

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672
5747 HOUSE JUDICIARY

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act relating to sentences...
individuals convicted of certain crimes."
Sponsor: Rep. Bover
Requestor: Rep. Bover

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

| OPERATING | FY 91 | FY 92 | FY 93 | FY 94 | FY 95 | FY 96 |
|-------------------|-------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | -0- | -0- | -0- | -0- | -0- | -0- |

| | | | | | | |
|---------|--|--|--|--|--|--|
| CAPITAL | | | | | | |
|---------|--|--|--|--|--|--|

| | | | | | | |
|---------|--|--|--|--|--|--|
| REVENUE | | | | | | |
|---------|--|--|--|--|--|--|

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

This is a sentencing provision and, as such, it will not have a fiscal impact on the Department of Law.

Prepared by: Richard I. Pegues, Director Phone: 465-3672
Division: Administrative Services Date: March 22, 1990
Approved by Commissioner: Richard I. Pegues / FOR Date: March 22, 1990
Agency: Department of Law

Distribution (by preparer):

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

A M E N D M E N T #1

OFFERED IN THE HOUSE

BY EARNES

TO: CSHB 121(HESS)

Page 1, line 8: (TITLE)

Delete "penalty for"

Insert "definition of"

Page 2, lines 25 - 26:

Delete "class A misdemeanor [CLASS C FELONY]"

Insert "class C felony"

*motion to ret to 2nd rdg.
passed w/c*

*Am #1 ret to Juel
w/pending am #1*

Original sponsor: Rules/Governor

1 IN THE HOUSE

BY THE HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

2

CS FOR HOUSE BILL NO. 121 (HESS)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act relating to crimes of sexual assault on
mentally incapable or incapacitated persons, and
amending the penalty for the crime of sexual assault
in the third degree; and providing for an effective
date."

10

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

12 * Section 1. AS 11.41.410(a) is amended to read:

13

(a) A person commits the crime of sexual assault in the first
degree if, being any age,

14

15

(1) [BEING ANY AGE,] the defendant engages in sexual pene-
tration with another person without consent of that person;

16

17

(2) [BEING ANY AGE,] the defendant attempts to engage in
sexual penetration with another person without consent of that person
and causes serious physical injury to that person;

18

19

20

(3) [BEING OVER THE AGE OF 18,] the defendant engages in
sexual penetration with another person

21

22

(A) who the defendant knows is mentally incapable; and

23

(B) who is entrusted to the defendant's care

24

(i) by authority of law; or

25

(ii) in a facility or program that is required by

26

law to be licensed by the Department of Health and Social
Services.

27

28

* Sec. 2. AS 11.41.420(a) is amended to read:

29

(a) An offender commits the crime of sexual assault in the

1 second degree if

2 (1) the offender engages in sexual contact with another
3 person without consent of that person;

4 (2) [BEING OVER THE AGE OF 18,] the offender engages in
5 sexual contact with a person

6 (A) who the offender knows is mentally incapable; and

7 (B) who is entrusted to the offender's care

8 (i) by authority of law; or

9 (ii) in a facility or program that is required by
10 law to be licensed by the Department of Health and Social
11 Services; or

12 (3) [BEING OVER THE AGE OF 18,] the offender engages in
13 sexual penetration with a person who the offender knows is

14 (A) mentally incapable; or

15 (B) incapacitated.

16 * Sec. 3. AS 11.41.425 is amended to read:

17 Sec. 11.41.425. SEXUAL ASSAULT IN THE THIRD DEGREE. (a) An
18 offender commits the crime of sexual assault in the third degree if
19 [BEING OVER THE AGE OF 18,] the offender engages in sexual contact
20 with a person who the offender knows is

21 (1) mentally incapable; or

22 (2) incapacitated [TEMPORARILY INCAPABLE OF APPRAISING THE
23 NATURE OF THE PERSON'S CONDUCT AND IS PHYSICALLY UNABLE TO EXPRESS
24 UNWILLINGNESS TO ACT].

25 (b) Sexual assault in the third degree is a class A misdemeanor
26 [CLASS C FELONY].

27 * Sec. 4. This Act takes effect immediately under AS 01.10.070(c).

H O U S E

ENGROSS: _____

ENROLL: _____

CS HB # 121 (Hess)

SB # _____

HJR # _____

SJR # _____

HCR # _____

SCR # _____

HR # _____

DATE PASSED 3-31-89

ROLL CALL: YEAS: 26

EFFECTIVE DATE: YEAS: 28

NAYS: 0

NAYS: 0

EXCUSED: 5

EXCUSED: 5

ABSENT: 9

ABSENT: 7

Am # 1 by Barnes:

H O U S E

ENGROSS: _____

ENROLL: _____

CS HB # 121 (Hess)

SB # _____

HJR # _____

SJR # _____

HCR # _____

SCR # _____

HR # _____

DATE PASSED April 3, 1989

ROLL CALL: YEAS: _____

EFFECTIVE DATE: YEAS: _____

NAYS: _____

NAYS: _____

EXCUSED: _____

EXCUSED: _____

ABSENT: _____

ABSENT: _____

Referred back to Judiciary Committee 2/5/89 pending

On reconsideration

HOUSE COMMITTEE REPORT

3/29

Rule

(7)
Date Referred: March 17, 1989

FURTHER REFERRALS:

Date of Committee Action: 3/28/89

The JUDICIARY Committee considered:

HB 121

HOUSE BILL NO. 121 [SEXUAL ASSAULT ON CERTAIN PERSONS]
"An Act relating to crimes of sexual assault on mentally incapable or incapacitated persons; and providing for an effective date."

CSNB 121 (New)

RECOMMENDATIONS:

- be replaced with _____ the same title
- have attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

- | | |
|---|--|
| ATTACHES NEW FISCAL NOTE(S): | APPROVES PREVIOUS: |
| (Dept) | (Date/Dept) |
| <input type="checkbox"/> fiscal impact _____ | <input type="checkbox"/> fiscal note(s) _____ |
| <input type="checkbox"/> zero fiscal note _____ | <input checked="" type="checkbox"/> zero fiscal note(s) _____ |
| <input type="checkbox"/> zero with analysis _____ | <input checked="" type="checkbox"/> zero fn/analysis <u>Low 11/27/89</u> |

SIGNING DO PASS:

W. H. GRENBERG
John GOLL
Ed ELIS
Mike M. DAVIS
Clay Davidson DAVIDSON
Mike Miller MILLER

SIGNING:
(Check approp. column)

| | Do Not Pass | No Rec | Amend |
|----------------------------|-------------|--------|---------------|
| <u>Terry Martin</u> MARTIN | | | <u>melote</u> |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

W. H. Grenberg / Peter J. ...
 CO - Chairman's signature

1 IN THE HOUSE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

2

HOUSE BILL NO. 121

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to crimes of sexual assault on
7 mentally incapable or incapacitated persons; and
8 providing for an effective date."

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

10 * Section 1. AS 11.41.410(a) is amended to read:

11 (a) A person commits the crime of sexual assault in the first
12 degree if,

13 (1) being any age, the defendant engages in sexual pene-
14 tration with another person without consent of that person;

15 (2) being any age, the defendant attempts to engage in
16 sexual penetration with another person without consent of that person
17 and causes serious physical injury to that person;

18 (3) being any age [OVER THE AGE OF 18], the defendant
19 engages in sexual penetration with another person

20 (A) who the defendant knows is mentally incapable;

21 and

22 (B) who is entrusted to the defendant's care

23 (i) by authority of law; or

24 (ii) in a facility or program that is required by
25 law to be licensed by the Department of Health and Social
26 Services.

27 * Sec. 2. AS 11.41.420(a) is amended to read:

28 (a) An offender commits the crime of sexual assault in the
29 second degree if

1 (1) the offender engages in sexual contact with another
2 person without consent of that person;

3 (2) [BEING OVER THE AGE OF 18,] the offender engages in
4 sexual contact with a person

5 (A) who the offender knows is mentally incapable,

6 (B) who is entrusted to the offender's care

7 (i) by authority of law; or

8 (ii) in a facility or program that is required by
9 law to be licensed by the Department of Health and Social
10 Services; or

11 (3) [BEING OVER THE AGE OF 18,] the offender engages in
12 sexual penetration with a person who the offender knows is

13 (A) mentally incapable; or

14 (B) incapacitated.

15 * Sec. 3. AS 11.41.425(a) is amended to read:

16 (a) An offender commits the crime of sexual assault in the third
17 degree if [BEING OVER THE AGE OF 18,] the offender engages in sexual
18 contact with a person who the offender knows is

19 (1) mentally incapable; or

20 (2) incapacitated [TEMPORARILY INCAPABLE OF APPRAISING THE
21 NATURE OF THE PERSON'S CONDUCT AND IS PHYSICALLY UNABLE TO EXPRESS
22 UNWILLINGNESS TO ACT].

23 * Sec. 4. This Act takes effect immediately under AS 01.10.070(c).

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION/THIRD JUDICIAL DISTRICT

OFFICE OF THE DISTRICT ATTORNEY

March 29, 1988

House Judiciary Committee
Box V
Juneau, Alaska 99801

Re: House Bill 545
Sexual Assault of Mentally Handicapped Persons

Dear Committee Members:

I am an Assistant District Attorney in Anchorage who prosecutes sexual assault cases. I have reviewed House Bill 545 which proposes significant amendments to the sexual assault laws relating to mentally handicapped victims. That bill greatly increases the protection against sexual exploitation of the mentally handicapped beyond present law.

The present criminal statute of second degree sexual assault does not adequately protect the mentally handicapped persons from sexual exploitation. It does not criminalize sexual contact crimes but only prohibits sexual penetration. It places a near impossible burden on the prosecution to prove that the mental handicap was so severe that the person does not even understand the nature of the conduct. Some judges say this means we have to prove the victim cannot even comprehend that someone is having sex with them. The proposed bill offers an alternative by allowing us instead to prove that the mental handicap affected the victim's ability to evaluate the consequences of her conduct even if she is capable of knowing that sex is occurring. The present second degree statute also includes a requirement to prove that the handicapped person would not have engaged in the conduct had they been mentally normal: The sex must occur "under circumstances in which a person who is capable of appraising the nature of the conduct would not engage in sexual penetration." Since it is very difficult to prove that normal people would not have engaged in sex under most circumstances, it is difficult to meet this burden of proof.

Two 1987 cases in Anchorage illustrate the problems

STEVE COWPER, GOVERNOR

REPLY TO

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☐ P.O. BOX 671
VALDEZ, ALASKA 99686-0671
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House Judiciary Committee

RE: House Bill 545

March 29, 1988

PAGE 2

in the present law which would be alleviated by the proposed bill.

Our office prosecuted the manager of an apartment building which had a number of female mentally handicapped tenants placed there by a social service agency. He was convicted of sex crimes against four of these severely mentally handicapped women who lived in the complex. He could only be convicted of a felony on two of them because he only penetrated those two. The other two women were only fondled by him. For these fondling crimes he could only be convicted of the class B misdemeanor of harassment carrying a maximum 90 day jail sentence.

In another case prosecuted last year the judge acquitted one of two defendants who were having sex in a park in broad daylight with a severely schizophrenic woman. Eyewitness and medical evidence proved she was being forcibly assaulted. All of the witnesses agree that the woman was so mentally ill that she could not even understand that these men were having sex with her. Part of the reason for the acquittal was the ambiguous requirement of present law to prove that the woman would not have engaged in the sexual activity had she been mentally normal. The judge reasoned that even normal people sometimes engage in group sex in public so the state had failed to prove that element. He felt the only way to prove this element was to prove that the woman was being raped or being physically injured because this is the only sexual activity to which normal people would not consent. But he acquitted him on the rape charge apparently because the woman did not testify since she was too mentally ill to be a competent witness. In other words, he ruled that to prove second degree sexual assault under present law the state had to prove first degree sexual assault, but the state could not prove first degree because the victim was so mentally ill. This was the strongest case of second degree sexual assault which could be brought under present law yet the judge acquitted the defendant and did not let the case go to the jury.

As I read House Bill 545 it would create a strong policy for protecting severely mentally handicapped people from sexual exploitation but would not criminalize consensual

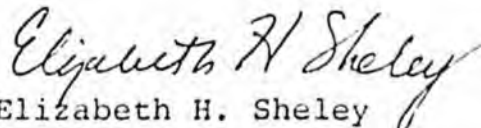
House Judiciary Committee
RE: House Bill 545
March 29, 1988
PAGE 3

sexual activity between two handicapped people or sexual activity with persons who were not severely mentally handicapped. The proposed law requires that the mental handicap be so severe that the person cannot either understand that sex is occurring or cannot give informed consent. These people need the protection of the criminal laws which this bill gives them without unnecessarily infringing on their privacy and sexual rights.

Very truly yours,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

DWAYNE W. MCCONNELL
DISTRICT ATTORNEY


Elizabeth H. Sheley
Assistant District Attorney

EHS:bch

ON 44 Disk

Washington

H13 121

CHAPTER 9A.44 SEXUAL OFFENSES

Section

- 9A.44.010. Definitions.
- 9A.44.020. Testimony—Evidence—Written motion—Admissibility.
- 9A.44.030. Defenses to prosecution under this chapter.
- 9A.44.040. Rape in the first degree.
- 9A.44.045. Minimum term for first degree rape—Restrictions on release from confinement—Application to offenses before July 1, 1984.
- 9A.44.050. Rape in the second degree.
- 9A.44.060. Rape in the third degree.
- 9A.44.070. Statutory rape in the first degree.
- 9A.44.080. Statutory rape in the second degree.
- 9A.44.090. Statutory rape in the third degree.
- 9A.44.100. Indecent liberties.
- 9A.44.110. Repealed.
- 9A.44.120. Admissibility of child's statement—Conditions.
- 9A.44.900. Decodifications and additions to this chapter.
- 9A.44.901. Construction—Sections decodified and added to this chapter.
- 9A.44.902. Effective date—1979 ex.s. c 244.

11:55 AM 11/11/83

Library References

- | | |
|---|--|
| Criminal practice, post-trial proceedings, departure from the guidelines, first offender, see Wash.Prac. vol. 13, Ferguson, § 4321. | Jury instructions, Incest, definition, see Wash.Prac. vol. 11, WPIC 46.05. Sexual intercourse, definition, see Wash.Prac. vol. 11, WPIC 45.01. |
|---|--|

WESTLAW Electronic Research

WESTLAW supplements West's Revised Code of Washington Annotated and is useful for additional research. Enter a citation in INSTA-CITE for display of any parallel citations and case history. Enter a constitution, statute or rule citation in a case law database for cases of interest.

Example query for INSTA-CITE: IC 692 P.2d 874

Example query for Washington Constitution:
Const. Constitution /s 8 + 3 5

Example query for statute: 59.12.030

Also, see the WESTLAW guide following the Preface pages of this volume.

9A.44.050

CHAPTER 9A.44
SEXUAL OFFENSES

Written motion—Admissibility.
tion under this chapter.
free.
first degree rape—Restrictions on release
—Application to offenses before July 1,

degree.
degree.
first degree.
second degree.
third degree.

Witness's statement—Conditions.
Additions to this chapter.
Sections decodified and added to this chapter,
e.g., s. c 244.

Primary References

ed. Jury instructions,
es. Incest, definition, see Wash.Prac.
ol. vol. 11, WPIC 46.05.
Sexual intercourse, definition, see
Wash.Prac. vol. 11, WPIC 45.01.

Electronic Research

Revised Code of Washington Annotated and
. Enter a citation in INSTA-CITE for
and case history. Enter a constitution,
see law database for cases of interest.
RC 692 P.2d 874

Constitution:

2.030

Following the Preface pages of this volume.

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SEXUAL OFFENSES

9A.44.010

9A.44.010. Definitions

As used in this chapter:

(1) "Sexual intercourse" (a) has its ordinary meaning and occurs upon any penetration, however slight, and

(b) Also means any penetration of the vagina or anus however slight, by an object, when committed on one person by another, whether such persons are of the same or opposite sex, except when such penetration is accomplished for medically recognized treatment or diagnostic purposes, and

(c) Also means any act of sexual contact between persons involving the sex organs of one person and the mouth or anus of another whether such persons are of the same or opposite sex.

(2) "Married" means one who is legally married to another, but does not include a person who is living separate and apart from his or her spouse and who has filed in an appropriate court for legal separation or for dissolution of his or her marriage.

(3) "Mental incapacity" is that condition existing at the time of the offense which prevents a person from understanding the nature or consequences of the act of sexual intercourse whether that condition is produced by illness, defect, the influence of a substance or from some other cause;

(4) "Physically helpless" means a person who is unconscious or for any other reason is physically unable to communicate unwillingness to an act;

(5) "Forcible compulsion" means physical force which overcomes resistance, or a threat, express or implied, that places a person in fear of death or physical injury to herself or himself or another person, or in fear that she or he or another person will be kidnapped;

(6) "Consent" means that at the time of the act of sexual intercourse there are actual words or conduct indicating freely given agreement to have sexual intercourse.

Formerly § 9.79.140, enacted by Laws 1975, 1st Ex.Sess., ch. 14, § 1. Recodified as § 9A.44.010 by Laws 1979, Ex.Sess., ch. 244, § 17, eff. July 1, 1979. Amended by Laws 1981, ch. 123, § 1.

Historical Note

Laws 1979, Ex.Sess., ch. 244, § 17, re- Source:
codified the section.

Laws 1981, ch. 123, § 1, in subsec. (2),
added the language following "means
one who is legally married to another".

Laws 1873, p. 187, § 37.
Laws 1909, ch. 249, § 185.
RRS § 2437.
Former § 9.79.030.
Laws 1973, 1st Ex.Sess., ch. 154, § 124.

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179) 23 of complaining witness where compelling reason is shown. State v. [redacted] (1980) 94 Wash2d 733, 619 P.2d 968.

In attempted rape prosecution, court did not abuse its discretion in denying motion to have victim, who received mental health treatment in submit to psychological examination where defendant presented no compelling reason why victim should have been committed to possibly traumatic psychiatric examination when other more traditional and less intrusive means of assessing her credibility and perceptual ability were presumably available, and in court carefully left issue open for further consideration if testimony showed victim's prior mental history might have had bearing upon her recitation of events at time of incident. State v. [redacted] (1980) 94 Wash2d 733, 619 P.2d 968.

In absence of any compelling reasons motions judge did not abuse discretion by refusing to order a psychiatric examination of alleged rape victim. State v. [redacted] (1979) 25 Wash.App. 15, 605 P.2d 786, affirmed 94 Wash.2d 733, 619 P.2d 968.

23. Evidence

Evidence of secretor type tests, results of which tended to some degree to make it more probable that defendant was guilty of rape and burglary with which he was charged, was properly admitted despite assertion that test results were irrelevant since they merely tended to include him in class of people who might have committed rape. State v. [redacted] (1983) 34 Wash.App. 775, 66 P.2d 1356.

Statements made by rape victim to physician for purpose of diagnosis or treatment are considered inherently trustworthy because declarant's well-being rests on truth of the statements. State v. [redacted] (1980) 27 Wash.App. 952, 621 P.2d 779.

Testimony of two victims, positively identifying defendant as perpetrator of two crimes, was substantial evidence which permitted jury to disbelieve defendant's alibi witnesses and to find defendant guilty on two counts of first-degree rape while armed with a deadly weapon. State v. [redacted] (1979) 21 Wash.App. 893, 600 P.2d 566.

24. Unanimity of Jury

Jury unanimity was not required on one of two alternative means charged in prosecution for first-degree rape charging commission by two alternative means, where constitutionally sufficient evidence supported both charged alternatives. State v. [redacted] (1987) 108 Wash 2d 506, 739 P.2d 1150.

