

ALASKA

LEGISLATURE

COMMITTEE FILES

1987-1988

8672

5308

SJUD

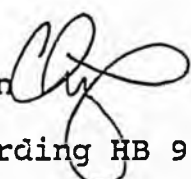
SB 96

- SB 108

880

4/10 BK
Rec'd

MEMORANDUM

To: Tom Koester
From: Chip Dennerlein 
Subject: Questions regarding HB 92, Mental Health Trust Lands

During my oral testimony before House H&SS regarding HB 92 I raised several questions which I felt should be clearly answered for the record before the bill is acted upon. Rep. Ellis asked you to address the questions, and I am forwarding them to you in writing so you can respond.

1. HB 92 reconstitutes the trust from lands already designated by the legislature as parks, refuges, forests and other public purpose lands. In essence, general grant park and refuge lands are disposed of and trust lands are substituted. During the testimony of several individuals there was a fair amount of discussion about the "leasing" of these new park/trust lands by the state to create a revenue stream for the trust. I am disturbed by the use of the term "lease" and believe it is incorrect. Park lands in particular derive their statutory existence from Article 8, Sec.7 of the Constitution. This is the "special purpose sites" provision. These lands are reserved from the public domain. All of the general statutory authority for leasing and disposal of state lands stems from Art.8, Sec.8. These are the lands in the public domain. Former Attorney General opinions have confirmed that "special purpose site" lands cannot be leased. Once the legislature enacts HB 92, the Mental Health Trust lands are (at least in some cases) state park lands. These lands cannot be "leased" - to the state or otherwise. How does the proposed legislation avoid the issue of "leasing" of state park lands (and other special purpose site lands)? As a matter of public policy, the bill should neither imply, nor open the door for future discussions about the leasing of these lands.

2. You have testified that the reconstitution of the trust from existing legislatively designated areas acts to provide an extra layer of protection for these areas. In essence, the lands will not only be covered by the statutory protection of

their original designations as refuges or forests, but will now also be protected by trust responsibilities. However, could the trust status also become a reason someday to abolish park and refuge lands where no other reason might exist? For example, suppose, the legislature fails to appropriate the required revenue stream payment in a given year or years. A reason might be that state revenues are extremely limited. Could the trust then move to "free" their lands from park and refuge designation in order to turn the lands directly into cash via disposal? Could the legislature decide to "pay" the trust in lands by abolishing parks and refuges in order to avoid the cash debt? In essence, could the proposed legislation create a lever which does not now exist and which may well be used in the future to pry lands out of parks, refuges and forests? If no, how does the bill ensure that the remedy to the trust for failure of a future legislature to appropriate funds is action to secure the money, not secure lands, thereby destroying public purpose areas?

3. From the perspective of municipalities, one of the major virtues of the bill is that it removes the cloud which currently hangs over many acres of municipal selections. However, the bill is not specific as to when this cloud is removed. Are the municipal selections freed upon passage of the legislation? Are they freed bit by bit as the trust is reconstituted? If so, in what order are individual municipal selections freed? The appraisal and reconstitution process may take some time to complete. How long do communities have to wait?

4. The Mental Health Trust issue is a matter of litigation. By enacting the proposed legislation, the legislature does not actually settle that litigation. Rather, the legislature merely provides the terms of settlement. To ensure that a future legislature cannot change the deal, the legislation should be adopted by the court as the settlement. What plans does the state have to ensure that the court adopts the proposed legislation as final settlement of the issue? Does the state view the legislation as the terms of settlement or as a "framework" within which to further negotiate a court settlement? Municipalities would not view the legislation as a basis for settlement, but as the final deal. Do you see any room for departure?

HB 92 has tremendous merit. The Municipality of Anchorage is inclined to strongly support its passage this session. Failure to act soon will, we believe result in further litigation which will create land management havoc in and around many communities throughout the state. Since the lands at issue in the debate are around population centers and are subject to existing resource uses, additional litigation will make the Udall lands freezes of the late 60s seem mild by comparison. However, we believe it is also important to protect the interests of the broad constituency of all Alaskans as well as

the members of the mental health class who are seeking to remedy their existing situation. Thousands of Alaskans worked long and hard to establish parks, refuges, state forests, and other public purpose areas. It is incumbent that we assure ourselves that the proposed legislation creates no hidden booby traps which would promote or cause destruction of these areas in the future. Communities throughout the state have selected certain lands in good faith and in accordance with past legislative direction in fulfillment of their municipal entitlements. We should be clear about the removal of the cloud which now hangs over many of these lands, remembering that these are lands which will be put to the benefit of local people around the state. Many people are working to secure passage of this legislation in the hopes of achieving a final resolution to this difficult issue. We must make certain that it is affirmed by the courts, and that the parties do not alter the deal. In this light, the above questions should be clearly answered on the record. Thank you.

SB

102

Original sponsors: Faiks, Uehling
and Szymanski

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 CS FOR SENATE BILL NO. 102 (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 reports of missing persons; and
7 creating a missing persons information clearing-
8 house."

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

10 * Section 1. AS 18.65 is amended by adding new sections to read:

11 ARTICLE 7. MISSING PERSONS INFORMATION CLEARINGHOUSE.

12 Sec. 18.65.600. MISSING PERSONS INFORMATION CLEARINGHOUSE.

13 There is in the Department of Public Safety the missing persons infor-
14 mation clearinghouse.

15 Sec. 18.65.610. DUTIES OF MISSING PERSONS INFORMATION CLEARING-
16 HOUSE. (a) The missing persons information clearinghouse is estab-
17 lished as a central repository of information regarding missing per-
18 sons.

19 (b) The clearinghouse shall

20 (1) establish within the state a system and appropriate
21 procedures for communication of information regarding missing persons;

22 (2) collect, maintain, and disseminate accurate and com-
23 plete information on missing persons for the purpose of identifying,
24 locating, and returning them;

25 (3) provide for exchange of information on missing persons
26 within the state;

27 (4) cooperate with private citizens, local law enforcement
28 agencies, and other state and federal agencies in investigations con-
29 cerning missing persons;

1 (5) maintain communication with the National Crime Informa-
2 tion Center for exchange of information on persons suspected of inter-
3 state travel;

4 (6) provide training and assistance to law enforcement
5 agencies to promote effective use of the clearinghouse.

6 Sec. 18.65.620. DUTY OF LAW ENFORCEMENT AGENCIES. In addition
7 to the requirements of AS 47.10.141 regarding reports of missing
8 minors, a local or state law enforcement agency shall submit to the
9 clearinghouse all missing person reports received by the law enforce-
10 ment agency that relate to a person who is not located within 48 hours
11 after the first report concerning that person was filed.

12 Sec. 18.65.630. MEDICAL AND DENTAL RECORDS OF MISSING PERSONS.

13 (a) When a person files a report of a missing person with a law
14 enforcement agency or with the clearinghouse, a form authorizing the
15 release of medical and dental records to the law enforcement agency
16 and to the clearinghouse shall be supplied to the family, next of kin,
17 or legal guardian of the missing person. The family, next of kin, or
18 legal guardian of the missing person may complete the release form and
19 deliver the release form to the physician or dentist of the missing
20 person. The physician or dentist who receives a release form signed
21 by the family, next of kin, or legal guardian of the missing person
22 may only release to the law enforcement agency and the clearinghouse
23 that information that is necessary to identify the missing person.

24 (b) When the family, next of kin, or legal guardian of a missing
25 person cannot be located or does not exist, a law enforcement agency
26 may execute a written declaration stating that an active investigation
27 is being conducted and that medical and dental records are required
28 for the exclusive purpose of furthering the investigation. Notwith-
29 standing AS 09.25.120 and AS 17.30.155, the declaration signed by a

1 peace officer under this subsection is sufficient authority for the
2 physician or dentist to release information necessary to aid in the
3 identification of the missing person. The physician or dentist may
4 only release that information that is necessary to identify the miss-
5 ing person.

6 (c) Medical and dental records obtained under this section shall
7 be provided to the clearinghouse.

8 (d) When a missing person is found, the law enforcement agency
9 and the clearinghouse shall destroy all records in their files ob-
10 tained under this section.

11 Sec. 18.65.640. REPORTS UPON FINDING A MISSING PERSON. A person
12 who has filed a missing person report with the clearinghouse or a law
13 enforcement agency shall immediately notify the clearinghouse or the
14 law enforcement agency when the location of the missing person is
15 determined.

16 Sec. 18.65.650. CIVIL PENALTY. The commissioner of public
17 safety, or a person designated by the commissioner of public safety,
18 may file a civil complaint in the district court to enforce
19 AS 18.65.640. A person who fails to comply with AS 18.65.640 is
20 subject to a civil fine of not more than \$1,000.

21 Sec. 18.55.660. DEFINITION. In AS 18.65.600 - 18.65.660 "clear-
22 inghouse" means the missing persons information clearinghouse estab-
23 lished in AS 18.65.600.

