

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672

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either meet or hold hearings in each of the five regions of the state each year, further expanding and facilitating public participation in the board process.

The board currently meets twice yearly, in the spring to consider primarily shellfish regulations and in the winter to consider finfish regulations. In most sessions, regulatory proposals statewide have been considered, though in 1983 the board first adopted a system whereby the state is divided into two regions, with regulatory consideration limited to each area every other year. The present board has recently reaffirmed that it will adhere to that approach. In years when an area is not open to regulatory consideration by the board, or during the fishing season when the board is not in session, management authority to open and close harvests and adjust their time or area, or to regulate ways and means of harvest, is delegated to the Department as provided for under AS 16.05.060. The intent is that the use of such emergency orders or emergency regulations be invoked only as necessary to protect the biological base of a stock if an unforeseen or unforeseeable event occurs which threatens that stock. In addition, the advisory committees have the authority under statute to close seasons, though this authority has never been applied.

When the advisory committees were established, part of their intended function seems to have been, as mandated by AAC 96.050, to develop and evaluate regulatory proposals to the board. In practice, however, only about 16% of the proposals voted on by the board between 1975 and 1987 originated with advisory committees or regional councils, while 49% have originated with individuals or interest groups and 35% with the Department or the board itself.

Though there is not total consensus on the reasons for such, it is clear that the number of proposals submitted to the board and the consequent workload has increased dramatically in recent years (since about 1975). In the sixties and early seventies meetings of the joint board

consumed about 10-15 days total for the year, with 100 to 125 proposals considered. Since 1975 fisheries board meetings have occupied from 17 to 81 days per year, with as many as 895 proposals for consideration.

In large part this expanded work load is probably a reflection of the increased value of and competition for fisheries resources themselves. For instance, ex-vessel values have increased from \$70 million in 1965 to nearly \$900 million in 1986, and wholesale values from \$166 million to \$1.6 billion (Senate Advisory Council, 1987). The volume and complexity of conservation and allocation issues to which the board has been subjected have increased accordingly, though its capacity to deal with such volume and complexity, in terms of funding and technical assistance, probably has not.

Other major factors contributing to this increased work load include (1) the delineation of subsistence and personal use categories, (2) revitalization of the state's salmon fishery and, concurrently, increased harvests of other, non-salmonoid, species, (3) lack of a comprehensive state fisheries policy within which to formulate management and allocation guidelines and (4) generally increased public participation in and access to the board process. The increased quantity, if not quality, of proposals with which the board must contend are described in a recent (1987) report of the Senate Advisory Council, as quoted below:

The mushrooming quantity of information and proposals thus presented to the board and the time consumed in public testimony before it has constrained the board's ability to carefully and reasonably consider all of the proposals and issues before it.

The only options, in light of such an increased and increasing work load, would seem to be (1) to somehow limit the number of proposals submitted to the board or (2) increase the efficiency of the board in dealing with this

increased volume. Due to 1988 budget limitations, the board is constrained to 27-30 meeting days this year, which is probably insufficient to deal with the issues facing it (Senate Advisory Council, 1987).

While problems with the board, either in terms of appointments or function, and public criticism of the board are nothing new, the recent collapse and adjournment of the board in Anchorage last December (1986), has resulted in unprecedented, and probably proper, criticism of the board and loss of confidence in the process. This recent collapse of the board can be viewed as a confirmation of sorts that the process does work, at least on a very basic level, for the board did self-destruct itself rather than continue on what seems generally perceived as a counterproductive course. Nevertheless, it did serve notice in a fairly dramatic way that the process was in trouble and badly needed attention. Several measures were undertaken by the legislature and the governor in response to this situation and to the public criticism and general loss of confidence which it engendered.

One response, originating with Senator Hensley, was proposed Senate Bill No. 188, which would have established a full-time, salaried, Alaska Fisheries Management Commission to replace The Board of Fisheries.

The legislature also authorized and budgeted a review of the board of fisheries by the Senate Advisory Council. This review, prepared by Sheila Helgath and Richard Rainery, is referred to and was used extensively during preparation of the present report.

5. DISCUSSION

The issues and problems deliberated by the review committee can be divided into four general categories corresponding to the major categories defined in the earlier section pertaining to formal recommendations of the committee.

5.1 Appointment, structure and mandate of the Board:

5.1.1 Consideration of a salaried, full-time professional board.

The consensus of the committee was that, for the present at least, employment of a full-time board is not necessary and might prove counterproductive to the interests of the state. There was unanimous agreement that the board should be provided with increased and adequate staffing, as discussed more fully later on, and that this, along with other measures to be discussed, would increase efficiency and reduce the work load and time demands on board members to a reasonable level. It was also felt that formation of a full time board might actually result in increased complexity and special interest bias. The tendency might be for the board itself, if employed full-time, to expand and complicate issues to justify such a time commitment. In any case a full-time board would very likely find itself under increased lobbying pressure from special interest groups.

The committee further agrees that many of the present problems derive from lack of a definitive state fisheries management policy by which to focus and direct regulatory and managerial efforts, and that formulation of such policy should be undertaken as soon as possible.

This issue will be discussed at greater length later in the report.

The decision of the committee was that a full-time board is not warranted at this time, and that the creation of such would create undue disruption and complication of a process already in trouble. The committee did reaffirm, however, that appointments to the board should not be representative of or accountable to narrow regional or user-group interests, but should be responsible and responsive to the best interests of the resource and the state as a whole.

5.1.2 Consideration of regional boards, with regulatory authority over local or intra-regional issues.

The committee decision was to not recommend this proposal, for the following reasons:

It was felt that such a division of responsibility and authority into regional boards would very likely result in increased regulatory complexity and inconsistency, and would result in heightened frustration and confusion among users whose interests cross regional boundaries. Also, local autonomy would probably result in increased inter-regional conflict and competition. Since most species and resources currently regulated by the board are not confined to a single region, local autonomy would very likely lead to increased complication and difficulty in management of inter-regional resources.

Also, the committee agreed that the tendency would be for regional boards to be even more susceptible to special-interest pressure and bias than is the case with a statewide board, and that the creation of regional boards would further

complicate the appointment process and would compromise ability to find and appoint board members with statewide perspective.

5.1.3 Consideration of proposals to split the present board into two boards, one to deal with either salmon and herring or anadromous and freshwater finfish, the other to deal with marine fish and shellfish.

The unanimous recommendation of the committee is to not implement this proposal

The committee agrees with the concerns that salmon interests have tended to dominate the board process, sometimes to the neglect of other fisheries. It feels, however, that to split the board along these lines would complicate interjurisdictional management of resources and would not be in the best interest of the state or the resources at present. The committee consensus is that the board should be structured to provide a comprehensive assessment of fisheries and fishery resources as a whole, and that fragmentation of this responsibility would increase the difficulty of designing and implementing a cohesive statewide and resource-wide fisheries policy. The feeling is that better staff support to the board will permit appropriate attention to non-salmon concerns as well as reducing time and effort demands on the board.

5.1.4. Process of appointment to the board, or removal from the board.

The recommendation of the committee is to retain the present process of appointment and removal, with the stipulation that certain specific causes for removal should be defined.

The committee recognizes that the present process of appointment of board members by the governor, subject to majority approval by the legislature in joint session, is by nature a political process and as such is sometimes vulnerable to abuse. It is, however, the responsibility of both the governor and the legislature, and ultimately the electorate, to see that this does not occur. Moreover, the committee agrees that the goal of the appointment process is to appoint board members who will direct and implement state fisheries policy as formulated by the administration, and that it is therefore appropriate that the administration, with legislative concurrence, control such appointments.

A proposal was also entertained to select board members from a list of nominations submitted by the local advisory committees and/or regional councils. As described in the preceding section dealing with the issue of regional boards, the consensus is that such a process would only increase the vulnerability of the system to special-interest pressure, and would remove much of the responsibility from where it rightly belongs, with the administration and the legislature.

Another sub-proposal considered was that board members be elected from their region of residency. The decision of the committee was to not recommend this procedure, primarily on grounds that election of board members, whether on a statewide or regional basis, would only increase special-interest pressure and would compromise the administration's ability to direct statewide fisheries policy.

5.1.5 Removal from the board.

Consideration was also given to the problem of removal of board members, including a proposal that members serve strictly at the pleasure of the governor, subject to removal for failure to follow and implement administration policy. The decision of the committee is that to liberalize the process of removal to the extent would encourage further instability in the system, and would not be in the best interests of the state. The committee did agree, however, for removal. These include violation of fish and game regulations and violation or ex parte communication regulations.

5.1.6 Conflict of interest.

While it is recognized by the committee that conflict of interest and special-interest bias can be and has at times been a problem with board members, the unanimous view of the committee, and the clear majority view received so far from the public, supports appointment to the board of persons with hands-on knowledge of and experience with fisheries resources and the fishing industry, including sport, commercial, subsistence and personal use. The feeling of the committee is that, even with a full-time board divested of financial interest in the industry, persons of sufficient knowledge and experience to qualify for appointment will bring with them, by definition, certain views commiserate with their experience and background. This probably cannot be avoided nor is it altogether undesirable so long as a balance of viewpoints is sought and achieved.

conflict of interest and special interest bias is not necessarily limited to commercial or

financial interests, but can easily be extended to include sport fishing, subsistence and personal use interests. Any broad interpretation of conflict of interest or special interest would, therefore, tend to severely limit the number of qualified and knowledgeable persons available for appointment to the board. This does not mean, however, that both the governor and the legislature should not use reasonable care in avoiding the appointment of persons perceived primarily as advocates of special interest groups.

5.1.7 Divestiture of fisheries interests by persons appointed to the board was carefully considered and ultimately rejected. Again, part of the problem is inherent in the definition of what constitutes financial interest and to what lengths this definition should be applied. In many cases financial involvement in the fisheries industry involves heavy investment of capital for gear and equipment, with consequently demanding payment schedules which cannot easily be divested. To require such divestiture would, again, seriously limit the number of qualified persons available for appointment.

In addition, the feeling of the committee is that it is relatively easy to "fake" such financial divestiture, and that to require it would not necessarily prove meaningful.

5.1.8 While the committee did not feel it necessary to require divestiture of financial interest in fisheries for appointment to the board, it did reaffirm the necessity for full disclosure by board appointees of any financial investments in fisheries or fishery related business as well as membership in fisheries 5.1.9 Conduct of the board.

The major concern voiced in regard to conduct of the board seems to relate to conflict of interest, special-interest bias, or inappropriate and undue influence over board members by special-interest proponents.