Evidence showing lustful disposition should only be admitted in sex offense case where it tends to show lustful inclination toward offended female. State v. [redacted] (1970) 1 Wash.App. 785, 464 P.2d 730.

Evidence of complaints made by female is restricted to bare complaint unless statement is strictly part of res gestae in cases of rape and similar crimes. State v. [redacted] (1961) 58 Wash 2d 77, 360 P.2d 757.

9A.44.045. Minimum term for first degree rape—Restrictions on release from confinement—Application to offenses before July 1, 1984

No person convicted of rape in the first degree shall be granted a deferred or suspended sentence except for the purpose of commitment to an inpatient treatment facility: *Provided*, That every person convicted of rape in the first degree shall be confined for a minimum of three years: *Provided further*, That the board of prison terms and paroles shall have authority to set a period of confinement greater than three years but shall never reduce the minimum three-year period of confinement; nor shall the board release the convicted person during the first three years of confinement as a result of any type of good time calculation; nor shall the department of corrections permit the convicted person to participate in any work release program or furlough program during the first three years of confinement. This section applies only to offenses committed prior to July 1, 1984.

Enacted by Laws 1982, ch. 192, § 12, eff. April 1, 1982.

Law Review Commentaries

Forcible rape in Washington—criminal and civil sanctions. 19 Gonzaga L.Rev. 363 (1983/84).

Library References

Rape § 64. Sentencing guidelines, mandatory minimum sentence, see Wash.Prac. vol. 13, Ferguson, § 4307. C.J.S. Rape § 86 et seq. Probation, deferred sentences, see Wash.Prac. vol. 13, Ferguson, § 4318.

9A.44.050. Rape in the second degree

(1) A person is guilty of rape in the second degree when, under circumstances not constituting rape in the first degree, the person engages in sexual intercourse with another person:

- (a) By forcible compulsion; or
 (b) When the victim is incapable of consent by reason of being physically helpless or mentally incapacitated.

(2) Rape in the second degree is a class B felony.

Formerly § 9.79.180, enacted by Laws 1975, 1st Ex.Sess., ch. 14, § 1. Amended by Laws 1979, Ex.Sess., ch. 244, § 2, eff. July 1, 1979. Recodified as § 9A.44.050 by Laws 1979, Ex.Sess., ch. 244, § 17, eff. July 1, 1979. Amended by Laws 1983, ch. 118, § 2.

Historical Note

Laws 1979, Ex.Sess., ch. 244, §§ 2, 17, recodified the section, and, in subsec. (2), preceding "felony" inserted "class B"; and, following "felony" deleted "and shall be punished by imprisonment in the state penitentiary for not more than ten years".

Laws 1983, ch. 118, § 2, at the end of the introductory paragraph of subsec. (1), deleted "not married to the perpetrator".

Source:

Laws 1854, p. 80, § 33.

Laws 1869, p. 204, § 35.
 Laws 1873, p. 187, § 37.
 Code 1881, §§ 812, 814.
 Laws 1886, p. 84, § 1.
 Laws 1897, ch. 19, § 1.
 Laws 1909, ch. 249, §§ 183, 184.
 Laws 1919, ch. 132, § 1.
 Laws 1937, ch. 74, § 1.
 Laws 1943, ch. 112, § 1.
 RRS §§ 2435, 2436.
 Former §§ 9.79.010, 9.79.020.
 Laws 1973, 1st Ex.Sess., ch. 154, §§ 122, 123.

Law Review Commentaries

Forcible rape in Washington—criminal and civil sanctions. 19 Gonzaga L.Rev. 363 (1983/84).

Library References

Rape ⇨ 1.
 C.J.S. Rape § 1 et seq.
 Jury instructions.
 Defenses, rape, second degree or indecent liberties, see Wash.Prac. vol. 11, WPIC 19.03.

Rape, second degree, definition, see Wash.Prac. vol. 11, WPIC 41.01.
 Rape, second degree, elements, see Wash.Prac. vol. 11, WPIC 41.02.

Notes of Decisions

Corpus delicti 1
 Included offenses 2

1. Corpus delicti

Threat of defendant to take his own child, in order to coerce defendant's estranged wife into engaging in sexual intercourse, constituted a threat of kidnapping when without legal authority and, as such, went to forcible compulsion so as to constitute crime of second-degree rape. State v. Tuitasi (1986) 46 Wash. App. 206, 729 P.2d 75.

Proof that male person had sexual intercourse with female, not his wife, and that at time she was incapable of giving her consent thereto because of unsoundness of mind, would establish corpus delicti of crime of rape under provisions now contained in this statute. State v. Meyer (1951) 37 Wash.2d 759, 226 P.2d 204.

2. Included offenses

Where defendant was charged with assault in the second degree under section of statute relating to assault with intent to commit a felony, defendant was also charged with attempted rape in the sec-

dition; or

is incapable of consent by reason of being mentally incapacitated.

Third degree is a class B felony.

Enacted by Laws 1975, 1st Ex.Sess., ch. 14, § 6, Sess., ch. 244, § 2, eff. July 1, 1979. Recodified as RCW 9A.44.060, Ex.Sess., ch. 244, § 17, eff. July 1, 1979, § 118, § 2.

Historical Note

§ 2, 17. Laws 1869, p. 204, § 35. In subsec. ed "class deleted", imprisonment not more than five years. At the end of subsec. the perpetrator. Laws 1873, p. 187, § 37. Code 1881, §§ 812, 814. Laws 1886, p. 84, § 1. Laws 1897, ch. 19, § 1. Laws 1909, ch. 249, §§ 183, 184. Laws 1919, ch. 132, § 1. Laws 1937, ch. 74, § 1. Laws 1943, ch. 112, § 1. RRS §§ 2435, 2436. Former §§ 9.79.010, 9.79.020. Laws 1973, 1st Ex.Sess., ch. 14, §§ 122, 123.

Review Commentaries

—criminal law—Gonzaga

Library References

Rape, second degree, definition, Wash.Prac. vol. 11, WPIC 41.01. Rape, second degree, elements, Wash.Prac. vol. 11, WPIC 41.02.

Notes of Decisions

Proof that male person had sexual intercourse with female, not his wife, and that at time she was incapable of giving her consent thereto because of unsoundness of mind, would establish commission of crime of rape under provisions now contained in this statute. State v. Meyer (1951) 37 Wash.2d 759, 226 P.2d 204.

2. Included offenses

Where defendant was charged with assault in the second degree under section of statute relating to assault with intent to commit a felony, defendant was also charged with attempted rape in the

second degree under forcible compulsion section of that statute, and, under offenses as charged, proved and instructed upon the same evidence of physical violence on part of defendant constituted the "assault" committed with intent to commit rape" element of the crime of assault in the second degree and the "attempt to engage in sexual intercourse

"... by forcible compulsion" element of the crime of attempted rape in the second degree, only one offense was committed, not two. appropriate remedy was to set aside the conviction of the lesser offense of attempted rape in the second degree. State v. Hinz (1979) 22 Wash.App. 906, 594 P.2d 1350, affirmed 93 Wash.2d 510, 610 P.2d 1322.

9A.44.060. Rape in the third degree

(1) A person is guilty of rape in the third degree when, under circumstances not constituting rape in the first or second degrees, such person engages in sexual intercourse with another person, not married to the perpetrator:

(a) Where the victim did not consent as defined in RCW 9A.44.010(6), to sexual intercourse with the perpetrator and such lack of consent was clearly expressed by the victim's words or conduct, or

(b) Where there is threat of substantial unlawful harm to property rights of the victim.

(2) Rape in the third degree is a class C felony.

Formerly § 9.79.190, enacted by Laws 1975, 1st Ex.Sess., ch. 14, § 6. Amended by Laws 1979, Ex.Sess., ch. 244, § 3, eff. July 1, 1979. Recodified as § 9A.44.060 by Laws 1979, Ex.Sess., ch. 244, § 17, eff. July 1, 1979.

Historical Note

Laws 1979, Ex.Sess., ch. 244, §§ 3, 17, recodified the section; and, in subsec. (1)(a), substituted a reference to RCW 9A.44.010(6) for a reference to RCW 9.79.140(6), and, in subsec. (2), preceding "felony" inserted "class C", and, following "felony" deleted "and shall be punished by imprisonment in the state penitentiary for not more than five years".

Laws 1869, p. 204, § 35. Laws 1873, p. 187, § 37. Code 1881, §§ 812, 814. Laws 1886, p. 84, § 1. Laws 1897, ch. 19, § 1. Laws 1909, ch. 249, §§ 183, 184. Laws 1919, ch. 132, § 1. Laws 1937, ch. 74, § 1. Laws 1943, ch. 112, § 1. RRS §§ 2435, 2436. Former §§ 9.79.010, 9.79.020. Laws 1973, 1st Ex.Sess., ch. 154, §§ 122, 123.

Source:

Laws 1854, p. 80, § 33.

Law Review Commentaries

Forcible rape in Washington—criminal and civil sanctions. 19 Gonzaga L.Rev. 363 (1983/84).

Library References

Rape § 1. C.J.S. Rape § 1 et seq. Jury instructions, rape, third degree,

Definition, see Wash.Prac. vol. 11, WPIC 42.01. Elements, see Wash.Prac. vol. 11, WPIC 42.02.

Notes of Decisions

Intent 1
 Marriage subsequent to offense 3
 Multiple convictions for same act 5
 Pregnancy 4
 Sex life of victim 2

1. Intent

Every laying on of hands upon female of age of fifteen does not necessarily imply intent to have carnal knowledge. *State v. Leach* (1950) 36 Wash.2d 641, 219 P.2d 972.

2. Sex life of victim

In a prosecution for carnal knowledge of female child, testimony concerning prior acts of intercourse between defendant and prosecuting witness is admissible to show his lustful disposition toward her. *State v. Harold* (1954) 45 Wash.2d 505, 275 P.2d 895.

State was not required to prove previous chastity of prosecuting witness, nor would proof of unchastity in any way rebut state's proof that defendant carnally knew female, or that she was under age of eighteen years, or that she was not his wife, since former statute merely recited "any female child under the age of eighteen years," not any chaste female under eighteen years of age. *State v. Linton* (1950) 36 Wash.2d 67, 216 P.2d 761.

In prosecution for statutory rape, evidence that prosecutrix had sexual intercourse with others is not admissible. *State v. Gay* (1914) 82 Wash. 423, 144 P. 711.

3. Marriage subsequent to offense

In prosecution for statutory rape of one under age of consent, who had since married defendant, it is error to require wife to appear in court for purpose of being identified by witness, when her condition as to pregnancy was apparent and could be observed by jury, thereby in reality compelling wife to become witness against defendant. *State v. Winnett* (1907) 48 Wash. 93, 92 P. 904.

4. Pregnancy

Instruction that pregnancy of complaining witness is not in and of itself evidence that defendant is guilty of specific act of carnal knowledge charged in information, is correct statement of law, and sufficient cautionary instruction, if any be needed. *State v. Jennen* (1961) 58 Wash.2d 171, 361 P.2d 739.

In prosecution for carnal knowledge of female under age of consent, it is not error to permit jury to consider pregnancy of prosecuting witness as evidence that offense has been committed and of time at which it occurred. *State v. Jennen* (1961) 58 Wash.2d 171, 361 P.2d 739.

Where charge is carnal knowledge of child, pregnancy can be shown, as it proves corpus delicti and affects credibility of prosecutrix. *State v. Chambers* (1957) 50 Wash.2d 139, 309 P.2d 1055.

5. Multiple convictions for same act

Legislature did not intend that defendant be convicted of both nonconsensual rape and statutory rape for single act of intercourse. *State v. Birgen* (1962) 33 Wash. App. 1, 651 P.2d 240.

9A.44.100. Indecent liberties

(1) A person is guilty of indecent liberties when he knowingly causes another person who is not his spouse to have sexual contact with him or another:

(a) By forcible compulsion; or

(b) When the other person is less than fourteen years of age; or

(c) When the other person is less than sixteen years of age and the perpetrator is more than forty-eight months older than the person and is in a position of authority over the person; or

of Decisions

3. Marriage subsequent to offense

In prosecution for statutory rape on one under age of consent, who had since married defendant, it is error to require wife to appear in court for purpose of being identified by witness, when her condition as to pregnancy was apparent and could be observed by jury, thereby in reality compelling wife to become witness against defendant. *State v. Winness* (1907) 48 Wash. 95, 92 P. 904.

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Where charge is carnal knowledge of child, pregnancy can be shown, as it proves corpus delicti and affects credibility of prosecutrix. *State v. Chambers* (1957) 50 Wash.2d 139, 309 P.2d 1055.

5. Multiple convictions for same act

Legislature did not intend that defendant be convicted of both nonconsensual rape and statutory rape for single act of intercourse. *State v. Birgen* (1982) 33 Wash.App. 1, 651 P.2d 240.

ent liberties when he knowingly
his spouse to have sexual contact

less than fourteen years of age; or
less than sixteen years of age and
forty-eight months older than the
authority over the person; or

12

(d) When the other person is incapable of consent by reason of being mentally defective, mentally incapacitated, or physically helpless.

(2) For purposes of this section:

(a) "Sexual contact" means any touching of the sexual or other intimate parts of a person done for the purpose of gratifying sexual desire of either party.

(b) "Person in a position of authority" means any person who is a parent or acting in the place of a parent and is charged with any of a parent's rights, duties, or responsibilities to a child, or a person who is charged with any duty or responsibility for the health, welfare, education, or supervision of a child, either independently or through another, no matter how briefly, at the time of the act.

(3) Indecent liberties is a class B felony.

Formerly § 9A.88.100, enacted by Laws 1975, 1st Ex.Sess., ch. 260, § 9A.88.100. Recodified as § 9A.44.100 by Laws 1979, Ex.Sess., ch. 244, § 17, eff. July 1, 1979. Amended by Laws 1986, ch. 131, § 1.

Historical Note

Laws 1979, Ex.Sess., ch. 244, § 17, recodified the section without change.

Laws 1986, ch. 131, § 1, in subsec. (1), inserted subd. (c); relettered former subd. (c) as (d); in subsec. (2), inserted subdivision designation "(a)"; and added subd. (b).

Source:

Code 1881, § 816.

Laws 1905, ch. 33, § 1.

Laws 1909, ch. 249, §§ 189, 190.

Laws 1935, ch. 74, § 2.

RRS §§ 2441, 2442.

Former §§ 979.070, 979.080.

Laws 1955, ch. 127, § 1.

Laws 1973, 1st Ex.Sess., ch. 154,

§§ 128, 129.

Law Review Commentaries

Impact of common law and reform statutes on rape prosecutions. Wallace D. Loh, 55 Wash.L.Rev. 543 (1980).

Library References

Infants ¶13, 20.

Obscenity ¶3.

C.J.S. Assault and Battery § 74.

C.J.S. Infants §§ 5 et seq., 95 et seq.

C.J.S. Obscenity § 8 et seq.

Jury instructions.

Defenses, rape, second degree or indecent liberties, see Wash.Prac. vol. 11, WPIC 1903.

Indecent liberties, definition, see Wash.Prac. vol. 11, WPIC 4901.

Indecent liberties, elements, see

Wash.Prac. vol. 11, WPIC 4903.

Indecent liberties, sexual contact,

definition, see Wash.Prac. vol. 11,

WPIC 4903.

Sexual intercourse, definition, see

Wash.Prac. vol. 11, WPIC 4501.

Words and Phrases (Perm.Ed.)

WESTLAW Electronic Research

See WESTLAW guide following the Preface of this volume.

HOUSE COMMITTEE REPORT

(7)

Date Referred: January 27, 1989

FURTHER REFERRALS: JUDICIARY

Date of Committee Action: 3/16/89

The HEALTH, EDUCATION & SOCIAL SERVICES Committee recommends that:

HOUSE BILL NO. 121 [SEXUAL ASSAULT ON CERTAIN PERSONS]
"An Act relating to crimes of sexual assault on mentally incapable or incapacitated persons; and providing for an effective date."

[X] be replaced with CSHB 121 (HESS) [] the same title
[X] a new title

[] have 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: 1/27/89

SIGNING DO PASS:

[Signature]
[Signature]
[Signature]
[Signature]

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

Cheri Davis No Rec

[Signature]
 Chairman's signature

STEVE COWPER
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 27, 1989

The Honorable Sam Cotten
Speaker of the House
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that corrects inequities in the law relating to sexual assault of mentally incapable and incapacitated persons. The current law was amended last year by CSHB 545(Jud), which was signed into law as ch. 96, SLA 1988.

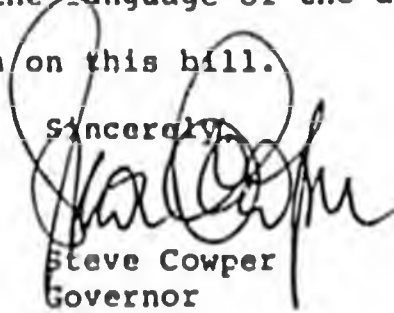
The inequity was created by an oversight, and had the effect of changing an uncontroversial law that had been in effect since the 1978 criminal code revision took effect. The main problem lies in the age element added to several provisions. For example, as a result of last year's amendments, if a 19-year-old and a 17-year-old sexually assault a person they know to be incapacitated, the 19-year-old could be prosecuted for a class B felony, and the 17-year-old would not have violated the law. Under prior law, both offenders could have been prosecuted.

A similar inequity is present in those portions of last year's amendments that stated new crimes. For example, if a 19-year-old orderly in a licensed facility and a 17-year-old orderly in a licensed facility sexually assault a person they know to be mentally incapable, the 19-year-old could be prosecuted for an unclassified felony, and the 17-year-old would not have violated the law.

In addition, the bill substitutes the word "incapacitated," in AS 11.41.425(a)(2), for the existing law's description of the condition of being incapacitated. This change is made because "incapacitated" is defined in AS 11.41.470(1), and there is no need to repeat the language of the definition.

I urge your favorable action on this bill.

Sincerely,


Steve Cowper
Governor

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Department of Law
 Title: "Sexual assault on mentally
incapable or incapacitated persons." BRU: Prosecution
 Sponsor: Rules Committee Components: All
 Requestor: Governor

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 | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | -0- | -0- | -0- | -0- | -0- | -0- |
| CAPITAL | | | | | | |
| REVENUE | | | | | | |

FUNDING: (Thousands of Dollars)

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| GENERAL FUND | -0- | -0- | -0- | -0- | -0- | -0- |
| FEDERAL FUNDS | | | | | | |
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POSITIONS:

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| FULL-TIME | | | | | | |
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| TEMPORARY | | | | | | |

ANALYSIS : (Attach a separate page if necessary)

This bill corrects a drafting oversight in the law relating to sexual assault of mentally incapable or incapacitated persons, which passed the legislature last year as CSHB 545 (Jud). Because the changes proposed in the bill are remedial in nature, the bill will not have fiscal impact on the Department of Law.

Prepared by: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Date: December 27, 1988
 Approved by Commissioner: Grace Berg Schable, Atty. Gen. Date: December 27, 1988
 Agency: Department of Law

Distribution (by preparer):

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

tional or knowing conduct. *Ridgely v. State*, Ct. App. Op. No. 727 (File Nos. A-30, A-43, A-56), 739 P.2d 1299 (1987).

Maximum sentence for first-degree murder upheld.

See *Riley v. State*, Ct. App. Op. No. 630 (File No. A-1258), P.2d (1986).