24 * Sec. 2. AS 18.60.170 is amended to read:

25 Sec. 18.60.170. REPORT AND INVESTIGATION OF DISAPPEARANCE. The
26 commissioner of public safety or a designee shall file each notifica-
27 tion of disappearance with the missing persons information clearing-
28 house under AS 18.65.620 [IN ALPHABETICAL ORDER IN THE OFFICE OF THE
29 COMMISSIONER OR DESIGNEE], and shall notify the peace officer in the

1 district where the disappearance occurred or in the nearest districts
2 where there is a peace officer to make an investigation regarding the
3 disappearance. If the circumstances give reasonable grounds for
4 suspicion that a murder has been committed or that a person has met
5 with foul play, the peace officer shall report all the facts to the
6 district attorney in the peace officer's district or the assistant
7 district attorney living nearest the place where the peace officer
8 resides. The district attorney or the assistant district attorney
9 shall assist and advise the peace officer in the investigation.

10 * Sec. 3. AS 47.10.141(a) is amended to read:

11 (a) Upon receiving a request to locate a minor evading the
12 minor's legal custodian or to locate a minor otherwise missing, a law
13 enforcement agency shall make reasonable efforts to locate the minor
14 and shall immediately complete a missing person's report containing
15 information necessary for the identification of the minor. As soon as
16 practicable, but not later than 24 hours after completing the report,
17 the agency shall transmit the report for entry into the Alaska Public
18 Safety Information Network and the National Crime Information Center
19 computer system. The report shall also be submitted to the missing
20 persons information clearinghouse under AS 18.65.620. As soon as
21 practicable, but not later than 24 hours after the agency learns that
22 the minor has been located, it shall request that the Department of
23 Public Safety and the Federal Bureau of Investigation remove the
24 information from the computer systems.

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version: SB 102

Publish Date: _____

REQUEST

Revision Date: _____

Agency Affected: Public Safety

Title: "An Act relating to reports of missing persons."

BRU: Alaska State Troopers

Sponsor: Sen. Faiks...

Components: Detachments & CIB

Requestor: Senate State Affairs

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES		24.8	25.5	26.3	27.1	27.9
TRAVEL						
SUPPLIES		1.0	1.1	1.1	1.1	1.1
EQUIPMENT		10.3				
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	38.1	28.7	29.5	30.4	31.4
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUNDS	0	38.1	28.7	29.5	30.4	31.4
FEDERAL FUNDS						
OTHER						
TOTAL	0	38.1	28.7	29.5	30.4	31.4

POSITIONS:

FULL-TIME						
PART-TIME	0	1	1	1	1	1
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Costs include one PPT Clerk IV and a micro computer to handle record keeping. Equipment costs are needed only in the first year. 3% inflation costs are anticipated in future years.

Prepared by: Francis C. Allan

Phone: 269-5691

Division: Alaska State Troopers

Date: 2/23/87

Approved by Commissioner: X [Signature]

Date: 2/24/87

Agency: Public Safety

Distribution (by preparer):

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

JNR
2/24/87

CONTINUATION OF FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 102

Personal Services

Clerk IV, Range 9, Step A, PPT
 30 hrs X \$11.06 X 52 weeks = 17,254
 Benefits 3,289
 SBS 1,058
 Health 2,214

Personal Services 24,815

Contractual

Line costs for computer interface 2,000

Supplies

Office Supplies 1,000

Equipment

Compaq Computer, Software, Printer, etc. 9,000
 Desk 691
 Chair 345
 Computer Table 300

Total Equipment 10,336

TOTAL 38,151

Position Title Clerk IV		No. of Positions	Range/Step	9/A	Barg. Unit	GSU
Time Status PPT	Staff Months 12	Location Anchorage		Election District 7-12		
Type of Expenditure		Amount				
1	2	3				
Salary	17,254					
Benefits	7,501					
Premium Pay						
Other						
Total Personal Services		24.8				
Travel						
Contractual		2.0				
Commodities		1.0				
Equipment		10.3				
Other						
Total Cost		38.1				
Funding Source for Total Cost						
Federal Receipts	1002					
G. F. Match	1003					
General Fund	1004	38.1				
I-A Receipts	1006					
CIP Receipts	1061					
Other						
Justification						
<p>This PPT (30 hrs per week) Clerk IV will be used to operate a purchased Compaq computer to enter and update data on missing persons reported by state and local law enforcement agencies. Incidents of runaways will need to be entered when reported and cleared when the individual is located. The filing of reports, medical records, photos and other data will be the responsibility of this position.</p>						

Request For
New Position

Agency Public Safety
 BRU Alaska State Troopers
 Component Detachments & CIB

Page 3 of 3
 Revised Date _____

FY 88

BILL NO: SB 102

DATE: 2/23/87

TITLE: "An Act relating to reports of missing persons..."

CONTACT: Maj. Walter J. Gilmour
Acting Director


DEPARTMENT OF
PUBLIC SAFETY

The purpose of this bill is to establish, by statute, a Missing Persons Clearinghouse. In previous years, a missing persons unit has been maintained within the division of Alaska State Troopers without specific funding. Due to reduced budgets, this is no longer possible.

This bill requires all state and local law enforcement agencies to report missing persons to a clearinghouse operated by the Department of Public Safety. The effect is the establishment of a central storage area for the collection, maintenance and dissemination of information relating to the identification, locating and return of missing persons.

In order to comply with this legislative mandate, we are conservatively requesting a part-time Clerk IV and the necessary equipment for this individual to perform the required tasks.

The Division of Alaska State Troopers supports passage of this legislation.



William R. Nix
Acting Commissioner

RECEIVED
FEB 24 1987
ALASKA STATE TROOPERS

Alaska State Legislature



PRESIDENT
907-465-3755

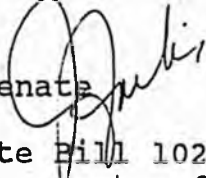
JAN FAIKS
POST OFFICE BOX V
JUNEAU, ALASKA 99811

Senate

February 9, 1987

MEMORANDUM

TO: Senator Mitch Abood, Chairman
Senate State Affairs Committee

FROM: Senator Jan Faiks 
President of the Senate

SUBJECT: Background on Senate Bill 102
An Act relating to reports of missing persons;
and creating a missing persons information
clearinghouse.

Senate Bill 102 has been referred to your committee for consideration. The purpose of this bill is to establish a statewide system for handling information about missing persons.

The locating of missing persons has been hampered in the state by the lack of consistent procedures for receiving, processing, and sharing information about lost persons. Each law enforcement agency seems to have its own method for handling reports of missing persons, for dealing with relatives of the victim, and for coordinating search efforts with others.

Often, this lack of consistency has resulted in undue expense to the government and needless anxiety for friends and relatives. The problem is aggravated by the vastness of our state. A body washed up on the shores of the Bering Sea is not matched with a missing persons report filed in Ketchikan. Village officials continue to investigate the disappearance of a teenager long after she has been found by authorities in Fairbanks.

OUT OF SESSION

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

By creating a central repository for collecting and handling information about missing persons, Senate Bill 102 should relieve these problems.

Senate Bill 102 proposes the following:

Section 1. Amends AS 18.65 by adding AS 18.65.600 - 18.65.660.

Sec. 18.65.600. Establishes the Missing Persons Information Clearinghouse.

Sec. 18.65.610. Requires the Clearinghouse to create a statewide system for handling information about missing persons. The Clearinghouse will collect and disseminate this information throughout Alaska. It will communicate with the National Crime Information Center about missing persons cases, and will train officials on how to best use the Clearinghouse.

Sec. 18.65.620. Places a duty on all law enforcement agencies to send to the Clearinghouse all reports of missing persons who have not been found within forty-eight hours.

Sec. 18.65.630. Allows agencies to obtain medical and dental records that will help identify bodies. If relatives of the missing persons are available, these records cannot be obtained by a government agency unless they are requested by family members. If no relatives are available, the law enforcement agencies can obtain records on their own initiative. When the agencies obtain these records, they must forward them to the Clearinghouse. Upon the location of the missing person, the law enforcement agency and the clearinghouse shall destroy all records in their files.

Sec. 18.65.640. Requires a person who files a missing person report to notify the clearinghouse or law enforcement agency once the person who has been reported missing has been found. Failure to notify the Clearinghouse or law enforcement agency when the person is found may be punishable by a civil fine of not more than \$1,000.

Sec. 18.65.650. Provides a maximum civil penalty of \$10,000 if a person fails to perform a duty required by this act

Section 2 Amends AS 18.60.170 which deals with procedures for handling missing persons reports within the Department of Public Safety. This section adds the additional duty of filing these reports with the Clearinghouse. If murder or foul play is suspected in a case, a report must be filed with the district attorney.

Section 3. Amends AS 47.10.141(a) to require the filing of reports of missing minors with the Clearinghouse.

A similar bill was rassed by the Senate during the last session, but time ran out before it was able to get through the legislative process. This bill has passed out of its first committee of referral, the Senate State Affairs Committee.

I would appreciate the committee's consideration of the legislation at its earliest convenience. Should you need any additional information, please let me know.

Thank you.

