

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672
5752 HOUSE JUDICIARY 156

that the petition is filed

petition, exhibits, and general public at a designated public hearing required under 19 AAC 10.530 here and when the petition is filed. (Eff. 2/21/82, Register 81)

N. (a) The department shall determine whether they are satisfied with the petition or brief is defective petition or brief and determine that the petition and brief have been

(a) Upon receipt of no-nd brief have been ac-filing of the petition to lation in the territory. he commissioner; shall boundary change, the ch municipality whose ate the place where the ublic as provided in 19 ivise persons that they C 10.550 in response to omments to the depart-

(b) The petitioner shall furnish the commissioner with proof of compliance with (a) of this section. Upon receipt of the proof, the commissioner shall submit the petition and brief to the commission.

(c) A petition filed with the commissioner may not be considered to be pending before the commission until the petition and brief have been submitted to the commissioner pursuant to this section. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.367

Editor's notes. — 19 AAC 10.530 is based on a former version of 19 AAC 10.080.

19 AAC 10.540. CALL FOR HEARING. The commission will establish a time and place for a hearing concerning a proposed boundary change which shall be held in or near the territory. The commission will publish notice of the hearing at least 15 days before the date of the hearing at least three times in a newspaper of general circulation in the territory, through other news media, or by posting in a public place, whichever is most feasible. At least 15 days before the date of the hearing, the commission will give public notice of the hearing and cause notice of the hearing to be served by certified mail upon

- (1) the municipalities specified in 19 AAC 10.510;
- (2) the petitioner or his representative; and
- (3) any person or municipality who has filed an answering brief pursuant to 19 AAC 10.550. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.367

Editor's notes. — 19 AAC 10.540 is based on a former version of 19 AAC 10.090.

19 AAC 10.550. ANSWERING BRIEF. (a) A person or entity residing or owning property in the territory, or the governing body of a municipality affected by a proposed boundary change may file a brief in opposition to the proposed boundary change. The original of the brief shall be filed with the commissioner together with proof that one copy was served upon the petitioner or his designated representative.

(b) A person, entity, or municipality filing an answering brief shall be designated a respondent.

(c) The answering brief shall indicate the factual information thought to be incorrectly or incompletely presented in the petition or the petitioner's brief and shall demonstrate the manner in which the proposed boundary change fails to satisfy the appropriate standards

prescribed in this chapter. The brief shall include a discussion of the considerations set forth in 19 AAC 10.500. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.550 is based on a former version of 19 AAC 10.100.

19 AAC 10.560. REPLY BRIEF. Before a hearing is held pursuant to 19 AAC 10.540, the petitioner may file a brief in reply to any new matter raised in an answering brief. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.560 is based on a former version of 19 AAC 10.110.

19 AAC 10.570. DEPARTMENT REPORT. The department will prepare a report on the proposed boundary change. The report will summarize the issues raised in the petition and briefs and may comment upon those issues or any other issue which the department considers relevant to the proposal. The report will contain recommendations to the commission. The report will be filed with the commission before the date of the hearing established under 19 AAC 10.540. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.570 is based on a former version of 19 AAC 10.120.

19 AAC 10.580. HEARING AND DECISIONAL MEETING. The commission's public hearing and decisional meeting concerning a proposed boundary change will be conducted in the manner set forth in 19 AAC 10.420 — 19 AAC 10.430. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.580 is based on former versions of 19 AAC 10.130 and 19 AAC 10.140.

19 AAC 10.590. Its discretion, waive substantial rights or waiver. A deviation waived by the commission. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec.
AS 44.47.567

Editor's notes. — 19 AAC 10.590 is based on a former version of 10.150.

19 AAC 10.600. There are alternative commissions will select under the circuit.

Authority: Art. X, Sec.
AS 44.47.567

Editor's notes. — 19 AAC 10.600 is based on a former version of 10.160.

19 AAC 10.610. CHANGES. Without exception, the department will prepare a report on the municipality to be changed. The department will prepare the recording district. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec.
AS 44.47.567

Editor's notes. — 19 AAC 10.610 is based on a former version of 10.170.

19 AAC 10.620. Its discretion, and boundary change, require municipalities with the purpose which are expected change be made any change. The commission will prepare a report on the municipality to be changed. The department will prepare the recording district. (Eff. 2/21/82, Register 81)

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19 AAC 10.590 COMMUNITY AND REGIONAL AFFAIRS 19 AAC 10.620

19 AAC 10.580. NONCOMPLIANCE. The commission will, in its discretion, waive compliance with the regulations of this chapter if substantial rights of interested parties are not prejudiced by the waiver. A deviation from the procedures set forth in this chapter is waived by the commission unless the commission or a party objects. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44 47 567

Editor's notes. — 19 AAC 10.590 is
based on a former version of 19 AAC
10.150.

19 AAC 10.600. DETERMINATION OF PROCEDURE. If there are alternative procedures for effecting a boundary change, the commission will select the procedure which it considers most appropriate under the circumstances. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44 47 567

Editor's notes. — 19 AAC 10.600 is
based on a former version of 19 AAC
10.160.

19 AAC 10.610. CERTIFICATION OF BOUNDARY CHANGES. Within 30 days after a boundary change becomes effective, the department will prepare a certificate of the new boundaries. The department will transmit duplicate originals of the certificate to the municipality or municipalities whose boundaries have been changed. The department will also record a copy of the certificate in the recording district in which the boundary change has taken place. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44 47 567

Editor's notes. — 19 AAC 10.610 is
based on a former version of 19 AAC
10.170.

19 AAC 10.620. PUBLIC MEETINGS. The commission will, in its discretion, and before considering a petition requesting a boundary change, require municipalities whose boundaries are proposed to be changed to conduct meetings or hearings in the area to acquaint residents with the purposes sought to be accomplished and the benefits which are expected to be derived by residents should the boundary change be made and to solicit public opinions on the proposed boundary change. The commission will, in its discretion, require that tran-

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19 AAC 10.642 COMMUNITY AND REGIONAL AFFAIRS 19 AAC 10.645

with other required materials, directly to the department. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.640 is
based on former versions of 19 AAC
15.060 and 19 AAC 15.210.

19 AAC 10.642. DEPARTMENT REVIEW OF PETITION. (a) The department shall review the petition and brief and determine whether they are in substantially the proper form and contain the factual information required by 19 AAC 10.630 — 19 AAC 10.730. If the department determines that the petition is deficient as to form or content, it will return the defective petition for correction or completion. If the department determines that the petition is deficient as to form or content, it will return the defective petition for correction or completion. If the department determines that the petition is in substantial compliance with these regulations, it will so notify the petitioner.

(b) The action required by the department in (a) of this section will be accomplished in no more than 30 working days from the date the department receives the petition. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.642 is
based on former versions of 19 AAC
15.060 and 19 AAC 15.220.

19 AAC 10.645. REVIEW BY LOCAL BOUNDARY COMMISSION. (a) A decision of the commission on a petition submitted under 19 AAC 10.630 — 19 AAC 10.730 will be rendered within 30 days of receipt of the petition from the department. The commission will, in its discretion, act by telephone or mail. However, noncompliance with the time limit established in this subsection for commission action will not affect the validity of a resulting boundary change.

(b) Notwithstanding other provisions of this chapter, if the commission determines that a proposed boundary change is of compelling public importance or if the interests of an individual or organization may not be properly protected the commission will, in its discretion and without limitation, require that the petition be acted upon pursuant to 19 AAC 10.450 — 19 AAC 10.620. If the determination is made, the commission will schedule public hearings within 45 days, and will notify the petitioner of its determination. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.645 is based on former versions of 19 AAC 15.070 and 19 AAC 15.230.

19 AAC 10.650. ANNEXATION WITHOUT ELECTION. (a) Notwithstanding the provisions of 19 AAC 10.660 — 19 AAC 10.710, an area adjoining a municipality may be annexed by ordinance of the municipality if all property owners and registered voters within the area petition the assembly or council for annexation.

(b) If an annexation petition is submitted pursuant to AS 29.68.010(b)(3) and this chapter, the department will determine whether the requisite signatures have been obtained. The department shall notify the assembly or council whether the petition is in accordance with this section and if it is in accordance with this section and the commission does not object to the annexation within 30 days, the annexation is effective upon the date of the notification.

(c) For the purposes of this section, "property owners" means all persons or entities necessary to convey fee title to the real property in question but does not include mortgagees, trustees, beneficiaries under deeds of trust, or the federal, state, or any municipal government. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.650 is based on a former version of 19 AAC 15.140.

19 AAC 10.660. ANNEXATION OR DETACHMENT BY ELECTION. Not less than 60 nor more than 90 days after the notification required by 19 AAC 10.670, the assembly or council shall submit the proposition to the voters in the area proposed to be annexed or detached. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.660 is based on former versions of 19 AAC 15.080 and 19 AAC 15.240.

19 AAC 10.670. NOTICE OF ELECTION. The assembly or council of a municipality which receives a petition for a boundary change under 19 AAC 10.660 — 19 AAC 10.710 shall give notice of an election by publication in a newspaper of general circulation in the territory proposed to be annexed or detached once each week for a

period of three successive notices in three publications proposed to be annexed or detached per of general circulation suffice. Posting of the newspaper shall be required before the election. The notice shall include:

- (1) the proposed boundaries;
- (2) the proposed date of the election;
- (3) any provisions relating to the proposed boundaries or assets.

Authority: Art. X, Sec. 12, AS 44.47

Editor's notes. — based on a former version of 15.090.

19 AAC 10.680. The assembly or council shall provide notice in the municipality affected by the election in the manner provided by this section whose boundaries are affected. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, AS 44.47

Editor's notes. — based on former versions of 15.100 and 19 AAC 10.680

19 AAC 10.690. The assembly or council shall place upon the territory described territory (municipality) ...

Authority: Art. X, Sec. 12, AS 44.47

Editor's notes. — based on former versions of 15.110 and 19 AAC 10.690

19 AAC 10.700. The assembly or council shall make provision for the number of votes cast. The assembly or council shall make provision for the number of votes cast.

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- (1) the proposition to be submitted;
- (2) the boundaries of the territory to be annexed or detached; and
- (3) any provision or agreement governing distribution of liabilities or assets. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.670 is based on a former version of 19 AAC 15.090.

19 AAC 10.680. CONDUCT OF ELECTION. Except as otherwise provided in this chapter, the assembly or council of the municipality affected by the proposed boundary change shall conduct the election in the manner prescribed by its election code. The municipality whose boundaries would be affected shall pay the election costs. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.680 is based on former versions of 19 AAC 15.100 and 19 AAC 15.260.

19 AAC 10.690. FORM OF BALLOT. The assembly or council shall place upon the ballot the following proposition: "Shall the following described territory be annexed (detached) to (from) the (name of municipality)? Yes or No." (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.690 is based on former versions of 19 AAC 15.110 and 19 AAC 15.270.

19 AAC 10.700. CANVASSING OF ELECTION. The assembly or council shall meet within 10 days of the election and canvass the votes cast. The assembly or council shall issue a certificate showing the number of votes cast in favor of the proposal and the number of

votes cast against. The certificate, together with the ballots cast, shall immediately be filed with the clerk of the municipality and a copy forwarded to the department. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.700 is based on former versions of 19 AAC 15.120 and 19 AAC 15.280.

19 AAC 10.710. EFFECTIVE DATE OF BOUNDARY CHANGE. A boundary change is effective upon the approval by a majority of the voters voting on the question residing within the territory and upon the subsequent filing of the certificate required by 19 AAC 10.700. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.710 is based on former versions of 19 AAC 15.130 and 19 AAC 15.290.

19 AAC 10.720. ANNEXATION OF MUNICIPALLY OWNED PROPERTY. (a) Notwithstanding other provisions of this chapter, municipally owned property adjoining the municipality may be annexed by ordinance without voter approval.

(b) Within five days of adoption of an ordinance annexing territory pursuant to (a) of this section, one certified copy of the ordinance, giving the date of adoption, shall be filed with the department. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.720 is based on a former version of 19 AAC 15.150.

19 AAC 10.730. TIMELINESS. A proposal under this chapter which is defeated in an election may not be included in a like proposal covered by a subsequent petition under this chapter filed within one year after the first petition. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

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735. Applicability
740. Petition
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19 AAC 10.735 COMMUNITY AND REGIONAL AFFAIRS 19 AAC 10.750

Editor's notes. — 19 AAC 10.730 is
based on former versions of 19 AAC
15.160 and 19 AAC 15.300.

Article 15. Procedures for Step Annexation

Section	Section
735. Applicability	770. Voting
740. Petition	780. Ordinances
750. Local election	790. Borough services
760. Taxes	

19 AAC 10.735. APPLICABILITY. The provisions of 19 AAC 10.740 — 19 AAC 10.790 apply to annexation proceedings initiated pursuant to AS 44.47.567(a)(4). (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

19 AAC 10.740. PETITION. An annexation petition submitted to the commission may request that during each of not more than five full fiscal years after the annexation takes effect, the rate of taxation for city services on the annexed properties shall be at a specified percentage of the full city tax rate. The proposal shall provide an increase from fiscal year to fiscal year until the percentage equals 100 percent of the full city tax rate. The city may not tax annexed property at a rate other than the percentage authorized for that year; however, the city pursuant to AS 29.53.405 may levy taxes on the annexed area at a different percentage from that authorized for the year in question, if the difference is attributed to the cost of provision in the territory of a special service not supported by the general city levy. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.740 is
based on a former version of 19 AAC
10.190.

19 AAC 10.750. LOCAL ELECTION. The commission will require the governing body of the city to which annexation is sought to submit the proposal to the voters in the area to be annexed. The city shall bear the expenses of the election and shall submit to the department or commission the information and reports that either may require before, during, or after the election. The election is not valid unless the notices pertaining to the election, the way in which the proposal is phrased on the ballot, and the timing of the election have been approved by the commissioner. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.760 is based on a former version of 19 AAC 10.200.

19 AAC 10.760. TAXES. The percentage of city taxes on newly annexed properties is determined as follows:

(1) city services to be provided during each year are scheduled by the petitioners or the commission in consultation with city officials;

(2) the cost of each service as a percentage of the gross general fund expenditure for the fiscal year immediately preceding the annexation is computed;

(3) newly annexed residents pay a percentage of the full city property tax rate equal to the total percentage cost of all services provided. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.760 is based on a former version of 19 AAC 10.210.

19 AAC 10.770. VOTING. Residents in the newly annexed territory have the same voting privileges as other city residents. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.770 is based on a former version of 19 AAC 10.220.

19 AAC 10.780. ORDINANCES. City sales-tax ordinances and all other city ordinances except those applicable to city services not yet provided in the territory are immediately effective in the annexed territory. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.780 is based on a former version of 19 AAC 10.230.