Sentence upheld. — See *Travelstead v. State*, Sup. Ct. Op. No. 407 (File No. A-114), 689 P.2d 494 (1984); *Lewis v. State*, Ct. App. Op. No. 673 (File No. A-793), 731 P.2d 68 (1987); *Jackson v. State*, Ct. App. Op. No. 781 (File No. A-2026), P.2d (1988).

Where two defendants were convicted of first-degree murder and one of second-degree murder for the same crime, the sentencing judge was entitled to make his own evaluation of the evidence in deciding how culpable was the behavior of the one convicted of second-degree murder, and where the record before the jury sufficed to support the conclusion that she was as guilty of premeditated murder as were the other defendants, the maximum term of 99 years received by each of the defendants, though certainly severe, was justified by the extreme nature of their crime. *Ridgely v. State*, Ct. App. Op. No. 727 (File Nos. A-30, A-43, A-56), 739 P.2d 1299 (1987).

Sentence of consecutive 99-year terms for two murders is not clearly mistaken where the defendant presents a risk of continued criminal conduct which would seriously threaten the public safety. *Kruhoff v. State*, Ct. App. Op. No. 487 (File No. A-183), P.2d (1985).

Sentence for first degree murder upheld. — See *Staael v. State*,

Ct. App. Op. No. 454 (File No. A-78), 697 P.2d 1059 (1985).

Conviction and sentence affirmed. — See *Clifton v. State*, Ct. App. Op. No. 657 (File No. A-853), 728 P.2d 649 (1986).

Convictions for first-degree and second-degree murder affirmed but sentence remanded for consideration of consecutive sentencing. — See *Tucker v. State*, Ct. App. Op. No. 633 (File No. A-918), P.2d (1986).

Conviction reversed where trial court's finding of voluntary Miranda waiver was in error. — See *Hampel v. State*, Ct. App. Op. No. 517 (File No. 7398), 706 P.2d 1173 (1985).

Conviction reversed because of admission of improperly seized evidence. — See *Lowry v. State*, Ct. App. Op. No. 528 (File No. A-249), 707 P.2d 280 (1985).

Cited in *Lerchenstein v. State*, Ct. App. Op. No. 453 (File No. 7729), 697 P.2d 312 (1985); *Hart v. State*, Ct. App. Op. No. 482 (File No. A-295), 702 P.2d 651 (1985); *Ridgely v. State*, Ct. App. Op. No. 503 (File No. A-30, A-43, A-56), 705 P.2d 924 (1985); *Peckham v. State*, Ct. App. Op. No. 639 (File No. 7029), P.2d (1986); *Hastings v. State*, Ct. App. Op. No. 706 (File No. A-602), P.2d (1987); *Clifton v. State*, Sup. Ct. Op. No. 3280 (File No. S-1945), P.2d (1988); *Peel v. State*, Ct. App. Op. No. 793 (File No. A-2293), 752 P.2d 472 (1988); *Cole v. State*, Ct. App. Op. No. 805 (File No. A-1505), P.2d (1988); *Ciervo v. State*, Ct. App. Op. No. 813 (File No. A-2033), P.2d (1988).

Sec. 11.41.110. Murder in the second degree (a) A person commits the crime of murder in the second degree

(1) with intent to cause serious physical injury to another person or knowing that the conduct is substantially certain to cause death or serious physical injury to another person, the person causes the death of any person;

(2) the person knowingly engages in conduct that results in the death of another person under circumstances manifesting an extreme indifference to the value of human life; or

(3) acting either alone or with one or more persons, the person commits or attempts to commit arson in the first degree, kidnapping, sexual assault in the first degree under AS 11.41.410(a)(1) or (2), sexual assault in the second degree, burglary in the first degree, escape in the first or second degree, or robbery in any degree and, in the course of or in furtherance of that crime, or in immediate flight from

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Op. No. 503
705 P.2d 924
Ct. App. Op.
29), P.2d
Ct. App. Op.
2), P.2d
Sup. Ct. Op.
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that crime, any person causes the death of a person other than one of the participants.

(b) Murder in the second degree is an unclassified felony and is punishable as provided in AS 12.55. (§ 3 ch 166 SLA 1978; am § 1 ch 66 SLA 1988)

Effect of amendments. — The 1988 amendment, effective May 28, 1988, substituted "knowingly engages in conduct" for "intentionally performs an act" in subsection (a)(2).

Legislative history reports. — For House letter of intent on ch. 66, SLA 1988 (CSHB 237 (Jud)), which amended this section, see 1988 House Journal 2330-2337.

NOTES TO DECISIONS

I. General Consideration.

I. GENERAL CONSIDERATION.

Substantial certainty to cause death and extreme indifference to value of human life. — Where an eyewitness saw defendant's passengers screaming for him to stop, and the record reflected that defendant's vehicle left the road in the process of attempting to negotiate a turn at 85 m.p.h., that defendant was well aware of the turn's dangerousness, having lived in the area for many years, and having driven the road and negotiated the same curve well over a hundred times, the jury was justified in concluding that the defendant was substantially certain to cause his passengers' deaths and that he manifested an extreme indifference to the value of human life. *Stiegele v. State, Ct. App. Op. No. 580 (File No. A-694), 714 P.2d 356 (1986).*

Murder committed with automobile. — Where a driver's recklessness manifests an extreme indifference to human life, he can be charged with murder even though the instrument by which he causes death is an automobile. *Pears v. State, Ct. App. Op. No. 309 (File No. 6783), 672 P.2d 903 (1983), rev'd on other grounds, Sup. Ct. Op. No. 2931 (File No. S-208), 698 P.2d 1198 (1985).*

Offense of attempted second-degree murder was an impossibility. *Huitt v. State, Ct. App. Op. No. 348 (File No. 7141), 678 P.2d 415 (1984).*

Instructions. — The trial court did not err in declining to instruct the jury concerning imperfect self defense. *Balentine v. State, Ct. App. Op. No. 538 (File No. A-381), 707 P.2d 922 (1985).*

In prosecution for extreme indifference murder, a fair reading of the given in-

structions in their entirety adequately conveyed the idea of defendant's subjective awareness of the risk to the jury. *State v. Johnson, Sup. Ct. Op. No. 3064 (File No. S-616), 720 P.2d 37 (1986).*

First conviction of murder for motor vehicle homicide. — See *Pears v. State, Ct. App. Op. No. 309 (File No. 6783), 672 P.2d 903 (1983), rev'd on other grounds, Sup. Ct. Op. No. 2931 (File No. S-208), 698 P.2d 1198 (1985).*

Exclusion of evidence relating to proximate cause not error. — See *Kusmider v. State, Ct. App. Op. No. 404 (File No. 7845), 688 P.2d 957 (1984).*

Conviction affirmed. — See *Castillo v. State, Sup. Ct. Op. No. 2124 (File No. 4561), 614 P.2d 756 (1980); Kusmider v. State, Ct. App. Op. No. 404 (File No. 7845), 688 P.2d 957 (1984).*

Stiegele v. State, Ct. App. Op. No. 580 (File No. A-694), 714 P.2d 356 (1986).

Conviction and sentence affirmed. — See *Abruska v. State, Ct. App. Op. No. 502 (File No. 7672), 705 P.2d 1261 (1985).*

Conviction reversed where trial court erred in instructing jury on self-defense. — See *Klumb v. State, Ct. App. Op. No. 575 (File No. A-859), 712 P.2d 909 (1986).*

Conviction reversed because of judicial error in not granting defendant's motion for change of venue. — *Nickolai v. State, Ct. App. Op. No. 545 (File No. A-610), 708 P.2d 1292 (1985).*

Sentence upheld. — See *Minchow v. State, Ct. App. Op. No. 299 (File No. A-15), 670 P.2d 719 (1983); Pears v. State, Ct. App. Op. No. 309 (File No. 6783), 672 P.2d 903 (1983); Jimmy v. State, Sup. Ct. Op. No. 409 (File No. A-51), 689 P.2d 504 (1984); Komakhuk v. State, Ct. App. Op.*

Collateral references. — 1 Am. Jur. 2d, Abduction and Kidnapping, § 1 et seq. 1 C.J.S., Abduction, § 1 et seq.; 51 C.J.S., Kidnapping, § 1 et seq.

Forcing another to transport one as constituting offense of kidnapping or of abduction, 62 ALR 200

Fiction of loss of services as a condition of action for abduction of child, 72 ALR 847.

Kidnapping or other criminal offense by taking or removal of child by, or under authority of, parent, or one in loco parentis, 77 ALR 317.

Offense of abduction or kidnapping as affected by defendant's belief in legality of his act, 114 ALR 870.

Fraud or false pretenses, kidnapping by, 95 ALR2d 450.

What is harm within provisions of statutes increasing penalty for kidnapping where victim suffers harm, 11 ALR3d 1053.

Seizure or detention for purposes of committing rape, robbery, or similar offense as constituting separate crime of kidnapping, 43 ALR3d 699.

Necessity and sufficiency of showing, in kidnapping prosecution, that detention was with intent to "secretly" confine victim, 98 ALR3d 733.

Sec. 11.41.300. Kidnapping. (a) A person commits the crime of kidnapping if

(1) the person restrains another with intent to

(A) hold the restrained person for ransom, reward, or other payment;

(B) use the restrained person as a shield or hostage;

(C) inflict physical injury upon or sexually assault the restrained person or place the restrained person or a third person in apprehension that any person will be subjected to serious physical injury or sexual assault;

(D) interfere with the performance of a governmental or political function; or

(E) facilitate the commission of a felony or flight after commission of a felony; or

(2) the person restrains another

(A) by secreting and holding the restrained person in a place where the restrained person is not likely to be found; or

(B) under circumstances which expose the restrained person to a substantial risk of serious physical injury.

(b) In a prosecution under (a)(2)(A) of this section, it is an affirmative defense that

(1) the defendant was a relative of the victim;

(2) the victim was a child under 18 years of age or an incompetent person; and

(3) the primary intent of the defendant was to assume custody of the victim.

(c) Except as provided in (d) of this section, kidnapping is an unclassified felony and is punishable as provided in AS 12.55.

kidnapping by.

provisions of statute for kidnapping crim. 11 ALR3d

purposes of comparable offense as kidnapping.

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(d) In a prosecution for kidnapping, it is an affirmative defense which reduces the crime to a class A felony that the defendant voluntarily caused the release of the victim alive in a safe place before arrest, or within 24 hours after arrest, without having caused serious physical injury to the victim and without having engaged in conduct described in AS 11.41.410(a)(1) or (2) or 11.41.420. (§ 3 ch 166 SLA 1978; am § 7 ch 102 SLA 1980)

Cross references. — For punishment, see AS 12.55.125(b).

Effect of amendments. — The 1980 amendment inserted "or sexually assault him" following "injury upon him" near the beginning of subparagraph (a)(1)(C), and added "or sexual assault" at the end of sub-

paragraph (a)(1)(C).

Legislative history reports. — For a report on Chapter 102, SLA 1980 (HCS CSSB 511), see 1980 Senate Journal Supplement, No. 44, May 29, 1980, or 1980 House Journal Supplement, No. 79, May 28, 1980.

NOTES TO DECISIONS

Editor's notes. — Many of the cases cited in the notes below were decided under former AS 11.15.260.

The crime of kidnapping is designed to protect the general personal security of citizens both in their persons and property. Ladd v. State, Sup. Ct. Op. No. 1480 (File No. 2475), 568 P.2d 960 (1977), cert. denied, 435 U.S. 928, 98 S. Ct. 1498, 55 L. Ed. 2d 524 (1978).

Constitutionality of former statute. — See Levashakoff v. State, Sup. Ct. Op. No. 1446 (File No. 2830), 565 P.2d 504 (1977).

Scope of former statute. — See Crump v. State, Sup. Ct. Op. No. 2309 (File No. 4546), 625 P.2d 857 (1981).

For discussion of elements that were required to be proved under former AS 11.15.260, see Davis v. State, Ct. App. Op. No. 23 (File No. 5100), 635 P.2d 481 (1981).

Exemption. — The new criminal code, which states that it is an affirmative defense that defendant was a relative of the victim, provides for a broader exemption from the kidnapping statute than the absolute exemption for the abduction of a minor by his parent under former AS 11.15.260. Crump v. State, Sup. Ct. Op. No. 2309 (File No. 4546), 625 P.2d 857 (1981).

For case discussing the parental exemption contained in Alaska's former kidnapping statute, AS 11.15.260, Lythgoe v. State, Sup. Ct. Op. No. 2235 (File No. 4497), 626 P.2d 1082 (1980).

Liability of agent for person not entitled to custody of child. — Where a person, while acting as an agent for a parent

not entitled to custody, takes a child from one entitled to custody, the person can be convicted of both the substantive crime of kidnapping and conspiracy to kidnap. Crump v. State, Sup. Ct. Op. No. 2309 (File No. 4546), 625 P.2d 857 (1981).

Conspiracy to kidnap. — Conspiracy to kidnap is no longer defined as an offense in Alaska under the newly revised criminal code. Lythgoe v. State, Sup. Ct. Op. No. 2235 (File No. 4497), 626 P.2d 1082 (1980).

Separate crimes. — Rape, assault with a dangerous weapon, and kidnapping were separate crimes with separate elements. Lacy v. State, Sup. Ct. Op. No. 2039 (File No. 3741), 608 P.2d 19 (1980).

Separate sentences were called for where defendant's conduct in kidnapping and raping his victim and assaulting her with a deadly weapon constituted the commission of three distinct offenses, each of which violated a different societal interest. State v. Occhipinti, Sup. Ct. Op. No. 1405 (File No. 3084), 562 P.2d 348 (1977).

Sentences upheld. — See Morrell v. State, Sup. Ct. Op. No. 1577 (File No. 2790), 575 P.2d 1200 (1978); Post v. State, Sup. Ct. Op. No. 1642 (File No. 2851), 580 P.2d 304 (1978); Davis v. State, Ct. App. Op. No. 23 (File No. 5100), 635 P.2d 481 (1981); Williams v. State, Ct. App. Op. No. 139 (File No. 5676), 652 P.2d 478 (1982).

Sentence found excessive. — See Hintz v. State, Sup. Ct. Op. No. 2334 (File No. 3541), 627 P.2d 207 (1981).

Applied in Nukapigak v. State, Ct. App. Op. No. 90 (File No. 5820), 645 P.2d 215 (1982); Bidwell v. State, Ct. App. Op. No. 199 (File No. 6290), 656 P.2d 592

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v. Municipality
No. 2390 (File
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(b) In circumstances described in (a)(1) — (3) of this section, the person claiming the defense of justification may use nondeadly force if that person has withdrawn from the encounter and effectively communicated the withdrawal to the other person, but the other person persists in continuing the incident by the use of unlawful force. (§ 10 ch 166 SLA 1978)

NOTES TO DECISIONS

Instructions. — Burden is on defendant to produce some evidence in support of claim of self-defense before he is entitled to jury instruction on that defense. Folger v. State, Ct. App. Op. No. 105 (File No. 5585), 648 P.2d 111 (1982).

Jury question. — Even a weak or implausible self-defense claim is a question for the jury. Folger v. State, Ct. App. Op. No. 105 (File No. 5585), 648 P.2d 111 (1982).

Applied in Kirby v. State, Ct. App. Op. No. 117 (File No. 5738), 649 P.2d 963 (1982).

Quoted in Cleveland v. Municipality of Anchorage, Sup. Ct. Op. No. 2390 (File No. 4956), 631 P.2d 1073 (1981).

Cited in Bell v. State, Ct. App. Op. No. 216 (File No. 6707), 657 P.2d 787 (1983).

Sec. 11.81.335. Justification: Use of deadly force in defense of self. (a) Except as provided in (b) of this section, a person may use deadly force upon another person when and to the extent

(1) the use of nondeadly force is justified under AS 11.81.330; and

(2) the person reasonably believes the use of deadly force is necessary for self defense against death, serious physical injury, kidnapping, sexual assault in the first degree under AS 11.41.410(a)(1) or (2), sexual assault in the second degree, or robbery in any degree.

(b) A person may not use deadly force under this section if the person knows that, with complete personal safety and with complete safety as to others, the person can avoid the necessity of using deadly force by retreating, except there is no duty to retreat if the person is

(1) on premises which the person occupies and the person is not the initial aggressor; or

(2) a peace officer acting within the scope and authority of the officer's employment or a person assisting a peace officer under AS 11.81.380. (§ 10 ch 166 SLA 1978)

Cross references. — For defenses to murder, see AS 11.41.115.

NOTES TO DECISIONS

Editor's notes. — Many of the cases cited in the notes below were decided under former AS 11.15.100.

A finding of necessity is required before the homicide can be justifiable. Gray v. State, Sup. Ct. Op. No. 595 (File Nos. 1003, 1005), 463 P.2d 897 (1970).

Defendant failed to make showing of necessity required to present defense of justifiable homicide. — See Des Jardins v. State, Sup. Ct. Op. No. 1245 (File No. 2280), 551 P.2d 191 (1976).

Standards by which party attacked may act. — Where one is attacked by an-

STATE OF ALASKA
THE LEGISLATURE

OFFICE OF THE CLERK
LEGISLATIVE AGENCY
1000 EAST BROADWAY
ANCHORAGE, ALASKA 99514

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 21, 1990

SUBJECT: Permanent Fund dividends of individuals
convicted of crimes (2d CSHB 121 ())

TO: Representative Mark Boyer

FROM: Tamara Brandt Cook
Director
Division of Legal Services

Here is a new draft of HB 121. Since the bill now deals with sentencing of defendants convicted of certain offenses, and only incidentally addresses the use of permanent funds as payment for enhanced penalties, provisions dealing with priority rights of creditors to permanent funds can no longer be included in the bill without violating the single subject requirement of the constitution. I have, therefore, eliminated provisions changing those priorities from this draft and have added a priority for payments that can now be ordered under this draft as a new, last item to AS 43.23.-065(b). That way, existing priorities are not altered by this draft.

In addition, I must alert you to a possible constitutional problem related to "bill stripping" as is done in this draft. HB 121 originally dealt with AIDEA and, under this draft, now deals with an entirely different subject. In Van Brunt v. State, 653 P.2d 343 (Alaska Ct. App. 1982) the Court of Appeals addressed the three readings requirement of Article II, section 14. The court stated the general rule that a bill does not have to be read three times in its amended form, even if the amendment has completely revised the bill. However, the court also noted an exception to that rule. Under the exception, the bill must be read three times (in its amended form) if the amendment changes the subject of the bill or is not germane to and within the scope of the original title.

That decision casts doubt on what has been a long standing practice of the legislature -- gutting a bill and using the

Representative Mark Boyer
Page 2
March 21, 1990

number as a vehicle for entirely different material. To avoid the question it would be necessary to introduce this draft as a new bill.

TBC:lmb
L10/020

Enclosure

go0919hD
Cook
3/21/90

Original sponsor(s): Rules/Covernor

1 IN THE HOUSE

2 2d CS FOR HOUSE BILL NO. 121 ()

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to sentences of individuals con-
7 victed of certain crimes."

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

9 * Section 1. AS 12.55.015 is amended by adding a new subsection to
10 read:

11 (g) A court, in imposing a sentence on a defendant convicted of
12 an offense listed in AS 18.67.101(2), shall order the defendant to pay
13 an amount not to exceed \$1,500 to the crime victim compensation fund
14 (AS 18.67.162). As a source of payment, the court may order the next
15 permanent fund dividend the defendant applies or has applied for that
16 is issued at least 30 days after the date of the order to be paid to
17 the crime vic ~ ensation fund, subject to the rights of other
18 creditors in that dividend under AS 43.23.065(b) and (c).