SB

103

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of _____ 5-DAY NOTICE
IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER:

**FISCAL NOTE(S) ATTACHED _____ **
IN ACCORDANCE WITH AS 24.08.035
(see below)
2/4/87

DATE TURNED INTO OFFICE _____

Mr. President:

JUDICIARY

Committee considered SB 103

relating to the disposal of property forfeited under federal drug enforcement laws.

and recommended:

- replace with CS _____ same title
- attached amendment(s) and new title

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

letter of intent adopted and attached

** Committee attached or adopted fiscal note(s)
 zero fiscal impact

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

Rich Halford

Joe Jackson

Lucas Johnson

[Signature]
 Chairman signature and recommendation

Committee Backup Attached

BILL NO: SB 103

DATE:2/9/87

TITLE: "An Act relating to the disposal of property forfeited under federal drug enforcement laws."

CONTACT:Maj. Walter J. Gilmour
Acting Director

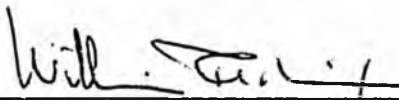
FEB 10 1987

DEPARTMENT OF
PUBLIC SAFETY

The purpose of this legislation is to allow the Department of Public Safety to receive property forfeited to the Federal Government as a result of charges under the Federal Controlled Substances Act (2 U.S.C. 881).

The authorization of the Department of Public Safety to receive property, including money, and to use it in supporting law enforcement activities, will be of great assistance. While the unpredictability of such receipts prevents any accurate estimate of the impact of this statute change, the reduction in the budget of the Division of Alaska State Troopers as a result of the revenue crisis can be partially offset by such receipts.

The Department of Public Safety supports SB103.



WILLIAM R. NIX
Acting Commissioner

RECEIVED
FEB 10 1987
ALASKA DEPARTMENT OF
PUBLIC SAFETY

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: _____

Bill Version : SB 103
Publish Date : _____

Revision Date: _____

Agency Affected: Public Safety

Title: "An Act relating to the disposal

BRU: Alaska State Troopers

of property forfeited under Fed drug laws."

Sponsor: Sen. Faiks

Components: Detachments & CIB

Requestor: Senate Judiciary

Narcotics

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						
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

The unpredictability of amounts and timeliness of such receipts prevents any accurate estimate of the impact of this statute change.

JNR
2/9/87

Prepared by: Francis C. Allan

Phone: 269-5691

Division: Alaska State Troopers

Date: 2/09/87

Approved by Commissioner: *Michael J. ...*

Date: 2-9-87

Agency: Public Safety

Distribution (by preparer):

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

Alaska State Legislature



PRESIDENT

907-465-3755

JAN FAIKS
POST OFFICE BOX V
JUNEAU, ALASKA 99811

Senate

February 11, 1987

MEMORANDUM

File - Ball

FEB 16 1987

TO: Senator Jay Kerttula, Chairman
Senate Judiciary Committee

FROM: Senator Jan Faiks
President of the Senate

SUBJECT: Background on Senate Bill 103
An Act relating to the disposal of property
forfeited under federal drug enforcement laws.

Senate Bill 103 has been referred to your committee for consideration. The purpose of this bill is to enable the state to use funds collected from the forfeiture of assets of convicted drug dealers for the enforcement of state drug laws.

This bill will permit the Department of Public Safety to accept property, including money, from the United States Attorney General which has been forfeited under the federal Controlled Substances Act. It further enables the Department to dedicate those funds to the enforcement of state drug laws.

The amount of funds which can be anticipated under this plan will vary with the amount of property that is seized in any given year and the amount of participation from the state.

The Department of Public Safety estimates that in 1986 it was allocated nearly \$150,000 in cash from drug-related investigations from the federal government. Although the funds have been allocated, the state has not been able to accept them, as there is not statutory authority to do so. Presently, the money reverts to the federal government.

OUT OF SESSION

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



The Department is able to retain property which is forfeited in these cases. Automobiles comprise the majority of the property that is confiscated, which the Department can then use as part of the enforcement process. The property obtained by the Department in 1986 has a value between \$50,000-72,000.

Senate Bill 103 does not appear to violate the Dedicated Funds clause of the Alaska Constitution, as the dedication of those funds is required by relevant federal law which enable such allocation to the states.

Specifically, the dedicated funds clause contained in Article IX, sec. 7 of the state constitution provides that

The proceeds of any state tax or license shall not be dedicated to any special purpose, except...when required by the federal government for state participation in federal programs.

The relevant federal law in this area, 21 U.S.C. 881 (e), provides that

Whenever property is civilly or criminally forfeited under this subchapter the Attorney General may
(1) retain the property for official use or transfer the custody of ownership of any forfeited property to any Federal, State, or local agency . . .

The United States Attorney General has issued guidelines which spell out the procedures for transferring property seized and forfeited under 21 U.S.C. 881 which provide that

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

These guidelines make it clear that the dedication of funds received by the state under 21 U.S.C. 881 appears to be required for state participation in a federal program, and is not in violation of the dedicated funds clause of the state constitution.

Attached is a copy of the analysis of the dedicated funds clause issue which was prepared by Legal Services.

STATE OF ALASKA
THE LEGISLATURE

POUCHY STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 30, 1987

SUBJECT: Use of funds forfeited to the federal government in drug enforcement proceedings (Work Order No. 5-04.8A)

TO: Senator Jan Faiks
Senate President

FROM: Keith B. Levy *KBL*
Legislative Counsel

The enclosed bill draft permits the Department of Public Safety to accept property and funds forfeited under the federal Controlled Substances Act (21 U.S.C. 801, et. seq) and dedicate those funds to the enforcement of state drug laws. Unless federal law requires such a dedication of those funds, the bill may be in violation of the dedicated funds clause of the Alaska Constitution (Art. IX, sec. 7). Since federal law does appear to require the dedication of those funds, the bill is probably not unconstitutional.

Article IX, sec. 7, of the state constitution provides, in part:

The proceeds of any state tax or license shall not be dedicated to any special purpose, except . . . when required by the federal government for state participation in federal programs.

Accordingly, if federal law does not require the state to dedicate to drug enforcement the funds the state receives under the federal forfeiture provisions, such a dedication would be unconstitutional. 21 U.S.C. 881(e) provides, in part:

Whenever property is civilly or criminally forfeited under this subchapter the Attorney General may --

(1) retain the property for official use or transfer the custody or ownership of any forfeited property to any Federal, State, or local agency . . .

The Attorney General shall ensure the equitable transfer pursuant to paragraph (1) of any forfeited property to the appropriate State or local law enforcement agency so as to reflect generally the contribution of any such agency participating directly in any of the acts which led to the seizure of forfeiture of such property.

While this provision permits the United States Attorney General to transfer the forfeited property (including money) to a state law enforcement agency, it does not appear to require that the money be dedicated to drug enforcement. However, the United States Attorney General has issued guidelines, published in the Federal Register, Volume 50, No. 110, page 24053, spelling out procedures for transferring property seized and forfeited under 21 U.S.C. 881. Section III.D.3.e. of those guidelines specifically provides:

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

The guidelines make it clear that the state is ineligible to receive cash or property forfeited to the United States Government unless that cash or property is given directly to the law enforcement agency involved in the forfeiture. Since 21 U.S.C. 881(e) provides that a decision of the United States Attorney General regarding the transfer of property is not subject to review, the guidelines appear to have the force of law. Accordingly, the dedication of funds received by the state under 21 U.S.C. 881 appears to be required for state participation in a federal program, and is therefore not in violation of the dedicated funds clause of the state constitution.

If I may be of further assistance, please advise.

KBL:mkr
m8/071

Enclosure

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

TO: Members, Senate Judiciary Committee
FROM: Hayden Kaden, Committee Co-Counsel
RE: SB 103; tracking federal money granted to Department of
Public Safety under 21 U.S.C. 881(e).
DATE: February 19, 1987

Senator Sturgulewski posed several related questions regarding the potential dollars available to the D.P.S. upon passage of SB 103.

- (1) What is the mechanism by which this money would come into the state system?
- (2) Is there tracking or an accounting of the use of the money by D.P.S.?
- (3) Does Budget and Audit have a role in auditing the use of the money?

The money available would probably be deposited in a federal depository. Public Safety applies to the proper federal agency. The request is approved. The money is sent by warrant to the state treasury where it would be credited to the department for the use specified by law. Budget and Audit would run what is called an A128 audit on the department which, among other things, determines whether there has been state compliance with federal laws and regulations governing the use of funds granted under federal law. If federal funds are found to have been improperly used, they must be repaid to the U.S. treasury.

SB

107

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 26, 1987

SUBJECT: CSSB 107(Judiciary)

TO: Senator Jalmar Kerttula
Chairman, Senate Judiciary Committee

FROM: David R. Dierdorff *[Signature]*
Revisor of Statutes

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

Summary of Changes

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

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

Summary of Effect

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

Sections that delete obsolete provisions:

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

Sections that update obsolete provisions:

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

Sections that repeal redundant provisions:

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

Sections that eliminate conflicts with other laws:

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

Sections that correct errors or oversights in drafting:

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

Sectional Analysis

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

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

Sec. 3. See analysis of sec. 5.

