u>	<u>BEST INTEREST FINDING DATE¹</u>	<u>APPRAISAL</u>	<u>COMMENTS</u>
018	8-11-37	NRO	GENERAL ²	NONE ³	NONE	NONE	16 Ac. patented M/C Nome area.
034	5-23-58	SERO	GENERAL ²	NONE ³	NONE	NONE	1/3 interest unpatented Federal M/C
036	9-16-64	NRO	GENERAL ²	NONE ³	NONE	NONE	15 Ac. patented M/C Fairbanks area.
038	6-30-65	SCRO	GENERAL ²	NONE ³	NONE	NONE	City of Seldovia substandard lot.
043	2- 6-78	SCRO	GENERAL ²	NONE ³	NC.	NONE	Talkeetna Townsite lot.
046	1- 3-80	SCRO	TRUST	12- 1-86			Powder Island.
051	3- 6-85	NRO	TRUST	11- 7-86			80 acres Fairbanks area
052	8- 4-86	SERO	TRUST	NONE ⁴	NONE	NONE	House and lot in Sitka.
053	12-11-86	SCRO	TRUST				8 Ac. patented M/C Kenai Peninsula.

¹ AS 38.95.230(a) requires a written best interest finding within two years after judgement of escheat obtained under AS 38.95.220.

² AS 38.95.230(c) identifies escheated real property not otherwise disposed of after seven years of the judgement of escheat as general State land for classification, disposal, and use.

³ None of these properties were obtained under AS 38.95.220 and all had exceeded the seven year limit before DNR given management responsibility.

⁴ An Agreement of Sale was signed for this property on 8-27-75. State succeeded deceased as seller. Purchasers pay \$300/month to Department of Revenue through NBA escrow account.

CORRECTION

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

**DIVISION OF LAND AND WATER MANAGEMENT
ESCHEAT REAL PROPERTY QUARTERLY REPORT
AS OF DECEMBER 31, 1986**

INVENTORY REPORT

<u>ESC #</u>	<u>JUDGEMENT DATE</u>	<u>REGION</u>	<u>FUND CATEGORY</u>	<u>BEST INTEREST REFERRAL DATE</u>	<u>BEST INTEREST FINDING DATE¹</u>	<u>APPRAISAL</u>	<u>COMMENTS</u>
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036	9-16-64	NRO	GENERAL ²	NONE ³	NONE	NONE	15 Ac. patented M/C Fairbanks area.
038	6-30-65	SCRO	GENERAL ²	NONE ³	NONE	NONE	City of Seldovia substandard lot.
043	2- 6-78	SCRO	GENERAL ²	NONE ³	NONE	NONE	Talkeetna Townsite lot.
046	1- 3-80	SCRO	TRUST	12- 1-86			Powder Island.
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STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: _____ Bill Version: SB 16
 _____ Publish Date: _____
 Revision Date: _____ Agency Affected: Natural Resources
 Title: Unclaimed real property BRU: Land & Water Public Use
 managements _____
 Sponsor: Faiks Components: _____
 Requestor: Senate Judiciary _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

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

REVENUE		50.0 (?)	50.0 (?)	50.0 (?)	50.0 (?)	50.0 (?)
---------	--	----------	----------	----------	----------	----------

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Improves existing management of unclaimed real property.
 Under aggressive management the program could yield annual revenues in the neighborhood of \$50,000 and the existing inventory has value of approximately \$215,000. Current level of effort is low.

Prepared by: Tom Hawkins Phone: 762-4355
 Division: Land and Water Management Date: 1/22/87

Approved by Commissioner: *Judith M. Brady* Date: _____
 Agency: Natural Resources

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



Senator Kerttula, Chairman
Senate Judiciary Committee
Alaska State Senate
431 N Franklin Street
Hand Delivered

Dear Senator Kerttula:

January 22, 1987

Thank you and the members of the Judiciary Committee for allowing me to present an amendment to SB 16 at the hearing earlier this afternoon. As always your courtesy in Chairing a committee is appreciated. The text of our amendment which includes Sen. Halford's suggestion is as follows.