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Authority: Art. X,
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Article 16.1

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19 AAC 10.790. BOROUGH SERVICES. The city must accept immediate responsibility for non-areawide borough services currently provided in the annexed territory. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.790 is based on a former version of 19 AAC 10.240.

Article 16. Procedures for Merger or Consolidation of Municipalities

Section 800. Procedure for merger or consolidation	Section 810. Effective date of merger or consolidation
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19 AAC 10.800. PROCEDURE FOR MERGER OR CONSOLIDATION. (a) In considering a merger or consolidation petition, the commission will use the same process as set out in 19 AAC 10.630 — 19 AAC 10.700 for considering local action annexations except that the election on the question of merger or consolidation shall be counted in the following two categories:

- (1) votes cast within cities; and
- (2) votes cast outside cities.

(b) To pass, the merger or consolidation proposal must be approved in both categories set out in (1) and (2) of this section. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

19 AAC 10.810. EFFECTIVE DATE OF MERGER OR CONSOLIDATION. If the proposal to consolidate or merge two or more municipalities is approved as required by 19 AAC 10.800, the merger or consolidation is effective 90 days from the filing of the certificate of election results with the commissioner. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Article 17. Miscellaneous Provisions

Section 820. Severability of parts of regulations 830. General provisions	Section 840. Definitions
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19 AAC 10.820. SEVERABILITY OF PARTS OF REGULATIONS. The provisions of this chapter are severable, and if any provision of this chapter is declared invalid by a court of competent jurisdiction, the invalidity does not affect the remaining provisions of this chapter. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.820 is based on a former version of 19 AAC 20.010.

19 AAC 10.830. GENERAL PROVISIONS. (a) Nothing in this chapter may be construed to require the commission to approve a boundary change which the commission determines not to be in the best interest of sound local government.

(b) The enumeration in this chapter of standards or factors for consideration may not be construed as exclusive of other factors which, in the view of the commission, are relevant to the decision in question.

(c) Before incorporation of a borough located wholly or partially within an existing borough or of a city located wholly or partially within an existing city may become effective, the commission will submit the proposed incorporation to the legislature in the manner provided for boundary changes. In addition, the commission will, in its discretion, condition the incorporation on approval by a majority of the voters of the existing borough or city. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.830 is based on a former version of 19 AAC 20.020.

19 AAC 10.835. COMPETING PETITIONS. (a) The commission will, in its discretion, act concurrently upon separate petitions filed under this chapter which embrace some or all of the same territory.

(b) Notwithstanding other provisions of this chapter, the commission will, in its discretion, postpone proceedings on a petition filed under this chapter in order to allow concurrent action on another existing or anticipated petition that will embrace some or all of the same territory. Except as provided in (c) of this section, in order to be considered concurrently, a competing petition must be received by the department within 90 days after the date of receipt of an earlier petition that embraces some or all of the same territory.

(c) In addition to the 90-day filing period specified in (b) of this section, the commission will, in its discretion, allow a 60-day or less

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will not be granted by the commission if it will delay legislative action
under art. X, sec. 12 of the Alaska Constitution on the earlier petition
if the earlier petition is approved by the commission under this chap-
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(d) In considering competing petitions concurrently, the commis-
sion will give precedence to the petition that, in the judgment of the
commission, serves the best interest of the state. In determining the
best interest of the state, the commission will consider, but is not
limited to, the following factors:

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(1) an existing or prospective municipality's ability to better
serve the territory embraced by the competing petitions;

(2) the extent to which approval of a petition would affect the
financial viability of the existing or prospective municipalities that
have filed competing petitions; and

(3) the extent to which each competing petition satisfies the stan-
dards required under this chapter for the action proposed by the
competing petitions.

(e) The provisions of this section supersede the common law relat-
ing to the doctrine of prior jurisdiction to control competing petitions
submitted under this chapter. (Eff. 8/19/88, Reg. 107)

Authority: Art. X, Sec. 12, Ak. Const.
AS 29.06.040

19 AAC 10.840. DEFINITIONS. (1) "annexation" means an al-
teration of municipal boundaries which adds territory;

(2) "commission" means the Local Boundary Commission;

(3) "commissioner" means the Commissioner of the Department
of Community and Regional Affairs;

(4) "contiguous" means territory which is immediately adjacent
to or which is separated only by natural or artificial barriers which
do not disrupt or impede the supplying or receiving of municipal
services;

(5) "date of annexation, detachment, merger or dissolution"
means the day on which the proposed boundary change becomes
effective pursuant to Article X, Section 12, of the Alaska Constitu-
tion;

(6) "department" means the Department of Community and Re-
gional Affairs;

(7) "detachment" means an alteration of municipal boundaries
which deletes territory;

(8) "differential taxation zone" means an area within the bound-
aries of a city which receives a different level of service than that

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provided generally within the city and in which property is taxed at a rate proportionate to the level of service provided;

(9) "full municipal services" means all of the services that a municipality is providing to its residents with revenues raised from the municipality's general mill levy or sales or use taxes;

(10) "general mill levy" means the highest rate at which property in the municipality is taxed but does not include special assessments;

(11) "legislature" means a regular session of the Alaska State Legislature;

(12) "mandatory powers" means those powers required to be exercised by a municipality under AS 29;

(13) "municipality" means an organized borough, including a unified local government, or an incorporated city of any class;

(14) "non-area-wide power" means a power exercised by an organized borough in all areas within the borough outside cities, but does not mean a power exercised on a service-area basis if the service area does not include the entire borough area outside cities;

(15) "party" means a petitioner or a respondent who files an answering brief;

(16) "territory" means the area or areas affected by the proposed boundary change. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567
AS 44.47.980

Editor's notes. — 19 AAC 10.840 is based on a former version of 19 AAC 20.030.

CHAPTER 15. BOUNDARY CHANGES BY LOCAL ACTION

Editor's notes. — As of 2/21/82, 19 AAC 05, 19 AAC 10, 19 AAC 15 and 19 AAC 20 have been reorganized under 19 AAC 10. The history notes for sections within the old chapters have not been carried forward in the reorganization.

CHAPTER 20. MISCELLANEOUS PROVISIONS

Editor's notes. — As of 2/21/82, 19 AAC 05, 19 AAC 10, 19 AAC 15, and 19 AAC 20 have been reorganized under 19 AAC 10. The history notes for sections within the old chapters have not been carried forward in the reorganization.

PART 2.

A

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36. Senior Citizen and Disabled Citizen	36.010 — 19 AAC 36.010
37. Senior Citizen and Disabled Citizen	19 AAC 37.040
38. Farm and Agriculture	
39. Errors in Municipalities	19 AAC 39.900
40. Legal Assistance	
42. Coastal Energy	
44. Aid to Unincorporated Municipalities	
60. Rural Development	AAC 60.010 -

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Section	
10. (Repealed)	
11. Application for	
20. (Repealed)	
21. Financial report	
30. (Repealed)	
31. (Repealed)	
40. (Repealed)	
41. (Repealed)	
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Alaska State Legislature

House of Representatives
Community & Regional Affairs

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1

Alaska State Legislature

House of Representatives Community & Regional Affairs

MEMORANDUM

TO: ALL MEMBERS
HOUSE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

FROM: REPRESENTATIVE EILEEN P. MACLEAN, CHAIRMAN
HOUSE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

DATE: March 14, 1989

RE: Sectional Analysis of CS HB 131 C&RA

- Sec. 1. Extends the requirement for two public hearings held 30 days apart to include incorporations. One of the two hearings could be teleconferenced.
- Sec. 2. Adds a new section which would require that annexations of areas which do not include year round residents would be prohibited unless the commission determines that:
- (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 residents of the organized borough is endangered by conditions existing or developing in the territory and annexation will enable the organized borough to remove or relieve those conditions.

This would take effect on the effective date of a constitutional amendment proposed in CS HJR 26 C&RA. Constitutional authority is now given to the commission to review and recommend any proposed boundary change. Committee Substitute for HJR 26 C&RA would propose a constitutional amendment to the legislature to allow the legislature to establish standards to guide the commission in its review of boundary changes. (See Memo dated 3/3/89 from Richard Bradley, Legal Counsel)

Sec. 3 Requires that: The commission shall adopt regulations for the conduct of the meeting of the commission under AS 44.62.

Sec. 4 Requires that notice of each hearing of the commission be given in the area in which the hearing is to be held at least 30 days before the date of the hearing and that notice of each hearing be given at least three times.

Requires that notice of each hearing shall be given by public service announcements on radio and television stations in the area and through print media and by posting in a public place.

Sec. 5 Requires that a majority of the full membership of the commission vote in favor of a proposed boundary change.

Sec. 6 Requires at least two hearings to be held in the communities in the affected area. If no community exists in the area proposed for annexation the hearings would be held in a community proximately located to the area.

The second hearing would be noticed separately and must be at least 30 days after the first hearing.

One of the hearings could be conducted by teleconference.

Sec. 7 Ties the effective date of Sec. 2 to passage of the constitutional amendment proposed in CS HB 26 C&RA.

STATE OF ALASKA THE LEGISLATURE

POUCH OF STATE CAPITAL
BUREAU ALASKA 99501
907 465 1000

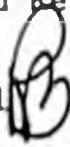
LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 3, 1989

SUBJECT: Prohibited recommendations from the
Local Boundary Commission
(CSHB 131(C&RA) and CSHJR 26(C&RA))

TO: Representative Eileen P. MacLean, Chair
House Community and Regional Affairs Committee

FROM: Richard A. Bradley 
Legislative Counsel

Louann Christian has requested a new version of CSHB 131(C&RA). We have provided the committee with that request.

Louann asked that we delete from the request a new section that would prohibit the commission from recommending annexations in unpopulated areas except on certain determinations; the request would prohibit the Local Boundary Commission from considering annexations of the type represented by the recent Fairbanks recommendation.

I suggest the following amendment to CSHB 131(C&RA) to achieve this request:

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

Sec. 44.47.568. PROHIBITED CHANGES. The commission may not propose to the legislature the annexation to an existing municipality of an unpopulated area unless the commission determines that

(1) the unpopulated area requires services 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."

Representative Eileen P. MacLean
Page 2
March 3, 1989

As a matter of style, I modified the language within the section and deleted the concept of a prohibited "consideration" and rather prohibited "proposed . . . changes", tracking the language of the Alaska Constitution. See art. X, sec. 12.

Louann also asked whether I believed that the change was constitutional. In my opinion, it may not be.

The language of the constitution is quite clear. It provides:

SECTION 12. BOUNDARIES. A local boundary commission or board shall be established by law in the executive branch of the state government. The commission or board may consider any proposed local government boundary change. It may present proposed changes to the legislature during the first ten days of any regular session. The change shall become effective forty-five days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house. The commission or board, subject to law, may establish procedures whereby boundaries may be adjusted by local action.

The language permits the commission to consider "any" change. The legislature may reject the change by a majority vote.

I do not believe that this amendment is a legislative implementation of the constitution; rather, it is inconsistent with the constitution.

And this being the case, I do not believe it is possible to redraft the language within the scope of the request to make the request constitutional.

Note that the United States Smelting, Ref. & Mining Co. v. Local Boundary Comm'n case, 489 P.2d 140 (1971) agreed that the legislature could require the commission (under AS 44.47.567(a)(2)) to establish "standards" for boundary changes and, on the failure of the commission to establish the standards, the annexation was void. But see Port Valdez Co. v. City of Valdez, 522 P.2d 1147 (1974) where the court employed the "de facto municipal incorporation" doctrine to

Representative Eileen P. MacLean
Page 3
March 3, 1989

approve an annexation where the commission had still not developed "standards" three years later.

In our view, the commission has adopted standards for its review of petitions for annexation to, for example, boroughs. See 19 A.C. 10.190 - 10.220.

Finally, while we believe the court has implicitly approved (in the USSR&M case) the legislative requirement that the commission establish standards to guide its review of boundary changes, we do not believe that the legislature may itself establish the standards that would prevent the commission from making specified recommendations to the legislature on boundary changes. As we suggested above, this result occurs because of the language of art. X, sec. 12 that the commission may consider "any . . . boundary change."

At Louann's request, I have revised CSHJR 26(C&RA) to permit the legislature to establish standards for boundary changes. I believe this will resolve the empowerment question.

If I may be of further assistance, please advise.

RAB:gc
WKG7/085

#4

STATE OF ALASKA
THE LEGISLATURE

PO BOX 11000
JUNEAU ALASKA 99811
907 586 1800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 15, 1989

SUBJECT: Annexation of the "entire" area
(CSHB 131 (C&RA))

TO: Representative Eileen P. MacLean, Chair
House Community and Regional Affairs Committee

FROM: Richard A. Bradley
Legislative Counsel

Louann Christian has asked that I comment on the question whether the amendments to Sec. 2 of the draft committee substitute should, in some way, state that the "area" that is the subject of the section is "the entire area."

My advice to her has been that when the bill establishes responsibilities for the Local Boundary Commission regarding the "annexation to an existing municipality of an area", the law requires that the determinations established in sec. 2 apply to the area as an entirety-- as a unit-- without it being necessary to state that. There is no basis for compartmentalizing the "area" into parts that have residents and parts that do not-- or any other fractionizing.

If I may be of further assistance, please advise.

RAB:gc
WKG8/022

5

R-2/23/89

SENATOR FRED F. ZHAROFF
ALASKA STATE LEGISLATURE

P.O. BOX 405, KODIAK, ALASKA 99818 (907) 486-5255
DURING SESSION
P.O. BOX V, JUNEAU, ALASKA 99801 (907) 485-2473 • 486-2474

DISTRICT N
ALASKA PENINSULA • ALUTKIAN CHAIN • BRISTOL BAY • KODIAK ISLAND • KUSKOOKUM BAY • LAKE ILIAMNA • PEBILOF ISLANDS • SHELIKA ISLAND

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Rec'd
3/8/89
Dan Beckwith

FEB - 7 1989

LEGISLATIVE
AUDIT

Memo

To: Senator Jalmar Korttula
Joint House/Senate Budget & Audit Committee

From: Senator Fred Zharoff *[Signature]*

Subject: Special Audit Request, Local Boundary Commission

It has come to my attention that there may be problems with the procedures of the Local Boundary Commission. Areas of concern regarding the Commission primarily center around basic policy and procedures of the Commission. There has been questions regarding the Commission's method of approach to:

1. Timely notification of hearings.
2. Communication methods used to provide notification of hearings.
3. Response time, if any, from the Commission to the entities providing written or oral testimony.
4. Establishing a consistent method of approach in carrying out the duties of the Commission.

Recent actions of the LBC regarding the proposed annexation of portions of the Alaska Peninsula by the Kodiak Island Borough and the proposed incorporation of the Lake and Peninsula Borough have raised the above referenced issues.