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

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

Sec. 6. The deleted material is obsolete.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 36. The referenced federal law was repealed by P.L. 91-606, making the reference obsolete.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 62. The amendment proposed by this section would conform the requirements of AS 45.55.090(b)(1) to those of AS 45.55.100(b)(12) (dealing with a closely related matter) and eliminate an unnecessary requirement. The amendment was requested by the division of banking, securities and corporations and the Department of Law.

Sec. 63. The deleted material is obsolete.

Sec. 64. The deleted material is obsolete.

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

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

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

DRD:mkr
m9/057

cc: Art Peterson
Department of Law

Karla Forsythe
Court System

5-0070B
Dierdorff
2/26/87

Original sponsor: Rules/Legislative Council

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 CS FOR SENATE BILL NO. 107 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

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

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

10 * Section 1. AS 06.30.720 is amended to read:

11 Sec. 06.30.720. PETITION BY COMMISSIONER. The commissioner,
12 acting through the attorney general, may apply to the superior court
13 for the appointment of a receiver, if in the [HIS] judgment of the
14 commissioner the public interest requires it and [EITHER]

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

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

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

21 * Sec. 2. AS 08.03.010(a) and (b) are repealed.

22 * Sec. 3. AS 08.04.500(a) is amended to read:

23 (a) A person may not assume or use the title or designation
24 "certified public accountant" or the abbreviation "CPA" or any other
25 title, designation, word, letter, abbreviation, sign, card, or device
26 tending to indicate that person is a certified public accountant,
27 unless the person has received a certificate, holds a live permit
28 [ISSUED UNDER AS 08.04.390 - 08.04.440, HEREINAFTER REFERRED TO AS A
29 "LIVE" PERMIT], and all of the person's offices in this state for the

1 practice of public accounting are maintained and registered as re-
2 quired by AS 08.04.350 - 08.04.380.

3 * Sec. 4. AS 08.04.510(b) is amended to read:

4 (b) A partnership or corporation of certified public accountants
5 in good standing in any state, not registered as a partnership or
6 corporation of certified public accountants under AS 08.04.240 [AND
7 08.04.250] but holding a permit under AS 08.04.420, may use the title
8 or designation "certified public accountants."

9 * Sec. 5. AS 08.04.680 is amended to read:

10 Sec. 08.04.680. DEFINITIONS. In this chapter [AS USED IN AS 08.-
11 04.010 - 08.04.690]

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

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

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

16 (4) "live permit" means a permit issued under AS 08.04.-
17 390 - 08.04.440 [REPEALED].

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

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

27 * Sec. 7. AS 08.62.180 is amended to read:

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

29 (1) vessels under enrollment, except as provided in

1 AS 08.62.185;

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

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

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

11 (A) on the rivers of Alaska, or

12 (B) in the coastwise trade on the west coast of the
13 United States including Alaska, Hawaii, and British Columbia,
14 Canada;

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

19 (6) pleasure craft.

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

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

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

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

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

4 * Sec. 9. AS 08.64.209(a) is amended to read:

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

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

10 (2) take the examination required by AS 08.64.210; the
11 State Medical Board shall call to its aid a podiatrist of known abil-
12 ity who is licensed to practice podiatry to assist in the examination
13 and licensure of applicants for a license to practice podiatry;

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

16 * Sec. 10. AS 08.64.225 is amended to read:

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

24 * Sec. 11. AS 08.64.272 is amended to read:

25 Sec. 08.64.272. RESIDENCY AND INTERNSHIP. For the limited
26 purpose of doing residency or internship work, the board may issue a
27 temporary permit to an applicant without examination if the applicant
28 meets the requirement [REQUIREMENTS] of AS 08.64.200(2) [AS 08.64.-
29 200(1) AND (2)], pays the required fee, and has been accepted by an

1 eligible institution in the state for the purpose of doing residency
2 or internship work.

3 * Sec. 12. AS 08.88.500 is repealed.

4 * Sec. 13. AS 09.17.080(a) is amended to read:

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

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

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

17 * Sec. 14. AS 09.17.080(c) is amended to read:

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

24 * Sec. 15. AS 09.17.090 is repealed.

25 * Sec. 16. AS 09.38.115(b) is amended to read:

26 (b) The dollar amounts change on October [JULY] 1 of each even-
27 numbered year if the percentage of change, calculated to the nearest
28 whole percentage point, between the index for January [NOVEMBER] of
29 that [THE PRECEDING] year and the most recent [REFERENCE BASE] index

1 used to change the exemption amount, is 10 percent or more, but

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

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

9 * Sec. 17. AS 09.38.115(d) is amended to read:

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

11 (1), on or before June [APRIL] 30 of each year in which
12 dollar amounts are to change, the changes in dollar amounts required
13 by (b) of this section; and

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

19 * Sec. 18. AS 11.66.280(4) is amended to read:

20 (4) "gambling enterprise" means a gambling business that
21 [WHICH]

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

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

28 (C) is not a municipality or a qualified organization
29 under AS 05.15.210 [AS 05.15.210(15)], except that, for purposes

1 of this paragraph, no application for a license under AS 05.15
2 [AS 05.15.210(15)] is required to be considered a qualified
3 organization;

4 * Sec. 19. AS 14.07.058(f) is repealed.

5 * Sec. 20. AS 14.17.140(b) is amended to read:

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

9 * Sec. 21. AS 14.20.420(a) is amended to read:

10 (a) The term of office For each member of the commission is
11 three years and until a successor is appointed [, EXCEPT THAT MEMBERS
12 OF THE FIRST COMMISSION SHALL BE APPOINTED AS FOLLOWS: THREE MEMBERS
13 FOR ONE YEAR, THREE MEMBERS FOR TWO YEARS, AND THREE MEMBERS FOR THREE
14 YEARS. MEMBERS OF THE FIRST COMMISSION SHALL DRAW BY LOT FOR THE
15 INITIAL TERM OF APPOINTMENT].

16 * Sec. 22. AS 14.42.030(b) is amended to read:

17 (b) The commission shall:

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

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

28 (3) serve as the state agency required under secs. 105 of
29 Title I (Community Service and Continuing Education), 603 of Title VI

1 (Financial Assistance for Undergraduate Education), [AND] 704 of Title
2 VII (Construction of Academic Facilities), and Part B of Title IV
3 (Guaranteed Student Loan Program) of the Higher Education Act of 1965
4 (PL 89-329; 79 Stat. 1220, 1262; 20 U.S.C. 1005, 1123) as authorized
5 by sec. 1202(c) of Title XII of the Higher Education Act of 1965, as
6 amended by the Education Amendments of 1972 (PL 92-318, sec. 196; 86
7 Stat. 324);

8 (4) administer the provisions of AS 14.43.090 - 14.43.160
9 (student loan program), and serve as the student financial aid commit-
10 tee;

11 (5) administer the provisions of AS 14.48 (regulation of
12 postsecondary educational institutions);

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

16 * Sec. 23. AS 15.13.120(a)(2) is repealed.

17 * Sec. 24. AS 16.05.390(b) is amended to read:

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

25 * Sec. 25. AS 16.05.430(a) is amended to read:

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

1 * Sec. 26. AS 16.05.860 is amended to read:

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

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

13 * Sec. 27. AS 16.05.925 is amended to read:

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

21 * Sec. 28. AS 16.10.475 and AS 16.30.030(3) are repealed.

22 * Sec. 29. AS 16.43.030(a) is amended to read:

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

27 * Sec. 30. AS 16.43.182 is repealed.

28 * Sec. 31. AS 16.43.980(b) is repealed.

29 * Sec. 32. The revisor of statutes shall substitute "director" for

1 "commissioner" where the latter appears in the following provisions of
2 AS 21.80 (Alaska Guaranty Association Act): AS 21.80.050(a) and (b);
3 21.80.060(a)(5) and (6); 21.80.070(a), (c)(7) and (8), and (d); 21.80.080;
4 21.80.110; 21.80.120; 21.80.150; and 21.80.170(a) and (b).

5 * Sec. 33. AS 22.15.240(c) is amended to read:

6 (c) An appeal from the district court is governed by the Rules
7 of Appellate Procedure [SHALL BE TAKEN WITHIN 30 DAYS FROM THE DATE OF
8 ENTRY OF THE JUDGMENT. ALL APPEALS SHALL BE ON THE RECORD].

9 * Sec. 34. AS 22.15.240(d) is repealed.

10 * Sec. 35. AS 29.10.200(43) is amended to read:

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

13 * Sec. 36. AS 29.45.230(e) is amended to read:

14 (e) In this section "disaster" means a major disaster declared
15 by the President of the United States under [THE PROVISIONS OF 42
16 U.S.C. SEC. 1855 - 1855g (FEDERAL DISASTER ACT OF 1950), OR OTHER]
17 federal law [,] or a disaster declared by the governor under AS 26.-
18 23.010 - 26.23.110.