As discussed earlier in this report, the committee decided against requiring divestiture of financial interest as a requisite for appointment to the board, the feeling being that such a requirement would be generally ineffective and probably counter-productive. The committee does agree, however, that board members should be required to disclose any and all financial interests in fisheries, and any memberships in fisheries organizations.

The committee also seriously considered a proposal which would require board members to abstain from discussing or voting on issues in which the member has any economic interest, including subsistence or personal use. It was decided, however, that such a requirement would seriously hinder the board's ability to function, and that, while laudable in principle, abstention should be at the discretion of the board itself. Currently, the board chairperson decides whether or not a member has a conflict of interest which should preclude his or her discussion or vote on a given issue.

In regard to inappropriate or undue or influence on board members from or by special interest representation, the committee has drafted formal recommendations, which expressly forbid exparte communication with and lobbying of board members during board, advisory committee or regional council meetings. The purpose of this recommendation is not to forbid or curtail

discussion of issues, but rather to ensure that such discussion remains in the public forum where it rightly belongs.

5.1.10 Consideration of salary for board members under the present system

The committee recommends that board members be compensated by an appropriate salary for a limited time period.

The primary concern, as expressed by the committee and received from public comment, is that recent time demands on the board make it financially difficult for persons to accept appointment, and that this difficulty may compromise the ability to appoint the most qualified persons to the board.

5.1.11 Development of regulatory and management documents.

In general, it is the recommendation of the committee that the board and the department interact closely with each other and with the local advisory committees and regional councils and whenever appropriate for formulation of resource assessment documents (RADS), area management plans (MP's) and regulations. In this regard it is recommended that representatives of the department and the board attend and participate in meetings of advisory committees and regional councils whenever possible and appropriate. The department should also make sure that RAD's and MP's are made available to the board, advisory committees, and regional councils for their use in evaluation and deliberation of regulatory proposals.

It is the committee's recommendation that the board be provided with adequate staff, independent of the department, in order to

effectively review and summarize for the board relevant information received from the department and other sources, to work with the department in formulation of RAD's and MP's, and to the department as to informational needs of the board. The board should, with the help of its staff and the department, construct, over time, a record of stock statuses for all major species, and should work with the department to summarize RAD's and MP's on file for use by the board, the advisory committees, and the regional councils. Whenever lacking, the board and the department should cooperate in formulating RAD's and MP's as feasible within the limitations of the available data base, and should establish better minimum sustainable yield estimates (MSY) and confidence limits for major stocks and species.

5.1.12 Documentation and accountability.

In large part, this issue is closely related to the previous one regarding conduct and special-interest bias. The concern, quite properly, is that decisions are too often made for reasons which are never made clear to those affected by them. Understandably, this tends to foster the perception that the board or board members are "making deals" with special-interest groups or are voting on behalf of their own special interests, whether or not such is the case.

Consequently, it is the recommendation of the committee that all contacts and information sources utilized in arriving at a decision be recorded and made public, and that the board provide a summary of its reasons for decisions, including economic and other impacts of that decision in so far as such can be foreseen. It is

also recommended that the board keep an accurate record on how each member votes on each issue and that such be public information. It is hoped that such documentation will serve to define and clarify, for both the board and the public, the criteria and process employed to reach decisions, and will help to remove the board from criticism regarding its decisions.

5.2 Staff

There was unanimous agreement that the board should be provided with increased and adequate staffing.

The conclusion of this committee is that the present staff needs of the board are not being adequately met, and that the board should have the authority and budgetary flexibility to hire and fire its own research and advisory staff. This is not intended as a negative reflection on the department or its staff and their efforts to supply information to the board. The committee does feel it would be both appropriate and constructive, however, for the board to retain its own staff, including biological and biostatistical expertise, for review, evaluation and summation of information acquired from the department and other sources.

The committee also recognizes that many of the decisions the board is called upon to make, particularly those involving allocation of resources, require socioeconomic information and advice which the department, except for subsistence issues, is poorly equipped to provide.

In this context is is the committee's recommendation that biologists in the department are not equipped to deal with issues having socioeconomic implications, and that both the board and the department should retain appropriate staff to address

those matters. Likewise, the findings of the committee indicate that legal advice supplied to the board by the Attorney General's office has not always been adequate or accurate except, for the most part, as relate to subsistence issues, and that the board either should be provided with legal counsel trained and experienced in fisheries issues or should retain such counsel at its own discretion.

5.2.1 Executive director and professional staff

The recommendation of the committee is that the executive director of the board(s) be appointed and dismissed by mutual consent of the joint boards and the commissioner of the department. The board research and advisory staff shall be hired and fired by this executive director and should be salaried, partially exempt positions within the state employee system. Funding for the executive director and staff positions should be the responsibility of the board(s) rather than the department, and will require that the joint boards prepare their own budget, in consultation with the governor's office, for submittal to the legislature. This budgeting process will place responsibility for funding and performance of the board more directly on the administration and the legislature, where it is generally felt to properly reside, will relieve the department of much of that responsibility, and will allow the board increased latitude in structuring its staff and budget requirements to respond to demands placed upon it.

5.2.2 Formation of a scientific/review panel and an industry advisory panel.

The recommendation of the committee is

that in addition to salaried staff a non-salaried review panel be appointed to assist and advise the Board. This committee would consist of persons of appropriate scientific and statistical background and expertise and appointed by the board from the university system and the private sector. Primary duties of this committee would be to review and evaluate resource assessment documents, management plans, stock assessments, and information supplied to the board for use in its deliberations. The committee would serve without salary, but would be reimbursed for per diem and other expenses associated with its duties.

The committee also considered recommending an industry advisory panel, such as is also employed by the North Pacific Fisheries Management Council, but decided that such is probably not necessary at this time given the present composition of the board itself and the use of advisory committees and regional councils.

5.3 Regulatory Process

A major concern regarding the board process, as conveyed to this committee by the public, related to the increasing number of proposals submitted to the board (mostly from that same public), the resultant work load on the board, and the need to somehow limit or screen the input of such proposals for consideration. However, while almost everyone agrees that there is a problem in this regard, there is no general concensus on how such screening or limitation should be accomplished. As discussed in the recent report by the Senate Advisory Council:

The value of much of what the board must consider is questionable.
Many proposals are nearly identical

in intent or are trivial in content. Others are ghosts of proposals past, having suffered numerous previous rejections. There are usually several "pay back" proposals, the purpose of which is primarily to exact revenge on a user group by which the proposer feels it has been wronged. Still others concern actions clearly outside the authority of the board. No formal controls or screening to separate these proposals from the legitimate, thoughtful, articulate variety exists. All must be considered in one way or another by the board at its public meetings.

Suggestions as to methods of screening proposals include appointment to the board of an independent committee of unspecified composition to perform that function, screening and approval by the advisory committees and/or regional councils, and limiting consideration to proposals with multiple sponsorship.

After due consideration, the decision of the committee is that none of these methods would be acceptable or appropriate, and would at any rate probably not serve to alleviate the problem. The feeling of the committee is that screening of proposals by a committee or panel appointed for that purpose would not result in overall savings in either time or money, would probably not be effective, and would very likely lead to further public criticism of and loss of confidence in the process as a whole. Similarly, screening by advisory committees and/or regional

councils would probably be overly time-consuming and costly for those organizations, would be of minimal benefit, and might make the process more vulnerable to special-interest pressure. As outlined in the following section dealing with formal recommendations, the committee does suggest earlier submittal of proposals and more involvement of the advisory committees and regional councils in proposal review and evaluation.

And again, the recommendation of the committee is for additional and independent staffing for the board to review and evaluate proposals and to make appropriate recommendations regarding them. It is felt that this in itself will greatly improve efficiency and reduce demands on the board.

Also, the committee once again strongly recommends that the board, the department, and the administration make every effort to develop a coherent statewide fisheries policy as well as area management plans in order to provide structure and guidelines for the formulation and submittal of proposals.

5.3.1 Rotation of proposals by area

The recommendation of the committee is in accord with the present decision of the board, as expressed in its recent report to the governor (November 9, 1987), to go back to a system of reviewing proposals from each of two areas (Kodiak/Western and Cook Inlet/Gulf of Alaska/Southeast) on an alternate year basis. The consensus is that this plan will reduce to some extent the annual work load faced by the board, and will provide for increased regulatory stability. Protection of the resource can be accomplished, in years when the board is not reviewing an area, through emergency orders or regulations by the department, or advisory

committees can themselves undertake closures of threatened fisheries.

5.3.2 Notification of proposal review and reconsideration of proposals by the board.

Several complaints were received by the governor's office and the committee about the process, or lack of such, used by the board to schedule debate on issues and regulations. The perception is that, in the past, the board has sometimes dealt with an issue during the period scheduled for public testimony and then gone back to reconsider and change its decision on that issue at a later time without public notification.

The committee agrees that the board needs to retain sufficient flexibility to incorporate new information as it is received, and thus may find it appropriate and necessary to undertake such last minute reevaluations. When such is the case, however, the recommendation of the committee is that the board be required to serve sufficient pre-notification to permit public testimony and participation, and should make public the reasons for such reconsideration.

5.3.3. Location of board meetings.

Present statute (AS 16.05.300b) requires the board to hold at least one meeting or hearing a year in each of four areas of the state. On the other hand, the same statute says that "Each board shall select the time and place in the state for the transaction of business".

Not surprisingly, this rule has been variously interpreted. Those living in outlying rural areas frequently feel disadvantaged by having to travel long distances (generally to Anchorage) to participate in board meetings, and are inclined to interpret this statute to mean

that the board must hold full meetings in each region each year.

For the board to move meeting locations around to regional centers would, of course, provide increased access for residents of that region. On the other hand, it would increase considerably the cost and time commitments of the board, and would not improve and might hinder access by residents of other regions. In addition, limitations on physical and communication facilities in some of the outlying regions would very likely complicate the process and reduce effectiveness and efficiency.

The concensus of this committee is that the board should not be constrained to hold full meetings in locations other than those it decides upon as being practical and cost/time effective. On the other hand, it is recommended that board members, along with board and department staff, schedule and attend regular meetings on at least an annual basis in each region for purposes of explaining decisions and receiving testimony. It is also felt that better definition of the role of advisory committees and regional councils, and increased participation of these organizations in the regulatory process, will go far to alleviate the difficulty of public participation.

