

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672  
5746 HOUSE JUDICIARY 150

With the delays with Planning and Zoning, additional time had used up the funds the Legislature had appropriated. The Court System brought the project back before the Legislature for additional funds, which were not approved. The reasoning for requesting a 350,000 sq. ft. addition (50,000 sq. ft. of that was for parking) was in part due to the increase in population and critical shortages in office spaces. The court System is now proposing redesigning the building, with only 200,00 sq. feet, almost half the size of the original proposal, and building it so as to add modules in the future, should there be a need for additional space in years to come. In regards to the District Court, the structural integrity is in question, and has been studied. This study has been turned over to DOT for their evaluation. Improvements on the existing building would run approximately \$8 million, not including the security improvements the Court System would require of itself. With that amount of money, we could knock it down and replace it with a facility that would meet all necessary requirements.

:174 - Rep. Martin asked for the cost comparisons between paying cash and amortizing the cost for 20-30 years.

:189 - Mr. Snowden replied the Court System is not recommending any specific form of funding, rather pointing out options available to the Legislature, including building it for cash, which would cost approximately \$197./sq. ft.

:230 - The Court System contracted with the Department of Public Safety to have an 18 minute film made for the members of the Legislature about the problems with the current courthouse, at a cost of \$450.00. The film highlighted the major problems which include:

- Lack of security in transport of prisoners.
- No adequate waiting area, especially for children.
- The Jury Assembly area is crowded, depressing, inconvenient.
- Jury Waiting area is crowded, with no windows, or tables, and has poor lighting, seating and ventilation.
- Smokers Lounge for jurors has inadequate ventilation.
- Jurors restrooms are not handicap accessible.
- Inadequate storage, not accessible or secure.
- Small Claims Dept. not handicap accessible.
- Courtrooms have inadequate separation for parties.
- Law Libraries have limited space, incoming mail is stacked in library hallways.

:454 - Mr. Snowden mentioned redesign would need a capital outlay of approximately \$3 million.

:479 - Rep. Martin asked what the amortized cost would be.

:492 - Mr. Snowden: \$15 mil/yr over 9 yr. period = \$ 120 mil.  
\$ 9 mil/yr over 20 yr. period = \$ 178 mil.  
\$ 8 mil/yr over 30 yr. period = \$ 229 mil.

Redesign would take 1 1/2 years, Building 3 1/2 years, and no payment would commence until the building was opened.

:607 - Judge Brian Shortell reiterated the concerns mentioned in the film, especially safety problems with the existing building.

:705 - Rep. Gruenberg mentioned the possibility of closing the halls during regularly scheduled use periods for prisoner transport, similar to the methods used at API. This would eliminate the interaction with prisoners and the public or staff.

END OF TAPE 1, SIDE 1.

:742 - Mr. Snowden will make a Jury Report available to the Legislature, especially the Judiciary Committee which evaluates Jury procedures, and suggestions.

:755 - Rep. Hanley requested the Court System provide documentation about what services the courthouse would provide for the rest of the state as well, to help the Legislature decide on how to act on this matter on behalf of the entire state.

:772 - Rep. Martin asked about the use of video cameras in the court system to eliminate transport of prisoners.

:781 - Mr. Snowden mentioned video arraignments are being set up in Fairbanks now, and a Task Force in Anchorage is putting together the same program to begin in Anchorage, starting in July 1989. This will not take care of all of the security problems. People still have to be brought in for trial, and a number of people not incarcerated may become violent, such as in Family Court. Other security measures are being locked into.

:817 - Kit Duke spoke briefly in support of the new proposal for reduced space, and will be providing the Legislature with updated information as it becomes available.

:847 - Don Simmons of the Municipality of Anchorage, spoke on behalf of the Muni in support of the courthouse project due to the economic advantage of a construction project, providing jobs in Anchorage. The municipality also offered to assist the Court System in financing.

:911 - Rep. Pourchot mentioned the argument for construction of a building for jobs does not sit well with the Legislature;

we should not build buildings just to provide jobs, because that money could be used in that capacity other ways where there is not a long term financial burden attached to the project. He mentioned the Legislature would look at the real issues of increased space, security, etc. in consideration of funding the project.

:942 - Mr. Simmons clarified the municipalities reasons for supporting the project were secondary to the important considerations of space and security, but that it was just another way to look at supporting the project.

:957 - Rep. Gruenberg asked if there were any others interested in testifying at this time. Hearing none, the meeting was adjourned at Noon.

STATE OF ALASKA  
THE LEGISLATURE

POUCH V STATE CAPITOL  
JUNEAU ALASKA 99811  
907 465 1800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 3, 1989

SUBJECT: Amendment to HB 110; Anchorage Court Facility

TO: Representative Peter Goli, Co-Chair  
Representative Max Gruenberg, Co-Chair  
House Judiciary Committee

FROM: George Utermohle *GU*  
Legislative Counsel

Enclosed is the amendment to HB 110 as passed by the Judiciary Committee.

Please note that this amendment is not appropriate for an appropriation bill because it is substantive law and not an appropriation item.

Under Article II, Section 13 "[b]ills for appropriations shall be confined to appropriations." The text of the amendment should be included in a separate bill enacting substantive law or in a statement of legislative intent accompanying HB 110.

If I may be of further assistance, please advise.

GU:gc  
WKG7/093

Enclosure

A M E N D M E N T

OFFERED IN THE HOUSE

BY THE JUDICIARY COMMITTEE

TO: HB 110

Page 1, following line 13:

Insert a new bill section to read.

"\* Sec. 2. The Alaska Court System shall obtain legislative approval before building the court facilities redesigned with this appropriation."

Renumber the following bill sections accordingly.



RECEIVED JAN 25 1988

## Alaska Court System

State of Alaska

303 "K" STREET  
ANCHORAGE, ALASKA  
99501

ARTHUR M. SNOWDEN II  
ADMINISTRATIVE DIRECTOR

(907) 274-8611

January 22, 1988

Governor Steve Cowper  
State of Alaska  
P. O. Box A  
Juneau, AK 99811-0101

Dear Governor Cowper:

I am writing to ask your assistance in a matter of utmost urgency for the Alaska Court System.

As you know, the court system has been planning and designing an expanded court facility in Anchorage. Under the current time line for the project, a request for construction bids would be issued in May or June of this year, and construction would begin this summer. However, because of a projected shortfall of budgeted funds to complete the design phase of the project, we may not be able to proceed as planned.

Let me outline the background of this project and our current dilemma. The 1981 legislature appropriated \$9,969,000 for acquisition of land, remodeling of the existing courthouse, and for the planning and design of an addition to the Anchorage Court Complex (SLA81/HB50). At the time the appropriation was made, it was envisioned construction would start during FY 83 and would finish in FY 86. In October, 1981, land was acquired for the project. Planning and design for the project and remodeling of the existing courthouse started in 1981.

The 1984 legislature authorized the court to enter into a lease-purchase agreement for the construction of the facility. Presently, the court is working with the Municipality of Anchorage and the Department of Revenue on financing the project with municipal lease revenue bonds.

As previously noted, construction was slated to begin in FY 1983. The project was delayed significantly by the municipal planning and zoning approval process. The delay and a significant increase in costs were caused by the unanticipated seismic studies required by the Municipality of Anchorage. Concern about the propriety of the courthouse site due to its proximity to land

Governor Steve Cowper

January 22, 1988

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which experienced significant movement in the 1964 earthquake precipitated a lengthy process involving on-site testing, expert reports and a multitude of municipal hearings. The resulting delay aggravated other costs associated with the project. Interim remodeling projects had to be pursued in the existing building to allow for some temporary breathing room for overcrowded departments. Professional fees mounted as completed tasks had to be reviewed and updated due to the long passage of time.

Because of the delay, we find ourselves in the unenviable position of lacking \$1.5 million in budgeted funds to complete the planning and design process. Funds are needed for completion of the construction documents, peer review, permit fees and utilities relocations. I am asking that you assist us by submitting a capital project request on behalf of the judiciary for this amount. If no additional funding is appropriated, I will have to close down the project as of the third week of March since, as you know, I cannot encumber funds which are not properly appropriated. This means that I will have to give notice of termination on our professional service contracts by March 1.

The situation is further aggravated by the tight project time line. Any delay will prevent us from breaking ground this summer, and will result in our missing one complete construction cycle. Thus, waiting until the end of the session is not a viable alternative.

I don't want to leave you with the impression that the court is ignoring the obvious changes that the State of Alaska has experienced since this project was first approved in 1981. The supreme court is currently reviewing its caseload statistics and a variety of demographic indicators to determine whether the pursuit of this project is still necessary. We recognize fully our responsibilities in this regard, and we will certainly modify our plans should such a modification appear to be appropriate. Nevertheless, even with a reaffirmance of the need for this project at the supreme court level, we cannot proceed under current circumstances.

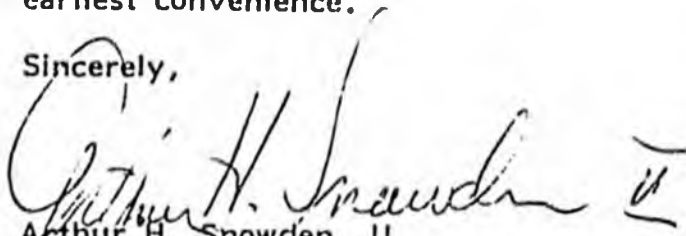
I am therefore asking for some assurance from you that a \$1.5 million appropriation will be requested on behalf of the court system and supported by you in the immediate future to allow this project to continue on track. Enclosed please find a capital project request. (Similar information about our needs was forwarded to the Department of Transportation and Public Facilities on December 22 for possible inclusion in your "jobs" bill.)

Should your conclusion be in the opposite direction, I would appreciate being advised of same as soon as possible, so that I can take all necessary actions to minimize the costs that will be associated with terminating this project.

Governor Steve Cowper  
January 22, 1988  
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I would appreciate hearing from you at your earliest convenience.

Sincerely,



Arthur H. Snowden, II  
Administrative Director

AHS:bh

Att.

cc: Alaska Supreme Court (w/o att.)  
Members, Alaska Senate (w/o att.)  
Members, Alaska House of Representatives (w/o att.)  
Garrey Peska, Chief of Staff (w/att.)  
Tom Fink, Mayor, Municipality of Anchorage (w/o att.)  
Stephanie J. Cole, Deputy Administrative Director (w/o att.)  
Robert G. Fisher, Manager, Fiscal Operations (w/o att.)  
Kit Duke, Project Manager (w/o att.)

1/21/88-7

*File*

MEMORANDUM

DATE: February 4, 1988

TO: Governor Steve Cowper

FROM: Lee Gorsuch, Director, ISER

SUBJECT: The Impacts of Constructing the Anchorage Courthouse Expansion

BACKGROUND

The Alaska Court System (ACS) proposes to build a major, 134,000 sq.ft., addition to the existing Boney Building and a new, 222,000 sq.ft., east "wing". These proposed additions would expand the 250,000 sq.ft. of space ACS' Anchorage and its participating agencies currently occupy to about 566,000 sq.ft.. To date, \$143,000 has been expended to acquire and clear the building site and an additional \$2-2.5m has been expended to date to conduct extensive seismic research, to develop the program requirements, and to prepare the construction design. Approximately \$1.5m of direct legislative appropriation is needed immediately if the construction design work is to be completed and be "bid ready" by the end of this May. Actual construction is planned to begin this September and run 30 months, with project completion scheduled for March, 1991. The total cost of the project is estimated to be about \$90m.

Currently ACS occupies 150,000 sq.ft. in the Boney Building, 60,000 sq.ft. in the old district courthouse, and leases 12,000 sq.ft. of commercial office space. Under the proposed project, two other state agencies who currently occupy about 31,000 sq.ft. of commercial office space would vacate their leased office space to become part of the reconfigured ACS complex.

The proposed project would have four major impacts. First, the project will impact the court system's performance by alleviating current space deficiencies, correcting operational inefficiencies, and providing for future expansion. Second, it would impact the local economy by increasing employment during the 30 month construction phase of the project and subsequently by adding to the local workforce workers who will be required to operate and maintain the new facility. Third, it would impact state government by adding to the cost of the court system as a result of lease/bond costs, the expense of operating and maintaining the new facility, and the costs associated with expanded court services. And fourth, the project would increase the supply of downtown Anchorage commercial office space by eliminating the office space which ACS currently leases.

ACS staff are currently: 1) revising their long term projections for needed court related space, 2) preparing financial projections of lease, o/m. and programmatic costs of the project, and 3) developing options to proceeding with the proposed project this year. This information is not yet available. Until it is, only a very preliminary assessment of the current proposal can be prepared. Similarly, assessing the impact of alternative approaches to meeting ACS space requirements, other than simply delaying construction, can only be prepared after ACS has identified and developed realistic space alternatives.

#### ANALYSIS

##### The Alaska Court System

The proposed project would have a major impact on the efficiency of services provided by ACS. It would alleviate current overcrowding and physical plant deficiencies. It would provide for separate and secure circulation systems for prisoners and court officials. It would expand the number of courtrooms and hearing rooms from 28 to 40. It would provide for public waiting areas and assembling and training areas for prospective jurors. And it would provide for the currently projected needs of ACS over the next two decades.

##### The Anchorage Economy

The impact of the project on the Alaska economy is straight forward. The project's construction costs are estimated to be \$65m of which about 40% is likely to go toward employment. Spreading this amount over the 30 month duration of the project results in an annual payroll of approximately \$10.4m annually. Despite state labor laws not all of this payroll will go to current Alaska residents, but if we were to assume 80% of it would, then about \$8.3m would be added to the local payroll. Using an economic multiplier of 1.4, the direct and indirect impact would then be about 300 jobs annually and about \$11.6 m of additional personal income for the two and one half year construction period.. Some additional value added will also result directly from project construction. The additional permanent employment created by the new facility is difficult to estimate without having the program development plans of the agency. Nonetheless, jobs related to building maintenance will increase as will jobs related to program operations, however some job expansion within ACS would likely occur independently of the new facility.