Title page, line 17Department of Natural Resources, the Bureau of Indian Affairs, Trust Office, the municipality in whose jurisdiction the property lies and the Municipal Trustee if applicable.

The rationale for the notifications is to allow other parties to intercede in these proceedings further where the basic land ownership itself may be the subject of unresolved administrative adjudication, or subject to interest external to the Department of Natural Resources. In addition the notice is inexpensive, especially compared to the cost of resolving a new ownership conflict brought on by further land transfer.

Sincerely,

A handwritten signature in cursive script that reads "Michael".

Michael DeMan
Principal Planner

Juneau Center, 130 Seward Street, Suite 311, Juneau, Alaska 99801

(907) 586-9440

SB

19

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: _____

Bill Version: SSSB 19
Publish Date: 4-14-87

Revision Date: _____
Title: An Act relating to the Alaska Children's Trust Corporation, etc.
Sponsor: Sen. Kerttula, Josephson...
Requestor: Senate HESS

Agency Affected: Public Safety
BRU: Council on Domestic Violence & Sexual Assault
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS :

JNR
4/8/87

Prepared by: Barbara Miklos, Executive Director Phone: 465-4356
Division: Council on Domestic Violence & Sexual Assault Date: 4-7-87

Approved by Commissioner: [Signature] Date: 5/18/87
Agency: Public Safety

Distribution (by preparer):

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

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version: SS SB 19

Publish Date: 4-14-87

REQUEST: _____

Revision Date: _____

Title: Alaska Children's Trust

Corporation _____

Sponsor: Kerttula

Requestor: Senate Finance

Agency Affected: Department of Revenue

BRU: Treasury

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
OPERATING						
PERSONAL SERVICES	-	-	-	-	-	-
TRAVEL	-	-	-	-	-	-
CONTRACTUAL	-	-	-	-	-	-
SUPPLIES	-	-	-	-	-	-
EQUIPMENT	-	-	-	-	-	-
LANDS & 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:

Prepared By: Milt Barker *MB*

Division: Treasury

Phone: 465-2350

Date: April 2, 1987

Approved by Commissioner: *H. Malone*

Agency: Department of Revenue

Date: 4/2/87

Distribution (by preparer):

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

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version: SSSB 19
Publish Date: 4-14-87

REQUEST

Revision Date: _____
Title: Relating to the Ak Children' Trust Corp.: the Ak Children's trust fund: ...
Sponsor: Kerttula, Josephson & Szymanski
Requestor: HESS

Agency Affected: Revenue
BRU: Public Services - Permanent Fund
Dividend _____
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

REVENUE	0	0	0	0	0	0
---------	---	---	---	---	---	---

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS:

Prepared by: Sally Smith *Sally Smith*
Division: Public Services

Phone: 465-2392
Date: March 31, 1987

Approved by: [Signature]
Commissioner: _____
Agency: Revenue

Date: 4/2/87

Distribution (by Agency preparing fiscal note):

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

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version: SSSB 19
Publish Date: 4-14-87

REQUEST _____
Revision Date: _____
Title: "An act establishing the Alaska children's trust corporation."
Sponsor: Kerttula, Josephson, Szymanski
Requestor: Judiciary and Finance

Agency Affected: Revenue
BRU: Administrative Services
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
OPERATING						
PERSONAL SERVICES	-	28.2	17.0	17.0	17.0	17.0
TRAVEL	-	-	-	-	-	-
CONTRACTUAL	-	11.0	11.0	11.0	11.0	11.0
SUPPLIES	-	0.2	0.2	0.2	0.2	0.2
EQUIPMENT	-	-	-	-	-	-
LANDS & STRUCTURES	-	-	-	-	-	-
GRANTS, CLAIMS	-	-	-	-	-	-
MISCELLANEOUS	-	-	-	-	-	-
TOTAL OPERATING	-	39.4	28.2	28.2	28.2	28.2
CAPITAL	-	-	-	-	-	-
REVENUE	-	-	-	-	-	-

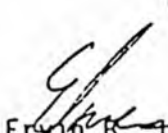
FUNDING: (Thousands of Dollars)

GENERAL FUND	-	39.4	28.2	28.2	28.2	28.2
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	-	-	-	-	-
TOTAL	-	39.4	28.2	28.2	28.2	28.2

POSITIONS:

FULL-TIME	-	-	-	-	-	-
PART-TIME	-	4	3	3	3	3
TEMPORARY	-	-	-	-	-	-

ANALYSIS:

Prepared By:  Ervin B. Jones
Division: Administrative Services

Phone: 465-2313
Date: 3/23/87

Approved by Commissioner: _____
Agency: Revenue

Date: _____

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

Department of Revenue
Administrative Services Division
Fiscal Note Analysis
SS SB 19
3/23/87

Assumptions:

1. The bill will take effect for the 1988 permanent fund dividend year and application. The 1987 dividend application has already been printed.
2. There are nine other bills which if signed into law, would result in some form of "check-off" on the 1988 dividend application. The Department of Revenue has no insight as to which, and how many, of these bills will become law. This fiscal note, and all related fiscal notes, is prepared on the assumption that the subject bill is the only bill of this nature which will become law. The passage of multiple bills with varying formulas (\$5, half of dividend, all or part of dividend, etc.) will inevitably have a compounding effect. Whereas there may be savings in some areas, there will be increased costs in others.
- 3) P. 3, line 21-24 intends that the income of the fund may be used to "reimburse the Department of Revenue for the costs of establishing and managing the fund and making changes to the permanent fund dividend application. . ." The income from the fund will not be available until FY89 and an appropriation will be required in FY88.
- 4) The incremental cost of computer resources will result in a chargeback by the Department of Administration.
- 5) Whereas the cost of programming changes will be a one-time cost, the cost of document review, data capture, data processing chargeback, and the extra page in the dividend application will be continuing.
- 6) Contributions will only be honored to the extent of available funds. Garnishments and assignments will take precedence in the order established by statute. Contributions will then be honored in the order listed on the form schedule, which will be in the order they become law.
- 7) Sec. 5, p. 3, line 12-15 provides for contribution choices including all or part of the dividend amount (see suggested amendment.)

Program Summary:

The provision of a new contribution decision on the dividend application will cause additional administrative cost in several areas:

- a) An additional page added to each application, a schedule of contribution decisions.
- b) The computer system will need to be changed to account for the change in the program, to establish new accounting controls for the almost infinite warrant values, and to provide for the transfer of funds to the trust fund (see Attachment A).

- c) Each of approximately 540,000 PFD applications will need to be visually reviewed and coded as to decision on the contribution decision. Each application will be data captured with additional attention and keystrokes expended on each positive decision.
- d) Due to the complexity of balancing and certifying warrant runs with varying warrant amounts, additional temporary staff will be required to balance the weekly warrant runs from October through December of each year.

1. Positions

1 PPT Analyst/Programmer V, R21
 @ \$5,638.47/Mo including salary
 and benefits for 2 months = \$11.2

PCN 04-1125 would be funded for an additional two months, in accordance with Attachment A. Ongoing maintenance of new programs would be accomplished by existing staff.

1 PPT Document Processor I, R7
 @ \$2,117.76/Mo, including salary and
 benefits for 3 months = \$6.3

This position would assist in the manual review and coding of 540,000 applications for the new contribution decision. This position represents the equivalent of the additional time and effort.

1 PPT Data Processing Clerk I, R8,
 @ \$2,221.64/Mo, including salary and
 benefits for 2 months = \$4.4

This position would assist in the data capture of the additional contribution decisions and in the verification of this field. The position represents the equivalent value of the additional time and effort.

1 PPT Document Processor I, R7,
 @ \$2,117.76/Mo, including salary
 and benefits, for 3 months = \$6.3

This position will assist in the balancing and verification of the weekly warrant runs from October 1 through December 31 each year.

TOTAL Personal Services \$28.2