5.3.4 Role and function of local advisory committees and regional councils.

As discussed earlier, local advisory committees were authorized and institutionalized by passage of AS 16.05.260, and regional councils by section 805 of the Alaska National Interest Lands Conservation Act (ANILCA). The number of advisory committees has increased greatly in recent years, from about 50 early in this decade

to 76 at present. The roles of regional councils and advisory committees, however, and criteria for formation and distribution of advisory committees, have never been clearly defined. The recent (1987) report of the Senate Advisory Council states that:

Fish and Game Advisory Committees are mandated by 5 AAC 96.050 to develop regulatory proposals, evaluate proposals, provide a "local forum" for fish and wildlife matters, to work with the appropriate regional councils regarding conservation and harvest strategies, and to interact with other interested parties. The department has interpreted that role as "committees are intended to provide a local forum for the collection and expression of opinions and recommendations on the management of fish and game" (ADFG, 1981). Congress, in ANILCA, expressed a broader orientation and purpose for the advisory committee/regional council system (Gorsuch, 1983):

The public participation system described in ANILCA section 805 and incorporated into state law was viewed by Congress as

essential. The findings in ANILCA section 801 (5) reflect that assessment:

[T]he proper regulation, protection and conservation of fish and wildlife...and the continuation of the opportunity for a subsistence way of life...require that an administrative structure be established for the purpose of enabling rural residents who have personal knowledge of local conditions and requirements to have a meaningful role in the management of fish and wildlife and of subsistence uses...in Alaska.

The intent of the advisory committees and regional councils was to draw upon the expertise of the local residents and to insure that local interests were well represented in the regulatory process.

Some of the local advisory committees seem to function quite well and are effective organizations for providing local input to the regulatory process; others are essentially non-functional and are seldom if ever heard from. In some instances there is criticism that the local advisory committees are merely forums for special-interest groups, and that committees are in fact not representative of the resident population. As discussed in the Senate Advisory Council Report (1967).

There has been considerable criticism of the advisory committee process and composition. Many assert that certain advisory committees are or have been formed around special

interest groups and have not been representative of a community's entire user spectrum or are single issue in scope.

In southeast Alaska, nearly every community, regardless of size has its own advisory committee. In western Alaska, four committees represent the forty some villages of the Calista region. Anchorage, with nearly half the state's population has one advisory committee with a voice equal to that of any other committee.

And, while the stated role of the advisory committees is, among other things, "to develop regulatory proposals", the committees have been minimally effective in this regard. The report of the Senate Advisory Council (1987) states that:

Although the source of proposals is not always clear, the annual number of proposals noted as originating with advisory committees or regional councils has remained relatively unchanged since 1975; about 16% of the total voted on during the period 1975-1987.

Proposals regarding the role and function of advisory committees range from suggestions to reduce or limit the number of committees to expanding the authority of committees and/or regional councils to include passage of local regulations or approval/veto power over regulations passed by the board(s).

The recommendation of this committee is

that the participation of local advisory committees and regional councils in the proposal and regulatory process, and in formulation of resource assessment documents, area management plans, and statewide fisheries policy statements, should be encouraged and actively solicited, and that the format for such participation be more clearly defined.

5.4 Criteria for decisions:

a. Numerous comments were received having to do with conservation decisions by the board. In some cases it is felt that such decisions should not be addressed at all by the board but rather left up to the department, with the board devoting its attention to matters of allocation. Others feel that it is proper for the board to address conservation issues, but that it should be provided with clear and explicit criteria for doing so.

The concensus of this committee is that it is the responsibility of the board to make regulatory decisions affecting the conservation of fisheries resources. After further discussion it was also decided that to impose upon the board explicit criteria, beyond those already established by the legislature, would be to unduly constrain and limit its flexibility.

The committee also agreed, however, that a major problem in arriving at either conservation or allocation decisions derives from the fact that the state has no well-defined and comprehensive fisheries policy in place, and that resource assessment documents and area management plans are often deficient or non-existent. As regards the latter, the committee recommends that the board staff work closely with the Department in

formulating such resource assessment documents and management plans for use by the board, the advisory committees, and the regional councils in their construction, review and deliberation of regulatory proposals.

b. Criteria for allocation decisions.

It is the opinion of this committee that many of the difficulties experienced by the board over the past are attributable to the fact that decisions in regard to allocation should be based on socioeconomic considerations, which neither the board nor the department are adequately equipped to evaluate and which neither the legislature nor the executive have provided adequate standards or criteria for.

It is clear that the responsibility for allocating surpluses in fisheries resources fall to the board of fisheries. As these allocative decisions become more complex, which they are bound to do as our population expands and increasing competition develops for the fisheries, the greater the necessity for definitive criteria regarding such decisions.

The board of fisheries was mandated by the legislature to adopt criteria for the allocation of fishery resources among personal use, sport and commercial interests. In April, 1987, the board adopted the seven criteria suggested by the legislature (AS 16.05.251). The Senate advisory Council report (1987) states, however, that:

"The failure to develop more specific criteria may result in inconsistencies in those (allocation) decisions and more legal problems for the board."

This same report goes on to say that:

"There has been widespread agreement among the industry, science, and public figures interviewed for this report that the allocation decisions and general management of fisheries by the board of fisheries would be improved significantly if relevant, timely socioeconomic data were routinely available to it."

In order to facilitate the meaningful utilization of these data, the board must have definitive criteria to apply, and must have adequate staff to evaluate and summarize such information.

In order to assist the board in developing criteria, the committee has drafted a formal recommendation for such criteria as detailed in an earlier section of the report.

SB

189

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

MAR 30 1987

REQUEST: _____

Bill Version: SB 189
Publish Date: _____

Revision Date: _____
Title: "An Act relating to enhancement
of a criminal sentence."
Sponsor: Senator Bennett
Requestor: Senate Judiciary

Agency Affected: Department of Law
BRU: Prosecution
Components: All

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Please see attached analysis.

Richard I. Pegues

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Phone: 465-3672
Date: March 20, 1987

Approved by Commissioner: Grace Berg Schaible, Atty. Gen.
Agency: Department of Law

Date: March 20, 1987

Distribution (by preparer):

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CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 189

This bill amends AS 12.55 by adding a new section that provides that when the court finds beyond a reasonable doubt that a defendant convicted of an offense induces, causes, or permits a person under 18 years of age to participate in the offense, the court may increase the term of imprisonment as great as 50 per cent of the maximum term of imprisonment for the offense. Because this is a sentencing bill it will not have a measurable impact on the Department of Law. It will neither decrease nor increase the number of cases handled, although some slight additional effort may be required at pre-sentencing hearings. Although data is collected regarding juvenile offenses, there is no data available that would indicate the number of times juveniles participate in other types of offenses as accomplices. If this participation is significant, there could be fiscal impact on the Department of Corrections.

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: _____ Bill Version: SB 189
Publish Date: _____

Revision Date: _____ Agency Affected: Alaska Court System
Title: An act relating to enhancement of a criminal sentence BRU: Trial Courts

Sponsor: Bennett Components: _____
Requestor: Senate Judiciary

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
OPERATING						
Personal Services	••••	••••	••••	••••	••••	••••
Travel	••••	••••	••••	••••	••••	••••
Contractual	••••	••••	••••	••••	••••	••••
Supplies	••••	••••	••••	••••	••••	••••
Equipment	••••	••••	••••	••••	••••	••••
Land & Structures	••••	••••	••••	••••	••••	••••
Grants & Claims	••••	••••	••••	••••	••••	••••
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL	••••	••••	••••	••••	••••	••••
REVENUE	••••	••••	••••	••••	••••	••••

FUNDING: (Thousands of Dollars)

General Funds	0.0	0.0	0.0	0.0	0.0	0.0
Federal Funds	••••	••••	••••	••••	••••	••••
Other	••••	••••	••••	••••	••••	••••
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

Full-time	••••	••••	••••	••••	••••	••••
Part-time	••••	••••	••••	••••	••••	••••
Temporary	••••	••••	••••	••••	••••	••••

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: Karla Forsythe, General Counsel Phone: 264-8228
Division: Alaska Court System Date: 3-27-87

Approved by: *Stephanie J. Cole* Stephanie J. Cole, Deputy Director Date: 3-27-87
Agency: Alaska Court System

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

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version: SB 189
Publish Date: _____

REQUEST
Revision Date: _____
Title: "An Act relating to enhancement
of a criminal sentence."
Sponsor: Sen. Bennett
Requestor: Senate Judiciary

Agency Affected: Public Safety
BRU: Alaska State Troopers
Components: Detachments & C.I.B.

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

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

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUNDS		0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact is anticipated.

Prepared by: Francis C. Allan *F.C.A.*
Division: Alaska State Troopers

Phone: 269-5691
Date: 2/24/87

Approved by Commissioner: William R. Nix *W.R.N.*
Agency: Public Safety

Date: 3/26/87

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

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

REQUEST: _____

Bill Version : SB 189

Publish Date : _____

Revision Date: 03/17/87

Agency Affected: Department of Corrections

Title: An act relating to enhancement
of a criminal sentence."

BRU: _____

Sponsor: _____

Components: _____

Requester: Senator Bennett

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

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

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

This legislation will have some impact on the institutional population but the Department feels it will be minimal.

Susan Knighton

Prepared by: Susan Knighton, Research Analyst IV Phone: 465-3376
Division: Administrative Services Date: 04/13/87

Approved by Commissioner: Susan Humphrey-Barnett *RySk* Date: 4-13-87
Agency: Department of Corrections

Distribution (by preparer):

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

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FBI Special Agent
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National Center for Missing
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Washington D.C.

Dr. Vincent J. Fontana
Professor of Clinical Pediatrics
New York University, College
of Medicine
Medical Director, New York
Foundling Hospital

Alaska Juvenile Crime Commission

P.O. Box 92850 Anchorage, Alaska 99509 Ph. (907) 279-7401

SB 189 Criminal Enhancement

The Alaska Juvenile Crime Commission strongly supports SB 189 because we are experiencing a growing case-load of juveniles who commit crimes at the direction of adults.

Both criminal adults and juveniles know that if the youth actually commits the crime he will not serve hard time if caught. The adult reaps the rewards of the criminal act while the juvenile is schooled in crime and prepares for a career in crime by learning from the adult. Their crimes range the spectrum from shoplifting, prostitution, robbery, burglary, pornography and even murder.

This bill is effective prevention legislation. We urge that SB 189 pass into law this session.

SB

1988

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

REQUEST: _____

Revision Date: _____

Title: An Act relating to dishonored checks
amending Alaska Rules of Civil Procedure 79 & 82

Sponsor: _____

Requestor: _____

Bill Version: SB 198
Publish Date: _____

Agency Affected: Comm. & Econ. Dev.