19 * Sec. 37. AS 29.45.700(a) is amended to read:

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

28 * Sec. 38. AS 29.45.700 is amended by adding a new subsection to read:

29 (d) A city that levies and collects sales and use taxes under

1 (a) of this section may not levy and collect a sales tax on a purchase
2 made with food coupons, food stamps, or other type of certificate
3 issued under 7 U.S.C. 2011 - 2025 (Food Stamp Act). This subsection
4 applies to home rule and general law municipalities.

5 * Sec. 39. Sections 35, 37, and 38 of this Act are retroactive to
6 October 1, 1986.

7 * Sec. 40. AS 33.30 is amended by adding a new section to read:

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

10 * Sec. 41. AS 33.30.031(c) is amended to read:

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

14 * Sec. 42. AS 35.15.060 is repealed.

15 * Sec. 43. AS 35.27.030(1) and AS 35.30.040(1) are repealed.

16 * Sec. 44. AS 36.25.020(c) is amended to read:

17 (c) A suit brought under this section shall be brought in the
18 name of the state or the political subdivision of the state for the
19 use of the person suing in the district or superior court. A suit
20 under this section is subject to AS 08.18.151. A [NO] suit may not be
21 started after the expiration of one year after the date of final
22 settlement of the contract. The state or political subdivision of the
23 state is not liable for costs or expenses of the suit.

24 * Sec. 45. AS 36.30.730 is amended by adding a new subsection to read:

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

1 * Sec. 46. AS 36.30.900 is amended to read:

2 Sec. 36.30.900. PREFERENCE FOR ALASKA PRODUCTS. This chapter
3 does not modify, amend, or alter AS 36.15.010 and 36.15.020 regarding
4 preference for Alaska forest products, or AS 36.15.050 and 36.15.060
5 regarding preference for Alaska agricultural and fisheries products
6 [AS 36.20.010 REGARDING PREFERENCE TO PRODUCERS OR DEALERS IN ALASKA]
7 except as provided in AS 36.30.170(b) and (c).

8 * Sec. 47. AS 36.90.050(b) is amended to read:

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

13 * Sec. 48. AS 37.05.157, 37.05.158, and AS 37.07.062(c)(4) are re-
14 pealed.

15 * Sec. 49. AS 37.10.088(b) is amended to read:

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

27 * Sec. 50. AS 37.20.040 is repealed.

28 * Sec. 51. AS 37.25.030 is repealed.

29 * Sec. 52. AS 38.09.100 is amended to read:

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

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

9 * Sec. 53. AS 39.05.100(a) is amended to read:

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

20 * Sec. 54. AS 39.25.110(11)(C) and AS 39.50.200(b)(43) are repealed.

21 * Sec. 55. AS 43.05.210 is repealed.

22 * Sec. 56. AS 43.70.020(b) is amended to read:

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

26 * Sec. 57. AS 43.70.030(d), 43.70.040, and 43.70.110(2) and (3) are
27 repealed.

28 * Sec. 58. AS 43.70.090 is amended to read:

29 Sec. 43.70.090. REGULATIONS. The department may adopt

1 regulations necessary to determine and collect the fees imposed by
2 this chapter [AND MAY ADOPT REGULATIONS DEFINING THE NECESSARY METHODS
3 OF COMBINATION AND APPORTIONMENT FOR MULTISTATE FINANCIAL INSTITUTIONS
4 REQUIRED TO FILE UNDER THIS CHAPTER].

5 * Sec. 59. AS 44.62.175(a)(4) is amended to read:

6 (4) notices of state agency requests for proposals issued
7 under AS 18.55.255, 18.55.320; AS 36.30.210; AS 37.05.316; AS 38.05.-
8 120; and AS 43.40.010;

9 * Sec. 60. AS 44.62.330(a)(46) is repealed.

10 * Sec. 61. AS 45.55.040(b) is amended to read:

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

22 * Sec. 62. AS 45.55.090(b) is amended to read:

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

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

29 (2) if the administrator requires, copies of the articles

1 of incorporation and bylaws (or their substantial equivalent) cur-
2 rently in effect, a copy of an agreement with or among underwriters, a
3 copy of an indenture or other instrument governing the issuance of the
4 security to be registered, and a specimen or copy of the security;

5 (3) if the administrator requests, any other information,
6 or copies of any other documents, filed under the Securities Act of
7 1933; and

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

14 * Sec. 63. AS 45.88.030(d) is amended to read:

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

18 * Sec. 64. AS 45.88.030(e) is amended to read:

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

25 * Sec. 65. AS 46.15.200 is amended to read:

26 Sec. 46.15.200. TERM OF OFFICE. The term of office for members
27 of the board is four years. [THE FIRST MEMBERS APPOINTED SERVE AS
28 FOLLOWS: TWO MEMBERS SERVE FOR ONE YEAR, THREE FOR TWO YEARS AND TWO
29 FOR THREE YEARS.] If a vacancy occurs, the governor shall fill it by

1 appointment for the unexpired term. The appointment shall be submit-
2 ted to the legislature for confirmation at the next regular or special
3 session.

4 * Sec. 66. Section 65, ch. 106, SLA 1986 is amended to read:

5 Sec. 65. REPORT. By December 1, 1988, the commissioner of
6 administration and the commissioner of transportation and public
7 facilities shall report to the legislature concerning procurements by
8 state agencies during fiscal year 1987. The report must include

9 (1) a summary of the information required under AS 36.30.-
10 510 [THE RECORDS PREPARED UNDER AS 36.30.510(4)];

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

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

15 * Sec. 67. This Act takes effect July 1, 1987.
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STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE COUNCIL

5B107
POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-405-4843

January 30, 1987

Senator Richard Eliason
Chairman, Rules Committee
Alaska State Senate
Juneau, Alaska 99811

Dear Senator Eliason:

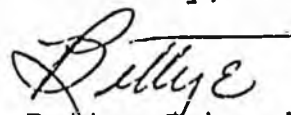
Enclosed is the 1987 statute revisor's bill, which was submitted by David Dierdorff, revisor of statutes, to the Legislative Council for introduction through the Rules Committee.

Although I am sure the bill will be thoroughly considered by the committees to which it is assigned, I do want to point out some sections of the bill which should be closely examined for their interpretations of legislative intent or their impact on existing laws and procedures.

In particular, I would like to direct your attention to Section 21, which would enact into law what the Department of Law has concluded to be "implied authority" under current law; Sections 23-25, 27, 29, 31-36, 41, 52, 53, and 59, which attempt to interpret legislative intent; Section 38, which would codify a supreme court ruling that may or may not reflect the legislature's intent; and Section 48, which repeals an old dedication of federal mineral leasing revenues.

I bring this to your attention since many of these issues require policy decisions.

Sincerely,



Bettye Fahrenkamp
Alaska State Senate

jfh
enclosure

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

SB107


POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

MEMORANDUM

January 19, 1987

SUBJECT: 1987 Revisor's Bill
(Work Order No. 5-0070)

TO: Senator Bettye Fahrenkamp
Chairman, Legislative Council

FROM: David R. Dierdorff 
Revisor of Statutes

Enclosed is a draft of the 1987 revisor's bill and a sectional analysis of the draft. I would appreciate it if you would place the draft before council for approval for introduction.

If you or your staff have any questions, please feel free to call upon me.

Thank you in advance for your cooperation.

DRD:mkr
m8/020

Enclosure

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

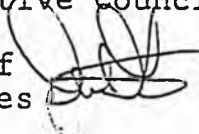
LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 19, 1987

SUBJECT: 1987 Revisor's Bill
(Work Order No. 5-0070)

TO: Senator Bettye Fahrenkamp
Chairman, Legislative Council

FROM: David R. Dierdorff 
Revisor of Statutes

This memorandum discusses the draft revisor's bill prepared for the consideration of the Legislative Council for possible introduction through the Rules Committee. I would be happy to meet with you or your staff prior to the first meeting of the council in the event you have any questions about the draft.

The draft was prepared by the revisor of statutes under AS 01.05.036, which provides, in part, that the revisor of statutes shall

. . . prepare for submission to the legislature legislation for the correction or removal of . . . deficiencies, conflicts, or obsolete provisions, or to otherwise improve the form or substance of . . . the statute law of this state.

Sectional Analysis

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

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

Sec. 3. See analysis of sec. 5.

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

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

Sec. 6. The deleted material is obsolete.

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

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

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

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

Secs. 16 and 17. Sections 16 and 17 make changes to AS 09.38.115 to reflect changes made by the federal

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

Sec. 18. The subsection proposed for repeal is obsolete. It was operative only during 1976.

Sec. 19. AS 28.10.255 was repealed in 1978. The current provisions relating to the motor vehicle registration tax are found in AS 28.10.431, and this section proposes that the reference to those laws in AS 14.17.140(b) be updated.

Sec. 20. The material proposed for deletion is obsolete.

Sec. 21. An April 22, 1986, memo from Assistant Attorney General Gary Amendola to Assistant Attorney General Art Peterson discussed the authority of the Alaska Commission on Postsecondary Education to adopt regulations related to the Guaranteed Student Loan Program. The commission desired to adopt the regulations to implement its role as the state guaranty agency for the federal loans. The memo concluded that the commission has the implied authority to adopt the regulations, but urged that the authority be made express through an amendment to AS 14.42.030(b)(3). Section 21 of this draft would accomplish that.

