

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672
5750 HOUSE JUDICIARY

AS 11.71.180(d); or

(B) preparations, compounds, mixtures, or substances of an aggregate weight of less than ^{sixteen cc's of} six grams containing a schedule VA controlled substance listed in AS 11.71.180(d).

* Sec. 3. AS 11.71.180 is amended by adding a new subsection to read:

(d) Schedule VA includes any material, compound, mixture, or preparation which contains any quantity of ^{anabolic steroids,} ~~the following substances,~~ including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers. [whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:]

- new subsec. (e) in this section anabolic steroids include use list from SS(d) of HESS CS. or any other material, compound mixture, etc. (see defin. in (d)).*
- (1) 17-dimethylandroster-5(10)-eno[3,2-d]-thiazol;
 - (2) 17-methyl-3-methylene-5-alpha-androst-1-en-17-beta-ol;
 - (3) 1-dehydromethyltestosterone;
 - (4) 11-oxomethyltestosterone;
 - (5) 11-alpha-hydroxymethyltestosterone;
 - (6) 19-nortestosterone;
 - (7) 2-alpha-methylandrostanolone;
 - (8) 2-alpha-methyldihydrotestosterone;
 - (9) 2-alpha-methyldihydrotestosterone-propionate;
 - (10) 4-hydroxymethyltestosterone;
 - (11) 4-hydroxy-19-nortestosterone;
 - (12) 4-hydroxy-19-nortestosterone-cyclopentylpropionate;
 - (13) androisoxazole;
 - (14) androstanediol-3-n-octyl-enol ether;
 - (15) androstanolone;
 - (16) androsterone;
 - (17) bolasterone;
 - (18) boldenone;

- 1 (19) callusterone;
- 2 (20) chloro-1-dehydromethyl-testosterone;
- 3 (21) chloro-19-nortestosterone;
- 4 (22) chloro-19-nortestosterone-acetate;
- 5 (23) chloromethyltestosterone;
- 6 (24) chlorotestosterone;
- 7 (25) chlorotestosterone-acetate;
- 8 (26) chlorotestosterone-capronate;
- 9 (27) clostebol;
- 10 (28) danazol;
- 11 (29) dehydrochlormethyltestosterone;
- 12 (30) dehydroepiandrosterone;
- 13 (31) dehydroisoandrosterone;
- 14 (32) dehydroisoandrosterone-acetate;
- 15 (33) dihydrotestosterone;
- 16 (34) dihydrotestosterone-valerianate;
- 17 (35) dimethazine;
- 18 (36) dimethyltestosterone;
- 19 (37) dromostanolone;
- 20 (38) drostanolone;
- 21 (39) epiandrosterone;
- 22 (40) ethyldienolone;
- 23 (41) ethylestrenol;
- 24 (42) ethylnortestosterone;
- 25 (43) ethylnortestosterone-propionate;
- 26 (44) fluoxymesterone;
- 27 (45) isoandrosterone;
- 28 (46) mestanolone;
- 29 (47) mesterolone;

- 1 (48) methandienone;
- 2 (49) methandriol;
- 3 (50) methandriol-3-propionate;
- 4 (51) methandriol-dipropionate;
- 5 (52) methandriol-dienanthoylacetate;
- 6 (53) methandrostenolone;
- 7 (54) methenolone;
- 8 (55) methenolone-acetate;
- 9 (56) methenolone-enanthate;
- 10 (57) methyl-19-nortestosterone;
- 11 (58) methylandrostanolone;
- 12 (59) methylandrostanolone-enanthoyl-acetate;
- 13 (60) methylandrosterediol;
- 14 (61) methyldiazirinol;
- 15 (62) methyltestosterone;
- 16 (63) nandrolone;
- 17 (64) nandrolone-propionate;
- 18 (65) nandrolone-phenylpropionate;
- 19 (66) nandrolone-furylpropionate;
- 20 (67) nandrolone-hexahydrobenzoate;
- 21 (68) nandrolone-n-capronate;
- 22 (69) nandrolone-hexyloxyphenylpropionate;
- 23 (70) nandrolone-laurate;
- 24 (71) nandrolone-undecylate;
- 25 (72) nandrolone-hemisuccinate;
- 26 (73) nandrolone-cyclohexylpropionate;
- 27 (74) nandrolone-cyclopentylpropionate;
- 28 (75) nandrolone-4-methylbicyclo[2.2.2]oct-2-ene-1-
- 29 carboxylate;

1 (76) nandrolone-decanoate;

2 (77) norbolethone;

3 (78) norethandrolone;

4 (79) oxabolone;

5 (80) oxandrolone;

6 (81) oxymesterone;

7 (82) oxymetholone;

8 (83) stanolone;

9 (84) stanozolol;

10 (85) testosterone (17-beta-hydroxyandrost-4-en-3-one),

11 except when naturally occurring in the human body;

12 (86) testosterone-acetate;

13 (87) testosterone-propionate;

14 (88) testosterone-cyclopentyl-propionate;

15 (89) testosterone-heptanoate;

16 (90) testosterone-cypionate;

17 (91) testosterone-enanthate;

18 (92) thiomesterone;

19 (93) delta'-testololactone.

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FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: "An Act relating to steroids,
 and providing for an effective date."
 Sponsor: Curt Henard
 Requestor: _____

Agency Affected: Health & Social Services
BRU: Alcohol and Drug Abuse Services
 Components: Administration

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	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Matthew C. Felix *Matthew C. Felix* Phone: 586-6201
 Division: Office of Alcoholism and Drug Abuse Date: 2/8/89

Approved by Commissioner: Myra H. Johnson *Myra H. Johnson* Date: 2/9/89
 Agency: Health & Social Services

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

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Department of Law
 Title: "An Act adding anabolic steroids... to schedule VA...controlled substance..." BRU: Prosecution
 Sponsor: Repr. Menard Components: All
 Requestor: Repr. Menard

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)

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)

Please see the attached analysis.

Richard I. Pegues

Prepared by: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Date: February 10, 1989
Richard I. Pegues / FOR
 Approved by Commissioner: Grace Berg Schauble, Atty. Gen. Date: February 10, 1989
 Agency: Department of Law

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

CONTINUATION of FISCAL NOTE ANALYSIS

No. 2
CSHB 126 (HES)
HOUSE 3/23/89

For Bill/Resolution No. _____

This bill amends AS 11.71.180 by adding a new subsection that will include anabolic steroids and their related materials and substances in schedule VA of the schedule of controlled substances under the Criminal Code. Violation of schedule VA is misconduct in the fifth degree, the penalty for which is a class A misdemeanor. Although the misuse of anabolic steroids to enhance athletic ability has recently received wide public attention, there is no information available to suggest that this practice is a problem in Alaska. Therefore the Department of Law does not believe that this bill will have a fiscal impact on its operations. The department does, however, caution against adding new crimes at a time when there are not enough resources to adequately enforce existing state laws.

<u>STATE/BILL No.</u>	<u>MAJOR PROVISION(S)</u>	<u>STATUS</u>
ALASKA H126	Places anabolic steroids (AS) In schedule VA	In committee
CALIFORNIA A1591	Adds toxandropirone to schedule III (with other AS)	In committee
CALIFORNIA A2063	Requires schools to teach the effects of using AS	In committee
CALIFORNIA A2064	Requires that ads for AS con- tain a warning on their dangers	Introduced on 3/10/89
CALIFORNIA A2065	Requires instruction in the dangers of using AS prior to receiving teaching credentials. Also, 7 to 12th grade science courses to contain material on AS.	In committee
CALIFORNIA S1585	Requires warning statements con- cerning unlawful use, sale, or exchange of AS to be posted in schools and colleges.	Introduced on 3/10/89
CONNECTICUT H5302	Prohibits prescription of AS to athletes.	In committee
CONNECTICUT H6027	Makes possession and possession with intent to sell AS felony offenses.	In committee
CONNECTICUT H6124	Provides penalties for those who use or encourage use of AS	In committee
GEORGIA H71	Provides prison terms and/or fines for distributors of AS	Passed the House and Senate
HAWAII S1197	Outlaws the possession, possess- ion for sale, or manufacture of AS when not for legitimate med- ical use.	To House committee on Judiciary
IDAHO S1258	To schedule V (AS and hGH)	House committee recommended passage
ILLINOIS H252	Makes it unlawful to distribute human AS to amateur athletic participants.	House committee reported favorably
ILLINOIS S188	Creates the Steroid Control Act	Introduced on 3/15/89

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<u>STATE/BILL No.</u>	<u>MAJOR PROVISION(S)</u>	<u>STATUS</u>
KANSAS S181	To schedule IV of the C.S.A.	In House committee
MASSACHUSETTS H808	Bans the use of AS by athletes	In committee
MARYLAND H636	To schedule III of the C.S.A.	In committee
MARYLAND H637	Prohibits a person from distributing, dispensing, or administering an AS within 1000 feet of schools.	Committee reported unfavorably
MICHIGAN H4081	Prohibits the use, distribution, or possession of AS under certain circumstances.	In committee
MINNESOTA H337	Places AS under the C.S.A.	In committee
MINNESOTA S339	To schedule IV of the C.S.A.	In committee
NEW HAMPSHIRE H264	Prohibits the prescription, possession, or use of AS for athletic enhancement.	Committee recommended passage with amendment.
NEW JERSEY HJR98	Mandates study of use among high school athletes (how obtained; extent and nature of use).	In committee
NEW JERSEY A4224	Makes it a crime of the fourth degree (up to 18 months in prison) to illegally distribute AS to a minor under the age of 18.	Reported from committee with substitute.
NEW JERSEY S533	Prohibits use by college athletes other than for legitimate medical reasons.	In committee
NEW JERSEY S3303	Makes use or distribution a crime.	In committee
NEW JERSEY S3315	Includes AS in school drug education, prevention, and intervention programs.	In committee
NEW YORK A4613	Criminalizes the knowing dispensing of AS for athletic enhancement and the knowing possession for same. Dispensing is a class E felony; possession is a class A misdemeanor.	In committee
NEW YORK A6177	Requires development of an educational program on AS for use in grades 7 to 12.	In committee

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<u>STATE/BILL No.</u>	<u>MAJOR PROVISION(S)</u>	<u>STATUS</u>
NEW YORK A6408	Requires instruction of pupils in the use of AS. Creates crime of unlawful distribution.	In committee
NEW YORK S2783	Same as A6408 (above)	In committee
NEW YORK S3047	Makes the prescription and dispensing of AS for other than therapeutic purposes a misdemeanor. Requires parental notification prior to administering AS to children under 19.	In Assembly committee
NEW YORK S3086	Provides that certain students receive education on the dangers of using AS	In committee
NEW YORK S3216	Same as A4613 (above)	In committee
NORTH DAKOTA H1352	Unlawful distribution or intent to distribute AS is a class B felony.	In Senate committee
OKLAHOMA H1191	Makes the illegal prescribing and dispensing of AS felony offenses.	House committee amended and recommended passage.
OREGON H2373	Prohibits prescribing, dispensing, delivering, or administering AS for other than valid medical purposes. (Maximum of 5 years in prison, \$100,000.00 fine, or both)	In committee
PENNSYLVANIA HR27	Calls for an investigation of AS use and abuse.	In committee
RHODE ISLAND H5160	Relates to prescribing and sale of AS.	In committee
RHODE ISLAND H5923	Provides specific penalties for the manufacture, sale, distribution, or possession of AS for certain purposes.	In committee
RHODE ISLAND H6228	Makes the sale or distribution of AS to minors illegal and sets mandatory penalties for same.	In committee
RHODE ISLAND S65	Adds AS to schedule I of the C.S.A.; makes it a misdemeanor to manufacture, use, sell, or possess AS without a valid, current doctor's prescription.	In committee

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<u>STATE/BILL No.</u>	<u>MAJOR PROVISION(S)</u>	<u>STATUS</u>
SOUTH CAROLINA H3286	Defines unprofessional conduct for a practitioner with regard to AS; provides penalties for violations. Provides penalties ranging from misdemeanors to felonies.	In Senate committee
SOUTH CAROLINA S281	Defines unprofessional conduct for a practitioner with regard to AS; violators are guilty of a misdemeanor.	Committee reported favorably
TENNESSEE S1004	Places AS into schedule VIII of the C.S.A. Provides penalties.	In committee
TEXAS H1507	Places AS and hGH under the State's C.S.A. Requires schools to post copies of the law.	In committee
UTAH H399	Places AS under the State's C.S.A. Prohibits use in school athletic programs. Provides for random testing; sets penalties.	In committee
UTAH S120	Places AS under the State's C.S.A.	Passed the Senate and House; Senate concurred in House amendments.
VIRGINIA HJR99	Calls for a study of the use of AS by high school athletes.	In committee
VIRGINIA HJR439	Continues the study begun in 1988	PASSED
VIRGINIA HJR440	Requires that the Secy. of HHS, the Secy. of Education, the Governor's Drug Abuse Task Force, and the Virginia High School League initiate certain designated actions.	PASSED
VIRGINIA H1418	Makes it unlawful to knowingly manufacture, sell, give, distribute, or possess with intent to....., any AS. Sets penalties.	Passed Senate
WASHINGTON H1558	Defines and regulates the use of AS. Expands offenses to include manufacture and possession. Prohibits certain athletics-related uses.	In Senate committee

<u>STATE/BILL No.</u>	<u>MAJOR PROVISION(S)</u>	<u>STATUS</u>
WASHINGTON H1785	Establishes penalties; unlawful possession is a misdemeanor; unlawful distribution or intent to distribute is a class C felony; unlawful distribution or intent to distribute to a minor is a class B felony.	In committee
WASHINGTON S5319	Prohibits the prescribing, administering, or dispensing of AS, hGH, certain other drugs, and autotransfusion by practitioners for the purpose of manipulating hormones to increase muscle mass, strength, or to enhance athletic ability.	In House committee

Legend:

- H = House
- HJR = House Joint Resolution
- A = Assembly
- S = Senate

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APPENDIX II

ALABAMA

May 1, 1988

By rule, Alabama has placed anabolic steroids under their Controlled Substances Act - Schedule V.

