ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672
5819 HOUSE JUDICIARY

223

cause, in his view, the law must bear the responsibility for jury verdicts and the instruction would *increase* the individual juror's responsibility by communicating that each juror is the author of the "rule that condemns." Both Christie and Leventhal thus focus on the jurors' responsibility for their verdicts.

Let us examine that responsibility. It is not the responsibility of jurors to make laws and it is an illegitimate exercise of their authority to create new crimes. The juror does not "fashion the rule that condemns" because the jury takes the law from the court and cannot substitute its own version of what the law should be. Judge Leventhal probably has a different meaning in mind when he expresses concern about juror responsibility. He appears to be worried that if jurors are told of the nullification power, they will be under a heavy burden because they know they have the power to free the defendant. They may feel that if they convict, it is their decision and not a legal decision. We sympathize with this point of view that seeks to protect jurors, but we are compelled to disagree with it. Jury service *is* a heavy responsibility and any attempt to make it lighter by passing responsibility to another governmental agency or institution violates the concept of the jury. Jury service should be understood and treated as one of the most solemn and meaningful obligations a citizen can be called upon to perform. In the words of one *Juror's Handbook*:

> Jury service is one of the most vital functions of citizenship. It is the most important duty of a citizen of the United States, next to fighting in the defense of one's country.[243]

The criminal juror's function is to sit in judgment of an accused person. Our system of justice is not served by trying to lighten the juror's responsibility by encouraging the juror to rely on "the law" rather than weighing the matter in terms of the community conscience. Although the juror must listen responsibly to the judge's instruction on the law, the juror cannot avoid making an individual evaluation of the defendant's conduct. Even under Judge Leventhal's view, it is permissible for jurors to know that they may nullify; many jurors do know they have this power. These jurors cannot escape responsibility in the way Judge Leventhal suggests. It seems more honest and honorable to tell all jurors about their power and responsibility in a clear and careful manner, at the same time that the judge outlines the law that governs the case.

Judge Leventhal says that jurors who have reached what they believe to be the right verdict, but who think that the community disagrees with their conclusion, can use the law as an excuse. We do not believe that it is conducive to good citizenship or good character to shift the responsibility elsewhere rather than standing up for what you believe is right. If jurors have reached unpop-

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243. Jurors' Handbook, Santa Clara County, California, quoted in M. TIMOTHY, JURY WOMAN 4 (1974) [hereinafter cited as M. TIMOTHY].

ular verdicts which they feel are nevertheless correct, and if they feel that they have the obligation to explain those verdicts, then their explanation should be based upon their recognition of their own role in attempting to do justice within the law. The juror's position is a responsible one and the full impact of that responsibility must be brought home to jurors so that they may perform their historic function.

Christie objects to the nullification instruction because it would be viewed by the jury as a command by the law that they acquit "if they feel strongly enough about the matter."[244] A carefully drafted nullification instruction that clearly limited situations justifying the exercise of that power[245] would answer this objection. Christie's concern that jurors would feel compelled to acquit would be satisfied with an instruction stating they do not have to acquit. The instruction could explain their power to acquit but would make clear that nullification was not commanded.

Christie, however, may have had a slightly different point in mind. He appears concerned about the law remaining value-neutral. Unlike Judge Leventhal who appears to prefer that the law absorb responsibility for jury verdicts, Christie believes that the law should be free of such responsibility. Jury verdicts, he believes, should belong to juries and the law should keep a discrete distance from them. This approach ignores the role of jury service in self-governance. As explained above,[246] our law is a dynamic force that springs from the people and is ultimately accountable to them. The essence of the jury is its obligation to pass judgment on each law it is asked to apply. Laws that are found to be inequitable when applied in certain instances should be "nullified" by the refusal of the jury to convict under them. Further, the neutrality that Christie favors is jeopardized by refusal to grant the nullification instruction; for what better way is there for the law to coerce a particular verdict than by refusing to tell the jury all the options it has available? The only way to maintain the neutrality of the law and to have the jurors bear responsibility for their decisions is to inform them of their prerogatives.

Christie's comparison of the juror with the school teacher and academic freedom questions[247] illustrates the problem with his approach. Professors in environments where academic freedom is nurtured are not instructed that they can only teach what they are told to teach. They do not need to rely on television and other informal sources to learn that they may teach what they want without being punished for it. They are encouraged to innovate and explore the uncertain realms of their subjects, and are usually promoted if they succeed in these endeavors. We would not have "free" teachers unless they

244. Christie, *supra* note 207, at 1304.
245. See text at notes 3, 9, and 44, and note 64, *supra*, for examples.
246. See text at notes 167-68 and at notes 233-34, *supra*.
247. Christie, *supra* note 207, at 1303, quoted in text at note 239, *supra*.

clearly understood that they were free to teach what they believed to be true. Similarly, we will not have "free" (and truly responsible) jurors until they are told that they have the authority to acquit on the basis of conscience in appropriate cases.

VII

CONCLUSION AND SUMMARY

We have shown that jury nullification is more than just a price the legal system pays for jury service. Rather, it is a distinct and unique benefit to our system of government that not only brings the community and the law closer together, but also adds a new dimension to the concept of democratic self-rule for all participating in the jury experience. Therefore, it is not merely a practice that should be tolerated, but it is a practice that should be applauded and treated with dignity and honesty. Even in those rare instances when juries reach verdicts that do not win public support, the community is learning vital lessons about itself. And, of course, whenever the jury returns a verdict with which the community morally agrees, even though it may run counter to the instructions of the judge on the law, faith in the jury system is openly vindicated.

In the final analysis, we believe that the jury power to acquit, in consideration of but against the judge's instructions on the law, is not an accidental by-product of the general verdict, the double jeopardy provision, and the judge's inability to punish jurors for their verdict. The jury, with its power of nullification, is a deliberate attempt to increase citizen participation in government, ameliorate the rigors of laws that may be too harsh when applied in certain cases, prevent governmental tyranny, bring the law and the community in closer harmony, and allow the people to make the final decision on moral blameworthiness in criminal cases. To achieve these goals, the jury must be instructed of its authority to acquit in appropriate circumstances.

Any examination of the history and development of the jury reveals how closely intertwined this institution is to the exercise of political freedom and individual liberty.[248] Defense of the jury need not rest solely with the major

248. For more than seven out of the eight centuries during which the judges of the common law have administered justice in . . . [England], trial by jury ensured that Englishmen got the sort of justice they liked and not the sort of justice that the government of the lawyers or any body of experts thought was good for them.

P. DEVLIN, *supra* note 66, at 159-60.

. . . The fundamental safeguards have been established, not so much by lawyers as by the common people of England, by the unknown juryman who in 1367 said he would rather die in prison than give a verdict against his conscience, by Richard Chambers who in 1629 declared that never till death would he acknowledge the sentence of the Star Chamber, by Edmund Bushell and his eleven fellow-jurors who in 1670 went to prison rather than find the quakers guilty, by the jurors who acquitted the printer of the Letters of Junius, and by a host of others. These are the men who have bequeathed to us the heritage of freedom.

A. DENNING, FREEDOM UNDER LAW 63-64 (1949) [hereinafter cited as A. DENNING].

political issues of any given era. It is in the little cases as well that the jury ameliorates the harshness of the law, thereby furthering respect for laws and legal procedures. If our legal system did not permit the dispensing function of the jury, it would grow cold and stale, the object of ridicule and disobedience. No legislature can anticipate all the situations that would fall under the terms of a statute. It is virtually impossible to write a general law to cover the identified problem, which is also detailed enough to prevent prosecution in all cases the legislature does not intend to cover. The generality of law necessitates the exercise of discretion and conscience in its enforcement.

The prosecutor has discretion to refuse indictment in sympathetic cases. In many instances, prosecutorial discretion is exercised in accord with community opinion, thus eliminating the necessity for jury nullification. But not in all cases. Prosecutors may bring defendants to trial for a variety of reasons, not all of which serve the interest of justice. Political cases attest to the willingness of prosecutors to curtail dissent by using the law as a sword to cut a wide swath through minority opposition to governmental policies. The extensive publicity given to some cases, the elective status of many prosecutors and the necessity for maintaining solid and cordial relations with the police may induce prosecutors to try cases that might otherwise not be brought to trial. In such cases, prosecutorial discretion fails to serve as a shield against unjust indictments. Jury nullification is necessary and essential to justice in these situations.

Judges also have discretion in the enforcement of laws, but they too are subject to the strictures of their role and are accountable to the people (if elected), the appellate courts, and the legal profession for their actions. In cases where justice might demand dismissal, politics may demand otherwise. Mary Timothy, jury foreperson in the Angela Davis murder case, subsequently wrote:

> Suppose he [Judge Arnason] were to rule that the prosecution had not proven its case and then dismissed all charges. Then the whole thing would be over! Wouldn't that be fantastic? The decision would be made and we jurors wouldn't have that burden. Fantastic, but not likely. Could any judge take that responsibility himself in a trial with so many political overtones? I doubted it.[249]

Once again, the exercise of its dispensing power makes the jury indispensable to justice. The essential difference between the jury and other legal institutions is that the jury, which meets for a trial and then melts back into the

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> [F]or a time in eighteenth-century England a jury's uncontrolled general verdict of acquittal—given in defiance of the judge's instructions—was the strongest safeguard available for the free discussion of public affairs.

Henderson, *The Background of the Seventh Amendment*, 80 HARV. L. REV. 289, 328 (1966).

249. M. TIMOTHY, *supra* note 243, at 185.

community, is, in the words of Justice Douglas, "the one governmental agency that has no ambition."[250] It is free to do what is right.

The right of the jury to nullify applications of law in a particular case can also be supported on political grounds as an essential aspect of democratic self-government. It serves to remind governments and legal professionals that the people are sovereign. It serves to remind the community that protection of its liberty and freedom rests in the hands of the people. The Senate and House reports on the 1968 federal Jury Selection and Service Act expressly state that, "*It must be remembered that the jury is designed not only to understand the case, but also to reflect the community's sense of justice in deciding it.*" [emphasis added][251]

Today, the jury system is under attack. In some courts, it is shrinking in size,[252] in strength,[253] and in usage,[254] and it is frequently criticized on grounds of expense and inefficiency.[255] Part of the campaign to weaken the

250. W.O. DOUGLAS, WE, THE JUDGES 389 (1956), *quoted in* A.F. GINGER, *supra* note 8, at 10. Douglas also says "Since [the jury] is of and from the community, it gives the law an acceptance which verdicts of judges cannot do." *Id.*

251. SENATE COMM. ON THE JUDICIARY, IMPROVED JUDICIAL MACHINERY FOR THE SELECTION OF FEDERAL JURIES, S. REP. No. 891, 90th Cong., 1st Sess. 21 (1967); HOUSE COMM. ON THE JUDICIARY, FEDERAL JURY SELECTION ACT, H.R. REP. No. 1076, 90th Cong., 2d Sess. 8 (1968).

252. In Williams v. Florida, 399 U.S. 78 (1970), the Court held seven-to-one that the number "12" for a jury was an "historical accident" and is not constitutionally required in non-capital state criminal trials. In Colgrove v. Battin, 413 U.S. 149 (1973), a divided Court held five-to-four that the seventh amendment did not require a 12-person jury in federal civil trials. For an analysis of these cases and the issue of jury size, see J. VAN DYKE, JURY SELECTION, *supra* note 2, at 193-203. In Ballew v. Georgia, 435 U.S. 223 (1978), the Court held that juries in state criminal trials could not consist of fewer than six persons.

253. In Johnson v. Louisiana, 406 U.S. 356 (1972), a divided Court held five-to-four that the fourteenth amendment's due process clause requiring proof beyond a reasonable doubt in criminal cases was not violated by a state law permitting non-unanimous jury verdicts in state non-capital criminal cases. In Apodaca v. Oregon, 406 U.S. 404 (1972), a divided Court (four-to one-to-four) held that it was not a violation of the sixth amendment for a state to permit a non-unanimous verdict in a non-capital criminal case. Justice Powell's vote joined the plurality opinion on state trials, but noted that the sixth amendment might bar non-unanimous jury verdicts in federal criminal proceedings. For an analysis of these cases and the issue of non-unanimous jury verdicts, see J. VAN DYKE, JURY SELECTION, *supra* note 2, at 203-14. In Burch v. Louisiana, 441 U.S. 130 (1979), the Court ruled that if state criminal juries consist of only six persons, their verdict must be unanimous.