Sec. 22. Last year AS 15.13.070(f) was repealed. The related provision in AS 15.13.120(a)(2) providing that "making a campaign contribution or expenditure which exceeds the limitations of AS 15.13.070(f)" is a crime, was not repealed. This section of the draft bill corrects that oversight.

Secs. 23 - 25. The amendments proposed by secs. 23 - 25 of the draft would correct an apparent oversight in ch. 132, SLA 1984. When enacting AS 16.05.925, the legislature intended to make uniform the penalty for violations of regulations adopted under the fish and game laws. However, the new provision failed to take into account the existence of certain specific penalties in AS 16.05.430, 16.05.831, and 16.05.860, with the result that the penalty for violating a regulation adopted under one of those sections would carry a stiffer penalty than a violation of the section itself.

That result could not be legally enforced, of course, but the oversight leads to confusion and uncertainty. The proposed amendments assume that the legislature did not intend to impliedly repeal the referenced penalty provisions, but, rather, that the lesser penalties for certain sport hunting and fishing violations should remain. The problem was brought to our attention by Jim Parker, director of magistrate services for the Court System, and Karla Forsythe, staff counsel for the system.

Sec. 26. The subsection proposed for repeal deals solely with a report that was to have been made to the legislature in 1975 and is now obsolete.

Sec. 27. The Alaska Guaranty Association Act (AS 21.80), enacted in 1970, was based on a Model Act promulgated by the National Association of Insurance Commissioners. Because the title of the administrative official regulating insurance in almost every state is "commissioner," the Model Act used that term and Alaska enacted it without change. In Alaska, the corresponding official is the director of the division of insurance, reporting to the commissioner of commerce and economic development (see AS 21.06). Although the use of the term "commissioner" in AS 21.80 presents no substantive legal problems, because the commissioner of commerce and economic development has the authority to delegate all responsibility to the director, it does cause some confusion. The division of insurance requested that the change of name be proposed in the revisor's bill. Section 27 of the draft would accomplish the desired result.

Sec. 28. The proposed amendment would conform the provisions of AS 22.15.240(c) to those of Appellate Rule 602(a)(1) covering the same subject. Requested by the Court System.

Secs. 29 and 31 - 33. Chapter 38, SLA 1986, which was intended solely to exempt purchases made with food stamps from municipal sales and use taxes, amended AS 29.45.700(a) and made a related amendment to AS 29.10.200. Unfortunately, a drafting error in ch. 38 led to an unintended result. Instead of the narrow result contemplated by the legislature, and reflected in the title of CSHB 697 (HESS), the amended law could be construed to require a home rule city in a borough that levies and collects an areawide sales tax to levy and collect a sales or use tax only in a manner identical to that of the borough

in which the city is located. The amendments proposed in secs. 29, 31 and 32 of this draft would correct the error. Section 33 of the draft would make the amendments retroactive to October 1, 1986, the effective date of ch. 38, SLA 1986. The amendments were requested by the Department of Community and Regional Affairs and the City of Ketchikan.

Sec. 30. The referenced federal law was repealed by P.L. 91-606, making the reference obsolete.

Sec. 34. As a part of the new procurement code, AS 33.30.050, dealing with medical services for prisoners, and AS 33.30.062, dealing with privately operated correctional facilities, were amended to incorporate express provisions subjecting the covered activities to AS 36.30. In ch. 88, SLA 1986, the corrections code was substantially rewritten and AS 33.30.050 and 33.30.062 were repealed. The proposed addition of a section to AS 33.30 making contracting activities under AS 33.30 subject to AS 36.30 is probably not required as a matter of law (AS 36.30 governs all state contracting activities unless expressly excluded), but the section is proposed to carry out the legislature's intent in enacting the 1986 amendments to the two repealed sections.

Sec. 35. The subsection proposed for repeal is unnecessary if new AS 33.30.026 proposed for enactment in the preceding section of this bill is enacted. In any event, the subsection needs to be amended to delete a reference to a provision repealed by the new procurement code.

Sec. 36. The provisions proposed for repeal deal with the use of local forest products in projects financed by public funds. The enactment of AS 36.30.322 - 36.30.338 as a part of the new procurement code supersedes these provisions. The provisions of AS 36.15.010 are incorporated in AS 36.30.322 and those of AS 36.15.020 are incorporated in AS 36.30.326. It should be noted that AS 36.30.322 - 36.30.338 derived from CSHB 679 (SA), 14th Legislature, 2nd Session, which would have amended AS 36.15.010 and added new provisions to AS 36.15, but which was merged into HCS CSSB 341 (Fin) (the procurement code bill). The failure to include a repealer of AS 36.15.010 and 36.15.020 at that time is believed to have been an oversight.

Sec. 37. The substance of the sections proposed for repeal by this section is reenacted as a part of AS 36.30 (the procurement code) in section 39 of this bill.

Sec. 38. In 1985, jurisdiction in actions involving contractors' bonds under AS 08.18 was transferred from the superior court to the district court (sec. 1, ch. 17, SLA 1985). The change proposed in the first sentence of AS 36.25.020 would give the district and superior courts concurrent jurisdiction over suits involving bonds posted under Alaska's "little Miller Act" by contractors on public projects. Thus, the amount sought by the plaintiff would determine whether the suit would be filed in district or superior court. The proposed amendment would also add language codifying the rule of State v. Tyonek Timber, Inc., 580 P.2d 1148 (1984), in which the supreme court held that a contractor or subcontractor suing under AS 36.25 is subject to the registration requirements of AS 08.18 and, consequently, the penalty provisions of AS 08.18.151. The amendments were suggested by the Court System.

Sec. 39. Enacts the substance of AS 36.15.050 and 36.15.060, repealed by section 37 of this bill. The purpose for this is to consolidate related provisions that were separately enacted in 1986.

Sec. 40. Adds a provision to the procurement code to conform to the program receipts Act (ch. 138, SLA 1986). A similar former provision had been amended by ch. 138, SLA 1986, but was repealed by ch. 106, SLA 1986.

Sec. 41. When CSHB 679(SA) was merged into HCS SSSB 341(Fin), this provision (which would have been enacted as a part of AS 37.05) should have been deleted from the text of the bill. In any event, it would need to be substantially amended to reflect the repeal of other provisions upon enactment of the procurement code. See also the discussion of sec. 36.

Sec. 42. The amendment conforms the subsection to the new procurement code, which repealed AS 37.05.230 and contains all of the relevant competitive bidding provisions of state law.

Sec. 43. The two sections in AS 37.05 that are proposed for repeal establish the reserve for capital outlay account and the reserve for energy facilities development account in the

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

Sec. 44. The material proposed for deletion is time-dated and now obsolete.

Sec. 45. The statute proposed for repeal, AS 37.20.040, is obsolete. The state's obligation to pay into the Alaska Native Fund under sec. 9 of ANCSA was extinguished when the state paid a total of \$500 million to the fund. The last payment was made under an appropriation in ch. 120, SLA 1980. The Department of Revenue requested the repeal.

Sec. 46. AS 38.05.077 was repealed when AS 38.09 was enacted. The two references to the repealed section should have been drafted to read as proposed by this amendment.

Sec. 47. Without the amendment proposed by this section, it is arguable that a student member of the Board of Regents or the Commission on Postsecondary Education is not eligible to serve unless the student was old enough to have voted in the last general election. This is inconsistent with the laws creating the student positions, which have no age requirements for the student member appointees. The amendment was requested by the Department of Law.

Sec. 48. The repeal of AS 43.05.210 would eliminate an old dedication of certain federal mineral leasing revenues. The dedication was required by the federal law, which has since been amended to eliminate the required dedication. In any event, the state has never identified this dedicated revenue stream as a fund source in the budget process. The Department of Revenue requested the repeal.

Sec. 49. The amendment clarifies the language of AS 43.70.020(b) to reflect changes made in the business license tax in 1978 and 1984.

Sec. 50. The provisions proposed for repeal were rendered obsolete by the repeal of AS 43.70.030(b) in 1984 and the change from a "gross receipts" tax to an annual license in

1978. All businesses now pay a flat \$25 per year business license fee.

Sec. 51. The material proposed for deletion was rendered obsolete by the repeal of AS 43.70.030(b) in 1984.

Sec. 52. This corrects an oversight in ch. 106, SLA 1986 (the procurement code) by listing RFP's issued under AS 36.30.210 among those actions that must be published in the Alaska Administrative Journal. Publication of the RFP's is required by AS 36.30.210(c) and 36.30.130.

Sec. 53. The Department of Commerce and Economic Development currently manages 11 different state loan programs, using identical procedures for all of the programs. The procedures include an administrative appeal process. See 3 AAC 77 - 87. When the Fisheries Enhancement Loan Program was established in 1976, the hearing provisions of the Administrative Procedure Act were made applicable to that loan program. None of the other 10 programs were included under the APA, and, in fact, DCED was not aware that the fisheries loan program was included until an assistant attorney general recently discovered the inclusion. Both DCED and the Department of Law believe that the 1976 inclusion was the result of an error rather than an intentional legislative decision. The repeal of AS 44.62.330(a)(46) as proposed in sec. 53 of the bill would remove this anomaly.