##### The State Budget

To achieve the above described economic impact requires the expenditure of state funds which could have been spent on other projects or programs. Assuming the total cost of the project is \$90m and that it is financed by a lease/bond sale, the annual lease

cost to the state would be approximately \$9m for the balance of the lease bond period (likely to be 30 years). This expense would be partially offset by the \$900,000 of current lease payments which would be saved once the building is occupied. In addition, the maintenance of the facility, including insurance, utilities, janitorial services, etc..., could cost between 5-10% of the \$65m construction cost. Thus, an additional annual expenditures of \$3.5-6.5m would be required to maintain the proposed facility. A third, and potentially substantial, budgetary impact could result from programmatic services ACS is able to provide because the facility is built which it could not provide without it. However, to place an estimate on this would be conjectural.

What impact this additional expenditure of \$15.5m will have on the state budget is also conjectural. However, it is clear that the state's revenue forecasts are showing declines rather than increases in state revenues. If these forecasts are reliable, all additional state expenditures, including those associated with the ACS project, will require either new revenue resources or a reallocation of state spending priorities. In either case, the \$15.5m has a very real opportunity cost. It could be spent on other state programs, services, or facilities, some of which may have larger public benefits or greater economic impacts than the ACS project.

#### The Anchorage Real Estate Market

The Anchorage commercial office space market is unstable due to a serious excess supply. Realtors estimate downtown office vacancies to be in excess of 500,000 sq.ft.. Class A office lease rates have fallen from a high of about \$2.40 per sq.ft. two years ago to about \$1.55 currently. Although most realtors do not expect Class A office lease rates to fall much further, they do expect that the total amount of vacant space could increase, but primarily in Class B and C properties.

The ACS project would displace approximately 45,000 sq.ft. of leased office space as of March, 1991. Given the projected rate of economic recovery for Anchorage, it is very unlikely the current surplus of downtown office space will be reduced significantly by 1991, thus, this displacement will add to the already large surplus of vacant office space. However, because the ACS leased office space represents a relatively small proportion of total downtown office space, its price impacts will be relatively negligible. Nonetheless, they will have a depressing impact on prices and add to an already large surplus. Vacancy rates in the buildings currently leased by ACS average an estimated 25% and would be directly impacted by the displacement.

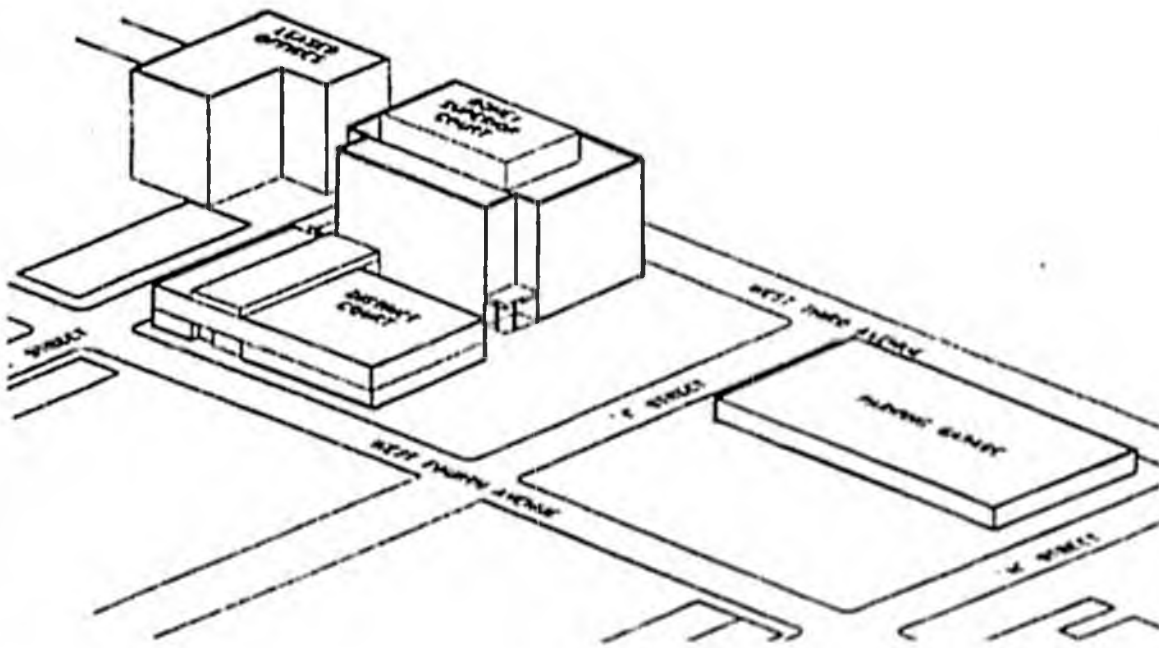
**THE COST OF POSTPONEMENT**

Postponing the ACS project would:

- \*adversely impact the efficient operation of the court system.
- \*delay the economic impact on the Anchorage economy unless equivalent money were spent in Anchorage by the state.
- \*not likely have an appreciable impact on the commercial office space market.
- \*delay the impacts of an additional \$11.5-14.5m on the state budget.

# Alaska Court System

## Anchorage Courthouse Expansion Project



Administrative Office of the Courts

March, 1989

## ANCHORAGE COURTHOUSE EXPANSION PROJECT

Through HB 110, the Alaska Court System is requesting \$3,000,000 to redesign a proposed addition to the Anchorage court facilities. The requested appropriation will provide funds for architects' fees to redesign the project into a structure of approximately 191,000 square feet, fees for the municipality plan check process and the costs of the bidding phase of the project. The project, as redesigned, will not provide for future court expansion; the project will only provide for current court needs, and assumes that the existing district court building will be demolished, and that no parking will be replaced.

The primary objectives of the Anchorage courthouse expansion project are to consolidate state court offices, and to correct spatial, functional and building code deficiencies in the current facility. The expansion project will provide for greater operational efficiency, increased safety for the public and employees, and greater public convenience.

When the Alaska Court System was created in 1960, the Anchorage court workload consisted of approximately 4,700 cases. At the time, the new court system was provided with the use of courtrooms in the then existing federal building and had administrative offices in the Lathrop building. In 1963, when the district court building was occupied, Anchorage case filings numbered approximately 9,000. In 1974, when the Boney Superior Court Building was occupied, Anchorage case filings amounted to 47,400. Since this last major expansion, the Alaska Court System has experienced a steady increase in caseload and staff.

By 1981, the creation of the Court of Appeals and the continued growth of Anchorage trial courts necessitated a move of the court's administrative offices to leased space away from the court buildings. Growth continued and in the 1987 warehouse space was rented to store case files, supplies and forms, in order to make available additional space within the court facility. In fiscal year 1988, 78,700 cases were filed in the Anchorage trial courts.

There are major deficiencies in both existing Anchorage court buildings. In particular, the significant increase in criminal offenders (see attachment 1), particularly violent felons, has created a need for a more secured prisoner circulation pattern than is possible to achieve in the present facilities. The proposed expansion facility will provide three separate circulation patterns: general public circulation; private circulation for court system staff, jurors and parties to litigation; and secured prisoner circulation including sallyport. This three-part circulation system, in conjunction with a security system, will provide a level of security that is impossible to achieve in the present buildings. It will greatly diminish the chance of prisoner escapes and other security breaches.

In the current facility, lack of space available for expansion has resulted in the fragmentation of growing departments which has disrupted work flow and has inconvenienced the public. Space deficiencies have necessitated the movement of essential support functions out of the court complex to leased space, resulting in further inefficiencies in court operations. In addition, the existing district court building does not conform to current fire codes and seismic requirements, and the mechanical and electrical systems are inadequate and difficult to remodel.

In 1981 the legislature appropriated funds to allow the court system to acquire land, to plan and design an expansion project and to remodel the existing superior court building. The court hired a nationally recognized courthouse space planner to develop a facility program for the expansion project, to include a calculation of the court's current and future space requirements. The planner's report projected a need for 350,000 additional square feet for current and future court needs, which formed the basis for the original design. The current request in HB 110 for funds to redesign the expansion project utilizes the original program report (with space requirements revised) and as much of the original building expansion design documents as possible.

#### The Redesign Decision

In the summer of 1988, the supreme court decided to reevaluate the Anchorage expansion project in light of Alaska's changed economic circumstances and reduced state budgets.

First, court staff obtained and evaluated all available state and national space standards to determine if the standards utilized for the original design program were in accord with the latest information available on efficient methods of court design and operation. This research confirmed the validity of the Alaska Court System standards. However, certain minor changes to the standards were made. A summary chart of the court standards is available.

Concurrently, staff developed a model to project space needs and applied the space standards adopted by the court to current staffing levels to produce the revised space requirements for the redesigned facility. (Summarized in attachment 2.)

A team of architects and engineers performed a technical evaluation of the district court building to determine its compliance with current building codes. Actual tests were made of the concrete structural members. These test results and analysis are contained within the report entitled "District Courthouse Evaluation", September 15, 1988. The major points are summarized in attachment 3.

Further, an evaluation was performed of both the district and the superior (Boney) buildings by National Center for State Courts staff, utilizing a nationally accepted checklist for court facility evaluation. The NCSC report evaluates how well justice functions are accommodated, as well as the physical condition of the building and its mechanical/electrical systems. The report is available.

All court departments also reviewed their space requirements as stated in the program and evaluated whether administrative solutions could be implemented to reduce the need for new space.

On an ongoing basis, the court system conducts evaluations in order to improve the efficiency of its operations through administrative means. Standing court committees examine court procedures, such as the rules for handling court exhibits, in order to develop systemic improvements. Special committees are assigned to examine areas of particular concern and to make recommendations to the supreme court. For example, the committee appointed to examine the management of the jury system has recently issued a report which made recommendations concerning the reduction of jury panel size, changes in voir dire process and improvements in jury administration. When appropriate, such information is used to assess space needs.

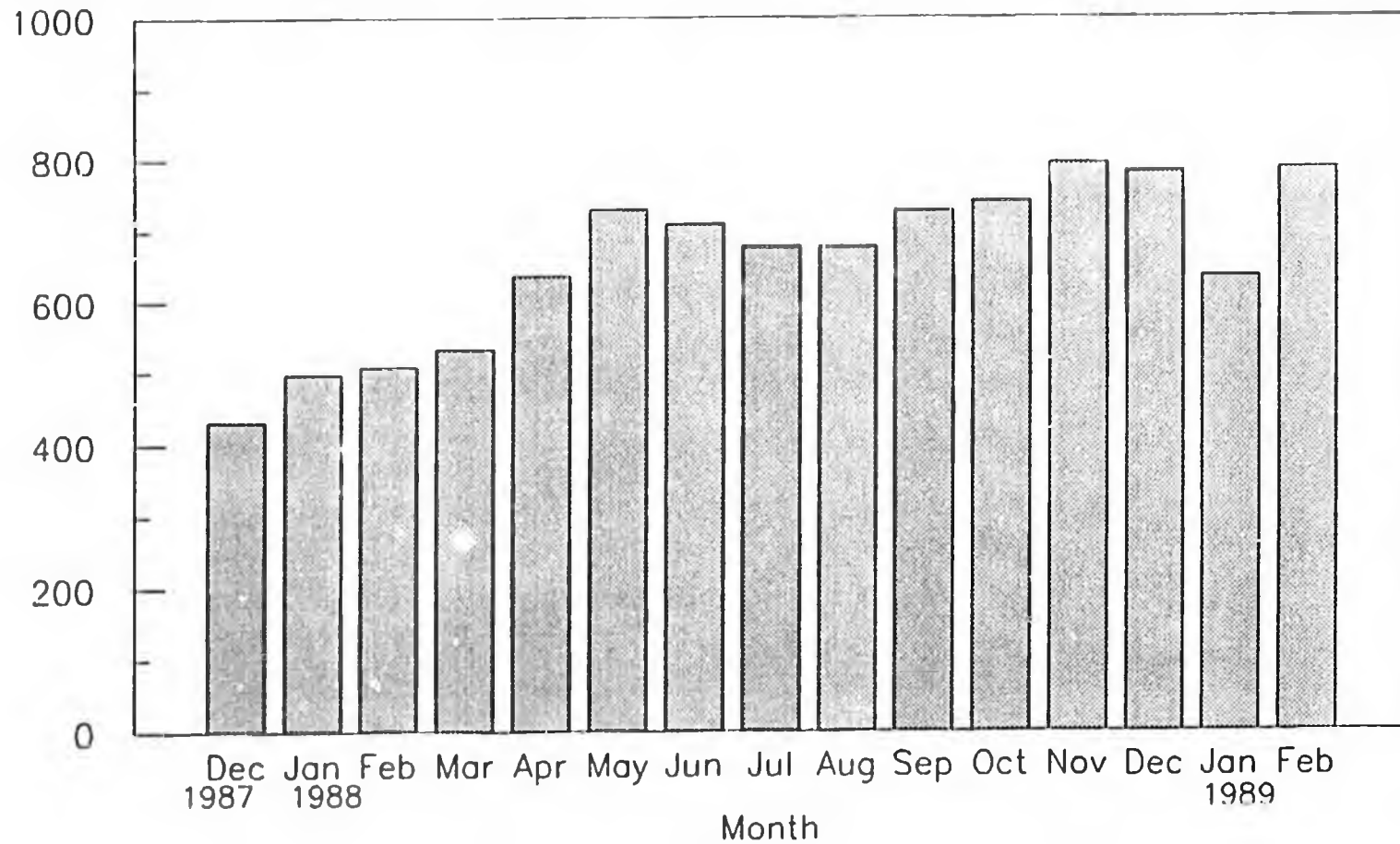
Utilizing the information gained as a result of this reevaluation effort, court staff developed a revised statement of space needs based upon current caseload and staffing conditions.

In conclusion, the appropriation requested through HB 110 will enable the Anchorage court to meet its most pressing current needs, as established through careful examination and evaluation of court operations and applicable space standards.