254. The Supreme Court has ruled in a series of cases that defendants have no constitutional right to a jury trial if they are accused of only a "petty offense." Whether or not a petty offense is involved depends upon the sentence. So far the Court has ruled that violations leading to six months in jail, three-years probation, and a fine of $10,000 are each "petty offenses" in contempt cases. Muniz v. Hoffman, 422 U.S. 454 (1975); Taylor v. Hayes, 418 U.S. 488 (1974); Codispoti v. Pennsylvania, 418 U.S. 506 (1974); Baldwin v. New York, 399 U.S. 66 (1970); Frank v. United States, 395 U.S. 147 (1969); Bloom v. Illinois, 391 U.S. 194 (1968).

255. It is important to mention that although the Supreme Court in the last decade has weakened the constitutional protection of the jury's structure, it has not deviated from its conception of the jury's function enunciated in Duncan v. Louisiana, 391 U.S. 145 (1968), quoted in the text at note 93. Indeed, the Court has been careful to point out that it would not change the structure of the jury if it thought that the function would thereby be weakened. We are, therefore, optimistic that the Court will recognize that the nullification instruction promotes the jury's function and must therefore be supported. Kadish and Kadish, who disagree with us that the jury should re-

jury is based on the proposition that the jury's only function is to decide the facts and that juries do a poor job at that.[256]

We believe that refusal to instruct the jury of its nullification power contributes to weakening the jury as a legal and political institution. It produces mendacious judges and more complacent and servile jurors (and citizens). Charles C. Curtis once remarked:

> In the judge we have our intellectual side. In the jury, we have the intuitive part of us. Together they reflect each of us as the jury reflects all of us. And a society which does not trust itself may be a state, but is not a society at all.[257]

In dismissing the jury in the Angela Davis trial after their verdict of not guilty, Judge Arnason read to them from G. K. Chesterton:

> Our civilization has decided, and very justly decided, that determining the guilt or innocence of men is a thing too important to be trusted to trained men. If it wishes for light upon that awful matter, it asks men who know no more law than I know, but who can feel the things I felt in the jury box. When it wants a library catalogued or the solar system discovered, or any trifle of that kind, it uses its specialists. But when it wishes anything done that is really serious, it collects twelve of the ordinary men standing about. The same thing was done, if I remember, by the founder of Christianity.[258]

The jury is responsible for the exercise of delicate moral, legal, social and political judgments. Sometimes it makes mistakes,[259] but mistakes cannot be eliminated because justice cannot be programmed into a computer. Sometimes juries reach verdicts that are not popular with particular segments of the community, but a jury verdict is never without an important social lesson that will help the community. Juries are less likely to make mistakes as to their function and are more likely to benefit the community if they are honestly in-

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ceive a nullification instruction, nevertheless agree that the Supreme Court has recognized "the jury's power to displace law by appeal to conscience as one of the characteristics that makes the right to a jury trial 'fundamental to our system of justice'. [Duncan v. Louisiana, 391 U.S. 145, 153 (1968)] . . . In other words, the jury's fundamental function is not only to guard against official departures from the rules of law, but on proper occasions themselves to depart from unjust rules or their unjust application." KADISH & KADISH, *supra* note 191, at 53-54. The only real issue concerning jury nullification is whether or not the jury should be honestly instructed as to its authority. The value of nullification to the legal system no longer appears to be a matter of dispute.

256. Duncan v. Louisiana, 391 U.S. 145, 186-89 (1969) (Harlan, J., dissenting).

257. C. CURTIS, IT'S YOUR LAW 104 (1954).

258. G. CHESTERTON, TREMENDOUS TRIFLES 86 (1920), quoted in M. TIMOTHY, *supra* note 243, at 292.

259. Juror errors are more often demonstrations of human fallibility than a weakness in the system. When an innocent defendant is convicted, the state has committed the original error in charging him, despite supposedly exhaustive investigations by police. The trained district attorney sustains it by prosecuting the case. The grand jury studies the charge and brings back a false indictment. The trained defense attorney presents an ineffectual defense. But only the trial jury is blamed if it brings in a false conviction.

G. LEHMAN, WHAT YOU NEED TO KNOW FOR JURY DUTY 83 (1968).

structed that they may, on the basis of conscience, acquit a defendant when the strict application of the law would lead to an unjust or inequitable result.

The jury may not always be right, but neither is any other deliberative body. As the conscience of the community drawn from a representative cross section of that community, it is the best we have . . . because it is us.[260]

260. To this day, when a man accused of serious crime is put in charge of the jury, it is in words which have come down through the centuries: 'To this charge he has pleaded not guilty and puts himself upon his country, which country you are.' All our past struggles are bound up in that one sentence. He entrusts his liberty to a jury of his fellowmen. So in the last resort do we all.

A. DENNING, *supra* note 248, at 59.

6-1927A
Chenoweth
1/16/90

BY REP. TAYLOR

IN THE HOUSE

HOUSE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to jurors in criminal actions, and to the oath taken by jurors; and amending Rule 24 of the Alaska Rules of Criminal Procedure."

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

* Section 1. AS 12.45 is amended by adding a new section to read:

Sec. 12.45.015. SCOPE OF TRIAL JURY'S DETERMINATION. (a) The trial jury shall judge both the law and the facts pertaining to the case that is tried before it. The court shall advise the jury of its duty under this subsection.

(b) In subscribing the oath, each juror shall affirm that the juror understands the duty imposed by (a) of this section.

(c) A party to the trial may not be prevented from encouraging jurors to exercise the duty imposed by (a) of this section.

(d) The failure of the trial court to advise jurors as required by (a) of this section is not harmless error and is grounds for declaration of a mistrial.

(e) A potential juror may not be disqualified from serving on a jury because the juror expresses willingness to judge the law and its application, or to vote according to the juror's conscience.

* Sec. 2. Rule 24(f), Alaska Rules of Criminal Procedure, is repealed and reenacted to read:

(f) CHARGE TO JURORS. The court shall, immediately before the jury is sworn and again before jury deliberation begins, advise the jurors:

"As jurors, your first responsibility is to decide whether the defendant has broken the law. If you decide that the defendant has, but that you cannot in good conscience support a guilty verdict, you are not required to do so. To reach a verdict that you believe is just, each of you has the right to consider to what extent the defendant's actions have actually caused harm or otherwise violated your sense of right and wrong. If you believe justice requires it, you may also judge both the merits of the law under which the defendant has been charged and the wisdom of applying that law to the defendant. Accordingly, for each charge against the defendant, if review of the evidence under the law would result in a guilty verdict, nevertheless, you have the right to find the defendant innocent. The court cautions that with the exercise of this right comes full moral responsibility for the verdict you deliver."

* Sec. 3. Rule 24, Alaska Rules of Criminal Procedure, is amended by adding a new subsection to read:

(g) OATH OF JURORS The jury shall be sworn by the clerk substantially as follows:

"You and each of you do solemnly swear (or affirm) that you will well and truly try the issues in the matter now before the court in accordance with the instructions of the court and the court's explanation of your responsibilities

as jurors to determine the law and the facts pertaining to the case; so help you God."

* Sec. 4. APPLICABILITY. The provisions of this Act apply to trial juries in criminal judicial proceedings commenced on or after the effective date of this Act.

* Sec. 5. Section 2 of this Act takes effect only if sec. 2 receives the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution of the State of Alaska. Section 3 of this Act takes effect only if sec. 3 receives the two-thirds majority of each house required by art. IV, sec. 15, Constitution of the State of Alaska.

HB
535

HOUSE COMMITTEE REPORT

4/17

(5)
Date Referred: February 12, 1990 FURTHER REFERRALS: JUDICIARY

Date of Committee Action: 4/17/90

The TRANSPORTATION Committee considered: HB 535

HOUSE BILL NO. 535 MOTOR VEHICLE FRONT SEAT OCCUPANCY LIMIT

"An Act relating to occupancy of motor vehicles."

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

ADOPTS: _____ _____letter of intent

ATTACHES NEW FISCAL NOTE(s): (Dept)
[ ] fiscal impact_____
[X] zero fiscal note Pub Safety
[ ] zero with analysis_____

APPROVES PREVIOUS: (Date/Dept)
[ ] fiscal note(s) _____
[ ] zero fiscal note(s)_____
[ ] zero fn/analysis _____

SIGNING DO PASS:

Richard A. Foster FOSTER
Bill Hudson HUDSON

SIGNING: (Check approp. column)

	Do Not Pass	No Rec	Amend
GROSSENDACHER		X	
LEMAN		✓	

FOSTER
Richard A. Foster
Chairman's Signature

HOUSE COMMITTEE REPORT

(7)
Date Referred: April 17, 1990 FURTHER REFERRALS:

Date of Committee Action: _____

The JUDICIARY Committee considered: HB 535

HOUSE BILL NO. 535 MOTOR VEHICLE FRONT SEAT OCCUPANCY LIMIT

"An Act relating to occupancy of motor vehicles."

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

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s): (Dept)
[ ] fiscal impact_____
[ ] zero fiscal note_____
[ ] zero with analysis_____

APPROVES PREVIOUS: (Date/Dept)
[ ] fiscal note(s) _____
[ ] zero fiscal note(s)_____
[ ] zero fn/analysis _____

SIGNING DO PASS:

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SIGNING: (Check approp. column)

	Do Not Pass	No Rec	Amend
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_____
Chairman's Signature

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: HB 535 No. 1
PUBLISH DATE: HOUSE 4/17/90

CC

FISCAL NOTE

REQUEST:

Revision Date: 4/11/90
Title: Relating to vehicle front seat occupancy
Sponsor: Rep. Taylor
Requestor: House Transportation Committee

Agency Affected: Public Safety
BRU:
Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

CAPITAL	-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						
PART-TIME						
TEMPORARY	-0-	-0-	-0-	-0-	-0-	-0

ANALYSIS: (Attach a separate page if necessary)

Prepared by: House Transportation Committee Phone: 465-4858
Division: Alaska State Legislature Date: 4/10/90

Approved by Commissioner: [signature] Date: 4/10/90
Agency: Dept of Public Safety

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

HB
537

B

HOUSE COMMITTEE REPORT

4/5

(7)
Date Referred: February 12, 1990 FURTHER REFERRALS: JUDICIARY added 4/5

Date of Committee Action: _____

The STATE AFFAIRS Committee considered: HB 537

HOUSE BILL NO. 537 PROPERTY ACQUISITION PRACTICES

"An Act relating to the taking and compensation for damage of property by the state; and providing for an effective date."

RECOMMENDATIONS:
[X] be replaced with CSHB537(SA) [ ] the same title [X] a new title
[ ] have attached amendment(s)
[ ] do pass
[ ] do not pass
[X] no recommendation
[ ] individual recommendations
[ ] additional referral to the Fin Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s): (Dept) APPROVES PREVIOUS: (Date/Dept)

[2] fiscal impact DOT/PF • Court Sys. [ ] fiscal note(s) _____
[ ] zero fiscal note _____ [ ] zero fiscal note(s) _____
[ ] zero with analysis _____ [ ] zero fn/analysis _____

SIGNING DO PASS:

D.C. Foster Boucher

SIGNING: (Check approp. column)

	Do Not Pass	No Rec	Amend
Bruce Hanley Hanley		✓	
Memid		✓	
Finkelstein		✓	

D.C. Foster
Chairman's Signature

HOUSE COMMITTEE REPORT

(7)
Date Referred: April 5, 1990 FURTHER REFERRALS:
(Finance added 4/5) FINANCE

Date of Committee Action: _____

The JUDICIARY Committee considered: HB 537

HOUSE BILL NO. 537 PROPERTY ACQUISITION PRACTICES

"An Act relating to the taking and compensation for damage of property by the state; and providing for an effective date."