Sec. 54. The material proposed for deletion is obsolete.

Sec. 55. The amendment proposed by this section would conform the requirements of AS 45.55.090(b)(1) to those of AS 45.55.100(b)(12) (dealing with a closely related matter) and eliminate an unnecessary requirement. The amendment was requested by the division of banking, securities and corporations and the Department of Law.

Sec. 56. The deleted material is obsolete.

Sec. 57. The deleted material is obsolete.

Sec. 58. The material proposed for deletion is obsolete.

Sec. 59. The version of the procurement code that became law did not contain the paragraph (4) referenced in sec. 65(1) of ch. 106. The proposed amendment substitutes the substance of proposed AS 36.30.510(4), which was included in

Senator Fahrenkamp
Page 9
January 19, 1987

earlier versions of the procurement code bill, for the obsolete reference.

Sec. 60. The bill is given a specific effective date, rather than the usual immediate effective date, in order to have it take effect on the same date that the procurement code takes effect.

DRD:mkr
m7/101

cc: Art Peterson
Department of Law

Karla Forsythe
Court System

STATE OF ALASKA
THE LEGISLATURE

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

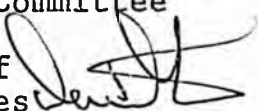
LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 5, 1987

SUBJECT: Proposed amendment to Revisor's Bill
(Senate Bill 107)

TO: Senator Jay Kerttula, Chair
Senate Judiciary Committee

FROM: David R. Dierdorff 
Revisor of Statutes

Attached is a proposed amendment to this year's revisor's bill, SB 107. The amendment addresses problems brought to our attention after the introduction draft was prepared for Legislative Council.

The new material consists of:

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

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

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

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

Sec. 30. The section proposed for repeal related to the personal income tax repealed in 1980. It provided that the purchase of an entry permit is a deductible business expense

Senator Kerttula
February 5, 1987
Page 2

under that tax. Should the legislature reinstate a personal income tax, the treatment of deductible expenses should be enacted within the tax laws rather than within the laws relating to state programs.

Sec. 40 (sec. 35 of the printed bill). The attached amendment to sec. 35 of the printed bill corrects an error on my part in drafting the bill as introduced. Instead of repealing AS 33.30.031(c), the subsection would be amended to reflect the repeal of AS 37.05.230(1)(B) and the adoption of corresponding provisions (relating to sole source procurements) in AS 36.30. This would continue the requirement that contracts for confinement and care of prisoners must be competitively bid.

Sec. 41. The section proposed for repeal is obsolete, relating only to construction contracts entered into before April 1, 1957. It exempted those contracts from procedures enacted in 1957.

Sec. 42. The two provisions proposed for repeal are definitions of "department" that are redundant to a definition in AS 35.25.020 that applies to all of AS 35.

Secs. 53 and 56. The provisions proposed for repeal were made obsolete by the repeal of the Alaska Energy Center last year.

If I may be of further assistance, please advise.

DRD:mkr
m8/097

Enclosure

A M E N D M E N T

Offered

By

To: SB 107

Page 6, following line 18, insert a new bill section to read:

"* Sec. 18. AS 11.66.280(4) is amended to read:

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

(A) includes five or more persons who conduct, finance, manage, supervise, direct, or own all or part of the business;

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

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

Renumber succeeding bill sections accordingly.

Page 8, following line 2, insert a new bill section to read:

"* Sec. 24. AS 16.05.390(b) is amended to read:

(b) Each agent authorized to sell licenses or tags under AS

16.05.380 shall, as directed by the commissioner of revenue, transmit the proceeds from the sales of licenses and tags, except the amount authorized to be retained, together with a report of the sales, to the commissioner for deposit in the fish and game fund or the general fund. [FEES IMPOSED UNDER AS 16.05.340(e) SHALL BE COLLECTED AND TRANSMITTED IN THE SAME MANNER.]"

Renumber succeeding bill sections accordingly.

Page 8, following line 27, insert new bill sections to read:

"* Sec. 28. AS 16.10.475 and AS 16.30.030(3) are repealed.

* Sec. 29. AS 16.43.030(a) is amended to read:

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

* Sec. 30. AS 16.43.182 is repealed."

Renumber succeeding bill sections accordingly.

Page 10, line 5:

Delete "29, 31, and 32" and insert "34, 36, and 37"

Page 10, line 10, delete "repealed" and insert:

"amended to read:

(c) Notwithstanding AS 36.30.300 [AS 37.05.230(1)(B)], an

agreement with a private agency to provide necessary facilities under (a) of this section must be based on competitive bids.

* Sec. 41. AS 35.15.060 is repealed.

* Sec. 42. AS 35.27.030(1) and AS 35.30.040(1) are repealed."

Renumber succeeding bill sections accordingly.

Page 12, following line 3, insert a new bill section to read:

"* Sec. 53. AS 37.25.030 is repealed."

Renumber succeeding bill sections accordingly.

Page 12, following line 23, insert a new bill section to read:

"* Sec. 56. AS 39.25.110(11)(C) and AS 39.50.200(b)(43) are repealed."

Renumber remaining bill sections accordingly.

MEMORANDUM

State of Alaska

TO: David Dierdorff
Revisor of Statutes
Legislative Affairs Agency

DATE: June 25, 1986

FILE NO.: 993-84-070 -- Part II

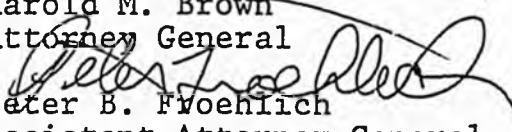
THRU:

TELEPHONE NO.: 465-3600

SUBJECT: Suggestion for 1987
revisor's bill

FROM: Harold M. Brown
Attorney General

By:


Peter B. Froehlich
Assistant Attorney General
and Assistant Regulations Attorney

Now that the smoke has cleared after the end of the 14th Legislature, here is a suggestion for your next revisor's bill. As explained in the attached memorandum from Assistant Attorney General Gary Amendola to Art Peterson, we suggest that AS 14.42.030(b)(3) be amended to clarify the authority of the Commission on Postsecondary Education to adopt regulations concerning the Alaska portion of the Federal Guaranteed Student Loan Program.

Incidentally, you have our thanks and congratulations for your good work and persistence on the 1985 revisor's bill, ch. 37, SLA 1986.

PBF:md

Attachment

cc w/o attach: Kerry Romesburg, Executive Director
Postsecondary Education Commission

Gary Amendola
Assistant Attorney General
Juneau

MEMORANDUM

State of Alaska

TO: Art Peterson
Legislation Attorney
Department of Law

DATE: April 22, 1986

FILE NO: 993-84-0070

TELEPHONE NO: 465-3603

FROM: Gary I. Amendola
Assistant Attorney General
Transportation Section-Juneau

SUBJECT: Guaranteed Student
Loan Regulations

You have asked for a memo regarding the authority of the Alaska Commission on Postsecondary Education (commission) to adopt the Guaranteed Student Loan Program regulations proposed for 20 AAC 15.300 - 20 AAC 15.490.

Admittedly the authority is not expressed clearly in AS 14.43.010 et seq., but I am convinced, especially after speaking with Kerry Romesburg, the Executive Director of the commission, that the legislature intended that the commission administer the Alaska portion of the Guaranteed Student Loan Program in Title IV, Part B of the Higher Education Act of 1965 (Public Law 89-329), as amended. Otherwise, the references to "federally insured" in AS 14.43.120(b) and (1) and AS 14.43.160(3) would be meaningless.

AS 14.43.120(b) and (1) state:

(b) The loans may only be used to attend a career education program or a college or university approved by the commission, and, if the loans are federally insured, by the United States Commissioner of Education.

(1) The state will pay the interest on that portion of a loan that is not federally insured

.....

On first impression one would think that the references in AS 14.43.120 (b) and (1) to "loans" refers only to scholarship loans offered under the Alaska State Student Loan program, except that such an interpretation would make the references to "federally insured" meaningless, since Alaska State Student Loans

RECEIVED
Department of Law

APR 23 1986

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Art Peterson
Legislation Attorney
993-84-0070

April 22, 1986
Page 2

are not federally insured. */ The references are clarified under AS 14.43.160 (3), which defines "federally insured" as "a loan covered by the provisions of the Guaranteed Student Loan Program of Title IV, Part B, of the Higher Education Act of 1965 (P.L. 89-329), as amended." AS 14.43.160(3) strongly suggests that the loans referred to in AS 14.43.120 include those which are available under P.L. 89-329, as amended.

It is my opinion that the commission has the authority to adopt regulations implementing its role as the state guaranty agency for loans obtained under P.L. 89-329, as amended. On the other hand, it is advisable that a revisor's bill be drafted to clearly express this authority by amending AS 14.42.030(b)(3) to include the Guaranteed Student Loan Program of Title IV, Part B, of the Higher Education Act of 1965 (P.L. 89-329), as amended.