- (d) Anabolic substances promoting constructive metabolism. Includes the naturally occurring androgens or derivatives of androstane (androsterone and testosterone); testosterone and its esters, including, but not limited to, testosterone propionate and its derivatives, including, but not limited to, methyltestosterone.

Anabolic Steroids

- (1) Clostebol
- (2) Danazol
- (3) Dromostanolone
- (4) Oxymesteron
- (5) Oxymetholone
- (6) Ethylestrenol
- (7) Mesterolone
- (8) Methenolone
- (9) Methandrostenolone
- (10) Stanozolol
- (11) Nandrolone phenpropionate
- (12) Nandrolone decanoate
- (13) Norethandrolone

Androgens

- (1) Testosterone (in aqueous suspension)
- (2) Testosterone propionate (in oil)
- (3) Testosterone enanthate (in oil)
- (4) Testosterone cypionate (in oil)
- (5) Methyltestosterone
- (6) Dehydrochloromethyl testosterone
- (7) Fluoxymesterone

ARIZONA

The Arizona Medical Practice Act (Chapter 13, Arizona Revised Statutes, Sect. 32-1401.1) defines "unprofessional conduct" as including the PRESCRIBING, DISPENSING, OR ADMINISTERING OF ANABOLIC-ANDROGENIC STEROIDS TO A PERSON FOR OTHER THAN THERAPEUTIC PURPOSES.

ARKANSAS

HB 1231 1989

Defines "anabolic steroid" as any isomer, ester, salt, or derivative of the following that acts in the same manner on the human body:

- (a) clostebol
- (b) dehydrochloromethyltestosterone
- (c) ethylestrenol
- (d) fluoxymesterone
- (e) human growth hormones
- (f) mesterolone
- (g) methandienone
- (h) methandrostenolone
- (i) methenolone
- (j) methyltestosterone
- (k) nandrolone
- (l) norethandrolone
- (m) oxandrolone
- (n) oxymesterone
- (o) oxymetholone
- (p) stanozolol
- (q) testosterone

Defines "counterfeit substance" as a drug which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, or device, or any likeness thereof, of a drug manufacturer, processor, packer or distributor other than the person or persons who in fact manufactured, processed, packed or distributed the drug and which thereby falsely purports, or is represented to be the product of, or to have been packed or distributed by, another drug manufacturer, processor, packer, or distributor.

Defines "human growth hormone."

Provides that any person who distributes or possesses with intent to distribute any ANABOLIC STEROID, HUMAN GROWTH HORMONE, or COUNTERFEIT SUBSTANCE purporting to be an ANABOLIC STEROID or HUMAN GROWTH HORMONE for any use in humans other than the treatment of disease pursuant to the order of a physician shall be deemed guilty of a class D felony.

Provides that any person who distributes or possesses with the intent to distribute to an individual under 18 years of age, any ANABOLIC STEROID, HUMAN GROWTH HORMONE, or COUNTERFEIT SUBSTANCE purporting to be an ANABOLIC STEROID or HUMAN GROWTH HORMONE for any use in humans other than the treatment of disease pursuant to the order of a physician shall be deemed guilty of a class C felony.

Provides that possession by any person of more than 200 capsules or tablets or more than 16cc of ANABOLIC STEROIDS, HUMAN GROWTH HORMONES, or COUNTERFEIT SUBSTANCES purporting to be an ANABOLIC STEROID or HUMAN GROWTH HORMONE shall create a rebuttable presumption that the person possesses such substances with the intent to deliver in violation of the aforementioned sections (i.e., previous two paragraphs) dealing with penalties for the illegal distribution of such.

CALIFORNIA

AB 4029 1986

Makes anabolic steroids Schedule III controlled substances.

"Section 11056 (f)

Any material, compound, mixture, or preparation containing an anabolic steroid, including, but not limited to:

- (1) Methandrostenolone
- (2) Stanozolol
- (3) Ethylestrenol
- (4) Nandrolone phenpropionate
- (5) Nandrolone decanoate
- (6) Testosterone propionate
- (7) Chorionic gonadotropin"

Unlawful possession, first offense, is a misdemeanor.

COLORADO

SB 81 1987

Defines as unprofessional conduct: (1) the dispensing, injecting, or prescribing of an anabolic steroid (defined) for the purpose of the hormonal manipulation that is intended to increase muscle mass, strength, or weight without a medical necessity to do so, or for the intended purpose of improving performance in any form of exercise, sport, or game; (2) the dispensing or injecting of an anabolic steroid unless such anabolic steroid is dispensed from a pharmacy pursuant to a written prescription or is dispensed by any practitioner in the course of his/her professional practice.

Requires that the label for anabolic steroid prescriptions must state the purpose for which the drug is prescribed.

The first violation of (1) is a Class 2 misdemeanor; a second or subsequent violation is a Class 5 felony.

The first violation of (2) is a Class 4 felony; a second or subsequent violation is a Class 3 felony.

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FLORIDA

By regulation, Florida has placed anabolic steroids under their Controlled Substances Act - Schedule IV.

A substance in Schedule IV has a low potential for abuse relative to the substances in Schedule III and has a currently accepted medical use in treatment in the United States, and in the case of anabolic steroids, human chorionic gonadotropins, or other gonadotropins, may lead to physical damage.

Schedule IV (b): Anabolic steroids, including testosterone and its analogs, human chorionic gonadotropins, and other gonadotropins, but not including patent or proprietary preparations containing anabolic steroids and labeled for animal use.

INDIANA

SB 415 1988

Provides penalties for the illegal prescribing, ordering, distributing, supplying, selling, manufacturing, or delivering of anabolic steroids.

Adds a new Section 12 to the Indiana Code concerning health.

Anabolic steroid means a material, compound, mixture, or preparation that contains an anabolic steroid that includes any of the following:

- (1) Chorionic gonadotropin
- (2) Clostebol
- (3) Dehydrochloromethyltestosterone
- (4) Ethylestrenol
- (5) Fluoxymesterone
- (6) Mesterolone
- (7) Metenolone
- (8) Methandienone
- (9) Methandrostenolone
- (10) Methyltestosterone
- (11) Nandrolone decanoate
- (12) Nandrolone phenpropionate
- (13) Norethandrolone
- (14) Oxandrolone
- (15) Oxymesterone
- (16) Oxymetholone
- (17) Stanozolol
- (18) Testosterone propionate
- (19) Testosterone-like related compounds

Makes it unlawful for a practitioner to prescribe, order, distribute, supply, or sell an anabolic steroid for:

- (1) enhancing performance in an exercise, sport, or game; or
- (2) hormonal manipulation intended to increase muscle mass, strength, or weight without a medical necessity.

Makes it unlawful for a person who is not a practitioner or lawful manufacturer of anabolic steroids to:

- (1) knowingly or intentionally manufacture or deliver an anabolic steroid, pure or adulterated;
- (2) possess, with intent to manufacture or deliver, an anabolic steroid.

Violators are guilty of a Class C felony; however, the offense is increased to a Class B felony if the person delivered the anabolic steroid to a person who is less than 18 years of age and who is at least 3 years younger than the delivering person.

LOUISIANA

HB 270 1988

Defines "anabolic steroid" as any anabolic steroid or synthetic derivative of testosterone, including, but not limited to:

- (1) Methandrostenolone. (sic)
- (2) Stabozalol. (sic)
- (3) Ethyl estrenol.
- (4) Nandrolone phenpropionate.
- (5) Nandrolone decanote. (sic)
- (6) Testosterone propionate.
- (7) Chorionic gonadotropin.
- (8) Toxandropirone.

Conviction of the unlawful furnishing or selling of an anabolic steroid shall result in a fine or not more than \$5000.00 or imprisonment with or without hard labor for not more than 5 years, or both.

Persons convicted of the unlawful possession of an anabolic steroid shall be guilty of a misdemeanor and shall be fined not more than \$500.00 or imprisoned for not more than 6 months, or both.

NEW MEXICO

HB 303 1987

Provides penalties for the illegal possession and distribution of anabolic steroids:

- A. Except as authorized by the NM FD&C Act, it is unlawful for any person to intentionally possess anabolic steroids. Violators are guilty of a misdemeanor.
- B. It is unlawful for any person to intentionally distribute or possess with intent to distribute anabolic steroids. Violators are guilty of a fourth degree felony.
- C. It is unlawful for any person 18 years of age or older to intentionally distribute anabolic steroids to a person under 18 years of age. Violators are guilty of a third degree felony.

Requires that a copy of the law be displayed prominently in the athletic locker room of all State post-secondary and public schools.

NORTH CAROLINA

HB 1130 October 1, 1988

Defines "anabolic steroid" as any material, compound, mixture, or preparation containing an anabolic steroid, including, but not limited to:

- (1) methandrostenolone,
- (2) stanozolol,
- (3) ethylestrenol,
- (4) nandrolone phenpropionate,
- (5) nandrolone deconoate, (sic)
- (6) testosterone propionate, and
- (7) chorionic gonadotropin.

Declares anabolic steroids to be schedule III controlled substances. (Adds a new subsection (k) to G.S. 90-91.)

OHIO

1988 (effective as of February 1)

The Ohio State Board of Medical Examiners passed an anti-abuse rule that prohibits the prescribing, dispensing, delivering, or administering of anabolic steroids and human growth hormone for the purpose of enhancing athletic ability, including their use in body building.

Physicians are required to complete and maintain patient medical records which accurately reflect the utilization of any substance or drug included in the rule.

Requires that patient medical records indicate the diagnosis and purpose for which the substance or drug is being used and any additional information upon which the diagnosis is based.

Physicians who violate the rule are subject to reprimand, probation, license suspension, or license revocation.

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TEXAS

SB 1035 1987

Provides penalties for the illegal prescribing, dispensing, delivering, administering, or possessing of anabolic steroids (AS) or human growth hormone (HGH).

Anabolic steroid includes any of the following or any isomer, ester, salt, or derivative of the following that acts in the same manner on the human body:

- (1) Clostebol
- (2) Dehydrochloromethyltestosterone
- (3) Ethylestrenol
- (4) Flucxymesterone
- (5) Mesterolone
- (6) Methandione
- (7) Methandrostenolone
- (8) Methenolone
- (9) Methyltestosterone
- (10) Nandrolone
- (11) Norethandrolone
- (12) Oxandrolone
- (13) Oxymesterone
- (14) Oxymetholone
- (15) Stanozolol; and
- (16) Testosterone

A practitioner may not dispense, deliver, or administer an AS or HGH or cause an AS or HGH to be administered under his/her direction or supervision except for a valid medical purpose and in the course of professional practice. **BODY BUILDING, MUSCLE ENHANCEMENT, OR INCREASING MUSCLE BULK OR STRENGTH THROUGH THE USE OF AN ANABOLIC STEROID OR HGH BY A PERSON IN GOOD HEALTH IS NOT A VALID MEDICAL PURPOSE.**

A practitioner or pharmacist may not prescribe, dispense, or deliver an AS or a HGH without a written prescription; however, a practitioner may administer an AS for a valid medical purpose without writing an Rx.

Persons who are not practitioners or pharmacists and who possess over 250 tablets or eight 2 cc bottles of an AS or a HGH or combination thereof are committing an offense.

Violators are guilty of a third degree felony; repeat offenders are guilty of a second degree felony.

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VIRGINIA

HJR 88 1988

Directs the Department of Health Regulatory Boards to determine the extent of the use and misuse of anabolic steroids among minors and the prevalence of a black market for such drugs in Virginia. It shall also determine ways in which youth and their parents can be apprised of the dangers of such drugs, the extent, if any, to which coaches are aware of or condone such drug use, and recommend ways in which the use of anabolic steroids may be regulated.