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS :

Prepared by: Willis F. Kirkpatrick, Director Phone: 465-2521

Division: Division of Banking, Securities & Corporations Date: March 25, 1987

Approved by Commissioner: Anthony Smith, Commissioner Date: March 25, 1987

Agency: Department of Commerce and Economic Development

Distribution (by preparer):

- Legislative Finance
 - Legislative Sponsor
 - Requestor
 - Office of Management and Budget
 - Impacted Agency(ies)
 - Senate Secretary
- 5683W32587a

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

April 23, 1987

SUBJECT: Sectional analysis of SB 198
TO: Senator Jim Duncan
FROM: Theresa L. Bannister *TB*
Legislative Counsel

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

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

Sections 1 - 3 indicate the changes made by the bill to AS 09.65.115(a).

Section 1 allows a plaintiff to recover a returned check charge and, up to a maximum of \$150, attorney's fees, process service costs, and court costs, in addition to damages. Limits a returned check charge to \$25.00 and eliminates the need to justify the charge. Allows a defendant to avoid paying damages to the plaintiff if the defendant offers the amount of the check and the returned check charge before the action is filed, or if after the case is filed but not tried, the defendant offers the amount of the check, a returned check charge, and, up to a maximum of \$150 for each check, payment of plaintiff's attorney's fees, process service expense, and court costs accrued before the offer. Substitutes "filing" of the action for "beginning" of the action.

Section 2 requires, if a defendant wishes to settle a dishonored check court action that has been filed but not tried, that the defendant pay a returned check charge in addition to payment of the amount of the check and attorney, process and court costs.

Senator Duncan
Page 2
April 23, 1987

Section 3 alters the definition of "written demand" to require the person making the demand to send it to a better address, if known, than the one on the check.

Sections 4 and 5 explain how sec. 1 of the bill changes certain court rules.

Section 6 gives the bill an immediate effective date.

If I may be of further assistance, please advise.

TLB:mkr
m11/055

TO: Senator Jim Duncan

FROM: Gary L. Jenkins, Director,
Governmental Relations, NFIB/Alaska

SUBJECT: Justification-SB 198

DATE: March 20, 1987

The amendments to the current law are intended to clarify the specific intent of the original act to insure that it is properly interpreted by the courts. In applying the provisions of the current law the courts have been applying the law as follows:

A. If a business takes a bad check writer to court and obtains a judgement, several judges have taken the position that the triple damage provision supplants the returned check charge and the reimbursement of costs provision resulting in it costing more to obtain the judgement than it is possible to recover.

This legislation will modify existing law to clarify the provisions dealing with the payment of the fees and penalty by the writer of a bad check so that the severity of the fees and penalties will increase as the costs incurred and time involved in attempting to collect the funds due increase. The fees and penalties are to accumulate as collection efforts progress. The provisions are designed to function as follows:

(1). Level 1 - The receiver of a check is notified by his/her bank that a check has been returned unpaid. The receiver then must contact the maker of the check and request payment. If the check is made good at that time, the receiver of the check may collect a fee of up to \$25.00. At this level, there is minimal effort required so the fee is accordingly limited. This charge is to compensate the receiver of the check for the aggravation caused by the check being returned, i.e. his/her bank account being reduced without notice by the returned check, having to contact the maker of the check and attempting to collect or collecting the amount due. Normally, there are no significant costs incurred to collect the amount due.

(2). Level 2 - After the receiver of the check has made the initial contact with the maker and received no response, the next step would be to proceed with the required formal notifications and filing in court. If the maker then makes the check good prior to formal court action being taken, the receiver may collect costs, up to the maximum of \$150.00. The costs paid at this level are to be paid in addition to the returned check charge of \$25.00, thus allowing the receiver of the check to be reimbursed for the additional costs over and above the initial notification which are incurred in pursuing collection of the amount due.

(3). Level 3 - If the receiver of the check has not received payment of the amount due plus the returned check charge and costs, and subsequently obtains a judgement in court, the penalty for this level would be an amount equal to three times the amount of the check, but not more than \$1,000.00 or less than \$100.00. It is intended that this penalty is in addition to the amounts due under levels 1 and 2.

B. If an individual has written several bad checks to one or more businesses and they are subsequently turned over to a collection agency to obtain a judgement, a few judges have ruled that the maximum cost that could be reimbursed is \$150.00 even though the actual costs exceed that amount. This legislation will resolve this problem by allowing actual costs incurred up to a total of \$150.00 for each bad check.

C. In at least one case, a judge has ruled that process service expenses were not allowable. This legislation would remedy that problem.

D. At least one judge has ruled that if the writer of a bad check has moved and left no forwarding address, the person seeking the judgement must first obtain a correct address before a judgement will be rendered. This legislation will require that notification shall be sent to the address on the check unless the holder has been made aware of a better address.

SB

1999

STATE OF ALASKA 1987 LEGISLATIVE SESSION

FISCAL NOTE SENATE

BILL VERSION: SB 199
PUBLISH DATE: 3/26/87

REQUEST: _____

Revision Date: _____
Title: An Act relating to motor vehicle dealers
Sponsor: Duncan
Requestor: Senate Labor & Commerce

Agency Affected: Public Safety
BRU: Motor Vehicles
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

No fiscal impact. There would be a slight reduction in revenue, estimated at less than \$1,000 annually.

Prepared by: Bill Brown
Division: Motor Vehicles

Phone: 465-4335
Date: 4-2-87

Approved by Commissioner: [Signature]
Agency: Public Safety

Date: 4/2/87

Distribution (by preparer):

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

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

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

MEMORANDUM

April 21, 1987

SUBJECT: SB 199 - Sectional analysis
TO: Senator Jim Duncan
FROM: Michael F. Ford *M.F.*
Legislative Counsel

The following is a section by section analysis of SB 199:

Section 1 - Excludes from the definition of motor vehicle, trailer, or semi-trailer "dealer" a person, agent, broker, or salesman who buys or sells new or used trailers designed to carry a single boat. Dealers are subject to certain registration and bonding requirements under AS 08.66.

Section 2 - Effective date.

MFF:mkr
m11/043

SB

202

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 24, 1988

SUBJECT: CSSB 462(Judiciary)
TO: Senator Jalmar Kerttula
FROM: George Utermohle *GU*
Legislative Counsel

Enclosed is the Judiciary Committee Substitute for SB 462, an act relating to seizure and forfeiture of property involving controlled substances and imitation controlled substances.

The CS contains the substance of amendments suggested by the Department of Public Safety; however the CS varies from the department's proposed language as follows:

First, the title of the bill is amended to include a reference to imitation controlled substances.

Second, the department's proposed new AS 17.30.110(3), (6)(C), and (7) are combined into one provision in the CS. These provisions are included in AS 17.30.110(6).

Third, the department proposed an amendment to AS 17.30.112(b) to provide an exception to the process set out in that subsection, so that the commissioner of public safety or a police chief did not have to take action towards the final disposition of seized property within 20 days after seizure occurs. The proposed amendment would allow the commissioner or a chief of police to hold the seized property indefinitely if they intended to seek forfeiture of the property as part of a criminal case against the defendant. Under this approach seized property could be held until the statute of limitations has expired without any action being taken towards final disposition of the property. The CS contains language addressing part of the problem raised by the department. Property seized under an order of forfeiture issued by a court is exempted from the provisions of AS 17.30.112(b). Thus, property forfeited as

Senator Jalmar Kerttula
Page 2
March 24, 1988

part of a criminal proceeding against a defendant can be seized and forfeited without having to repeat the procedures set out in AS 17.30.112(b).

Fourth, the amendment of the definition of controlled substances to include imitation controlled substances is not necessary because imitation controlled substances are already subject to AS 17.30.110 - 17.30.138 under AS 11.73.060. Section 1 of the bill contains the provision making the forfeiture and seizure statutes apply to imitation controlled substances.

Enclosure

GU:gc
WKG2:071

5-1354L
Utermohle
3/24/88

Original sponsors: Sturgulewski, Uehling,
Fischer and Rodey

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 CS FOR SENATE BILL NO. 462 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to seizure and forfeiture of proper-
7 ty in cases involving controlled substances and
8 imitation controlled substances."

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

10 * Section 1. AS 11.73.060 is amended to read:

11 Sec. 11.73.060. FORFEITURES. (a) Property used during or in
12 aid of a violation of this chapter may be forfeited to the state to
13 the extent permitted under AS 17.30.110 - 17.30.138 [AND IN ACCORDANCE
14 WITH THE PROVISIONS OF AS 17.30.110 - 17.30.126].

15 (b) For purposes of this section the terms "controlled sub-
16 stance" and "this chapter", as used in AS 17.30.110 - 17.30.138
17 [AS 17.30.110 - 17.30.126], shall be construed as "imitation con-
18 trolled substance" and "AS 11.73" respectively.

19 * Sec. 2. AS 17.30.110 is amended to read:

20 Sec. 17.30.110. ITEMS SUBJECT TO FORFEITURE. The following may
21 be forfeited to the state or a municipality, except as provided in
22 AS 17.30.126:

23 (1) a controlled substance that [WHICH] has been manufact-
24 ured, distributed, dispensed, acquired, or possessed in violation of
25 this chapter or AS 11.71;

26 (2) property, including raw materials, products, and
27 equipment, that is [WHICH ARE] used or intended for use in manufactur-
28 ing, distributing, compounding, processing, delivering, importing, or
29

chapter or AS 11.71;

(3) property that [WHICH] is used or intended for use as a container for property described in (1) or (2) of this section;

(4) a conveyance, including but not limited to aircraft, vehicles, or vessels, that [WHICH] has been used or is intended for use in transporting or in any manner in facilitating the transportation, sale, receipt, possession, or concealment of property described in (1) or (2) of this section in violation of a felony offense under this chapter or AS 11.71; however,

(A) a conveyance may not be forfeited under this paragraph if the owner of the conveyance establishes, by a preponderance of the evidence, at a hearing before the court as the trier of fact, that use of the conveyance in violation of this chapter or AS 11.71 was committed by another person and that the owner was neither a consenting party nor privy to the violation;

(B) a forfeiture of a conveyance encumbered by a valid security interest at the time of seizure is subject to the interest of the secured party if the secured party establishes, by a preponderance of the evidence, at a hearing before the court as the trier of fact, that use of the conveyance in violation of this chapter or AS 11.71 was committed by another person and that the secured party was neither a consenting party nor privy to the violation;

(5) books, records, and research products and materials, including formulas, microfilm, tapes, and data, that [WHICH] are used in violation of this chapter or AS 11.71;

(6) property, including money, securities, or negotiable instruments, that is

(A) furnished by

substance in violation of this chapter or AS 11.71;

(B) used in, intended for use in, or used to facilitate a violation of this chapter or AS 11.71; or

(C) proceeds derived directly or indirectly from a violation of this chapter or AS 11.71; [, OR OTHER THINGS OF VALUE USED IN FINANCIAL TRANSACTIONS DERIVED FROM ACTIVITY PROHIBITED BY THIS CHAPTER OR AS 11.71; AND]

(7) a firearm that [WHICH] is visible, carried during, or used in furtherance of a violation of this chapter or AS 11.71; and

(8) real property, including interests in real property and appurtenances and improvements to real property, that is used or intended for use to commit, or to facilitate the commission of, a felony offense under this chapter or AS 11.71; however

(A) real property may not be forfeited under this paragraph if the owner of the real property establishes, by a preponderance of the evidence, at a hearing before the court as the trier of fact, that use of the real property in violation of this chapter or AS 11.71 was committed by another person and that the owner was neither a consenting party nor privy to the violation;

(B) a forfeiture of real property encumbered by a valid security interest at the time of seizure is subject to the interest of the secured party if the secured party establishes, by a preponderance of the evidence, at a hearing before the court as the trier of fact, that use of the real property in violation of this chapter or AS 11.71 was committed by another person and that the secured party was neither a consenting party nor privy to the violation;

(9) property acquired, maintained, produced by, or derived

1 from proceeds obtained directly or indirectly from a violation of this
2 chapter or AS 11.71.