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

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s): (Dept)
[ ] fiscal impact _____
[ ] zero fiscal note _____
[ ] zero with analysis _____

APPROVES PREVIOUS: (Date/Dept)
[ ] fiscal note(s) _____
[ ] zero fiscal note(s) _____
[ ] zero fn/analysis _____

SIGNING DO PASS:

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SIGNING: (Check approp. column)

	Do Not Pass	No Rec	Amend
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_____
Chairman's Signature

Item 2

Department of Transportation and Public Facilities

POSITION PAPER

Bill No: H.B. 537

Approved: Mark S. Hickey
Commissioner

Title: An Act Relating to the Taking and Compensation for Damage of Property by the State

Date: March 20, 1990

The Department of Transportation and Public Facilities is concerned with the inclusion of business losses in House Bill No. 537. Payment of long term business losses will have a substantial effect on the department's ability to handle the highway program. Not only will it be a costly program but without case law and a decade of practice, it could jeopardize projects, especially in urban areas. If the bill continues to move in this direction, Alaska will be one of the few states that recognizes business losses as a part of the acquisition process. In addition to the legal issues the appraisals cost could more than triple when trying to determine long term business losses that may be subjective at best. The Federal Highway Administration has suggested that business losses are not generally federal participating. The Relocation Assistance program was designed and enacted at the federal level to assist business that are forced to move or go out of business due to a federal-aid program.

Without specific direction or language addressing the intent of this bill, or how such action will be handled, it is impossible to quantify the impact of paying long term business losses in the State of Alaska.

Item 3

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March 19, 1990

Representative Jim Zawacki
P.O. Box V
Juneau, Alaska 99811

Re: House Bill 537

Dear Jim:

Enclosed are amendments which I believe would be appropriate in reforming Alaska's antiquated and unjust eminent domain laws. As you know, there is no statutory provision requiring just compensation for business loss to property owners whose land has been taken or damaged for a public project. The Alaska Supreme Court, in State v. Hammer, 550 P.2d 820 (Alaska 1976), recognized that a business is a form of property which cannot be taken or damaged unless the property owner is fully indemnified for the loss. The court recognized that just compensation is determined by what the property owner has lost, not what the State has gained. However, because of the specific facts before it, the Supreme Court limited its holding to just compensation for temporary loss of business during relocation of that business. It did not address a situation in which long term business loss is provable or where a business has been forced to close its doors permanently as a consequence of the State's exercise of the power of eminent domain.

Since the Hammer decision, the State and the various municipalities condemning property for public purposes have attempted to circumvent their obligations to fully indemnify property owners for business loss. Over the years, uncounted businesses have been seriously damaged or destroyed as a consequence of condemnation for public projects. Few of these property owners had the economic resources to litigate a case for permanent loss of business damage to the Alaska Supreme Court. Hence, the issue of long term or permanent business loss has not been ruled upon.

Often, the State and municipalities, when exercising a declaration of taking, refuses to appraise and make a deposit of estimated just compensation for any business loss. Moreover, the state and various municipalities have often resorted to

"lowballing" appraisals so that their deposit of estimated just compensation is low. When challenged in court on this issue, the condemnors usually respond, that the court has no jurisdiction to review the adequacy of the deposit; that this is a matter exclusively within the discretion of the condemning agency.

Since 1971, the State has enacted the Uniform Real Property Acquisition Act, which parallels the Federal 1970 Act concerning federally funded projects. The Act sets forth specific guidelines requiring the condemner to appraise property prior to institution of eminent domain proceedings; to engage in fair, good faith negotiations prior to instituting condemnation proceedings; and to allow property owners at least 90 days to vacate the premises after right of entry has been granted by the court. All too often, these measures have been ignored or side stepped by condemners. All that the Federal Act does is to simply admonish condemners to go and treat their subjects kindly. It is not enforceable by any court action. The State Act has been interpreted similarly by the courts.

If these practices are to be stopped, both Title 34 and Title 9 of the Alaska Statutes need to be amended to make the Uniform Acquisition Act enforceable and to require full indemnification of a property owner for any provable business loss legally caused by the exercise of the power of eminent domain. It would be desirable if the Uniform Acquisition Act were to be broadened, so that it applies to all state projects, not to just those which are federally funded. The state's oppressive practices in winking at the Uniform Acquisition Act occur in both situations.

I am aware of these practices, having spent nine years as a trial attorney who condemned land on behalf of the Greater Anchorage Area Borough and Municipality of Anchorage, as well as seven years as an attorney for condemnees.

The proposed amendments to Title 34 would make the Act applicable to all State projects and would require the State to appraise business loss prior to institution of eminent domain proceedings.

The amendments to Title 9 would require that a property owner be fully indemnified for any provable business loss legally caused by condemnation; would give the courts jurisdiction to review the adequacy of any deposit of estimated just compensation in conjunction with a declaration of taking; and would require that any condemning authority, state or municipal, comply with the Uniform Acquisition Act or its municipal counterpart.

These reforms are long overdue. The proposed amendments to Title 34 and Title 9 would insure that no citizen be forced to pay a disproportion cost for a public project.

I would be most appreciative if you could see fit to become a cosponsor of H.B 537, with the amendments which I have suggested. I understand that a public hearing will be held on the bill in the House Affairs Committee at 9:00 a.m. on March 21, 1990.

At the District 7 Republican Convention, the following resolution was passed:

> The Legislature should enact a statute providing that if the State of Alaska or any Municipality takes or damages property for public purpose through the power of eminent domain, the property owner is entitled to full indemnification for any provable business loss legally caused by exercise of the eminent domain power.

Thanks for your help.

Sincerely,

PLETCHER, WEINIG,
LOTTRIDGE & MOSER

Richard A. Weinig

RAW/kaa

Introduced: 2/12/90
Referred: State Affairs, and Judiciary

6-1833A

BY REP. BOUCHER BY REQUEST

IN THE HOUSE

~~HOUSE BILL NO. 537~~

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "~~An Act~~ relating to the taking and compensation for damage of property by the state; and providing for an effective date."

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

* Section 1. AS 34.60.020 is amended to read:

Sec. 34.60.020. STATE AGENCIES TO ESTABLISH PROGRAM. State agencies shall establish and provide the means for implementing a program providing fair and reasonable relocation and other payment for persons displaced as a result of [~~federally assisted~~] activities undertaken by state agencies, to carry out relocation assistance programs for persons displaced, and to provide payments to persons as a result of taking or damaging [ACQUISITION] of [REAL] property for activities of state agencies.

* Sec. 2. AS 34.60.040(a) is amended to read:

(a) When the taking or damaging [ACQUISITION] of [REAL] property for a [~~federally assisted~~] program or project undertaken by a state agency will result in the displacement of a person, the state agency responsible for the program or project shall make payment to the displaced person, upon proper application as approved by the state agency, for

(1) actual reasonable expenses in moving a person, the person's family, business, farm operation, or other personal property;

(2) actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, but

have been required to relocate the property as determined by the state agency; and

(3) actual reasonable expenses in searching for a replacement business or farm.

* Sec. 3. AS 34.60.050 is amended to read:

Sec. 34.60.050. REPLACEMENT HOUSING FOR HOMEOWNERS. (a) In addition to payments otherwise authorized by this chapter, the state agency shall make an additional payment not to exceed $22,500 [,] to a displaced person who is displaced from a dwelling actually owned and occupied by the person for not less than 180 days before the initiation of negotiations for the acquisition of the property. This additional payment must [SHALL] include the following elements:

(1) the amount, if any, that [WHICH], when added to the taking [ACQUISITION] cost of the dwelling taken [ACQUIRED] by the state agency, equals the reasonable cost of a comparable replacement dwelling that [WHICH] is a decent, safe, and sanitary dwelling adequate to accommodate the displaced person, is reasonably accessible to public services and places of employment, and is available on the private market; all determinations required to carry out this paragraph shall be made in accordance with standards established by the state agency making the additional payment;

(2) the amount, if any, that [WHICH] will compensate the displaced person for any increased interest costs that [WHICH] the displaced person is required to pay for financing the taking [ACQUISITION] of the comparable replacement dwelling; this amount may be paid only if the dwelling taken [ACQUIRED] by the state agency was encumbered by a bona fide mortgage that [WHICH] was a valid lien on the dwelling for not less than 180 days before the initiation of negotiations for the taking [ACQUISITION] of the dwelling; and

taking [ACQUISITION] of the dwelling; and

(3) reasonable expenses incurred by the displaced person for evidence of title, recording fees, and other closing costs incident to the purchase of the replacement dwelling, but not including prepaid expenses.

(b) The additional payment authorized by (a) of this section may be made only to a displaced person who purchases and occupies a replacement dwelling that [WHICH] is decent, safe, and sanitary not later than the end of the one-year [ONE YEAR] period beginning on the date on which the person receives from the state agency final payment of all costs of the taken dwelling [,] or the date on which the person moves from the taken [ACQUIRED] dwelling, whichever is the later date.

* Sec. 4. AS 34.60.060 is amended to read:

Sec. 34.60.060. REPLACEMENT HOUSING FOR TENANTS AND OTHERS. In addition to amounts otherwise authorized by this chapter, the state agency shall make a payment to or for a displaced person displaced from a dwelling, who is not eligible to receive a payment under AS 34.60.050, if the dwelling was actually and lawfully occupied by the displaced person for not less than 90 days before the initiation of negotiations for taking [ACQUISITION OF] the dwelling. The payment shall be either

(1) the amount necessary to enable the displaced person to lease or rent for a period not to exceed three years and six months [,] a decent, safe, and sanitary dwelling of standards adequate to accommodate the displaced person in areas not generally less desirable in regard to public utilities and public and commercial facilities, and reasonably accessible to the person's place of employment, but not to exceed $5,250; or

(2) the amount necessary to enable the displaced person to

make a down payment, including incidental expenses described in AS 34.60.050(a)(3), on the purchase of a decent, safe, and sanitary dwelling of standards adequate to accommodate the displaced person in areas not generally less desirable in regard to public utilities and public and commercial facilities, but not to exceed $5,250.

* Sec. 5. AS 34.60.070 is amended to read:

Sec. 34.60.070. EXPENSES INCIDENTAL TO TRANSFER OF PROPERTY. The state agency, ~~as soon as practicable~~ after the date of payment of the purchase price or the date of deposit in court of funds to satisfy the award of compensation in a condemnation proceeding to take or compensate for damage to [ACQUIRE REAL] property, whichever is the earlier, shall reimburse the owner, to the extent the department considers fair and reasonable, for expenses necessarily incurred for

(1) recording fees, transfer taxes, and similar expenses incidental to conveying the [REAL] property to the state agency;

(2) penalty costs for prepayment of a preexisting recorded mortgage entered into in good faith encumbering the real property, if the mortgage was a valid lien on the property for not less than 180 days before the initiation of negotiations for the acquisition of the property; and

(3) the pro rata portion of [REAL] property taxes paid that [WHICH] are allocable to a period subsequent to the date of vesting title in the state [,] or the effective date of possession of the [REAL] property by the state agency, whichever is the earlier.

* Sec. 6. AS 34.60.080(a) is amended to read:

(a) The state court having jurisdiction of a proceeding instituted by the state agency to take [ACQUIRE REAL] property by condemnation shall award the owner of a [ANY] right to, or title to, or interest in, the [REAL] property a sum that [WHICH] will in the opinion of ~~the court reimburse the owner for reasonable costs, disbursements, and~~

the court reimburse the owner for reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees [,] actually incurred because of the condemnation proceedings, if

(1) the final judgment is that the state agency cannot take [ACQUIRE] the [REAL] property by condemnation; or

(2) the proceeding is abandoned by the state agency.

* Sec. 7. AS 34.60.090(a) is amended to read:

(a) When the taking or damaging [ACQUISITION] of [REAL] property for a program or project undertaken by a state agency for a [~~federally assisted~~] program or project undertaken by the state agency will result in the displacement of a person [ON OR AFTER JANUARY 2, 1971], the state agency shall provide a relocation assistance advisory program for displaced persons that [WHICH] offers the services described in (c) of this section. If the state agency determines that a person occupying property immediately adjacent to the [REAL] property taken [ACQUIRED] is caused substantial economic injury because of the taking [ACQUISITION], it may offer the occupant relocation advisory services under the program.

* Sec. 8. AS 34.60.120 is amended to read:

Sec. 34.60.120. UNIFORM [REAL] PROPERTY TAKING AND DAMAGE COMPENSATION [ACQUISITION] POLICY. A state agency or other entity taking or damaging [ACQUIRING REAL] property for a [ANY] project or program in which State [~~federal or federal aid~~] funds are used shall to the greatest extent practicable comply with the following policies:

(1) Every reasonable effort shall be made to expeditiously take or make compensation for [ACQUIRE REAL] property by negotiation.