19 * Sec. 2. AS 43.23.065(b) is amended to read:

20 (b) An exemption is not available under this section for perma-
21 nent fund dividends taken to satisfy

22 (1) child support obligations required by court order or
23 decision of the child support enforcement agency under AS 47.23.140 -
24 47.23.220;

25 (2) court ordered restitution under AS 12.55.045 - 12.55.-
26 051 or 12.55.100; [OR]

27 (3) a debt owed by an eligible individual to an agency of
28 the state, unless the debt is contested and an appeal is pending, or
29 the time limit for filing an appeal has not expired; or

1 (4) court ordered payments to the crime victim compensation
2 fund under AS 12.55.015(g).
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go0919hD ✓
Cook
3/8/90

Original sponsor(s): Rules/Governor

1
2 IN THE HOUSE

3 ~~2d~~ CS FOR HOUSE BILL NO. 121 ()
4 IN THE LEGISLATURE OF THE STATE OF ALASKA
5 SIXTEENTH LEGISLATURE - SECOND SESSION
6 A BILL

7 For an Act entitled: "An Act relating to permanent fund dividends of
8 individuals convicted of certain crimes."

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

10 * Section 1. AS 12.55.015 is amended by adding a new subsection to
11 read:

12 (g) A court, in imposing a sentence on a defendant convicted of
13 an offense listed in AS 18.67.101(2), shall order the next permanent
14 fund dividend the defendant applies or has applied for and is eligible
15 for, that is issued at least 30 days after the date of the order, to
16 be paid to the crime victim compensation fund (AS 18.67.162).

17 * Sec. 2. AS 14.43.120(i) is amended to read:

18 (i) If a loan is in default, the commission shall notify the
19 borrower that repayment of the remaining balance is accelerated and
20 due by sending the borrower a notice by registered or certified mail.
21 The permanent fund dividend of a borrower may be taken under
22 AS 43.23.065(b) [AS 43.23.065(b)(3)] to satisfy the balance due on the
23 defaulted loan.

24 * Sec. 3. AS 43.23.065(b) is amended to read:

25 (b) An exemption is not available under this section for perma-
26 nent fund dividends taken to satisfy

27 (1) child support obligations required by court order or
28 decision of the child support enforcement agency under AS 47.23.140 -
29 47.23.220;

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(2) court ordered restitution under AS 12.55.045 - 12.55.-051 or 12.55.100; [OK]

(3) court ordered payments to the crime victim compensation fund under AS 12.55.015(g); or

(4) a debt owed by an eligible individual to an agency of the state, unless the debt is contested and an appeal is pending, or the time limit for filing an appeal has not expired.

(d) When a missing person is found, the law enforcement agency and the clearinghouse shall destroy all records in their files obtained under this section. (§ 1 ch 72 SLA 1988)

Sec. 18.65.640. Reports upon finding a missing person. A person who has filed a missing person report with the clearinghouse or a law enforcement agency shall immediately notify the clearinghouse or the law enforcement agency when the location of the missing person is determined. (§ 1 ch 72 SLA 1988)

Sec. 18.65.650. Civil penalty. The commissioner of public safety, or a person designated by the commissioner of public safety, may file a civil complaint in the district court to enforce AS 18.65.640. A person who fails to comply with AS 18.65.640 is subject to a civil fine of not more than \$1,000. (§ 1 ch 72 SLA 1988)

Sec. 18.65.660. Definition. In AS 18.65.600 — 18.65.660 "clearinghouse" means the missing persons information clearinghouse established in AS 18.65.600. (§ 1 ch 72 SLA 1988)

Chapter 67. Violent Crimes Compensation Board.

Section

101. Incidents and offenses to which this chapter applies

Sec. 18.67.101. Incidents and offenses to which this chapter applies. The board may order the payment of compensation in accordance with the provisions of this chapter for personal injury or death that resulted from

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

(2) the commission or attempt on the part of one other than the applicant to commit any of the following offenses:

(A) murder in any degree;

(B) manslaughter;

(C) criminally negligent homicide;

(D) assault in any degree;

(E) kidnapping;

(F) sexual assault in any degree;

(G) sexual abuse of a minor;

(H) robbery in any degree;

(I) threats to do bodily harm; or

(J) driving while intoxicated or another crime resulting from the operation of a motor vehicle, boat, or airplane when the offender is

is found, the law enforcement agency destroy all records in their files obtained (2 SLA 1988)

on finding a missing person. A person report with the clearinghouse or immediately notify the clearinghouse or on the location of the missing person (1988)

v. The commissioner of public safety, commissioner of public safety, may file a writ to enforce AS 18.65.640. A person 65.640 is subject to a civil fine of not SLA 1988)

in AS 18.65.600 — 18.65.660 "clearinghouse information clearinghouse established (ch 72 SLA 1988)

Compensation Board.

offenses to which this chapter payment of compensation in accordance with this chapter for personal injury or death

applicant to prevent the commission of a suspected criminal, or aiding or abetting, or aiding a victim of crime; or on the part of one other than the following offenses:

le;

;

another crime resulting from the or airplane when the offender is

intoxicated. (§ 2 ch 35 SLA 1979; am § 2 ch 96 SLA 1983; am § 40 ch 14 SLA 1987; am § 1 ch 22 SLA 1989)

Effect of amendments. — The 1987 amendment deleted "contributing to the delinquency of a minor under AS 11.51.170(a)(4)" following "robbery in any degree" in paragraph (2).
The 1989 amendment, effective August

6, 1989, inserted the subparagraph designations "(A) — (J)" in paragraph (2); substituted "any degree" for "the first or second degree" in present subparagraph (2)(D); and made related punctuation changes.

Chapter 70. Fire Protection.

Article

- 1. Prevention and Investigation (AS 18.70.075, 18.70.095)
- 3. General Provisions (AS 18.70.310)

Article 1. Prevention and Investigation.

Section

- 75. Authority of fire department officers
- 95. Smoke detection devices

Sec. 18.70.075. Authority of fire department officers. (a) A fire officer of a municipal fire department or a fire department registered under AS 29.60.130, while providing fire protection or other emergency services, has the authority to

- (1) control and direct activities at the scene of a fire or emergency;
- (2) order a person to leave a building or place in the vicinity of a fire or emergency, for the purpose of protecting the person from injury;
- (3) blockade a public highway, street, or private right-of-way temporarily while at the scene of a fire or emergency;
- (4) trespass upon property at or near the scene of a fire or emergency at any time of the day or night;
- (5) enter a building, including a private dwelling, or premises where a fire is in progress, or where there is reasonable cause to believe a fire is in progress, to extinguish the fire;
- (6) enter a building, including a private dwelling, or premises near the scene of a fire for the purpose of protecting the building or premises or for the purpose of extinguishing the fire that is in progress in another building or premises;
- (7) upon 24-hour notice to the owner or occupant, conduct a prefire planning survey in all buildings, structures, or other places within the municipality or the registered fire department's district, except the interior of a private dwelling, where combustible material is or may become dangerous as a fire menace to the building;
- (8) direct the removal or destruction of a fence, house, motor vehicle, or other thing judged necessary to prevent the further spread of a fire.

§ 24 ch 99 SLA A 1989)

subsection (d) was corrected by the revisor. For further reports. — For a letter related to this section by ch. 11 276(Fin) am), see 933-934.

Department shall receive dividend fund; procedure Act (AS 44.62) that establish a permanent fund dividend limit for application of eligible individuals which the dividend is paid year are paid

procedure Act (AS 44.62) that establish an individual's permanent fund dividend limit for application of eligible individuals which the dividend is paid year are paid

in rural areas, who are eligible for public transportation assistance to establish eligibility and to apply for permanent fund dividends; and

Department of Corrections shall administer the program.

Amendment AS 44.62(1) ch 11 276(Fin) am) 933-934

Five cash under

under the Administrative Procedure Act (AS 44.62) that establish time limits for application of permanent fund dividend or for application of public transportation assistance to establish eligibility and to apply for permanent fund dividends; and

ment shall set the time limit for applications for permanent fund dividends so that the number of eligible applicants is determined by October 1 of the year for which the dividend is declared and permanent fund dividends for a year are paid before April 30 of the year following that year;

"(3) adopt regulations under the Administrative Procedure Act (AS 44.62) that establish procedures and time limits for an individual upon emancipation or upon reaching majority to apply for permanent fund dividends not credited or received during minority because the parent, guardian, or other authorized representative did not apply on behalf of the individual;

"(4) assist residents of the state, particularly in rural areas, who because of language, disability, or inaccessibility to public transportation need assistance to establish eligibility and to apply for permanent fund dividends; and

"(5) provide the commissioner of administration with information necessary to maintain individual annuity account records and administer the annuity program."

Effect of amendments. — The 1984 amendment substituted "October" for "December" in paragraph (2).

The 1988 amendment, effective May 26, 1988, deleted "and" at the end of paragraph (3), and added paragraphs (5) and (6).

Editor's notes. — Section 4, ch. 54, SLA 1988 provides that the amendments made to this section by ch. 54, SLA 1988 apply "only to eligibility for permanent fund dividends for years after 1988."

Sec. 43.23.065. Exemption of permanent fund dividends.

(a) Except as provided in (b) of this section, 50 percent of the annual permanent fund dividend payable to an individual is exempt from levy, execution, garnishment, attachment, or any other remedy for the collection of debt. This exemption applies to an eligible individual's permanent fund dividend both before and after payment is made to the individual.

(b) An exemption is not available under this section for permanent fund dividends taken to satisfy

(1) child support obligations required by court order or decision of the child support enforcement agency under AS 47.23.140 — 47.23.220;

(2) court ordered restitution under AS 12.55.045 — 12.55.051 or 12.55.100; or

(3) a debt owed by an eligible individual to an agency of the state, unless the debt is contested and an appeal is pending, or the time limit for filing an appeal has not expired.

(c) Claims listed in (b) of this section have priority in the order listed over other claims on a permanent fund dividend. (§ 1 ch 102 SLA 1982; am § 1 ch 157 SLA 1984; am § 1 ch 57 SLA 1985; am § 67 ch 138 SLA 1986; am § 3 ch 26 SLA 1989)

Revisor's notes. — Sections 12 and 13, ch. 99, SLA 1985, amend this section and add new (b) and (c). The amendments are effective if § 1, ch. 99, SLA 1985 is repealed (see § 25, ch. 99, SLA 1985). If the amendments become law, the section will read: "(a) Fifty percent of a cash permanent fund dividend payment is exempt from levy, execution, garnishment, attachment, or any other remedy for the col-

lection of debt. This exemption applies to an eligible individual's permanent fund dividend both before and after payment is made to the individual. An exemption is not available under this section for cash permanent fund dividend payments taken to satisfy (1) child support obligations required by court order or decision of the child support enforcement agency under AS 47.23.140 — 47.23.220; (2) a debt owed

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION/THIRD JUDICIAL DISTRICT

OFFICE OF THE DISTRICT ATTORNEY

March 29, 1988

House Judiciary Committee
Box V
Juneau, Alaska 99801

Re: House Bill 545
Sexual Assault of Mentally Handicapped Persons

Dear Committee Members:

I am an Assistant District Attorney in Anchorage who prosecutes sexual assault cases. I have reviewed House Bill 545 which proposes significant amendments to the sexual assault laws relating to mentally handicapped victims. That bill greatly increases the protection against sexual exploitation of the mentally handicapped beyond present law.

The present criminal statute of second degree sexual assault does not adequately protect the mentally handicapped persons from sexual exploitation. It does not criminalize sexual contact crimes but only prohibits sexual penetration. It places a near impossible burden on the prosecution to prove that the mental handicap was so severe that the person does not even understand the nature of the conduct. Some judges say this means we have to prove the victim cannot even comprehend that someone is having sex with them. The proposed bill offers an alternative by allowing us instead to prove that the mental handicap affected the victim's ability to evaluate the consequences of her conduct even if she is capable of knowing that sex is occurring. The present second degree statute also includes a requirement to prove that the handicapped person would not have engaged in the conduct had they been mentally normal: The sex must occur "under circumstances in which a person who is capable of appraising the nature of the conduct would not engage in sexual penetration." Since it is very difficult to prove that normal people would not have engaged in sex under most circumstances, it is difficult to meet this burden of proof.

Two 1987 cases in Anchorage illustrate the problems

STEVE COWPER, GOVERNOR

REPLY TO

X 1031 WEST 4TH AVENUE, SUITE 520
ANCHORAGE, ALASKA 99501-5906
PHONE (907) 277-8622

☐ P O BOX 470
DILLINGHAM, ALASKA 99576-0470
PHONE (907) 842-2482

☐ 145 MAIN STREET LOOP ROOM 201
KENAI, ALASKA 99611-9998
PHONE (907) 283-3131

☐ 326 CENTER AVE. SUITE 205
KODIAK, ALASKA 99615-9998
PHONE (907) 486-5744

☐ 809 S CHUGACH ST. SUITE 3
PALMER, ALASKA 99645-9998
PHONE (907) 745-5027

☐ P O BOX 671
VALDEZ, ALASKA 99686-0671
PHONE (907) 835-2462

House Judiciary Committee
RE: House Bill 545
March 29, 1988
PAGE 2

in the present law which would be alleviated by the proposed bill.

Our office prosecuted the manager of an apartment building which had a number of female mentally handicapped tenants placed there by a social service agency. He was convicted of sex crimes against four of these severely mentally handicapped women who lived in the complex. He could only be convicted of a felony on two of them because he only penetrated those two. The other two women were only fondled by him. For these fondling crimes he could only be convicted of the class B misdemeanor of harassment carrying a maximum 90 day jail sentence.

In another case prosecuted last year the judge acquitted one of two defendants who were having sex in a park in broad daylight with a severely schizophrenic woman. Eyewitnesses and medical evidence proved she was being forcibly assaulted. All of the witnesses agree that the woman was so mentally ill that she could not even understand that these men were having sex with her. Part of the reason for the acquittal was the ambiguous requirement of present law to prove that the woman would not have engaged in the sexual activity had she been mentally normal. The judge reasoned that even normal people sometimes engage in group sex in public so the state had failed to prove that element. He felt the only way to prove this element was to prove that the woman was being raped or being physically injured because this is the only sexual activity to which normal people would not consent. But he acquitted him on the rape charge apparently because the woman did not testify since she was too mentally ill to be a competent witness. In other words, he ruled that to prove second degree sexual assault under present law the state had to prove first degree sexual assault, but the state could not prove first degree because the victim was so mentally ill. This was the strongest case of second degree sexual assault which could be brought under present law yet the judge acquitted the defendant and did not let the case go to the jury.

As I read House Bill 545 it would create a strong policy for protecting severely mentally handicapped people from sexual exploitation but would not criminalize consensual

House Judiciary Committee
RE: House Bill 545
March 29, 1988
PAGE 3

sexual activity between two handicapped people or sexual activity with persons who were not severely mentally handicapped. The proposed law requires that the mental handicap be so severe that the person cannot either understand that sex is occurring or cannot give informed consent. These people need the protection of the criminal laws which this bill gives them without unnecessarily infringing on their privacy and sexual rights.

Very truly yours,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

DWAYNE W. MCCONNELL
DISTRICT ATTORNEY

Elizabeth H. Sheley
Elizabeth H. Sheley
Assistant District Attorney

EHS:bch

H B

1 2 3

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

P. O. BOX D
JUNEAU, ALASKA 99811-0800
PHONE: (907) 465-2500

OFFICE OF THE COMMISSIONER
ALASKA INDUSTRIAL DEVELOPMENT AND EXPORT AUTHORITY

March 29, 1989

*in m-1
Bill file*

Honorable Peter Goll
Alaska House of Representatives
P.O. Box V
Juneau, AK 99811

Dear Representative Goll:

RE: HB 123

At our meeting yesterday, you expressed some concern over provisions of HB 123 which would allow joint ventures between the authority and private industry. The rationale for allowing such joint ventures is to assist private firms in developing Alaskan resources and becoming competitive in the international marketplace. Joint ventures between a governmental entity and a private company are not uncommon, and if structured prudently, can benefit both parties.

An example of such a joint venture proposal could be a coal loading facility designed to handle throughput from several different lease holders. By having the authority assist in the common transportation system from the uplands to tidewater, the lease holders in effect convert a capital cost to an operating cost freeing up their capital to develop their respective coal leases.

Some concern has also been expressed that adequate safeguards are not in place to protect the authority from poor decision making. Anytime we are trying to accomplish something a certain amount of risk is inherent. However, various provisions of statutes set forth restrictions to protect the authority.

The first and one of primary importance is that all debt of the authority must meet a market test. The bond offerings are reviewed by rating analysts and subject to the marketplace in determining their quality. These acts hold up to public scrutiny all the transactions the authority enters into. Secondly, the authority has on retainer investment bankers who carefully analyze each transaction brought before the authority. Additionally, each transaction must, of course, be worked over by staff and then it is presented to the board for their review. The authority has an extremely active board that meets at least once a month.

*Building
a case for
HB 123
to a study*

*1989
sent to
Bill
Sullivan
10/2/89*

When the board considers a transaction, the statutes set forth guidelines the board will use in considering whether or not to enter into a transaction:

1. AS 44.88.173 requires a finance plan be prepared that sets forth all details concerning cost, operational expenses, and sources of funds. This report will be submitted to the Legislature, State Bond Committee, and the Governor.
2. Sec. 44.88.175. Requirements prior to approval of projects.
 - (a) Before entering into an agreement to finance or to develop a proposed project with a cost in excess of \$10,000,000 that is financed under AS 44.88.171, the authority shall obtain the approval of each Regional Resource Advisory Council or municipality in the area in which the proposed project is to be located. Approval under this subsection must be evidenced by a certified copy of a resolution of the council or of the governing body of the municipality.

(b) Before approving a project financed under AS 44.88.172 for which bonds must be issued, the authority shall

(1) obtain approval under (a) of this section;

(2) find, on the basis of all information reasonable to it, that

(A) The project and its development under this chapter will be economically advantageous to the state and to the general public welfare and will contribute to the economic growth of the state;

(B) the project applicant is financially responsible;

(C) the project is economically and financially feasible and able to produce revenue adequate to repay the bonds or loans with which it is financed;

(D) increased demand on public facilities that might result from the project will be provided for;

(E) the project will provide or retain employment reasonably related to the amount of the financing by the authority, considering the amount of investment per employee for comparable facilities, and other relevant factors;

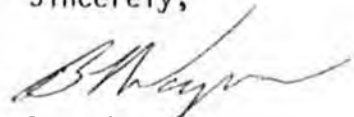
March 29, 1989

(F) the scope of the project is sufficient to provide a reasonable expectation of a benefit to the economy of the state;

(G) the project is in compliance with applicable law; and

(H) issuance of the bonds is not expected to adversely affect the ability of the state or any political subdivision of the state to market other bonds (§ 8 ch 162 SLA 1984)

Sincerely,



Bert Wagon
Executive Director

BW/mm/C.144
032989b

cc: Honorable Max Gruenberg
Co-Chair House Judiciary Committee

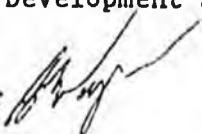


ALASKA INDUSTRIAL DEVELOPMENT
AND EXPORT AUTHORITY

1577 "C" STREET • SUITE 304 • ANCHORAGE, ALASKA 99501-5177 • (907) 274-1651

M E M O R A N D U M

TO: Board of Directors
Alaska Industrial Development and Export Authority

FROM: Bertram L. Wagnon 
Executive Director

DATE: February 27, 1989

SUBJECT: FEDERAL SMALL BUSINESS ADMINISTRATION PROGRAM (SBA)

Attached is a letter which impacts the Federal SBA program nationwide.

The effect of this directive is that the SBA will no longer allow outstanding SBA loans to be refinanced with new SBA loans. Additionally, no refinance which would result in a reduction of exposure of the participant or other lending institution is permitted.

It was requested that a representative from the SBA be at our Board meeting, however, they are in Washington, D.C. discussing this problem and could not attend.

BLW/ss
attachment

SMALL BUSINESS ADMINISTRATION

SBA NOTICE

Cox, Brian
Free
gan
NOTICE NO. 5000-242

TO: All RA's, ARA's F&I, DD's, and ADD's F&I

2-10-89

EFFECTIVE

SUBJECT: Temporary limitation on use of SBA 7(a) loan proceeds for repayment of debt

The demand for 7(a) loan funds currently exceeds available amounts. In order to ease this shortage, effective immediately, new applications for 7(a) business loan guarantees will be subject to the following restrictions:

- o Outstanding SBA loans will not be refinanced with new SBA loans. If a borrower requires additional funds, the new loan will be so structured by reamortization or otherwise that the existing loan remains outstanding.
- o No reduction in a participant lender's exposure or of the exposure of other lending institutions will be permitted. Accordingly, where a participating lender increases its participation percentage to an extent sufficient to cover at least all of the outstanding debt, SBA will extend its guaranty to that part of the loan which does not include the outstanding debt.

Example: a loan is approved for \$400,000, of which \$50,000 is to pay debt to the participant, \$50,000 to pay debt to another lender, and \$300,000 is for the purchase of machinery and equipment. In this case a 25% participation would be required so that the lender's exposure in the loan will at least

EXPIRES 10/1/89

SBA Form 1353 (3-83)

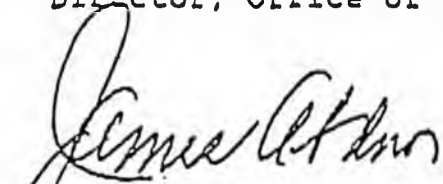
equal the loan amounts used for pre-existing debt payment. An alternative would be to reduce the loan by \$50,000, eliminating payment of the other lender if the participant is unwilling to take more than 15%, and if repayment ability would still exist.

- o Payment of trade payables is not considered debt repayment, but will be treated as working capital. Participating lenders may also continue to make interim advances in anticipation of reimbursement from SBA financing, as provided in SOP 50-10, paragraph 2d.(4).

These debt payment limitations are a temporary constraint to help manage the shortage of funds. In some regions restrictions have already been placed on debt payment. However we must have a consistent national policy. The constraints are effective until further notice.

These restrictions apply to all categories of 7(a) loan guarantees. Development Company (502 and 504) guarantees are not affected.

Any questions should be addressed to Everett Shell, Director, Office of Business Loans (FTS 653-6470)


 James Abdnor
 Administrator

2/16
 PER TELECONF WITH BOTH REGION & CENTRAL OFFICES:

- 1) REFINANCING PROHIBITION ALSO APPLIES TO FOIC
- 2) SBA DIRECT FUNDS (VIETNAM VETERAN LOANS) MAY NOT BE USED TO RETIRE AN OUTSTANDING GP LOAN
- 3) A NEW GP MAY NOT BE USED TO PURCHASE ORRO FROM THE SUBMITTING BANK - OK TO USE A NEW GP TO PURCHASE ANOTHER BANK'S ORRO
- 4) REFINANCING PROHIBITION APPLIES EVEN IF WE HAVE ALREADY RECEIVED A BANK WRITER ADVISING OF INTERIM FINANCING BEING USED TO PAY OFF SBA GP OR BANK DEBT.




ALASKA INDUSTRIAL DEVELOPMENT
AND EXPORT AUTHORITY

1577 "C" STREET • SUITE 304 • ANCHORAGE, ALASKA 99501-5177 • (907) 274-1651

MEMORANDUM

TO: Board of Directors
Alaska Industrial Development and Export Authority

FROM: Bertram L. Wagnon 
Executive Director

DATE: February 27, 1989

SUBJECT: LOAN GUARANTY PROGRAM CHANGES

The Chair has requested that staff agenda the Loan Guaranty Program for consideration of several changes.

The first change would be to raise the allowable guaranty percentage from 70% to 80%.

The second change would be to amend the language that limits the guaranty to a percent of the loan and set the maximum guaranty at \$1 million irrespective of the loan size.

The third change would allow the Authority to pay pro rata costs of foreclosing and liquidating the collateral. Previously I have advised the Chair that this third change was not necessary in that it could be done by regulation. Counsel has reviewed this and strongly suggests that a statutory change is necessary here as well.

Mr. Jan Sieberts of the National Bank of Alaska appeared before the House Labor & Commerce Committee recommending such changes. Attached as Appendix "A" is a letter from Mr. Siebert's pertaining to this.

The Committee Chair requested that I draft changes for his Committee to consider and this memo is attached as Appendix "B". Appendix "C" is a subsequent memo advising the Committee that a statutory change is required to add a pro rata participation by the Authority in paying liquidation costs.

Loan Guaranty Program Changes

February 27, 1989

Page Two

Recently the SBA has eliminated the use of SBA Guarantees for refinancing of their own debt or that of third parties. This action has created considerable interest in amending the Authority's Loan Guaranty Program.

Of the three changes, the National Bank of Alaska has stated that a pro rata sharing of liquidation costs is the major impediment which is keeping them from participating in the program. I believe the legislature did intend that the loan guaranty would be limited to \$1 million and that in the actual drafting of the bill, language was worded in such a way that the limits reduced the guaranty to a maximum of \$700,000 (70% of \$1 million loan).

The 70% guaranty was inserted by the legislature on the floor of the Senate. Previous versions of the bill had 80%.

It is significant to note that three changes are being considered: 1) paying of liquidation costs; 2) raising the guaranty to \$1 million; and 3) raising the guaranty percentage to 80%. Remember that this is a program whereby the Authority guarantees a loan made by someone else. It also allows a bank to refinance an existing loan and have a guaranty be provided. While changes appear required if we want the National Bank of Alaska participation, changes 1 and 2 would seem to provide enough and still leave the bank responsible for only 30% of the risk.

BLW/ss
attachment(s)

January 27, 1989

Mr. Wes Coyner
3111 Douglas Highway
Juneau, AK 99801

Re: AIDEA Loan Guaranty Program

Dear Mr. Coyner:

The Alaska Legislature passed the Business Assistance Program Statute last year for implementation through the Alaska Industrial Development and Export Authority. Even though the legislation gave a good framework of a program to deal with, we feel that the regulatory process through which the program has been implemented created a program which is not being used by the banking system for business development. In particular, of the indicated items below, the first represents the major regulatory curtailment of the program while the remaining represent legislative problems. I have attempted to place these in order of importance.

1. Under the regulations the payment of the guaranty is made based on the principal balance at the time of liquidation and does not cover liquidation costs and protective advances in handling the defaulted loan. Our recommendation would be to change the regulations to cover liquidation, carrying costs, and protective advances in the handling of collateral. This is universally the case in participation loans, other government guaranteed programs, and AIDEA's other loan programs. Since AIDEA has the ability to approve a liquidation of collateral plan and is not required to pay the guaranty until such time as liquidation takes place, they could in fact stall the liquidation and the sale of the assets for many years, which would substantially increase or create prohibitive liquidation and protective advance expenses to the banks. We believe that this regulation in itself has destroyed the validity of the program.
2. We believe the guaranty amount should be increased from 70% to 90% to be consistent with the AIDEA umbrella loan program. For instance, under AIDEA's umbrella loan program, AIDEA effectively buys a 90% participation in loans rather than a 70% participation in the guaranteed loan program. The bond holders are providing the capital in the umbrella program as the Alaska banking system would under the guarantee program. It seems logical that they be consistent in their credit exposure from program to program. It should be noted that we understand that AIDEA

Mr. Wes Coyner
January 27, 1989
Page Two

is requesting legislation to reduce their participation amount to 80% in the umbrella loan program. If that is the case, we would think it reasonable to increase the guaranteed amount to 80% to be consistent. As a matter of fact, the federal SBA program will guarantee 90% of some loans with the most common guaranty at 85%.

3. The million dollar cap on the loan should be removed. As an example, a fish processing plant may require a loan of \$2,000,000 and we would like to have the opportunity to request a 35% guaranty from AIDEA. It has been our experience in larger complex projects requiring long-term capital that a variety of participants are brought together with different regulations to make a transaction work. We really think the limitation on a loan of \$1,000,000 was a drafting mistake in the legislation.
4. The loan guaranteed amount should be increased to \$1,000,000 as we believe was the intent of the original lawmakers. The law in its final form limited the amount of the loan to \$1,000,000 with a 70% guaranty or a \$700,000 maximum guaranty. As a matter of fact, since the implementation of the law the federal Small Business Administration's loan guaranty program has increased their guaranty to the amount of \$750,000 from \$500,000. The federal program is excellent, but does not work for all borrowers.

In my opinion, these are the major impediments to the AIDEA Business Assistance Program. Of course, the major fact is that AIDEA is not enthusiastic about implementing the program. Feel free to call upon me for any questions you may have.

Sincerely,

Jan Sieberts
Senior Vice President

lkr

cc: Bob Gray
Dick Hall

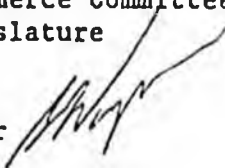


ALASKA INDUSTRIAL DEVELOPMENT
AND EXPORT AUTHORITY

1577 "C" STREET • SUITE 304 • ANCHORAGE, ALASKA 99501-5177 • (907) 274-1651

MEMORANDUM

TO: The Honorable Members
House Labor & Commerce Committee
Alaska State Legislature

FROM: Bertram L. Wagnon 
Executive Director

DATE: February 21, 1989

SUBJECT: Loan Guaranty Program

At the hearing on House Bill 123 held this Saturday, it was requested that draft amendments to the Loan Guaranty Program be prepared for the committee's review.

The first change suggested at the hearing was that the percentage of allowable guaranty be increased from 70% to 80%. To effect this change, following is suggested language. AS 44.88.535(b) is amended to read:

"(b) The authority may provide a guarantee from the fund for up to [70] 80 percent of a loan that qualifies under AS 44.88.500 - 44.88.599. The ratio of the guarantee to the outstanding principal of the loan may not increase over the term of the loan."

The committee should be aware that this was changed from 80% to 70% on the floor of the legislature last session.

The second change involves the dollar limit on the guaranty. As currently written, the guaranty limit is expressed in terms of a loan of not more than \$1,000,000. It is the Author's opinion that Mr. Sieberts of the National Bank of Alaska is correct in that the legislature's intent was to limit the guaranty to a maximum of \$1 million irrespective of the loan size. To accommodate such changes the following language is suggested. AS 44.88.545 is amended to read:

Sec. 44.88.545. Limitations of Guarantees with respect to borrowers. The Authority may not provide a guarantee

(1) [a loan] of more than \$1,000,000

(2) [loans] to an individual borrower that cumulatively exceed \$1,000,000 of guaranteed indebtedness.

The net effect of such changes are that the maximum guaranteed transaction by the Authority would be \$1 million per loan regardless of the size of the loan and also that no borrower could have more than \$1 million of Authority guaranteed indebtedness.

BLW/ss

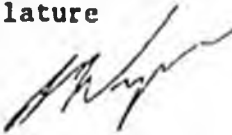


ALASKA INDUSTRIAL DEVELOPMENT
AND EXPORT AUTHORITY

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M E M O R A N D U M

TO: The Honorable Members
House Labor & Commerce Committee
Alaska State Legislature

FROM: Bertram L. Wagnon 
Executive Director

DATE: February 22, 1989

SUBJECT: House Bill 123

At the teleconference Committee meeting on Saturday, considerable discussion was held concerning the Authority's Loan Guaranty Program and changes to that program suggested by Mr. Jan Sieberts of the National Bank of Alaska.

Language concerning the percentage of guaranty and language to allow a guaranty up to \$1 million was submitted for your consideration. Additionally, I advised the Committee that the third significant point of Mr. Sieberts, dealing with paying a pro rata share of liquidation assets could be handled by regulation and no statute change was necessary. After reviewing the existing law and conferring with counsel, I regret to inform you that counsel has strongly suggested that if it is the Committee's desire to make such a change, that the following amendment be inserted.

AS 44.88.560 is amended by adding a new paragraph to read:

(7) use money in this fund to pay expenses relating to the liquidation of collateral securing loans guaranteed by this fund to the extent the Authority considers it in its best interest to do so.

House Labor & Commerce Committee
February 22, 1989
Page Two

The Committee may wish to consider that in Mr. Sieberts testimony, he indicated that the greatest impediment to his bank's participation was the limitation on not paying liquidation costs of loans on a pro rata basis and if this were changed, his bank would participate in the program. Given that and as this is a Guaranty Program whereby the State through AIDEA will assume 70% of the risk, consideration should be given to perhaps leaving the banks at least 30% at risk. If the changes are made to raise the limit to \$1 million and pay pro rata costs of liquidation, having the banks maintain a 30% interest in the transaction could be very prudent.

BLW/ss

SBA NOTICE

Col. Train
Jan

NOTICE NO. 5000-242

TO: All RA's, ARA's F&I, DD's, and ADD's F&I

2-10-89

EFFECTIVE

SUBJECT: Temporary limitation on use of SBA 7(a) loan proceeds for repayment of debt

The demand for 7(a) loan funds currently exceeds available amounts. In order to ease this shortage, effective immediately, new applications for 7(a) business loan guarantees will be subject to the following restrictions:

- o Outstanding SBA loans will not be refinanced with new SBA loans. If a borrower requires additional funds, the new loan will be so structured by reamortization or otherwise that the existing loan remains outstanding.
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Example: a loan is approved for \$400,000, of which \$50,000 is to pay debt to the participant, \$50,000 to pay debt to another lender, and \$300,000 is for the purchase of machinery and equipment. In this case a 25% participation would be required so that the lender's exposure in the loan will at least

EXPIRES 10/1/89

SBA Form 1353 (3-83)

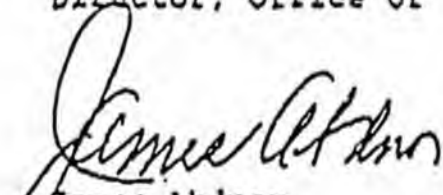
equal the loan amounts used for pre-existing debt payment. An alternative would be to reduce the loan by \$50,000, eliminating payment of the other lender if the participant is unwilling to take more than 15%, and if repayment ability would still exist.

- o Payment of trade payables is not considered debt repayment, but will be treated as working capital. Participating lenders may also continue to make interim advances in anticipation of reimbursement from SBA financing, as provided in SOP 50-10, paragraph 2d.(4).

These debt payment limitations are a temporary constraint to help manage the shortage of funds. In some regions restrictions have already been placed on debt payment. However we must have a consistent national policy. The constraints are effective until further notice.

These restrictions apply to all categories of 7(a) loan guarantees. Development Company (502 and 504) guarantees are not affected.

Any questions should be addressed to Everett Shell, Director, Office of Business Loans (FTS 653-6470)


James Abdnor
Administrator

- 2/16
PER TELECALL WITH BOTH REGION & CENTRAL OFFICES:
- 1) REFINANCING PROHIBITION ALSO APPLIES TO FOIC
 - 2) SBA DIRECT FUNDS (VIETNAM VETERAN LOANS) MAY NOT BE USED TO RETIRE AN OUTSTANDING GP LOAN
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ALASKA INDUSTRIAL DEVELOPMENT
AND EXPORT AUTHORITY

1577 "C" STREET • SUITE 304 • ANCHORAGE, ALASKA 99501-5177 • (907) 274-1651

March 1, 1989

The Honorable Dave Donley, Chairman
House Labor & Commerce Committee
And The Honorable Members
House Labor & Commerce Committee
P.O. Box V
Juneau, Alaska 99811

Dear Representative Donley:

On Monday, February 27, 1989, the Authority Board Members conducted a meeting. The primary purpose being consideration of amendments to the Loan Guaranty Program.

The Board felt that two of the changes under discussion held merit and that statutory changes were appropriate in those two cases. Those dealt with raising the limit of the guaranty to \$1 million regardless of the loan size and providing for a sharing of liquidation costs on a pro rata basis in the event of a default. The third dealt with raising the guaranty from 70% to 80%, the directors felt that this was not an appropriate change.

Obviously your Committee has the power to make any statutory change they feel is appropriate. However, it seemed appropriate to have the Authority's rationale made available to the Committee during its deliberative process.

In considering the changes, the raising of the guaranty to \$1 million was what was contemplated by the original drafters of the legislation. In considering a pro rata sharing of liquidation costs, the National Bank of Alaska has stated that if that change was made, they would participate in the program.

House Labor & Commerce Committee
March 1, 1989
Page Two

The third change, which was rejected by the Authority Board, would have raised the amount of the Authority's guaranty on a bank loan from 70% to 80%. The Board felt that given the two approved changes and the fact that the largest bank in the State would participate in the program with the two changes, that raising the guaranty percentage to 80% was not prudent. One major ingredient to maintaining integrity within the program is to keep the participants at risk for a substantial enough share of the exposure to avoid the dumping of substandard loans on the State. In effect, a guaranty program is a risk transfer mechanism and the Board felt having the banks maintain a 30% exposure was the prudent course of action.

If I can be of any assistance to the Committee or answer any questions, please let me know.

Sincerely,



Bertram L. Wagnon
Executive Director

BLW/ss
attachment



CC
282123

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 27, 1989

The Honorable Sam Cotten
Speaker of the House
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill authorizing the Alaska Industrial Development and Export Authority (AIDEA) to finance development enterprises.

The most significant provisions of this bill relate to AIDEA's ability to finance resource development projects that AIDEA intends to own or operate (such as the Red Dog Mine project). In this regard, the bill would permit AIDEA to issue up to \$25,000,000 of its bonds for such a project without requiring passage of a law approving the project. It would also permit AIDEA to transfer amounts among its various accounts to provide more financing flexibility. (Although the provisions [proposed AS 44.88.095(b) and (f)] requiring legislative approval before certain bonds exceeding specified amounts may be issued raise a constitutional question under the separation-of-powers doctrine, I know of the legislature's concern about bond issuance and I believe that it might be helpful to set out this procedure in the statutes, as a courtesy to the legislature.)

Another significant provision would require originating financial institutions to retain a higher percentage of a loan before it may sell it to AIDEA. Under existing law, a financial institution must retain 10 percent of a loan. AS 44.88.155(d). Under this bill, the originating financial institution must retain 20 percent of the loan. By increasing this requirement along with the amount that AIDEA can invest in or loan on projects, it is hoped that financial institutions will carefully select the projects for which they will extend credit.

This bill will allow AIDEA to gather together all funds and accounts established by law and administer them as a part of the revolving fund of the authority. AIDEA would be given the power to transfer freely between accounts within the

development fund so that it has the flexibility to adapt to the appropriate structure of a financing proposal presented to it for financing. AIDEA would be given the power to create separate accounts necessary to guarantee repayment of a bond issue if that action becomes necessary to make the bonds marketable.

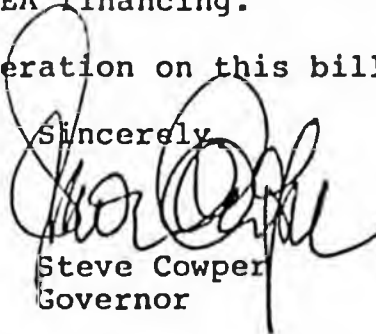
The bill also amends a provision in existing law which represents to investors in AIDEA bonds that the state might step in and make bond payments if the authority is unable to do so. This section acknowledges the state's moral obligation to back AIDEA's revenue bonds if the authority becomes insolvent. The bill would change this moral obligation representation to apply only to bonds issued on or before January 1, 1989.

The bill would expressly confer on AIDEA the power to share ownership of projects with private enterprises by either forming a partnership, joint venture, or other form of cooperative ownership agreement.

The bill would also amend the provision in existing law that prohibits AIDEA from purchasing loans from financial institutions that experience a two percent or greater delinquency rate on loans made by the institution. The bill would allow AIDEA to set the target delinquency rate by regulation. By adopting this technique, AIDEA will be given the flexibility to adjust the delinquency rate to reflect existing economic conditions. The inflexible rule in effect under existing law sets the rate too low to allow the majority of banks in the state to qualify for AIDEA financing.

I urge your favorable consideration on this bill.

Sincerely,



Steve Cowper
Governor

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: AIDEA
Sponsor: Rules Committee
Requestor: Governor

Agency Affected: Commerce & Econ. Dev.
BRU: AIDEA
Components: _____

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 | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | -0- | -0- | -0- | -0- | -0- | -0- |
| CAPITAL | -0- | -0- | -0- | -0- | -0- | -0- |
| REVENUE | -0- | -0- | -0- | -0- | -0- | -0- |

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Existing staffing and budget of the Authority will be utilized to implement legislation. The primary focus of the Authority will shift from commercial/service sector financing to primary basic industries.

Prepared by: Bert Wagon, Executive Director Phone: 279-1651
Division: Alaska Industrial development & Export Authority Date: 1/25/1989
Approved by Commissioner: Larry Mercurieff, Commissioner Date: 1/26/89
Agency: Dept. of Commerce & Economic Development

Distribution (by preparer):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
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STATE OF ALASKA

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

P. O. BOX D
JUNEAU, ALASKA 99811-0800
PHONE: (907) 465-2500

ALASKA INDUSTRIAL DEVELOPMENT AND EXPORT AUTHORITY

April 13, 1989

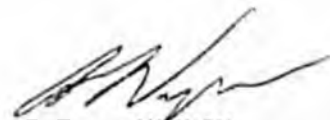
Honorable Peter Goll
Honorable Max Gruenburg
Members of the House Judiciary Committee
P.O. Box Y
Juneau, AK 99811

RE: CSHB 123

Several members of the committee have expressed concerns over the lack of legislative control with the passage of HB 123. In an effort to allow passage of the bill in the short time which remains it is suggested that the bill be amended lowering the \$25 million floor on legislative approval.

Current law provides for a 10 million ceiling after which legislative approval will be required.

A change such as proposed would allow several very important projects to progress and yet require that the individual projects themselves be subject to approval by the Legislature.



BERTRAM WAGNON, EXECUTIVE DIRECTOR

BL/cw9688c
41389a



Alaska Environmental Lobby, Inc.

P.O. Box 22151 Juneau, Alaska 99802

907-586-5373

Y... ..
73 89

GENERAL CONCERNS WITH HB 123 / SB 249 -- AIDEA

The Alaska Environmental Lobby has the following concerns regarding the proposed changes to the AIDEA statutes:

1. Analysis of the social and environmental impacts of a proposed project, including public review and comment based on that analysis, is not required.
2. A local hearing is required only if the project exceeds \$10,000,000.
3. No legislative approval is required on projects under \$25,000,000.

Requirements for public review and comment based on the analysis of economic, social, and environmental concerns need not be a stumbling block to economic development. These provisions would pave the way for resource development which is compatible with the community and the environment, based on informed decision-making. This would help ensure that future funds will not be spent for mitigating environmental damage and that environmental degradation will not impact existing industry within the area.

We believe that the proposed \$25,000,000 threshold for legislative approval is too high. Projects much smaller than that may involve major public policy decisions. We support the maintenance of the existing \$10,000,000 cap.

We appreciate your consideration of these issues.

Alan Phipps 4-24-89



ALASKA INDUSTRIAL DEVELOPMENT
AND EXPORT AUTHORITY

1577 "C" STREET • SUITE 304 • ANCHORAGE, ALASKA 99501-5177 • (907) 274-1651

MEMORANDUM

RECEIVED APR - 4 1989

TO: The Honorable Peter Goll
House of Representatives, Alaska State Legislature

FROM: Bertram L. Wagon
Executive Director *[Signature]*

DATE: April 3, 1989

SUBJECT: House Bill 123

Per our phone conversation I have attempted to set out below an explanation of the two areas of concern you mentioned on Thursday.

1. Public access to bonds issued by the Authority.

The debt issued by the Authority in the form of its bonds are sold through underwriting syndicates lead by a senior underwriter, Goldman Sachs & Company and Prudential Bache Securities. Efforts have been made to make these securities available to Alaskans by including brokerage houses that have offices in Alaska in the underwriting group. Dean Witter, Paine Webber and Merrill Lynch have all participated in our selling groups and all three have offices located in Anchorage. Due to the structure of our financings, about 2/3 of the volume is taken down by institutional buyers with the balance being sold to the retail market. This split between buyers changes over time with changes in the economy and lately continual changes in federal taxation policy. For example the 1986 tax code change made our bonds subject to A.M.T (the Alternative Minimum Tax) which in time will most likely cause fewer insurance companies to be buyers. All reasonable efforts are made to have our bonds available to the Alaska public at the initial public offering.

For background information, I have attached official statements from several of our past transactions for your review.

Honorable Peter Goll
April 3, 1989
Page Two

2. How loans are participated in by AIDEA.

The Authority functions as a participant to banks who make loans to Alaskan residents. An individual needing to obtain funds for a business would approach a bank of their choice.

The bank would evaluate the proposal and if satisfied with the credit aspects, would then forward the package to the Authority for its review. If the Authority concurs with the bank, the Authority will issue a commitment letter to the bank and once the bank has closed the loan, purchase its participation (usually 80%). The rationale for having the bank originate the transaction is to keep the private banking sector involved in making both money available to Alaska business as well as performing the credit analysis.

As you mentioned on smaller loans, some banks may not find it cost effective to go through the participation process and undoubtedly some smaller customers are not being served. Two avenues exist to address the particular needs of the very small loan.

The Federal SBA operates a program that many banks take advantage of. This program allows the banks to make a loan to a small business and have SBA guaranty up to 85% of the loan amount. This transfer of risk from the bank to the SBA often will entice a bank to make loans it otherwise could not.

A second alternative is the Authority's own Guaranty program (amendments to this program are contained in Sections 15, 16 & 17 of CSHB123 to make the program more acceptable to banks) operated by the Authority. This program operates similar to the SBA program and its intent is to once again entice banks to make loans to credit worthy businesses.

BLW/ss
attachment(s)



ALASKA INDUSTRIAL DEVELOPMENT AND EXPORT AUTHORITY

1577 "C" STREET • SUITE 304 • ANCHORAGE, ALASKA 99501-5177 • (907) 274-1651

TELECOPY

done
(S)

TO: The Honorable Peter Coll
House of Representatives
Alaska State Legislature

FROM: Bertram L. Wagnon, Executive Director
Alaska Industrial Development & Export Authority

SUBJECT: House Bill 123

DATE: April 3, 1989

TIME SENT: 9:56 a



THIS FORM PLUS 2 PAGES. PHONE CONTACT IF NOT RECEIVED PROPERLY IS (907) 274-1651. ATTENTION: Sharron.

THANK YOU.

NOTE: Original Memorandum with attachments will be hand delivered on Tuesday, April 4, 1989

THE FOLLOWING DOCUMENT HAS
NOT BEEN FILMED BUT IS
AVAILABLE IN THE ORIGINAL
FILE

NEW ISSUE

\$14,540,000

**Alaska Industrial Development and Export Authority
Taxable Umbrella Bonds I, Series 1987
(Taxable Medium Term Notes)**

Dated: Date of Delivery

Due: April 1, as shown below

The Bonds will be issuable in fully registerable form in denominations of \$5,000 or any whole multiple thereof. Principal of the Bonds is payable on April 1 of the years set forth below upon presentation and surrender thereof at the principal office of the Trustee, Rainier National Bank, Seattle, Washington. Interest on the Bonds is payable on April 1 and October 1 of each year, commencing October 1, 1987 by check or draft mailed to the registered owners thereof on the record date, which is the fifteenth day of the calendar month next preceding each interest payment date.

The Bonds are not subject to redemption prior to maturity.

Interest on the Bonds is includible in gross income of the recipient for United States income tax purposes.

Payment of the principal of, and 205 days' interest on, the Bonds is secured by an irrevocable direct pay Letter of Credit issued by

The Sumitomo Bank, Limited, Seattle Branch

The Bonds constitute general obligations of the Authority, and the full faith and credit of the Authority is pledged to the payment of the principal of and interest on the Bonds. The Bonds are further secured by the Taxable Umbrella Bond Capital Reserve Fund and the moneys, properties, assets and revenues described herein. The Authority does not have the power to levy taxes for any purpose. The Bonds do not constitute an indebtedness or liability of the State of Alaska and do not directly, indirectly or contingently obligate the State of Alaska to apply money from, or levy or pledge, any form of taxation whatever to the payment of the Bonds.

| <u>Maturity (April 1)</u> | <u>Amount</u> | <u>Interest Rate</u> | <u>Maturity (April 1)</u> | <u>Amount</u> | <u>Interest Rate</u> |
|-------------------------------|---------------|--------------------------|-------------------------------|---------------|--------------------------|
| 1988 | \$ 230,000 | 7½% | 1993 | \$1,625,000 | 9.20% |
| 1989 | 575,000 | 8.10 | 1994 | 1,710,000 | 9¾ |
| 1990 | 1,425,000 | 8.45 | 1995 | 1,340,000 | 9½ |
| 1991 | 1,500,000 | 8.80 | 1996 | 1,350,000 | 9.60 |
| 1992 | 1,550,000 | 9 | 1997 | 3,235,000 | 9.65 |

| | <u>Public Offering Price</u> | <u>Underwriting Discount</u> | <u>Proceeds to the Authority (1)</u> |
|----------------|----------------------------------|----------------------------------|--|
| Per Bond | 100% | 1.20% | 98.80% |
| Total | \$14,540,000 | \$174,480 | \$14,356,520 |

(1) Before deduction of expenses payable by the Authority.

The Series 1987 Bonds are offered by the undersigned, subject to the receipt and acceptance thereof and the right to reject any order in whole or in part. It is expected that delivery of the Series 1987 Bonds will be made at the office of Goldman, Sachs & Co., 85 Broad Street, New York, New York, on or about August 6, 1987.

Goldman, Sachs & Co. Prudential-Bache Capital Funding

July 28, 1987.

THE FOLLOWING DOCUMENT HAS
NOT BEEN FILMED BUT IS
AVAILABLE IN THE ORIGINAL
FILE

NOT A NEW ISSUE

In the opinion of Bond Counsel, subject to the limitations herein, interest on the Bonds is exempt from Federal income taxes under existing statutes, regulations, court decisions and rulings, except that no opinion is expressed as to the exemption from such taxes of interest on any Bond for any period during which such Bond is held by a person who, within the meaning of Section 103(b) of the Internal Revenue Code of 1954, as amended, is a substantial user of the facilities with respect to which the proceeds of the Bonds were used, or a related person. In the opinion of Bond Counsel, conversion of the interest rate on the Bonds will not cause the Bonds to be considered as having been issued after December 31, 1985 under the provisions of H.R. 3838 as passed by the U.S. House of Representatives on December 17, 1985. In the opinion of Bond Counsel, such interest is also exempt from taxation by the State except for inheritance, estate and bank franchise taxes and taxes on transfers by or in anticipation of death. See "Tax Exemption" herein.

\$11,000,000
Alaska Industrial Development Authority
Variable Demand/Fixed Rate Bonds

1984 Series A and 1984 Series B
Conversion to Fixed Interest Rates

Date of Issue: October 30, 1984

Date of Conversion to Fixed Interest Rates: March 14, 1986

Due: April 1, 2004

The Bonds were issued by the Alaska Industrial Development Authority (the "Authority") on October 30, 1984 as \$12,200,000 Variable Demand/Fixed Rate Bonds, 1984 Series A and 1984 Series B, bearing a variable interest rate and subject to conversion at any time to fixed interest rates at the option of the Authority. The Authority has exercised its option to convert the interest rate on the Bonds to fixed interest rates effective March 14, 1986. The Bonds were tendered for payment on the date of conversion and are being remarketed by the Underwriters.

The Bonds are issuable only in registered form in denominations of \$5,000 or any integral multiple thereof. Principal of, and premium, if any, will be payable at the main office of La Salle National Bank, Chicago, Illinois, as Trustee. Upon conversion of the interest rate on the Bonds to fixed interest rates, the Bonds will bear interest from March 14, 1986 payable on October 1, 1986 and semiannually thereafter on April 1 and October 1 by check or draft mailed to the registered owners thereof. The Bonds are subject to certain mandatory and optional provisions for redemption prior to maturity as described herein under the caption "Redemption Provisions."

The Bonds were issued by the Authority to finance the purchase of participations in qualified loans in the State of Alaska, as more fully described herein. The Authority is a public instrumentality of the State of Alaska in the Department of Commerce and Economic Development but with a separate and independent legal existence.

The Bonds constitute general obligations of the Authority, and the full faith and credit of the Authority is pledged to the payment of the principal of, redemption premium, if any, and interest on the Bonds. The Bonds are further secured by the Fixed Rate Capital Reserve Fund and the monies, properties, assets and revenues described herein. The Authority does not have the power to levy taxes for any purpose. The Bonds do not constitute an indebtedness or liability of the State of Alaska and do not directly, indirectly or contingently obligate the State to apply money from, or levy or pledge, any form of taxation whatever to the payment of the Bonds.

\$4,115,000 7½% 1984 Series A Term Bonds due April 1, 2004 @ 100%

\$6,885,000 7.70% 1984 Series B Term Bonds due April 1, 2004 @ 100%

The Bonds are offered when, as and if received by the Underwriters and subject to the approving legal opinion of Wohlforth & Flint, Bond Counsel, Anchorage, Alaska, as to validity and the exemption of interest thereon from Federal income taxation. Certain legal matters will be passed upon for the Underwriters by Preston, Thorgrimson, Ellis & Holman, Seattle, Washington. It is expected the Bonds in definitive form will be available for delivery in New York, New York on or about March 14, 1986.

Goldman, Sachs & Co.

Prudential-Bache
Securities

John Nuveen & Co.
Incorporated

February 26, 1986

THE FOLLOWING DOCUMENT HAS
NOT BEEN FILMED BUT IS
AVAILABLE IN THE ORIGINAL
FILE

NEW ISSUE

In the opinion of Bond Counsel, interest on the 1987A Bonds is exempt from Federal income taxes other than the alternative minimum tax and is exempt from taxation by the State except for net income tax of certain corporations, inheritance and estate taxes, and taxes on transfers by or in contemplation of death. See "Tax Exemption" herein.

\$103,250,000



Alaska Industrial Development Authority

**DeLong Mountain Transportation Project
Revenue Bonds, Series 1987A**

Dated: February 1, 1987

Due: April 1, as shown below

The 1987A Bonds will be issued as fully registered bonds and, when issued, will be registered in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York ("DTC"). DTC will act as securities depository of the 1987A Bonds. Individual purchases of interests in the 1987A Bonds will be made in book-entry form only, in the principal amount of \$5,000 or any integral multiple thereof. Purchasers of such interests will not receive certificates representing their interest in the 1987A Bonds. Principal and interest are payable directly to DTC by Rainier National Bank, Seattle, Washington, as Trustee for the 1987A Bonds. Principal is payable on the dates set forth below. Interest is payable semiannually on April 1 and October 1, commencing on October 1, 1987 (eight months' interest). Upon receipt of payments of principal and interest, DTC will in turn remit such principal and interest to the DTC Participants (as such term is herein defined) for subsequent disbursement to the purchasers of interests in the 1987A Bonds, as described herein. The 1987A Bonds will be subject to redemption prior to maturity as set forth herein.

The Authority is issuing the 1987A Bonds as part of the financing for the DeLong Mountain Transportation Project, under the DeLong Mountain Transportation Project Revenue Bond Resolution (as supplemented, the "Resolution"). The 1987A Bonds are payable solely from certain revenues of the Authority pledged by the Resolution and from certain funds and accounts held by the Trustee under the Resolution.

THE 1987A BONDS ARE NOT OBLIGATIONS OF THE STATE OF ALASKA AND ARE NOT GENERAL OBLIGATIONS OF THE AUTHORITY. NEITHER THE STATE NOR THE AUTHORITY HAS PLEDGED ITS FULL FAITH AND CREDIT TO THE 1987A BONDS.

The payment of the principal of (whether at maturity or upon mandatory sinking fund redemption, but not upon acceleration or optional redemption, as described herein) and interest on the 1987A Bonds will be unconditionally guaranteed under a municipal bond guaranty insurance policy to be issued by the



MUNICIPAL BOND INVESTORS ASSURANCE CORPORATION

| <u>Maturity</u> | <u>Amount</u> | <u>Interest Rate</u> | <u>Maturity</u> | <u>Amount</u> | <u>Interest Rate</u> | <u>Maturity</u> | <u>Amount</u> | <u>Interest Rate</u> |
|-----------------|---------------|----------------------|-----------------|---------------|----------------------|-----------------|---------------|----------------------|
| 1992 | \$1,800,000 | 5.40% | 1995 | \$1,885,000 | 6 % | 1999 | \$2,395,000 | 6½ % |
| 1993 | 1,685,000 | 5.60 | 1996 | 2,000,000 | 6.10 | 2000 | 2,550,000 | 6.60 |
| 1994 | 1,780,000 | 5.80 | 1997 | 2,120,000 | 6¼ | 2001 | 2,720,000 | 6.70 |
| | | | 1998 | 2,250,000 | 6.40 | | | |

(Price of all 1987A Bonds shown above: 100%)

\$52,485,000 7.20% 1987A Term Bonds due April 1, 2013 @100%

\$23,760,000 7.30% 1987A Term Bonds due April 1, 2017 @100%

(Accrued interest from February 1, 1987 to be added)

The 1987A Bonds are offered when, as and if received by the Underwriters and subject to the approving legal opinion of Brillard, Spahr, Andrews & Ingersoll, Bond Counsel, Washington, D.C., as to validity and the exemption of interest thereon from Federal income taxation. Certain legal matters will be passed upon for the Underwriters by Wohlforth, Flint & Gruening, Anchorage, Alaska. It is expected the 1987A Bonds in definitive form will be available for delivery to DTC on or about March 18, 1987.

Goldman, Sachs & Co.

Prudential-Bache Capital Funding

Dated: February 25, 1987

| DATE | PAGE | ACTION |
|--------------|------|---|
| 04/11/85 (S) | 766 | READ THE FIRST TIME - REFERRAL(S) |
| 05/01/85 (S) | 992 | SA RPT CS 3DP INR NEW TITLE |
| 05/01/85 (S) | 992 | FISCAL NOTE 58034 |
| 05/01/85 (S) | 993 | LETTER OF INTENT WITH SA REPORT |
| 02/18/86 (S) | 1858 | FIN RPT CS 4DP 24R |
| 02/18/86 (S) | 1858 | FISCAL NOTE 58051 |
| 02/19/86 (S) | 1874 | NEW TITLE OFFERED 2/19 |
| 02/25/86 (S) | 1929 | RULES TO CALENDAR 2/26 |
| 02/26/86 (S) | 1930 | READ THE SECOND TIME |
| 02/26/86 (S) | 1930 | FIN CS ADOPTED UNAN CONSENT |
| 02/26/86 (S) | 1930 | (S) ADOPTED SA LETTER OF INTENT |
| 02/26/86 (S) | 1931 | HELD IN SECOND READING TO 2/27 |
| 02/27/86 (S) | 1942 | AM TO AM NO 1 ADOPTED UNAN CONSENT |
| 02/27/86 (S) | 1942 | AM NO 1 AS AMENDED ADOPTED UNAN CONSENT |
| 02/27/86 (S) | 1943 | AM NO 2 ADOPTED UNAN CONSENT |
| 02/27/86 (S) | 1943 | ADVANCED TO THIRD READING UNAN CONSENT |
| 02/27/86 (S) | 1943 | READ THE THIRD TIME CSSB 278 FIN AM |
| 02/27/86 (S) | 1943 | PASSED Y17 N2 X1 |
| 02/27/86 (S) | 1946 | TRANSMITTED TO (H) |
| 03/03/86 (H) | 2263 | READ THE FIRST TIME - REFERRAL(S) |
| 05/05/86 (H) | 3087 | SA RPT HCS(SA) 5DP INR |
| 05/05/86 (H) | 3087 | LETTER OF INTENT WITH SA REPORT |
| 05/11/86 (H) | 3381 | JUD RPT HC(JUD) 4DP 3NR |
| 05/12/86 (H) | 3437 | FIN RPT HCS(FIN) 2DP 6NR |
| 05/12/86 (H) | 3437 | FISCAL NOTE HSE SUPPL 136 |
| 05/12/86 (H) | 3437 | RULES TO 2ND SUPPLEMENTAL CALENDAR 5/12 |
| 05/12/86 (H) | 3472 | READ THE SECOND TIME |
| 05/12/86 (H) | 3472 | FIN HCS ADOPTED UNAN CONSENT |
| 05/12/86 (H) | 3473 | ADVANCED TO THIRD READING UNAN CONSENT |
| 05/12/86 (H) | 3473 | READ THE THIRD TIME HCS CSSB 278(FIN) |
| 05/12/86 (H) | 3473 | PASSED Y23 N13 A2 |
| 05/12/86 (H) | 3473 | (H) ADOPTED HSE SA LETTER OF INTENT |
| 05/12/86 (H) | 3527 | TRANSMITTED TO (S) AS AMENDED |
| 05/12/86 (S) | 2930 | CONCUR AM OF (H) Y18 N1 A1 |
| 05/20/86 (S) | 2960 | 1:40 PM 5/20/86 TRANSMITTED TO GOVERNOR |
| 06/01/86 (S) | 2977 | SIGNED INTO LAW CHAPTER 60 SLA 86 |
| 06/03/86 (S) | | EFFECTIVE DATE OF LAW 9/1/86 |

SB 279
CSSB 279 FIN

AN ACT TRANSFERRING AND APPROPRIATING CERTAIN LOANS TO THE ECONOMIC DEVELOPMENT FUND AND THE COMMERCIAL FISHING REVOLVING LOAN FUND, TRANSFERRING AND APPROPRIATING MONEY TO THE ECONOMIC DEVELOPMENT FUND; AND PROVIDING FOR EFFECTIVE DATES.

PRIME SPONSOR: RESOURCES COMMITTEE
CO-SPONSORS:

CURRENT STATUS: CHAPTER 67 SLA 85

| DATE | PAGE | ACTION |
|--------------|------|--|
| 04/11/85 (S) | 766 | READ THE FIRST TIME - REFERRAL(S) |
| 04/29/85 (S) | 962 | RES RPT CS 4DP 1DNP INR NEW TITLE |
| 05/01/85 (S) | 993 | FIN RPT CS 3DP 3NR NEW TITLE |
| 05/01/85 (S) | 993 | FISCAL NOTE SENATE SUPPLEMENT 34 |
| 05/06/85 (S) | 1069 | RLS RPT CALENDAR TODAY |
| 05/06/85 (S) | 1070 | READ THE SECOND TIME |
| 05/06/85 (S) | 1071 | FIN CS ADOPTED UNAN CONSENT NEW TITLE |
| 05/06/85 (S) | 1072 | ADVANCED TO THIRD READING UNAN CONSENT |
| 05/06/85 (S) | 1072 | READ THE THIRD TIME CSSB 279 FIN |
| 05/06/85 (S) | 1072 | PASSED Y20 N- |
| 05/06/85 (S) | 1073 | EFFECTIVE DATES SAME AS PASSAGE |
| 05/06/85 (S) | 1074 | FERGUSON NOTICE OF RECONSIDERATION |
| 05/06/85 (S) | 1074 | RECONSIDERATION TAKEN UP UNAN CONSENT |
| 05/06/85 (S) | 1075 | PASSED ON RECONSIDERATION Y19 N1 |

| | | |
|--------------|------|---|
| 05/06/85 (S) | 1075 | EFFECTIVE DATES SAME AS PASSAGE |
| 05/06/85 (S) | 1094 | TRANSMITTED TO (H) |
| 05/06/85 (H) | 1363 | READ THE FIRST TIME - REFERRAL(S) |
| 05/07/85 (H) | 1386 | FIN RPT 8DP 3NR |
| 05/08/85 (H) | | RLS TO CALENDAR 5/8/85 |
| 05/08/85 (H) | 1428 | READ THE SECOND TIME |
| 05/08/85 (H) | 1428 | ADVANCED TO THIRD READING UNAN CONSENT |
| 05/08/85 (H) | 1429 | READ THE THIRD TIME CSSB 279(FIN) |
| 05/08/85 (H) | 1429 | PASSED Y32 N5 X1 A2 |
| 05/08/85 (H) | 1429 | EFFECTIVE DATES SAME AS PASSAGE |
| 05/08/85 (H) | 1429 | RINGSTAD NOTICE OF RECONSIDERATION |
| 05/08/85 (H) | 1425 | RECON TAKEN UP SAME DAY UNAN CONSENT |
| 05/08/85 (H) | 1430 | PASSED ON RECONSIDERATION Y32 N5 X1 A2 |
| 05/08/85 (H) | 1430 | EFFECTIVE DATES SAME AS PASSAGE |
| 05/09/85 (H) | 1430 | RETURNED TO (S) |
| 05/10/85 (S) | 1221 | 9:30 AM 5/10/85 TRANSMITTED TO GOVERNOR |
| 05/31/85 (S) | 1364 | SIGNED INTO LAW CHAPTER 67 SLA 85 |
| 06/06/85 (S) | | EFFECTIVE DATE OF LAW SEE CHAPTER |

SB 280

CSSB 280 FIN AM

AN ACT RELATING TO THE AUTHORIZATION OF BONDS OR NOTES FOR THE DELONG MOUNTAIN TRANSPORTATION PROJECT, ESTABLISHING CONDITIONS UNDER WHICH THE BONDS OR NOTES MAY BE ISSUED; AND PROVIDING FOR AN EFFECTIVE DATE.

PRIME SPONSOR: RESOURCES COMMITTEE
CO-SPONSORS:

CURRENT STATUS: CHAPTER 68 SLA 85

| DATE | PAGE | ACTION |
|--------------|------|---|
| 04/11/85 (S) | 767 | READ THE FIRST TIME - REFERRAL(S) |
| 04/29/85 (S) | 963 | RES RPT CS 4DP 1DNP INR |
| 05/01/85 (S) | 993 | FIN RPT CS 4DP 2NR |
| 05/06/85 (S) | 1069 | RLS RPT CALENDAR TODAY |
| 05/06/85 (S) | 1073 | READ THE SECOND TIME |
| 05/06/85 (S) | 1073 | FIN CS ADOPTED UNAN CONSENT |
| 05/06/85 (S) | 1073 | AM NO 1 ADOPTED UNAN CONSENT |
| 05/06/85 (S) | 1073 | AM NO 2 ADOPTED UNAN CONSENT |
| 05/06/85 (S) | 1074 | AM NO 3 ADOPTED UNAN CONSENT |
| 05/06/85 (S) | 1074 | ADVANCED TO THIRD READING UNAN CONSENT |
| 05/06/85 (S) | 1074 | READ THE THIRD TIME CSSB 280 FIN AM |
| 05/06/85 (S) | 1074 | PASSED Y19 N1 |
| 05/06/85 (S) | 1074 | EFFECTIVE DATE SAME AS PASSAGE |
| 05/06/85 (S) | 1075 | FERGUSON NOTICE OF RECONSIDERATION |
| 05/06/85 (S) | 1075 | RECONSIDERATION TAKEN UP UNAN CONSENT |
| 05/06/85 (S) | 1076 | PASSED ON RECONSIDERATION Y19 N1 |
| 05/06/85 (S) | 1076 | EFFECTIVE DATE SAME AS PASSAGE |
| 05/06/85 (S) | 1094 | TRANSMITTED TO (H) |
| 05/06/85 (H) | 1363 | READ THE FIRST TIME - REFERRAL(S) |
| 05/07/85 (H) | 1387 | FIN RPT 7DP 4NR |
| 05/07/85 (H) | 1387 | ZERO FISCAL NOTE |
| 05/08/85 (H) | | RLS TO CALENDAR 5/8/85 |
| 05/08/85 (H) | 1430 | READ THE SECOND TIME |
| 05/08/85 (H) | 1430 | ADVANCED TO THIRD READING UNAN CONSENT |
| 05/08/85 (H) | 1431 | READ THE THIRD TIME CSSB 280(FIN) AM |
| 05/08/85 (H) | 1431 | PASSED Y32 N7 X1 |
| 05/08/85 (H) | 1431 | EFFECTIVE DATE SAME AS PASSAGE |
| 05/08/85 (H) | 1431 | CLOCKSIN NOTICE OF RECONSIDERATION |
| 05/08/85 (H) | 1431 | RECON TAKEN UP SAME DAY UNAN CONSENT |
| 05/08/85 (H) | 1432 | PASSED ON RECONSIDERATION Y32 N7 X1 |
| 05/08/85 (H) | 1432 | EFFECTIVE DATE SAME AS PASSAGE |
| 05/09/85 (H) | 1432 | RETURNED TO (S) |
| 05/10/85 (S) | 1221 | 9:30 AM 5/10/85 TRANSMITTED TO GOVERNOR |
| 05/31/85 (S) | 1365 | SIGNED INTO LAW CHAPTER 68 SLA 85 |
| 06/06/85 (S) | | EFFECTIVE DATE OF LAW 7/1/85 |

HB 217

CS FOR HOUSE BILL NO. 217 (JUD) by the Judiciary Committee, entitled:

"An Act relating to interest rates on judgments and decrees, interest rates on agreements subject to the provisions of AS 06 and AS 45, and certain interest rate preemptions by the federal government; and providing for an effective date."

was read the first time and referred to the Finance Committee.

COMMUNICATIONS

Posted April 29:

Notice of proposed changes in the regulations of the Department of Health and Social Services and the Department of Environmental Conservation, dealing with standards and requirements for X-rays, lasers and other radiation sources in the State of Alaska

STANDING COMMITTEE REPORTS

SB 279

The Resources Committee considered SENATE BILL NO. 279 (special appropriation to the economic development fund of Alaska Industrial Development Authority, transferring and appropriating certain loans to the economic development fund and the commercial fishing revolving loan fund; efd) and recommended it be replaced with

CS FOR SENATE BILL NO. 279 (RES), entitled:

"An Act transferring and appropriating certain loans to the economic development fund and the commercial fishing revolving loan fund; and providing for an effective date."

with a majority do pass. The report was signed by Senator Sturgulewski, Chairman and concurred in by Senators Coghill, Fahrenkamp and Zharoff. Senator Halford signed "do not pass". Senator Eliasson signed "no recommendation".

SENATE BILL NO. 279 was referred to the Finance Committee.

SB 280

The Resources Committee authorized the transportation of the bonds or replaced with

CS FOR SB

with a majority Sturgulewski, Zharoff and Fahrenkamp and Senator Eliasson

SENATE BILL NO.

SJR 22

The Resources Committee recommended SJR 22 (support for the surimi by the committee recommended by Senator Sturgulewski, Fahrenkamp, Coghill, Fahrenkamp

SENATE JOINT COMMITTEE.

HB 267

The Resources Committee recommended (RES) an (levy on park facilities

SENATE CS

with a majority Sturgulewski, Fahrenkamp and Zharoff and Senator Eliasson

It is the intent of the committee to use the funds for overnight use of the facilities a night for

CS FOR HOUSE BILL NO. 267 by the Finance Committee.

May 1, 1985

993

SB 278 cont'd"Letter of Intent
CSSB 278 (SA)

The driver license compact will enable the State of Alaska to exchange drivers' license records with twenty nine other member states.

It is the intent of the Senate State Affairs Committee that the increased fee schedule for drivers' licenses and permits cover the cost for implementing the driver license compact."

SENATE BILL NO. 278 was referred to the Finance Committee.

SB 279

The Finance Committee considered SENATE BILL NO. 279 (special appropriation to the economic development fund of Alaska Industrial Development Authority, transferring and appropriating certain loans to the economic development fund and the commercial fishing revolving loan fund; efd) and recommended it be replaced with

CS FOR SENATE BILL NO. 279 (FIN)

Senator Faiks, Co-Chairman, and Senators Sackett and Ferguson signed "do pass". Senators Kerttula, Paul Fischer and Eliason signed "no recommendation".

Department of Revenue and Department of Commerce and Economic Development fiscal notes appear in Supplement No. 34.

SENATE BILL NO. 279 was referred to the Rules Committee.

SB 280

The Finance Committee considered SENATE BILL NO. 280 (authorization of bonds or notes for the DeLong Mountain transportation project, establishing conditions under which the bonds or notes may be issued; efd) and recommended it be replaced with

CS FOR SENATE BILL NO. 280 (FIN)

with a majority do pass. The report was signed by Senator Faiks, Co-Chairman and concurred in by Senators Sackett, Paul Fischer and Ferguson. Senators Kerttula and Eliason signed "no recommendation".

HOUSE OF REPRESENTATIVES
 SENATE JOURNAL
 MAY 1, 1985

May 6, 1985

May 6, 1985

SB 279 cont'd

UNFINISHED BUSINESS

SENATE BILLS IN THIRD READING

CS FOR SENATE BILL NO. 279 (FIN) was before the Senate on re-consideration.

The question to be reconsidered is: "Shall CS FOR SENATE BILL NO. 279 (FIN) (transferring and appropriating certain loans to the economic development fund and the commercial fishing revolving loan fund, transferring and appropriating money to the economic development fund; efd) pass the Senate?" The roll was taken with the following result:

CS SB 279 FIN RECON

Yeas: 19 Abood, Bennett, Coghill, DeVries,
Eliason, Fahrenkamp, Faiks,
Ferguson, Fischer Paul,
Fischer Vic, Halford, Josephson,
Kelly, Kerttula, Ray, Sackett,
Sturgulewski, Zharoff, Ziegler

Nays: 1 Rodey

and so, CS FOR SENATE BILL NO. 279 (FIN) passed the Senate on reconsideration.

Senator Halford moved and asked unanimous consent that the vote on the passage of the bill be considered the vote on the effective date clauses, Secs. 8 and 9. Without objection, it was so ordered.

CS FOR SENATE BILL NO. 279 (FIN) was referred to the Secretary for engrossment.

SB 280

Senator Ferguson gave notice of reconsideration on CS FOR SENATE BILL NO. 280 (FIN) am (authorization of bonds or notes for the DeLong Mountain transportation project, establishing conditions under which the bonds or notes may be issued; efd) and moved and asked unanimous consent that it be taken up at this time. Without objection, it was so ordered.

SENATE BILLS IN THIRD READING

CS FOR SENATE BILL NO. 280 (FIN) am was before the Senate on reconsideration.

CSSCR 3(HES91)

(background checks on school district employees and contract workers who come into contact with children) and reports it back as follows: Gruenberg (Co-Chairman), Taylor, Hurley and Hanley recommend do pass.

CSSCR 3(HES91) was referred to the Judiciary Committee.

CSSB 51(Fin)

The Finance Committee has considered COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 51 (Finance) (state aid for school construction; effective date), recommends it be replaced with HOUSE COMMITTEE SUBSTITUTE FOR COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 51 (Finance) (same title) and reports it back as follows: Szymanski, Larson, Pourchot, Cotten, Frank and Rieger recommend do pass. Adams (Chairman), Duncan, Ringstad, Binkley and Uehling have no recommendation.

A new fiscal note was attached and appears in House Journal Supplement No. 66.

CSSB 51(Fin) was referred to the Rules Committee for placement on the calendar.

CSSB 74(Jud)am

The State Affairs Committee has considered COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 74 (Judiciary) amended (driving while intoxicated; effective date) and reports it back as follows: Hurley (Chairman), M.M. Miller and Boucher have no recommendation. Jenkins, Cato, Navarre and Collins recommend do pass.

CSSB 74(Jud)am was referred to the Judiciary Committee.

CSSB 279(Fin)

The Finance Committee has considered COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 279 (Finance) (transferring and appropriating certain loans to the economic development fund and the commercial fishing revolving loan fund, transferring and appropriating money to the economic development fund; effective date) and reports it back as follows: Adams (Chairman), Ringstad, Duncan, Binkley, Uehling, Cotten, Frank and Rieger recommend do pass. Szymanski, Larson and Pourchot have no recommendation.

CSSB 279(Fin) was referred to the Rules Committee for placement on the calendar.

CSSB 280(Fin)am

The Finance Committee has considered COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 280 (Finance) (state bonds or notes; project, establishment, effective date) and reports it back as follows: Adams (Chairman), Uehling, Rieger and Larson, Pourchot and

A new zero fiscal

CSSB 280(Fin)am placement on the calendar.

HCR 27

The State Affairs Committee has considered RESOLUTION NO. 27 (Department of Administration; information regarding the State Department of Administration) and reports it back as follows: Collins, Cato and Adams have no recommendation.

HCR 27 was referred to the calendar.

HB 393

The Finance Committee has considered COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 393 (rights of physical therapists; effective date) and reports it back as follows: Duncan, Binkley, and Frank recommend do pass.

HB 393 was referred to the calendar.

REJ

CSSB 78(Fin)

The House Special Committee has considered COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 78 (Loans; making miscellaneous effective date), COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 78 (Loans; making miscellaneous effective date) and reports it back as follows: Sund (Chairman), Cotten and

CSSB 78(Fin) was referred to the calendar.

HOUSE JOURNAL
 MAY 7, 1965
 HOUSE JOURNAL
 MAY 7, 1965

CORRECTION

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

CSSCR 3(HESB)

(background checks on school district employees and contract workers who come into contact with children) and reports it back as follows: Gruenberg (Co-Chairman), Taylor, Hurley and Hanley recommend do pass.

CSSCR 3(HESB) was referred to the Judiciary Committee.

CSSB 51(Fin)

The Finance Committee has considered COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 51 (Finance) (state aid for school construction; effective date), recommends it be replaced with HOUSE COMMITTEE SUBSTITUTE FOR COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 51 (Finance) (same title) and reports it back as follows: Szymanski, Larson, Pourchot, Cotten, Frank and Rieger recommend do pass. Adams (Chairman), Duncan, Ringstad, Binkley and Uehling have no recommendation.

A new fiscal note was attached and appears in House Journal Supplement No. 66.

CSSB 51(Fin) was referred to the Rules Committee for placement on the calendar.