3 * Sec. 3. AS 17.30.112 is amended to read:

4 Sec. 17.30.112. PROCEEDINGS RESULTING IN FORFEITURE. (a) Prop-
5 erty listed in AS 17.30.110 may be forfeited to the state or a munic-
6 ipality upon the order of the commissioner of public safety or a chief
7 of police in a summary administrative forfeiture proceeding under
8 AS 17.30.115, [EITHER] upon conviction of the defendant of a violation
9 of this chapter or AS 11.71, or upon judgment of a court in a separate
10 civil proceeding in rem.

11 (b) Unless the property is seized under a court order forfeiting
12 the property to the state or a municipality, the commissioner of
13 public safety or a chief of police, whoever is in custody of the
14 property, shall within 20 days after the property is seized under
15 AS 17.30.114

16 (1) cause a summary administrative forfeiture proceeding to
17 be commenced under AS 17.30.115;

18 (2) commence a civil proceeding in rem under AS 17.30.116;

19 or

20 (3) release the property, unless the property is subject to
21 AS 17.30.126.

22 (c) A [THE] court may order a forfeiture in the in rem proceed-
23 ing if it finds that an item specified in AS 17.30.110 was used during
24 or in aid of a violation of this chapter or AS 11.71. [(b)] It is
25 not a defense in an in rem proceeding brought under this chapter
26 [SECTION] that a criminal proceeding has resulted in a conviction or
27 conviction of a lesser offense for a violation of this chapter or
28 AS 11.71.

29 * Sec. 4. AS 17.30.114 is amended to read:

1 Sec. 17.30.114. SEIZURE AND CUSTODY OF PROPERTY. (a) Property
2 listed in AS 17.30.110 may be seized by a peace officer upon an order
3 issued by a court having jurisdiction over the property upon a showing
4 of probable cause that the property may be forfeited under AS 17.30.-
5 110. Seizure without a court order may be made if

6 (1) the seizure is incident to a valid arrest or a search
7 under a valid search warrant;

8 (2) the property subject to seizure has been the subject of
9 an earlier judgment in favor of the state or a municipality in a
10 criminal proceeding or civil proceeding in rem under this chapter or
11 AS 11.71; or

12 (3) there is probable cause that the property was used, is
13 being used, or is intended for use, in violation of this chapter or AS
14 11.71 and the property is easily movable; property seized under this
15 paragraph may not be held for more than 48 hours without a court order
16 obtained to continue its detention.

17 (b) Property taken or detained under (a) of this section shall
18 be held in the custody of either the commissioner of public safety or
19 a municipal law enforcement agency [AUTHORIZED BY THE COMMISSIONER OF
20 PUBLIC SAFETY TO RETAIN CUSTODY OF PROPERTY LISTED IN AS 17.30.110]
21 subject only to disposition under procedures set out in this chapter
22 [THE ORDERS AND DECREES OF THE COURT HAVING JURISDICTION OVER ANY
23 FORFEITURE PROCEEDINGS]. If property is seized under this chapter,
24 the commissioner of public safety or a [AN AUTHORIZED] municipal law
25 enforcement agency may

26 (1) place the property under seal;

27 (2) remove the property to a place designated by the court;

28 or

29 (3) take custody of the property and remove it to an

appropriate location for disposition in accordance with law.

(c) Within 10 days after a seizure under AS 17.30.110 - 17.30.-138 [AS 17.30.110 - 17.30.126], the commissioner of public safety or the chief of police shall make an inventory of any property seized, including controlled substances, and shall estimate [APPRAISE] the value of any items seized other than controlled substances.

* Sec. 5. AS 17.30 is amended by adding a new section to read:

Sec. 17.30.115. SUMMARY ADMINISTRATIVE FORFEITURE PROCEEDING.

(a) If the estimated value of seized property is \$100,000 or less or if the seized property is a conveyance subject to forfeiture under AS 17.30.110(4), the official who has custody of seized property may commence a summary administrative forfeiture proceeding by

(1) giving notice of the forfeiture proceeding to persons known to have an interest in the property or who are ascertainable from official registration numbers, licenses, or other state, federal, or municipal numbers on the property; and

(2) publishing notice of the proceeding in a newspaper of general circulation in the judicial district where the seizure was made, or if no newspaper is published in that judicial district, in a newspaper published in the state and distributed in that judicial district; the notice shall be published once each week during three consecutive calendar weeks; the notice must

(A) describe the property seized, including motor and serial numbers, if any;

(B) state the time, place, and cause of seizure; and

(C) state that a person claiming an interest in the property shall, within 20 days from the date of the first publication of the notice, file with the official a claim to the property and a bond in the proper amount.

1 (b) A person claiming property subject to a proceeding under
2 this section shall submit a claim and a bond to the official within 20
3 days after the date of first publication of the notice required under
4 this section.

5 (c) The bond with satisfactory sureties shall be in the amount
6 of \$2,500 or 10 percent of the estimated value of the property, which-
7 ever is lower, but not less than \$500. The bond shall be in cash,
8 certified check, or satisfactory sureties. The bond shall be rendered
9 to the state or municipality, as appropriate, with sureties approved
10 by the official and conditioned that in the event of judicial forfei-
11 ture of the property the obligor shall pay from the bond all costs and
12 expenses of the civil proceeding in rem.

13 (d) When the claim and bond are received, the official shall
14 determine that the claim and bond are in proper form and the sureties
15 are satisfactory. If the claim and bond are satisfactory, the offi-
16 cial shall terminate the proceeding and commence a civil proceeding in
17 rem under AS 17.30.116. Notwithstanding AS 17.30.112(b), the official
18 shall commence the civil proceeding in rem within 20 days after the
19 timely and satisfactory claim and bond are filed. If the claim and
20 bond are not satisfactory when first received, a reasonable time for
21 correction of the claim and bond may be allowed. If satisfactory
22 corrections are not made to the claim and bond within a reasonable
23 time, the official may proceed as though the claim and bond had not
24 been tendered.

25 (e) The filing of a timely and satisfactory claim and bond
26 terminates the summary administrative forfeiture proceeding, but does
27 not entitle the claimant to possession of the property.

28 (f) If a timely and satisfactory claim and bond are not filed
29 within the time required under this section, the official shall

1 declare the property forfeited. The official shall execute a declara-
2 tion of forfeiture.

3 (g) In this section

4 (1) "commissioner of public safety" includes an employee of
5 the Department of Public Safety designated by the commissioner to
6 conduct summary administrative forfeiture proceedings;

7 (2) "official" means the commissioner of public safety or
8 chief of police who has custody of seized property.

9 * Sec. 6. AS 17.30.116(a) is amended to read:

10 (a) If the estimated value of seized property is more than
11 \$100,000, or the commissioner of public safety or chief of police in
12 custody of seized property elects to commence a civil proceeding in
13 rem against property with an estimated value of \$100,000 or less or
14 against a conveyance, or a summary administrative forfeiture pro-
15 ceeding is terminated upon the timely and satisfactory filing of a
16 claim and bond, [WITHIN 20 DAYS AFTER A SEIZURE UNDER AS 17.30.110 -
17 17.30.126,] the commissioner of public safety or chief of police
18 shall, by certified mail, notify any person known to have an interest
19 in an item with an estimated [APPRAISED] value of \$500 or more, or who
20 is ascertainable from official registration numbers, licenses, or
21 other state, federal, or municipal numbers on the item, of the pending
22 forfeiture action. Additionally, the commissioner of public safety
23 or chief of police shall publish notice of forfeiture action of an
24 item valued at \$500 or more in a newspaper of general circulation in
25 the judicial district in which the seizure was made, or if no news-
26 paper is published in that judicial district, in a newspaper published
27 in the state and distributed in that judicial district. The notice
28 shall be published once each week during four consecutive calendar
29 weeks. The requirements of this subsection do not apply to the

1 forfeiture of controlled substances which have been manufactured, dis-
2 tributed, dispensed, or possessed in violation of this chapter or AS
3 11.71, regardless of their value.

4 * Sec. 7. AS 17.30.120 is amended to read:

5 Sec. 17.30.120. PETITION FOR SALE OF SEIZED ITEM. A claimant
6 may petition the court for sale of an item before final disposition of
7 court proceedings. The court shall grant a petition for sale upon a
8 finding that the sale is in the best interests of the state or munic-
9 ipality, whichever is in custody of the property, and the preservation
10 and maintenance of the item seized. Proceeds from the sale plus
11 interest to the date of final disposition of the court proceedings
12 become the subject of the forfeiture action.

13 * Sec. 8. AS 17.30.122 is amended to read:

14 Sec. 17.30.122. STATE DISPOSAL OF FORFEITED PROPERTY. Property
15 forfeited to the state under AS 17.30.110 - 17.30.138, [AS 17.30.110 -
16 17.30.126] other than controlled substances, shall be disposed of by
17 the commissioner of administration in accordance with applicable law.
18 The commissioner of administration may

19 (1) destroy property harmful to the public;

20 (2) sell the property and use the proceeds for payment of
21 all proper expenses of the proceedings for forfeiture and sale, in-
22 cluding expenses of seizure, custody, and court costs; proceeds re-
23 maining from the sale of the property after expenses are paid shall be
24 deposited in the general fund;

25 (3) take custody of the property and authorize its use in
26 the enforcement of this chapter or AS 11.71, or transfer it to another
27 agency of the state or a political subdivision of the state for a use
28 in furtherance of the administration of justice;

29 (4) take custody of the property and remove it for

1 disposition in accordance with law;

2 (5) forward the property [IT] to the Drug Enforcement
3 Administration of the United States Department of Justice for dispo-
4 sition; or

5 (6) transfer ownership of an aircraft to the Alaska Wing,
6 Civil Air Patrol.

7 * Sec. 9. AS 17.30.126(a) is amended to read:

8 (a) A controlled substance manufactured, possessed, transferred,
9 sold, or offered for sale in violation of this chapter or AS 11.71 is
10 contraband and must be seized and summarily forfeited to the state.
11 The commissioner of public safety or the commissioner's designee,
12 including a municipal law enforcement agency [AUTHORIZED UNDER AS 17.-
13 30.114(b) OF THIS SECTION TO RETAIN CUSTODY OF CONTROLLED SUBSTANCES],
14 is responsible for the disposal of controlled substances which have
15 been forfeited. The controlled substances shall be disposed of in
16 accordance with procedures and requirements prescribed by the commis-
17 sioner.

18 * Sec. 10. AS 17.30 is amended by adding a new section to article 2 to
19 read:

20 Sec. 17.30.138. DEFINITIONS. In AS 17.30.110 - 17.30.138

21 (1) "chief of police" means the head of a law enforcement
22 agency of a municipality;

23 (2) "municipality" means a municipality that has adopted an
24 ordinance under AS 29.35.135 providing for summary administrative
25 forfeiture proceedings to be conducted by the municipality's chief of
26 police;

27 (3) "violation of this chapter or AS 11.71" includes an
28 attempt or solicitation to violate this chapter or AS 11.71.

29 * Sec. 11. AS 29.10.200 is amended by adding a new paragraph to read:

(49) AS 29.35.135 (forfeiture of property under AS 17.30)

* Sec. 12. AS 29.35 is amended by adding a new section to read:

Sec. 29.35.135. FORFEITURE OF PROPERTY UNDER AS 17.30. (a) The governing body may adopt an ordinance authorizing the chief of police to conduct a summary administrative forfeiture proceeding under AS 17.30 for forfeiture of property seized by the municipal law enforcement agency in cases involving controlled substances.

(b) Property forfeited to the municipality under AS 17.30.110 - 17.30.138 shall be disposed of by the municipality under applicable law and ordinance. The municipality may

(1) destroy property harmful to the public;

(2) sell the property and use the proceeds for payment of all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, custody, and court costs;

(3) take custody of the property and authorize its use in the enforcement of AS 11.71 or AS 17.30 or for a use in the administration of justice;

(4) take custody of the property and remove it for disposition under law; or

(5) forward it to the Drug Enforcement Administration of the United States Department of Justice for disposition.

Sec. 39.50.030. Contents of statements. (a) Each statement shall be an accurate representation of the financial affairs of the public official or candidate and shall contain the same information for each member of the person's family, as specified in (b) of this section, to the extent that it is ascertainable by the public official or candidate. An asset or liability under \$500, household goods, and personal effects need not be identified.

(b) Each statement filed by a public official or candidate under this chapter shall include the following:

(1) the source of all income over \$100 during the preceding calendar year, including taxable and nontaxable capital gains, received by the person, the person's spouse or dependent child, or a nondependent child of the person who is living with that person;

(2) the identity, by name and address, of each business in which the person, the person's spouse or dependent child, or a nondependent child of the person who is living with that person was a stockholder, owner, officer, director, partner, proprietor, or employee during the preceding calendar year;

(3) the identity and nature of each interest owned in any business during the preceding calendar year by the person, the person's spouse or dependent child, or a nondependent child of the person who is living with that person;

(4) the identity and nature of each interest in real property, including an option to buy, owned at any time during the preceding calendar year by the person, the person's spouse or dependent child, or a nondependent child of the person who is living with that person;

(5) the identity of each trust or other fiduciary relation in which the person, the person's spouse or dependent child, or a nondependent child of the person who is living with that person held a beneficial interest during the preceding calendar year, a description and identification of the property contained in each trust or relation, and the nature and extent of the beneficial interest in it;

(6) any loan or loan guarantee made to the person, the person's spouse or dependent child, or a nondependent child of the person who is living with that person, and the identity of the maker of the loan or loan guarantor and the identity of each creditor to whom the person, the person's spouse or dependent child, of a nondependent child of the person who lives with that person owed \$500 or more;

(7) a list of all contracts and offers to contract with the state or an instrumentality of the state during the preceding calendar year held, bid, or offered by the person, the person's spouse or dependent child, a nondependent child of the person who is living with that person, the person's mother or father, or a corporation in which the person or the person's spouse or children, or a combination of them, hold a controlling interest; and

(8) a list of all mineral, timber, oil, or any other natural resource lease held, or lease offer made, during the preceding calendar year by the person, the person's dependent child, a nondependent child of the person who is living with that person, the person's mother or father, a partnership or professional corporation of which the person is a member, or a corporation in which the person or the person's spouse or children, or a combination of them, holds a controlling interest.

(c) [Repealed, § 26 ch 25 SLA 1975.] (1974 Initiative Proposal No. 2, § 1; am §§ 3, 4, 26 ch 25 SLA 1975)

Opinions of attorney general. — Requiring an attorney who is a public official to disclose the names of clients, including the clients of the firm, is valid and

legally supportable; and disclosure of such names does not violate any constitutional or professional privileges. February 15, 1985 Op. Att'y Gen.

NOTES TO DECISIONS

To determine the validity of the disclosure provisions of the Conflict of Interest law, both the nature and the extent of the privacy invasion and the strength of the state interest requiring disclosure must be considered. *Falcon v. Alaska Pub. Offices Comm'n, Sup. Ct. Op. No. 1512 (File No. 3220), 570 P.2d 469 (1977).*

Certain types of information communicated in the context of the physician-patient relationship fall within a constitutionally-protected zone of privacy. *Falcon v. Alaska Pub. Offices Comm'n, Sup. Ct. Op. No. 1512 (File No. 3220), 570 P.2d 469 (1977).*

Patient of a physician is a client for medical services and falls within the scope of this chapter. *Falcon v. Alaska*

Pub. Offices Comm'n, Sup. Ct. Op. No. 1512 (File No. 3220), 570 P.2d 469 (1977).

And source of income. — The Conflict of Interest law encompasses a physician's individual patients as sources of income. *Falcon v. Alaska Pub. Offices Comm'n, Sup. Ct. Op. No. 1512 (File No. 3220), 570 P.2d 469 (1977).*

Reporting individual names of physician's patients. — Until appropriate regulations are promulgated, the Conflict of Interest law may not be applied so as to require reporting the names of individual patients of a physician. *Falcon v. Alaska Pub. Offices Comm'n, Sup. Ct. Op. No. 1512 (File No. 3220), 570 P.2d 469 (1977).*

Applied in *Warren v. Thomas, Sup. Ct. Op. No. 1484 (File No. 2919), 568 P.2d 400 (1977).*

Sec. 39.50.035. Exemptions. A person subject to this chapter is not exempt from any of its provisions except to the extent state courts determine that legally privileged professional relationships preclude complete compliance. (§ 5 ch 25 SLA 1975)

NOTES TO DECISIONS

This section applies only to legal privileges, not ethical mandates. *Falcon v. Alaska Pub. Offices Comm'n, Sup. Ct. Op. No. 1512 (File No. 3220), 570 P.2d 469 (1977).*

Fact that a physician is subject to

professional discipline for revealing the names of patients does not create a "legal privilege." *Falcon v. Alaska Pub. Offices Comm'n, Sup. Ct. Op. No. 1512 (File No. 3220), 570 P.2d 469 (1977).*

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: CSSB 202 (SA)
PUBLISH DATE: (SENATE) 3/10/88

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: _____
Title: "An Act relating to the contents of BRII of interest law."
disclosure statements under the conflict of interest law."
Sponsor: Josephson Components: _____
Requestor: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

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

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)

Prepared by: Senate State Affairs Committee Phone: 465-4522
Division: _____ Date: _____

Approved by Senator Mitch Abood Date: 3/9/88
Agency: Senate State Affairs Committee

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

SB

207

STEVE COWPER
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 23, 1987

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

Dear Senator Faiks:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill abolishing the Governor's Commission on the Administration of Justice and transferring certain of the commission's responsibilities to a more workable commission made up of representatives from those agencies that are charged with administering criminal justice information systems on a day-to-day basis.

The commission was originally established to be the steering agency for handling federal grants from the Law Enforcement Assistance Administration (LEAA). Since the LEAA no longer exists, the primary function of the commission has been eliminated.

A secondary function of the commission involved overseeing law enforcement uses of criminal justice information systems under AS 12.62. However, the large, 13-member commission has not met for a number of years. Therefore, under administrative regulations, the commission delegated this oversight function solely to the attorney general as ex-officio chairman of the commission.

This bill represents a realistic compromise between the inefficiency created by an unwieldy body such as the present commission, and what some may perceive as an overcentralization of authority in a single person, such as exists under current practice. The bill thus eliminates unnecessary statutes and governmental structures, while assuming that broadranging viewpoints will be considered in decisions involving criminal justice information. Therefore, I urge your prompt and favorable action on this measure.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Cowper".

Steve Cowper
Governor

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST SB 207

FISCAL DETAIL

Bill/Resolution No. : _____
 Title : "An Act abolishing the Governor's
 Commission on the Administration of
 Justice and transferring..."
 Sponsor : Senate Rules/Req. of the Gov.
 Requestor : Office of the Governor
 Date of Request : November 18, 1986

Agency Affected : Department of Law
 BRU : Prosecution

 Components : Administration and Support

EXPENDITURES/REVENUES : (Thousands of Dollars)

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

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

REVENUE						
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FUNDING : (Thousands of Dollars)

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

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS :

Please see the attached analysis.

Prepared by : Richard I. Pegues, Director Phone : 465-3672
 Division : Administrative Services Date : 11/19/86
 Approved by Commissioner : Harold M. Brown, Attorney General Date : 11/19/186
 Agency : Department of Law

Distribution (by Agency preparing fiscal note) :

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB.207

This bill abolishes the thirteen-member Governor's Commission on the Administration of Justice and transfers responsibility for overseeing law enforcement uses of criminal justice information to a new seven-member Governor's Commission on Criminal Justice Information. It is anticipated that the new commission will meet three or four times in its first year to update the state's current privacy regulations under AS 12.62. Thereafter, the commission will probably meet twice each year. The individual state agencies represented on the commission will be responsible for paying for their representatives' attendance at commission meetings. The Department of Law will pay for the cost of adopting new or amended regulations, and it will pay the travel and per diem cost for the municipal police member to attend commission meetings from its existing budget.

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: _____

Bill Version: SB 207
Publish Date: _____

Revision Date: _____

Agency Affected: Department of Law
BRU: Prosecution

Title: "An Act abolishing the Governor's
Commission...Administration of Justice..."