(2) Property to be taken or damaged [REAL PROPERTY] shall be appraised before the initiation of negotiations, and the owner or a designated representative shall be given an opportunity to accompany

the appraiser during inspection of the property

(3) Before the initiation of negotiations for [REAL] property, an amount shall be established that [WHICH] is reasonably believed to be just compensation for the [REAL] property taken or damaged, and that amount shall be offered for the property. In no event shall the amount be less than the approved appraisal of the fair market value of the property. A decrease or increase in the fair market value of [REAL] property before the date of valuation caused by the public improvement for which the property is taken [ACQUIRED] or by the likelihood that the property would be taken [ACQUIRED] for or damaged by the improvement, other than that due to physical deterioration within the reasonable control of the owner, will be disregarded in determining the compensation for the property. The owner of the [REAL] property to be taken [ACQUIRED] shall be provided with a written statement of, and a summary of the basis for, the amount established as just compensation.

(4) An owner may not be required to surrender possession of [REAL] property before the state agency concerned pays the agreed purchase price or deposits with the court in accordance with applicable law, for the benefit of the owner, an amount not less than the approved appraisal of the fair market value of the property [,] or the amount of the award of compensation in the condemnation proceeding for the property.

(5) The construction or development of a public improvement shall be so scheduled that, to the greatest extent practicable, a person lawfully occupying [REAL] property is not required to move from a dwelling, assuming a replacement dwelling will be available, or to move the person's business or farm operation [,] without at least 90 days' written notice of the date by which the move is required.

~~(6) If an owner or tenant is permitted to occupy the [REAL]~~

(6) If an owner or tenant is permitted to occupy the [REAL] taken or damaged property [ACQUIRED] on a rental basis for a short term or for a period subject to termination by the state agency on short notice, the amount of rent required shall not exceed the fair rental value of the property to a short-term occupier.

(7) In no event may the time of condemnation be advanced or negotiations or condemnation and the deposit of funds in court for the use of the owner be deferred, nor any other coercive action be taken in order to compel an agreement on the price to be paid for the taking or damage to property.

(8) If an interest in [REAL] property is to be taken or damaged [ACQUIRED] by exercise of the power of eminent domain, formal condemnation proceedings shall be instituted. The [ACQUIRING] state agency may not intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking or damage of the [REAL] property.

(9) If the taking or damage [ACQUISITION] of only part of the property would leave its owner with an uneconomic remnant, an offer to take [ACQUIRE] the entire property shall be made.

* Sec. 9. AS 34.60.130(a) is amended to read:

(a) Notwithstanding another [ANY OTHER] provision of law, if a state agency takes an [ACQUIRES ANY] interest in real property, the state agency must take [ACQUIRE] at least an equal interest in all buildings, structures, or other improvements located upon the real property that [WHICH] the state agency requires to be removed from the real property or that [WHICH] the state agency determines will be adversely affected by the use to which the real property will be put.

* Sec. 10. AS 34.60.130(b) is amended to read:

(b) For the purpose of determining just compensation to be paid

(for a building, structure, or other improvement required to be taken

[ACQUIRED] under (a) of this section, the building, structure, or other improvement is considered to be a part of the real property to be taken [ACQUIRED] notwithstanding the right or obligation of a tenant, as against the owner of another [ANY OTHER] interest in the real property, to remove the building, structure, or improvement at the expiration of the tenant's term, and the fair market value that [WHICH] the building, structure, or improvement contributes to the fair market value of the real property to be taken [ACQUIRED], or the fair market value of the building, structure, or improvement for removal from the real property, whichever is the greater, shall be paid to the tenant.

* Sec. 11. AS 34.60.150 is amended to read:

Sec. 34.60.150. DEFINITIONS. In this chapter

(1) "business" means any lawful activity, excepting a farm operation, conducted primarily

(A) for the purchase, sale, lease, and rental of personal and real property, and manufacture, processing, or marketing of products, commodities, or any other personal property;

(B) for the sale of services to the public;

(C) by a nonprofit organization; or

(D) for assisting, solely for the purpose of AS 34.-60.040(a), in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, personal property, or services by the erection and maintenance of an outdoor advertising display, whether or not the display is located on the premises on which any of the above activities are conducted;

(2) "displaced person" means a [ANY] any person who [, ON OR AFTER JANUARY 2, 197-] moves from [HIS] property, or moves per-

OR AFTER JANUARY 2, 1971] moves from [REAL] roperty, or moves personal property from [REAL] property, as a result of the taking [ACQUISITION] of the [REAL] property, in whole or in part, or as a result of the written order of the state agency to vacate [REAL] property, for a program or project undertaken by the state agency, and solely for the purpose of AS 34.60.040(a) and 34.60.090, as a result of the taking [ACQUISITION] of, or as a result of the written order of a state agency to vacate other [REAL] property on which the person conducts a business or farm operation for the program or project;

(3) "farm operation" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing these products or commodities in sufficient quantity to be capable of contributing materially to the operator's support;

(4) "mortgage" means those classes of liens commonly given to secure advances on, or the unpaid purchase price of, real property [,] under the law of the state in which the real property is located, together with the credit instruments, if any, secured by the property;

(5) "person" means an individual, partnership, corporation, or association;

(7) ~~(6)~~ "state agency" means a department, agency, instrumentality, corporate authority of the state, or a political subdivision of the state, or a department, agency, instrumentality or authority of two or more political subdivisions of the state participating in federally assisted programs.

* Sec. 12. AS 34.60.100 is repealed.

* Sec. 13. This Act takes effect immediately under AS 01.10.070(c).

(6) "property" includes short-term and long term business interest;

AS 09.055 is amended as follows:

* Section 14. AS 09.55.310 is amended to read:

Sec. 09.55.310. HEARING. (a) The jury or master shall hear the allegations and evidence of persons interested and shall ascertain and assess the following:

(1) the value of the property sought to be condemned, and all improvements on it pertaining to the realty, and of each separate estate or interest in it; if it consists of different parcels, the value of each parcel and each estate or interest in each parcel shall be separately assessed;

(2) if the property sought to be condemned constitutes only a part of a larger parcel, the damages which will accrue to the portion not sought to be condemned by reason of its severance from the portion sought to be condemned, and the construction of the improvements in the manner proposed by the plaintiff;

(3) separately, how much the portion not sought to be condemned and each estate or interest in it will be benefitted, if at all, by the construction of the improvements proposed by the plaintiff; and, if the benefit is equal to the damages assessed under (2) of this section, the owner of the parcel shall be allowed no damages except the value of the portion taken; but if the benefits are less than the damages so assessed, the former shall be deducted from the latter

and the remainder shall be the only damages allowed in addition to the value;

(4) if the property sought to be condemned is for a railroad, the cost of good and sufficient fences along the line of the railroad, and the cost of cattle guards where fences may cross the line of the railroad.

(5) the full amount of business loss and/or loss of goodwill legally caused by exercise of the power of eminent domain.

(b) As far as practicable, compensation shall be assessed for each source of damages separately.

* Sec. 15. AS 09.430 is amended to read:

Sec. 09.55.430. CONTENTS OF DECLARATION OF TAKING. The declaration of taking shall contain

(1) a statement of the authority under which the property or an interest in it is taken;

(2) a statement of the public use for which the property or an interest in it is taken;

(3) a description of the property sufficient for the identification of it;

(4) a statement of the estate or interest in the property;

(5) a map or plat showing the location of the property;

(6) a statement of the amount of money estimated by the plaintiff to be just compensation for the property or the interest in it;

(7) a statement that the property is taken by necessity for a project located in a manner which is most compatible with the greatest public good and the least private injury <u>including, but not limited to, the full amount of business loss and/or loss of goodwill legally caused by exercise of the power of eminent domain</u>.

* Sec. 3. AS 09.55.440 is amended to read:

Sec. 09.55.440. VESTING OF TITLE AND COMPENSATION. (a) Upon the filing of the declaration of taking and the deposit with the court of the amount of the estimated compensation stated in the declaration, title to the estate as specified in the declaration vests in the plaintiff, and that property is condemned and taken for the use of the plaintiff, and the right to just compensation for it vests in the persons entitled to it. The compensation shall be ascertained and awarded in the proceed and established by judgment. the judgment shall include interest at the rate set out in AS 09.30.070 on the amount finally awarded which exceeds the amount paid into court under the declaration of taking. The interest runs from the date title vests to the date of payment of the judgment.

(b) Upon motion of a party in interest and notice to all parties, the court shall [may] order that the money deposited or a part of it be paid immediately to the person or persons entitled to it or an account of the just compensation to be awarded in the proceedings. If the compensation finally awarded exceeds the amount of money deposited, the deposit shall be offset against the award. If the compensation finally awarded is less than the amount of money deposited, the court shall enter judgment in favor of the plaintiff and against the proper parties for the amount of the excess.

* Sec. 16. AS 09.55.450 is amended to read:

Sec. 09.55.450. RIGHT OF ENTRY AND POSSESSION. (a) Upon the filing of the declaration of taking and the deposit of the estimated compensation, the court may, upon motion, fix the time during which and the terms upon which the parties in possession are required to surrender possession to the petitioner. However, the right of entry shall not be granted the plaintiff until the running of the time for the defendant to file an objection to the declaration of taking or until after the hearing on any objection to the declaration of taking if the objection is made in the time allowed by law. The court shall not grant the right of entry until it determines that the amount of estimated just compensation deposited pursuant to AS 09.55.440(a) is adequate just compensation for all property, real or

personal, which has been taken or damage. Where the party in possession withdraws any part of the award and remains in possession, the court may fix a reasonable rental for the premises to be paid by that party to the plaintiff during such possession.

(b) The court may direct the payment of delinquent taxes and special assessments out of the amount determined to be just compensation, and make orders with respect to encumbrances, liens, rents, insurance, and other charges as are just and equitable.

(c) The right to take possession and title in advance of final judgment where a declaration of taking is filed is in addition to any other rights to take possession provided in AS 09.55.240 -- 09.55.460.

* Sec. 18. 09.55.460 is amended to read:

Sec. 05.44.460. EFFECT OF APPEAL. (a) No appeal or a bond or undertaking given operates to prevent or delay the vesting of title to real property or the right to possession of it.

(b) The plaintiff may not be divested of a title or possession acquired except where the court finds that (1) the property was not taken by necessity for a public use or purpose in a manner compatible with the greatest public good and the least private injury; (2) the amount of estimated just compensation deposited pursuant to AS 09.55.440(a) is adequate, (3) the State of Alaska failed to comply with AS 34.60.010 -- 150;

(4) a municipal corporation failed to comply with municipal ordinances concerning relocation assistance or real property acquisition practices which are substantially similar to AS 34.60.010 -- 150; or (5) plaintiff failed to comply with AS 09.55.275. In the vent of that finding, the court shall enter the judgment necessary to (1) compensate the persons entitled to it for the period during which the property was in the possession of the plaintiff, (2) recover for the plaintiff any award paid to any person, and (3) order the plaintiff to restore the property to the condition in which it existed at the time of the filing of the declaration of taking unless such restoration is impossible, in which case the court shall award damages to the property persons as compensation for any diminution in the value of the property caused by the plaintiff's wrongful possession.

HB 537

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William R. Satterberg, Jr.
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MAR 23 1987

March 18, 1987

The Honorable John B. "Jack" Coghill
The Alaska State Senate
Alaska State Legislature
Pouch V (MS 3100)
Juneau, AK 99811

RE: Proposed Legislation Eminent Domain Condemnation

Dear Senator Coghill:

Pursuant to our telephone conversation of Monday, March 2, 1987, this letter is to outline for your consideration some problems which I perceive with respect to the handling of condemnation cases in Alaska.

Specifically, under Alaska law, as established both constitutionally and by statute, condemnation cases represent a very special instance involving the government's treatment of its citizens. Article I, Section 18 of the Alaska Constitution provides that private property may not be taken or damaged by the State of Alaska without just compensation being offered. Although this mandate, by and of itself, is meritorious, the fact of the matter is that the administration of condemnation matters by the State of Alaska leaves much to be desired at this time.

As you are aware, I have worked in the field of emminent domain since 1976, and have done work for both the condemnor and the condemnee. I consider my work in the field to be relatively extensive, and have been involved with proceedings ranging from the most simple of takings to the extremely complex. Over the years, certain problems have presented themselves.