The Department shall report its findings and recommendations to the Governor and the 1989 General Assembly Session.

H 622 1988

Makes it unlawful (Class 1 misdemeanor) for any person to knowingly sell or distribute, without prescription, to a minor any anabolic steroid or any pill, capsule, or tablet containing any combination of caffeine and ephedrine sulfate.

A M E N D M E N T

OFFERED IN THE HOUSE

BY MENARD

TO: HB 126

Page 1, following line 17:

Insert:

"(1) bolasterone;

(2) boldenone;"

Renumber following paragraphs accordingly.

Page 2, following line 7:

Insert:

"(22) ultandren"

A M E N D M E N T

OFFERED IN THE HOUSE

BY MENARD

TO: HB 126

Page 1, line 15, after "androgenic properties":

Insert ", including an isomer, salt, or derivative of the following substances that acts in the same manner on the human body,"

APPENDIX IV

NATIONAL ASSOCIATION OF BOARDS OF PHARMACY (NABP)

Model Law on Anabolic Steroids

Section 1: Definitions

The term "anabolic steroid" includes any of the following or any isomer, ester, salt, or derivative of the following that acts in the same manner on the human body.

- (a) clostebol.
- (b) dehydrochloromethyltestosterone.
- (c) ethylestrenol.
- (d) fluoxymesterone.
- (e) human growth hormones.

- (f) mesterolone.
- (g) methandienone.
- (h) methandrostenolone.
- (i) methenolone.
- (j) methyltestosterone.
- (k) nandrolone.
- (l) norethandroloone.
- (m) oxandroione.
- (n) oxymesterone.
- (o) oxymetholone.
- (p) stanozolol, and
- (q) testosterone

Section 2: Board of Pharmacy Authority

The Board of Pharmacy may by rule adopted pursuant to the Administrative Procedures Act, add or delete substances to the list in Section 1. In adding or deleting such substances, the Board shall consider the use of the substance, and potential for physiological harm due to the use or misuse of the substance.

Section 3: Prescriptions

If an anabolic steroid is prescribed, the purpose for which it is being prescribed must be provided by the prescriber and appear on the prescription.

Section 4: Unprofessional Conduct

It shall be considered to be unprofessional conduct for a practitioner to prescribe, dispense or administer an anabolic steroid for the purpose of the hormonal manipulation that is intended to increase muscle mass, strength or weight without a medical necessity to do so, or for the intended purpose of improving performance in any form of exercise, sport, or game.

Section 5: Violations

A person commits an offense if the person

(a) prescribes, dispenses, delivers, or administers an anabolic steroid or delivers a prescription form for an anabolic steroid to a person for human use for any purpose other than a valid medical purpose and in the course of professional practice;

(b) without a valid prescription delivers an anabolic steroid to a person for human use, or;

(c) is not a practitioner or pharmacist, and the person possesses over 150 tablets or four 2cc bottles of an anabolic steroid without a valid prescription.

HB

130

Original sponsor: Rules/Governor

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 130 (Judiciary)

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 the crime of theft and conceal-
7 ment of merchandise; and providing for an effective
8 date."

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

10 * Section 1. AS 11.46.120(a) is amended to read:

11 (a) A person commits the crime of theft in the first degree if
12 the person commits theft as defined in AS 11.46.100 and

13 [(1)] the value of the property or services is \$25,000 or
14 more [; OR

15 (2) THE VALUE OF THE PROPERTY OR SERVICES IS \$500 OR MORE
16 BUT LESS THAN \$25,000 AND WITHIN THE PRECEDING FIVE YEARS THE PERSON
17 HAS BEEN CONVICTED AND SENTENCED ON TWO OR MORE SEPARATE OCCASIONS IN
18 THIS OR ANOTHER JURISDICTION OF A CRIME SET OUT IN (1) OF THIS SUB-
19 SECTION OR AS 11.46.130(a)(1) - (3) OR AN OFFENSE UNDER ANOTHER LAW OR
20 ORDINANCE WITH SIMILAR ELEMENTS].

21 * Sec. 2. AS 11.46.130(a) is amended to read:

22 (a) A person commits the crime of theft in the second degree if
23 the person commits theft as defined in AS 11.46.100 and

24 (1) the value of the property or services is \$500 or more
25 but less than \$25,000;

26 (2) the property is a firearm or explosive;

27 (3) the property is taken from the person of another; or

28 (4) the value of the property is \$50 or more but less than
29 \$500 and within the preceding five years the person has been convicted

1 and sentenced on two or more separate occasions in this or another
2 jurisdiction of

3 (A) AS 11.46.120, or an offense under another law or
4 ordinance with similar elements;

5 (B) a crime set out in [(1) - (3) OF] this subsection
6 or an offense under another law or ordinance with similar ele-
7 ments; [OR]

8 (C) AS 11.46.140(a)(1) or (2), or an offense under
9 another law or ordinance with similar elements; or

10 (D) AS 11.46.220(c)(1) or (c)(2)(A), or an offense
11 under another law or ordinance with similar elements.

12 * Sec. 3. AS 11.46.140(a) is amended to read:

13 (a) A person commits the crime of theft in the third degree if
14 the person commits theft as defined in AS 11.46.100 and

15 (1) the value of the property or services is \$50 or more
16 but less than \$500;

17 (2) the property is a credit card; or

18 (3) the value of the property is less than \$50 and within
19 the past five years the person has been convicted and sentenced on two
20 or more separate occasions in this or another jurisdiction of theft or
21 concealment of merchandise, or an offense under another law or ordi-
22 nance with similar elements.

23 * Sec. 4. AS 11.46.220(c) is amended to read:

24 (c) Concealment of merchandise is

25 (1) a class C felony if

26 (A) the merchandise is a firearm;

27 (B) the value of the merchandise is \$500 or more; or

28 (C) the value of the merchandise is \$50 or more but
29 less than \$500 and within the preceding five years the person has

1 been convicted and sentenced on two or more separate occasions in
2 this or another jurisdiction of the offense of

3 (i) concealment of merchandise under this para-
4 graph or (2)(A) of this subsection, [THAT HAS A VALUE OF
5 \$50 OR MORE] or an offense under another law or ordinance
6 with similar elements; or

7 (ii) AS 11.46.120, 11.46.130, or 11.46.140(a)(1)
8 or (a)(2), or an offense under another law or ordinance with
9 similar elements;

10 (2) a class A misdemeanor if

11 (A) the value of the merchandise is \$50 or more but
12 less than \$500; or

13 (B) the value of the merchandise is less than \$50 and
14 within the preceding five years the person has been convicted and
15 sentenced on two or more separate occasions of the offense of
16 concealment of merchandise or theft in any degree, or an offense
17 under another law or ordinance with similar elements;

18 (3) a class B misdemeanor if the value of the merchandise
19 is less than \$50.

20 * Sec. 5. AS 11.46.295 is amended to read:

21 Sec. 11.46.295. PRIOR CONVICTIONS. For purposes of considering
22 prior convictions in prosecuting a crime of theft under AS 11.46.-
23 130(a)(4) [AS 11.46.120(a)(2), 11.46.130(a)(4),] or 11.46.140(a)(3),
24 or in prosecuting the crime of concealment of merchandise under
25 AS 11.46.220(c), a conviction for an offense under another law or
26 ordinance with similar elements is a conviction of an offense having
27 elements similar to those of an offense defined as such under Alaska
28 law at the time the offense was committed.

29 * Sec. 6. This Act takes effect immediately under AS 01.10.070(c).

ENHANCED CLASSIFICATION OF REPEAT THEFT OFFENSES

Comparison of Existing Law, HB 130, and CSIB 130

EXISTING STATUTE

HB 130

CSIB 130

AS 11.46.220 - Concealment of Merchandise (A misdemeanor)

Enhance Charge from B misdemeanor to A misdemeanor

IF

this offense is concealment of merchandise (B misdemeanor)

AND

the defendant has 2 prior convictions for:

No	Theft 1st (B felony)	Yes	Yes
No	Theft 2d (C felony)	Yes	Yes
No	Theft 3d (A misd.)	Yes	Yes
No	Theft 4th (B misd.)	Yes	Yes
Yes	Con. mer. (C felony)	Yes	Yes
Yes	Con. mer. (A misd.)	Yes	Yes
Yes	Con. mer. (B misd.)	Yes	Yes

AS 11.46.220 - Concealment of Merchandise (C felony)

Enhance Charge from A misdemeanor to C felony

IF

this offense is concealment of merchandise (A misdemeanor)

AND

the defendant has 2 prior convictions for:

No	Theft 1st (B felony)	Yes	Yes
No	Theft 2d (C felony)	Yes	Yes
	Theft 3d (A misd.)		
No	- >\$50/<\$500	Yes	Yes
No	- credit card	Yes	Yes
No	- 3 B misd. theft	Yes	No
Yes	Con. mer. (C felony)	Yes	Yes
	Con. mer. (A misd.)		
Yes	- >50/\$500	Yes	Yes
Yes	- 3 B misd. theft	Yes	No

AS 11.46.140 - Theft 3d (A misdemeanor)
Enhance Charge from B misdemeanor to A misdemeanor
IF
this offense is theft 4th (B misdemeanor)
AND
the defendant has 2 prior convictions for:

Yes	Theft 1st (B felony)	Yes	Yes
Yes	Theft 2d (C felony)	Yes	Yes
Yes	Theft 3d (A misd.)	Yes	Yes
Yes	Theft 4th (B misd.)	Yes	Yes
No	Con. mer. (C felony)	Yes	Yes
No	Con. mer. (A misd.)	Yes	Yes
No	Con. mer. (B misd.)	Yes	Yes

AS 11.46.130 - Theft 2d (C felony)
Enhance Charge from A misdemeanor to C felony
IF
this offense is theft 3d (A misdemeanor)
AND
the defendant has 2 prior convictions for:

No	Theft 1st (B felony)	Yes	Yes
Yes	Theft 2d (C felony)	Yes	Yes
	Theft 3d (A misd.)		
Yes	- >\$50/<\$500	Yes	Yes
Yes	- credit card	Yes	Yes
No	- 3 B misd. theft	Yes	No
No	Con. mer. (C felony)	Yes	Yes
	Con. mer. (A misd.)		
No	- >\$50/<\$500	Yes	Yes
No	- 3 B misd. theft	Yes	No

*AS 11.46.120 - Theft 1st (B felony)
 Enhance Charge from C felony to B felony
 IF
 this offense is theft 2d (C felony)
 AND
 the defendant has 2 prior convictions for:*

Yes	Theft 1st (B felony)	Yes	No
Yes	Theft 2d (C felony)	Yes	No
No	Con. mer. (C felony)	Yes	No

PROPOSED AMENDMENTS TO THEFT IN THE FIRST DEGREE

Sec. 11.46.120. THEFT IN THE FIRST DEGREE. (a) A person commits the crime of theft in the first degree if the person commits theft as defined in AS 11.46.100 and

(1) the value of the property or services is \$25,000 or more; or

(2) the value of the property or services is \$500 or more but less than \$25,000 [AND WITHIN THE PRECEDING FIVE YEARS THE PERSON HAS BEEN CONVICTED AND SENTENCED ON TWO OR MORE SEPARATE OCCASIONS IN THIS OR ANOTHER JURISDICTION OF A CRIME SET OUT IN (1) OF THIS SUBSECTION OR AS 11.46.130(A) (1) - (3) OR AN OFFENSE UNDER ANOTHER LAW OR ORDINANCE WITH SIMILAR ELEMENTS].

(b) Theft in the first degree is a class B felony.

Unlike HB130, this amendment repeals the change made last year that enhances a Class C felony theft offense to a Class B felony theft offense, if the offender has prior felony theft convictions. Since presumptive sentencing has the effect of enhancing the penalty, it is unnecessary, and unduly harsh, to also enhance the classification of the offense.

PROPOSED AMENDMENTS TO THEFT IN THE SECOND DEGREE

Sec. 11.46.130. THEFT IN THE SECOND DEGREE. (a) A person commits the crime of theft in the second degree if the person commits theft as defined in AS 11.46.100 and

(1) the value of the property or services is \$500 or more but less than \$25,000;

(2) the property is a firearm or explosive;

(3) the property is taken from the person of another; or

(4) the value of the property is \$50 or more but less than \$500 and within the preceding five years the person has been convicted and sentenced on two or more separate occasions in this or another jurisdiction of

(A) AS 11.46.120 or an offense under another law or ordinance with similar elements;

(B) a crime set out in [(1) - (3) OF] this subsection or an offense under another law or ordinance with similar elements; [OR]

(C) AS 11.46.140(a)(1) or (2) or an offense under another law or ordinance with similar elements; or

(D) AS 11.46.220(c)(1) or (2)(A) or an offense under another law or ordinance with similar elements.

(b) Theft in the second degree is a class C felony.

Under current law, if a person with two prior C felony or A misd. theft offenses commits an A misd. theft offense, the charge is enhanced to a C felony. The amendment adds B felony theft, C felony conc/merch, and A misd. conc/merch offenses as triggers for enhanced charges, since all are the equivalent or more serious than A misd. theft offenses. The amendment differs from HB130 in that enhancement is not triggered by theft and conc/merch convictions that were A misdemeanors solely as a result of enhancement under this statute.

PROPOSED AMENDMENTS TO THEFT IN THE THIRD DEGREE

Sec. 11.46.140. THEFT IN THE THIRD DEGREE. (a) A person commits the crime of theft in the third degree if the person commits theft as defined in AS 11.46.100 and

(1) the value of the property or services is \$50 or more but less than \$500;

(2) the property is a credit card; or

(3) the value of the property is less than \$50 and within the past five years the person has been convicted and sentenced on two or more separate occasions in this or another jurisdiction of theft or concealment of merchandise in any degree, or an offense under another law or ordinance with similar elements.

(b) Theft in the third degree is a class A misdemeanor.

Under current law, if a person with two prior theft offenses commits a B misd. theft offense, the charge is enhanced to an A misdemeanor. The amendment adds conc/merchandise offenses as triggers for enhanced charges, since conc/merchandise is a theft offense. The proposed amendment is the same as HB130.

Sec. 11.46.150. THEFT IN THE FOURTH DEGREE. (a) A person commits the crime of theft in the fourth degree if the person commits theft as defined in AS 11.46.100 and the value of the property or services is less than \$50.

(b) Theft in the fourth degree is a class B misdemeanor.

PROPOSED AMENDMENTS TO FELONY CONCEALMENT OF MERCHANDISE

Sec. 11.46.220. CONCEALMENT OF MERCHANDISE. (a) A person commits the crime of concealment of merchandise if without authority the person knowingly conceals on or about the person the merchandise of a commercial establishment, not purchased by the person, while still upon the premises of the commercial establishment, with intent to deprive the owner of the merchandise or with intent to appropriate the merchandise.

(b) Merchandise found concealed upon or about the person which has not been purchased by the person is prima facie evidence of a knowing concealment.

(c) Concealment of merchandise is (1) a class C felony if

(A) the merchandise is a firearm;

(B) the value of the merchandise is \$500 or more; or

(C) the value of the merchandise is \$50 or more but less than \$500 and within the preceding five years the person has been convicted and sentenced on two or more separate occasions in this or another jurisdiction of the offense of

(i) concealment of merchandise under AS 11.46.220(c)(1) or (2)(A) [THAT HAS A VALUE OF \$50 OR MORE] or an offense under another law or ordinance with similar elements;

(ii) AS 11.46.120 or an offense under another law or ordinance with similar elements;

(iii) AS 11.46.130 or an offense under another law or ordinance with similar elements; or

(iv) AS 11.46.140(a)(1) or (2) or an offense under another law or ordinance with similar elements.

Under current law, if a person with two prior C felony or A misd. conc/merch convictions commits an A misd. conc/merch, the charge is enhanced to a C felony. The amendment adds B felony, C felony, and A misd. theft convictions as triggers for enhanced charges, since all are either the equivalent or more serious than C felony or A misd. conc/merch offenses. The amendment differs from HB130 in that enhancement is not triggered by theft and conc/merch convictions that were A misdemeanors solely as a result of enhancement under this statute.

PROPOSED AMENDMENTS TO MISDEMEANOR CONCEALMENT OF MERCHANDISE

(2) a class A misdemeanor if

(A) the value of the merchandise is \$50 or more but less than \$500; or

(B) the value of the merchandise is less than \$50 and within the preceding five years the person has been convicted and sentenced on two or more separate occasions of the offense of concealment of merchandise or theft in any degree, or an offense under another law or ordinance with similar elements;

Under current law, if a person with two prior conc/merch offenses (C felony, A misd. or B. misd.) commits a B misd. conc/merch offense, the charge is enhanced to an A misdemeanor. The amendment allows theft offenses to also trigger enhanced charges, since such offenses are more serious or the equivalent of conc/merch. The proposed amendment is the same as HB130.

(3) a class B misdemeanor if the value of the merchandise is less than \$50.

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION

MMX

STEVE COWPER, GOVERNOR

REPLY TO

CRIMINAL DIVISION CENTRAL OFFICE
P.O. BOX KC
JUNEAU, ALASKA 99811-0310
PHONE: (907) 465-3428

February 27, 1989

OFFICE OF SPECIAL PROSECUTIONS
AND APPEALS
1031 WEST 4TH AVENUE, SUITE 310
ANCHORAGE, ALASKA 99501-5993
PHONE: (907) 279-7424

The Honorable Peter Goll
The Honorable Max Gruenberg
Alaska State Representatives
P.O. Box V
Juneau, Alaska 99811

Dear Representatives Goll and Gruenberg:

Both of you have expressed concern about HB 130, which is designed to cure certain constitutional problems with the existing theft statutes. The problems were created by passage of CSHB 461(Jud) last year.

As a result of our conversations, I developed the attached CS to HB 130 that, hopefully, addresses and resolves your most serious concerns. At the same time, the CS retains the enhanced classification scheme for misdemeanor theft offenses that I understand was Rep. Cotten's intended purpose in seeking passage of CSHB461(Jud).

There are two main differences between the proposed CS and HB 130:

1. In the CS, repeat Class C felony theft offenses may not be enhanced to Class B felonies. Since presumptive sentencing has the effect of enhancing the penalty, it is unnecessary, and unduly harsh, to also enhance the classification of the offense.

2. In the CS, theft and concealment of merchandise offenses that are Class A misdemeanors solely as a result of classification enhancement may not be used to enhance subsequent offenses to Class C felonies.

Attached you will find a draft CS to HB 130, a section-by-section analysis of the proposed changes, and a chart which compares existing law, HB 130 and the proposed CS to HB 130.

I will be glad to meet with you at any time to discuss any questions or comments you have about this proposal.

Very truly yours,

DOUGLAS B. BAILY
ATTORNEY GENERAL

By:



Laurie H. Otto
Assistant Attorney General

cc: Bob Evans
John Salemi
Brant McGee

Attachments

LHO:me-12

1 convicted and sentenced on two or more separate occasions in this
2 or another jurisdiction of

3 (A) AS 11.46.120 or an offense under another law
4 or ordinance with similar elements;

5 (B) a crime set out in [(1) - (3) OF] this
6 subsection or an offense under another law or ordinance with
7 similar elements; [OR]

8 (C) AS 11.46.140(a)(1) or (2) or an offense under
9 another law or ordinance with similar elements; or

10 (D) AS 11.46.220(c)(1) or (2)(A) or an offense
11 under another law or ordinance with similar elements.

12 * Sec. 3. AS 11.46.140(a) is amended to read:

13 (a) A person commits the crime of theft in the third degree
14 if the person commits theft as defined in AS 11.46.100 and

15 (1) the value of the property or services is \$50 or more
16 but less than \$500;

17 (2) the property is a credit card; or

18 (3) the value of the property is less than \$50 and within
19 the past five years the person has been convicted and sentenced on
20 two or more separate occasions in this or another jurisdiction of
21 theft or concealment of merchandise in any degree, or an offense
22 under another law or ordinance with similar elements.

23 * Sec. 4. AS 11.46.220(c) is amended to read:

24 (c) Concealment of merchandise is (1) a class C felony if

25 (A) the merchandise is a firearm;

1 (B) the value of the merchandise is \$500 or more;

2 or

3 (C) the value of the merchandise is \$50 or more but
4 less than \$500 and within the preceding five years the person has
5 been convicted and sentenced on two or more separate occasions in
6 this or another jurisdiction of the offense of

7 (i) concealment of merchandise under AS
8 11.46.220(c)(1) or (2)(A) [THAT HAS A VALUE OF \$50 OR MORE] or an
9 offense under another law or ordinance with similar elements;

10 (ii) AS 11.46.120 or an offense under another
11 law or ordinance with similar elements;

12 (iii) AS 11.46.130 or an offense under another
13 law or ordinance with similar elements; or

14 (iv) AS 11.46.140(a)(1) or (2) or an offense
15 under another law or ordinance with similar elements.

16 (2) a class A misdemeanor if

17 (A) the value of the merchandise is \$50 or more but
18 less than \$500; or

19 (B) the value of the merchandise is less than \$50
20 and within the preceding five years the person has been convicted
21 and sentenced on two or more separate occasions of the offense of
22 concealment of merchandise or theft in any degree, or an offense
23 under another law or ordinance with similar elements;

24 (3) a class B misdemeanor if the value of the merchandise
25 is less than \$50.

26 * Sec. 5. This Act takes effect immediately under AS 01.10.070(c).

COMPARISON OF THEFT AND CONCEALMENT OF MERCHANDISE STATUTES

CONCEALMENT OF MERCHANDISE

(a) A person commits the crime of concealment of merchandise if without authority the person knowingly conceals on or about the person the merchandise of a commercial establishment, not purchased by the person, while still upon the premises of the commercial establishment, with intent to deprive the owner of the merchandise or with intent to appropriate the merchandise.

(b) Merchandise found concealed upon or about the person which has not been purchased by the person is prima facie evidence of a knowing concealment.

(c) Concealment of merchandise is (1) a class C felony if

(A) the merchandise is a firearm;

(B) the value of the merchandise is \$500 or more; or

(C) the value of the merchandise is \$50 or more but less than \$500 and within the preceding five years the person has been convicted and sentenced on two or more separate occasions in this or another jurisdiction of the offense of concealment of merchandise that has a value of \$50 or more or an offense under another law or ordinance with similar elements;

THEFT

A person commits theft if

(1) with intent to deprive another of property or to appropriate property of another to oneself or a third person, the person obtains the property of another;

Theft in the second degree is a class C felony ... if

(1) the value of the property or services is \$500 or more but less than \$25,000;

(2) the property is a firearm or explosive;

(3) the property is taken from the person of another; or

(4) the value of the property is \$50 or more but less than \$500 and within the preceding five years the person has been convicted and sentenced on two or more separate occasions in this or another jurisdiction of a crime set out in (1) - (3) of this subsection or AS 11.46.140(a)(1) or (2) or an offense under another law or ordinance with similar elements.

(2) a class A misdemeanor
if

(A) the value of the
merchandise is \$50 or more but
less than \$500; or

(B) the value of the
merchandise is less than \$50 and
within the preceding five years
the person has been convicted
and sentenced on two or more
separate occasions of the
offense of concealment of
merchandise in any degree or an
offense under another law or
ordinance with similar elements;

(3) a class B
misdemeanor if
the value of the merchandise is
less than \$50.

Theft in the third degree
is a class A misdemeanor

(1) the value of the
property or services is \$50 or
more but less than \$500;

(2) the property is
a credit card; or

(3) the value of the
property is less than \$50 and
within the past five years the
person has been convicted and
sentenced on two or more
separate occasions in this or
another jurisdiction of theft
or an offense under another law
or ordinance with similar
elements.

Theft in the fourth degree
is a class B misdemeanor if
the value of the property or
services is less than \$50.

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: "An Act relating to penalties for repeat theft offenses..."
 Sponsor: Rules Committee
 Requestor: _____

Agency Affected: Department of Corrections
 BRU: _____
 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)

Susan E. Knighton
 Susan E. Knighton, Director

Prepared by: _____ Phone: 465-3376
 Division: Administrative Services Date: 2-13-89

Susan Humphrey-Barnett
 Approved by Committee Date: 2-13-89
 Agency: Department of Corrections

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

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION

STEVE COWPER, GOVERNOR

REPLY TO

CRIMINAL DIVISION CENTRAL OFFICE
P.O. BOX KC
JUNEAU, ALASKA 99811-0310
PHONE: (907) 465-3428

OFFICE OF SPECIAL PROSECUTIONS
AND APPEALS
1031 WEST 4TH AVENUE, SUITE 318
ANCHORAGE, ALASKA 99501-5993
PHONE: (907) 279-7424

March 14, 1989

The Honorable Max Gruenberg
Alaska State Representative
P.O. Box V
Juneau, Alaska 99811

Dear Representative Gruenberg:

The Governor introduced HB 130 to correct problems in the theft statutes that were unintentionally created last year by passage of CSHB461(Jud). Andy Hemenway of your staff requested that we summarize the history of this issue for your review.

Last session, members of the Anchorage Police Department expressed their frustration with the low penalties imposed on defendants convicted of misdemeanor thefts, even where a defendant had a significant record of theft convictions. During testimony before the Senate Judiciary Committee last year, an aide to Representative Cotton explained the problem as follows:

HB 461 was introduced at the request of the Anchorage Police Department Employees Association. Misdemeanors aren't covered by presumptive sentencing, and a study of the Anchorage Police Department has pointed out that current penalties are not a sufficient deterrent to the repeat offender.

Testimony was given in support of the bill by an Anchorage police officer who stated that he had been investigating misdemeanor thefts for over a year, and had discovered that the same people were being repeatedly arrested for theft. The officer felt this was because the penalties were inadequate and suggested that enhancing the classification for repeat theft offenses would work to deter thefts because "the statute for second offense joyriding seems to be an appropriate and effective penalty." Under the joyriding statute, a first offense is an A misdemeanor, and a subsequent offense is a C felony.

The legislature responded to the concerns raised by the Anchorage police and unanimously passed CSHB461(Jud). Unfortunately, the statute contained a number of internal contradictions that were not discovered during the committee hearings. After passage, the Department of Law carefully examined the statute and discovered that a person with a more serious criminal history of theft may be charged and sentenced more leniently than someone who had committed less serious thefts.

For instance, under AS 11.46.130(a)(4), a person can be convicted of second degree theft (C felony), if the person commits third degree theft and has two prior convictions for third degree theft (A misdemeanor). But, an offender who commits the exact same A misdemeanor theft offense and has two prior convictions for first degree theft (B felony) may not be convicted of second degree theft. This disparate treatment of offenders who commit the same crime raises serious equal protection concerns.

The aggravated concealment of merchandise provisions are also problematic. The statute aggravates a third misdemeanor concealment of merchandise to a felony. However, a person with a worse history of theft who then commits the exact same concealment offense is guilty only of a misdemeanor. For example, a person previously convicted of a felony theft of jewelry (that is, someone who completes the theft offenses) can only be charged with a misdemeanor for a subsequent misdemeanor concealment charge. However, a more inept thief who is repeatedly caught before getting the property out of the store is liable for felony penalties. This scheme may very well be unconstitutional as a violation of equal protection (treating similarly situated persons differently) or due process (being somewhat irrational).

As introduced, HB 130 corrects the equal protection and due process problems by creating a rational and consistent structure for aggravating theft offenses. However, it did not address two additional problems with the law that had been identified by the Department of Law and the Public Defender Agency. The problems relate to the effect of the legislation on offenses that are subject to presumptive sentencing and a provision that allows for a double enhancement. Since both you and Representative Goll independently raised these additional concerns, we prepared a CS that addresses all problems with last year's legislation.

As is explained in more detail in the attachments to our letter of February 27, 1989, the CS eliminates those statutory provisions that went beyond the stated purpose of the sponsor and supporters of last year's legislation. As reflected in the committee minutes, the intent of the bill was to increase the penalties for misdemeanor theft offense, similar to the enhancement that is imposed for repeat joyriding offenses. It is very easy to retain the provisions that accomplish this result and, at the same

The Honorable Max Gruenberg

March 14, 1989

Page 3

time, eliminate the provisions relating to presumptive sentencing and double enhancement that the criminal justice agencies, and apparently the two co-chairs of this year's Judiciary Committee, found to be objectionable.

We appreciate the opportunity to explain CSHB 130, and hope this corrective legislation can be expeditiously considered by the Judiciary Committee.

Very truly yours,

DOUGLAS B. BAILY
ATTORNEY GENERAL

By: 

Laurie H. Otto

Assistant Attorney General

cc: ✓ The Honorable Peter Goll
Bob Evans

LHO:me-26

STEVE COWPER, GOVERNOR

PUBLIC DEFENDER AGENCY

900 W. 5TH AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501-2090
PHONE: (907) 279-7541

February 13, 1989

Representative Max F. Gruenberg, Jr.
P.O. Box V
Juneau, Alaska 99811

RE: HB 130 - "An Act relating to penalties for repeat theft offenses"

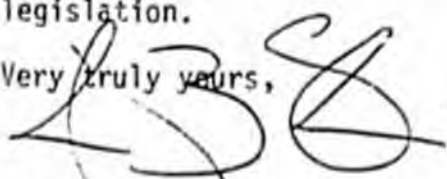
Dear Representative Gruenberg:

Thank you for the opportunity to comment on the above-referenced proposed legislation. This proposal is identical to a draft bill submitted for comment by the Office of the Governor in December of 1988. As the attached commentary prepared by me on December 19, 1988 indicates, this statutory scheme has serious flaws of a constitutional dimension which the proposed amendment will not cure. In the attached commentary you will find hypothetical examples which point out the inequities of present law. The proposed changes to that law submitted through HB 132 do not cure these flaws.

Although an extreme remedy, I believe that the present law needs to be scrapped through the repeal process. Short of that, a much more exhaustive revision of the law must be undertaken than is contemplated by HB 132.

Thank you again for this opportunity to provide our perspective on proposed legislation.

Very truly yours,


John B. Salemi
Acting Public Defender

JBS:sh
Attachment

In 1988 CS HB 461 was signed into law, amending the theft and concealment of merchandise statutes. The 1988 amendments allowed for the prosecution of a higher crime and increased penalty provisions for an offender who has a certain number of prior theft convictions within five years prior to the present offense. Without going into detail how these amendments trigger this differential treatment of repeat theft offenders, the amendments have created serious inequities which are not addressed in these draft amendments under consideration.

The theft statutes, even with the changes now proposed, are constitutionally flawed. The constitutional issues are best understood by looking at the specific application of these laws hypothetically. Following are three examples of the inequity of the statutes:

Hypothetical No. 1 - Mr. Smith commits the crime of theft in the second degree by appropriating property worth \$600 in value. Theft in the second degree is a class C felony having a presumptive term of zero to five years. Mr. Smith has two prior felonies involving felony concealment of merchandise (AS 11.46.220). These felonies occurred within the five year period immediately preceding the instant offense. As a result of these prior felonies, the theft second becomes theft first under AS 11.46.120(a)(2). As a person convicted of a B felony, with two prior theft felonies, Mr. Smith will receive a presumptive jail term of six years.

Hypothetical No. 2 - Mr. Smith again commits the same offense of theft in the second degree. He has two prior felonies, only this time one of them is felony concealment of merchandise and the other is criminally negligent homicide (also a C felony which involved Mr. Smith causing the death of another human being). Because only one of the prior convictions involves theft, even though they both occurred within the same five year period, AS 11.46.120(a)(2) is not controlling. This theft in the second degree is not "bumped up" to a B felony. It remains a C felony. With these two prior felony offenses, Mr. Smith is only subject to a presumptive three year jail term.

Hypothetical No. 3 - Mr. Smith commits attempted sexual abuse of a minor in the second degree, a C felony with a zero to five sentencing range. He has two felony concealment of merchandise priors within the five years immediately preceding his commission of the sex offense. Because the offense for which he is now to be sentenced is not a theft, even though he has two prior felony theft convictions within five years, he is only subject to C felony treatment and a presumptive three year term.

One could make a strong argument that Mr. Smith's legal situation in Hypothetical No. 1 is such where he should receive less punishment than in Hypotheticals Nos. 2 or 3. Under Hypothetical No. 2, Mr. Smith has a prior felony conviction involving the killing of another human being. Hypothetical No. 1 involves three felony theft offenses. But in Hypothetical No. 1, Mr. Smith will receive double the presumptive jail time as he would in Hypothetical No. 2.

When one compares Hypothetical No. 3 with Hypothetical No. 1, one might make the argument that someone who is convicted of felony theft and has two prior felony theft convictions should receive a sentence less than someone who has two prior felony convictions and now commits a sex offense. Nevertheless, Mr. Smith in Hypothetical No. 1 again will receive twice the presumptive jail term (six years) as he would under Hypothetical No. 3 (presumptive three year term applies).

It is likely that criminal defendants to whom these statutes apply will end up in lengthy litigation regarding the inequitable treatment they are receiving under current law. People who are similarly situated can conceivably receive very different sentences. Those people who have committed offenses of a less serious nature will receive harsher sentences than those accused of more serious crimes. Without going into exhaustive treatment of the constitutional issues, it is likely that litigation will center on questions of due process (fundamental fairness) and equal protection under the law.

It must be remembered that in 1980 a wholesale revision of the criminal code occurred. One of the main purposes of this revision was to achieve consistency in treatment of offenders, especially as it related to the sentences they receive. This kind of "tinkering" we are seeing within the theft statutory framework creates anomalies in the law and defeats the objective

of consistency in sentencing. The real remedy is not to try to fix something that is seriously flawed, but instead to repeal the 1988 amendments to the theft statutes.

OTHER CONCERNS

The final concern the Public Defender Agency has with the proposed amendments involves the use of misdemeanor concealment of merchandise convictions to bootstrap present prosecutions to the felony level. Given diminishing state resources and the expense of incarcerating people for extended periods of time, this seems an impractical approach to treatment of theft offenders. Additionally, it seems on its face rather harsh. Persons convicted of concealment of merchandise already face up to a maximum of one year in prison. That seems punishment enough for thefts involving moderate amounts of money or property.

HB 130
Don't distribute
Test out in file

January 31, 1989

Hayden Kaden
House Judiciary Committee
P.O. Box V
Juneau, Alaska 99811

Dear Hayden:

A Governor's bill was recently introduced that corrects problems with the theft bill that passed last year. The bill has an immediate effective date because it corrects a problem that we believe makes the theft sentencing statute unconstitutional as it is currently written.

We would very much appreciate any assistance you can provide in scheduling this bill at the earliest possible opportunity. The bill number is HB130. If you have any questions please give me a call.

Very truly yours,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By: 

Laurie H. Otto

STEVE COWPER
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

CO
1/30/89

January 30, 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 regarding penalties for repeat theft offenses.

This bill corrects a number of inequities in the law governing repeat theft offenses, which passed the legislature last year as CSHB 461(Jud) and was signed into law as ch. 133, SLA 1988. For example, under that current law, a person previously convicted twice of misdemeanor concealment of merchandise, who is again charged with concealment of merchandise, is treated much more harshly than if the person had previously been convicted twice of felony theft. Similarly, a person convicted twice of misdemeanor theft, who is again charged with theft, is treated much more harshly than if the person had previously been convicted twice of felony concealment of merchandise.

In order to justify the increased penalties provided by ch. 133, SLA 1988, the law must be fairly and equitably structured. The attached bill provides that structure.

I urge your favorable action on this bill

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Cowper", written over the word "Sincerely,".

Steve Cowper
Governor

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Department of Law
 Title: "An Act relating to penalties for repeat theft offenders." 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)

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 bill makes needed correction to the increased penalty provisions for repeat theft offenders, which passed the legislature last year as CSHB 461 (Jud). Because the changes proposed in the bill are remedial in nature, the bill will not have a fiscal impact on the Department of Law.

Prepared by: Richard L. Pegues, Director Phone: 465-3672
 Division: Administrative Services Date: November 16, 1988
 Approved by Commissioner: Grace Berg Squaible, Atty. General Date: November 16, 1988
 Agency: Department of Law

Distribution (by preparer):

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

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: "An Act relating to penalties for repeat theft offenses."
 Sponsor: Rules Committee
 Requestor: Governor

Agency Affected: Dept. of Administration
 BRU: Public Defender Agency

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						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

~~See Appendix A and B.~~

(Handwritten signature)

Prepared by: John Salemi, Act. Public Defender Phone: 279-7541
 Division: Public Defender Agency Date: Dec. 19, 1988

Approved by Commissioner: John M. Andrew Date: 12/22/88
 Agency: Administration

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

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Administration
 Title: "An Act relating to penalties for repeat theft offenses." BRU: Office of Public Advocacy
 Sponsor: Rules Committee Components: _____
 Requestor: Governor

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Brant McGee, Public Advocate Phone: 274-1684
 Division: Office of Public Advocacy Date: Dec. 22, 1988

Approved by Commissioner: John Andrews Date: 12/22/88
 Agency: Department of Administration

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

SELECT - QUERY
00001 ALL BTL = HB0461

HB0461 . DOCUMENT# 11 OF 31

CHAMBER = H
SOURCE = HJR
DATE = 042588
YEAR = 84
BILL = HB0461

DOCUMENT TEXT
HJR042688HB0461
CSHB 461(JUD)

REPRESENTATIVE DAVIS MOVED AND ASKED UNANIMOUS CONSENT THAT THE RECONSIDERATION OF CSHB 461(JUD) BE TAKEN UP AT THIS TIME. THERE BEING NO OBJECTION, IT WAS SO ORDERED.

THE FOLLOWING IS AGAIN BEFORE THE HOUSE IN THIRD READING:

CS FOR HOUSE BILL NO. 461 (JUDICIARY)
"AN ACT INCREASING THE PENALTIES FOR REPEAT CONVICTIONS FOR THE CRIMES OF THEFT AND CONCEALMENT OF MERCHANDISE."

THE QUESTION TO BE RECONSIDERED: "SHALL CSHB 461(JUD) PASS THE HOUSE?" THE ROLL WAS TAKEN WITH THE FOLLOWING RESULT:

CSHB 461(JUD) RECONSIDERATION

YEAS: 37 ADAMS, BARNES, BOUCHER, BOYER,
BROWN, CATO, COLLINS, CUTTEN,
DAVIS, DONLEY, ELLIS, FRANK,
FURNACE, GRUENBERG, GRUSSENDORF,
HANLEY, HERRMANN, HUDSON, KOPONEN,
LARSON, MARTIN, MENARD, MILLER,
NAVARRE, PEARCE, PETTYJOHN,
PHILLIPS, POURCHOT, RIEGER,
SHULTZ, SPRINGER, SUND,
SWACKHAMMER, TAYLOR, ULMER,
WALLIS, ZAWACKI

NAYS: 0

EXCUSED: 0

ABSENT: 3 DAVIDSON, GOLL, HOFFMAN *> on first vote: all 3
voted for CSHB461 (Jud.)*

AND SO, CSHB 461(JUD) PASSED THE HOUSE ON RECONSIDERATION AND WAS REFERRED TO THE CHIEF CLERK FOR ENGROSSMENT.

END OF DOCUMENT

SELECT - QUERY
00001 ALL BILL = HB0461

HB0461 . . . DOCUMENT# 12 OF 31

CHAMBER = S
SOURCE = SJRN
DATE = 050780
YEAR = 05
BILL = HB0461

DOCUMENT TEXT
SJRN050780HB0461
HB 461

CS FOR HOUSE BILL NO. 461(JUDICIARY) "AN ACT INCREASING THE PENALTIES FOR REPEAT CONVICTIONS FOR THE CRIMES OF THEFT AND CONCEALMENT OF MERCHANDISE" WHICH HAD BEEN PLACED AT THE BOTTOM OF THE CALENDAR WAS BEFORE THE SENATE IN SECOND READING.

SENATOR ELIASON MOVED AND ASKED UNANIMOUS CONSENT THAT CS FOR HOUSE BILL NO. 461(JUDICIARY) BE ADVANCED TO THIRD READING AND PLACED ON FINAL PASSAGE. WITHOUT OBJECTION, IT WAS SO ORDERED.

CS FOR HOUSE BILL NO. 461(JUDICIARY) WAS READ THE THIRD TIME.

THE QUESTION BEING: SHALL CS FOR HOUSE BILL NO. 461 (JUDICIARY) "AN ACT INCREASING THE PENALTIES FOR REPEAT CONVICTIONS FOR THE CRIMES OF THEFT AND CONCEALMENT OF MERCHANDISE" PASS THE SENATE? THE ROLL WAS TAKEN WITH THE FOLLOWING RESULT:

CSHB 461 JUD 3RD

YEAS: 20 ABOOD, BINKLEY, COGHILL, DUNCAN,
ELIASON, FAHRENKAMP, FAIKS,
FANNING, FISCHER, HALFORD,
HENSLEY, JONES, JOSEPHSON, KELLY,
KERTTULA, RODEY, STURGULEWSKI,
SZYMANSKI, UEHLING, ZHAROFF

NAYS: 0

AND SO, CS FOR HOUSE BILL NO. 461(JUDICIARY) PASSED THE SENATE.

CS FOR HOUSE BILL NO. 461(JUDICIARY) WAS SIGNED BY THE PRESIDENT AND SECRETARY AND RETURNED TO THE HOUSE.

END OF DOCUMENT

HB

131

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907.465.3800

LEGISLATIVE AFFAIRS AGENCY
LEGISLATIVE REFERENCE LIBRARY

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files. .

Mary Van Nimwegen

HB 131

H. CGRA

2/9/89

HOUSE COMMITTEE REPORT

(5)

Date Referred: February 1, 1989

FURTHER REFERRALS: JUDICIARY

Date of Committee Action: 3/16/89

The COMMUNITY & REGIONAL AFFAIRS Committee recommends that:

HOUSE BILL NO. 131 [LOCAL BOUNDARY COMMISSION HEARINGS/VOTES]
"An Act relating to the Local Boundary Commission."

[] be replaced with CS HB131 CRA [] the same title
[] a new title

[] have attached amendment(s)

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

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

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

APPROVES PREVIOUS:

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

SIGNING DO PASS:

Bette Cat
Richard Sobey

Eileen P. Maclean

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

no rec *Fally*
no rec *Cheryl Davis*

Eileen P. Maclean
Chairman's signature

1 commission or the commissioner of community and regional affairs with
2 the consent of the chairman may call a meeting or hearing of the local
3 boundary commission. All meetings and hearings shall be public. The
4 commission shall adopt regulations for the conduct of the meeting of
5 the commission under AS 44.62.

6 * Sec. 4. AS 44.47.573 is amended to read:

7 Sec. 44.47.573. NOTICE OF PUBLIC HEARINGS. Public notice of
8 each [A] hearing of the local boundary commission shall be given in
9 the area in which the hearing is to be held at least 30 [15] days
10 before the date of the hearing. The notice of the hearing must
11 [SHALL] include the time, date, place, and subject of the hearing.
12 The commissioner [DIRECTOR OF LOCAL AFFAIRS] shall give notice of each
13 [THE] hearing at least three times

14 (1) by public service announcements on radio and television
15 stations in the area; and

16 (2) [IN THE PRESS,] through print [OTHER NEWS] media and [,
17 OR] by posting in a public place [, WHICHEVER IS MOST FEASIBLE].

18 * Sec. 5. AS 44.47.577 is amended to read:

19 Sec. 44.47.577. BOUNDARY CHANGE. A majority of the full mem-
20 bership of the local boundary commission must vote in favor of a
21 proposed boundary change before it may be presented to the legisla-
22 ture.

23 * Sec. 6. AS 44.47.581 is amended to read:

24 Sec. 44.47.581. HEARINGS ON BOUNDARY CHANGES. A local govern-
25 ment boundary change may not be proposed to the legislature unless at
26 least two hearings [A HEARING] on the change have [HAS] been held in
27 communities in [OR IN THE NEAR VICINITY OF] the area affected by the
28 change. If there is no community within the area affected by the
29 change, the commission shall hold the hearing in a proximately located

1 community. The second hearing shall be separately noticed and shall
2 be held at least 30 days after the first hearing. One of the hearings
3 may be conducted by teleconference.

4 * Sec. 7. Section 2 of this Act takes effect on the effective date of a
5 constitutional amendment proposed by the Sixteenth Alaska State Legislature
6 relating to the Local Boundary Commission.
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6-0577D✓
Bradley
4/13/89

Original sponsors: Shultz, Foster,
Wallis, et al.

1 IN THE HOUSE

2 CS FOR HOUSE BILL NO. 131 ()
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 the Local Boundary Commission;
7 and providing for an effective date."

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

9 * Section 1. AS 29.05.090 is amended to read:

10 Sec. 29.05.090. HEARING. The Local Boundary Commission shall
11 hold at least two public hearings [ONE PUBLIC HEARING] in the area
12 proposed to be incorporated for the purpose of receiving testimony and
13 evidence on the proposal. The second hearing shall be separately
14 noticed and shall be held at least 30 days after the first hearing.
15 One of the hearings may be conducted by teleconference.

16 * Sec. 2. AS 44.47 is amended by adding a new section to read:

17 Sec. 44.47.568. PROHIBITED CHANGES. The commission may not
18 propose to the legislature the annexation of an area without permanent
19 year-round residents to an existing municipality unless the commission
20 determines that

21 (1) the area to be annexed requires one or more services at
22 a level not provided by the state that the municipality would be able
23 to provide; or

24 (2) the health, welfare, or safety of the residents of the
25 municipality is endangered by conditions existing or developing in the
26 area being considered for annexation and the annexation will enable
27 the municipality to relieve the conditions.

28 * Sec. 3. AS 44.47.569 is amended to read:

29 Sec. 44.47.569. MEETINGS AND HEARINGS. The chairman of the

1 commission or the commissioner of community and regional affairs with
2 the consent of the chairman may call a meeting or hearing of the local
3 boundary commission. All meetings and hearings shall be public. The
4 commission shall adopt regulations for the conduct of the meeting of
5 the commission under AS 44.62.

6 * Sec. 4. AS 44.47.573 is amended to read:

7 Sec. 44.47.573. NOTICE OF PUBLIC HEARINGS. Public notice of
8 each [A] hearing of the local boundary commission shall be given in
9 the area in which the hearing is to be held at least 30 [15] days
10 before the date of the hearing. The notice of the hearing must
11 [SHALL] include the time, date, place, and subject of the hearing.
12 The commissioner shall provide notice to radio and television stations
13 in the area and request that public service announcements be aired.
14 The commissioner [DIRECTOR OF LOCAL AFFAIRS] shall give notice of each
15 [THE] hearing at least three times [IN THE PRESS,] through print
16 [OTHER NEWS] media and [, OR] by posting in a public place [,
17 WHICHEVER IS MOST FEASIBLE].

18 * Sec. 5. AS 44.47.577 is amended to read:

19 Sec. 44.47.577. BOUNDARY CHANGE. A majority of the full mem-
20 bership of the local boundary commission must vote in favor of a
21 proposed boundary change before it may be presented to the legisla-
22 ture.

23 * Sec. 6. AS 44.47.581 is amended to read:

24 Sec. 44.47.581. HEARINGS ON BOUNDARY CHANGES. A local govern-
25 ment boundary change may not be proposed to the legislature unless at
26 least two hearings [A HEARING] on the change have [HAS] been held in
27 communities in [OR IN THE NEAR VICINITY OF] the area affected by the
28 change. If there is no community within the area affected by the
29 change, the commission shall hold the hearing in a proximately located

1 community. The second hearing shall be separately noticed and shall
2 be held at least 30 days after the first hearing. One of the hearings
3 may be conducted by teleconference.

4 * Sec. 7. Section 2 of this Act takes effect on the effective date of a
5 constitutional amendment proposed by the Sixteenth Alaska State Legislature
6 relating to the Local Boundary Commission.
7

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

April 18, 1989

POSITION PAPER

RE: Committee Substitute for House Bill 131(CR&A)
Committee Substitute for House Joint Resolution 38(CR&A)

SPONSOR: Shultz

Program Effects of Bill

Committee Substitute House Bill 131 would accomplish four basic changes to existing law. 1) It would require two public hearings, rather than one by the Local Boundary Commission when an area is proposed for incorporation or an area is to be affected by a boundary change, before the proposal comes before the legislature for approval. 2) It would require 30 days public notice, rather than 15 days, before such hearings can be conducted. 3) It would require a majority of the full membership, rather than a simple majority, of the Local Boundary Commission to vote in favor of proposed boundary changes before they may be proposed to the legislature. 4) It would prohibit the Local Boundary Commission from proposing to the legislature annexations of areas in which there were no inhabitants unless the area requires services provided by the municipality or the annexation would protect municipal residents from a danger to their health, welfare or safety arising from the area to be annexed. This final provision would become effective upon adoption of a constitutional amendment proposed by HCR 26, which would allow the legislature to set standards for the Local Boundary Commission's consideration of boundary changes.

Comments

The department has a two-fold interest in this legislation, one because of the department's interest in its impact on the municipalities it serves and the other because of the department's responsibility to provide staff support to the Local Boundary Commission. In both areas of interest this legislation causes some concern.

The Local Boundary Commission was created in the constitution as a mechanism for consideration of local boundary changes. In some states there is no such mechanism and the process of annexation or detachment relies on local action by municipalities. The framers of the constitution, however, felt that reliance upon purely local interests would not adequately protect the interests of the state and provided for the creation of a local boundary agency which, under the oversight

- P.O. BOX B
JUNEAU, ALASKA 99811-2100
PHONE: (907) 465 4700
- 949 E. 36TH AVENUE, SUITE 400
ANCHORAGE, ALASKA 99508-4302
PHONE: (907) 583-1073

of the legislature, it was felt would provide a needed statewide perspective. In its actions, the Local Boundary Commission applies specific regulatory standards which were designed to balance state and local interests. The Local Boundary Commission has the authority to provide for local action boundary changes which, because they are largely uncontested, do not require the review of the legislature. Those actions which are reviewed by the legislature, therefore, tend to be controversial to a greater or lesser degree.

Recent decisions of the Commission have raised concerns that the Commission may be too responsive to local municipal interests in setting the timetable for processing annexation petitions to insure that the proposed annexations could be set before the legislature in a timely manner. It has been argued that the process did not allow full presentation of concerns by all interested parties. At least in part to address this situation, provisions relating to expanded hearings and notice (Sections 1, 4, and 6) were introduced.

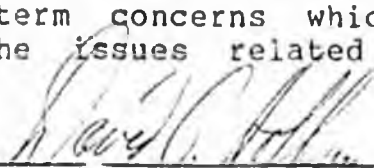
The department supports the proposed notice and hearing procedures to insure an opportunity for the presentation and careful consideration of concerns from interested parties. However, such procedures should not be so cumbersome and difficult as to inhibit legitimate municipal interests in pursuing boundary changes. The notice and hearing procedures set out in the proposed legislation, while making the process somewhat more cumbersome, would not have a prohibitive effect on municipalities. Additionally, there will be a fiscal impact on the department which must be addressed to accomplish the desired ends. In the absence of such resources, the department and Commission would be unable to provide the mandated procedural safeguards, effectively bringing the process to a halt to the detriment of municipalities putting forth good faith, legitimate proposals.

It should be noted that the Local Boundary Commission is also concerned with these problems and is proposing to address them through comprehensive formal procedures providing for broadening distribution of notice, depending upon the degree of significance of the change being considered. The Commission will be adopting procedures to formalize the review process to insure the hearing and review time line is not unreasonably compressed. The procedural requirement for action to be taken by a majority of the full membership of the Commission (Section 5 of the bill) is consistent with existing Commission practice. The Commission is also taking steps to adopt formal procedural rules.

The proposal section 4 to restrict the Commission's ability propose a boundary change of an area with no permanent residents, unless the area requires services or endangers municipal residents is a troublesome one. On the one hand, such a restriction seems to discriminate against existing municipalities. If a proposed new borough and an existing borough were competing for the same uninhabited area, the new borough would not be judged against the same standards as the existing one. This could result in the area at issue becoming part of the proposed borough even though it should more appropriately be within the boundaries of the existing borough, simply because the area does not present a danger to residents of the existing borough or have a current need for services.

The majority of the state remains unorganized. This area tends to be predominately uninhabited and is characterized by the very conditions placed upon the consideration of annexations of such territory by the Local Boundary Commission. Placing such a restriction on the Commission's activities would preclude it from considering annexations of this type of territory and may cause problems we cannot anticipate at this time as more regional governments are formed in the future.

The prohibition in CSHB 131 is dependent upon the passage of CSHJR 26 which would give the legislature the authority to establish standards for the Commission's review of boundary changes. While the legislature does not currently have the authority to establish such standards, it does have the power to approve or disapprove any boundary change brought before it. This proposal would significantly alter this framework to give the legislature a more active role in the activities currently reserved to the Commission. This presents the danger of a piecemeal approach through which standards are adopted in response to specific short term concerns which inhibit a comprehensive treatment of the issues related to boundary changes.



David G. Hoffman
Commissioner

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: "An Act relating to the Local
 Boundary Commission..effective date."
 Sponsor: House C&RA Committee
 Requestor: _____

Agency Affected: Community & Regional Affairs
 BRU: Local Government Assistance

Components: Local Boundary Commission

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL		44.6	44.5	44.6	44.6	44.6
CONTRACTUAL		12.3	12.3	12.3	12.3	12.3
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		56.9	56.9	56.9	56.9	56.9

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

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

FUNDING: (Thousands of Dollars)

GENERAL FUND		56.9	56.9	56.9	56.9	56.9
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

See attached

Jim Plasman

Prepared by: Jim Plasman, Deputy Director
 Division: Municipal & Regional Assistance Division

Phone: 465-4750
 Date: 4/17/89

Approved by Commissioner: *[Signature]*
 Agency: Community & Regional Affairs

Date: 18 AM 89

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

STATE OF ALASKA 1989 - 16TH LEGISLATURE
FIRST SESSION
FISCAL NOTE

Committee Substitute for House Bill 131

ANALYSIS:

Assumptions:

1. The requirements of Sections 1 and 6 of CSHB 131 apply only to petitions for municipal incorporations (AS 29.05.090), legislative review annexations and detachments (AS 29.06.040(b), AS 44.47.567(b)(2), and Article X, Section 12 of the State Constitution).
2. Five petitions for municipal incorporations and five petitions for legislative review annexations and detachments will be received each year.
3. Consistent with the Commission's policies, all public hearings will be conducted in person with all Commission members present. Therefore, in all cases, the Commission will conduct the requisite second hearings (mandated by Sections 1 and 6 of CSHB 131) on site but in a different location and at a different time than the first hearing. The additional expense will be substantial. Assumptions are as follows:

Per Diem:

Each meeting will require an average of 2 days travel time per Commission member and staff.

Per diem will be \$80/day.

\$80 x 2 (days) x 6 (5 commissioners and 1 staff)
x 10 additional meetings per year. = \$ 9,600

Travel:

Each meeting will require that each commission member and staff travel round trip from their originating points. No meetings will be "piggy-backed".

Average of \$583/person/meeting.

\$583 x 6 (5 commissioners and 1 staff) x 10
additional meetings per year. = \$34,980

Notice Requirements:

The notices for annexations will be shorter and therefore somewhat less expensive to publish than notices for municipal incorporations. Annexation notices will average \$250/newspaper. Incorporation notices will average \$350/newspaper.

Each notice for each meeting will run three times in at least two separate publications.

\$250 x 2 (newspapers) x 5 additional meetings
per year. (annexations) = 2,500

\$350 x 2 (newspapers) x 5 additional meetings
per year (incorporations) = 3,500

To ensure that notice is broadcast on radio and TV stations in the area as required by Section 4 of the bill, it will be necessary to pay for the service. It is estimated that each notice will require 30 seconds to broadcast. Radio broadcasts are estimated to cost \$15 each and television broadcasts are estimated to cost \$75 each. It is assumed that each notice will be broadcast on two radio stations and 1 television station. Because this requirement is new, it will apply to all 20 of the projected hearings.

\$15 x 3 (# of broadcasts) x 2 (# of stations)
x 20 (# of hearings) = 1,800

\$75 x 3 (# of broadcasts) x 20 (# of hearings) = 4,500

TOTAL: \$ 56,880

LOCAL BOUNDARY COMMISSION

949 EAST 36TH AVENUE, SUITE 404
ANCHORAGE, ALASKA 99501
PHONE: (907) 561-8588

April 7, 1989

The Honorable Peter Goll, Co-Chairman
The Honorable Max F. Gruenberg, Jr., Co-Chairman
House Judiciary Committee
Pouch V
Juneau, Alaska 99811

Dear Representatives Goll and Gruenberg:

RE: COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 131 (C&RA)

This is to offer comments on behalf of the Local Boundary Commission (LBC) regarding CSHB 131 (C&RA), which is presently before your committee. This measure proposes to amend existing laws concerning the procedures of the LBC. In addition, the bill would (subject to approval of a Constitutional amendment proposed by CSHJR 26) impose limitations on certain municipal boundary changes.

The comments of the Commission are provided in two sections, the first addresses procedures. The second section of the Commission's comments concerns proposed standards for boundary changes.

I. COMMENTS CONCERNING PROPOSED CHANGES TO PROCEDURES

A. Hearings. Section 1 of the bill would increase the number of hearings which the LBC must conduct for a proposed incorporation from one to two. Section 6 would do the same for a proposed municipal boundary change (detachment or annexation) to be submitted to the legislature. Hearings must be held at least 30 days apart. One of the hearings may be conducted via teleconference.

It appears that the purpose of these and several other provisions of the bill is to ensure a more moderate pace in proceedings of the LBC. The Commission has already taken independent steps to accomplish this same objective, as well as to make other warranted improvements to its procedures.

Over the past two months, the LBC has conducted a series of meetings to contemplate desired changes to its procedures. As a result, the LBC is currently proposing to adopt a number of regulations and a set of bylaws which, the Commission believes, will address the legitimate concerns which have recently been raised concerning such matters.

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Adoption of these measures by the LBC to improve the existing regulations would seem to satisfy the intent of Section 3 of the bill. A copy of the proposed changes to the regulations and the proposed bylaws will be provided to you under separate cover.

Given the steps being taken by the LBC to improve its procedures, the Commission does not support a requirement that two hearings be conducted for every boundary change to be submitted to the legislature and for every incorporation. In most cases, only one hearing on such matters is necessary. If the Commission determines that more than one hearing is necessary or appropriate, it can (and, indeed, already does) conduct multiple hearings on a proposed boundary change or incorporation.

The LBC does not object to the proposed requirement for 30 days notice of a proposed incorporation or legislative review boundary change. In fact, an identical measure is included in the Commission's proposed amendments to its regulations.

With respect to teleconference hearings, the Commission's experience is that they are less effective than conventional hearings. In addition, teleconference hearings have not always resulted in significant cost savings. The Commission's experience with such matters has led it to adopt a policy that hearings will be conducted in a conventional fashion whenever possible.

B. Notice of Hearings. In addition to accommodating changes contained in Sections 1 and 6, Section 4 of the bill would require public service announcements of LBC hearings to be given "at least three times by public service announcements on radio and television stations in the area . . . and through print media and by posting in a public place".

The Commission understands from discussions with staff of the Alaska Broadcasting Commission that, contrary to common belief, radio and television stations are not obligated to broadcast public service announcements. In fact, the Commission has been advised that few, if any, commercial stations will broadcast public service announcements without a charge. While publicly owned stations might be more inclined to broadcast public service announcements, there is no practical way to ensure when and how frequently those announcements will be made, unless payment is involved (FCC regulations now permit public stations to charge for public service announcements from "non-profit groups" such as the State).

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The Commission supports provisions to enhance public awareness of its proceedings. However, here again, the LBC has already taken steps to expand the notice requirements even beyond those of this legislation (see Section I of enclosed "Report on Local Boundary Commission Worksessions").

C. Requirement for Majority of Full Membership. Section 5 of the bill would require that a majority of the full membership of the LBC must vote in favor of a proposed boundary change. Such provisions (as well as similar provisions concerning incorporations) already exist in regulations (see enclosed copy of 19 AAC 10.430 for incorporations and 19 AAC 10.580 for boundary changes).

D. Fiscal Impact. The Commission believes that it has already taken steps to remedy the procedural concerns intended to be addressed by CSHB 131 (C&RA). The improved procedures developed by the Commission will be implemented with a moderate increase in costs. However, to implement the provisions of CSHB 131 will be, in the judgment of the LBC, exceedingly expensive. The Commission understands from discussions with staff of the Department of Community and Regional Affairs that the annual fiscal impact of this measure is projected to be in excess of \$50,000.

II. COMMENTS CONCERNING PROPOSED LIMITATIONS ON BOUNDARY CHANGES

The Commission is greatly troubled by the specific standards proposed by Section 2 of the bill. That portion of the bill provides that uninhabited territory proposed for annexation must meet standards which are substantially higher than those which must be met for the inclusion of uninhabited territory in an area proposed for incorporation. These proposed standards consist of:

1. "the area to be annexed requires one or more services at a level not provided by the state that the municipality would be able to provide", or
2. "the health, welfare, or safety of the residents of the municipality is endangered by conditions existing or developing in the area being considered for annexation and the annexation will enable the municipality to relieve the conditions".

A. Provisions Establish Double Standard. Clearly, such provisions would severely discriminate against established municipalities that may need to expand their boundaries. For

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example, if a proposed new borough and an existing borough were competing to include the same uninhabited territory within their respective jurisdictions, the proposed new borough would have the overwhelming advantage. This would be the case even though annexation of the territory in question to the existing borough may satisfy far more of the relevant standards than would be satisfied by incorporating the territory in the proposed new borough (see enclosed copy of 19 AAC 10.835 governing competing petitions).

If the legislature desires to enact standards such as those set out in Section 2 of the bill, it should logically make those same provisions apply to all existing and future municipalities. In other words, in those cases where existing and proposed municipalities contain territories which do not meet the standards set out in Section 2 of the bill, those territories should be excluded from the municipalities. In reality, however, if such action were taken it would cause significant adverse consequences for virtually every borough and many cities in the state.

B. Example of Annexation Which Fails to Meet Proposed Standards. In 1974 (six years after it incorporated), the Haines Borough successfully petitioned for the annexation of approximately 317 square miles along the Chilkat Peninsula. This territory was virtually uninhabited. It appears to the Commission that the area in question did not then, nor does it now, satisfy either of the standards set out in Section 2 of the bill. Yet, the annexation was vitally important to the Borough.

As a result of the annexation, the Borough was able to generate badly needed revenues. For example, since 1980, the Borough has received an average of \$114,861 each year in National Forest Receipts. In addition, for the most recent year on record, the Borough received \$96,900 in PL 97-258 funds (federal payments in lieu of taxes) and also received \$146,749 in State shared raw fish taxes. Almost all of these funds were derived from the territory annexed in 1974. Together, these funds total \$358,510. A loss of such funding to the Borough would necessitate a projected increase of nearly 75% in the areawide property tax levy by the Borough (based upon 1988 areawide tax rate of 5.5 mills on total local assessed valuation of \$88,606,681).

C. Annexations Must be Viewed in Context. The preceding example illustrates the need to view an annexation proposal in the context of the characteristics which the annexation will

The Honorable Peter Goll
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April 7, 1989
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bring to the entire municipality (as opposed to a consideration which is limited exclusively to the characteristics of the area proposed for annexation). Viewed in an isolated fashion, it would be difficult to see the merits of the annexation. However, when viewed in the context of the entire borough, it becomes more evident that the annexation was warranted.

The tax base of the Haines Borough was at the time, and still is, relatively weak (in 1988, its property tax base was 54% of statewide average per capita full value). As such, the annexation was essential in the further satisfaction of standards for incorporation of boroughs to "include all areas necessary for full development of municipal services" and to ensure that the region included the "financial resources capable of providing municipal services". In addition, the annexation provided greater satisfaction of the standard that the boundaries of the "borough conform generally to natural geography" (see enclosed copy of AS 29.05.031 - borough incorporation standards).

Similar examples could be provided for virtually every other borough and many cities in Alaska. The Commission will be pleased to provide additional examples, if you desire.

D. Annexations are Essential to Accommodate Change. It is important to remember that annexation offers the only way for a municipality to perfect its boundaries to accommodate changes which may have occurred after incorporation. A fundamental principle of local government established under the Constitution provides that "boundaries were to be left flexible in order to permit future adjustment to growth and changing requirements for the performance of regional functions" (source Borough Government in Alaska pp 39 - 40). Section 2 of the bill would severely alter that principle.

E. Proposed Standards are Reaction to Problems with Existing Structure. It is rather apparent that Section 2 of the bill stems from frustration and concern over recent actions of the Commission, particularly approval of the proposed annexation to the Fairbanks North Star Borough (FNSB). The type of conflicts generated by the FNSB annexation proposal are, unfortunately, likely to escalate until the legislature addresses growing problems with the delivery of local and regional services throughout Alaska. The Commission has formally raised concerns regarding such matters with the legislature for the past six years. Most recently, the Commission's January 26, 1989 report to the legislature contains a six page statement of these problems (see enclosed copy of Statement on Borough Government in Alaska).

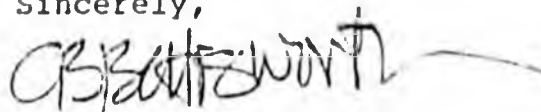
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CONCLUSION

In conclusion, the Local Boundary Commission believes that the steps being taken on its own initiative to implement improvements to its procedures represent a more practical and comprehensive approach than that offered by CSHB 131. The Commission also believes very strongly that the standards proposed by Section 2 of the bill are inappropriate. Therefore, the Commission opposes CSHB 131. Further, the Commission again urges the legislature to address the problems relating to the current structure for the delivery of local and regional services throughout the state.

Thank you for considering these comments. If possible, I will be present when your committee takes up this measure to answer any questions or provide additional information.

Sincerely,



C. B. Bettisworth
Chairman

enclosures:

- "Report on Local Boundary Commission Worksessions"
- 19 AAC 10.430; 19 AAC 10.580 (regulations concerning voting by a majority of the full membership of the LBC)
- 19 AAC 10.835 (regulations governing competing petitions)
- "Statement on Borough Government in Alaska"

cc:

The Honorable Richard Shultz, Sponsor, HJR 26 and HB 131
The Honorable Eileen MacLean, Chairman, House C&RA Committee
The Honorable Ron Larson, Sponsor, HB 1
David Hoffman, Commissioner, DCRA
Scott Burgess, Executive Director, Alaska Municipal League

REPORT ON LOCAL BOUNDARY COMMISSION WORKSESSIONS
REGARDING PROCEDURES (January 30 - 31, 1989)

The following is a summary of the worksessions held by the Local Boundary Commission on January 30 and 31, 1989 to discuss procedures and rules to be used by the Commission. The Commission plans additional worksessions concerning this matter and intends to amend its existing regulations (19 AAC 10) to implement changes to its procedures.

Commission Members present:

C.B. Bettisworth, Chair
Shelley Dugan, Vice-Chair
Jo Anderson, Member
Ben Nageak, Member
Lamar Cotten, Member

DCRA Staff present

Jake Lestenkof (partial attendance)
Patrick Poland, Deputy Director, MRAD-Anchorage
Dan Bockhorst, Local Government Specialist

Others Present (partial attendance)

Phil Kelly, Aide to Senator Zharoff
Martha Stuart, Aide to Senate C&RA Committee
Louanne Christian, Aide to House C&RA Committee
Vern Roberts, Chignik City Administrator
Peter Froehlich, Assistant Attorney General
Marjorie Odland, Assistant Attorney General

I. PUBLIC NOTICE OF THE FILING OF A PETITION

A. FOR REGIONAL ACTIONS HAVING POTENTIAL FOR SUBSTANTIAL PUBLIC INTEREST (defined to include incorporations, dissolutions, legislative review annexations, step annexations, legislative review detachments and local action detachments which involve boroughs or unified municipalities).

1. All of the following parties located within the territory proposed for the change, and within each regional educational attendance area (REAA) and municipality adjoining the borough or unified municipality shall receive individual public notice of the filing of a petition:

- A. All municipalities (cities, boroughs, unified municipalities);
- B. The tribal council or recognized spokesperson of every unincorporated community having 25 or more residents;
- C. All ANCSA village corporations with core townships within the region or the adjoining regions;
- D. All ANCSA regional corporations organized for profit;
- E. All ANCSA regional non-profit corporations;
- F. Regional Educational Attendance Areas;
- G. Coastal Resource Service Areas;
- H. Regional Health providers;
- I. "Major property owners" (to the extent they are readily known).

2. All of the following additional parties shall receive individual notice of the petition:
 - A. Legislators (at a minimum, all legislators serving the region and the adjoining regions should be notified; for issues of statewide importance all legislators should be notified);
 - B. Media (newspapers, radio stations and television stations serving the areas in question);
 - C. The petitioners' representative;
 - D. The Local Boundary Commission;
 - E. Appropriate State and federal agencies;
 - F. Other parties which the Department believes would be interested in this matter (e.g. financial institutions in the event of a proposed dissolution).
 3. Notice described in 1 and 2 above shall be mailed via first class mail (except for that processed through the State mail distribution system). Certified mailings will not be used. Staff will prepare an affidavit of mailing identifying the date of the mailing and the mailing address for each party.
 4. Notice shall be published as display advertisements in newspapers of circulation in the regions specified. [Note: standards for publication (e.g. number of times, minimum size) to be developed at subsequent worksessions of LBC].
- B. FOR COMMUNITY ACTIONS HAVING POTENTIAL FOR SUBSTANTIAL PUBLIC INTEREST (defined to include incorporations, dissolutions, legislative review annexations, step annexations, legislative review detachments and local action detachments which involve cities).
1. All of the following parties located within 10 miles from the perimeter boundary of the proposed change and/or existing boundary of the city, whichever is further, shall be provided with individual notice.
 - A. All municipalities (cities, boroughs, unified municipalities);
 - B. The tribal council or recognized spokesperson of every unincorporated community having 25 or more residents;
 - C. All ANCSA village corporations with core townships within the defined area;
 - D. All ANCSA regional corporations organized for profit;
 - E. All ANCSA regional non-profit corporations;
 - F. Regional Educational Attendance Areas;
 - G. Coastal Resource Service Areas;
 - H. Regional Health providers;
 - I. "Major property owners" (to the extent they are readily known).

2. All of the following additional parties shall receive individual notice of the petition:
 - A. Legislators (at a minimum, all legislators serving the territory defined should be notified; for issues of statewide importance all legislators should be notified);
 - B. Media (newspapers, radio stations and television stations serving the areas in question);
 - C. The petitioners' representative;
 - D. The Local Boundary Commission;
 - E. Appropriate State and federal agencies;
 - F. Other parties which the Department believes would be interested in this matter (e.g. financial institutions in the event of a proposed dissolution).
3. Notice in 1 and 2 above shall be mailed via first class mail (except for that processed through the State mail distribution system). Certified mailings will not be used. Staff will prepare an affidavit of mailing identifying the date of the mailing and the mailing address for each party.
4. Notice shall be published as display advertisements in newspapers of circulation in the territory specified. [Note: standards for publication (e.g. number of times, minimum size) to be developed at subsequent worksessions of LBC].

C. FOR REGIONAL AND COMMUNITY ACTIONS HAVING LIMITED POTENTIAL PUBLIC INTEREST (defined to include mergers and consolidations involving boroughs, unified municipalities and cities, as well as local action annexations to boroughs, unified municipalities and cities).

Public notice of such types of actions will be much less than that described in I A and B. [Note: to be more clearly defined at subsequent worksessions of LBC]. Since mergers and consolidations involve a restructuring of existing governments, as opposed to a change in the boundaries of any government, notice will likely be limited to interested parties within the existing governments to be merged or consolidated.

With respect to local action annexations, there are three types of annexations. These are: annexations involving strictly municipally-owned property, those which have been requested by all of the property owners and resident voters in the territory proposed for annexation and those for which the annexation will be ultimately determined by an election of the voters within the territory. The overwhelming majority of these types of annexations are small in scale and are of little or no interest to the general public. In the event a local action proposal is

filed which has the potential for substantial public interest, appropriate notice will be given.

II. ADDITIONAL INFORMATION

Discussions were held by the LBC concerning the extent to which parties potentially interested in a particular proposal should be made responsible to ask for any information beyond that provided by the notice of the filing of the petition. These additional materials would include a copy of the petition, responsive briefs and written comments in favor or opposition to the petition, replies to the responsive material; from the petitioners' representative, correspondence from DCRA, DCRA draft reports, DCRA final reports, notice of meetings, hearings, et cetera. The Commission's discussion centered around the need to keep potentially interested parties informed, yet not incur undue costs of copying and mailing substantial materials to what would typically amount to 200 or more parties. The Commission was inclined limit the such information, UNLESS INDIVIDUALS SPECIFICALLY REQUESTED ADDITIONAL MATERIALS IN WRITING.

III. ADMINISTRATIVE PROCEDURES

Peter Froehlich, Assistant Attorney General, expressed the opinion that State Statutes [AS 29.05.100(b), 29.06.040(a), 29.06.130(b) and 29.06.500(b)] subject the Commission only to limited provisions of the Administrative Procedure Act. Specifically, these consist of AS 44.62.560 - 570 concerning a judicial appeal of a decision of the Commission.

Mr. Froehlich specifically indicated his belief that the provisions of AS 44.62.540 concerning reconsideration did not apply to the Commission. Mr. Froehlich suggested that the Commission adopt a regulation setting up a procedure for reconsideration based upon the process set out in the State court rules.

Mr. Froehlich recommended that the Commission adopt a regulation clearly establishing an effective date for its decisions.

The Commission discussed the need to formally adopt parliamentary rules. Assistant Attorneys General Marjorie Odland and Peter Froehlich recommended that the Commission adopt bylaws rather than a set of pre-established parliamentary rules. Ms. Odland indicated that she would provide the Commission with sample bylaws for consideration.

IV. SCHEDULE OF PROCEEDINGS

The Commission expressed the belief that a more moderate pace in future proceedings would likely accommodate nearly all of the concerns recently expressed regarding the procedures used by DCRA and the LBC.

It was agreed that the Commission should adopt a regulation allowing the Commission (or Chairman) to set a formal schedule for each proceeding. A typical schedule concerning DCRA and LBC activities leading to a decision concerning a legislative review boundary change, incorporation or dissolution was outlined as follows:

- STEP 1. Form and content of petition reviewed for compliance with law by DCRA. If form and content is accepted, individual public notice of the filing of petition is given. Arrangements are also made for publication in appropriate newspaper at least once each week for four weeks. (see sample notice - petition for dissolution of City of Akiachak). These tasks would typically be accomplished within 2 weeks.
- STEP 2. Chairman of the LBC sets the formal schedule for the proceedings. This would occur sometime around the 2nd or 3rd week of publication of the notice of the filing of the petition.
- STEP 3. Deadline for receipt of responsive briefs and written comments in support of or in opposition to the petition. This would be determined in Step 2, but would typically be set for at least 7 weeks following the distribution and initial publication of the notice of the filing of the petition.
- STEP 4. Deadline for receipt of answering brief from the petitioners' representative in reply to responsive briefs and written comments. This would be determined in Step 2, but would typically be set for 2 weeks following the deadline for responsive briefs.
- STEP 5. Distribution of draft report and recommendation on the petition by DCRA. This would typically occur 4 weeks following the deadline for the answering brief.
- STEP 6. Deadline for comment on DCRA draft report and recommendation. Possible public meeting(s) conducted on the petition by DCRA. These activities would typically occur 4 weeks following the distribution of the draft report.