CSSB 74(Judiam)

The State Affairs Committee has considered COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 74 (Judiciary) amended (driving while intoxicated; effective date) and reports it back as follows: Hurley (Chairman), M.M. Miller and Boucher have no recommendation. Jenkins, Cato, Navarre and Collins recommend do pass.

CSSB 74(Judiam) was referred to the Judiciary Committee.

CSSB 279(Fin)

The Finance Committee has considered COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 279 (Finance) (transferring and appropriating certain loans to the economic development fund and the commercial fishing revolving loan fund, transferring and appropriating money to the economic development fund; effective date) and reports it back as follows: Adams (Chairman), Ringstad, Duncan, Binkley, Uehling, Cotten, Frank and Rieger recommend do pass. Szymanski, Larson and Pourchot have no recommendation.

CSSB 279(Fin) was referred to the Rules Committee for placement on the calendar.

CSSB 280(Fin)am

The Finance Committee has considered COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 280 (Finance) (state aid for school construction; effective date) and reports it back as follows: Adams (Chairman), Ringstad, Duncan, Binkley, Uehling, Cotten, Frank and Rieger recommend do pass. Szymanski, Larson and Pourchot have no recommendation.

A new zero fiscal note was attached and appears in House Journal Supplement No. 66.

CSSB 280(Fin)am was referred to the Rules Committee for placement on the calendar.

HCR 27

The State Affairs Committee has considered RESOLUTION NO. 27 (Department of Administration; information regarding the Department of Administration; effective date) and reports it back as follows: Collins, Cato and Navarre recommend do pass. Adams (Chairman), Duncan, Binkley, Uehling, Cotten, Frank and Rieger have no recommendation.

HCR 27 was referred to the Rules Committee for placement on the calendar.

HB 393

The Finance Committee has considered COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 393 (Finance) (rights of physical education; effective date) and reports it back as follows: Adams (Chairman), Ringstad, Duncan, Binkley, Uehling, Cotten, Frank and Rieger recommend do pass. Szymanski, Larson and Pourchot have no recommendation.

HB 393 was referred to the Rules Committee for placement on the calendar.

REJ

CSSB 78(Fin)

The House Special Committee has considered COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 78 (Finance) (making miscellaneous appropriations; effective date), and reports it back as follows: Sund (Chairman), Cotten and Rieger recommend do pass. Adams (Chairman), Ringstad, Duncan, Binkley, Uehling, Cotten, Frank and Rieger have no recommendation.

CSSB 78(Fin) was referred to the Rules Committee for placement on the calendar.

May 8, 1985

May 8, 1985

CSSB 279(Fin)

CSSB 279(Fin) was read the third time.

Representative Martin rose to a point of order stating that debate was straying from the bill.

The Speaker asked members to confine their remarks to the bill before the House.

Representative Pourchot requested to abstain from voting due to a conflict of interest. Objection was noted, therefore Representative Pourchot was required to vote.

The question being: "Shall CSSB 279(Fin) pass the House?"
The roll was taken with the following result:

CSSB 279(FIN)

| | | |
|----------|----|--|
| Yeas: | 32 | Adams, Binkley, Boucher, Cato, Collins, Cotten, Duncan, Frank, Fuller, Furnace, Gruenberg, Grussendorf, Hanley, Herrmann, Jenkins, Larson, Martin, Miller, M.M., Miller, M.W., Navarro, Pearce, Pignalberi, Pourchot, Rieger, Ringstad, Shultz, Sund, Szyranski, Taylor, Thompson, Uehling, Wallis |
| Nays: | 5 | Clocksln, Davis, Marrou, Pettyjohn, Phillips |
| Excused: | 1 | Koponen |
| Absent: | 2 | Goll, Hurley |

And so, CSSB 279(Fin) passed the House.

Representative Clocksin moved and asked unanimous consent that the roll call on the passage of the bill be considered the roll call on the effective date clauses. There being no objection, it was so ordered.

Representative Ringstad gave notice of reconsideration of his vote on CSSB 279(Fin) and moved and asked unanimous consent that the reconsideration be taken up at this time.

Representative Clocksin objected and withdrew his objection.

and asked unanimous consent of the bill be considered the clause. There being no

to the Chief Clerk for

asked unanimous consent 5:30 p.m. There being no 5:31 p.m.

ES

47 p.m.

esent.

DATE BILLS

BILL NO. 279 (Finance)
certain loans to the
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Committee report (page:

asked unanimous consent
engrossed, advanced to
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abstain from voting due
on was noted, therefore
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objection. There being
was advanced.

CSSB 279(Fin)

Representative Cotten objected and withdrew his objection. There being no further objection, it was so ordered.

CSSB 279(Fin) was read the third time.

The question to be reconsidered: "Shall CSSB 279(Fin) pass the House?" The roll was taken with the following result:

CSSB 279(FIN) RECONSIDERATION

| | | |
|----------|----|--|
| Yeas: | 32 | Adams, Binkley, Boucher, Cato, Collins, Cotten, Duncan, Frank, Fuller, Furnace, Gruenberg, Brussendorf, Hanley, Herrmann, Jenkins, Larson, Martin, Miller, M.M., Miller, M.W., Navarre, Pearce, Pignalberi, Pourchot, Rieger, Ringstad, Shultz, Sund, Szymanski, Taylor, Thompson, Uehling, Wallis |
| Nays: | 5 | Clocksln, Davis, Marrou, Pettyjohn, Phillips |
| Excused: | 1 | Koponen |
| Absent: | 2 | Goll, Hurley |

And so, CSSB 279(Fin) passed the House on reconsideration.

Representative Clocksln moved and asked unanimous consent that the roll call on the passage of the bill be considered the roll call on the effective date clauses. There being no objection, it was so ordered.

CSSB 279(Fin) was signed by the Speaker and the Chief Clerk and returned to the Senate.

CSSB 280(Fin)am

COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 280 (Finance amended (authorization of bonds or notes for the Deer Mountain transportation project, establishing conditions under which the bonds or notes may be issued; and providing for an effective date) was read the second time with Finance Committee report (page 1387).

Representative Clocksln moved and asked unanimous consent that CSSB 280(Fin)am be considered engrossed, advanced third reading and placed on final passage. There being no objection, it was so ordered.

CSSB 280(Fin)am

CSSB 280(Fin)am

Representative [unclear] concerning [unclear] from papers.

The Speaker [unclear]

Representative [unclear]

The Speaker [unclear]

The question [unclear] House?" The roll

CSSB 280(FIN)Am

Yeas:

Nays:

Excused:

Absent:

And so, CSSB 280(

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CSSB 280(Fin)am wa

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(8) "revenues" means all fees, charges, money, profits, payments of principal of or interest on municipal bonds and other investments, gifts, grants, contributions, appropriations and all other income derived or to be derived by the bond bank authority under this chapter. (§ 1 ch 79 SLA 1975; am § 2 ch 48 SLA 1978; am §§ 1, 2 ch 23 SLA 1980; am §§ 78, 79, 88 ch 74 SLA 1985; am § 4 ch 118 SLA 1988)

Effect of amendments. — The 1985 amendment in paragraph (3) in subparagraph (A) substituted "that" for "which" and "29 45 590" for "AS 29 53 410" and in subparagraph (D) inserted "AS 29 47 440 or former" and made a minor punctuation change, and repealed paragraph (4), which defined "municipality"

The 1988 amendment, effective June 8, 1988, in paragraph (3), substituted "that" for "which" in the introductory language, deleted "or" at the end of subparagraphs (A)-(C), added "or" at the end of subparagraph (D), and added subparagraph (E)

Chapter 88. Alaska Industrial Development Authority.

Article

1. Creation and Organization (§§ 44.88.010, 44.88.060)
2. Purpose and Powers (§§ 44.88.070 — 44.88.085)
3. Financial Provisions (§§ 44.88.090 — 44.88.105, 44.88.130, 44.88.140, 44.88.155 — 44.88.159)
4. General Administrative Provisions (§§ 44.88.172, 44.88.190, 44.88.212)
5. Export assistance (§§ 44.88.300 — 44.88.390)
6. Small business economic development revolving loan fund (§§ 44.88.400 — 44.88.430)
- 6A. Business Assistance Program (§§ 44.88.500 — 44.88.599)
7. General Provisions (§ 44.88.900)

Article 1. Creation and Organization.

Section

10. Legislative finding and policy
60. Alaska Industrial Development and Export Authority revolving fund

Sec. 44.88.010. Legislative finding and policy. (a) The legislature finds, determines, and declares that

(1) there exist areas of the state in which seasonal and nonseasonal unemployment exist;

(2) this unemployment is a serious menace to the health, safety, and general welfare, not only to the people in those areas, but also to the people of the entire state;

(3) the state lacks the basic manufacturing, industrial, export, small business, and business enterprises and the other facilities referred to in this subsection necessary to permit adequate development of its natural resources and the balanced growth of its economy;

(4) the establishment and expansion of industrial, manufacturing, export, small business, and business enterprises in Alaska and the other facilities referred to in this subsection are essential to the devel-

opment of the natural resources and the long-term economic growth of the state, and will directly and indirectly alleviate unemployment in the state;

(5) the expansion of export trade is vital to the health and growth of the state's economy;

(6) many Alaska businesses could benefit from additional financial and technical assistance with respect to the exportation of their products and services;

(7) the United States Export-Import Bank has been mandated by the Export-Import Bank Act Amendments of 1983 to provide technical assistance and export financing support to small businesses in cooperation with state export finance agencies;

(8) Alaska-based exporters can be effectively assisted through the establishment, as part of the Alaska Industrial Development Authority, of an export financing program designed to work with the U.S. Export-Import Bank and other federal, state, and private institutions;

(9) the achievement of the goal of full employment, and of establishment and continuing operation and development of industrial, manufacturing, export, small business, and business enterprises in the state, including, without limitation, facilities for transportation, facilities for pollution control and waste disposal, facilities for the local furnishing of gas, facilities for water, facilities for industrial parks, mass commuting vehicles, facilities for local district heating or cooling, parking facilities, or a storage or training facility relating to a plant or facility, will be accelerated and facilitated by the creation of an instrumentality of the state with powers to incur debt, to own and operate facilities, to make and insure loans to finance, and to assist private lenders to make loans to finance, the establishment, operation, and development of industrial, manufacturing, export, small business, and business enterprises, including, without limitation, facilities for transportation, facilities for pollution control and waste disposal, facilities for the local furnishing of gas, facilities for water, facilities for industrial parks, mass commuting vehicles, facilities for local district heating or cooling, parking facilities, or a storage or training facility relating to a plant or facility;

(10) it is in the public interest to promote the prosperity and general welfare of all citizens of the state by

(A) stimulating commercial and industrial growth and expansion by encouraging an increase of private investment by banks, investment houses, insurance companies, and other financial institutions, including pension and retirement funds, to help satisfy the need for economic expansion;

(B) encouraging the production of raw materials and goods for export, the expansion of exports and raw materials and goods, and the rendering of services abroad by residents of the state through the establishment of a program that provides financial assistance in coop-

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eriation with federal, state, and private institutions for these purposes in the form provided in this chapter;

(C) creating the Alaska Industrial Development and Export Authority with the powers necessary to accomplish the objectives stated in this paragraph, including the power to issue taxable and tax-exempt bonds and to acquire ownership interests in projects as provided in this chapter;

(11) it is in the state's interest to import private capital to create new economic activity which would not otherwise take place in the state.

(b) It is declared to be the policy of the state, in the interests of promoting the health, security, and general welfare of all the people of the state, and a public purpose, to increase job opportunities and otherwise to encourage the economic growth of the state, including the development of its natural resources, through the establishment and expansion of manufacturing, industrial, export, small business, and business enterprises and the other facilities referred to in (a) of this section by creating the Alaska Industrial Development and Export Authority with the powers, duties, and functions as provided in this chapter.

(c) It is further declared to be the policy of the state, in the interests of promoting the health, security, and general welfare of all the people of the state, and a public purpose of the state, to accomplish the objectives set out in (b) of this section through the provision of financial support in cooperation with federal, state, and private institutions for the purpose of increasing the export of Alaska goods, talent, raw materials, and services. (§ 1 ch 64 SLA 1967; am § 1 ch 64 SLA 1977; am §§ 44 — 48 ch 106 SLA 1980; am § 28 ch 115 SLA 1981; am § 3 ch 162 SLA 1984; am §§ 1, 2 ch 42 SLA 1987)

Effect of amendments. — The 1987 amendment in subsection (a) inserted "export, small business" in paragraph (3), in paragraph (4), and twice in paragraph (9), designated former paragraphs (5)-(7) as present paragraphs (9)-(11), added present paragraphs (5)-(8), in paragraph (10) inserted subparagraph designations and added the language of subparagraphs (B)

and (C); in subsection (b) inserted "export, small business" and substituted "(a)" for "(a)(5)," "Alaska Industrial Development Export Authority" for "public corporation" and "the powers, duties, and functions provided in this chapter" for "power, duties and functions as provided in AS 44.88.010 — 44.88.220", and added subsection (c).

Sec. 44.88.060. Alaska Industrial Development and Export Authority revolving fund. The Alaska Industrial Development and Export Authority revolving fund is established in the authority. The revolving fund consists of appropriations made to the revolving fund by the legislature, money or other assets transferred to the revolving fund by the authority, and unrestricted payments on loans made or purchased by the authority. Amounts deposited in the revolving fund may be pledged to the payment of bonds of the authority or expended

for the purposes of the authority under this chapter. (§ 3 ch 42 SLA 1987)

Article 2. Purpose and Powers.

Section

70. Purpose of the authority

80. Powers of the authority

Section

85. Administrative procedure

Sec. 44.88.070. Purpose of the authority. The purpose of the authority is to promote, develop, and advance the general prosperity and economic welfare of the people of Alaska, to relieve problems of unemployment, and to create additional employment by

(1) providing various means of financing and means of facilitating the financing, in cooperation with federal, state, and private institutions, of industrial, manufacturing, export, small business, and business enterprises and the other facilities referred to in AS 44.88.010(a) in the state;

(2) owning and operating the enterprises and other facilities described in AS 44.88.172;

(3) fostering the expansion of exports of Alaska goods, services, and raw materials;

(4) cooperating and acting in conjunction with other organizations, public and private, the objects of which are the promotion and advancement of export trade activities in the state;

(5) establishing a source of funding credit guarantees and insurance, not otherwise available, to support export development;

(6) providing and cooperating or participating with federal, state, and private institutions to provide actual and potential Alaska exporters, particularly small- and medium-sized exporters, with financial assistance in support of export transactions. (§ 1 ch 64 SLA 1967; am § 54 ch 106 SLA 1980; am § 31 ch 115 SLA 1981; am § 4 ch 162 SLA 1984; am § 4 ch 42 SLA 1987)

Effect of amendments. — The 1987 amendment inserted paragraph designations, in paragraph 1) inserted "in cooperation with federal, state, and private institutions" and "export, small business" and substituted "AS 44.88.010(a) in" for

"AS 44.88.010(a)(5) within," added "described in AS 44.88.172" at the end of paragraph (2), added the language of paragraphs (3)-(6), and made other minor word and punctuation changes.

Sec. 44.88.080. Powers of the authority. In furtherance of its corporate purposes, the authority has the following powers in addition to its other powers:

(1) to sue and be sued;

(2) to have a seal and alter it at pleasure;

(3) to make and alter bylaws for its organization and internal management;

ch 42 SLA

(4) to adopt regulations governing the exercise of its corporate powers;

(5) to acquire an interest in a project as necessary or appropriate to provide financing for the project, whether by purchase, gift or lease;

(6) to lease to others a project acquired by it for the rentals and upon the terms and conditions the authority may consider advisable, including, without limitation, provisions for options to purchase or renew;

(7) to issue bonds and otherwise to incur indebtedness, in accordance with AS 44.88.090, in order to pay the cost of a project or development projects or in order to provide money for the authority's purposes under this chapter; the authority may also secure payment of the bonds or other indebtedness as provided in this chapter;

(8) to sell, by installment sale or otherwise, exchange, donate, convey or encumber in any manner by mortgage or by creation of any other security interest, real or personal property owned by it, or in which it has an interest, including a project, when, in the judgment of the authority, the action is in furtherance of its corporate purposes;

(9) to accept gifts, grants or loans from, and enter into contracts or other transactions regarding them, with a federal agency or an agency or instrumentality of the state, a municipality, private organization or other source;

(10) to deposit or invest its funds, subject to agreements with bondholders;

(11) to enter into contracts or agreements with respect to the exercise of any of its powers, and do all things necessary or convenient to carry out its corporate purposes and exercise the powers granted in this chapter;

(12) to purchase or insure loans to finance the costs of manufacturing, industrial, and business enterprise projects;

(13) to enter into loan agreements with respect to one or more projects upon the terms and conditions the authority considers advisable;

(14) to acquire, manage, and operate projects as the authority considers necessary or appropriate to serve a public purpose;

(15) to assist private lenders to make loans to finance the costs of projects through loan commitments, short-term financing, or otherwise;

(16) to accept gifts, grants, or loans from a federal agency, from an agency or instrumentality of the state or of a municipality, or from any other source;

(17) to enter into contracts or other transactions with a federal agency, with an agency or instrumentality of the state or of a municipality, or with a private organization or other entity consistent with the exercise of any power under this chapter;

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(18) to facilitate the expansion of a secondary market for the resale of federally or commercially insured loans made to finance the costs of projects in Alaska held by federal and state chartered financial institutions or by the Alaska Commercial Fishing and Agriculture Bank;

(19) to charge fees or other forms of remuneration for the use or possession of the projects described in (14) of this section in accordance with the agreements described in (11) and (17) of this section, other agreements pertaining to the projects, covenants, or representations made in bond documents pertaining to the projects, or regulations of the authority pertaining to the projects;

(20) to participate with government or private industry in programs for technical assistance, loans, technology, transfer, or other programs related to the exportation of Alaska goods, services, or raw materials with respect to its financing activities;

(21) to provide export finance training for office staff and other individuals involved in export finance assistance, including the training sessions that may be provided by the United States Export-Import Bank or other organizations;

(22) to coordinate to the maximum extent possible its efforts to promote the export of Alaska goods, services, and raw materials with programs and goals of the United States Export-Import Bank, the International Trade Administration of the United States Department of Commerce, the Foreign Credit Insurance Association, and other private and public programs designed to provide export assistance and export-related financing;

(23) to guarantee loans related to qualified export transactions under regulations adopted by the authority;

(24) to provide financing assistance, in cooperation with federal, state, and private institutions, as provided in this chapter for small business enterprises. (§ 1 ch 64 SLA 1967; am §§ 55 — 59 ch 106 SLA 1980; am §§ 32, 33 ch 115 SLA 1981; am § 5 ch 162 SLA 1984; am §§ 5, 6 ch 42 SLA 1987)

Effect of amendments. — The 1987 amendment substituted the present language of paragraph (7) for "to issue bonds, in accordance with AS 44.88.090, to pay

the cost of a project and to secure payment of the bonds as provided in this chapter" and added paragraphs (20)-(24).

Sec. 44.88.085. Administrative procedure. (a) Except for AS 44.62.310 and 44.62.312 regarding public meetings, and except for AS 44.62.320(a) regarding legislative review of regulations, the provisions of the Administrative Procedure Act regarding the adoption of regulations (AS 44.62.040 — 44.62.320) do not apply to the authority. The authority shall make available to members of the public copies of the regulations adopted under this section. Within 45 days after adoption of a regulation under this section, the chairman of the authority shall submit the regulation adopted to the chairman of the Adminis-