Perhaps one of the greatest problems in the field of condemnation rests in the area of having the case proceed to judgment with payment to the condemnee. Virtually all cases which have been taken through trial in the field of eminent domain have been appealed by the State of Alaska in the event of an adverse verdict to the State. Because the State of Alaska is not required by law to post a bond pending an appeal to the Supreme Court, it is a simple exercise to file

an appeal and thus delay the settlement of a case for well over an additional year. During the appeal time, the landowner continues to incur substantial attorney's fees. Furthermore, during appeal, in the past, attorney's fees incurred have not been compensible even though the landowner has received its attorney's fees before lower court proceedings. As such, the State is given a very potent weapon to compel a settlement by simply filing an appeal, knowing full well that the landowner generally will have to expend between five to twenty thousand dollars ($5,000 - $20,000) for appellate briefing which, most likely, will not be reimbursed under the current state of the law.

Another area of eminent domain which has caused serious concern as of recent has been in the area of mineral and materials resources. Although the landowner is capable of selling the resource on a unit basis in the marketplace, the State of Alaska appraises the property using a simple real estate formula of before and after values, essentially not taking into consideration the unit value of the material. A classic example of this occurred in Nome where the State of Alaska utilized on the Hastings Creek Project several tons of material, but offered the landowners only surface value for the property. The State agreed on the Nome Project that the material had distinct value, moreover, and further stated that one of the major reasons for condemning the parcel, which was owned by Allen Vezey and the Bering Straits Native Corporation, was to obtain the source of material.

Another area of concern in mineral and materials acquisition exists. When material and mineral properties which are known to exist are condemned by the State of Alaska, an obligation should be placed upon the State, by statute, to do a reasonable subsurface evaluation of the parcel. To date, the State of Alaska has simply insisted that the responsibility is that of the landowner to hire the drilling experts, geologists, or the like, knowing full well that substantial costs might be entailed in employing such resources. Again, the landowner has been faced with the burden, as opposed to the State of Alaska, in evaluating the property, and the Nome cases cited are another example.

An area of current abuse of eminent domain pertains to the deposit made by the State of Alaska. Under Alaska law, once a deposit is made, the landowner may withdraw the deposit for his use during the pendency of the condemnation case. The problem which occurs, however, is that there is nothing to compel the State of Alaska to make a good faith deposit. Although the law does state that a good faith deposit is implied, the State of Alaska has the option of either depositing far too little for the property, or, conversely, an amount far too great. In the case of an insufficient deposit, the landowner is faced with virtually no funds with which to present its defense. In the event of

an overly substantial deposit, however, the landowner can be tricked into withdrawing the entire deposit and spending the deposit before the conclusion of the case, only to find that the landowner must now reimburse the State of Alaska for the amount of money withdrawn at 10.5 percent interest. As such, a trap for the unwary exists under the second scenario under a situation where, say, the deposit is over twice as large as the amount the State intends to offer at trial and, once the landowner has withdrawn the entire amount of money, the landowner becomes subject to the State's mercy. This issue could be remedied by requiring the State of Alaska to offer an amount which is commensurate with the highest appraisal performed for the State of Alaska and by further mandating, by law, that the State of Alaska cannot offer less than the deposit either at the trial of the case, or in settlement. In short, the State would be bound by its deposit.

Recognizing the above-stated concerns, I am enclosing with this correspondence to you some proposed legislation. Needless to say, the proposed legislation is in draft format and, as such, there is no pride of authorship involved. If even some of the proposed legislation can be embodied into law in the 1987 session, many of the abuses currently followed by the State of Alaska will be curtailed.

I look forward to your thoughts on this matter.

Sincerely yours,

William R. Satterberg, Jr.

WRS/cf

Enclosures

Proposed Legislation:

Additional Section to Eminent Domain Code, Title 9

ATTORNEY'S FEES

A condemnee shall not be denied its costs and attorney's fees for issues raised during litigation unless the court determines upon a full review of the facts and law of the case that the specific issue raised by the condemnee for which denial of attorney's fees is sought by the condemning authority is a frivolous issue. The failure of a condemnee to prevail upon a point of law raised during condemnation proceedings shall not be the sole basis for a denial of attorney's fees to the condemnee if the issue of law has been fairly raised in the context of the lawsuit.

In the event of an appeal by the State of Alaska of any judgment in a condemnation case, the condemnee shall be entitled to its full and reasonable attorney's fees incurred on appeal. In the event of an appeal by the condemnee of any judgment in a condemnation case, the condemnee shall be entitled to its full and reasonable attorney's fees if it prevails on appeal. The Supreme Court is further authorized to award attorney's fees to the condemnee in the event of an unsuccessful appeal by the condemnee in the event that the Supreme Court determines that the appeal was taken in good faith and was not frivolous.

Proposed Legislation, cont.:

DEPOSIT AND DISTRIBUTION

The amount of funds deposited by the State of Alaska in any condemnation case shall constitute the State's offer, to which the State of Alaska shall be bound. In the event that the State of Alaska submits that an amount less than the State's deposit shall form the basis of just compensation for the purposes of a master's hearing or trial, the landowner shall still be entitled to retain the deposit made by the State of Alaska as full compensation notwithstanding any jury verdict or award resulting in just compensation being determined as less than the deposit made by the State.

In the event of a condemnation involving property having a distinct mineral or material source value, the condemning authority must conduct a reasonable subsurface analysis to determine the specific quality and quantity of the material source being acquired and the fair market value of such. Any offer to the landowner shall be made in consideration of the specific subsurface value of the property as determined following such subsurface analysis.

The State of Alaska shall not be entitled to acquire property by eminent domain for the purposes of obtaining a materials source, nor shall the State of Alaska be entitled to design a project in such a manner so as to take advantage of a material source under circumstances where reasonable design standards would not provide for the acquisition of the materials source. In the event of the acquisition of a material source by the State of Alaska, the State of Alaska shall pay to the owner the owner's net profit for the source as computed upon unit values existing in the marketplace. Although the demands created by the project for which the source was acquired may not be computed in arriving at just compensation, nothing shall preclude the consideration of demands and markets created by unrelated projects in the establishing of just compensation to be paid.

More Proposed Legislation:

INTERIM AWARD OF COSTS AND ATTORNEYS FEES

Upon application to the court by any condemnee, the court shall make an interim award of costs and attorneys fees to any such applicant if the court, following application, determines that the interim award of the costs and fees sought by the applicant represents those costs and fees reasonably and necessarily incurred by the condemnee in seeking just compensation. Application by the condemnee for costs and fees shall not be more often than on a quarterly basis following the institution of condemnation proceedings. In the event that any interim application for costs and fees shall involve or disclose privileged communications, the court shall be entitled to review any such application *in camera*.

Any award of costs or fees under this provision shall be conclusive and not subject to repayment by the condemnee in the event of a failure by the condemnee to prevail in the overall disposition of its case.

DEPOSIT OF MASTER'S AWARD

In the event of an appeal by the condemnor of any master's award, the condemnor shall deposit within twenty (20) days of any such appeal that amount of money forming the master's award, for the use and benefit of the condemnee.

Proposed Legislation, cont.:

PROHIBITION OF AWARD OF CONDEMNOR'S ATTORNEYS FEES IN CONDEMNATION CASES

At no time shall a condemnor be entitled to an award of attorneys fees or costs as against a condemnee in any cause of action involving either trial or appellate proceedings.

Item 6

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

MEMORANDUM April 4, 1990

SUBJECT: Sectional summary of draft CSHB 537 (State Affairs) (Work Order No. 6-1833E, 4-3-90)

TO: Representative H.A. "Red" Boucher
Chair, House State Affairs Committee

FROM: Theresa L. Bannister TLB
Legislative Counsel

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

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1 amends AS 09.55.310(a) to require the jury or master in an eminent domain action to ascertain and assess the full amount of business loss caused by taking or damaging the property.

Section 2 amends AS 09.55.440(b) by directing the court in an eminent domain action to expeditiously order that deposited money be paid immediately to the entitled persons.

Section 3 amends AS 09.55.450(a) by adding a third situation in which a court is prohibited from granting a right of entry in an eminent domain action. The new provision delays the right of entry until the court determines that the deposited amount of the estimated just compensation for all property taken or damaged is substantiated by one or more appraisals prepared in good faith.

Section 4 adds four additional situations in which the plaintiff in an eminent domain action may be divested of a title or possession taken. The new situations are when the court

finds that the amount of the estimated just compensation deposited under AS 09.55.440(a) is not adequate, the state failed to comply with AS 34.60, the plaintiff is a municipality that failed to comply with AS 34.60, or the plaintiff failed to comply with AS 09.55.275.

Section 5 defines "business loss" and "private injury" for the eminent domain article.

Section 6 makes a technical change to make AS 29.35.100(25) compatible with the change made in sec. 7.

Section 7 adds to AS 29.35.030(a) the requirement that municipalities use the procedures set out in AS 09.55.250 - 09.55.-460 (Eminent Domain) and AS 34.60 (Relocation Assistance and Real Property Acquisition Practices), regardless of the source of funding, when exercising the powers of eminent domain and declaration of taking.

Section 8 states that the purpose of AS 34.60 is to establish a uniform policy for the fair and equitable treatment of persons displaced as a result of state agency activities.

Section 9 requires state agencies to establish a relocation and payment program for persons displaced as a result of state agency activities, in order to carry out relocation assistance programs and to provide payments to persons as a result of the taking or damaging of property for activities of state agencies.

Section 10 requires a state agency to make certain payments to displaced persons when the taking or damaging of property for a state agency program or project will displace the persons.

Section 11 Sec. 34.60.050(a) requires a state agency to make, in addition to other payments authorized by AS 34.60, an additional payment to a displaced person who meets certain requirements. The payment must include

(1) the amount that, when added to the cost of taking the dwelling, equals the reasonable cost of a comparable replacement dwelling that meets certain criteria;

(2) the amount that will compensate the displaced person for any increased interest costs that the displaced person is required to pay for financing a comparable replacement dwell-

ing; this amount is to be paid only if the dwelling taken by the state agency was encumbered by a mortgage meeting certain requirements a specified time before the negotiations began for the taking of the dwelling; and

(3) certain other expenses incurred by the displaced person relating to the replacement dwelling.

Sec. 34.60.050(b) limits the making of the additional payment authorized in (a) to a displaced person who purchases and occupies a replacement dwelling (that meets certain criteria) within one year from (1) when the person receives final payment of all costs of the taken dwelling, or (2) when the person moves from the taken dwelling, whichever is later.

Section 12 requires state agencies, in addition to amounts otherwise authorized by AS 34.60, to make a specified payment to a displaced person who is not eligible for a payment under AS 34.60.050, if the dwelling was actually and lawfully occupied by the person for a certain period before the initiation of negotiations for taking the dwelling.

Section 13 requires a state agency, as soon as practicable after paying the purchase price or depositing the funds to satisfy the award of compensation in a condemnation proceeding, whichever event is earlier, to reimburse the owner to a fair and reasonable extent for certain expenses necessarily incurred for conveying the property to the state agency, certain mortgage prepayment penalty costs, and a pro rata portion of certain property taxes.

Section 14 requires the state court handling a state agency condemnation proceeding to award the owners of certain interests in the property a sum that the court determines will cover certain costs incurred because of the condemnation proceedings, if (1) the final judgment is that the agency cannot take the property by condemnation, or (2) the state agency abandons the proceeding.

Section 15 directs a state agency to provide a specified relocation assistance advisory program for displaced persons when the taking or damaging of property for a program or project undertaken by a state agency will result in the displacement of a person. Directs the state agency to offer the occupant of immediately adjacent property the relocation

advisory services under the program if the person is caused substantial economic injury because of the taking.

Section 16 directs a state agency or other entity taking or damaging property for a project or program to comply with certain policies to the greatest extent practicable. These policies include

(1) making every reasonable effort to expeditiously take or make compensation for the property by negotiation;

(2) appraising the property before the initiation of negotiations, and giving the owner or designated representative an opportunity to accompany the appraiser during the inspection of the property;

(3) before the initiation of negotiations for the property, establishing and offering a reasonable amount for compensation for all property taken or damaged; the amount is not to be less than the approved appraisal of the fair market value of the property; certain increases or decreases in the fair market value of the property are to be disregarded; the owner of the property must be provided with certain written information about the amount established as compensation;

(4) not requiring the owner to surrender possession of the property before a specified payment or court deposit is made;

(5) scheduling the construction or development of a public improvement so that a person lawfully occupying the property is not required to move or to move the person's business or farm operation without at least 90 days' written notice of the date for moving, and until 90 days have elapsed after

(1) a court determines that the prerequisites under AS 09.55.270 have been met, or

(2) has ruled under AS 09.55.450(a) on any objections made to a declaration of taking, or the time for filing objections under AS 09.55.450(a) has expired without an objection being filed.