# Anchorage Courthouse Expansion Project Increase in Prisoner Escorts Alaska State Troopers - Judicial Services

Number of Prisoners

ATTACHMENT ONE



Month

Anchorage Courthouse Expansion Project  
Space Program Summary

Program Category	Existing Staff	Programmed Space	Existing Space	Space Deficit	Space Deficit	
					w/ Remodel	w/o Remodel
2-Supreme Court	20	12,745	13,289	(544)	(544)	510
3-Court of Appeals	16	4,965	3,438	1,527	1,527	1,864
4-Appellate Clerks Office	12	3,265	2,559	706	706	966
5-Superior Court	37	44,430	32,135	12,295	12,295	17,956
5-Superior Court - InCourt Clerks	17	2,130	2,217	(87)	(87)	279
6-District Court	15	21,395	20,535	860	860	6,921
6-District Court - InCourt Clerks	14	2,205	1,758	447	447	599
7-Probate	4	2,865	2,455	410	410	750
8-Family Court	12	8,585	5,650	2,935	2,935	3,517
9-Area Court Administrator	12	3,690	2,669	1,021	1,021	1,170
10-Traffic Court/Magistrate	19	5,275	3,593	1,682	1,682	1,760
12a-Clerk of Court	6	2,205	1,369	836	836	1,155
12b-Clerk Office - Criminal Section	16	2,690	2,310	380	380	380
12c-Clerk Office - Civil Section	12	3,010	2,175	835	835	835
12d-Clerk Office - Accounting	10	1,915	1,529	386	386	386
12e-Clerk Office - Appeals Section	4	1,145	730	415	415	445
12f-Clerk Office - Records	13	8,340	6,530	1,810	1,810	1,960
13-Transcript	7	2,475	1,598	877	877	877
14-Jury Assembly	3	5,700	2,388	3,312	3,312	3,372
15-Grand Jury	0	1,840	1,440	400	400	480
16-Coroner/Public Administrator	5	3,850	2,811	1,039	1,039	1,205
18-Alcohol Safety Action Program	13	2,815	2,380	435	435	435
19-Judicial Services	10	12,320	5,179	7,141	7,141	7,308
20-Municipal Warrants	6	2,565	1,071	1,494	1,494	2,445
21a-Administration-Director	15	6,085	4,698	1,387	1,387	1,774
21b-Administration-Personnel	6	1,400	1,011	389	389	459
21f-Administration-Micrographics	9	4,520	2,330	2,190	2,190	2,230
21g-Administration-Fiscal/Purchasing	11	2,030	1,870	160	160	276
21h-Administration-Technical	9	2,475	1,671	804	804	861
21i-Administration-Engineering	4	1,595	1,410	185	185	575
21j-Administration-Supply	8	7,535	5,155	2,380	2,380	3,415
22-Law Library	7	15,110	10,477	4,633	4,633	4,707
23-Building Support/M & O	4	11,000	1,258	9,742	9,742	9,742
<b>Net Space Needs</b>	<b>356</b>	<b>214,170</b>	<b>151,688</b>	<b>62,482</b>	<b>62,482</b>	<b>81,614</b>

Net Space Needs Satisfied by Rental Space

21a-Administration-Director	800	400	400	400	400
21f-Administration-Micrographics	2,500	2,500	2,500	2,500	2,500
21j-Administration-Supply	2,500	2,500	2,500	2,500	2,500

<b>Net Space Needs After Elimination of Rental Space</b>	<b>208,370</b>	<b>146,288</b>	<b>57,082</b>	<b>57,082</b>	<b>76,214</b>
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<b>Gross Space Needs (multiplier 1.50 of net space needs)</b>	<b>219,432</b>	<b>85,623</b>	<b>85,623</b>	<b>114,321</b>
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<b>Gross Space Needs If District Court Building is Replaced</b>	<b>162,973</b>	<b>162,973</b>	<b>191,671</b>
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<b>Gross Space Needed for Replacement Parking</b>	<b>51,670</b>
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ATTACHMENT THREE

District Courthouse Evaluation

September 16, 1988

The building: The "district courthouse" was constructed in 1952, and is located at 4th Avenue and K Streets, in Anchorage. It has 60,755 square feet of total area in three stories and a basement. The building is currently used for court proceedings, hearings, grand jury, judges' chambers, jury deliberation, court offices, printing, coroner, night court and traffic court.

The evaluation: The court system contracted for a structural evaluation of the district courthouse, to identify code deficiencies and hazardous conditions, and to estimate the costs of correcting these conditions.

Code Deficiencies and Hazardous Conditions: The evaluation identified a variety of structural problems: deficiencies under current seismic loading criteria (i.e., "A severe earthquake could cause serious damage or total collapse"); an inadequate fire alarm system; corridors and stairs without sufficient fire resistive protection; presence of asbestos; PCB's in light fixture ballasts, insufficient handicapped accessibility; dangerous, deteriorating and obsolete electrical system; inadequate emergency generation system; and lack of proper emergency and exit lighting.

Proposed solutions: The evaluation report discusses three options for addressing the concerns raised by the building's deficiencies:

- A. Option I includes no seismic improvements and provides only for the minimum code upgrades required by the Municipality of Anchorage if no significant remodeling is planned.

The cost of option I is estimated to be \$79,843 (based upon construction costs projected for 1989), or \$1.31 per square foot.<sup>1</sup>

- B. Option II includes work for correction of seismic deficiencies and removal of hazardous materials. With a renovation of this scale, most of the facility will be required to be brought up to current codes and standards.

The cost of option II is estimated to be \$3,325,658 (based upon construction costs for 1989), or \$123.58 per square foot.<sup>2</sup> This cost does not include the cost of relocation of all the functions housed in the facility for the period of the renovation, estimated to be approximately 15 months.

- C. Option III includes remodeling to make the building more functional, safe, and more easily maintained. It includes replacement of a grossly insufficient temperature and

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<sup>1</sup> DOT/PF has estimated the cost of option I to be \$400,000 or \$1.31 per square foot

<sup>2</sup> DOT/PF has estimated the cost of option II to be \$7,650,000, or \$123.58 per square foot

ventilation control system and the addition of sprinkler systems.

The cost of option III is not estimated in the evaluation. However, DOT/PF has conducted a review of the evaluation (see attached letter from William Snell dated December 30, 1988), and DOT/PF has estimated that the cost of option III could equal the cost of new construction.

Documentation: Appendices included in the report outline the tests conducted and approaches used during the architectural and structural evaluation.

Senate floor debate on May 11, 1984 on CSHB 653

page 81 of STATE  
CONSTITUTION MINUTES

Halford: Thank you Mr. President. Throughout this session, we've looked at various proposals for lease-purchases and their effect on future debts of the State in light of Constitutional Article Section 9 (attached file) dealing with State debt. Section 2 of this bill allows the Supreme Court to enter into a lease-purchase agreement for construction of a court facility in Anchorage. Of course, a lease-purchase agreement is a contract which then would require payments in the future of State funds. There's no revenue base, it's not a revenue bond or it's not a revenue issue. It appears to be a general obligation of the State once that lease purchase agreement is started and as I read Article 2, Section 8, it says "no state debt shall be contracted unless authorized by law for capital improvements and ratified by a majority of the qualified voters of the State who vote on the question." I think this is the same kind of question we've dealt with with regard to a lot of other lease purchase proposals only this one would be extremely interesting as one to end up in the Court system in trying to decide what the constitutional provision really means.

Rodey: Mr. President, if I could respond to the question that was raised by my colleague from Eagle River. This doesn't fall under the constitutional prohibition of a general obligation. The money has to be appropriated each year by the legislature. It is a contract as many contracts that the state enters into large and small. I think it's desirable from the point of view one, it provides my constituents, indeed our constituency with a court building which we very desperately need. We have many agencies of the court scattered throughout town. It doesn't promote the efficiency in justice and it doesn't serve the public. Also, the Court has a very good track record in terms of cost savings and efficiency. Their savings have been approximately 15% over similar DOT work and that's the kind of efficiency I like to see in government, particularly when it meets a need that we have in Anchorage. I think this is a very serious need.

Halford: Thank you Mr. President. I certainly have no problem with the facility or with the Court System's ability to operate their own leasing program. My concern is what is the difference in this action versus action to authorize a lease purchase of a building in Juneau, another building in Anchorage, or any other building? What is the effect on both the power of the legislature, and I think we've dealt with the power of the legislature here because the legislature is approving it. But what is the effect on the safeguard that the people

(JB)  
3/15/88

have to vote on those issues? I think we're making a very serious policy mistake here although I don't disagree with the purposes for which we're doing it.

Fischer (vic): Mr. President, I believe Senator Rodey responded to this. This is not a general obligation beyond one year. The annual lease purchase agreement entered into by the Court will be subject to appropriation of the funds by the legislature so that if after seven years, after one year, the legislature says no, the lease will have to be terminated and its really as simple as that.

Ray: I'm glad its simple to my colleague from Anchorage and its very simply not correct what he's saying because this is legislative approval written, ceded to and passed by the legislature giving the Court System the right to enter into lease purchase agreements for construction. So its, you're just handing them a check saying you go ahead and build you a court house in Anchorage. I don't doubt that a court house in Anchorage in needed but I still believe if you're going to do this, then you should allow the other branch of government, Administration, which is the one that really enters into lease purchase agreements for a considerable a vast amount of buildings throughout the State. Why do you pick out.. because its Anchorage. I wonder if it said Juneau if it would get the same consideration by this body.

Halford: I think the point still remains although the legislature could fails to appropriate the second year of lease, if in fact there is any value there, any portion of the purchase portion of the first year lease that is then lost, lost to the State, or if there is any penalty. That would also require an appropriation and by the fact that it requires an appropriation, which could be enforceable through the Court System, it is a debt of the State not approved by the people of the State.

Rodey: Mr. President, I can't resist rising to the comment by my good colleague from Juneau whom I sure made the remarks tongue-in-cheek. The Juneau Court House, which we see as we leave the capitol building here was funded through various mechanism: due to the great skill of the good Senator from Juneau when the ... in fact, it wasn't even approved by a bill, it was a mere resolution, actually an amendment to a resolution that did approve the Court House and one of the methods of funding was ASHA bonds. I think the court house in Juneau was needed, I think it received legislative scrutiny

at that time and I certainly would not have opposed it had I been in the legislature because I think it was needed and was a good project. On the other hand, I think we're doing this the proper way and it provides a great service to the people of Alaska.

Ray: Well, my colleague just validates what I said. Just a mere resolution was a lease purchase agreement and it said court facilities in Anchorage and Juneau and just by the adoption of the resolution, it confirmed and obligated the State to build it and they had to build it. That's the reason its there.

Kerttula: The ASHA situation versus the lease purchase under a different formula too is slightly separate program, gentlemen.

Josephson (?): Mr. President, it may be that the issue is how the contracts and leases are written. If they are written so that the court system's obligations to pay the owner for the annual occupancy fee is subject to appropriation from the legislature and neither the court as an agency nor the State is liable unless those appropriations are made, then there is no constitutional problem. If on the other hand, there is some right of the lessor to command payment whether there is an appropriation or not, then perhaps there is a problem but I don't think on its face a problem exists. It depends on how the documents are written.

Halford. Well then the question arises, is someone going to build a multi-million dollar building with the first year lease payment and nothing else? There is going to be some other consideration there, be it the effect of the political process, the effect of the legal process that may follow if the political process doesn't respond. But there's certainly got be some other considerations other than that simple first year appropriation.

Ray: Mr. President, I hope I'm not being naive, although my colleague thinks I'm being here. A lease-purchase signed by the court, the supreme court and if it ever came to a court case, whose going to try it? The legislature, are we going to try it? I don't think so and I think you would find that the court would find it was a valid agreement entered into and approved by the legislature through the passage of CSHB 653.

Sturgulewski: Mr. President, just a question to perhaps Senator Fischer might know on this. Under Section 1(a) where it allows

Supreme Court having authority over leasing, we just passed a bill dealing with certain leases having to come to the legislature for special action in \$1 million and excess and I'm wondering if this exempts then the system from having to conform to that bill should it pass.

Fischer: Mr. President, I don't think that would exempt the court system from falling under that legislation which hasn't moved anyway. But the principal part of that bill that we had before the State Affairs committee that the supreme court present any major lease or lease purchase agreement to the legislature which is in effect what they are doing here so that I believe they would be conforming to the intent and the letter of that bill.

Ray: There is agreement like that. There is no portion in law that says the supreme court has to do anything like what was just expressed by my colleague. I wonder if there is a fiscal note attached to this, an expected fiscal note, or a probably fiscal note or is it just make believe?

Josephson: The anchorage Court House, when it was first occupied after Statehood was on a lease basis and was subsequently acquired through a lease-purchase arrangement with the owner of that facility. I just mention that because the first legislature that was ever created which included some people who wrote this constitution, more people than we have now...

Kerttula: The second legislature

Josephson: The second legislature approved that arrangement and that's how we had the court house at 4th and K which later got expanded to include the Boney wing. What I'm saying is that this is not the first time this procedure has been done. This was done by the, some of the very people who wrote the Constitution and was how we got the State court house in the first place.

Kerttula: I was the only vote against it.

Ray: You mentioned very prominently Mr. President about ASHA bonds and that's how that building got built was through ASHA bonds and the second part of it and the major portion of it was built through ASHA bonds as was the one in Juneau which again, avoided the vote of the people, did not allow for the vote of the people either.

Halford: Well Mr. President, the fact that it was done before I still don't think really carries that kind of weight. I think the former governor was right when he stopped that process and forced those issues to go back to the voters. I think this one is particularly dangerous just because of the nature of the conflicts it brings up if we ever do find ourselves in .... (tape ends)

Halford (continued)... system on that question. I think that loads the question very poorly for the people of Alaska.

Ray: May I suggest that we hold this over to Mondays calendar.....

Monday, May 14

Halford: I just want to restate my objection to authorizing lease-purchase agreements. It has the potential of resulting in a debt of the State not approved by the voters as required by the Constitution.

money made, or credit be used,

it is, on its face, never, what is a interest, it seems of public pur- ivate businesses and "longevity oubtedly much go. Courts have public purpose. olding the con- hority against a

ill be served by the public credit, the unless it clearly reasonable basis in 376 P.2d 717;

ot be dedicated to n 15 of this article state participation rohibit the contin- ing upon the date ska.

n, or "earmark- lature would not of the day. The the second sen- v creation of the tions to the pro- convention dele- already in exist- igh receives pro- und construction. it is required by ng program. This 05.100, to which

Legal debate has surrounded the meaning of the phrase "proceeds of any state tax or license," in the first sentence. Did the authors of the constitution use the phrase to mean all state revenue, or did they want to exclude from the prohibition against dedication those state revenues that are not derived from a tax or license? The question became important when Alaska began to receive substantial income from oil lease bonuses and royalties, which are not proceeds from a tax or license.

An opinion of the attorney general of an early administration said that oil lease royalty income was outside the prohibition against earmarking in this section. A later opinion reversed this interpretation and held that the historical record of the convention made it clear that the delegates intended to bar the dedication of all state revenue, whether or not they derive strictly from a tax or license. Consequently, a constitutional amendment was required to create the Alaska Permanent Fund.

Note that the last sentence of Section 15 seems to permit the legislature to dedicate earnings of the Permanent Fund.

#### Section 8. State Debt

No state debt shall be contracted unless authorized by law for capital improvements and ratified by a majority of the qualified voters of the State who vote on the question. The State may, as provided by law and without ratification, contract debt for the purpose of repelling invasion, suppressing insurrection, defending the State in war, meeting natural disasters, or redeeming indebtedness outstanding at the time this constitution becomes effective.

(Amended in 82 to allow bonding for VA homes)

Except for meeting emergencies and paying public debts incurred during the territorial period, the legislature may incur debt only for capital improvements, and then only after approval by the voters. In the first twenty years of statehood, eighty-three bonding propositions have gone before the voters; seventy-four of these were ratified and nine rejected.

#### Section 9. Local Debts

No debt shall be contracted by any political subdivision of the State, unless authorized for capital improvements by its governing body and ratified by a majority vote of those qualified to vote and voting on the question.

Local governments are also required by the constitution to limit their debt to capital projects and to secure prior approval by the voters. Capital improvements are public works of a permanent character, such as streets, sewers, schools, libraries, and public utilities.

3/15/88  
MB (DOR)

Alaska State Building Authority  
State Lease Revenue Bonds  
FIN: Service to Maturity

FY	Bond # 01-A	Bond # 01-B	Bond # 01	Bond # 01-1	Bond # 01-2	Bond # 06	Bond # 07-1	Bond # 07-2	Bond # 08-2	Bond # 09	Bond # 10-2	Bond # 11	Total State Lease Revenue Bonds
88	\$ 245,000.00	\$ 270,000.00	\$ 225,000.00	\$ 175,000.00	\$ 80,000.00	\$ 270,000.00	\$ 70,000.00	\$ 545,000.00	\$ 615,000.00	\$ 475,000.00	\$ 945,000.00	\$ 660,000.00	\$ 4,575,000.00
89	250,000.00	285,000.00	240,000.00	185,000.00	85,000.00	290,000.00	75,000.00	580,000.00	650,000.00	505,000.00	1,000,000.00	705,000.00	4,850,000.00
90	265,000.00	300,000.00	255,000.00	195,000.00	90,000.00	310,000.00	80,000.00	620,000.00	690,000.00	535,000.00	1,060,000.00	750,000.00	5,150,000.00
91	275,000.00	315,000.00	270,000.00	205,000.00	95,000.00	330,000.00	85,000.00	660,000.00	735,000.00	565,000.00	1,120,000.00	775,000.00	5,450,000.00
92	285,000.00	330,000.00	285,000.00	220,000.00	100,000.00	355,000.00	90,000.00	705,000.00	780,000.00	605,000.00	1,190,000.00	840,000.00	5,785,000.00
93	-	345,000.00	305,000.00	230,000.00	105,000.00	-	95,000.00	750,000.00	830,000.00	640,000.00	1,260,000.00	900,000.00	5,460,000.00
94	-	-	325,000.00	250,000.00	110,000.00	-	-	-	-	-	1,335,000.00	955,000.00	2,975,000.00
95	-	-	345,000.00	-	110,000.00	-	-	-	-	-	-	1,015,000.00	1,475,000.00
	<u>1,330,000.00</u>	<u>1,845,000.00</u>	<u>2,250,000.00</u>	<u>1,460,000.00</u>	<u>780,000.00</u>	<u>1,555,000.00</u>	<u>495,000.00</u>	<u>3,860,000.00</u>	<u>4,300,000.00</u>	<u>3,325,000.00</u>	<u>7,910,000.00</u>	<u>6,620,000.00</u>	<u>35,720,000.00</u>
88	58,378.37	89,707.50	128,250.00	77,955.00	42,052.50	87,437.50	25,902.50	201,938.75	217,015.00	164,027.50	408,995.00	396,455.00	1,898,114.62
89	46,312.75	75,206.25	114,300.00	67,838.75	37,411.25	69,517.50	21,715.00	169,450.00	180,902.50	138,057.50	355,910.00	354,293.75	1,631,030.75
90	3,759.64	59,850.00	99,450.00	57,093.75	32,467.50	50,162.50	17,220.00	134,650.00	142,600.00	110,230.00	298,800.00	308,825.00	1,371,108.39
91	7,15	706.25	83,700.00	45,742.50	27,217.50	29,362.50	12,435.00	97,530.00	101,631.25	80,530.00	237,760.00	260,543.75	1,040,755.90
92	16	46,775.00	67,050.00	33,630.00	21,660.00	9,318.75	7,360.00	57,945.00	61,000.00	48,637.50	172,485.00	209,240.00	722,048.41
93	-	9,056.25	49,350.00	20,805.00	15,817.50	-	2,375.00	18,750.00	20,150.00	16,000.00	102,610.00	154,430.00	409,993.75
94	-	-	30,450.00	7,125.00	9,690.00	-	-	-	-	-	33,375.00	95,520.00	176,160.00
95	-	-	10,350.00	-	3,277.50	-	-	-	-	-	-	32,480.00	46,107.50
	<u>165,15.07</u>	<u>304,301.25</u>	<u>582,900.00</u>	<u>310,180.00</u>	<u>189,593.75</u>	<u>245,798.75</u>	<u>87,007.50</u>	<u>680,263.75</u>	<u>723,958.75</u>	<u>557,482.50</u>	<u>1,610,055.00</u>	<u>1,811,787.50</u>	<u>7,269,323.82</u>
88	308,318.37	364,707.50	358,250.00	257,955.00	127,052.50	362,437.50	100,902.50	751,938.75	837,015.00	644,027.50	1,358,995.00	1,061,455.00	6,533,114.62
89	301,312.75	365,206.25	359,300.00	257,828.75	127,411.25	364,517.50	101,715.00	754,450.00	835,967.50	618,057.50	1,360,980.00	1,064,293.75	6,541,035.25
90	301,759.64	364,850.00	359,450.00	257,093.75	127,467.50	365,162.50	102,220.00	759,650.00	837,600.00	650,230.00	1,363,820.00	1,063,825.00	6,555,108.39
91	300,597.15	363,706.25	358,700.00	255,742.50	127,217.50	364,362.50	102,435.00	762,510.00	841,631.25	650,530.00	1,362,760.00	1,060,543.75	6,550,755.90
92	296,967.16	361,775.00	357,050.00	258,630.00	126,660.00	369,318.75	102,360.00	767,945.00	846,000.00	658,637.50	1,367,485.00	1,054,240.00	6,567,048.41
93	-	359,056.25	359,350.00	255,805.00	125,817.50	-	102,375.00	773,750.00	855,750.00	651,030.00	1,367,660.00	1,059,430.00	5,919,993.75
94	-	-	360,450.00	262,125.00	124,650.00	-	-	-	-	-	1,373,375.00	1,055,520.00	3,176,160.00
95	-	-	360,450.00	-	123,277.50	-	-	-	-	-	-	1,052,480.00	1,536,107.50
	<u>31,510,995.07</u>	<u>32,179,301.25</u>	<u>32,872,900.00</u>	<u>31,805,180.00</u>	<u>31,009,593.75</u>	<u>31,825,798.75</u>	<u>31,207,500.00</u>	<u>34,570,263.75</u>	<u>35,053,958.75</u>	<u>33,912,482.50</u>	<u>39,555,055.00</u>	<u>38,471,787.50</u>	<u>343,379,323.82</u>

TOTAL DEBT SERVICE (Including \$5,000 Per Annum ASBA Fee)

STATE FACILITIES UNDER BONDED INDEBTEDNESS

BOND # 01-A 1966 ISSUE

FACILITY NAME	LOCATION
ELEMENTARY SCHOOL HOUSING	ANGOON
ELEMENTARY SCHOOL	ANGOON
GENERATOR/POWER BUILDING	ANGCON
COMBINED FACILITY	DELTA JUNCTION
HIGHSCHOOL ADDITION	DELTA JUNCTION
COMBINED FACILITY	DILLINGHAM
EMPLOYEE HOUSING UNIT	DILLINGHAM
HIGHWAY MAINTENANCE SHOP	GIRDWOOD
COMBINED FACILITY	GLENNALLEN
HIGHSCHOOL ADDITION	GLENNALLAN
MANUAL TRAINING SHOP	GLENNALLEN
WAREHOUSE AND GARAGE	GLENNALLAN
HIGHWAY MAINTENANCE SHOP	NELCHINA
HIGHWAY MAINTENANCE SHOP	NENANA
HIGHWAY MAINTENANCE SHOP	PAXSON
HIGHWAY WARM STORAGE	SOLDOTNA
EMPLOYEE HOUSING	TELLER
WAREHOUSE	TELLER
CLASSROOM & LIVING QUARTERS	TENAKEE SPRINGS
COMBINED FACILITY	TOK JUNCTION
EMPLOYEE HOUSING (8PLEX)	TOK JUNCTION
SCHOOL ADDITION	TOK JUNCTION
EMPLOYEE HOUSING (8PLEX)	VALDEZ
EMPLOYEE HOUSING (8PLEX)	VALDEZ
EMPLOYEE HOUSING (8PLEX)	VALDEZ

BOND # 01-B 1967 ISSUE

FACILITY NAME	LOCATION
HIGHWAY MAINTENANCE SHOP	BERNICE LAKE
COMBINED FACILITY	BETHEL
HIGHWAY MAINTENANCE SHOP HIGHWAY POWER HOUSE	CENTRAL CENTRAL
HIGHSCHOOL ADDITION	GLENNALLAN
HIGHWAY MAINTENANCE SHOP	HEALY
HIGHWAY MAINTENANCE SHOP	HOMER
S.E. CORRECTIONAL FACILITY	JUNEAU
COMBINED FACILITY HIGHWAY MAINTENANCE SHOP	KODIAK KODIAK
HIGHWAY MAINTENANCE SHOP	NINILCHIK

BOND # 03 1969 ISSUE

COURT AND OFFICE BUILDING	ANCHORAGE
COURT AND OFFICE BUILDING	FAIRBANKS

BOND # 04-1 1968 ISSUE

HIGHWAY MAINTENANCE HOUSING HIGHWAY MAINTENANCE SHOP	CHULITNA CHULITNA
FISH & GAME HEADQUARTERS BUILDING	COLD BAY
FISH & GAME HEADQUARTERS BUILDING	CORDOVA
HIGHWAY COMPLEX: LARGE VEHICLE/WARM STORAGE BUILDING MAINTENANCE SHOP MATERIAL TEST LABORATORY PUMPHOUSE SMALL VEHICLE STORAGE BUILDING	FAIRBANKS

FACILITY NAME	LOCATION
SUPPLY BUILDING	FAIRBANKS
HIGHWAY MAINTENANCE SHOP	KETCHIKAN
HIGHWAY MAINTENANCE SHOP	TAZLINA

BOND # 04-2 1968 ISSUE

HIGHWAY COMPLEX/OFFICE BUILDING	FAIRBANKS
FISH & GAME COMPLEX:	KING SALMON
HEADQUARTERS OFFICE BUILDING	
DORMITORY BUILDING	
WAREHOUSE/SHOP BUILDING	
FUEL STORAGE BUILDING	

BOND # 05-1 1970 ISSUE

ALCANTRA YOUTH CAMP	WASILLA
ALCANTRA WATER TREATMENT FACILITY	WASILLA
HIGHWAY COMPLEX:	ANCHORAGE
OFFICE BUILDING	
SMALL VEHICLE STORAGE BUILDING	
SUPPLY BUILDING	
TESTING LABORATORY	
LARGE VEHICLE STORAGE BUILDING	
HIGHWAY MAINTENANCE SHOP	CORDOVA
COMBINED FACILITY	FORT YUKON
HIGHWAY MAINTENANCE SHOP	PETERSBURG
DUPLEX/OFFICE	SAND POINT

BOND # 05-2 1970 ISSUE

LOCATION

ANCHORAGE

KETCHIKAN

BOND # 05-3 1970 ISSUE

OFFICE BUILDING

JUNEAU

BOND # 06 1971 ISSUE

COURT AND OFFICE BUILDING # 2

ANCHORAGE

BOND # 07-1 1972 ISSUE

DOUGLAS ISLAND BUILDING

DOUGLAS (JUNEAU)

BOND # 07-2 1972 ISSUE

COMMUNITY BUILDING  
COURT AND OFFICE BUILDING

JUNEAU  
JUNEAU

BOND # 08-2 1972 ISSUE

AVIATION BUILDING

ANCHORAGE

PIONEER HOME ADDITION #2

FAIRBANKS

ARCHIVES AND RECORDS BUILDING

JUNEAU

PUBLIC SAFETY BUILDING

SITKA

# **CORRECTION**

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

BOND # 05-2 1970 ISSUE

FACILITY NAME	LOCATION
COURT AND OFFICE BUILDING	ANCHORAGE
COURT AND OFFICE BUILDING	KETCHIKAN

BOND # 05-3 1970 ISSUE

STATE OFFICE BUILDING	JUNEAU
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BOND # 06 1971 ISSUE

COURT AND OFFICE BUILDING # 2	ANCHORAGE
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BOND # 07-1 1972 ISSUE

DOUGLAS ISLAND BUILDING	DOUGLAS (JUNEAU)
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BOND # 07-2 1972 ISSUE

COMMUNITY BUILDING	JUNEAU
COURT AND OFFICE BUILDING	JUNEAU

BOND # 08-2 1972 ISSUE

AVIATION BUILDING	ANCHORAGE
PIONEER HOME ADDITION #2	FAIRBANKS
ARCHIVES AND RECORDS BUILDING	JUNEAU
PUBLIC SAFETY BUILDING	SITKA

BOND # 09 1973 ISSUE

<u>FACILITY NAME</u>	<u>LOCATION</u>
REGIONAL OFFICE BUILDING	FAIRBANKS
REGIONAL OFFICE BUILDING	KODIAK
PIONEER HOME	PALMER

BOND # 10-2 1973 ISSUE

COMMUNICATION BUILDING	ANCHORAGE
PIONEER HOME	ANCHORAGE
PARKING STRUCTURE	ANCHORAGE
HIGHSCHOOL ADDITION #4	DELTA JUNCTION
COURT AND OFFICE BUILDING	KENAI
PIONEERS HOME	KOTZEBUE
COURT AND OFFICE BUILDING	VALDEZ

BOND # 11 1974 ISSUE

PARKING STRUCTURE	FAIRBANKS
PARKING STRUCTURE	JUNEAU
COURT AND OFFICE BUILDING	SITKA

HB

114

# HOUSE COMMITTEE REPORT

(7)

Date Referred: January 25, 1989

FURTHER REFERRALS: JUDICIARY

Date of Committee Action: \_\_\_\_\_

The STATE AFFAIRS Committee recommends that:

HOUSE BILL NO. 114 [LEG COUNCIL REVIEW OF COURT OPINIONS]  
"An Act relating to the examination of regulations and of opinions and decisions issued by courts and agencies on the law of the state."

[ ] be replaced with \_\_\_\_\_ [ ] the same title  
[ ] a new title

[ ] have attached amendment(s)

- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- fiscal impact
- zero fiscal note
- zero with analysis

APPROVES PREVIOUS:

- fiscal note(s) published: \_\_\_\_\_
- zero fiscal notes(s) published: \_\_\_\_\_

SIGNING DO PASS:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SIGNING OTHER THAN DO PASS:  
(Do Not Pass, No Recommendation, Amend)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Chairman's signature

Item 2

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: An Act relating to the examination  
of regulations and of opinions and decisions...  
Sponsor: House Judiciary  
Requestor: House State Affairs

Affect Agency Legislative Affairs Agency  
BRU: Legislative Council BRU  
Components Legal Services

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
Personal Services	0	0	0	0	0	0
Travel	0	0	0	0	0	0
Contractual	0	0	0	0	0	0
Supplies	0	0	0	0	0	0
Equipment	0	0	0	0	0	0
Land & Structures						
Grants, Claims						
Miscellaneous						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING: (THOUSANDS OF DOLLARS)

General Fund	0	0	0	0	0	0
Federal Fund						
Other						
TOTAL	0	0	0	0	0	0

POSITIONS:

Full-Time	0	0	0	0	0	0
Part-Time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (ATTACH A SEPARATE PAGE IF NECESSARY)

There would not be a fiscal impact for the Division of Legal Services under the Legislative Council BRU relating to adding examination of common law. However, it should be noted that the annual examination of administrative regulations and final decisions adopted under the Administrative

Prepared By: Pamela Stoops, Director Phone: 465-3850  
Division: Administrative Services Date: 2/6/89

Approved By: Warren Endicott, Executive Director  
Agency: Legislative Affairs Agency Date: 2/6/89

DISTRIBUTION (BY PREPARER)  
LEGISLATIVE FINANCE  
LEGISLATIVE SPONSOR

REQUESTOR  
OFFICE OF MANAGEMENT & BUDGET  
AGENCY (IES)

CONTINUATION OF FISCAL NOTE - HB 114

ANALYSIS (continued)

Procedure Act is not currently being done by Legal Services for Legislative Council.

The Administrative Regulation Review Committee is in charge of administrative regulations.

There are insufficient funds at this time to support the attorney time needed to fully examine the administrative regulations and Administrative Procedures Act. A substantial fiscal impact would be realized to comply with these aspects of this statute.

# Alaska State Legislature



House of Representatives  
House Judiciary Committee

P. O. Box V  
State Capitol  
Juneau, Alaska 99811  
~~(907) 586-2300~~  
465-4968, 465-4986

February 7, 1989

MEMORANDUM

TO: Rep. Red Boucher  
Chair, State Affairs Committee

FROM: Rep. Max Gruenberg and Rep. Peter Goll, Co-Chairmen  
Judiciary Committee

Re: Analysis of HB 114, relating to the examination  
of regulations and of opinions and decisions issued by  
courts and agencies on the law of the state

HB 114 would amend AS 24.20.065(a). That statute requires the legislative council to annually review judicial and administrative decisions and administrative regulations for their effect on state law. HB 114 amends the statute to include a review for the effects of court decisions on state common law (non-statutory) provisions.

Thank you for providing a prompt hearing on the bill.

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### HB 114: Leg Council Review of Court Opinions

- Item 1: HB 114 by The Judiciary Committee
- Item 2: Fiscal Note and Analysis
- Item 3: Memorandum from the Judiciary Committee  
February 7, 1989

HOUSE COMMITTEE ON STATE AFFAIRS

RECAP OF  
HB 114

Leg Council Review of Court Opinions

Received January 25, 1989  
by the Judiciary Committee

Heard February 14, 1989

Passed Out of Committee February 14, 1989  
5 Do Pass  
1 No Recommendation

HOUSE COMMITTEE REPORT

(7)

Date Referred: February 15, 1989

FURTHER REFERRALS:

Date of Committee Action: \_\_\_\_\_

The JUDICIARY Committee considered:

HB 114

HOUSE BILL NO. 114 [LEG COUNCIL REVIEW OF COURT OPINIONS]
"An Act relating to the examination of regulations and of opinions and decisions issued by courts and agencies on the law of the state."

RECOMMENDS:

- [ ] replacing with \_\_\_\_\_ [ ] the same title [ ] a new title
[ ] the attached amendment(s)
[X] do pass
[ ] do not pass
[ ] no recommendation
[ ] individual recommendations
[ ] additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- [ ] fiscal impact
[ ] zero fiscal note
[ ] zero with analysis

APPROVES PREVIOUS:

- [ ] fiscal note(s) published:
[X] zero fiscal notes(s) published:
LEMM SERVICES 2/15/89

SIGNING DO PASS:

Handwritten signatures: Peter J... Terry Martin, Cliff Davidson, Mike Hill, J. Ellis, Mike Davis

SIGNING OTHER THAN DO PASS: (Do Not Pass, No Recommendation, Amend)

Blank lines for signatures under 'SIGNING OTHER THAN DO PASS'

Handwritten signature of Peter J...
Chairman's signature

*House Judiciary  
Sponsored bill*

*now in H. File*

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: An Act relating to the examination  
of regulations and of opinions and decisions...  
Sponsor: House Judiciary  
Requestor: Senate Finance

Affect Agency: Legislative Affairs Agency  
BRU: Legislative Council BRU  
Components: Legal Services

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
Personal Services	0	0	0	0	0	0
Travel	0	0	0	0	0	0
Contractual	0	0	0	0	0	0
Supplies	0	0	0	0	0	0
Equipment	0	0	0	0	0	0
Land & Structures						
Grants, Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

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

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

FUNDING: (THOUSANDS OF DOLLARS)

General Fund	0	0	0	0	0	0
Federal Fund						
Other						
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

POSITIONS:

Full-Time	0	0	0	0	0	0
Part-Time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (ATTACH A SEPARATE PAGE IF NECESSARY)

Zero fiscal impact.

Prepared By: Pamela Stoops, Director  
Division: Administrative Services

*Pamela Stoops*

Phone: 465-3850  
Date: 4/10/89

Approved By: Warren Endicott, Executive Director  
Agency: Legislative Affairs Agency

*Warren Endicott*

Date: 4/10/89

DISTRIBUTION (BY PREPARER)  
LEGISLATIVE FINANCE  
LEGISLATIVE SPONSOR

REQUESTOR  
OFFICE OF MANAGEMENT & BUDGET  
AGENCY (IES)

HB

120

# HOUSE COMMITTEE REPORT

(7)

Date Referred: January 27, 1989

FURTHER REFERRALS: FINANCE

Date of Committee Action: 4/10/89

The JUDICIARY Committee recommends that:

HOUSE BILL NO. 120 [EXTEND BOARD OF GOVERNORS/AK BAR ASSOC.]  
"An Act extending the termination date of the Board of Governors of the Alaska Bar Association; and providing for an effective date."

[ ] be replaced with \_\_\_\_\_ [ ] the same title  
[ ] a new title

[ ] have attached amendment(s)

- [  ] do pass
- [ ] do not pass
- [ ] no recommendation
- [ ] individual recommendations
- [ ] additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- [ ] fiscal impact
- [  ] zero fiscal note
- [ ] zero with analysis

APPROVES PREVIOUS:

- [ ] fiscal note(s) published: \_\_\_\_\_
- [ ] zero fiscal notes(s) published: \_\_\_\_\_

SIGNING DO PASS:

[Signature]  
\_\_\_\_\_  
[Signature]  
\_\_\_\_\_  
[Signature]  
\_\_\_\_\_  
[Signature]  
\_\_\_\_\_  
[Signature]  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SIGNING OTHER THAN DO PASS:  
(Do Not Pass, No Recommendation, Amend)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

[Signature]  
Chairman's signature

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 HOUSE BILL NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act extending the termination date of the Board  
7 of Governors of the Alaska Bar Association; and  
8 providing for an effective date."

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

0 \* Section 1. AS 08.03.010(c)(19) is amended to read:

1 (19) Board of Governors of the Alaska Bar Association  
2 (AS 08.08.040) - June 30, 1993 [1989].

3 \* Sec. 2. This Act takes effect immediately under AS 01.10.070(c).  
4  
5  
6  
7  
8  
9  
0

**FISCAL NOTE**

**REQUEST:**

Revision Date: \_\_\_\_\_  
 Title: "Extending termination date of  
 Alaska Bar Association"  
 Sponsor: House Judiciary  
 Requestor: House Judiciary

Agency Affected: Alaska Bar Association  
 BRU: \_\_\_\_\_

Components: \_\_\_\_\_

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES		0	0	0	0	0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>		0	0	0	0	0

<b>CAPITAL</b>		0	0	0	0	0
----------------	--	---	---	---	---	---

<b>REVENUE</b>		0	0	0	0	0
----------------	--	---	---	---	---	---

**FUNDING: (Thousands of Dollars)**

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>		0	0	0	0	0

**POSITIONS:**

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

**ANALYSIS : (Attach a separate page if necessary)**

The Alaska Bar Association is wholly funded through dues paid by its members. No State funds are used for its operations.

Prepared by: Max Gruenberg Phone: 465-4968  
 Division: Rep. Gruenberg, Co-Chair Date: \_\_\_\_\_  
 House Judiciary Committee

Approved by Commissioner: \_\_\_\_\_ Date: \_\_\_\_\_  
 Agency: \_\_\_\_\_

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

**STATE OF ALASKA 1989 LEGISLATIVE SESSION  
FISCAL NOTE**

**REQUEST:** Bill Version: HB 120  
Publish Date: 1/27/89

---

Revision Date: Agency Affected: Alaska Court System  
Title: An act extending the termination date of the Board of Governors ... BRU: Trial Courts  
Sponsor: Judiciary Committee Components:  
Requestor: House Judiciary

EXPENDITURES/REVENUES:	(Thousands of Dollars)					
OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
Personal Services	.	.	.	.	.	.
Travel	.	.	.	.	.	.
Contractual	.	.	.	.	.	.
Supplies	.	.	.	.	.	.
Equipment	.	.	.	.	.	.
Land & Structures	.	.	.	.	.	.
Grants & Claims	.	.	.	.	.	.
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**CAPITAL** . . . . .

**REVENUE** . . . . .

FUNDING:	(Thousands of Dollars)					
General Funds	0.0	0.0	0.0	0.0	0.0	0.0
Federal Funds	.	.	.	.	.	.
Other	.	.	.	.	.	.
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**POSITIONS:**

Full-time	.	.	.	.	.	.
Part-time	.	.	.	.	.	.
Temporary	.	.	.	.	.	.

**ANALYSIS:** (Attach a separate page if necessary)

No fiscal impact.

Prepared by: *Jan Strandberg*, General Counsel Phone: 264-8228  
Division: Alaska Court System Date: 02/10/89  
Approved by: *Arthur H. Snowden, II*, Administrative Director Date: 02/10/89  
Agency: Alaska Court System

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

A PERFORMANCE REPORT ON THE  
BOARD OF GOVERNORS OF THE  
ALASKA BAR ASSOCIATION

February 3, 1989

Audit Control Number

41-1352-89-R

Chief Justice, Alaska  
Supreme Court

Warren W. Matthews

Alaska Bar Association

Executive Director

Deborah O'Regan

Board of Governors

President  
President-Elect  
Vice President  
Secretary  
Treasurer  
Member  
Member  
Member  
Member  
Member  
Member  
Member

Larry R. Weeks  
Jeffrey M. Feldman  
Ardith Lynch  
Andonia Harrison  
Lew M. Williams  
Daniel R. Cooper, Jr.  
Kenneth P. Eggers  
Elizabeth Kennedy  
Susan C. Orlansky  
Sandra Stringer  
Michael A. Thompson  
Alex. Young

# STATE OF ALASKA

**THE LEGISLATURE**  
BUDGET AND AUDIT COMMITTEE

AUDIT DIVISION  
P.O. BOX W  
JUNEAU, ALASKA 99811-3300

February 3, 1989

Members of the Legislative Budget  
and Audit Committee:

In accordance with the provisions of Titles 24 and 44 of the Alaska Statutes (sunset legislation), the attached report is submitted for your review.

A PERFORMANCE REPORT ON THE  
BOARD OF GOVERNORS OF THE  
ALASKA BAR ASSOCIATION

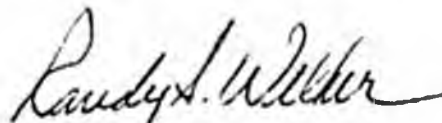
February 3, 1989

Audit Control Number

41-1352-89-R

The purpose of this audit is to examine the activities of the Board of Governors of the Alaska Bar Association (ABA, the Bar, or the Association) to determine if there is a demonstrated public need for its continued existence, and if the Board has been operating in an efficient and effective manner.

The audit was conducted in accordance with generally accepted governmental performance auditing standards. Audit scope and methodology will be discussed in the Report Objectives, Scope, and Methodology section of this report. Audit results may be found in the Report Conclusion, Findings and Recommendations, and Analysis of Public Need sections of this report.



Randy S. Welker, CPA  
Legislative Auditor  
Division of Legislative Audit

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## REPORT OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with the intent of Titles 24 and 44 of the Alaska Statutes (sunset legislation), we have examined the activities of the Board of Governors of the Alaska Bar Association to determine if there is a demonstrated public need for its continued existence, and if the Board has been operating in an efficient and effective manner.

Legislative intent requires consideration of this report during the legislative oversight hearings to determine whether the Board of Governors of the Alaska Bar Association should be reestablished. The law now specifies that the Board will terminate June 30, 1989 and have one year from that date to conclude its affairs.

The policy and audit approach utilized by the Division of Legislative Audit for performance reports can best be described as "audit by exception." This methodology focuses audit effort on areas of an auditee's operation that have been identified by a preliminary survey as having a high degree of probability for needing improvements.

Therefore, by design, finite audit resources are used to identify where and how improvement can be made and little time is devoted to reviewing well-run operations or programs. Consequently, this report highlights those areas needing improvement and does not emphasize those operations and programs that are properly functioning.

Discussion of the objectives, scope, and methodology of our review follows.

### Objectives

The Alaska Bar Association was created in 1955 as an instrumentality of the State to ensure that only qualified members of the legal profession of good moral character are allowed to practice in this State. The primary objective of this audit, therefore, is to determine whether that need for protection of the public continues to exist today.

The secondary objective is to review the major processes instituted by the Alaska Bar, namely the examination of prospective members, admission, and discipline procedures, for effectiveness in meeting the public need. The tertiary objective is to evaluate those processes in particular, and Bar operations in general, for economy and efficiency of operation.

## ORGANIZATION AND FUNCTION

The practice of law in the State of Alaska is regulated by the Board of Governors of the Alaska Bar Association. The Board consists of twelve members; nine attorneys elected by the active membership of the Association, and three non-attorney, public members appointed by the Governor and confirmed by the legislature in joint session.

The powers and duties of the Board are conferred by the Alaska Integrated Bar Act (AS 08.08) and the Alaska Bar Rules promulgated by the Supreme Court of Alaska.

The two primary functions of the Alaska Bar Association are the admission and discipline of its members. To accomplish these and other functions, the Association has a 1989 operating budget of \$1,277,501. Funding is provided primarily by membership dues (\$310 per year), admission fees, lawyer referral fees, continuing legal education, and interest income.

The Association's office is located in Anchorage and is staffed with twelve full-time employees and one temporary part-time employee.

## REPORT OBJECTIVES, SCOPE, AND METHODOLOGY

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The secondary objective is to review the major processes instituted by the Alaska Bar, namely the examination of prospective members, admission, and discipline procedures, for effectiveness in meeting the public need. The tertiary objective is to evaluate those processes in particular, and Bar operations in general, for economy and efficiency of operation.

## Scope and Methodology

Recent state and national trends in the legal profession (i.e., increases/decreases in numbers of: students attending law school, applicants for admission to practice, cases litigated, etc.) were analyzed to determine public need. Resources utilized to determine these trends included statistical information obtained from the Alaska Bar Association, the Alaska Court System, the American Bar Association, and assorted trade publications and HALT (an Organization of Americans for Legal Reform).

The review of Alaska Bar Association operations included all activities for calendar years 1986, 1987, and 1988. Examination and admission statistics (i.e., pass/fail rates, required passing scores, multi-state bar exam (MBE) scores, etc.) were obtained, reviewed, and compared with national statistics for consistency. Individual applicant records were reviewed for compliance with established Bar rules and procedures, accuracy of reporting, and timeliness of processing.

The attorney discipline process was analyzed for conformance with standards recommended by the American Bar Association and compared with procedures adopted by other states in the Pacific Northwest. A sample of individual discipline files were reviewed for compliance with established Bar rules and procedures, and timeliness. Current discipline statistics produced by the Alaska Bar were reviewed against historical data to determine trends in caseload and processing time.

Activities of the Board of Governors were examined through a review of meeting minutes and discussion with Association staff. Board composition and appointments were also reviewed for conformance with statutory requirements.

## ORGANIZATION AND FUNCTION

The practice of law in the State of Alaska is regulated by the Board of Governors of the Alaska Bar Association. The Board consists of twelve members; nine attorneys elected by the active membership of the Association, and three non-attorney, public members appointed by the Governor and confirmed by the legislature in joint session.

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The Association's office is located in Anchorage and is staffed with twelve full-time employees and one temporary part-time employee.

## REPORT CONCLUSION

This review contains policy issues raised as a result of our evaluation of the Board of Governors of the Alaska Bar Association. The final policy decisions affecting ABA are not within the scope of this report, but require legislative consideration. In debating these issues, the oversight committees should take into consideration the findings and recommendations and other information presented in this report so the potential impact of policy changes can be evaluated.

### Report Conclusion

In our opinion, the Board of Governors of the Alaska Bar Association should be reestablished. Since the first three attorneys were admitted to the practice of law in Alaska in 1884 membership has grown to the current level of 2,707. In addition to the number of applicants seeking admission to practice, court statistics indicate increasing numbers of lawsuits being filed annually. It would appear that more members of the general public are interacting with the legal profession and that financial resources both expended on and resulting from those interactions have greatly increased. These factors result in a greater potential for harm to the general public, thereby indicating a need for continuing governance of the profession.

The public interest requires that the public be secure in its expectation that those who are admitted to the bar are worthy of the trust and confidence clients may reasonably place in their attorneys. The Board of Governors provides this protection by reasonably assuring that persons licensed to practice law are qualified and by assuring that those licensed act in a competent and ethical manner through a sophisticated complaint investigation process.

Furthermore, nothing came to our attention during our review that showed the public's best interest would be better served by any different regulatory method.

Overall, it is our opinion that the Board operates in an effective and economical manner. However, we have made recommendations which, if implemented, will improve the efficiency and effectiveness of the Board's operations (see the Findings and Recommendations section of this report).

## FINDINGS AND RECOMMENDATIONS

### Recommendation No. 1

The Board of Governors of the Alaska Bar Association should comply with Alaska Bar Rules governing appropriate sanctions in attorney discipline cases and public access to disciplinary proceedings.

In January 1988 the Board of Governors acting as the formal disciplinary board of the Bar violated several Alaska Bar Rules governing disciplinary enforcement. In concluding a disciplinary matter before them which had been heard in formal public hearing, the Board imposed a sanction of private reprimand for a violation of Alaska Bar Rule 15(4) (failure to respond to a grievance).

The disciplinary rules which the Board is currently operating under became effective January 1985. These rules were changed upon recommendation of the American Bar Association evaluation of Alaska procedures. Pertinent changes included Rule 21 which states that after the filing of a petition for formal hearing, hearings held before either a hearing committee or the Board will be open to the public. Under the new Rule 16, private reprimands are no longer possible at the Board level except in cases where the respondent and discipline counsel agree by stipulation to that sanction. Since the stipulation precludes the need for a petition for formal hearing, the proceeding remains confidential.

Subsequent to the Board's decision which was reaffirmed after discipline counsel's appeal, proposed changes to Bar Rule 16 allowing private reprimand by the disciplinary board were forwarded to the Supreme Court. Those proposed changes were recently referred back to the Association for reconsideration with the following comment. "It seems somewhat incongruous to have the hearing process open to the public but to allow a private reprimand following such a hearing."

This Board action was indeed incongruous and has generated confusion among Association staff as to public access to the outcome of this proceeding. Since private reprimands are maintained as confidential documents which the public does not have access to, it appears the intent of the Board was to seal these records as confidential after they became public under current Bar rules.

We recommend that in all future proceedings the Board of Governors strictly conform with adopted Rules of Court applicable to disciplinary proceedings.

Recommendation No. 2

The Board of Governors of the Alaska Bar Association should recommend a proposed change to Alaska Bar Rules clarifying and limiting the Board's authority to engage in lobbying and other political activities.

The Alaska Bar Association is a mandatory bar in that in order to practice law in Alaska a lawyer must be a member in good standing of the Association. This requirement makes it difficult for an attorney to disassociate himself/herself from a political stance adopted by the Board of Governors or the Association. In light of this fact, the appropriateness of lobbying and other political activities by the Board or Association is questioned.

Some of the actions taken by the Board and Association which would be considered questionable include a decision to lobby in support of the continuation of the Alaska Women's Commission and a resolution to cease all business dealings with the Republic of South Africa and Libya in protest of current political conditions.

The lobbying issue has been debated nationally by other mandatory bar associations and has been the subject of court proceedings in other states. The Wisconsin Supreme Court has responded to the concern by permitting attorneys who object to the bar's legislative activities to reduce their membership dues by a certain percentage. The Washington State Supreme Court recently took a more direct approach by amending general Bar Rule 12 governing Washington State Bar Association general purposes to include the following.

(c) Activities Not Authorized. Among the specific actions which this rule and these Purposes do not authorize are:

(1) Taking positions on issues concerning the politics or social positions of foreign nations;

(2) Taking positions on political or social issues which do not relate to or affect the practice of law or the administration of justice;

(3) Supporting or opposing, in an election, candidates for public office.

We recommend the Board of Governors propose a similar amendment to Alaska's bar rules to clarify and limit activities of the Board to those appropriate to a mandatory bar.

Recommendation No. 3

The Board of Governors of the Alaska Bar Association should take prompt action to reduce both the number of backlogged disciplinary investigation cases and the length of time it takes to bring an investigation to a conclusion.

At the time of our last audit (October 31, 1984) the Alaska Bar Association had 41 cases pending disciplinary or other proceedings and an additional 165 cases under investigation. As of December 31, 1988, the Alaska Bar Association's discipline section had 18 cases pending disciplinary or other proceedings and an additional 160 cases under investigation. Although the actual number of open cases has decreased slightly, the average number of days open has increased.

An analysis of the status and length of time these cases have been open showed the following.

<u>Status</u>	-----1984-----		-----1988-----	
	<u>Cases</u>	<u>Avg. Days Open</u>	<u>Cases</u>	<u>Avg. Days Open</u>
<u>Pending Proceedings:</u>				
Pending Supreme Court	5	636	5	1,082
Pending Disc. Board	6	425	2	787
Pending Hearing Comm.	10	720	4	771
Pending Admonition	3	422	5	618
Pending Fee Arb.	12	291	1	985
Pending Conciliation	5	332	1	219
<u>Total</u>	<u>41</u>	<u>471</u>	<u>18</u>	<u>769</u>
<u>Under Investigation:</u>				
Investigator on Case	11	606	--	--
Special Counsel	1	1,662	1	871
Under Review (Prelim.)	113	188	25	85
Investigation (Formal)	40	342	134	375
<u>Total</u>	<u>165</u>	<u>261</u>	<u>160</u>	<u>333</u>

In addition, an analysis of cases closed during 1986, 1987, and 1988 was made. The information presented was produced by Association staff and includes grievances not accepted, closed by admonition, closed by reprimand, closed by suspension, closed by disbarment, and dismissed. The overall processing time represents the average time from the date a grievance is filed until either a determination is made to decline an investigation or the case is completed. The results follow.

### Analysis of Closed Cases

<u>Year</u>	<u>Number of Cases Closed</u>	<u>Overall Processing Time (Avg. Days Open)</u>
1986	251	207
1987	277	169
1988	244	187

Significant improvement was noted in reduction of case backlog during 1985, 1986, and 1987. During 1988, however, the backlog began to return to previous levels.

We encourage the Board to take prompt action to reduce the case backlog. In addition, we recommend that during the Board's deliberations of available options, consideration should be given to the length of time taken to conclude cases. It is in the best interest of ABA, the complainant, and the attorneys against whom the grievances were filed to take timely action in closing cases. The deterioration in processing time on open cases reflects, in part, the increase in complexity of cases coming before the Bar. However, a review of discipline files did reveal significant "dead" time in several proceedings. In one proceeding the dead time caused the investigation trail to become cold and resulted in the case being dismissed.

Therefore, we recommend that the Board's actions not only address the immediate need to reduce the case backlog, but also address the long-term staffing needs of the discipline section.

#### Recommendation No. 4

The Alaska Bar Association should comply with the public notice requirements of AS 08.08.075.

Chapter 52, SLA 1981 amended the Alaska Integrated Bar Act (AS 08.08) to bring meetings of the Board of Governors under the public meeting statutes, AS 44.62.310 and .312. More specifically, the Bar Act was amended to require that the public shall be given 30 days notice of meetings of the Board, except for emergency meetings.

Legislative Audit's 1984 audit of the Bar found that ABA had not publicly advertised meetings of the Board. Our current review found that the Board has properly noticed all face-to-face meetings of the Board, but has not publicly advertised teleconferenced meetings. A review of the minutes of these meetings demonstrated that these meetings were for the purpose of carrying out Board business which, in some cases, included discussion and voting on resolutions before that body.

We recommend that the Alaska Bar Association publicly advertise all meetings of the Board in conformance with applicable statutes and regulations.

Recommendation No. 5

The Alaska Bar Association should elect members of the Board of Governors in conformance with statutory guidelines.

AS 08.08.040-050 requires that members elected to the Board of Governors serve three-year terms subject to a specified triennial rotation. The purpose of this requirement is to maintain a level of experience on the Board which would be lost were a majority of members to rotate on any given year.

In recent years the Board of Governors has had several mid-term resignations. Statute allows the Board to appoint a replacement until the next annual election. The current rotation problem has arisen by election of a new Board member for a full three-year term rather than for the balance of the existing term.

We recommend that at the next annual meeting of the Alaska Bar Association those terms currently out of rotation be adjusted and, in the future, members elected to replace a resigning member be elected for the balance of the existing term.

## ANALYSIS OF PUBLIC NEED

### Limited Analysis

The following analyses indicate both positive and negative factors as they relate to the public need as defined in the "sunset" law. These analyses are not intended to be comprehensive, but to address those areas we were able to cover during our examination.

I. The extent to which the board, commission, or program has operated in the public interest.

- A. ABA admits applicants to practice law through a sophisticated examination process which was designed under consultation with a national expert. The exam has withstood a court challenge as to its adequacy as a test of competence. Admission is also contingent on the passage of the Multi-state Professional Responsibility Examination and a character investigation to determine if the applicant is of good moral character.

The Alaska Bar Association has recently developed proposed changes to the Alaska Bar Rules which will facilitate the determination of "good moral character." At this time those rules changes have not been adopted by the Supreme Court of the State of Alaska.

- B. Effective January 1, 1985 the Alaska Bar began admitting members under motion for reciprocity. That option is limited to attorneys in the active practice of law for five years in states with which Alaska has a reciprocal agreement.
- C. ABA has a lawyer discipline process for the investigation of complaints of ethical misconduct. Sanctions are imposed on those found to be in violation of the rules of conduct. This process was developed through a cooperative effort of the Supreme Court, the Board of Governors, the ABA staff, and a review team from the American Bar Association's Standing Committee on Professional Discipline.

In response to the American Bar Association's recommendation, and to alleviate public concern that attorney discipline is not taken seriously by ABA, discipline rules provide that once a petition for formal hearing is filed, the disciplinary proceedings become open to the public.

- D. ABA provides public notice of any attorney who has been disbarred or suspended.
- E. In addition to the three public members who serve on the Board of Governors, the Board has also appointed a total of 34 non-attorney individuals to serve on disciplinary hearing committees and fee arbitration panels throughout the State.
- F. If a complaint received by ABA does not constitute misconduct on the part of an attorney, but rather is primarily concerned with a fee dispute, ABA offers a fee arbitration process. This process provides for the dispute to be arbitrated by a third-party panel consisting of two attorneys and one public member.

Similarly, ABA offers a conciliation process to attempt to resolve disputes between attorneys and clients where the dispute is neither fee- nor misconduct-related. Failure by an attorney to participate in good faith in the conciliation process may be grounds for disciplinary action.

- G. ABA operates an attorney referral service, funded by subscribing attorneys, whereby anyone from around the State or from outside the State can call a toll-free number and receive the names of three attorneys who practice law in certain disciplines. Subscribing attorneys agree to provide referred clients the first half hour of consultation at a reduced rate of \$35. (See Appendix D for the number of referral calls received by discipline.)
  - H. ABA maintains a Client Security Fund for the purpose of making reimbursement to clients of attorneys who have suffered non-insured losses of money, property, or other things of value as a result of a dishonest act by an attorney. A portion (\$10) of each ABA member's annual dues is deposited in the Fund.
  - I. ABA jointly sponsors with the Alaska Legal Services Corporation the Alaska Pro Bono Program which involves attorneys in the delivery of free legal services to low-income Alaskans.
- II. The extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personnel matters.

A. ABA has been impeded by the absence of Bar Rules governing the degree to which the Board of Governors may be involved in lobbying and other political activities (see Recommendation No. 2). They have also been impeded by the absence of guidelines as to "good moral character" which, as noted in I.A. above, proposed changes to the Bar Rules have been drafted, but have not yet been adopted.

B. The operations of the Board are enhanced by a substantial budget funded virtually entirely by the ABA membership through dues, admission fees, continuing legal education, lawyer referral fees, conventions, and interest income. The 1989 budget totals \$1,277,501. (See Appendix A for a schedule of ABA revenues and expenditures.)

III. The extent to which the board, commission, or agency has recommended statutory changes which are generally of benefit to the public interest.

A. The Board has not recommended any statutory changes during our three-year audit test period. However, the Board's involvement in the process of evaluating and revising the Alaska Bar Rules governing Bar Association policies and procedures has been a dynamic one.

IV. The extent to which the board, commission, or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service which it has provided.

A. ABA is enhanced by an unprecedented involvement of the membership (in excess of one half) in its operations. That involvement may take the form of service on one of the eight standing committees or four bar rules committees. It may also take the form of participation in a section (group of members with similar specialization (i.e., bankruptcy law, criminal defense, etc). Each section is responsible for monitoring the law, suggesting revisions, and reporting annually to the membership. It may also take the form of participation in adjunct organizations (such as the Alaska Pro Bono Program) or special projects (such as the Statewide Lawyer Referral Service).

B. ABA publishes all proposed changes to the Alaska Bar Rules in its quarterly publication The Alaska Bar Rag which is distributed to all members of the Association. Members are asked to submit any and all comments on those proposed rule changes for review by the Board.

- V. The extent to which the board, commission, or agency has encouraged public participation in the making of its regulations and decisions.
- A. As previously noted, in addition to the three public members who serve on the Board of Governors, the Board has also appointed a total of 42 non-attorney individuals to serve on disciplinary hearing committees and fee arbitration panels throughout the State.
  - B. ABA has publicly advertised face-to-face meetings of the Board of Governors in major newspapers and the Alaska Bar Rag. They have not advertised teleconferenced meetings at Association business has been conducted (see Recommendation No. 4).
- VI. The efficiency with which public inquiries or complaints regarding the activities of the board, commission, or agency filed with it, with the department to which a board or commission is administratively assigned, or with the Office of the Ombudsman have been processed and resolved.
- A. ABA is an instrumentality of the State and not administratively assigned to any department. Five complaints have been filed against it with the Office of the Ombudsman during the last three years. Investigation into complaints filed with the Ombudsman have been somewhat stymied by a disagreement with ABA as to whether they have jurisdiction over it.
  - B. ABA has adopted rules governing appeal procedures for both the disciplinary and examination/admission processes. As noted in Recommendation No. 3, resolution of disciplinary proceedings in 1988 averaged a processing time of 187 days. ABA received two appeals of the July 1988 bar exam results which were released in November of that year. Both appeals were heard at the January 1989 meeting of the Board of Governors.
- VII. The extent to which a board or commission which regulated entry into an occupation or profession has presented qualified applicants to serve the public.
- A. We found no instances where the Board had licensed unqualified applicants.

- B. Although many complaints are filed against attorneys, approximately fifteen percent result in sanctions against those attorneys. This represents sanctions against approximately one percent of the active membership of the Alaska Bar Association annually.
- C. The Alaska Bar Association offers a continuing legal education program to its membership and also maintains an education library.
- D. ABA sponsors and promotes the LEXIS program, a computer-assisted legal research service.

VIII. The extent to which state personnel practices, including affirmative action requirements, have been complied with by the board, commission, or agency to its own activities and the area of activity of interest.

- A. Nothing came to our attention that showed the Board was in violation of any affirmative action or hiring requirements.
- B. The Board has on several occasions voiced concern over the low minority pass rate of the Alaska Bar Exam. A national consultant on bar examinations was asked to review the exam in 1986 and found it not to be unusually biased. He recommended the problem be corrected through tutoring and remedial programs. At their June 1988 meeting the Board of Governors resolved to ask the Alaska Bar Foundation to develop a scholarship program for minorities; and to resurrect the Continuing Legal Education Opportunities Committee to tutor minority applicants.

IX. The extent to which statutory, regulatory, budgeting, or other changes are necessary to enable the agency, board, or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

Please refer to the previous section, Findings and Recommendations.

APPENDIXES

APPENDIX A

BOARD OF GOVERNORS  
ALASKA BAR ASSOCIATION  
REVENUES COMPARED WITH EXPENSES  
For the Calendar Years 1986, 1987, and 1988  
(Note 1)

	<u>1986</u>	<u>1987</u>	<u>1988</u>
<u>Revenues</u>			
Membership Dues	\$ 677,753	\$ 705,347	\$ 697,310
Admission Fees	148,575	105,675	94,875
Cont. Legal Ed.	122,549	112,596	140,318
Lawyer Refer. Fees	53,361	51,836	55,883
Annual Meeting	33,635	31,633	73,415
Interest on Invest.	82,399	75,687	59,772
Lexis Service	-0-	46,072	15,637
Other	100,332	65,606	92,653
<u>Total Revenues</u>	<u>1,218,604</u>	<u>1,194,452</u>	<u>1,229,863</u>
<u>Expenses</u>			
Admissions	150,832	151,686	136,905
Board of Governors	43,766	34,382	25,923
Discipline	286,714	281,488	294,600
Administration	251,004	253,791	255,241
Lawyer Referral Svc.	31,715	31,740	33,993
Cont. Legal Ed.	144,126	168,345	171,077
Annual Meeting	34,750	38,045	58,825
Fee Arbitration	30,888	41,002	38,896
The Bar Rag	36,468	39,688	35,335
Alaska Law Review	22,000	25,000	26,500
Lexis Service	-0-	58,074	19,488
Other	76,002	29,274	28,780
<u>Total Expenses</u>	<u>1,108,265</u>	<u>1,152,515</u>	<u>1,125,563</u>
<u>Other Financing Sources (Uses):</u>			
Loss on Sale of Investments		<u>(47,553)</u>	
<u>Excess (deficit) of Revenues over Expenses and Other Financing Uses</u>	<u>\$ 110,339</u>	<u>\$ (5,616)</u>	<u>\$ 104,300</u>

Note 1: The 1986 and 1987 revenue and expense information was taken from audited financial statements of ABA. The 1988 information was obtained from the accounting records of ABA and has not been audited.

APPENDIX B

BOARD OF GOVERNORS  
ALASKA BAR ASSOCIATION  
DISCIPLINE STATISTICS  
(Note 1)

Disposition of Cases Closed  
During 1986, 1987, and 1988

<u>Disposition</u>	<u>1986</u>	<u>1987</u>	<u>1988</u>
Disbarment by Supreme Court	2	1	0
Suspension by Supreme Court	2	0	2
Public Censure by Supreme Court	0	0	0
Public Reprimand by Disciplinary Board	-	-	1
Private Reprimand by Disciplinary Board	9	0	2
Private Admonition by Discipline Counsel	17	9	23
Dismissed	<u>109</u>	<u>111</u>	<u>74</u>
<u>Total Closed Cases</u>	<u>139</u>	<u>121</u>	<u>102</u>

Status of Cases Open  
as of December 31, 1988

<u>Status</u>	<u>Cases</u>
Attorney on Probation	8
Short Term Suspension	0
Pending Supreme Court	5
Pending Disciplinary Board	2
Pending Hearing Committee	4
Pending Admonition	5
Pending Fee Arbitration	1
Pending Conciliation	1
Held in Abeyance	4
Special Counsel Investigation	1
Filed/Under Review	25
Under Investigation	<u>134</u>
<u>Total Open Cases</u>	<u>190</u>

Note 1: The information in this Appendix was obtained from statistical summaries prepared by ABA's discipline section.

Note 2: All numbers reflect individual complaints filed and not the number of attorneys under investigation.

APPENDIX C

BOARD OF GOVERNORS  
ALASKA BAR ASSOCIATION  
BAR EXAMINATION AND ADMISSION STATISTICS  
For Calendar Years 1986, 1987, and 1988  
(Note 1)

Bar Examination

	<u>Number Taking Exam</u>	<u>Number Passing Exam</u>	<u>Percent Passing Exam</u>
February 1986 Exam	102	70	68%
July 1986 Exam	106	66	62%
February 1987 Exam	78	58	74%
July 1987 Exam	76	48	63%
February 1988 Exam	58	42	72%
July 1988 Exam	84	52	61%

Admission Under Motion for Reciprocity

<u>Year</u>	<u>Number Admitted</u>
1986	16
1987	8
1988	10

Note 1: The information in this Appendix was obtained from statistical summaries prepared by the Alaska Bar Association.

APPENDIX D

BOARD OF GOVERNORS  
ALASKA BAR ASSOCIATION  
ATTORNEY REFERRAL CALLS RECEIVED  
For Calendar Years 1986, 1987, and 1988  
(Note 1)

<u>Area of Discipline</u>	<u>1986</u>	<u>1987</u>	<u>1988</u>
Administrative	214	235	274
Admiralty	33	32	31
Arts	1	0	7
Bankruptcy	505	429	373
Commercial	505	345	292
Construction	29	19	14
Consumer	383	559	632
Discrimination	100	94	60
Eminent Domain	9	10	12
Environmental	6	3	3
Family	2,213	2,619	2,705
Felony/Misdemeanor	808	702	692
Foreign Language	1	2	10
Immigration	70	82	20
Insurance	122	92	89
Labor Relations	461	464	562
Landlord/Tenant	286	322	334
Malpractice	155	158	202
Mining	6	9	14
Negligence	732	729	873
Patent/Copyright	128	162	157
Public Interest	1	4	-
Real Estate	504	718	706
SSI Cases	2	40	22
Tax	89	102	103
Traffic	289	183	117
Trust/Wills/Estates	230	247	285
Workers' Compensation	189	216	273
<u>Total</u>	<u>8,071</u>	<u>8,577</u>	<u>8,855</u>

Note 1: The information in this Appendix was obtained from statistical summaries prepared by ABA.

APPENDIX E

BOARD OF GOVERNORS  
ALASKA BAR ASSOCIATION  
MEMBERSHIP ON ABA COMMITTEES  
February 3, 1989

Committee	<u>Attorney Members</u>	<u>Public Members</u>	<u>Total Members</u>
<u>Board of Governors</u>	<u>9</u>	<u>3</u>	<u>12</u>
<u>Standing Committees</u>			
Bar Polls and Elections	8	-	8
Continuing Legal Education	12	-	12
Ethics	12	-	12
Historians	10	-	10
Law Related Education	17	4	21
Statutes, Bylaws & Rules	12	-	12
<u>Total Standing Committees</u>	<u>71</u>	<u>4</u>	<u>75</u>
<u>Bar Rule Committees</u>			
Law Examiners	29	-	29
Disciplinary Hearing:			
First District	10	2	12
Second & Fourth Districts	8	3	11
Third District	25	8	33
Conciliation Panels:			
First District	4	-	4
Second & Fourth Districts	4	-	4
Third District	8	-	8
Attorney Fee Review:			
First District	15	6	21
Second & Fourth District	10	2	12
Third District	36	13	49
Client Security Fund	6	-	6
<u>Total Bar Rule Committees</u>	<u>155</u>	<u>34</u>	<u>189</u>
<u>Other Adjunct Involvement</u>			
American Bar Assoc. Delegate	1	-	1
AK Assoc. of Legal Assistance	1	-	1
AK Bar Foundation	5	-	5
AK Code Revision Commission	1	-	1
AK Comm. on Jud. Conduct	3	-	3
AK Judicial Council	3	-	3
AK Law Review	3	-	3
AK Legal Service Corp.	17	-	17
Ninth Circuit Judicial Conf.	5	-	5
Rocky Mountain Mineral Law Foundation	1	-	1
Bar Rag	16	-	16
Tutors	11	-	11
<u>Total Other Involvement</u>	<u>67</u>	<u>-</u>	<u>67</u>
<u>Total Committee Membership</u>	<u>302</u>	<u>41</u>	<u>343</u>

APPENDIX F

BOARD OF GOVERNORS  
ALASKA BAR ASSOCIATION  
GRIEVANCES FILED BY CATEGORY  
For Calendar Years 1986, 1987, and 1988

<u>Grievance Category</u>	<u>1986</u>	<u>1987</u>	<u>1988</u>
Trust violations (embezzlement, conversion, withholding client's property)	6	11	9
Conflict of Interest	13	15	9
Neglect (failure to perform, delay)	39	44	35
Relationship with client (disclosing confidential information, improper withdrawal, abandonment, failure to protect interest of client).	24	23	7
Misrepresentation/Fraud	10	13	11
Excessive Fees	1	1	3
Interference with justice	32	35	34
Improper advertising and solicitation	6	2	0
Criminal conviction	0	0	1
Personal behavior	1	0	2
Willful failure to cooperate with discipline authorities	0	0	0
Medical incapacity	0	0	0
Incompetence	0	0	0
Other	<u>1</u>	<u>0</u>	<u>1</u>
<u>Total Grievances by Category</u>	<u>133</u>	<u>144</u>	<u>112</u>

ALASKA BAR  
ASSOCIATION

Randy S. Welker  
Legislative Auditor  
Division of Legislative Audit  
Pouch W  
Juneau, AK 99811

March 9, 1989  
MAR 13 1989  
LEGISLATIVE  
AUDIT

Dear Mr. Welker:

This letter is written to respond to the recommendations contained in the Division of Legislative Audit's preliminary performance report on the Board of Governors of the Alaska Bar Association. It is my understanding that the Division's recommendations and this response will be contained in your final report to the Alaska Legislature's Budget and Audit Committee.

Let me say that I appreciate the positive comments about the Bar's lawyer referral, pro bono and CLE programs. We have worked hard to have increased member participation and public access and it is gratifying to have you acknowledge those improved aspects. We understand that it is your function to point out ways that we can improve and accept your report in that spirit. In response to your specific recommendations:

Recommendation No. 1: The Legislative Auditor has questioned the Board of Governor's action in a disciplinary matter in which the Board imposed a private reprimand following a public hearing. The Board subsequently recommended to the Alaska Supreme Court proposed changes to Alaska Bar Rules 10(c) and 16(a) which would allow a private reprimand to be imposed by the Board. The court referred the matter back to the Board for reconsideration before they discussed the proposal.

Currently the Bar Rules provide that the Board can issue a private reprimand only if discipline counsel and the attorney stipulate to that discipline and that once imposed, this information is not released to the public. In their decision to issue a private reprimand in the referenced matter, the Board recognized the incongruity of allowing a private reprimand following a public hearing. However, their desire was to make a distinction in the severity of discipline imposed. The Board's position was that the public would have access to the outcome of this discipline matter, but the Board would not publish a notice regarding the imposition of discipline.

Randy S. Welker  
March 9, 1989  
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At the January 19-21, 1989 Board of Governors meeting, the Board discussed the proposed rule changes and is attempting to work out a tenable solution. The Board directed discipline counsel to review the Discipline Rules and submit proposed rule changes which would delete the terms "public" and "private" wherever the rules refer to reprimands. The result of this proposal would give the Board the authority to impose a reprimand either after hearing or by stipulation of discipline counsel and the attorney. This would give the Board the flexibility when they issue a reprimand to determine the level of severity of the discipline imposed. After a public hearing the Board could impose a reprimand that would be public, without requiring publishing a notice in the Bar Rag.

The Board does recognize that this is an area which needs to be worked out and they will most likely be recommending proposed changes to the Bar Rules following the March Board meeting.

Recommendation No. 2: The Board has recognized for several years the problems associated with a mandatory bar association taking a formal position on political issues, with which members of the Association may disagree. In 1986, this matter arose with the issue of tort reform. The Board of Governors decided that it was not appropriate for them as a Board to take a position on tort reform. Instead, the Board sponsored a public hearing and invited speakers from various sides of the issue to make presentations.

The Association has, in the past couple of years, occasionally taken positions on political issues. In 1988 the Board voted to support the continuation of the Alaska Women's Commission, and the membership voted at the annual business meeting in 1986 to cease doing business with South Africa and Libya. While the South Africa/Libya resolution was done somewhat tongue-in-cheek, the resolution supporting the Women's Commission was serious and adopted after some discussion of the appropriateness of the action.

The court cases around the country which have considered the question of lobbying by mandatory bar associations have generally stated that bars may lobby or take positions on political issues, provided they make some provisions for not spending or refunding that portion of the dues of a member who may disagree with the bar's position. Several bar associations will refund, upon request and on a pro rata basis, that portion of bar dues spent by the bar on lobbying.

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March 9, 1989  
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The Alaska Bar Board of Governors has not gone beyond passing a resolution on political issues and has no plans to actively lobby on such issues. The Bar is aware that the Washington State Bar Association has a provision which lists appropriate lobbying areas for them (Washington is also a mandatory bar association.) The Board agrees that it is a good idea to focus on this question and determine appropriate areas on which the Board could take positions. The Board of Governors will be reviewing the provisions listed by Washington and may recommend changes to the bylaws which would cover the question of lobbying and taking positions on political issues.

Recommendation No. 3: The Board of Governors has regularly focused its attention on the discipline process and taken steps to reduce the number of backlogged discipline cases and the amount of time it takes to bring cases to a conclusion.

In the winter of 1985, the Board of Governors directed discipline counsel to review their caseload and determine the status of and probable disposition of each case and report to the Board at the mid-March meeting. The staff was specifically instructed to concentrate on those cases, especially the older cases, and resolve those cases which could be resolved. By the end of the first quarter of 1986, the discipline caseload was at its lowest point of 125 open cases.

By the end of the second quarter of 1987, the discipline caseload had edged up to 156. The Board analyzed the caseload to determine why the caseload was gradually increasing and to look for possible solutions. In August of that year, the Board contracted with a former discipline counsel to handle some of the more routine discipline cases on a part-time basis. With the assistance of the contract discipline counsel, the caseload level through the first half of 1988 remained about the same, even though the total number of new cases initiated and total grievances went up.

In October 1988, the Board of Governors hired an additional half time assistant discipline counsel. The hiring of this staff person is an indication of the Board's commitment of the Bar's resources to reduce the caseload and processing time.

In 1988, in addition to its regular monitoring of the discipline process, the Board requested an analysis of the discipline caseload which reflected the average processing time for cases closed, cases dismissed, and cases not accepted for investigation after screening for the years 1986 and 1987. This analysis, which is reported on page 10 of the preliminary

Randy S. Welker  
March 9, 1989  
Page 4

report, reflected an average time (date filed to disposition) of 207 days for 1986 and 169 days for 1987. The analysis for 1988 shows an average of 187 days.

In reviewing the processing time, discipline counsel believes that the Bar is dealing with a greater number of more complex and more serious cases than several years ago. There have been an increased number of hearings over the past four years. The formal hearing process requires a considerable investment of time by discipline counsel and staff in preparing for hearing, conducting the hearing itself, and then preparing the necessary record and briefing for the Board and the Supreme Court. Thus, the average time to process a case is significantly increased with more cases going to hearing and on to the Board and to the Court.

Another factor which increases the processing time is the failure of attorneys to respond to grievances opened by discipline counsel for investigation. An attorney's non-response is itself a grievable offense, which must be dealt with either before or with the underlying grievance itself. There seem to be more of these non-responses as economic times get hard. Finally, once the case is filed with the Court, the case comes within exclusive control and processing guidelines of the Court.

The Board of Governors recognizes that the discipline caseload is an ongoing priority, as demonstrated by the Board's efforts over the years to take action to manage the caseload. We believe the recent hirings to be a positive step to meet this continuing problem.

Recommendation No. 4: The Board of Governors has conscientiously complied with the statutory requirement to give 30 days public notice of its regularly scheduled meetings. The Board has generally found it necessary to call one or two unscheduled conference call meetings a year. Conference call meetings are usually called to deal with matters which cannot wait until the next regularly scheduled Board meeting. For example, in 1988 the Board called conference call meetings to arrange hearings in two admission appeals and to decide on the purchase of a new computer system before the manufacturer's deadline.

The statute does grant exemptions to the notice requirement in the case of emergency meetings. In the case of the admissions appeals, the applicants were operating under tight time constraints and since the matters were confidential, the Board met in executive session.

Randy S. Welker  
March 9, 1989  
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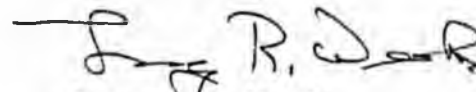
The Board will make every effort to publish notice of conference call meetings. The Board's schedule of meetings is currently published in the Bar Rag, as well as the notice being published in the State's major newspapers.

Recommendation No. 5: The Board of Governors is now aware that several of the Board seats are "out of sync" due to the mid-term resignation of several Board members. The Board has, as required by statute, appointed attorney members to the vacant seats until the next general election. Rather than having a election for a three year term, the Board will treat these as elections for the remainder of the terms of that Board seat.

A notice recently went out to the active members of the association soliciting nominations for the vacant seats on the Board. This gave notice that one of the seats was for a two year term and one of the seats was for a one year term. With the election to these seats, the Board seats will be back in sync according to the rotation set out in the statute.

In closing, let me take this opportunity to express my appreciation for the manner in which your Division conducted the performance audit. I hope your Division found the Bar's staff cooperative. If you have any questions concerning this response, please contact me or the Bar Association staff directly.

Sincerely,



Larry R. Weeks  
President

cc: Deborah Ricker  
Division of Legislative Audit  
Deborah O'Regan  
Executive Director

exdir127



## FROM THE PRESIDENT

Larry Weeks

**A**t the end of the summer I was approached by a Fairbanks lawyer who indicated that Dr. Irving Rothrock of Fairbanks, this year's president of the Alaska Medical Association, was interested in forming a joint committee to discuss the treatment of medical malpractice in Alaska and ways in which it might be improved.

I've known Dr. Rothrock for some years and believe him to be a reasonable and rational man. I called him and when in Fairbanks he bought me a lunch and we discussed the idea. We agreed to each appoint four persons from our various associations to look at how medical malpractice is treated in Alaska and what might be done to address some of the problems.

We each appointed four persons, one from Fairbanks, one from Ketchikan, and two from Anchorage. I tried to appoint a plaintiff and defense attorney and then other persons who had both plaintiff and defense experience. Ames Luce has chastised me, perhaps quite properly, for not appointing a plaintiff lawyer who actually does medical

malpractice work to the committee.

The four lawyers and doctors met on December 12 in Anchorage and talked about how they would proceed. The consensus of the lawyers is that three of the doctors came unwilling to talk about medical malpractice but only about how the tort system in general must be reformed. The doctors believed that the committee's existence itself might keep the legislature from taking some action, and as long as the committee was not willing to address the reformation of the tort system, they didn't want to be a part of it and did not want to seek to address the particular problems of their own profession.

One doctor suggested that it was best that the whole system come crashing down rather than attempt to make changes in small ways.

The lawyers, Millard Ingraham, Co-chair; Donna Willard of Anchorage; Geoffery Currall of Ketchikan and Jim DeWitt of Fairbanks were by all descriptions honorable, courteous, and basically flabbergasted. I relate this nonsuccess so that the membership as a whole is aware of

how adamant, even paranoid the medical profession is about what is happening. With the exception of Dr. Doolittle of Fairbanks, all of the physicians present basically wanted to talk with the Bar Association only if we were willing to accept the Citizen's Committee on Tort Reform as our credo.

I don't believe that Dr. Rothrock was trying to set us up and it is my understanding that Dr. Doolittle wrote Dr. Rothrock a letter afterwards telling him that he was embarrassed by the medical participation in the committee. However Dr. Rothrock had indicated to me that he would attempt to appoint the reasonable and respected folks in the profession as opposed to the crazies. If three out of four of the "reasonable" medical people are as fanatic as these folks then we have a great breach that is yawning beneath us and which some day will have to be bridged.

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