(OVER)



Southwest Alaska Municipal Conference

Putting Resources to Work For People

1007 West 3rd Avenue, Suite 201 • Anchorage, Alaska 99501 • (907) 274-7555

#6

RESOLUTION NO. 89-16

A RESOLUTION OF THE SOUTHWEST ALASKA MUNICIPAL CONFERENCE REQUESTING THE STATE LEGISLATURE AND THE LOCAL BOUNDARY COMMISSION TO REVIEW THE PROCESS OF BOROUGH ANNEXATION AND INCORPORATION.

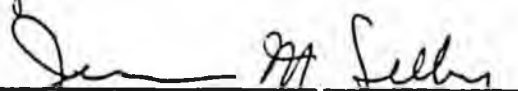
WHEREAS, a variety of economic and political factors have increased statewide pressure for borough formation and the expansion of existing boroughs, and the Southwest Region alone has seen two new borough proposals and one major borough annexation since 1986; and

WHEREAS, the Local Boundary Commission's regulations governing borough proposals were promulgated before the recent surge of borough activity; and

WHEREAS, the regulations should assure adequate notice and opportunity for public hearings which lead to rational decision-making at a time when all of the unorganized borough is under pressure to incorporate.

NOW, THEREFORE, BE IT RESOLVED by the Southwest Alaska Municipal Conference that the Legislature and the Local Boundary Commission review the 1982 regulations to assure local input to the annexation process.

PASSED THIS 22nd DAY OF January, 1989.



President



Attest

Representing Bristol Bay, The Pribilofs, Kodiak and the Aleutians.

MEMORANDUM

State of Alaska

*7

Community & Regional Affairs

TO: Local Boundary Commission

DATE: March 9, 1989

FILE NO.

TELEPHONE NO.


561-8586

THRU

SUBJECT

LBC procedures, etc.

FROM


Dan Bockhorst
Supervisor
LBC Staff Component

As requested, I have drafted proposed regulations and bylaws addressing procedures of the Commission. A copy of these materials is enclosed.

As you review the proposed bylaws, I ask you to particularly consider Section 2(b) of Article IX concerning ethics. The draft language of Section 2, Article IX, is virtually identical to the ethics resolution adopted by the Commission on May 24, 1988. However, the provisions of Section 2(b) have recently been called into question by a number of individuals, including some members of the Commission. The concern is that it may be desirable to modify the standard to allow the Chairman and/or a majority of the Commission members to compel the participation of another member regardless of a declared conflict of interest, so long as such will not result in the violation of Article 2 of the Executive Branch Ethics Act ("EBEA" - AS 39.52.110 - 39.52.190).

I have enclosed a copy of Article 2 of the EBEA for your review. I have also enclosed a copy of the State law relating to conflict of interest for municipal officials. AS 29.20.010(a) requires that every municipal government in the state adopt laws which deal with conflict of interest. These laws must include provisions which allow the presiding officer or a majority of the governing body to compel the participation of a member who has declared a "substantial financial interest".

On another matter, one member of the Commission has recently expressed the desire to reexamine the requirement that a municipality proposed for dissolution have an audit prepared by a certified public accountant. The suggestion to reexamine the audit requirement was not a call to abandon any careful review of the financial affairs of a municipality proposed for dissolution, but rather a desire to look at more practical alternatives of doing so. The Commission member's concern over

Local Boundary Commission
March 9, 1989
Page Two

this matter was apparently raised by the recent article which appeared in the Anchorage Times regarding Akiachak (a copy of which was provided to you previously). Further, Representative Hoffman's office has recently expressed dismay over the audit requirements. Consequently, I have taken the liberty of drafting three options which the Commission may wish to consider as alternatives to the present language.

The three options for modifying the language concerning the audit requirement are self-explanatory, so I will avoid any detailed discussion here. I wish to note, however, that I believe none of these options would represent an irresponsible position on the part of the Commission with respect to the exercise of its duties. When you read the material, keep in mind that proposed deletions of current language in the regulations are shown in capital letters enclosed by brackets; proposed new language is underlined.

I have also enclosed the following for your information:

- 1) A copy of the memorandum of March 3 from Richard Bradley concerning CSHB 131 (C&RA) and CSHJR 26 (C&RA);
- 2) A copy of the latest work draft of CSHB 131 (C&RA); and
- 3) A copy of the latest work draft of CSHJR 26 (C&RA).
- 4) A copy of Senator Zharoff's request that "a special audit be performed on the LBC" by the Division of Legislative Budget and Audit.

I will be in contact with you in the immediate future concerning the scheduling of a meeting to discuss these matters. If you have any questions, please contact me.

cc: Marjorie Odland, Assistant Attorney General
Pat Poland, Deputy Director, MRAD - Anchorage
Jim Plasman, Deputy Director, MRAD - Juneau
Gene Kane, Local Government Specialist
Carol Akerelrea, Local Government Specialist

COMMUNITY AND REGIONAL AFFAIRS

19 AAC 10 is amended by adding new sections to read:

19 AAC 10.850. SCHEDULING OF PROCEEDINGS. The chairman of the local boundary commission will, in his or her discretion, issue an order setting or amending a formal schedule for each petition anticipated to be brought or pending before the commission. The order will, in the discretion of the chairman, set deadlines for the filing of petitions, answering briefs, reply briefs, reports by the department and other elements of each proceeding. (Eff. / / , Register)

Authority: Art. X, Sec. 12,
Alaska Const.
AS 44.47.567

19 AAC 10.860. EFFECTIVE DATE OF DECISION. A decision of the commission becomes effective upon the adoption of a motion by three or more commission members, unless otherwise specified by the commission. The need or intention to issue a written statement of decision following the adoption of a motion by the commission does not delay the effective date of that decision. (Eff. / / , Register)

Authority: Art. X, Sec. 12,
Alaska Const.
AS 44.47.567

19 AAC 10.870. RECONSIDERATION. (a) Within fifteen days after an order of the commission is served, any individual may file a request for reconsideration of that order setting out specifically the grounds upon which the order is believed to be unreasonable, erroneous, unlawful or otherwise defective. At the same time that the request for reconsideration is filed with the commission, the individual seeking reconsideration must provide a copy of the request to the representative of the petitioner(s) for the matter to which the order relates. The request for reconsideration shall be accompanied by an affidavit stating that a copy of the request for reconsideration was served to the representative of the petitioner(s).

(b) Any individual opposing the request for reconsideration has ten days after the date on which the request is filed to respond.

(c) The Commission's power to order reconsideration expires thirty days after the date on which the request for reconsideration is filed with the commission. If the commission takes no action on a request for reconsideration within the time allowed, the request is automatically denied. (Eff. / / , Register)

Authority: Art. X, Sec. 12,
Alaska Const.
AS 44.47.567

19 AAC 10.880. PURPOSE OF RULES. These regulations are designed to facilitate the business of the commission, and shall be construed to secure the reasonable, speedy and inexpensive determination of every action and proceeding. They may be relaxed or dispensed with by the commission in any case where it shall be manifest to the commission that a strict adherence to them will work injustice or result in a substantially uninformed decision. (Eff. / / , Register)

Authority: Art. X, Sec. 12,
Alaska Const.
AS 44.47.567

BYLAWS

ALASKA LOCAL BOUNDARY COMMISSION

ARTICLE I - NAME

The name of this body is the Alaska Local Boundary Commission. Common usage and abbreviation may be "Commission" or "LBC." (Eff. / /89)

ARTICLE II - MISSION AND OBJECTIVES

Section 1. The Constitution of the State of Alaska recognizes that the establishment and revision of boundaries of cities and boroughs are primarily the responsibilities of the State. Article X, Section 12 of the Constitution provides the constitutional authority under which the Commission carries out these responsibilities. Shortly after statehood, the Alaska Supreme Court articulated the considerations which led to the creation of the Commission. (Fairview Public Utility District No. 1 v. City of Anchorage 368 P.2d 540).

An examination of the relevant minutes of [a series of 31 meetings held by the Committee on Local Government at the Constitutional Convention] shows clearly the concept that was in mind when the local boundary commission section was being considered: that local political decisions do not usually create proper boundaries and that boundaries should be established at the state level. The advantage of the method proposed, in the words of the court -- "lies in placing the process at a level where area-wide or statewide needs can be taken into account. By placing authority in this third-party, arguments for and against boundary change can be analyzed objectively." (Eff. / /89)

Section 2. The courts have consistently recognized that the Commission enjoys considerable discretion and broad authority in the exercise of its powers and duties. The Commission hereby acknowledges that such powers and duties carry with them the responsibility to act in a judicious fashion. (Eff. / /89)

Section 3. The powers and duties of the Commission include:

(a) considering proposals for the incorporation of cities and boroughs;

(b) considering proposals for the annexation of territory to cities, boroughs and unified municipalities;

Section 2. By statute, the member appointed from the state at large is the Chairman. The Vice Chairman is elected by a majority of the Commission members. (Eff. / /89)

Section 3. The duties of the officers shall be as follows:

(a) Chairman

(i) Call all meetings (except that three members of the Commission may also call a meeting). Preside at all meetings.

(ii) Appoint special committees and chairpersons of special committees.

(iii) Serve as ex-officio member of all committees.

(iv) Serve as the Commission's official representative.

(v) Operate and conduct the business and affairs of the Commission according to the orders and resolutions of the Commission.

(vi) Perform other duties described in these bylaws or assigned by resolution of the Commission.

(b) Vice Chairman

(i) Assist the Chairman in the discharge of his/her duties.

(ii) Assume the duties of the Chairman in the absence of the Chairman.

(iii) Act as the parliamentarian for the Commission.

(iv) Perform other duties in accordance with the orders and resolutions of the Commission. (Eff. / /89)

ARTICLE VI - MEETINGS

Section 1. Meetings of the Commission may be held at such time and place as the Chairman or a majority of the Commission members may order. (Eff. / /89)

ARTICLE IX - ETHICS

Section 1. Commission members are required to comply with AS 39.52.010 - 39.52.960, the Alaska Executive Branch Ethics Act. As provided by AS 39.52.960(8), the Chairman or Acting-Chairman shall act as the designated supervisor for the Commission members.

Section 2. In addition to the ethics standards established by the Executive Branch Ethics Act, the following apply to members of the Commission:

(a) A member of the Commission is prohibited from having ex parte contacts (i.e., any contact outside a formal proceeding of the Commission with another party) concerning a matter for which a petition has formally been submitted to the Department of Community and Regional Affairs. The prohibition shall take effect once the Commission member has been advised by the Department that a petition has been received. The prohibition shall remain in effect until the Commission's power to order reconsideration of its decision expires.

(b) A member of the Commission shall not participate in matters before the Commission in which the Commission member has been employed by a petitioner or respondent during the 180 days preceding the submission of the petition or response brief. The 180 days will be measured from the date that the Commission member has been advised by the Department of Community and Regional Affairs that a petition or response brief has been received.

(c) If a member of the Commission acted upon a proposal before the Commission, that member shall not accept employment with a petitioner or respondent in any action brought before the Commission for a period of at least 180 days following Commission action on the matter.

(d) Except as provided below, a member of the Commission shall not participate in the consideration of a proposal before the Commission where that proposal would affect the territory in which the residence of the Commission member is located. Such territory may consist of: a) an area proposed for annexation to or incorporation of a municipality; or b) a municipality subject to a proposal for annexation, detachment, merger, consolidation or dissolution. Exceptions may be granted if a majority of the other Commission members present conclude that the public will generally perceive the Commission member whose residence is at issue as being able to be fair and objective in the proceedings and that there is no

Chapter 52. Alaska Executive Branch Ethics Act.

Article

- 1. Declarations (§ 39.52.010)
- 2. Code of Ethics (§§ 39.52.110 — 39.52.190)
- 3. Disclosure and Action to Prevent Violations (§§ 39.52.210 — 39.52.260)
- 4. Complaints; Hearing Procedures (§§ 39.52.310 — 39.52.390)
- 5. Enforcement, Remedies (§§ 39.52.410 — 39.52.460)
- 6. General Provisions (§§ 39.52.910 — 39.52.960)

Article 1. Declarations.

Section

- 10. Declaration of policy

Sec. 39.52.010. Declaration of policy. (a) It is declared (1) that high moral and ethical standards among public officers in the executive branch are essential to the conduct of free government; and (2) that the legislature believes that a code of ethics for the guidance of public officers will discourage those officers from acting upon personal or financial interests in the performance of their public responsibilities, will improve standards of public service, and will promote and strengthen the faith and confidence of the people of this state in their public officers. It is further declared that holding public office or employment is a public trust and that as one safeguard of that trust, the people require public officers to adhere to a code of ethics.

(b) The legislature declares that it is the policy of the state, when a public employee is appointed to serve on a state board or commission, that the holding of such offices does not constitute the holding of incompatible offices unless expressly prohibited by the Alaska Constitution, this chapter and any opinions or decisions rendered under it, or another statute. (§ 1 ch 87 SLA 1986)

Article 2. Code of Ethics.

Section

- 110. Scope of code
- 120. Misuse of official position
- 130. Improper gifts
- 140. Improper use or disclosure of information
- 150. Improper influence in state grants, contracts, leases, or loans

Section

- 160. Improper representation
- 170. Outside employment restricted
- 180. Restrictions on employment after leaving state service
- 190. Aiding a violation prohibited

Sec. 39.52.110. Scope of code. (a) The legislature reaffirms that each public officer holds office as a public trust, and any effort to benefit a personal or financial interest through official action is a violation of that trust. In addition, the legislature finds that, so long as it does not interfere with the full and faithful discharge of an officer's duties and responsibilities, this chapter does not pre-

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family member, in a state grant, contract, lease, or loan that is awarded, executed, or administered by the agency the officer serves. (§ 1 ch 87 SLA 1986)

Sec. 39.52.160. Improper representation. (a) A public officer may not represent, advise, or assist a person in any matter pending before the administrative unit that the officer serves, if the representation, advice, or assistance is

(1) for compensation, unless the representation, advice, assistance, and compensation are required by statute, regulation, or court rule, or is otherwise customary; or

(2) without compensation, but rendered to benefit a personal or financial interest of the public officer.

(b) This section does not prohibit activities related to collective bargaining.

(c) This section does not preclude a nonsalaried member of a board or commission from representing, advising, or assisting in any matter in which the member has a personal or financial interest regulated by the board or commission on which the member serves, except that the member must act in accordance with AS 39.52.220. (§ 1 ch 87 SLA 1986)

Sec. 39.52.170. Outside employment restricted. (a) A public employee may not render services to benefit a personal or financial interest or engage in or accept employment outside the agency which the employee serves, if the outside employment or service is incompatible or in conflict with the proper discharge of official duties.

(b) A public employee rendering services for compensation, or engaging in employment outside the employee's agency, shall report by July 1 of each year the outside services or employment to the employee's designated supervisor. During the year, any change in an employee's outside service or employment activity must be reported to the designated supervisor as it occurs. (§ 1 ch 87 SLA 1986)

Sec. 39.52.180. Restrictions on employment after leaving state service. (a) A public officer who leaves state service may not, for two years after leaving state service, represent, advise, or assist a person for compensation regarding a matter that was under consideration by the administrative unit served by that public officer, and in which the officer participated personally and substantially through the exercise of official action. For the purposes of this subsection, "matter" includes a case, proceeding, application, contract, or determination, but does not include the proposal or consideration of legislative bills, resolutions and constitutional amendments, or other legislative measures; or the proposal, consideration, or adoption of administrative regulations.

(b) This section does not prohibit an agency from contracting with a former public officer to act on a matter on behalf of the state.

(c) The head of an agency may waive application of (a) of this section after determining that representation by a former public officer is not adverse to the public interest. The waiver must be in writing and a copy of the waiver must be provided to the attorney general for approval or disapproval. (§ 1 ch 87 SLA 1986)

Sec. 39.52.190. Aiding a violation prohibited. It is a violation of this chapter for a public officer to knowingly aid another public officer in a violation of this chapter. (§ 1 ch 87 SLA 1986)

Article 3. Disclosure and Action to Prevent Violations.

Section	Section
210. Declaration of potential violations by public employees	230. Reporting of potential violations
220. Declaration of potential violations by members of boards or commissions	240. Advisory opinions
	250. Advice to former public officers
	260. Designated supervisor's report and attorney general review

Sec. 39.52.210. Declaration of potential violations by public employees. (a) A public employee who is involved in a matter that may result in a violation of AS 39.52.110 — 39.52.190 shall

(1) refrain from taking any official action relating to the matter until a determination is made under this section; and

(2) immediately disclose the matter in writing to the designated supervisor.

(b) A public employee's designated supervisor shall make a written determination whether an employee's involvement violates AS 39.52.110 — 39.52.190. If the supervisor determines that a violation could exist or will occur, the supervisor shall,

(1) reassign duties to cure the employee's potential violation, if feasible; or

(2) direct the divestiture or removal by the employee of the personal or financial interests that give rise to the potential violation.

(c) A designated supervisor may request guidance from the attorney general, in accordance with AS 39.52.240, when determining whether a public employee is involved in a matter that may result in a violation of AS 39.52.110 — 39.52.190 (§ 1 ch 87 SLA 1986)

Sec. 39.52.220. Declaration of potential violations by members of boards or commissions. (a) A member of a board or commission who is involved in a matter that may result in a violation of AS 39.52.110 — 39.52.190 shall disclose the matter on the public record and in writing to the designated supervisor. The supervisor shall determine whether the member's involvement violates AS

39.52.110 — 39.52.190 shall, after consulting with the attorney general, request guidance from the attorney general, in accordance with AS 39.52.240, when determining whether a public officer is involved in a matter that may result in a violation of AS 39.52.110 — 39.52.190.

(b) The designated supervisor shall, after consulting with the attorney general, request guidance from the attorney general, in accordance with AS 39.52.240, when determining whether a public officer is involved in a matter that may result in a violation of AS 39.52.110 — 39.52.190.

Sec. 39.52.230. A public officer who is the subject of a report to a public officer, a public officer, or a public officer, shall determine whether the report is in accordance with AS 39.52.190. (§ 1 ch 87 SLA 1986)

Sec. 39.52.240. A public officer who is the subject of a report to a public officer, a public officer, or a public officer, shall determine whether the report is in accordance with AS 39.52.190. (§ 1 ch 87 SLA 1986)

(b) The attorney general shall, after consulting with the attorney general, request guidance from the attorney general, in accordance with AS 39.52.240, when determining whether a public officer is involved in a matter that may result in a violation of AS 39.52.110 — 39.52.190.

(c) The designated supervisor shall, after consulting with the attorney general, request guidance from the attorney general, in accordance with AS 39.52.240, when determining whether a public officer is involved in a matter that may result in a violation of AS 39.52.110 — 39.52.190.

(d) A public officer who is the subject of a report to a public officer, a public officer, or a public officer, shall determine whether the report is in accordance with AS 39.52.190. (§ 1 ch 87 SLA 1986)

(e) A public officer who is the subject of a report to a public officer, a public officer, or a public officer, shall determine whether the report is in accordance with AS 39.52.190. (§ 1 ch 87 SLA 1986)

Article 1. Conflict of Interest and Public Meetings.

Section

10. Conflict of Interest
20. Meetings public

Sec. 29.20.010. Conflict of interest. (a) Each municipality shall adopt a conflict of interest ordinance that provides that

(1) a member of the governing body shall declare a substantial financial interest the member has in an official action and ask to be excused from a vote on the matter;

(2) the presiding officer shall rule on a request by a member of the governing body to be excused from a vote;

(3) the decision of the presiding officer on a request by a member of the governing body to be excused from a vote may be overridden by the majority vote of the governing body; and

(4) a municipal employee or official, other than a member of the governing body, may not participate in an official action in which the employee or official has a substantial financial interest.

(b) If a municipality fails to adopt a conflict of interest ordinance by June 30, 1986, the provisions of this section are automatically applicable to and binding upon that municipality.

(c) This section applies to home rule and general law municipalities. (§ 7 ch 74 SLA 1985)

NOTES TO DECISIONS

This section does not prohibit enactment of ordinances which go beyond its requirements. *Acevedo v. City of North Pole*, Sup. Ct. Op. No. 2748 (File Nos. 7120, 7251), 672 P.2d 130 (1983), decided under former, similar law.

Limitation on eligibility of city officeholder for salaried position not preempted by section. — Home rule charter section which prohibited a person who holds or has held an elective city office from being eligible for appointment to an office or for employment for which a

salary is paid by the city until one year has elapsed following the term for which he was elected or appointed, unless an exception is made with the approval of four or more members of the city council, was not preempted by this section since the charter also contained a section prohibiting members of the city council from voting on matters in which they have a pecuniary interest. *Acevedo v. City of North Pole*, Sup. Ct. Op. No. 2748 (File Nos. 7120, 7251), 672 P.2d 130 (1983), decided under former, similar law.

Collateral references. — Validity, construction, and application of regulation regarding outside employment of gov-

ernmental employees or officers. 94 ALR3d 1230.

19 AAC 10.130(a)* is amended to read:

19 AAC 10.130 DISSOLUTION. (a) The commission will, in its discretion, approve a petition for dissolution of a city under AS 29.06.450(a) if the commission determines that

(1) dissolution is in the best interests of the state based on (e) of this section;

OPTION I

(2) the city is free of debt or has satisfied its creditors with a method of repayment, [AS EVIDENCED, TO THE EXTENT POSSIBLE, BY AN AUDIT PREPARED BY AN INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT WHICH IDENTIFIES THE ASSETS AND LIABILITIES OF THE CITY]; and

OPTION II

(2) the city is free of debt or has satisfied its creditors with a method of repayment, as evidenced, to the extent possible, by [AN AUDIT] a written report prepared by an independent certified public accountant which identifies the assets and liabilities of the city; and

OPTION III

(2) the city is free of debt or has satisfied its creditors with a method of repayment, as evidenced, to the extent possible, by [AN AUDIT PREPARED BY AN INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT] a written report prepared by or on behalf of the department which identifies the assets and liabilities of the city; and

(3) at least one of the following standards is met:

(A) the city no longer meets the standards established by law for the incorporation of a city;

(B) the city has ceased for at least 730 consecutive days to exercise each of its mandatory powers; or

(C) the petition for dissolution was signed by a number of voters of the city greater than 50 percent of the number of votes cast in the last general election of that city.

(Eff. 2/21/82, Register 81; am 4/1/89, Register XX; am / / /, Register)

Authority: Art. X, Sec. 12,
Alaska Const.
AS 44.47.567

* Changes to 19 AAC 10.130(a) concerning audit requirements should also be made to 19 AAC 10.130(b) and 19 AAC 10.260(a) and (b).

DRAFT

DRAFT

IMPORTANT NOTICE FILING FOR DISSOLUTION OF THE CITY OF AKIACHAK

Voters of the community of Akiachak (located approximately 20 miles northeast of Bethel) have petitioned the State of Alaska to dissolve their city government. A copy of the petition and supporting materials is available for review at the Akiachak Native Community Office in Akiachak and at the Department of Community and Regional Affairs (DCRA) in Bethel and Anchorage.

BOUNDARIES. The boundaries of the city proposed for dissolution encompass approximately 12 square miles in and around the community of Akiachak.

WRITTEN COMMENT PERIOD. Individuals may file briefs or written comments in support of or opposition to this petition. To ensure consideration, such materials must be submitted in accordance with the schedule set by the Chairman of the Local Boundary Commission (LBC) as outlined below.

SCHEDULE. The Chairman of the LBC will formally set the schedule for action by the LBC concerning this matter on February 27, 1989. The following is the tentative schedule of the proceedings.

- 03/13/89 - Deadline for filing briefs and/or written comments in support of or opposition to the proposed dissolution.
- 03/27/89 - Deadline for submission of answering briefs by petitioners' representative.
- 04/24/89 - DCRA releases (for public review) draft report and recommendation to the LBC concerning the proposed dissolution.
- 05/22/89 - Deadline for receipt of comments on draft report and recommendation from DCRA.
- 06/05/89 - DCRA releases final report and recommendation.
- 06/26/89 - LBC conducts hearing in Akiachak.
- 11/07/89 - State conducts election on dissolution (assuming LBC approves petition - actual election date will be set by Director of Division of Elections).

SPECIAL NOTICE TO CREDITORS AND OTHERS WITH A FINANCIAL INTEREST. Any party to whom a debt is owed by the City of Akiachak or who holds assets of the City of Akiachak is asked to notify (INSERT NAME, ADDRESS AND TELEPHONE NUMBER OF AUDITOR).

FURTHER INFORMATION. Questions and requests for a copy of the petition for dissolution, DCRA's reports, briefs, correspondence and/or other materials concerning this matter should be directed to Dan Bockhorst, Department of Community and Regional Affairs, 949 East 36th Avenue, Suite 405, Anchorage, AK 99508 (telephone: 561-8586).

STANDARDS ESTABLISHED BY THE LOCAL BOUNDARY COMMISSION CONCERNING THE ETHICAL CONDUCT OF COMMISSION MEMBERS PROHIBIT INDIVIDUAL MEMBERS OF THE COMMISSION FROM DISCUSSING ANY ASPECT OF THIS MATTER, OTHER THAN PROCEDURES TO BE USED.

HPB

132

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Public Safety
Title: Minimum penalty for joyriding BRU: Alaska State Troopers
Sponsor: Rep's. Miller & Taylor Component: _____
Requestor: House Judiciary

EXPENDITURES/REVENUES: (Thousands of Dollars) (Inflation not Included)

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

CAPITAL	-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/PROG RCPT						
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)

This bill would require a mandatory minimum sentence of three days in jail and a \$250 fine for a first offense "joy-riding" conviction. (Second and subsequent offenses are felonies.) This is the same mandatory minimum sentence imposed upon first offense drunk drivers.

Passage of this legislation would have no fiscal impact on the Department of Public Safety.

Prepared by: Gavle A. Horetski, Deputy Commissioner Phone: 465-4322
Division: Office of the Commissioner Date: 12/19/89

Approved by Commissioner: Arthur English Date: 1-8-90
Agency: Department of Public Safety Page 1 of 1

Handwritten:
12/22/89

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: "An Act amending the penalty...
 ...taking of a propelled vehicle."
 Sponsor: Repr. Miller
 Requestor: Repr. Miller

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

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 13, 1989
Richard I. Pegues / FOR
 Approved by Commissioner: Grace Berg Schauble, Atty. Gen. Date: February 13, 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

For Bill/Resolution No. HB 132

This bill amends AS 11.46.484 by adding a new subsection that imposes a mandatory minimum sentence for joyriding of a term of imprisonment of not less than 72 hours, a fine of not less than \$250, and restitution. These sentencing provisions will not have a fiscal impact on the Department of Law. It should be noted that some additional prosecutor time will be needed because defendants can be expected to offer a more vigorous defense in the face of a mandatory jail term. Prosecutor workload in most of the state's district attorney offices is currently at or near the saturation point. Consequently, adoption of this bill and other similar measures, that do not individually have a fiscal impact, will cumulatively diminish the department's ability to handle more serious offenses. Lastly, the bill could have a substantial impact on the Department of Corrections.

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Public Safety
 Title: Amending the penalty for the BRU: Alaska State Troopers
taking of a propelled vehicle
 Sponsor: Rep. Miller & Taylor Component: _____
 Requestor: House Judiciary

EXPENDITURES/REVENUES: (Thousands of Dollars) (Inflation not included)

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	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

This bill would require a mandatory minimum sentence of three days in jail and a \$250 fine for a first offense "joy-riding" conviction. (Second and subsequent offenses are felonies.) This is the same mandatory minimum sentence imposed upon first offense drunk drivers.

Passage of this legislation would have no fiscal impact on the Department of Public Safety.

Prepared by: Gavle A. Horetski, Deputy Commissioner Phone: 465-4322
 Division: Office of the Commissioner Date: 2/13/89

Approved by Commissioner: Arthur English Date: 2/13/89
 Agency: Department of Public Safety

*
* DELIVER TO: LIOGGLA *
* *
* ORIGINAL *
* SENT: 02/17/85 TIME: 13:22 *
* FROM: LIOCP3G *
* SUBJECT: JOY RIDER *
* PRINT DATE: 02/17/85 TIME: 14:27 *
*

PARTICIPANT LIST FROM PETERSBURG *:

1. GAYLE EASTWOOD - EMT
2. MARVIN ROMINGUS - ACTING CHIEF OF POLICE
3. ARLENE PENCE - MAYOR OF PETERSBURG
4. DOUG WELDE - FIRE CHIEF



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

P.O. Box Y, State Capitol
Juneau, Alaska 99811-3100
Mail Stop 3100
(907) 465-3991

April 21, 1989

MEMORANDUM

TO: Representative Peter Goll
FROM: Brad Pierce *BP*
Legislative Analyst
RE: Joyriding Cases in Southeast
Research Request 89.359

You asked that we provide information on the disposal of joyriding cases (criminal mischief) by the courts in Ketchikan, Wrangell and Petersburg during the past five years. Specifically, you wanted to know the number of cases charged, convictions and sentences. You are interested in determining if the disposition of cases in these three courts is consistent with other jurisdictions in the state.

Attached is a Department of Law printout of criminal misdemeanor joyriding cases--involving 60 individuals during the past five years--recorded by the courts in these three cities. The printout entries are self-explanatory. (Apparently the department has not yet received the paperwork for the five cases with missing disposition entries.) According to Dean Guaneli, assistant attorney general, the disposition of these cases is quite similar to those in other courts around the state. The vast majority of those convicted (or who plead guilty or no contest) served at least some jail time--14 of the 19 individuals convicted in Ketchikan went to jail, three of the four in Petersburg and nine of the ten in Wrangell also received jail sentences.

*

*

*

I hope this is enough information for your purposes. Please call if you have questions.

Attachment

*All members +
M9
HJUD Bill file
m Joyriding
Sen to Goll
BB 26*

CRIMINAL MISDEMEANOR JOYRIDING CASES

COURT LOC TRANS		COURT LOC	: KETCHIKAN					
1)	CHARGE TRANS		DISP TRANS		TOTAL JAIL TIME	TOTAL FINE	SUS IMPOS SENT	
1)	DOB	CHARGE	DISPOSITION					
2)	CHARGE TRANS		REASON TRANS		TIME SUSPENDED	FINE SUSPENDED		DATE CAS
2)	CHARGE CONVICTED		AMENDMENT REASON					
1)	02/15/56	CRIM MISC III						02/10
2)								
1)	06/06/56	CRIM MISC III						02/10
2)								
1)	10/31/65	CRIM MISC III						01/17
2)								
1)	07/28/64	CRIM MISC III	PROS DECL/DISM REQ					12/16
2)			ESSENTIALLY A CIVIL MATTER					
1)	01/27/66	CRIM MISC III	PROS DECL/NO DISM RQ					10/30
2)			ESSENTIALLY A CIVIL MATTER					
1)	01/04/58	CRIM MISC III	PROS DECL/NO DISM RQ					01/16
2)			VICTIM DECLINES TO PROSECUTE					
1)		CRIM MISC III	PROS DECL/NO DISM RQ					10/01
2)			INSUFF EVID-OTHER ESS ELEMENT					
1)		CRIM MISC III	PROS DECL/NO DISM RQ					11/01
2)			INADEQUATE CORROBORATION					
1)	12/31/65	CRIM MISC III	PROS DECL/NO DISM RQ					11/21
2)			ESS WITNESS NOT CREDIBLE					
1)	08/05/70	CRIM MISC III	PROS DECL/NO DISM RQ					11/11
2)			INSUFF EVID-OTHER ESS ELEMENT					
1)	12/30/66	CRIM MISC III	JT-GUILTY AS CHARGED		30D	500+		12/21
2)					27D	400+		
1)	07/16/63	CRIM MISC III	JT-GUILTY AS CHARGED		1Y	+		02/11
2)						+		
1)		CRIM MISC III	JT-GUILTY AS CHARGED		1Y	+		02/11
2)						+		
1)		CRIM MISC III	JT-GUILTY AS CHARGED		1Y	+		02/11
2)						+		

CRIMINAL MISDEMEANOR JOYRIDING CASES

COURT LOC TRANS		COURT LOC	: KETCHIKAN				
1)	CHARGE TRANS		DISP TRANS		TOTAL JAIL TIME	TOTAL FINE	SUS IMPOS SENT
1)	DOB	CHARGE	DISPOSITION	REASON TRANS			
2)	CHARGE TRANS		REASON TRANS		TIME SUSPENDED	FINE SUSPENDED	DATE CAS
2)	CHARGE CONVICTED		AMENDMENT REASON				
1)	02/27/62	CRIM MISC III	PROS DECL/NO DISM RQ				08/20
2)			OTHER DISCRETIONARY REASONS				
1)	11/10/42	CRIM MISC III	PROS DECL/NO DISM RQ				08/20
2)			OTHER DISCRETIONARY REASONS				
1)	02/03/69	CRIM MISC III	PROS DECL/NO DISM RQ				08/11
2)			REFERRED TO JUVENILE AUTH				
1)	03/12/61	CRIM MISC III	PLED AS CHARGED		360D	500+	08/05
2)					300D	500+	
1)	09/26/69	CRIM MISC III	PLED AS CHARGED		30D	+	01/03
2)					29D	+	
1)	10/30/62	CRIM MISC III	NOLO PLEA AS CHARGED		30D	500+	01/08
2)					27D	200+	
1)	10/28/53	CRIM MISC III	DISM BY PROSECUTOR				02/12
2)			OTHER DISCRETIONARY REASONS				
1)	07/06/61	CRIM MISC III	NOLO PLEA AS CHARGED		60D	+	07/08
2)					50D	+	
1)	08/29/57	CRIM MISC III	NOLO PLEA AS CHARGED			+	Y 08/20
2)						+	
1)	03/01/62	CRIM MISC III	NOLO PLEA AS CHARGED			75+	09/03
2)						+	
1)	03/09/63	CRIM MISC III	DISM BY PROSECUTOR				09/09
2)			ESS WITNESS NOT CREDIBLE				
1)	12/01/60	CRIM MISC III	DISM BY PROSECUTOR				01/06
2)			OTHER DISCRETIONARY REASONS				
1)	10/13/64	CRIM MISC III	NOLO PLEA AS CHARGED		60D	+	02/03
2)					40D	+	
1)	05/22/67	CRIM MISC III	NOLO PLEA AS CHARGED		120D	500+	03/28
2)					100D	500+	

CRIMINAL MISDEMEANOR JOYRIDING CASES

COURT LOC TRANS		COURT LOC	: KETCHIKAN		TOTAL JAIL TIME	TOTAL FINE	SUS IMPOS SENT
1)	CHARGE TRANS		DISP TRANS				
1)	DOB		DISPOSITION		TIME SUSPENDED	FINE SUSPENDED	DATE CAS
2)	CHARGE TRANS		REASON TRANS				
2)	CHARGE CONVICTED		AMENDMENT REASON				
1)	12/15/63	CRIM MISC III	NOLO PLEA AS CHARGED		60D	500+	
2)					60D	+	06/26
1)	08/03/66	CRIM MISC III	NOLO PLEA AS CHARGED		1Y	+	
2)					6M	+	06/26
1)	07/16/63	CRIM MISC III	NOLO PLEA AS CHARGED		180D	+	
2)						+	08/07
1)	03/06/68	CRIM MISC III	NOLO PLEA AS CHARGED		20D	+	
2)					17D	+	09/02
1)	11/04/66	CRIM MISC III	NOLO PLEA AS CHARGED		120D	1,000+	
2)					113D	1,000+	10/10
1)	10/10/68	CRIM MISC III	NOLO PLEA AS CHARGED		60D	1,000+	
2)					60D	650+	04/02
1)	05/09/69	CRIM MISC III	NOLO PLEA AS CHARGED		180D	+	
2)					180D	+	06/13
1)	12/30/67	CRIMINAL MISCHIEF II	NOLO-AMENDED CHARGE			+	Y
2)		CRIM MISC III	INSUFF EVID-PROOF OF VALUE			+	12/31
1)	08/21/69	CRIM MISC III	NOLO-SENT BARGAIN		120D	1,000+	
2)					120D	1,000+	04/27
1)	09/24/64	CRIM MISC III	DISM BY PROSECUTOR				
2)			EXCULPATORY EVID DISCOVERED				07/17
1)	12/15/63	CRIM MISC III	DISM BY PROSECUTOR				
2)			EXCULPATORY EVID DISCOVERED				10/25
1)	06/20/62	CRIM MISC III	DISM BY PROSECUTOR				
2)			OTHER MISCELLANEOUS REASONS				03/05
1)	09/22/64	CRIM MISC III	DISM BY PROSECUTOR				
2)			INTEREST OF JUSTICE				03/31
1)	10/07/68	CRIM MISC III	DISM BY PROSECUTOR				
2)			DEF CONVICTED IN ANOTHER CASE				11/04

CRIMINAL MISDEMEANOR JOYRIDING CASES

COURT LOC TRANS		COURT LOC	: KETCHIKAN	DISP TRANS	TOTAL JAIL TIME	TOTAL FINE	SUS IMPOS SENT
1)	CHARGE TRANS			DISPOSITION			
2)	CHARGE CONVICTED			REASON TRANS	TIME SUSPENDED	FINE SUSPENDED	DATE CA'
2)	CHARGE CONVICTED			AMENDMENT REASON			
1)	10/07/68	CRIM MISC III		DISM BY PROSECUTOR			11/0'
2)				INTEREST OF JUSTICE			
1)	07/16/63	CRIM MISC III		DISM BY PROSECUTOR			12/2'
2)				DEF CONVICTED IN ANOTHER CASE			
1)	12/29/64	CRIM MISC III		DISM BY PROSECUTOR			05/1'
2)				RESTITUTION MADE/IN PROGRESS			
1)	12/28/66	CRIM MISC III		DISM BY PROSECUTOR			02/0'
2)				DEF CONVICTED IN ANOTHER CASE			
1)	08/08/62	CRIM MISC III		DISM BY PROSECUTOR			12/2'
2)				OTHER DISCRETIONARY REASONS			
1)	12/25/64	CRIM MISC III		DISM BY PROSECUTOR			05/1'
2)				OTHER EVIDENTIARY REASONS			
1)	07/27/66	CRIM MISC III		DISM BY PROSECUTOR			05/2'
2)				VICTIM DECLINES TO PROSECUTE			
1)	09/22/70	CRIM MISC III		DISM BY PROSECUTOR			12/2'
2)				REFERRED TO JUVENILE AUTH			

DATE 04/19/89

ALASKA VERSION OF ON-LINE PROMIS

PAGE 05
NAME CODE: CRIM3D

CRIMINAL MISDEMEANOR JOYRIDING CASES

COURT LOC TRANS COURT LOC : PETERSBURG

1) 2)	DOB	CHARGE TRANS CHARGE CHARGE TRANS CHARGE CONVICTED	DISP TRANS DISPOSITION REASON TRANS AMENDMENT REASON	TOTAL JAIL TIME TIME SUSPENDED	TOTAL FINE FINE SUSPENDED	SUS IMPOS SENT DATE CAS
1) 2)	07/02/65	CRIM MISC III				02/06
1) 2)	07/13/53	CRIM MISC III	PLED AS CHARGED		+	Y 09/06
1) 2)	05/08/67	CRIM MISC III	NOLO PLEA AS CHARGED	90D 65D	+	08/28
1) 2)	06/08/66	CRIM MISC III	NOLO PLEA AS CHARGED	90D 45D	+	07/22
1) 2)	12/01/65	CRIM MISC III	NOLO PLEA AS CHARGED	90D 90D	+	11/10
1) 2)	10/31/67	CRIM MISC III	NOLO PLEA AS CHARGED	60D 40D	+	02/08
1) 2)	08/18/60	CRIM MISC III	DISM BY PROSECUTOR OTHER DISCRETIONARY REASONS			08/01

CRIMINAL MISDEMEANOR JOYRIDING CASES

COURT LOC TRANS		COURT LOC	: WRANGELL	DISP TRANS	TOTAL JAIL TIME	TOTAL FINE	SUS IMPOS SENT
1)	CHARGE TRANS			DISPOSITION			
2)	CHARGE			REASON TRANS	TIME SUSPENDED	FINE SUSPENDED	DATE CAS
2)	CHARGE TRANS			AMENDMENT REASON			
2)	CHARGE CONVICTED						
1)	02/18/57	CRIM MISC III					10/30
2)							
1)	07/22/62	CRIM MISC III		NOLO PLEA AS CHARGED	60D	+	03/05
2)					30D	+	
1)		CRIM MISC III		NOLO PLEA AS CHARGED	60D	+	03/05
2)					30D	+	
1)	11/09/67	CRIM MISC III		NOLO PLEA AS CHARGED	5D	+	02/25
2)						+	
1)	11/04/66	CRIM MISC III		NOLO PLEA AS CHARGED	10D	+	07/31
2)					10D	+	
1)	12/20/64	CRIM MISC III		NOLO PLEA AS CHARGED	3Y	+	12/25
2)					1Y	+	
1)	02/23/68	CRIM MISC III		NOLO PLEA AS CHARGED	20D	+	02/25
2)					15D	+	
1)	10/27/68	CRIM MISC III		NOLO PLEA AS CHARGED	30D	+	07/15
2)					27D	+	
1)	05/15/61	CRIM MISC III		NOLO PLEA AS CHARGED		100+	07/15
2)						+	
1)	10/04/67	CRIM MISC III		NOLO PLEA AS CHARGED	20D	300+	11/15
2)					10D	200+	
1)	08/10/66	CRIM MISC III		NOLO PLEA AS CHARGED	180D	+	12/05
2)					120D	+	
1)	09/19/62	CRIM MISC III		NOLO-AMENDED CHARGE	5D	+	06/25
2)	CRIMINAL MISCHIEF IV			OTHER WITNESS PROBLEM	3D	+	

EXTRACT SELECT COUNT IS 69

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

RE: HB 132 - "An Act amending the penalty for unauthorized taking of a propelled vehicle"

Dear Representative Gruenberg:

Thank you for the opportunity to comment on the above-referenced proposed legislation. HB 132 seeks to amend what is commonly called the "joyriding" statute. Section 11.46.484, which is affected by the proposed amendment involves the temporary taking of a propelled vehicle of another without that person's permission. In other words, if I leave my car warming up in the driveway and Mr. Smith enters it and drives it away, later leaving it at a location across town, he has committed criminal mischief in the third degree. Criminal mischief in the third degree involves no damage to the vehicle or damage of an amount less than \$500.00. It is a Class A misdemeanor and carries substantial penalties, those being a maximum sentence of one year in prison and up to a \$5,000 fine. A term of up to five years probation can also be imposed.

This amendment contemplates imposing a mandatory jail sentence of not less than 72 hours and a fine of not less than \$250.00 for an individual convicted of this offense. Additionally, the court may not suspend imposition of sentence, even for a first offender.

I believe it is ill advised to adopt the proposed amendment contained in HB 132. Criminal mischief in the third degree already carries substantial penalties, mentioned above. There are a large number of misdemeanor offenses which fall into the Class A misdemeanor category, including everything from drunk driving to assault in the fourth degree to misconduct involving weapons in the second degree to promoting prostitution in the third degree. None of those I mentioned, with the exception of D.W.I., carry mandatory jail sentences. The judge is given the discretion to fashion an appropriate sentence.

The problem I see with singling out this offense for different treatment is that such action skews the overall sentencing scheme. In 1980 the Criminal Code was completely restructured in part to cure the disparity in the sentencing of individuals. The new Code was adopted with special care given to a uniform approach to sentencing.

By this amendment the crime of criminal mischief in the third degree is elevated in terms of its seriousness, being made comparable with first offender D.W.I. prosecutions. I do not believe that "special" treatment

can be justified based on the nature of the offense or the frequency with which it occurs. It must be remembered that joyriding is only a temporary taking, and often an impetuous act. This amendment would make joyriding more serious than all other misdemeanor thefts, which involve the intent to permanently deprive an individual of his or her property. There are many misdemeanor offenses in the Class A category which are arguably more serious than criminal mischief in the third degree.

As anomalous as the mandatory sentence and fine, is the proscription against giving a suspended imposition of sentence. Suspended impositions of sentence are typically given to youthful property offenders whose criminal act was of an impulsive nature. An S.I.S. is usually given to a person so that he or she can be placed on probation for the purpose of monitoring subsequent conduct and efforts at rehabilitation. An S.I.S. provides an additional incentive to "walk the straight and narrow" because a judge has the ability at the end of the term of probation to set aside the conviction. Thus the offender can apply for employment, schooling, etc. without the criminal conviction being a part of the record. If the person violates any condition of the probationary term after having received an S.I.S., the offender can be brought before the court and sentenced to any term of imprisonment up to the maximum sentence. Therefore an S.I.S. is not lenient treatment so much as an additional lever with which the court can influence behavior.

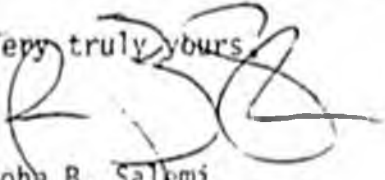
It is my impression that this amendment is really a response to a local problem in Southeast. I think it is bad public policy to change the Criminal Code on a statewide basis because of a perceived problem in one area. It seems the better solution would be to sensitize the prosecutors and court in that area to the "problem". There may, in fact, not be a problem. Oftentimes it is just a matter of the public not having accurate information concerning the law and/or treatment of offenders.

With this letter I also enclose a memo from a staff attorney (Scott Taylor) which gives his perspective on the proposal before you.

Finally, enactment of this proposal will have an undetermined fiscal impact on the Public Defender Agency. If the Department of Law anticipates a fiscal impact, it is likely we would likewise experience the need to increase our resources. I note that when a similar bill was introduced in 1988 (CS SB 497) the Public Defender Agency submitted a fiscal note of 95.8. This included a request for one Attorney III and a halftime Clerk Typist III.

Thanks again for allowing my input regarding HB 132. Please contact me if you have further questions.

Very truly yours,


John B. Salemi
Acting Public Defender

JBS:sh

Enclosure

MEMORANDUM

State of Alaska

TO John Salemi

DATE 2/10/89

FILE NO

TELEPHONE NO

THRU

SUBJECT SB 26/HB 132

FROM Scott

The bill amends AS 11.46.484 (criminal mischief in the third degree) to add a mandatory minimum sentence of 72 hours imprisonment, a \$250 fine, and restitution. The mandatory minimum would only apply to a first offense of AS 11.46.484(a)(2): "the person drives, tows away, or takes the propelled vehicle of another." A second conviction under this paragraph is already classified as a class C felony.

Dana's fiscal note on last year's substitute bill (CS SB 497) is a good comment and should be repeated. The legislature needs to be aware of the following points:

1. Currently, a first offense of joyriding is a class A misdemeanor with an authorized sentence of imprisonment up to one year, a fine up to \$5,000, restitution and community work service. First offenders are not getting off "scot-free." A second offense is a class C felony.

2. SB 26 removes discretion from the sentencing judge for first convictions of a crime that is often an 18-year-old taking the family car without permission. Mandatory jail time is not appropriate in all situations.

3. A mandatory minimum 72-hour jail term will encourage trials and crowd the jails. SB 26 will engender significant consequential costs in prosecution, defense, court time, jail reporting and processing, and incarceration.

4. If the perceived problem is that current sentencing practices are not a sufficient deterrent, then it is the job of the prosecuting attorneys to educate the courts to sentence more appropriately. That is the purpose of sentencing remarks.

5. The "unauthorized taking of a propelled vehicle" is an impulse crime of opportunity. Offenders take the vehicle because they need to get somewhere or because they see the keys in the ignition. They do not pause to consider the penalties. The 1982 amendment classifying a second conviction as a class C felony has not reduced joyriding recidivism. There is no reason to believe that SB 26 would have any effect other than to increase the costs of criminal justice.



ALASKA STATE LEGISLATURE
 HOUSE OF REPRESENTATIVES
 RESEARCH AGENCY

P.O. Box Y, State Capitol
 Juneau, Alaska 99811-3100
 Mail Stop 3100
 (907) 465-3991

January 27, 1989

MEMORANDUM

TO: Representative Mike Miller
 ATTN: Gene Therriault
 FROM: Karla Hart *KH*
 Legislative Analyst
 RE: Motor Vehicle Theft in Alaska
 Research Request 88.213 Revised

You requested that House Research Memorandum 88.213, motor vehicle theft in Alaska, be updated to include 1987 figures (the latest available).

Motor Vehicle Theft in Alaska

There were 19,970 actual motor vehicle thefts, including autos, trucks and buses, and other vehicles, in Alaska between 1981 and 1986. Figures for 1988 are not yet available. Table 1 presents the number of thefts year by year.

Table 1
 Motor Vehicle Thefts

<u>Year</u>	<u>Total</u>	<u>Auto</u>	<u>Bus/Truck</u>	<u>Other</u>
1981	2,822	1,097	703	1,022
1982	2,544	991	623	930
1983	3,017	1,167	822	1,028
1984	3,039	1,322	794	923
1985	3,083	1,348	763	972
1986	3,032	1,319	702	1,011
1987	2,433	1,297	535	601
Total	19,970	8,541	4,942	6,487

The Department of Public Safety does not require that municipalities break down motor vehicle theft into categories, such as joyriding and grand auto theft. These data represent actual thefts; reported thefts which proved to be false or baseless are not included.

Representative Miller
January 27, 1989
Page 2

The number of people arrested for motor vehicle theft is broken down by year and by adults and juveniles (under 18 years of age). A breakdown of arrests by type of motor vehicle stolen is not available. Arrests for the years 1981 through 1987 are shown in Table 2.

Table 2
Arrests for Motor Vehicle Thefts

<u>Year</u>	<u>Adults</u>	<u>Juveniles</u>
1981	160	137
1982	172	146
1983	196	172
1984	153	156
1985	143	138
1986	146	154
1987	165	166
Total	1,135	1,069

Attached is information on motor vehicle thefts as reported in Crime in Alaska 1987, Uniform Crime Reporting, Department of Public Safety.

* * *

I hope this information is helpful. If you have questions, please call.

Attachment

M/V THEFTS

TREND

	<u>NUMBER OF OFFENSES</u>	<u>% CHANGE</u>	<u>RATE PER 100,000 % CHANGE</u>
1983	3056		
1984	3039	-0.6%	-2.9%
1985	3083	+1.4%	-0.8%
1986	3032	-1.7%	-2.9%
1987	2433	-19.8%	-19.2%

Motor vehicle theft is defined as the theft or attempted theft of a motor vehicle.

1987 SUMMARY

A total of 2433 motor vehicles were stolen in 1987. This is a 19.8% decrease compared to 1986.

Motor vehicle thefts accounted for 9.8% of the property crimes and 9.0% of the total crime index. Motor vehicle theft rate per 100,000 people was 452.2.

Automobile had the highest percentage of motor vehicle thefts with 53%, followed by trucks and buses with 22%, and other vehicles making up 25%.

Sixteen year-olds had 16% of the arrests made for motor vehicle thefts followed by 17 year-olds having 13%.

The most motor vehicle thefts occurred in March, 231, and November had the least, 136.

1987 STATEWIDE TOTALS
OFFENSES KNOWN TO POLICE

CLASSIFICATION OF OFFENSES	OFFENSES REPORTED OR KNOWN	UNFOUNDED FALSE OR BASELESS	NUMBER OF ACTUAL OFFENSES	TOTAL OFFENSES CLEARED BY ARREST OR EXCEPT	NUMBER OF CLEARANCES PERSONS UNDER 18
1. Criminal Homicide	TOTAL 56	1	55	39	
A. Murder & Nonneg Mansl	51		51	36	
B. Mansl By Negligence	5	1	4	3	
2. Forcible Rape	TOTAL 377	44	333	152	8
A. Rape By Force	303	41	262	117	8
B. Attempts To Commit Forc. Rape	74	3	71	35	
3. Robbery	TOTAL 380	4	376	94	6
A. Firearm	120	1	119	28	2
B. Knife Or Cutting Instrument	48		48	20	1
C. Other Dangerous Weapon	29	1	28	10	
D. Strong-Arm (Hands, Fist, Feet)	183	2	181	36	3
4. Assault	TOTAL 5,945	90	5,855	3,761	228
A. Firearm	415	8	407	255	15
B. Knife Or Cutting Instrument	298	2	296	198	14
C. Other Dangerous Weapon	360	3	357	210	14
D. Hands, Fist, Feet - aggravated	521	12	509	330	23
E. Other Assaults - simple	4,351	65	4,286	2,768	161
5. Burglary	TOTAL 5,008	75	4,933	699	276
A. Forcible Entry	3,188	38	3,150	467	171
B. Unlawful Entry-No Force	1,510	34	1,476	201	89
C. Attempted Forcible Entry	310	3	307	31	15
6. Larceny - Theft (Except Motor Veh)	TOTAL 17,637	239	17,398	4,097	1,397
7. Motor Vehicle Theft	TOTAL 2,679	246	2,433	465	128
A. Autos	1,464	167	1,297	293	74
B. Trucks And Buses	603	68	535	75	26
C. Other Vehicles	612	11	601	97	28
8. Arson	TOTAL 233	3	230	35	7
GRAND TOTAL	32,315	702	31,613	9,342	2,050

Officers Killed or Assaulted
Killed-Felony 0 Killed-Accident 0 Assaulted 207

1987 STATEWIDE TOTALS

PROPERTY STOLEN BY CLASSIFICATION

CLASSIFICATION OF OFFENSES	NUMBER OF ACTUAL OFFENSES	VALUE OF PROPERTY STOLEN
1. Murder/Nonneg Mansl	51	\$ 800
2. Forcible Rape (TOTAL)	333	\$ 10,835
3. Robbery		
A. Highway (Street, Alleys, Etc.)	149	\$ 76,801
B. Commercial House (Ex. C,D,F)	73	73,077
C. Gas or Service Station	16	3,300
D. Chain Store	42	7,678
E. Residence (Anywhere on Prem)	54	24,289
F. Bank	3	33,222
G. Miscellaneous	39	3,102
TOTAL ROBBERY	376	\$ 221,469
4. Assault - Not Applicable		\$
5. Burglary - Breaking or Entering		
A. Residence (Dwelling)		
1. Night (6 p.m. - 6 a.m.)	719	\$ 604,346
2. Day (6 a.m. - 6 p.m.)	754	1,349,010
3. Unknown	1,400	2,276,323
B. Non-Residence (store, off, etc.)		
1. Night (6 p.m. - 6 a.m.)	739	591,577
2. Day (6 a.m. - 6 p.m.)	272	319,229
3. Unknown	1,049	1,227,418
TOTAL BURGLARY	4,933	\$ 6,367,903
6. Larceny - Theft (Except Motor Veh)		
A. \$200 and over	5,968	\$ 7,932,803
B. \$50 to \$200	3,960	433,356
C. Under \$50	7,470	84,940
TOTAL LARCENY	17,398	\$ 8,451,099
7. Motor Vehicle Theft	2,433	\$ 9,590,899
GRAND TOTAL ALL		\$ 24,643,005
6X. Nature of Larcenies under 6		
A. Pocket - picking	70	\$ 45,477
B. Purse - snatching	48	6,831
C. Shoplifting	4,220	212,486
D. From Motor Vehicles	2,925	1,279,376
E. Motor Vehicle Parts and Acc.	1,271	563,206
F. Bicycles	1,351	268,646
G. From Buildings (except C & H)	2,998	1,552,669
H. From any Coin-Op Machines	95	11,825
I. All Other	4,420	4,510,583
TOTAL LARCENIES	17,398	\$ 8,451,099
7X. Motor Vehicles Recovered		
A. Number Stolen Locally & Recovered Locally	1,662	
B. Number Stolen Locally & Recovered Other Jurisdictions	146	
C. Total Locally Stolen Motor Vehicles Recovered	1,808	
D. Number Stolen Out of Town, Recovered Locally	6	

M/V THEFT ARRESTS - 1987

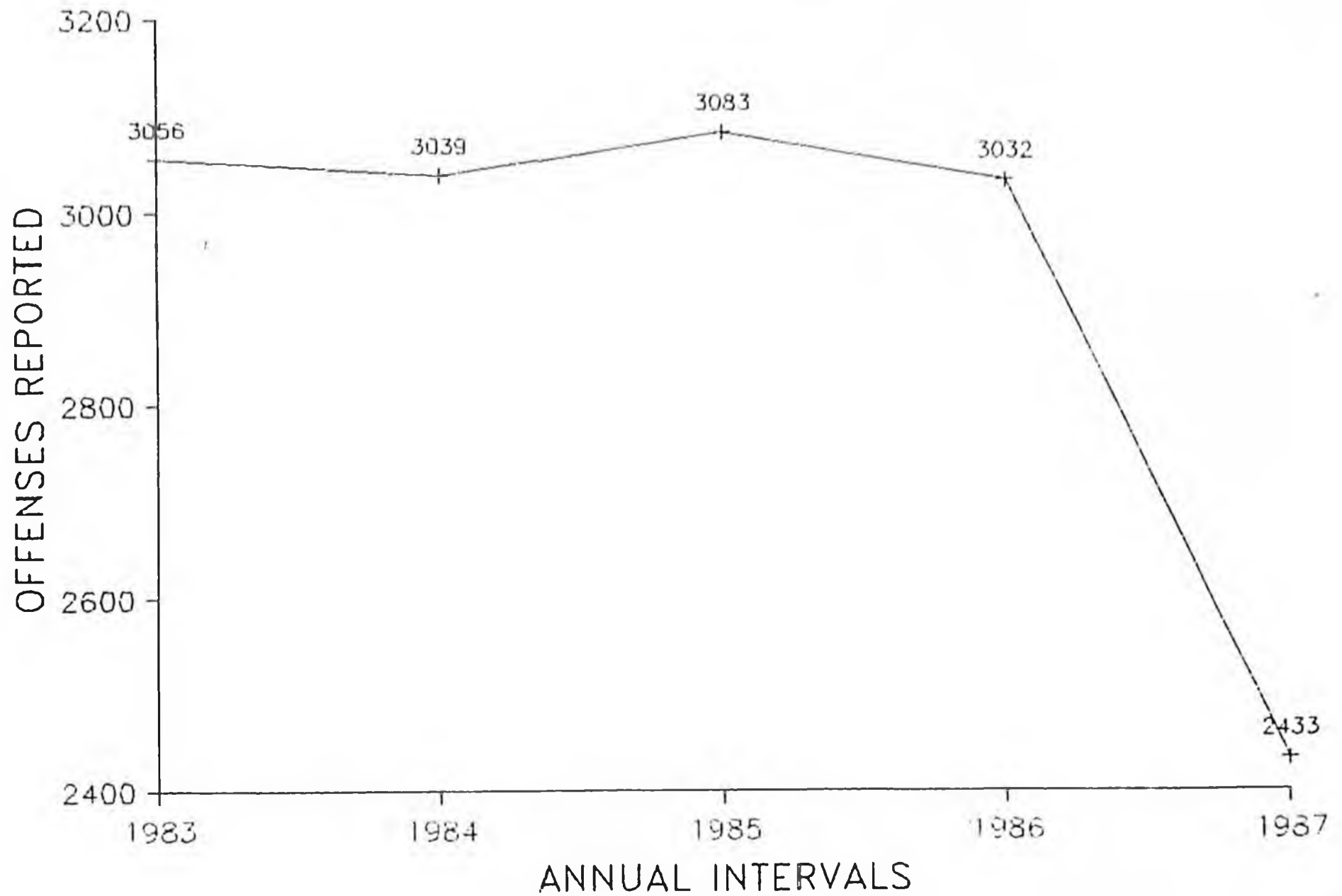
12 and under	M	14
	F	1
13-14	M	21
	F	8
15	M	19
	F	7
16	M	46
	F	8
17	M	34
	F	8
18	M	29
	F	0
19	M	20
	F	0
20	M	15
	F	1
21	M	8
	F	1
22	M	13
	F	0
23	M	10
	F	1
24	M	9
	F	1
25-29	M	18
	F	3
30-34	M	16
	F	3
35-39	M	6
	F	5
40-44	M	5
	F	0

M/V THEFT ARRESTS - 1987 (cont.)

45-49	M	0
	F	0
50-54	M	0
	F	0
55-59	M	1
	F	0
60-64	M	0
	F	0
65 and over	M	0
	F	0
TOTAL	M	284
	F	47
White		215
Black		20
Indian		92
Asian		4

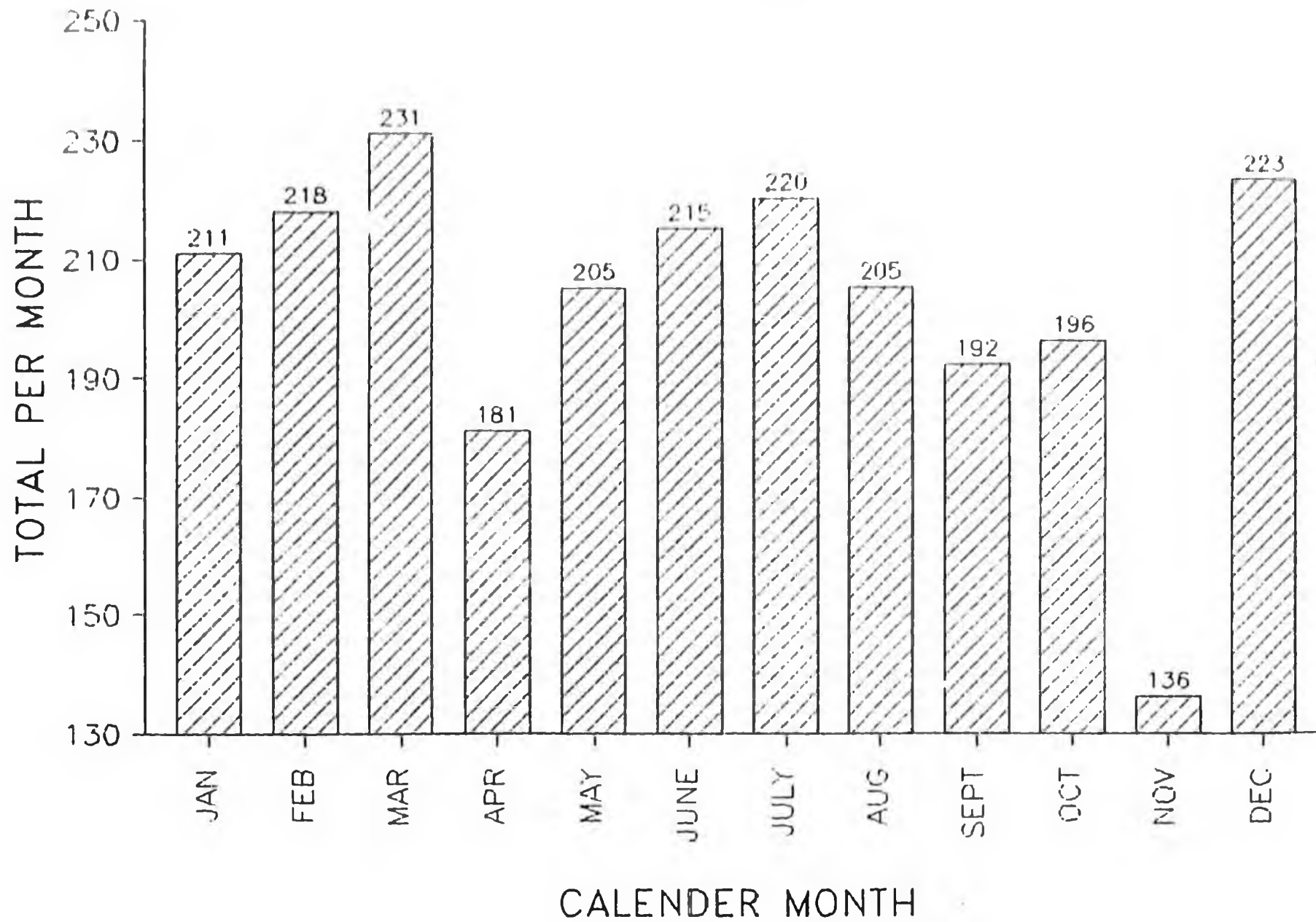
MOTOR VEHICLE THEFT TREND

1983 through 1987



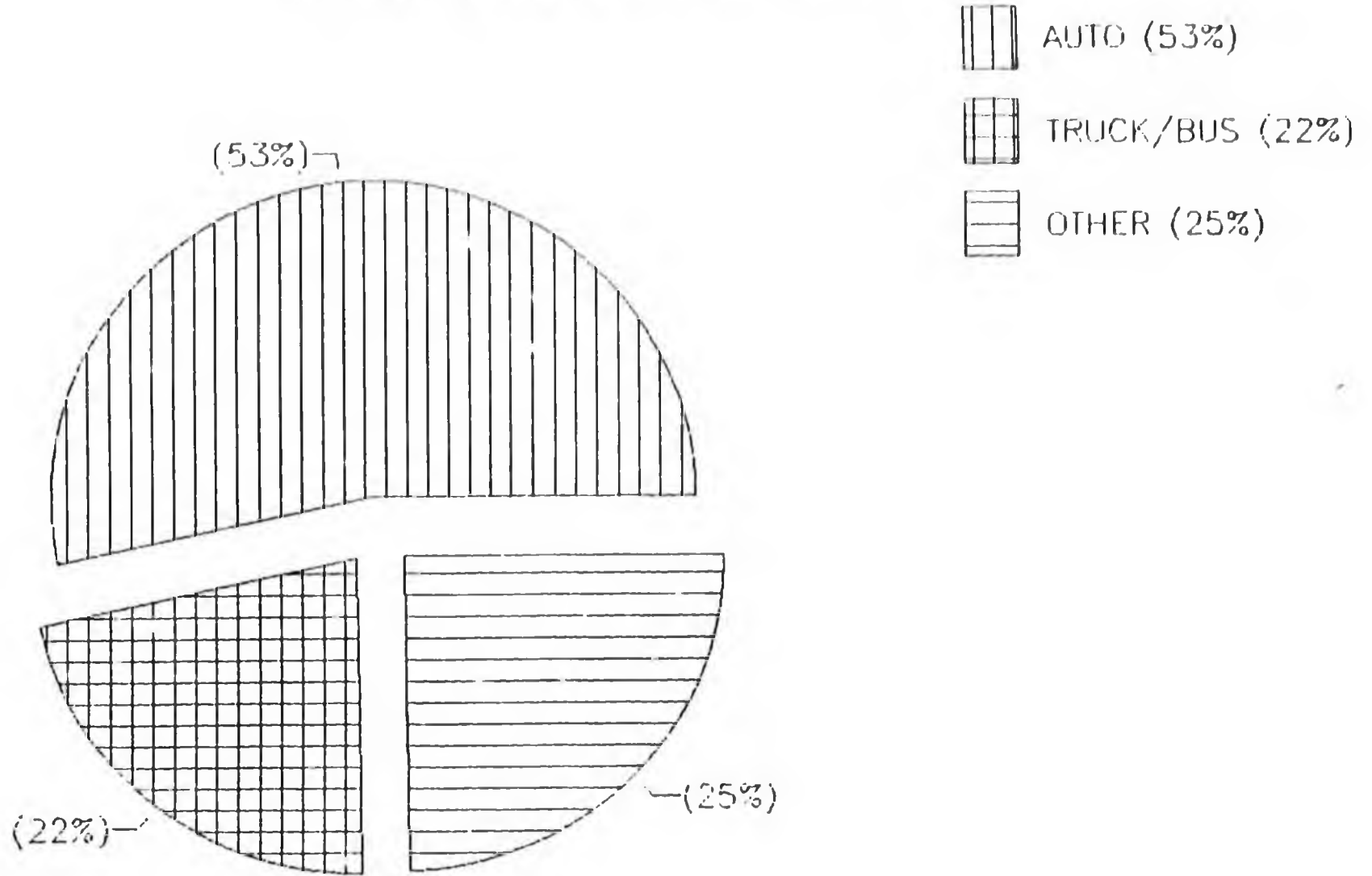
MOTOR VEHICLE THEFT BY MONTH

1987



MOTOR VEHICLE THEFTS 1987

PERCENTAGE DISTRIBUTION



H B

133

* DELIVER TO LIOCGLE *
* * * * *
* ORIGINAL *
* SENT: 02/21/89 TIME: 13:10 *
* FROM: LIOGINE *
* SUBJECT: (H) JUD, HB133, 2-21 ANC, PL11 *
* PRINT DATE: 02/21/89 TIME: 13:18 *
* * * * *

①
*** ANCHORAGE PARTICIPANT LIST ***

TO: ALL TELECONFERENCE SITES
FROM: INEZ ---) ANCHORAGE
TC #: 89-02-299
SUBJECT: HB 133 - CRIMES RELATING TO OBSCENITY
DATE: -----

TO TESTIFY:

1.) DON JOHNSON HB 133

②
ARIZONA
Lynn munsil

2.) IRA PERMAN HB 133
3.) DAVE ERLICH HB 133
4.)
5.)
6.)

TO OBSERVE:

1.) GARY CADD HB 133
2.) DAN AMOS HB 133
3.) CHRISTINE DARCY HB 133
4.)
5.)
6.)

EMAIL ADDRESS IS: LIOGINE
BACKUP NUMBER IS: 561-1199

EDM IW

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act relating to obscenity."

Agency Affected: Department of Law
BRU: Prosecution

Sponsor: Repr. Miller
Requestor: House Judiciary

Components: All

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) The Department of Law believes that this bill is so broad that it has serious constitutional problems. In light of these problems, the department does not believe there will be any fiscal impact beyond the cost of an initial litigation that can be absorbed by existing resources.

Prepared by: Richard L. Pegues, Director Phone: 465-3672
Division: Administrative Services Division Date: February 21, 1989

Approved by Commissioner: Douglas B. Baily, Atty. General Date: February 21, 1989
Agency: Department of Law

Distribution (by preparer):

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

STATE OF ALASKA 1989 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST:

Bill Version: HB 133
Publish Date: 2/1/89

Revision Date:
Title: An act relating to obscenity

Agency Affected: Alaska Court System
BRU: Trial Courts

Sponsor: Miller, Martin, & Leman
Requestor: Judiciary

Components:

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

CAPITAL

REVENUE

LOADING:	(Thousands of Dollars)					
General Funds	0.0	0.0	0.0	0.0	0.0	0.0
Federal Funds	..	..	..	..	..	..
Other	..	..	..	..	..	..
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:						
Full-time	..	..	..	..	..	..
Part-time	..	..	..	..	..	..
Temporary	..	..	..	..	..	..

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: *Jan Strandberg*
Jan Strandberg, General Counsel
Division: Alaska Court System

Phone: 261-0328
Date: 02/29/89

Approved by: *Stephanie Cole, fax-*
Arthur H. Snowden, II, Administrative Director
Agency: Alaska Court System

Date: 02/28/89

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

MEMORANDUM

TO: Representative Mike Miller
FROM: Staff *[Signature]*
RE: Plain English analysis for HB 133
DATE: 2/16/89

The language contained in House Bill 133 creates a number of new sections in state law dealing with the production, promotion and distribution of material that is obscene or harmful to minors.

BACKGROUND - U.S. SUPREME COURT TEST FOR OBSCENITY

There have been several significant decisions of the United States Supreme Court relating to the issue of obscenity. One of the earliest, Roth v. United States, declared that the First Amendment was not intended to "protect every utterance". This decision allows federal, state and local governments to regulate material that is determined to be "utterly without redeeming social importance." More recently, Miller v. California, reaffirmed that pornography is not protected by the First Amendment's guarantees. In the Miller decision, the Supreme Court added three criteria to the Roth standard by which the courts can determine whether material is "utterly without redeeming social importance". The criteria consists of the following:

- 1) whether the average person, applying contemporary community standards, would find that the work, taken as a whole, appeals to the prurient interest;
- 2) whether the work describes or depicts, in a patently offensive way, sexual conduct that is specifically prohibited by the applicable state law; and
- 3) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.

The language proposed in HB 133 modifies this wording to read:

A) with respect to material or a performance, the average person, applying contemporary community standards, would find that the material or performance, taken as a whole, appeals to the prurient interest;

B) the material or performance depicts or describes sexually explicit nudity, sexual conduct, sadomasochistic sexual abuse, or lewd exhibition of the genitals in a way that is offensive to prevailing standards in the community; and

C) with respect to the material or a performance, that a reasonable person would find that the material or performance, taken as a whole, lacks serious literary, artistic, political, or scientific value.

This test is modified once again, as allowed by Ginsberg v. New York, to determine what material should be restricted from minors. The modification adds the following language to sections A and B of the test to determine what material is "harmful to a minor":

A)as a whole, appeals to the prurient interest of a minor;

B)offensive to prevailing standards among adults in the community with respect to what is suitable for minors; and

PROMOTING OBSCENITY AND PROMOTING OBSCENITY FOR RESALE

Under the language of HB 133, and based on the above mentioned definition of "obscene", promoting obscene material or performances would become a class A misdemeanor and promoting obscene material for resale would become a class C felony. This language has been drafted to prohibit commercial exploitation or public dissemination of obscene material or performances.

PROMOTING A SEXUAL DEVICE

Promotion of a sexual device would be punishable as a class A misdemeanor. This offense is linked to a proposed statutory definition of a "sexual device" which covers artificial devices primarily designed to physically stimulate the genitals or anus. This definition would not ban the use of birth control devices.

The sections mentioned above are accompanied by an affirmative defense which recognizes that there are certain medical, psychological, legislative judicial, or law enforcement purposes allowable under the proposed law. An example of this affirmative defense would be, the distribution of material to members of a jury who are deciding the facts in case filed under this proposed law.

MAKING AN OBSCENE DRAWING

Making an obscene drawing in a public place, for the purpose of display in that place, would be a class B misdemeanor under the proposed language of HB 133.

DISSEMINATION MATTER HARMFUL TO A MINOR

Based on the definition of material that is "harmful to a minor", distributing such material to a person under the age of 18 would constitute the offense of disseminating matter harmful to a minor. Such an offense would be a class A misdemeanor. This section would prevent the sale or showing of certain material to individuals that are under the age of 18.

This section is accompanied by an affirmative defense that the minor used false identification, purporting to show that they were 18 years of age or older, to gain access to the material, and the person accepting the ID did not have reasonable cause to believe the minor was under 18 years of age. In addition, in cases where the material is harmful to a minor but not obscene, an affirmative defense exists if the minor was accompanied by their guardian or parent.

In cases involving obscene material, an affirmative defense exists if the person distributing the material is the parent, guardian or spouse of the minor. An affirmative defense also exists for bona fide medical, psychological, judicial or law enforcement purposes.

UNLAWFUL EXHIBITION OF MATERIAL HARMFUL TO A MINOR

The unlawful exhibition of material harmful to a minor would be a class A misdemeanor under HB 133. An individual would be guilty of this offense if they had responsibility for a place of business which displayed or exhibited matter harmful to a minor in portions of the business that could be entered or viewed by minors without parental supervision.

An affirmative defense exists for cases where a minor used false identification to gain access to the material, was accompanied by their parent or guardian or was given the material by their parent, guardian, or spouse.

DECEPTION TO OBTAIN MATTER HARMFUL TO A MINOR

Deception to obtain matter harmful to a minor would be a class A misdemeanor under the language of HB 133. This section covers individuals who falsely represent themselves as the parent, guardian or spouse of a minor in order to allow access to harmful material by a minor. This offense would also apply to individuals who supply minors with false identification.

Minors could also be charged with this offense if they falsely represent themselves to be 18 years of age or older, or use false identification showing that they are 18 years of age or older.

COMPELLING ACCEPTANCE OF OBJECTIONABLE MATERIAL

A person could be charged with with a class A misdemeanor for compelling acceptance of objectionable material. This section defines as a crime any efforts by a distributor to link sales to business retailers or pornographic materials to the provision for sale of nonsexual materials.

EVIDENCE OF KNOWLEDGE

This section collects and sets out certain technical legal requirements relevant to matters of proof in prosecutions brought under the preceding legal provisions.

DEFINITIONS

The final section of the bill consist of definitions of terms and phrases that are used through out the bill. These definitions are fairly self-explanatory.

STATE OF ALASKA
THE LEGISLATURE

HOUSE OF REPRESENTATIVES
LEGISLATIVE AGENCY
907 465 1100

LEGISLATIVE AFFAIRS AGENCY


MEMORANDUM

February 8, 1989

SUBJECT: House Bill 133, relating to obscenity --
sectional analysis

TO: Representative Mike Miller

FROM: Jack Chenoweth
Legislative Counsel



This legislation is based on last year's House Bill 449. It adds to the body of state criminal law (AS 11) new sections in the chapter defining crimes relating to public health and decency. The sections proposed to be added are AS 11.66.300 - 11.66.499.

There have been several significant decisions of the United States Supreme Court relating to the issue of obscenity. One of the earliest, Roth v. United States, 354 U.S. 476 (1957), held that the First Amendment was not intended to "protect every utterance," leaving open to the federal government and to state and local governments opportunity to regulate material that is "utterly without redeeming social importance." More recently, Miller v. California, 413 U.S. 15, 93 S.Ct. 2607, 37 L.Ed.2d 419 (1973), reaffirmed that pornography was not protected by the First Amendment's guarantees. The decision in Miller added to the Roth standard three criteria by which the courts might determine whether material was "utterly without redeeming social importance":

(1) whether the average person, applying contemporary community standards, would find that the work, taken as a whole, appeals to prurient interest;

(2) whether the work describes or depicts, in a patently offensive way, sexual conduct that is specifically prohibited by the applicable state law; and

(3) whether the work, taken as a whole, lacks

serious literary, artistic, political, or scientific value.

Miller, supra., at 24, 25.

A number of the provisions incorporated into this bill are accompanied by a related affirmative defense. Under the criminal code, an affirmative defense means that some evidence must be introduced that places the issue in defense, and that the defendant has the burden of establishing the defense by a preponderance of the evidence. See, in this respect, AS 11.81.900(b)(1).

Promoting obscenity (AS 11.66.300) and promoting obscene material for resale (AS 11.66.310), and the related affirmative defense (AS 11.66.320):

The two sections that define the crime are grounded on the definition of "obscene" (proposed AS 11.66.499(5)), a definition that in turn draws on the Miller criteria. In describing the elements of the respective offenses, they take advantage of the rule announced in Ginzburg v. United States, 383 U.S. 463, 16 L.Ed.2d 31, 86 S.Ct. 942 (1966), holding that the exploitation of highly erotic material is itself evidence that the material is obscene. In essence, these sections prohibit commercial exploitation or public dissemination of obscene matter. Proof of either of those rests primarily on objective evidence of specific facts. Precise knowledge of the contents of the material is not made a requirement to satisfy scienter. Rather, having knowledge of the character or nature of the material may be an adequate indicator of scienter in order to sustain a conviction. The sections also set the penalties for their violation: violation of promoting obscenity is made a class A misdemeanor, but violation of promoting obscene materials for resale, deemed a more serious crime, is designated a class C felony.

An accompanying provision, AS 11.66.320, sets out an affirmative defense by recognizing that obscene matter can be legitimately sold or circulated in conjunction with a defined proper purpose, and allows use, research, or study of the material for these valid purposes.

Promoting a sexual device (AS 11.66.330) and the related affirmative defense (AS 11.66.340):

The section defining the crime generally bans advancing or furthering sale of a sexual device. The elements of this crime require that an offender know the illegal device is a "sexual device," an object of perversion or abuse, as that term has been defined in AS 11.66.499(9). Conviction would impose the penalty applicable to a class A misdemeanor.

An accompanying provision, AS 11.66.340, sets up an affirmative defense, recognizing that a sexual device can be legitimately promoted in conjunction with one of the defined purposes, and allowing the use of the sexual device for these valid purpose.

Making an obscene drawing (AS 11.66.350):

This section would criminalize the act of making an obscene drawing. The charge is applicable only as to acts involving defacing of public property with expressions that meet the Miller test of obscenity, with the additional requirements that the maker "intend to display" or that the drawing "[be] visible to the public" in that place that it is made. Violation of the provision is made a class B misdemeanor.

Disseminating matter harmful to a minor (AS 11.66.360) and the related affirmative defense (AS 11.66.370):

The definition of the offense covers the distribution of material to a person under the age of 18 that is either "obscene," as that term is defined with reference to the Miller test, or "harmful to a minor," a definition adapted from the New York state statute approved by the United States Supreme Court in Ginsberg v. New York, 390 U.S. 629, 20 L.Ed.2d 195, 88 S.Ct. 1274 (1968), as altered by the decision in Miller. The "harmful to a minor" standard applicable to review the suitability of material to a juvenile is a less stringent standard than the Miller standard defining obscenity with reference to adults. A violation of the provision would be made a class A misdemeanor.

The related affirmative defenses (AS 11.66.370) are intended to protect persons who disseminate material harmful to a minor based on exhibition of false identification or securing parental consent, and to protect persons who disseminate obscene material or material harmful to a minor if

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the person is the minor's parent or in limited governmental or scientific instances in which the distribution may be necessarily required.

Unlawful exhibition of material harmful to a minor (AS 11.-66.380) and the related affirmative defense (AS 11.66.390):

The "unlawful exhibition" provision, AS 11.66.380, would apply to the disclosure or showing of "material harmful to a minor" in a business or commercial setting. It initially distinguishes on the basis of whether a minor may be present in any portion of a business premises. The offense of "unlawful exhibition" occurs if the minor is permitted on the premises without parental supervision--that is, if access to the premises is not restricted to adults--and the person responsible for the business premises makes no effort to prevent the minor from being able to view harmful material. The "unlawful exhibition" provision also acts to prohibit display of material that is harmful if the display is viewable by a minor whether or not accessible by that minor, that is, where only the minor may act to prevent his or her own exposure to the material. Finally, the "unlawful exhibition" provision precludes employment or use of a minor when the harmful materials would be handled by or displayed to them. Violation of the provision constitutes a class A misdemeanor.

The related affirmative defense provision, AS 11.66.390, is included in order to protect business owners and employees who make reasonable precautionary efforts, and to preclude interference with the rights of a parent to the minor.

Deception to obtain matter harmful to a minor (AS 11.66.-400):

The elements of the crime of "deception" are defined with reference to efforts to aid or assist a minor to obtain material that is harmful to a minor or to gain admission to a performance that is harmful to a minor. They address attempted misrepresentation by one claiming to be the parent, guardian, or spouse of the minor, the provision of phony identification to the minor, false representation by the minor, and use of false identification by the minor. Violation of any of these provisions is made a class A misdemeanor.

Compelling acceptance of objectionable materials (AS 11.66.-470):

This section defines as a crime any efforts by a distributor to link sales to business retailers of pornographic materials to the provision for sale of non-sexual materials. Violation of the section is defined as a class A misdemeanor.

Presumption and evidence of knowledge (AS 11.66.490):

This section collects and sets out certain technical legal requirements relevant to matters of proof in prosecutions brought under the preceding legal provisions.

Subsection (a) permits a prosecution based on evidence that the defendant has provided or supplied sexually explicit works. It makes a presumption that a dealer in materials or performances knows the character of that in which he or she deals if the dealer has actual or constructive notice, whether or not the dealer has precise knowledge of the specific content of those materials or that performance. Proof that the dealer is involved in providing or supplying sexually explicit works permits an inference that the dealer is aware that the material or performance contains the kind of conduct or exhibitions that are addressed in this legislation.

Subsection (b) defines the scienter requirements applicable to prosecutions. Since the thrust of this legislation is to proscribe calculated purveyance or distribution of obscene materials and materials harmful to minors, the provision is grounded on the requirement of Smith v. California, 361 U.S. 147, 4 L.Ed.2d 205, 80 S.Ct. 215 (1957), that, rather than requiring proof of specific knowledge of contents of materials, one's general awareness of the content of the materials is sufficient to meet the scienter test. The subsection permits a fact trier to presume knowledge of the character of materials or of a performance by the owner or manager of a commercial establishment, or by their agents or employees, if they have "actual or constructive notice of the nature of the materials or the performance," without requiring that the person have precise knowledge of its contents.

Representative Mike Miller

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Subsection (c) speaks to prosecutions in which knowledge of the character of material or a performance, or that a device is a "sexual device," is at issue. The provision directs that it is evidence of that knowledge that the defendant had received actual notice of the character of the material, the performance, or the device, and specifies how that notice may be given by the attorney general or a prosecuting attorney.

A related provision, subsection (d), relates the nature of the evidence that may be accepted by a court relevant to the proof of a defendant's knowledge of the character of sexually explicit material or as to an obscene performance, or of knowledge as to whether or not a device is a sexual device.

Definitions (AS 11.66.499):

This section sets out the definitions specifically applicable to this legislation. Note, especially, the following definitions:

-- "harmful to a minor," drafted with an eye toward defining suitability of material for juveniles on the basis of the "variable obscenity" basis of Miller and Ginsberg;

-- "obscene," based on the standards for determining obscenity discussed in Miller, briefly summarized in the introductory paragraph of this memo; and

-- "prurient," defined in a manner that permits consideration of the nature of the appeal of the material or of a performance; the technical terms that compose the definition are themselves also defined in this section.

JC:gc
WKG6/113

State of Alaska

HB 133

Committees

CO-CHAIR, HOUSE JUDICIARY
VICE CHAIR, HOUSE LABOR AND COMMERCE
HOUSE HEALTH, EDUCATION
AND SOCIAL SERVICES



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Representative Max F. Gruenberg, Jr.
District 11
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February 28, 1989

Don Johnson
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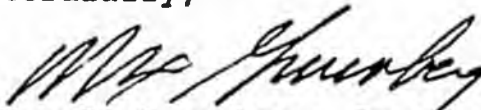
Dear Mr. Johnson:

Thank you for your public opinion message on HB 133, the
obscenity legislation. A copy is enclosed.

I'm sorry you were not able to testify at the teleconference.
It has always been my policy to allow any and all public
testimony. If you will send me your written testimony, I'll
be glad to include it in the record. The House Judiciary
Committee staff will let you know of any future hearings on
the bill so you can testify further if you would like.

Thank you again for contacting me.

Cordially,


Max F. Gruenberg, Jr.

Enclosure



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Memorandum in Opposition to Alaska HB 133

This memorandum is respectfully submitted on behalf of the Motion Picture Association of America, Inc. (MPAA), a trade association representing many of the major producers and distributors of motion picture distributors in the United States¹ in opposition to Alaska HB 133. All MPAA members companies distribute motion pictures for theatrical exhibition.

The Bill

HB 133 would enact an omnibus obscenity statute referred to as the "Obscenity Act". Section 11.66.499 of the "Obscenity Act" provides that the definition of "community standards" is the municipality or village in which the crime occurred.

Statewide Community Standards Should Be Utilized

The MPAA respectfully submits that jurors in the State of Alaska should utilize statewide community standards in obscenity prosecutions. The application of statewide obscenity standards facilitates the uniform application of law within the State of Alaska. A patchwork of inconsistent local standards, from each of the judicial districts in Alaska would impose an impossible burden on the free flow of protected commerce.

Thus, if a national distributor of motion pictures, books, or magazines were forced to review hundreds of different local standards in each state, the distribution of materials protected by the First Amendment would be severely hampered. The cost of distribution would also increase substantially, limiting availability of motion pictures, books, and magazines to the public. Distributors of such protected materials may simply throw up their hands and cease distributing their works rather than face prosecution in hundreds of different jurisdictions.

In addition, if a "local community" obscenity standards were enacted, production costs and the risks associated with production would increase tremendously; thus, limiting the funds available for motion picture product. Producers of such constitutionally protected materials might simply be forced to cease exhibition of their work rather than face prosecutions in hundreds of different jurisdictions.

¹ MPAA members includes
Buena Vista Pictures Distribution, Inc., Columbia Pictures Entertainment, Inc., MGM/UA
Communications Co., Orion Pictures Corporation, Paramount Pictures Corporation,
Twentieth Century Fox Film Corporation, Universal City Studios, Inc., Warner Bros. Inc.