(6) if an owner or tenant is permitted to occupy the taken or damaged property on a rental basis for a short term or for a term subject to termination by the state agency on short notice, not charging rent that exceeds the fair rental value of the property to a short-term occupier;

(7) not advancing the time of condemnation, deferring certain other activities, or engaging in other coercive action in order to compel an agreement on the price for taking or damaging the property;

(8) initiating formal condemnation proceedings if an interest in property is to be taken or damaged by the exercise of eminent domain and not intentionally requiring the owner to begin legal proceedings to prove the taking or damage;

(9) offering to take the entire property if the taking or damage of only part of the property would leave the owner with an uneconomic remnant.

Section 17 directs a state agency taking property to take at least the same interest as taken in the property, in all buildings, structures, and certain other improvements located upon the property that are to be removed by the state agency or that will be adversely affected by the use to which the real property will be put.

Section 18 states that for determining just compensation for a building, structure, or other improvement required to be taken under AS 34.60.130(a) the building, structure, or other improvement is considered to be a part of the real property to be taken although a tenant has the right or obligation to remove it. The tenant with the right or obligation of removal is to be paid the fair market value that the building, structure, or improvement contributes to the fair market value of the real property to be taken, or the fair market value of the building, structure, or improvement for removal, whichever is greater.

Section 19 authorizes a state agency to make, in addition to other programs authorized by AS 34.60, loans to encourage and facilitate the construction or rehabilitation of housing to meet the needs of displaced persons. States that the loans are part of the project cost, identifies to whom and for what they may be made, identifies the maximum proportion of certain planning and financing costs that the loans may constitute, indicates when and how much interest is to be charged, establishes certain repayment requirements, and authorizes the cancellation of a loan under certain circumstances.

Section 20 authorizes a state agency to take the action necessary or appropriate to provide certain housing by using

funds authorized for the project, if the agency program or project cannot proceed to actual construction because comparable replacement sale or rental housing is not available and if the agency determines that housing cannot otherwise be made available.

Section 21 adds a definition of property to include short-term and long-term business interests. Makes several changes in the definition of "displaced person" to reflect the changes in the rest of the chapter and to delete an obsolete date.

Section 22 repeals AS 34.60.100.

Section 23 gives the act an immediate effective date.

If I can be of further assistance, please advise.

TLB:mi
wkmi6/068

b. Example / Checklist Contact Sheet

LEGISLATIVE SPONSOR: House State Affairs TC DATE/DAY: Wed. Mar 21

Pub. Hear Work Ses. Inv. Hear TIME: 8:30-10 AM

LEGISLATIVE REFERENCE: HB537 JUNEAU ROOM: Cap 102

SUBJECT: Property Acquisition Practices BRIDGE:

OF PORTS:

CONTACT: Ann PH: 4963 DATE TAKEN/BY: 3/14 Joanne

****

TELECONFERENCE SITES:

LIO'S	LTC'S	VTS'S
Anchorage	Homer	See List on
Barrow *	Wrangell	Reverse Side
Bethel		
Delta Junction *		
Dillingham *		
Fairbanks	ALL LIO'S	
Glennallen *		
Juneau		
Ketchikan	OTHER SITES WELCOME WITH PRIOR NOTIFICATION	
Kodiak		
Kotzebue		
Mat-Su		
Nome		
Petersburg *		
Sitka		
Soldotna		
Valdez *		

OFFNETS: _____

CHAIRING SITE: Juneau

CHAIRPERSON: Boucher

[ ] CONFORMS TO LEGISLATIVE COUNCIL POLICY 4/85

_____ _____

SIGNATURE OF SPONSOR/CONTACT PERSON DATE

****

SPECIAL INSTRUCTIONS

add 271 - Peter Sokolov
BRIDGE: 562-2877

* SESSION ONLY

HOUSE COMMITTEE ON STATE AFFAIRS

RECAP OF
HB 537

Property Acquisition Practices

Received February 12, 1990
by Rep. Boucher by Request

Heard March 21, 1990
Heard March 29, 1990
Heard April 4, 1990

Adopted CSHB 537 (SA) April 4, 1990

Passed Out of Committee April 4, 1990
1 Do Pass
3 No Recommendation

TABLE OF CONTENTS

HB 537: Property Acquisition Practices

HB

538

HOUSE COMMITTEE REPORT

(7)
Date Referred: April 9, 1990 FURTHER REFERRALS:
FINANCE

Date of Committee Action: _____

The JUDICIARY Committee considered: HB 538

HOUSE BILL NO. 538 CHILD VISITATION MEDIATION PROJECT

"An Act authorizing a child visitation mediation project; and providing for an effective date."

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

ADOPTS: _____letter of intent

ATTACHES NEW FISCAL NOTE(s): (Dept)
[ ] fiscal impact_____
[ ] zero fiscal note_____
[ ] zero with analysis_____

APPROVES PREVIOUS: (Date/Dept)
[ ] fiscal note(s) _____
[ ] zero fiscal note(s)_____
[ ] zero fn/analysis _____

SIGNING DO PASS:

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

SIGNING: (Check approp. column)

	Do Not Pass	No Rec	Amend

_____
Chairman's Signature

HOUSE COMMITTEE REPORT

6 4/9

(7)
Date Referred: February 12, 1990 FURTHER REFERRALS: JUDICIARY FINANCE

Date of Committee Action: 4/6/90

The HEALTH, EDUCATION, & SOCIAL SERVICES Committee considered: HB 538

HOUSE BILL NO. 538 CHILD VISITATION MEDIATION PROJECT

"An Act authorizing a child visitation mediation project; and providing for an effective date."

RECOMMENDATIONS:
[X] be replaced with CS HB 538 (HESS) [ ] the same title [X] a new title
[ ] have attached amendment(s)
[X] do pass
[ ] do not pass
[ ] no recommendation
[ ] individual recommendations
[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s): (Dept) APPROVES PREVIOUS: (Date/Dept)

[ ] fiscal impact _____ [ ] fiscal note(s) _____
[X] zero fiscal note HESS Comm. [ ] zero fiscal note(s) _____
[ ] zero with analysis _____ [ ] zero fn/analysis _____

SIGNING DO PASS: ELLIS

GRUENBERG
C. DAVIS
BOYER

SIGNING: (Check approp. column)

	Do Not Pass	No Rec	Amend
FURNACE		X	
		X	

Chairman's Signature

6-2238F
Chenoweth
5/1/90

Original sponsor(s): REP. ELLIS, Menard, Ulmer

IN THE HOUSE

CS FOR HOUSE BILL NO. 538 ( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act requiring the Alaska Judicial Council to establish and evaluate a child visitation mediation project; and providing for an effective date."

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

* Section 1. CHILD VISITATION MEDIATION PROJECT. (a) To better enable persons having either custody of or rights of visitation for a minor child to reach voluntary agreements relating to child visitations that are in the best interests of the child, the Alaska Judicial Council shall

(1) establish a child visitation mediation project using mediators to mediate child visitation disputes; the mediation project shall be located in and serve residents of the judicial district of the state determined by the Alaska Judicial Council to have the greatest caseload relating to court-ordered child visitations; and

(2) evaluate the child visitation mediation project created under (1) of this subsection; the evaluation must measure

(A) the success of the project in terms of its ability to promote and serve the best interests of the child;

(B) the satisfaction of the legitimate and appropriate needs of the persons who participate in the project;

(C) the project's efficiency; and

(D) the project's economy.

(b) In establishing the child visitation mediation project under (a) of this section, the Alaska Judicial Council shall

(1) require the screening of cases and exclude from the scope of

the child visitation mediation project cases in which

(A) there has been an indication of domestic violence as defined in AS 18.66.900;

(B) the child or children who are the subject of a visitation order require the continuing services of a guardian ad litem;

(C) a material change in the visitation order is being sought; or

(D) court records reflect a pattern of harassment of one party by another;

(2) develop a curriculum for the initial contact and for the mediation orientation session that describes the process and purpose of mediation and informs all parties of their rights and the scope and purpose of the project before mediation begins;

(3) consult, as to the child visitation mediation project's design and evaluation

(A) with the Alaska Court System; and

(B) in a formal process, with custodial and noncustodial parents;

(4) consult with other states to determine their experiences with child visitation mediation and to obtain their recommendations relating to mediation of child visitation disputes; and

(5) develop a list of qualifications for persons who may serve as mediators.

(c) A person may participate in the child visitation mediation project if the person is a party to a valid visitation order and files a complaint regarding implementation of the order with the Alaska Court System, and the complaint requests mediation services.

(d) The Alaska Judicial Council shall determine a party's eligibility to participate in the project by screening complaints.

(e) If one party to the visitation order files a complaint requesting mediation services and the person qualifies for those services, a mediator shall contact the other party and, in a nonthreatening manner and consistent with the material developed under (b)(2) of this section, notify the other party that a complaint has been filed and that visitation mediation services are available. In making the contact, the mediator shall outline the parties' option either to participate in mediation or to continue with the court case. The mediator shall also invite the notified party to attend an initial orientation session, advising the party that the party may withdraw from mediation after the orientation session.

(f) Mediation under the child visitation mediation project is limited to the visitation dispute. Mediation must be conducted informally and may be conducted as a conference or series of conferences, by telephone or in person. The parties need not be present in the same location. Counsel for the parties may attend each conference.

(g) A person who is a party to mediation under the child visitation mediation project must attend a mediation orientation session. After the mediation orientation session, either party may choose to withdraw from mediation. A party's refusal to participate may not be used against the party in a proceeding.

(h) Mediation conferences under the child visitation mediation project are confidential. The mediator may not submit recommendations to a court about the disposition of the dispute.

(i) In this section, "party" means a person having either custody of or rights of visitation for a minor child.

* Sec. 2. PROJECT EVALUATION. The Alaska Judicial Council shall complete the evaluation required under sec. 1(a)(2) of this Act and report the evaluation to the legislature by February 1, 1992. The evaluation of the project must consider establishing a sliding scale fee system for

visitation mediation services if this child visitation mediation program is continued after February 1, 1992.

* Sec. 3. ADDITIONAL MEDIATION PROJECTS PROHIBITED. The Alaska Court System may not establish and conduct another mediation project until the child visitation mediation project established by this Act has been evaluated under sec. 2 of this Act.

* Sec. 4. USE OF FEDERAL FUNDS. The Alaska Judicial Council shall apply for federal money that may be available for the child visitation mediation project.

* Sec. 5. This Act is repealed February 1, 1992.

* Sec. 6. This Act takes effect July 1, 1990.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

M E M O R A N D U M May 4, 1990

SUBJECT: Draft CSHB 538 ( )

TO: Representative Peter Goll
ATTN: Hayden Kaden

FROM: Jack Chenoweth
Legislative Counsel

That opening sentence ("To promote and serve the best interests of the children . . . relating to child visitations that are in the best interests of the child . . . ") is probably the most convoluted provision that has crossed my desk all session.

Can't we repair it before it gets amended on the floor???

JBC:mi
wkmi6/087

6-2238S
Chenoweth
5/4/90

Original sponsor(s): REP. ELLIS, Menard, Ulmer

IN THE HOUSE

CS FOR HOUSE BILL NO. 538 ( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act requiring the Alaska Judicial Council to establish and evaluate a child visitation mediation project; and providing for an effective date."

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

* Section 1. CHILD VISITATION MEDIATION PROJECT. (a) To promote and serve the best interests of the children who are the subject of visitation orders by better enabling the persons having either custody of or rights of visitation for a minor child to reach voluntary agreements relating to child visitations that are in the best interests of the child, the Alaska Judicial Council shall

(1) establish a child visitation mediation project using mediators to mediate child visitation disputes; the mediation project shall be located in and serve residents of the judicial district of the state determined by the Alaska Judicial Council to have the greatest caseload relating to court-ordered child visitations; and

(2) evaluate the child visitation mediation project created under (1) of this subsection; the evaluation must measure

(A) the success of the project in terms of its ability to promote and serve the best interests of the child;

(B) the satisfaction of the legitimate and appropriate needs of the persons who participate in the project;

(C) the project's efficiency;

(D) the project's economy;

(E) whether the project has decreased the time required to

resolve disputes relating to child visitation;

(F) whether the project has reduced litigation relating to visitation disputes; and

(G) whether mediation under the project improves compliance with court-ordered child support payments.