Sponsor: Senate Rules/Req. of the Gov.

Components: Criminal Justice Litigation
and Legal Services

Requestor: Senate Judiciary Committee

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Please see the attached analysis.

Prepared by: Richard I. Pegues, Director
Division: Administrative Services

Phone: 465-3672
Date: April 14, 1987

Approved by Commissioner: Grace Berg Schaible, Atty. Gen.
Agency: Department of Law

Date: April 14, 1987

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 207

This bill abolishes the thirteen-member Governor's Commission on the Administration of Justice and transfers responsibility for overseeing law enforcement uses of criminal justice information to a new seven-member Governor's Commission on Criminal Justice Information. It is anticipated that the new commission will meet three or four times in its first year to update the state's current privacy regulations under AS 12.62. Thereafter, the commission will probably meet twice each year. The individual state agencies represented on the commission will be responsible for paying for their representatives' attendance at commission meetings. The Department of Law will provide for the adoption of new or amended regulations using existing staff, and it will pay the travel and per diem cost for the municipal police member to attend commission meetings from its existing budget. These costs are not of sufficient magnitude to warrant fiscal note costs.

01

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David E. Rogers
124 West 5th Street
Juneau, Alaska 99801
(907) 586-4151*

March 12, 1987

Senator John Binkley
P.O. Box V
Juneau, Ak 99811

Re: ACLU -- Computer Privacy
Our File No. 3012.01

Dear Senator ^{John}Binkley:

You indicated on last fall's ACLU Questionnaire that you would support legislation to

1) establish a system to verify, update, and purge criminal justice information; and 2) ensure that use of criminal justice information is strictly limited to legitimate law enforcement purposes.

The enclosed bill contains those goals and implements the findings of a 1986 Legislative Audit on computerized criminal justice information systems. Hopefully, the problem raised in the attached memo from "bill drafting" can be resolved. Arthur Snowden, of the Alaska Court System, takes the position that computer privacy procedures may not be imposed on the Court System without its consent. So long as that consent is obtained, there is no problem.

We are requesting that you be a sponsor of this legislation. Similar letters are being sent to Representatives Menard, Ulmer, Koponen, Navarre, Boucher, Donley, Gruenberg, Brown, Ellis, Martin, Furnace and Cotten and Senator Uehling.

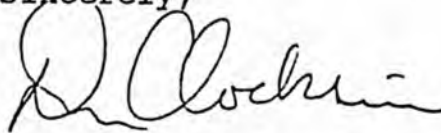
They all indicated support, and I hope all of you can confer and work to get this bill filed and enacted.

The ACLU will provide necessary back-up information.

Please call if you have questions.

Thank you.

Sincerely,

A handwritten signature in cursive script, appearing to read "Don Clocksin".

Don Clocksin
Member of the Board
Alaska Chapter, ACLU

DC:ksg

Representative Fran Ulmer
Representative Curt Menard
Representative Niilo Koponen
Representative Mike Navarre
Representative Red Boucher
Representative Max Gruenberg
Representative Kay Brown
Representative Johnny Ellis
Representative Terry Martin
Representative Walt Furnace
Representative Sam Cotten
Senator Rick Uehling
Senator John Binkley

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

February 10, 1987

SUBJECT: Criminal justice computer information bill
(Work Order No. 5-0562)

TO: Representative Johnny Ellis

FROM: Keith B. Levy *KBL*
Legislative Counsel

Enclosed you will find the bill draft you requested relating to criminal justice information systems. You should be aware of several issues raised by the bill.

The bill changes the name of the Governor's Commission on the Administration of Justice to the Governor's Commission on Criminal Justice Information. Section 18 of the bill restructures the composition of the commission to include the Attorney General, the Public Defender, the Chief Justice of the Supreme Court, and two public members appointed by the Governor. The bill gives the commission extensive powers to adopt regulations pertaining to criminal justice information systems. By including a member of the judiciary (the Chief Justice) on a primarily executive commission, the bill may be in violation of the separation of powers doctrine.

The Alaska Supreme Court has ruled that, although not expressly stated in the Alaska Constitution, the separation of powers doctrine is an inherent principle of Alaska government. Bradner v. Hammond, 553 P.2d (1976). Numerous cases from other jurisdictions have struck down legislative enactments putting legislators on commissions or boards serving an executive function. For a discussion of these cases see State ex rel. Wallace v. Bone, 286 S.E.2d 79, 84 - 87 (N.C. 1982). In each case, where the court found the duties of the commission or board to be primarily executive in nature, it was held that there is a violation of the constitutional principle of separation of powers if a legislator serves on such a commission or board. Limited exceptions to this rule

Representative Ellis
February 10, 1987
Page 2

have been noted where the commission or board is only advisory or informational:

The separation of powers doctrine does not in all cases prevent individual members of the legislature from serving on administrative boards or commissions created by legislative enactments. Individual members of the legislature may serve on administrative boards or commissions where such service falls in the realm of cooperation on the part of the legislature and there is no attempt to usurp functions of the executive department of the government. State ex rel. Schneider v. Bennet, 219 Kan. 285, 547 P.2d 786, 792 (Kansas 1976).

The same principle holds true for legislative enactments that encroach on the functions of the executive branch by the judicial branch. Placing the Chief Justice of the Supreme Court on a commission whose function appears to be primarily executive (adopting regulations regarding criminal justice information systems) is probably such an encroachment on the executive branch, and therefore unconstitutional under the separation of powers doctrine.

It is certainly true that the Supreme Court has the power to adopt regulations or rules regarding its own criminal justice information systems. However, since the commission would have power over executive branch computers as well, there is a separation of powers problem. The argument could be made that, as a matter of policy, it is critical to have both branches of the government represented on the commission because of the need for interaction between the computer systems of each branch. How such an argument would fare before the court is uncertain, however, in light of prior rulings on the separation of powers doctrine.

On a separate note, there are two items in your request that are not completely addressed in the bill. First, you requested that the application of AS 12.65.035 be limited to requests for conviction information on certain sex crimes only. Don Clocksin informed me that the intent is to go back to the law prior to the 1983 amendments. However, AS 12.65.035 was added in 1983 and then amended in 1984 to cover the statutory sex crime sections as they were written before the criminal code was rewritten. Therefore, it is impossible for me to determine which crimes you wish to include under AS 12.65.035. I can prepare language amending

Representative Ellis
February 10, 1987
Page 3

that section if you provide me with more specific information on which crimes are to be included.

Finally, the audit referred to in your bill request recommends that statutory language be adopted providing for purging of certain criminal justice information from computer systems. However, I am unable to draft such language without more specific directions. AS 12.62.040(a)(3), set out in sec. 9 of the bill, provides that criminal justice information must include operating procedures approved by the commission designed to assure that information in criminal justice information systems is periodically removed. Section 10 of the bill adds a new provision (AS 12.62.060(c)) requiring the commission to adopt regulations requiring law enforcement agencies to "modify, supplement, close, or purge" criminal justice information that is inaccurate or gathered illegally. If these provisions are not adequate to satisfy your concerns, I will need greater details in order to draft more specific requirements.

If I may be of further assistance, please advise.

KBL:mkr
m8/112

Enclosure

1 IN THE HOUSE

2 HOUSE BILL NO.

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 intelligence information; a
7 relating to and renaming the Governor's Commission
8 the Administration of Justice."

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

10 * Section 1. AS 12.62.010 is amended to read:

11 Sec. 12.62.010. REGULATIONS. (a) The Governor's Commission c
12 Criminal Justice Information [THE ADMINISTRATION OF JUSTICE] estab
13 lished under AS 44.19.110 - 44.19.122 shall [IS AUTHORIZED], afte
14 appropriate consultation with representatives of state and local la
15 enforcement agencies participating in information systems covered by
16 this chapter, [TO] adopt regulations to establish [AND] procedure:
17 considered necessary to facilitate and regulate the exchange of crimi-
18 nal justice information and to insure the security and privacy of
19 criminal justice information systems. The notice and hearing require-
20 ments of the Administrative Procedure Act (AS 44.62), relating to the
21 adoption of regulations, apply to regulations adopted under this
22 chapter.

23 (b) In addition to regulations adopted under (a) of this sec-
24 tion, the commission shall, after appropriate consultation with rep-
25 resentatives of state and local law enforcement agencies, adopt regu-
26 lations [AND PROCEDURES] governing the gathering of intelligence
27 information and the storage, security, and privacy of the intelligence
28 information collected and maintained by law enforcement agencies in
29 the state. [THE NOTICE AND HEARING REQUIREMENTS OF THE ADMINISTRATIVE

1 PROCEDURE ACT (AS 44.62), RELATING TO THE ADOPTION OF REGULATIONS
2 APPLY TO REGULATIONS ADOPTED UNDER THIS SUBSECTION.] In adopting
3 these regulations, the commission shall take into account both the
4 interest of law enforcement agencies in maintaining the ability
5 to conduct intelligence operations and each individual's right to privacy.
6

7 * Sec. 2. AS 12.62.010 is amended by adding a new subsection to read:

8 (c) This chapter and regulations adopted under this chapter
9 apply to all criminal justice information systems in the state, in-
10 cluding the Alaska Public Safety Information Network.

11 * Sec. 3. AS 12.62.015(a) is amended to read:

12 (a) Regulations of the commission adopted under AS 12.62.010(b)
13 must [SHALL] include requirements and guidelines concerning the cat-
14 egories of intelligence information that [WHICH] may be gathered by
15 law enforcement agencies in the state, the purposes for which intelli-
16 gence information may be collected, and the methods and procedures
17 that [WHICH] may be used in collecting intelligence information. The
18 regulations must restrict methods and procedures for collecting intel-
19 ligence information to methods and procedures likely to result in
20 relevant and reliable information.

21 * Sec. 4. AS 12.62.015 is amended by adding a new subsection to read:

22 (c) A law enforcement agency in the state may not gather or
23 retain intelligence information unless the information pertains to an
24 individual or group that is reasonably suspected of engaging in crimi-
25 nal activity.

26 * Sec. 5. AS 12.62.030(b) is amended to read:

27 (b) Criminal justice information may be made available to qual-
28 ified persons for research related to law enforcement under regu-
29 lations adopted by the commission. These regulations must include

1 procedures to assure the security of information and the privacy
2 individuals about whom information is released. Release of infor
3 tion under this subsection shall be limited to the maximum extent th
4 is consistent with law enforcement goals.

5 * Sec. 6. AS 12.62.030(c) is amended to read:

6 (c) A person has [SHALL HAVE] the right to inspect crimin
7 justice information that refers to the person. If a person believ
8 the information to be inaccurate, incomplete, or misleading, th
9 person may request the criminal justice agency having custody o
10 control of the records to purge, modify, or supplement them. When th
11 agency responds to the person's request, the agency shall notify th
12 person of the right to request a review from the commission under thi
13 subsection. If the agency declines to implement the person's reques
14 [DO SO], or if the person believes the agency's decision to be other-
15 wise unsatisfactory, the person may in writing request review by the
16 commission within 60 days after [OF] the decision of the agency. If
17 it finds a basis for complaint, the [THE] commission or [,] its rep-
18 resentative or agent shall [, IN A CASE IN WHICH IT FINDS A BASIS FOR
19 COMPLAINT,] conduct a hearing at which the person may appear with
20 counsel, present evidence, and examine and cross-examine witnesses.
21 Written findings and conclusions shall be issued and a copy of them
22 shall be sent to the person requesting review with a notice of the
23 person's right to appeal under (f) of this section. If the record in
24 question is found to be inaccurate, incomplete, or misleading, the
25 commission shall order it to be appropriately purged, modified, or
26 supplemented by an explanatory notation. An agency or person in the
27 state with custody, possession, or control of the record shall prompt-
28 ly have every copy of the record altered in accordance with the com-
29 mission's order. The commission shall promptly notify [NOTIFICATION

1 OF A DELETION, AMENDMENT AND SUPPLEMENTARY NOTATION SHALL BE PROMI
2 DISSEMINATED BY THE COMMISSION TO] persons or agencies to which
3 cords in question have been communicated, and [AS WELL AS TO]
4 person whose records have been altered, of a deletion, amendment,
5 supplementary notation.

6 * Sec. 7. AS 12.62.030(e) is amended to read:

7 (e) The commission shall adopt regulations for access to crim
8 nal justice information and establishing reasonable [REASONABLE] hou
9 and places of inspection, and any additional restrictions, includi
10 fingerprinting, that are reasonably necessary both to assure th
11 record's security and to verify the identity of a person who seeks t
12 inspect a record [IDENTITIES OF THOSE WHO SEEK TO INSPECT THEM MAY B
13 PRESCRIBED BY PUBLISHED RULES]. Fingerprints taken under this sub-
14 section may not be transferred to another agency or used for any other
15 purpose.

16 * Sec. 8. AS 12.62.035(a) is amended to read:

17 (a) Notwithstanding any other provision of law, an interested
18 person as defined in (e) of this section may request from the commis-
19 sion records of all convictions involving [CONTRIBUTING TO THE DELIN-
20 QUENCY OF A MINOR AND ANY] sex crimes of a person who holds or applies
21 for a position in which the person has or would have supervisory or
22 disciplinary power over a minor. The requesting interested person
23 shall include with the request a written authorization, signed by the
24 subject of the request, indicating that the subject consents to re-
25 lease of the records to the interested person. If the commission is
26 satisfied that the subject of the request has authorized release of
27 the information, the commission shall authorize the disclosure of the
28 information to the requesting interested person, and shall provide a
29 copy of the information to the person who is the subject of the

1 request. Information released under this section is limited to
2 fact that the person was convicted of a crime and the date of conviction
3 other information pertaining to the crime.

4 * Sec. 9. AS 12.62.040(a) is amended to read:

5 (a) Criminal justice information systems shall

6 (1) be dedicated to law enforcement purposes and be under
7 the management and control of law enforcement agencies in accordance
8 with [UNLESS EXEMPTED UNDER] regulations adopted under AS 12.62.010;

9 (2) include operating procedures approved by the commission
10 that [WHICH] are [REASONABLY] designed to assure the security of the
11 information contained in the system from unauthorized disclosure, and
12 [REASONABLY] designed to assure that criminal offender record informa-
13 tion in the system is regularly and accurately revised to include
14 subsequently furnished information;

15 (3) include operating procedures approved by the commission
16 that [WHICH] are designed to assure that information concerning an
17 individual shall be removed from the records, based on considerations
18 of age, nature of record, and reasonable interval following the last
19 entry of information indicating that the individual is still under the
20 jurisdiction of a law enforcement agency.

21 * Sec. 10. AS 12.62.040 is amended by adding a new subsection to read:

22 (c) The commission shall adopt regulations that require a law
23 enforcement agency to modify, supplement, close, or purge from the
24 criminal justice information system

25 (1) inaccurate information; or

26 (2) information gathered or entered in violation of this
27 chapter.

28 * Sec. 11. AS 12.62.060(b) is amended to read:

29 (b) A person who [WILFULLY] disseminates or uses criminal

1 justice information knowing the [SUCH] dissemination or use to be a
2 violation of this chapter, or who knowingly collects, obtains or uses
3 intelligence information in violation of this chapter, is guilty of
4 class C felony [UPON CONVICTION, IS PUNISHABLE BY A FINE OF NOT MORE
5 THAN \$1,000 OR BY IMPRISONMENT FOR NOT MORE THAN ONE YEAR, OR BOTH].
6

7 * Sec. 12. AS 12.62.060(c) is amended to read:

8 (c) A good faith reliance upon the provisions of this chapter or
9 of applicable law governing maintenance, dissemination, or use of
10 criminal justice information, or upon [RULES,] regulations adopted [
11 OR PROCEDURES PRESCRIBED] under this chapter is a defense to a civil
12 or criminal action brought under this chapter.

13 * Sec. 13. AS 12.62.070(1) is amended to read:

14 (1) "commission" means the Governor's Commission on Crimi-
15 nal Justice Information [THE ADMINISTRATION OF JUSTICE] established
16 under AS 44.19.110 - 44.19.122.

17 * Sec. 14. AS 12.62.070(3) is amended to read:

18 (3) "criminal justice information system" means a system [,
19 INCLUDING THE EQUIPMENT, FACILITIES, PROCEDURES, AGREEMENTS, AND
20 ORGANIZATIONS RELATED TO THE SYSTEM FUNDED IN WHOLE OR IN PART BY THE
21 LAW ENFORCEMENT ASSISTANCE ADMINISTRATION,] for the collection, pro-
22 cessing, or dissemination of criminal justice information;

23 * Sec. 15. AS 14.43.310(b) is amended to read:

24 (b) To assist the administering authority in selecting eligible
25 applicants for award of each of the memorial scholarship loans under
26 AS 14.43.250 - 14.43.325 and in reviewing the memorial scholarship
27 loan program, the following advisory committees are established:

28 (1) three Alaska state troopers, each one to be selected
29 from and to represent a state trooper region of the state by the

1 regional commander to serve for three years, for the Michael Murph;
2 memorial scholarship;

3 (2) three members of the Governor's Commission on Criminal
4 Justice Information [THE ADMINISTRATION OF JUSTICE] selected annually
5 by the commission from among its membership, for the Carroll L.
6 "Butch" Swartz memorial scholarship;

7 (3) three members of the state Board of Registration for
8 Architects, Engineers and Land Surveyors selected annually by the
9 board from among its engineer members, for the Harvey Golub memorial
10 scholarship; and

11 (4) three members of the state Board of Education, or of
12 the staff of the Department of Education, or any combination of these,
13 selected annually by the board, for the Robert L. Thomas memorial
14 scholarship.

15 * Sec. 16. AS 18.65.250(a) is amended to read:

16 (a) The Governor's Commission on Criminal Justice Information
17 [THE ADMINISTRATION OF JUSTICE] has the authority to assist political
18 subdivisions and police departments in meeting the costs involved by
19 extending financial assistance for travel, per diem, tuition, and
20 other costs.

21 * Sec. 17. AS 44.19.110 is amended to read:

22 Sec. 44.19.110. ESTABLISHMENT OF THE COMMISSION. The Governor's
23 Commission on Criminal Justice Information [THE ADMINISTRATION OF
24 JUSTICE] is established in the Office of the Governor.

25 * Sec. 18. AS 44.19.112 is repealed and reenacted to read:

26 Sec. 44.19.112. MEMBERSHIP AND MEETINGS. (a) The commission is
27 composed of the attorney general, the public defender, the chief
28 justice of the Supreme Court of Alaska, and two public members ap-
29 pointed by the governor. One of the public members must be

1 experienced in the field of computer science.

2 (b) The commission shall elect a member to serve as chair and
3 may elect other officers. Terms of officers are for one year.

4 (c) The commission shall meet at least once each year at the
5 call of the chair.

6 * Sec. 19. AS 44.19.114 is amended to read:

7 Sec. 44.19.114. COMPENSATION AND PER DIEM. Members of the
8 commission receive no salary for their service on the commission. The
9 public members [BUT] are entitled to per diem and travel expense
10 authorized by law for boards and commissions.

11 * Sec. 20. AS 44.19.122 is repealed and reenacted to read:

12 Sec. 44.19.122. STAFF. The Department of Law shall provide
13 staff for the commission without expense to the commission.

14 * Sec. 21. Each criminal justice agency in the state that has entered
15 intelligence information into criminal justice information systems shall
16 review that information and immediately purge from the system information
17 that does not meet the requirements of this Act.

18 * Sec. 22. AS 12.62.035(e)(1); AS 44.19.118, and 44.19.120(a) are
19 repealed.

3211 Providence Drive
Anchorage, Alaska 99508
(907) 786-1810

SCHOOL OF JUSTICE

April 6, 1987

Hon. Jay Kerttula, Chairman
Senate Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, AK 99811

*Batts
file*

APR 7 1987

Dear Senator Kerttula:

A policy group such as would be created by Senate Bill No. 207 to oversee the use of Alaska criminal justice information is needed, since the Governor's Commission on the Administration of Justice which is presently designated to perform that role has not been convened for several years. On behalf of the faculty and staff of the School of Justice at the University of Alaska, Anchorage, and as director of the Alaska Justice Statistical Analysis Unit, I have several suggestions which we believe could be used to enhance the scope and effectiveness of the measure.

1. Although existing security and privacy statutes specifically provide for justice researchers to have access to the state's computerized information for research purposes, in practice, gaining such access has in the past proven difficult and time-consuming. We suspect even legislative researchers have encountered problems in obtaining criminal justice data. Without someone to speak to the concerns of the researchers, the problems of access will likely increase under this agency-dominated commission. Given the state's economic downturn, expeditious research related to crime and the administration of justice will be even more important than in times past.

We suggest that the membership of the proposed commission be expanded to include representation of the justice research community. Since the School of Justice is responsible for coordinating university research in this field, we would appreciate a designated position on the Commission.

2. The bill's provisions that no regulations affecting the executive or judicial branches can be binding without an independent affirmative vote from the representatives of the affected branch seems to render the Commission impotent in establishing rules except as the rules affect those outside the executive and judicial branches. Since the municipal police representative has no similar