GIA:prm

cc: Kerry D. Romesburg

*/ Only during FY 81 were Alaska State Student Loans even partially federally insured.

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

COPY

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

MEMORANDUM

September 16, 1986

SUBJECT: AS 09.38.115(b) and (d)
TO: Peter B. Froehlich
Assistant Attorney General
Department of Law
FROM: David R. Dierdorff
Revisor of Statutes

I will include the proposed amendments to AS 09.38.115(b) and (d) in the draft revisor's bill I prepare for 1987 introduction.

I will circulate the draft for comment later this year, so you will have another opportunity to add to its contents.

DRD:mkr
m6/107

MEMORANDUM

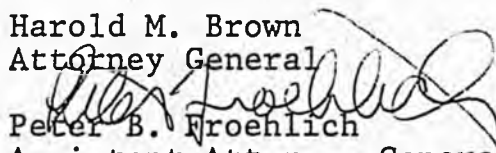
State of Alaska

TO: David Dierdorff
Revisor of Statutes
Legislative Affairs Agency

DATE: September 12, 1986

FILE NO:

TELEPHONE NO: 465-3600

FROM: Harold M. Brown
Attorney General
By: 
Peter B. Froehlich
Assistant Attorney General
Legislation/Regulations Section

SUBJECT: Revision of AS 09.-
38.115(b) and (d) on
adjustment of debtor
exemption

As we discussed early this week, here is the revision of AS 09.38.115(b) and (d) proposed by the Department of Labor.

* Section 1. AS 09.38.115(b) is amended to read:

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

(1) the portion of the percentage change in the index in excess of a multiple of 10 percent is disregarded and the dollar amounts change only in multiples of 10 percent of the amounts appearing in this chapter on August 26, 1982; and

(2) the dollar amounts do not change if the amounts required by this section are those currently in effect as a result of earlier application of this section.

* Sec. 2. AS 09.38.115(d) is amended to read:

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

(1) on or before June 30 [APRIL 30] of each year in which dollar amounts are to change, the changes in dollar amounts required by (b) of this section; and

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

Please let me know whether you can include this proposal in your 1987 revisor's bill.

Thanks for your cooperation.

PBF:md

cc: Judy Knight, Director
Div. of Administrative Services
Dept. of Labor

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

REQUEST: _____

Bill Version : SB 107
Publish Date : _____

Revision Date: _____
Title: An Act ... corrective amendments ...
as recommended ... by the revisor of statutes

Agency Affected : A11
BRU : _____

Sponsor : Senate Rules by Request
Requestor : Legislative Council

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-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

There is no fiscal impact.



Prepared by: David R. Dierdorff, Revisor of Statutes
Division : Legal Services

Phone : 465-3850
Date : 2/13/87

Approved by: Warren W. Endicott, Executive Director
Agency : Legislative Affairs Agency

Date : 2/13/87

Distribution (by preparer):

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

SB

108

Final CS for short version BIC

5-0553L
Bradley
4/10/87

Original sponsor: Coghill

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IN THE SENATE BY THE JUDICIARY COMMITTEE

CS FOR SENATE BILL NO. 108 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to decisions on right-of-way lease applications."

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

* Section 1. AS 38.35.100 is amended to read:

Sec. 38.35.100. DECISION ON APPLICATION. (a) The commissioner shall promptly determine, on an application filed under AS 38.35.050, whether the applicant is fit, willing and able to perform the transportation or other acts proposed in a manner that will be required by the present or future public interest. In making a determination the commissioner shall consider whether or not

(1) the proposed use of the right-of-way will unreasonably conflict with existing uses of the land involving a superior public interest;

(2) the applicant has the technical and financial capability to protect state and private property interests;

(3) the applicant has the technical and financial capability to take action to the extent reasonably practical to

(A) prevent any significant adverse environmental impact, including but not limited to, erosion of the surface of the land and damage to fish and wildlife and their habitat;

(B) undertake any necessary restoration or revegetation; and

(C) protect the interests of individuals living in the general area of the right-of-way who rely on fish, wildlife and

1 biotic resources of the area for subsistence purposes;

2 (4) the applicant has the financial capability to pay
3 reasonably foreseeable damages for which the applicant may become
4 liable on claims arising from the construction, operation, maintenance
5 or termination of the pipeline;

6 (5) the applicant has agreed that in the construction and
7 operation of a pipeline within the right-of-way the applicant will
8 comply with and require contractors and their subcontractors to comply
9 with applicable and valid laws and regulations regarding the hiring of
10 residents of the state then in effect or that take effect subsequent-
11 ly.

12 (b) If the commissioner makes the [THESE] determinations under
13 (a) of this section favorably to the applicant, then the commissioner
14 may grant the whole or part of the application. If the commissioner
15 makes the determinations under (a)(1) - (5) of this section favorably
16 to the applicant but determines that the applicant is not then fit,
17 willing, and able to perform under the application, the commissioner
18 may grant the application subject to conditions established by the
19 commissioner that will ensure that the applicant will, within a pre-
20 scribed period of time not exceeding 10 years, establish that the
21 applicant is fit, willing, and able, under (a) of this section, to
22 perform the transportation or other acts that will be required by the
23 present or future public interest. An applicant is not entitled to a
24 notice or authorization to proceed to construction, or its equivalent,
25 under a conditional lease until the commissioner determines in writing
26 that the applicant has satisfactorily established that the applicant
27 is then fit, willing, and able to perform under (a) of this section.
28 Otherwise, the commissioner shall deny the application.

29 (c) The commissioner may offer the applicant a lease under this

1 section. If the applicant does not accept a lease offered under this
 2 section within 30 days, the lease offered is withdrawn [IN ORDER TO
 3 GRANT THE WHOLE OR PART OF THE APPLICATION THE COMMISSIONER SHALL

4 OFFER A LEASE TO THE APPLICANT FOR ITS ACCEPTANCE THROUGH SIGNING OF

5 THE LEASE AND AGREEING TO COMPLY WITH ITS TERMS, CONDITIONS, AND

6 OBLIGATIONS. ONLY UPON PROPER ACCEPTANCE OF OFFERED LEASE BY THE

7 APPLICANT WITHIN 30 DAYS AFTER ITS HAVING BEEN PRESENTED IS THE GRANT

8 OF THE APPLICATION CONSUMMATED].

9 * Sec. 2. AS 38.35.100 is amended by adding new subsections to read:

10 (d) The commissioner shall include in a conditional lease each

11 requirement and condition of the covenants established under AS 38.-

12 35.120. The commissioner may also require that the lessee agree to

13 additional conditions that the commissioner finds to be in the public

14 interest. In place of the covenant established under AS 38.35.-

15 120(a)(9), the commissioner shall require the lessee to agree that it

16 will not transfer, assign, pledge, or dispose of in any manner, di-

17 rectly or indirectly, its interest in a conditional right-of-way lease

18 or a pipeline subject to the conditional lease, unless the commis-

19 sioner, after considering the public interest, authorizes the trans-

20 fer. The commissioner shall also require the lessee to agree not to

21 allow the transfer of control of the lessee without the approval of

22 the commissioner; as used in this subsection, "transfer of control of

23 the lessee" means the transfer of 30 percent or more, in the aggre-

24 gate, of ownership interest in the lessee in one or more transactions

25 to one or more persons by one or more persons.

26 (e) The commissioner shall require a conditional lessee to agree

27 that

28 (1) in the absence of the approval of the commissioner, a

29 transfer may not relieve the lessee of an obligation assume' under the

1 lease;

2 (2) a transfer, including the transfer of lessee, that
3 occurs without the approval of the commissioner is ineffective to
4 transfer interests in and obligations under the lease; and

5 (3) a transfer constitutes a default under the lease.

6 (f) In an application for the approval under (d) of this section
7 of a transfer of an interest, the commissioner shall consider whether
8 the proposed transferee will be fit, willing, and able to perform the
9 transportation or other acts proposed under the conditions established
10 in the conditional lease and whether the transfer is in the public
11 interest. In approving the transfer of an interest under (d) of this
12 section and this subsection, the commissioner may impose any condition
13 on the transfer that the commissioner considers in the public inter-
14 est.

15 (g) If the commissioner determines under (a) of this section
16 that the applicant is fit, willing, and able to perform the transpor-
17 tation or other acts proposed in a manner that will be required by the
18 present or future public interest, the commissioner may amend the
19 conditional right-of-way lease to insert the covenant established in
20 AS 38.35.120(a)(9) in place of the covenant against a transfer estab-
21 lished under (d) and (e) of this section.

22 (h) The issuance of a conditional lease does not prevent the
23 commissioner from issuing other conditional or unconditional leases
24 for the same right-of-way. An applicant or conditional lessee accrues
25 no priority rights to a particular right-of-way until the commissioner
26 makes a determination that the applicant or conditional lessee is then
27 fit, willing, and able to perform the transportation or other acts
28 proposed under (a) of this section.

29 (i) The commissioner shall insert a provision implementing the

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requirements of (a)(5) of this section into each agreement entered into by the commissioner for the construction and operation of a pipeline within the state.