(b) In establishing the child visitation mediation project under (a) of this section, the Alaska Judicial Council shall

(1) require the screening of cases and exclude from the scope of the child visitation mediation project cases in which

(A) there has been an indication of domestic violence as defined in AS 18.66.900 or a pattern of harassment of one party by another; or

(B) a party desires to materially change the existing visitation schedule;

(2) develop protocols for the initial contact and for the mediation orientation session that describes the process and purpose of mediation and informs all parties of their rights and the scope and purpose of the project before mediation begins;

(3) consult, as to the child visitation mediation project's design and evaluation

(A) with the Alaska Court System; and

(B) in a formal process, with custodial and noncustodial parents and other appropriate parties;

(4) consult with other states to determine their experiences with child visitation mediation and to obtain their recommendations relating to mediation of child visitation disputes; and

(5) develop a list of qualifications for persons who may serve as mediators.

(c) A person may participate in the child visitation mediation

project if the person is a party to a valid visitation order and submits a written request for mediation to the Alaska Judicial Council. The request must state the existing visitation schedule as set out in the current visitation order, the actual visitation being exercised, what the party hopes that mediation will accomplish, and the efforts that the party has made to resolve the party's concerns.

(d) If a minor child for whom visitation rights are made the subject of mediation has a guardian ad litem, the guardian ad litem

(1) shall be involved in all aspects of mediation; and

(2) shall approve any agreement to child visitation that arises out of mediation.

(e) If one party to the visitation order files a request for mediation and the person qualifies for mediation, a mediator shall contact the other party and, in a nonthreatening manner and consistent with the protocols developed under (b)(2) of this section, notify the other party that a request for mediation has been filed and that visitation mediation services are available. In making the contact, the mediator shall outline the parties' option to participate in mediation. The mediator shall also invite the notified party to attend an initial orientation session, advising the party that the party may withdraw from mediation at any time.

(f) Mediation under the child visitation mediation project is limited to the visitation dispute. Mediation must be conducted informally and may be conducted as a conference or series of conferences, by telephone or in person. The parties need not be present in the same location. Counsel for the parties may attend each conference.

(g) A person who has been contacted under (e) of this section and agrees to participate in mediation under the child visitation mediation project must attend a mediation orientation session. After the mediation orientation session, either party may choose to withdraw from mediation. A

party's refusal to participate may not be used against the party in a proceeding.

(h) Mediation conferences under the child visitation mediation project are confidential. The mediator may not submit recommendations to a court about the disposition of the dispute.

(i) In this section, "party"

(1) means a person having either custody of or rights of visitation for a minor child; and

(2) includes, when appropriate, the guardian ad litem of the minor child.

* Sec. 2. PROJECT EVALUATION. The Alaska Judicial Council shall complete the evaluation required under sec. 1(a)(2) of this Act and report the evaluation to the legislature by February 1, 1992. The evaluation of the project must consider establishing a sliding scale fee system for visitation mediation services if this child visitation mediation program is continued after February 1, 1992.

* Sec. 3. ADDITIONAL MEDIATION PROJECTS PROHIBITED. The Alaska Court System may not establish and conduct another mediation project until February 1, 1992.

* Sec. 4. USE OF FEDERAL FUNDS. The Alaska Judicial Council shall apply for federal money that may be available for the child visitation mediation project.

* Sec. 5. This Act is repealed February 1, 1992.

* Sec. 6. This Act takes effect July 1, 1990.

6-2238S
Chenoweth
5/4/90

Original sponsor(s): REP. ELLIS, Menard, Ulmer

This W/Be
Inserted
5-4-90
7:15 p.m.

IN THE HOUSE

CS FOR HOUSE BILL NO. 538 ( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act requiring the Alaska Judicial Council to establish and evaluate a child visitation mediation project; and providing for an effective date." per Hayden

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

* Section 1. CHILD VISITATION MEDIATION PROJECT. (a) To promote and serve the best interests of the children who are the subject of visitation orders by better enabling the persons having either custody of or rights of visitation for a minor child to reach voluntary agreements relating to child visitations that are in the best interests of the child, the Alaska Judicial Council shall

(1) establish a child visitation mediation project using mediators to mediate child visitation disputes; the mediation project shall be located in and serve residents of the judicial district of the state determined by the Alaska Judicial Council to have the greatest caseload relating to court-ordered child visitations; and

(2) evaluate the child visitation mediation project created under (1) of this subsection; the evaluation must measure

(A) the success of the project in terms of its ability to promote and serve the best interests of the child;

(B) the satisfaction of the legitimate and appropriate needs of the persons who participate in the project;

(C) the project's efficiency;

(D) the project's economy;

(E) whether the project has decreased the time required to

resolve disputes relating to child visitation;

(F) whether the project has reduced litigation relating to visitation disputes; and

(G) whether mediation under the project improves compliance with court-ordered child support payments.

(b) In establishing the child visitation mediation project under (a) of this section, the Alaska Judicial Council shall

(1) require the screening of cases and exclude from the scope of the child visitation mediation project cases in which

(A) there has been an indication of domestic violence as defined in AS 18.66.900 or a pattern of harassment of one party by another; or

(B) a party desires to materially change the existing visitation schedule;

(2) develop protocols for the initial contact and for the mediation orientation session that describes the process and purpose of mediation and informs all parties of their rights and the scope and purpose of the project before mediation begins;

(3) consult, as to the child visitation mediation project's design and evaluation

(A) with the Alaska Court System; and

(B) in a formal process, with custodial and noncustodial parents and other appropriate parties;

(4) consult with other states to determine their experiences with child visitation mediation and to obtain their recommendations relating to mediation of child visitation disputes; and

(5) develop a list of qualifications for persons who may serve as mediators.

(c) A person may participate in the child visitation mediation

project if the person is a party to a valid visitation order and submits a written request for mediation to the Alaska Judicial Council. The request must state the existing visitation schedule as set out in the current visitation order, the actual visitation being exercised, what the party hopes that mediation will accomplish, and the efforts that the party has made to resolve the party's concerns.

(d) If a minor child for whom visitation rights are made the subject of mediation has a guardian ad litem, the guardian ad litem

(1) shall be involved in all aspects of mediation; and

(2) shall approve any agreement to child visitation that arises out of mediation.

(e) If one party to the visitation order files a request for mediation and the person qualifies for mediation, a mediator shall contact the other party and, in a nonthreatening manner and consistent with the protocols developed under (b)(2) of this section, notify the other party that a request for mediation has been filed and that visitation mediation services are available. In making the contact, the mediator shall outline the parties' option to participate in mediation. The mediator shall also invite the notified party to attend an initial orientation session, advising the party that the party may withdraw from mediation at any time.

(f) Mediation under the child visitation mediation project is limited to the visitation dispute. Mediation must be conducted informally and may be conducted as a conference or series of conferences, by telephone or in person. The parties need not be present in the same location. Counsel for the parties may attend each conference.

(g) A person who has been contacted under (e) of this section and agrees to participate in mediation under the child visitation mediation project must attend a mediation orientation session. After the mediation orientation session, either party may choose to withdraw from mediation. A

party's refusal to participate may not be used against the party in a proceeding.

(h) Mediation conferences under the child visitation mediation project are confidential. The mediator may not submit recommendations to a court about the disposition of the dispute.

(i) In this section, "party"

(1) means a person having either custody of or rights of visitation for a minor child; and

(2) includes, when appropriate, the guardian ad litem of the minor child.

* Sec. 2. PROJECT EVALUATION. The Alaska Judicial Council shall complete the evaluation required under sec. 1(a)(2) of this Act and report the evaluation to the legislature by February 1, 1992. The evaluation of the project must consider establishing a sliding scale fee system for visitation mediation services if this child visitation mediation program is continued after February 1, 1992.

* Sec. 3. ADDITIONAL MEDIATION PROJECTS PROHIBITED. The Alaska Court System may not establish and conduct another mediation project until February 1, 1992.

* Sec. 4. USE OF FEDERAL FUNDS. The Alaska Judicial Council shall apply for federal money that may be available for the child visitation mediation project.

* Sec. 5. This Act is repealed February 1, 1992.

* Sec. 6. This Act takes effect July 1, 1990.

6-2238P ✓
Chenoweth
4/6/90

Original sponsor(s): REP. ELLIS, Menard, Ulmer

IN THE HOUSE BY THE HESS COMMITTEE

CS FOR HOUSE BILL NO. 538 (HESS)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act authorizing the Alaska Judicial Council to establish and evaluate a child visitation mediation project and establishing an advisory council to provide advice concerning the project; and providing for an effective date."

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

* Section 1. FINDING. The legislature finds that it is in the best interests of a child to have reasonable access to both of the child's parents unless there are circumstances in which that access would be detrimental to the child.

* Sec. 2. CHILD VISITATION MEDIATION PROJECT. (a) To better enable persons having either custody of or rights of visitation for a minor child to reach voluntary agreements relating to child visitations that are in the best interests of the child, the Alaska Judicial Council may

(1) create a child visitation mediation project using mediators to mediate child visitation disputes; the mediation project shall be located in and serve residents of the judicial district of the state determined by the Alaska Judicial Council to have the greatest caseload relating to court-ordered child visitations; and

(2) evaluate the project created under (1) of this subsection; the evaluation must measure the success of the project in terms of its ability to promote and serve the best interests of the child, the project's efficiency, and the project's economy.

(b) In establishing the project under (a) of this section, the Alaska

Judicial Council shall

(1) exclude from the scope of the project cases in which there has been an indication of domestic violence as defined in AS 18.66.900; and

(2) develop a curriculum for the initial mediation session that informs all parties of their visitation rights and the scope and purpose of the project before mediation begins.

(c) Except as provided in (d) of this section, mediation under the child visitation mediation project shall be conducted informally and may be conducted as a conference or series of conferences, by telephone or in person. The parties need not be present in the same location. Counsel for the parties may attend each conference.

(d) A party who is involved in mediation under the child visitation mediation project must attend a mediation orientation session. After the mediation orientation session, either party may choose to withdraw from mediation. A party's refusal to participate may not be used against the party in another proceeding.

(e) Mediation conferences under the child visitation mediation project are confidential. The mediator may not submit recommendations to a court about the disposition of the dispute.

(f) Unless precluded by (b)(1) of this section, a minor who is at least 13 years of age may refer persons having custody of or rights of visitation for the minor to the child visitation mediation project.

(g) In this section, "party" means a person having either custody of or rights of visitation for a minor child.

* Sec. 2. PROJECT ADVISORY COUNCIL. (a) There is established an advisory council to advise the Alaska Judicial Council concerning the project authorized by sec. 1 of this Act. Before the Alaska Judicial Council begins offering mediation services under the project, the advisory council shall make recommendations to the Alaska Judicial Council

concerning the implementation of the project and how the success of the project should be measured.

(b) The advisory council consists of seven members, including

(1) a representative of the judicial branch, appointed by the chief justice of the supreme court;

(2) a person who is experienced as a mediator, appointed by the governor;

(3) a legislator, appointed by the governor;

(4) four parents, two of whom are custodial parents and two of whom have visitation rights with their children who are in the custody of the other parent, appointed by the governor.

(c) Members of the advisory council appointed under (b) of this section serve without compensation, but are entitled to per diem and travel expenses authorized for boards and commissions under AS 39.20.180 for attendance at scheduled meetings of the advisory council.

* Sec. 3. The Alaska Judicial Council shall complete the evaluation required under sec. 2(a)(2) of this Act and report the evaluation to the legislature by February 1, 1992.

* Sec. 4. This Act is repealed February 1, 1992.

* Sec. 5. This Act takes effect July 1, 1990.

Article IV

The Judiciary

Section 1 - Judicial Power and Jurisdiction.

The judicial power of the State is vested in a supreme court, a superior court, and the courts established by the legislature. The jurisdiction of courts shall be prescribed by law. The courts shall constitute a unified judicial system for operation and administration. Judicial districts shall be established by law.

Section 2 - Supreme Court.

(a) The supreme court shall be the highest court of the State, with final appellate jurisdiction. It shall consist of three justices, one of whom is chief justice. The number of justices may be increased by law upon the request of the supreme court.

(b) The chief justice shall be selected from among the justices of the supreme court by a majority vote of the justices. His term of office as chief justice is three years. A justice may serve more than one term as chief justice but he may not serve consecutive terms in that office. [Amendment approved August 25, 1970 - Effective October 10, 1970]

Section 3 - Superior Court.

The superior court shall be the trial court of general jurisdiction and shall consist of five judges. The number of judges may be changed by law.

Section 4 - Qualifications of Justices and Judges.

Supreme court justices and superior court judges shall be citizens of the United States and of the State, licensed to practice law in the State, and possessing any additional qualifications prescribed by law. Judges of other courts shall be selected in a manner, for terms, and with qualifications prescribed by law.

Section 5 - Nomination and Appointment.

The governor shall fill any vacancy in an office of supreme court justice or superior court judge by appointing one of two or more persons nominated by the judicial council.

Section 6 - Approval or Rejection.

Each supreme court justice and superior court judge shall, in the manner provided by law, be subject to approval or rejection on a nonpartisan ballot at the first general election held more than three years after his appointment. Thereafter, each supreme court justice shall be subject to approval or rejection in a like manner every tenth year, and each superior court judge, every sixth year.

Section 7 - Vacancy.

The office of any supreme court justice or superior court judge becomes vacant ninety days after the election at which he is rejected by a majority of those voting on the question, or for which he fails to file his declaration of candidacy to succeed himself.

Section 8 - Judicial Council.

The judicial council shall consist of seven members. Three attorney members shall be appointed for six-year terms by the governing body of the organized state bar. Three non-attorney members shall be appointed for six-year terms by the governor subject to confirmation by a majority of the members of the legislature in joint session. Vacancies shall be filled for the unexpired term in like manner. Appointments shall be made with due consideration to area representation and without regard to political affiliation. The chief justice of the supreme court shall be ex-officio the seventh member and chairman of the judicial council. No member of the judicial council, except the chief justice, may hold any other office or position of profit under the United States or the State. The judicial council shall act by concurrence of four or more members and according to rules which it adopts.

Section 9 - Additional Duties.

The judicial council shall conduct studies for improvement of the administration of justice, and make reports and recommendations to the supreme court and to the legislature at intervals of not more than two years. The judicial council shall perform other duties assigned by law.

Section 10 - Commission on Judicial Conduct.

The Commission on Judicial Conduct shall consist of nine members, as follows: three persons who are justices or judges of state courts, elected by the justices and judges of state courts; three members who have practiced law in this state for ten years, appointed by the governor from

BILL NO: CSHB 538 DATE: March 15, 1990

TITLE: An Act directing the Office of Public Advocacy to establish a child visitation mediation project, and providing for an effective date

CONTACT: Barbara Miklos 465-4356

DEPARTMENT OF PUBLIC SAFETY

CS for HB 538 (HESS) directs the Office of Public Advocacy to establish a child visitation mediation project. The Council has some concerns about some of the provisions in this bill.

Mediation can be very harmful to victims of domestic violence or sexual assault. Violence distorts the balance of power in a relationship. Violent men physically and psychologically coerce women, by domination and intimidation. Women who are severely intimidated and frightened of violence are not able to make independent decisions in their own best interests or the best interests of their children. Domestic violence and sexual assault occur much more frequently than may be suspected. A stur by Stockholm and Helms, which surveyed women in Alaska on the extent of abuse of women by their spouses or live-in partners, found that 26% of the women had been abused as adults. It is important to note that studies show domestic violence occurs at least at the same rate after a separation as before a separation. In fact, violence is often escalated following a separation and, therefore, the danger to the victim is increased.

We recommend that subsection (b), Section 1, lines 25 - 26, page 1, be changed to delete the requirement that a report of domestic violence must be made to a public agency before a domestic violence case can be excluded from mediation. There are several problems with this requirement. Many victims of domestic violence will not have made a report to a public agency. It is only recently that arrests or prosecutions of domestic violence assaults have been vigorously pursued, thus there was previously little advantage to the victims in reporting domestic violence assaults. Reports to DFYS are confidential. If a victim sought services from a non-profit domestic violence program, that would not be a public agency, and those records are also required to be confidential. In most rural areas, services are simply unavailable, and so this provision is of particular concern for people who have lived in rural areas. We recommend that the wording be changed as follows: "The Agency or court may not refer a dispute for mediation if <u>there has been an indication</u> [A PARTY TO A DISPUTE HAS BEEN ACCUSED] of domestic violence, as defined in AS 18.66.900. [IN A REPORT TO OR BY A PUBLIC AGENCY]." The Council on Domestic Violence and Sexual Assault also feels it is important to have someone who has expertise in the field of family violence on the Child Visitation Mediation Council.

The Council on Domestic Violence and Sexual Assault agrees that participation in mediation should be voluntary, as provided for in subsection (c), and that a person's refusal to participate may not be used against the

Alaska State Legislature

Please enter into the record my testimony to the House HESS.
committee name

committee on SB38/SB39, dated 3-7-90.
bill/subject

I am in support of this bill because not all cases of denided visitation are because of D.V. and because of the cost of going to court to get visitation restored. I have been denided visitation on many holidays and birthdays. if you call the police, there is nothing that can be done to help. In court each parent is made out to be a bad person by each others lawers. My hope is that someday parents wouldn't be bad guys who do not have custody of their children, but just moms or dads who can freely be a part of their childrens life. This bill is a step in the right direction. Don't let the hope of a better way to solve visitation die!

Signed: Mabel H Ramsay
Testifier

Representing (Optional)

P O B 874691 Wasilla AK 99687
Address

892-7163
Phone No.

CORRECTION

THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY

BILL NO: CSHB 538 DATE: March 15, 1990

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We recommend that subsection (b), Section 1, lines 25 - 26, page 1, be changed to delete the requirement that a report of domestic violence must be made to a public agency before a domestic violence case can be excluded from mediation. There are several problems with this requirement. Many victims of domestic violence will not have made a report to a public agency. It is only recently that arrests or prosecutions of domestic violence assaults have been vigorously pursued, thus there was previously little advantage to the victims in reporting domestic violence assaults. Reports to DFYS are confidential. If a victim sought services from a non-profit domestic violence program, that would not be a public agency, and those records are also required to be confidential. In most rural areas, services are simply unavailable, and so this provision is of particular concern for people who have lived in rural areas. We recommend that the wording be changed as follows: "The Agency or court may not refer a dispute for mediation if <u>there has been an indication</u> [A PARTY TO A DISPUTE HAS BEEN ACCUSED] of domestic violence, as defined in AS 18.66.900. [IN A REPORT TO OR BY A PUBLIC AGENCY]." The Council on Domestic Violence and Sexual Assault also feels it is important to have someone who has expertise in the field of family violence on the Child Visitation Mediation Council.

The Council on Domestic Violence and Sexual Assault agrees that participation in mediation should be voluntary, as provided for in subsection (c), and that a person's refusal to participate may not be used against the

person in another proceeding. Mediation is most likely to fail where there are truly irreconcilable differences, no common interests, and where both parties are not committed to the process. Research on conflict resolution also indicates that, to the extent that one or both parties feels coerced, negotiations will be deadlocked or agreements that are reached are likely to fail to be implemented.

Generally, the Council is neutral regarding the establishment of this voluntary child visitation mediation project. We strongly feel that no victims of domestic violence should be directed into this process.

Dayle A. Hoetzki

for Arthur English
Commissioner

Alaska State Legislature

Please enter into the record my testimony to the House HESS.
committee name

committee on 538/539, dated 3-7-90.
bill/subject

I am in support of this bill because not all cases of denided visitation are because of D.V. and because of the cost of going to court to get visitation restorted. I have been denided visitation on many holidays and birthdays, if you call the police, there is nothing that can be done to help. In court each parent is made out to be a bad person by each others lawers. My hope is that someday parents won't be bad guys who do not have custody of their children, but just moms or dads who can freely be a part of their childrens life. This bill is a step in the right direction. Don't let the hope of a better way to solve vistatoin die!

Signed: Mabel H Ramsay
Testifier

Representing (Optional)

P O B 874691 Wasilla AK 99687
Address

892-7163
Phone No.

Please enter into the record my testimony to the HOUSE HESS committee name

committee on HB 538/539 bill/subject, dated MARCH 7, 1990.

As a member of Alaska Family Support Group and an advocate of children's rights I am testifying in favor of HB 583 and 539. Section 6) should be amended to include self referral by either custodial or non-custodial parents and direct access in addition to court or CSED referral. Having experienced visitation difficulties for extended periods, ~~during a time~~ actively seeking assistance from the troopers and the court System, in retrospect I can see ~~the~~ mediation as a much more timely + efficient process for the kids benefit than ~~the~~ law enforcement or the judiciary. This ~~mediation~~ would be mediation not to discredit either parent as is customary in the court process of litigation + custody dispute. but rather to gain access of kids to moms + dads.

Signed: Jim Travis JIM TRAVIS
Testifier

member - Alaska Family Support Group
Representing (Optional)

581 MULCHATNA #4
Address

376-2219
Phone No.

ATTENTION: HOUSE H.E.S.S.

H.B. 472 I strongly support this bill. This Bill will put the child support award system in to the democratic process.

In my opinion it is good policy for parents and elected officals to be directly involved in formulating child support laws.

H.B. 571 I strongly support this bill so that obligors will be notified when a duty of support begins accruing.

H.B. 538 and 539 I strongly support these bills. I believe that children have the right to have access to both parents and both parents have the right to access their children. This visitation project will benefit familys and children by providing mediation for visitation problems.

I am a member of the Alaska ^ Support Group.
FAMILY

Paul A. L. Nelson

Paul A. L. Nelson
March 6, 1990

Rhona L. Miels

Rhona L. Miels Non-member

From: Tina Martini
Box 900203
Fairbanks, Ak. 99775

To: Rep. Johnny Ellis and Mark Boyer
Alaska State Legislature
Box V (MS 3100)
Juneau, AK. 99811

Dear Representatives,

I am very sorry I was unable to make it for testimony on March 7th's teleconference. My child was very sick. I hope that this letter will suffice.

I next want to thank Johnny Ellis for introducing House bills 538 and 539.

Finally, I am writing my testimony that was to be heard on the 7th. I have had the experience as a child of being separated from my father. When my parents were divorced, my mother gained custody of 4 children. I love my mother dearly and feel that she raised us well. One thing that I still feel bothers me is that when she gained that custody, visitation with my father was non-existent. Just because my mother didn't get along with him, we weren't to like him either. Countless times when he would call us, we would get upset and begin missing him and wanting to see him. All of us were denied to see him or even to write to him. When my step-father stepped into the picture, my father's efforts to see us diminished. Being a teenager then, it was hard for me to accept this new person as my Dad. His attitude was that if he was paying to raise us, we were to show him the

Courtesy of: DADS

THE PRINCE GEORGE'S COUNTY GOVERNMENT
OFFICE OF CHILD SUPPORT ENFORCEMENT, SUITE 405
14701 Gov. Oden Bowie Drive, Upper Marlboro, MD 20772
952-4822

April 9, 1986

M E M O R A N D U M

TO: John Wesley White, Chief Administrative Officer
Office of the County Executive

FROM: M.S. Meg Sollenberger, Executive Director
Office of Child Support Enforcement

SUBJECT: Report on Visitation Pilot Project

As you know the Office of Child Support Enforcement is currently conducting a Visitation Pilot Project at the recommendation of the Visitation Task Force with the support and approval of the County executive, legislative and judicial branches of government.

On January 23, 1986, Ms. Rita Gunn, an experienced counselor and social work administrator accepted a temporary (700 hour) Counselor Coordinator I position with this agency to carry out this project.

VISITATION PROJECT STATISTICS

At the end of the first quarter of calendar year 1986 the results of Ms. Gunn's efforts are as follows:

Number of Hours Worked	:203
Number of Visitation Complaints Received	: 92
Number of Visitation Complaints Resolved	: 75
Number of Visitation Complaints Reopened	: 5
Number of Visitation Complaints Carried Over	: 17

Average Number of Complaints Received Per Week	: 9.2
Average Number of Complaints Resolved Per Week	: 7.5
Average Number of Telephone Contacts Per Complaint	: 2.33
Average Time Spent Per Case	: 2 hours 15 minutes

6A

CORRECTION

THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY