

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990
5867 HOUSE JUDICIARY 8672

27

1 FAILS TO COMPLY WITH AS 10.06.155 WITHIN 30 DAYS AFTER RECEIPT BY THE
2 CORPORATION OR ITS REGISTERED AGENT OF NOTICE OF NONCOMPLIANCE SENT BY
3 THE DEPARTMENT BY CERTIFIED MAIL].

4 * Sec. 56. AS 10.06.828 is amended to read:

5 Sec. 10.06.828. INCORPORATION OR FILING FEES. A domestic or
6 foreign corporation that is required to file articles of incorpo-
7 ration, an application for a certificate of authority, [OR] amendatory
8 articles, or other application with the department, except corporate
9 entities organized under AS 10.20 and corporate entities organized
10 under the laws of the United States or the laws of a state or terri-
11 tory of the United States or the laws of a foreign country for the
12 same purposes as those allowed under AS 10.20, shall pay to the com-
13 missioner a filing fee established by the department by regulation.
14 The filing fee shall be uniform and fixed without reference to the
15 amount of authorized shares.

16 * Sec. 57. AS 10.06.855 is amended to read:

17 Sec. 10.06.855. PAYMENTS TO BE MADE IN ADVANCE. Fees and
18 charges provided for in this chapter, including the biennial corpo-
19 ration tax, shall [MAY] be paid in advance.

20 * Sec. 58. AS 10.06.960 is amended to read.

21 Sec. 10.06.960. CORPORATIONS ORGANIZED UNDER ALASKA NATIVE
22 CLAIMS SETTLEMENT ACT [P.L. 92-203]. (a) A corporation organized
23 under 43 U.S.C. 1601 - 1629e as amended [43 U.S.C. 1601 - 1629a]
24 (Alaska Native Claims Settlement Act) shall be incorporated under and
25 is subject to this chapter except

26 (1) each corporation shall issue without further considera-
27 tion the number of shares of common stock that may be necessary to
28 comply with the requirements of the act [43 U.S.C. 1601 - 1629a] and
29 all stock so issued is considered fully paid and nonassessable when

1 issued;

2 (2) unless otherwise provided in the articles of incorpo-
3 ration, the capital

4 (A) is considered the consideration for the initial
5 issuance of shares; and

6 (B) of a corporation organized under the act [43
7 U.S.C. 1601 - 1629a] includes the

8 (i) land or interests in it conveyed to the
9 corporation by the United States under the act [43 U.S.C.
10 1601 - 1629a], except that which is required to be conveyed
11 under 43 U.S.C. 1613(c)(1), (3), and (4), entered at its
12 fair value to the corporation upon receiving the conveyance
13 of it; and

14 (ii) money, when received under 43 U.S.C. 1605 and
15 43 U.S.C. 1608, that is retained by the corporation and that
16 is not immediately distributed or required to be distributed
17 under 43 U.S.C. 1606(j).

18 (b) Notwithstanding the provisions of AS 10.06.305 - 10.06.390,
19 payment from the money of a corporation organized under the act [43
20 U.S.C. 1601 - 1629a] that is required by the language of the act [43
21 U.S.C. 1601 - 1629a] to be distributed to shareholders or to other
22 corporations so organized is not a distribution to its shareholders as
23 defined in AS 10.06.990.

24 (c) Notwithstanding the provisions of AS 10.06.546, a plan of
25 merger, consolidation or exchange in which each participating corpo-
26 ration either (1) was organized under the act [43 U.S.C. 1601 - 1629a
27 (ALASKA NATIVE CLAIMS SETTLEMENT ACT)], within the same one of the 12
28 regions of Alaska established under the act [43 U.S.C. 1601 - 1629a],
29 or (2) resulted from the prior merger, consolidation, or exchange of

1 other similarly organized corporations within the same region, is
2 approved if it receives the affirmative vote of the holders of at
3 least a majority of the outstanding shares of each corporation. If a
4 class of shares of a corporation specified in this subsection is
5 entitled to vote as a class, the plan of merger, consolidation, or
6 exchange is approved if it receives the affirmative vote of the hold-
7 ers of at least a majority of the outstanding shares of each class of
8 shares entitled to vote as a class and of the total outstanding
9 shares. Notwithstanding AS 10.06.574 - 10.06.582, a plan of merger,
10 consolidation, or exchange approved under this section before Decem-
11 ber 19, 1991, may not include a right of shareholders to dissent.

12 (d) A director or officer of a corporation organized under the
13 act [43 U.S.C. 1601 - 1629a] is not personally liable to the contract
14 creditors specified in AS 10.06.490 except as otherwise provided by
15 law.

16 * Sec. 59. AS 10.06.960 is amended by adding new subsections to read:

17 (e) Notwithstanding the provisions of AS 10.06.502 - 10.06.510,
18 a corporation organized under the act may amend its articles by a vote
19 of the board of directors in order for the corporation to comply with
20 the mandatory requirements of the act.

21 (f) Notwithstanding the other provisions of this chapter, a
22 corporation organized under the act is governed by the act to the
23 extent the act is inconsistent with this chapter, the corporation may
24 take any action, including amendment of its articles, authorized by
25 the act, and the action is considered to be approved and adopted if
26 approved under the act. An amendment approved under the act and
27 delivered to the commissioner under AS 10.06.512 shall be filed by the
28 commissioner under AS 10.06.910, and a certificate of amendment shall
29 be issued.

1 (g) Notwithstanding AS 10.06.358, if there are no retained
2 earnings, the directors of a corporation organized under the act may
3 declare and pay distributions in cash or property out of its net
4 profits for the fiscal year in which the distribution is declared and
5 for the preceding fiscal year, except when the corporation is insol-
6 vent under AS 10.06.360. For the purposes of this subsection, a
7 corporation's debts include the amounts it is required to distribute
8 under 43 U.S.C. 1606(i) and 43 U.S.C. 1606(j). The directors may
9 determine the net profits derived from the exploitation or liquidation
10 of wasting assets without consideration of the depletion of those
11 assets resulting from lapse of time, consumption, liquidation, or
12 exploitation of the assets, and a distribution declared from those net
13 profits shall be described, concurrently with distribution of the net
14 profits to shareholders, as a distribution from wasting assets without
15 consideration of the depletion of the assets. In this subsection,
16 "wasting assets" means timber resources and subsurface estates.

17 (h) Notwithstanding AS 10.06.358, the directors of a corporation
18 organized under the act may, from time to time, distribute to its
19 shareholders in partial liquidation a portion of the corporation's
20 assets out of capital, in cash or property, except that a distribution

21 (1) may not be made at a time when the corporation is
22 insolvent under AS 10.06.360;

23 (2) may not be made unless the articles of incorporation
24 authorize the board to make the distribution or the distribution is
25 authorized by the affirmative vote of the holders of at least two-
26 thirds of the outstanding shares;

27 (3) when made, shall be identified as a distribution in
28 partial liquidation and the amount per share shall be disclosed to the
29 shareholders concurrently with the distribution.

1 (i) In this section, "act" means 43 U.S.C. 1601 - 1629e (Alaska
2 Native Claims Settlement Act).

3 * Sec. 60. AS 10.06.990(12) is amended to read:

4 (12) "control" [OR "CONTROLLING INTEREST"] means

5 (A) owning directly or indirectly, or having the power
6 to vote, 25 percent or more of a class of voting securities of a
7 corporation subject to this chapter; or

8 (B) influencing or affecting in any substantive manner
9 the election of a majority of the directors or trustees of a
10 corporation subject to this chapter;

11 * Sec. 61. AS 10.06.990 is amended by adding a new paragraph to read:

12 (47) "entire board" means the total number of directors that
13 the corporation has if there are no vacancies.

14 * Sec. 62. APPLICABILITY TO CERTAIN CORPORATIONS WITH CLASSIFIED DIREC-
15 TORS. (a) Notwithstanding AS 10.06.453(e) and 10.06.455, if a corporation
16 is organized under 43 U.S.C. 1601 - 1629e and if the corporation's bylaws,
17 as the bylaws exist immediately before July 1, 1989, contain a provision
18 that complies with former AS 10.05 and provides for a board of directors
19 consisting of three or fewer classes of directors with terms of office
20 extending not longer than the third annual meeting after the directors'
21 election, the corporation may continue to elect directors in the classes
22 and for the terms provided under the bylaws.

23 (b) The application of (a) of this section terminates if on or after
24 July 1, 1989, the corporation modifies or eliminates the provisions of the
25 corporation's bylaws on the classification and terms of office of the
26 corporation's directors.

27 (c) Notwithstanding AS 10.06.453(e) and 10.06.455, if a corporation
28 is not covered by (a) of this section, if the corporation is organized
29 under former AS 10.05, and if the corporation's bylaws, as the bylaws exist

1 immediately before July 1, 1989, contain a provision that complies with
2 former AS 10.05 and provides for a classified board of directors, the
3 corporation may continue to elect directors in the classes and for the
4 terms provided under the bylaws until July 1, 1994.

5 * Sec. 63. APPLICABILITY OF CUMULATIVE VOTING PROVISIONS TO CERTAIN
6 CORPORATIONS. Notwithstanding AS 10.06.420(d) and 10.06.460(a)(2), if a
7 corporation is organized under former AS 10.05 and if the corporation's
8 bylaws, as the bylaws exist immediately before July 1, 1989, contain a
9 provision that complies with former AS 10.05 and prohibits cumulative
10 voting, the corporation may continue to operate without cumulative voting
11 until July 1, 1994.

12 * Sec. 64. AS 10.06.210(1)(L), 10.06.155, and 10.06.230(b) are re-
13 pealed.

14 * Sec. 65. This Act takes effect July 1, 1989.
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Hand Delivered

May 2, 1989

The Honorable Peter Goll
The Honorable Max F. Gruenberg, Jr.
Cochairs, House Judiciary Committee
P.O. Box V
Juneau, Alaska 99811

Re: SB 204(Jud) - Suggested Amendments

Dear Representatives Goll and Gruenberg:

In my letter to you dated May 1, 1989, I expressed Sealaska Corporation's support for two amendments to Senate Bill 204(Jud), which amends the new Corporations Code.

Since the transmittal of that letter, Sealaska has reconsidered its endorsement of the first proposed amendment, the suggested addition of 43 U.S.C. 1606(i) to AS 10.06.960(a)(2)(ii). To remain in accord with the Alaska Federation of Natives, which does not support that change, Sealaska withdraws its support of this proposed amendment. However, Sealaska continues strongly to endorse the change to AS 10.06.358 that is the second amendment proposed in the corporation's May 1 letter.

We appreciate your attention to this matter. If you have questions about Sealaska's position, please contact Sam Kito, General Counsel Chris E. McNeil, or our outside corporate counsel, E. Budd Simpson.

Sincerely,

SEALASKA CORPORATION

Marlene Johnson
Chairman of the Board

cc: Byron I. Mallott
Chris E. McNeil, Jr.
E. Budd Simpson
Sam Kito
David P. Wolf



May 1, 1989

Hand Delivered

Representative Peter Goll
Representative Max F. Gruenberg, Jr.
Cochairs, House Judiciary Committee
Alaska House of Representatives
P. O. Box V
Juneau, Alaska 99811

Re: SB 204(Jud) - Suggested Amendments

Dear Representatives Goll and Gruenberg:

Senate Bill 204(Jud), which amends the new Corporations Code, passed to the House this morning, and will likely be assigned to House Judiciary for consideration. As you know, Sealaska Corporation's reservations about the new Code and the lack of opportunity to amend it have led the corporation to support HB 204, which simply extends the effective date of the new Code by one year to give Native corporations and all other Alaska businesses a chance to identify and lobby for necessary amendments.

Both SB 204(Jud) and the new Code overlook a few areas of concern not only to Sealaska Corporation but to Native corporations generally. Sealaska proposes two amendments to the bill; for the sake of simplicity, our suggested amendments are written as amendments to the new Code rather than to any version of the bill, and use the legislative bill format for showing deletions and insertions.

First, we propose to amend AS 10.06.960(a)(2)(B)(ii) (in the bill at page 28) to include as capital those funds obtained by Native corporations under 43 U.S.C. 1606(i):

(ii) money, when received under 43 U.S.C. 1605, 43 U.S.C. 1606(i), and 43 U.S.C. 1608, that is retained by the corporation and that is not immediately distributed or required to be distributed under 43 U.S.C. 1606(j).

Representative Peter Goll
Representative Max F. Gruenberg, Jr.
May 1, 1989
Page 2

43 U.S.C. 1606(i) funds are those received under the ANCSA provision that requires division of 70% of certain natural resource revenues among all of the Native corporations.

Finally, Sealaska strongly endorse the apparent intent behind the suggested amendment of AS 10.06.358 (page 8 of SB 204(Jud)), a provision that requires corporations to use generally accepted accounting principles ("GAAP") in determining whether distributions are permissible. However, Sealaska suggests that the provision be revised further to obviate a problem in the new Code for Native corporations. The Commission amendment would allow corporations to use "fair and reasonable" accounting principles other than GAAP when the corporations can prove the fairness and reasonableness of the principles used.

The problem the Commission has addressed with its amendment is that Native corporations often have a nominal value on their books for their land and resource assets, because at the time these assets were conveyed to the corporations they were not easily valued. GAAP does not allow a corporation to rebook an asset based on later information about its value. The former Corporations Code addressed this dilemma (in AS 10.05.005(d)) by permitting Native Corporations to make distributions out of net income, computed without allowance for depletion. If they are required to use only GAAP to determine distributions, the corporations' capacity to make distributions will be unduly restricted.

The amendment in the current bill does not adequately address the Native corporations' distribution problems as created by the new Code. No acceptable alternative method of accounting would allow the change on the corporate books; instead, Sealaska asks that Native corporations be permitted to base their dividend determinations on fair valuation of their assets. A requirement that the corporations prove the fairness of the fair valuation would negate the intent of the legislation. Sealaska asks that this valuation be judged according to the standard used for any other decision of the corporate board of directors.

Sealaska's suggested amendment would add a new AS 10.06.358(c) and (d):

(c) For the purpose of this chapter, the amount of a distribution payable in property shall be determined on the basis of the value at which the property is carried on the corporation's financial statements prepared on the

Representative Peter Goll
Representative Max F. Gruenberg, Jr.
May 1, 1989
Page 3

basis of accounting practices and principles that are reasonable in the circumstances, or on a fair valuation or other method that is reasonable in the circumstances [IN ACCORDANCE WITH GENERALLY ACCEPTED ACCOUNTING PRINCIPLES].

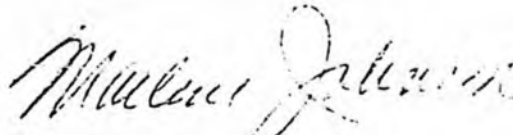
(d) Only a corporation that classifies its assets as current assets and fixed assets under accounting practices and principles that are reasonable in the circumstances, or on a fair valuation or other method that is reasonable in the circumstances [GENERALLY ACCEPTED ACCOUNTING PRINCIPLES] is governed by (a)(2)(B) of this section.

The apparent purpose of the Commission's proposed amendment to AS 10.06.358 is to alleviate the undue restriction on Native corporations' distributions; the above amendment to SB 204(Jud) would carry out this purpose.

If you have questions about Sealaska's proposed amendments to SB 204(Jud), please contact Sam Kito, General Counsel Chris E. McNeil, or our outside corporate counsel, E. Budd Simpson. We will be pleased to discuss these changes with you.

Sincerely,

SEALASKA CORPORATION



Marlene Johnson
Chairman of the Board

cc: Byron I. Mallott
Chris E. McNeil, Jr.
E. Budd Simpson
Sam Kito
David P. Wolf

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSSB 204 (Judiciary)

Page 30, before line 1:

Insert new subsections to read:

"(g) Notwithstanding AS 10.06.358, if there are no retained earnings, the directors of a corporation organized under the act may declare and pay distributions in cash or property out of its net profits for the fiscal year in which the distribution is declared and for the preceding fiscal year except when the corporation is insolvent under AS 10.06.360. For the purposes of this subsection, a corporation's debts include the amounts it is required to distribute under 43 U.S.C. 1606(i) and 43 U.S.C. 1606(j). The directors may determine the net profits derived from the exploitation or liquidation of wasting assets without consideration of the depletion of those assets resulting from lapse of time, consumption, liquidation, or exploitation of the assets, and a distribution declared from those net profits shall be described, concurrently with distribution of the net profits to shareholders, as a distribution from wasting assets without consideration of the depletion of the assets. In this subsection, "wasting assets" means timber resources and subsurface estates.

(h) Notwithstanding AS 10.06.358, the directors of a corporation organized under the act may, from time to time, distribute to its shareholders in partial liquidation a portion of the corporation's

assets out of capital, in cash or property, except that a distribution

(1) may not be made at a time when the corporation is insolvent under AS 10.06.360;

(2) may not be made unless the articles of incorporation authorize the board to make the distribution or the distribution is authorized by the affirmative vote of the holders of at least two-thirds of the outstanding shares;

(3) when made, shall be identified as a distribution in partial liquidation and the amount per share shall be disclosed to the shareholders concurrently with the distribution."

Reletter the following subsection accordingly.

Page 30, following line 26:

Insert new material to read:

"(c) Notwithstanding AS 10.06.453(e) and 10.06.455, if a corporation is not covered by (a) of this section, if the corporation is organized under former AS 10.05, and if the corporation's bylaws, as the bylaws exist immediately before July 1, 1989, contain a provision that complies with former AS 10.05 and provides for a classified board of directors, the corporation may continue to elect directors in the classes and for the terms provided under the bylaws until July 1, 1994.

* Sec. 63. APPLICABILITY OF CUMULATIVE VOTING PROVISIONS TO CERTAIN CORPORATIONS. Notwithstanding AS 10.06.420(d) and 10.06.460(a)(2), if a corporation is organized under former AS 10.05 and if the corporation's bylaws, as the bylaws exist immediately before July 1, 1989, contain a

provision that complies with former AS 10.05 and prohibits cumulative voting, the corporation may continue to operate without cumulative voting until July 1, 1994."

Renumber the following bill sections accordingly.

SB

2017

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 2, 1989

SUBJECT: Liens for Utility Services
(Work Order No. 16-0949)

TO: Senator Al Adams

FROM: Tamara Brandt Cook
Director *TBC*
Division of Legal Services

You have asked whether a municipality has the power to impose a lien on real property to secure payment for utility services provided by a utility owned by the municipality. A municipality probably does have that power under its general authority to exercise by ordinance any power not prohibited by law. (See AS 29.35.200 - 29.35.220) However, it does not have specific authority to establish liens for these purposes as is granted under AS 29.45.300 for property taxes, AS 29.45.650(e) for sales and use taxes, and AS 29.46.-080(c) for special assessments.

The enclosed draft would provide specific authority for a municipality to provide for liens for these utility services by ordinance. In addition, the enforcement provision now in place for foreclosure of property tax liens is made applicable to utility liens under this draft.

TBC:gc:kb
WKG7/083

Enclosure



City of Nenana

State of Alaska

February 14, 1989

Senator John B. Coghill
Alaska State Legislature
Pouch V [MS 3100]
Juneau, AK 99811

Dear Senator Coghill,

The City has introduced an ordinance which creates a lien against real property if the charges for water and sewer services provided to the property are not paid.

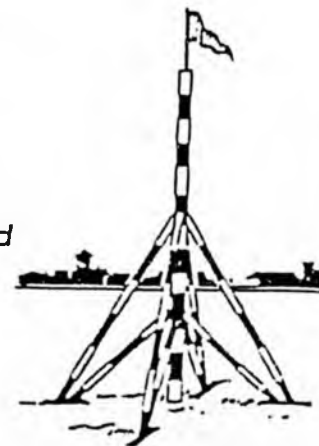
The State supreme court has never decided whether a home rule municipality, such as Nenana, has the authority to create liens without statutory authority. There is no provision in Alaska law which specifically prohibits Nenana from creating these liens, and under the state constitution a home rule municipality can do anything which is not prohibited by law.

The legislature could easily resolve the question as to the City's authority by simply making a small change in Title 29 - specifically 29.35.070. To this end I would suggest the following addition to Section 29.35.070. Public Utilities: [additions underlined, deletions bracketed]

Sec. 29.35.070. Public Utilities. (a) The assembly acting for the area outside all cities in the borough and the council acting for the area in a city may regulate, fix, establish, and change the rates and charges imposed for a utility service provided to the municipality or its inhabitants by a utility that is not subject to regulation under AS 42.05 unless that utility is exempted from regulation under AS 42.05.711(a) or (d) - (k).

(b) A municipality may provide for a reasonable deposit for meters and service to be given if interest is paid on the deposit.

(c) Unless the utility is owned by the municipality, all rates, charges, and regulations established under this section shall be established



by ordinance and shall be reasonable and permit a fair return on Invested capital.

[d] A municipality may provide for the creation, recording, notice, and foreclosure of a lien on real property to secure the payment of charges for water, sewer, electric, and other utilities provided to the property by the municipality, and the interest, penalties, and administration costs in the event of delinquency. When recorded the utility lien has priority over all other liens except [1] liens for property taxes and special assessments; [2] liens that were perfected before the recording of the utility lien for amounts actually advanced before the recording of the utility lien; [3] mechanic's and materialman's liens for which claims of lien under AS 34.35.070 or notices of right of lien under AS 34.35.060 have been recorded before the recording of the utility lien; and [4] sales and use tax liens created under AS 29.45.650 [e].

[[d]] [e] This section applies to home rule and general law municipalities.

Subsection [d] which is added above is copied verbatim from the language enacted by the legislature last session to establish the priority of liens for delinquent sales and use taxes. The statute which was copied is AS 29.45.650[e].

Please call should you have any questions, but basically all we are trying to do here is make everyone responsible for their own bills. There are always some utility customers who don't feel obligated to pay, and this effort would help in collecting past due accounts.

Sincerely,



Steve Bainbridge
City Administrator

cc Representative Richard Shultz

P.O. BOX 55109
NORTH POLE, ALASKA
99705



TOP OF THE WORLD
PHONE: 907-488-2281
AT YOUR SERVICE

March 21, 1989

The Honorable Senator Jack Coghill
P. O. Box V
Juneau, Alaska 99811

Re: SB 207, Municipal Utility Liens

Dear Jack:

Just a short note to let you know that we are in receipt of and support Senate Bill 207. As you are well aware, collection of utility charges has posed a major problem for small municipalities. Often, the only remedy is Small Claims Court. In instances where the delinquent party has left the area, there is little recourse.

The provisions of SB 207 would take tremendous strides toward alleviating this problem. You have the full support of The City of North Pole. Please let us know to whom we may make further contacts to aid in passage.

Sincerely,

A handwritten signature in black ink, appearing to read 'Carleta Lewis', written over a horizontal line.

Carleta Lewis
Mayor, City of North Pole

CL/kl

NOME JOINT UTILITY SYSTEM

RESOLUTION 89-09

A RESOLUTION SUPPORTING SENATE BILL NO. 207,
AN ACT RELATING TO LIENS ON REAL PROPERTY TO SECURE PAYMENT
FOR SERVICES PROVIDED BY A UTILITY OWNED BY A MUNICIPALITY

WHEREAS, there is a Senate Bill No. 207 in the Legislature of the State of Alaska Sixteenth Legislature - First Session, and

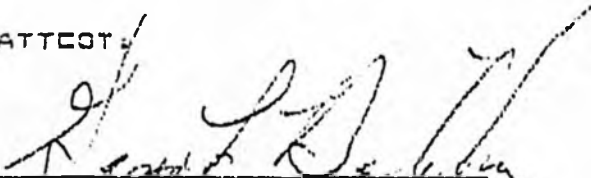
WHEREAS, this Bill is "An Act relating to liens of real property to secure payment for services provided by a utility owned by a municipality.", and

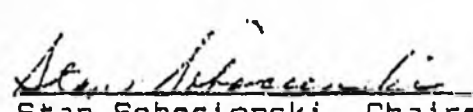
WHEREAS, the Nome Joint Utility Board would like to go on record as being in support of this Bill,

NOW THEREFORE BE IT RESOLVED that the Nome Joint Utility Board, sitting in Regular Session on March 21, 1989, supports Senate Bill No. 207, An Act Relating to Liens on Real Property to Secure Payment for Services Provided by a Utility Owned by a Municipality.

SIGNED THIS 21 DAY OF MARCH, 1989 AT NOME, ALASKA.

ATTEST:


Gary Butcher, Secretary
NOME JOINT UTILITY SYSTEM


Stan Sobocienski, Chairman
NOME JOINT UTILITY BOARD

STATE OF ALASKA

STEVE COWPER, GOVERNOR

ALASKA PUBLIC UTILITIES COMMISSION
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT420 "L" STREET
SUITE 100
ANCHORAGE, ALASKA 99501
(907) 276-6222

ALASKA PUBLIC UTILITIES COMMISSION

COMMENTS ON CSSB 207

April 11, 1989

CSSB 207 authorizes a municipality to create a lien on real property to secure payment for services provided by a municipally-owned utility. The bill further provides that the lien may be enforced in the same manner as a property tax lien.

The public policy issue of what authority should be given to governmental entities, such as municipalities, to collect money from its citizens is appropriately resolved by the Legislature. The Commission would point out, however, that CSSB 207 provides municipalities, in their role as utilities, with significantly greater recourse against consumer/citizens than is generally allowed public utilities by regulatory commissions, courts, and legislatures.

The Commission has adopted specific rules and regulations regarding the billing and collection practices of electric and telephone public utilities, and those rules and regulations are applicable to those municipally-owned utilities which are subject to economic regulation by the Commission. CSSB 207 creates the potential that the billing and collection practices adopted by municipalities for certain utilities will conflict with the regulations established by the Commission.

The problem raised by the City of Nenana which resulted in this legislation was limited to collection of charges for water and sewer service. The Commission notes that payment and collection of rates for sewer and water service has traditionally been handled somewhat differently than for other utilities. For example, landlords generally remain responsible for water and sewer service, while tenants generally obtain and pay for other utility services. In addition, it may not be practical to use discontinuance of service as a means to secure against loss for non-payment. Thus, the Commission believes that it might be preferable if any legislation on this subject were limited to the problem raised by the City of Nenana involving water and sewer service.

HOUSE COMMITTEE REPORT

4/20

(5)
Date Referred: April 18, 1989

FURTHER REFERRALS: JUDICIARY

Date of Committee Action: 4/18/89

The COMMUNITY & REGIONAL AFFAIRS Committee considered: CSSB 207(C&RA)

CS FOR SENATE BILL NO. 207 (C&RA)

[LIENS BY MUNICIPALITY FOR UTILITY SERVICE]

"An Act relating to liens on real property to secure payment for services provided by a utility owned by a municipality."

RECOMMENDATIONS:

- be replaced with: H.C.S for CSSB 207 C+RA 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) APPROVES PREVIOUS: (Date/Dept)

- fiscal impact _____
- zero fiscal note _____
- zero with analysis _____
- fiscal note(s) _____
- ^{Senate} zero fiscal note(s) C&RA 3/31/89
- zero fn/analysis _____

SIGNING DO PASS:

SIGNING: (Check approp. column)

Do Not Pass No Rec Amend

<u>Richard J. Foster</u> FOSTER	<u>Cheri Davis</u> C. DAVIS	X		
<u>Eileen P. MacLean</u> MACLEAN				

Eileen P. MacLean
Chairman's Signature

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act..liens on real property to secure payment..services..utility.."
Sponsor: Senate C&RA Committee
Requestor: _____

Agency Affected: Community & Regional Affairs
BRU: _____

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Jim Plesman, Deputy Director Phone: 465-4750
Division: Municipal & Regional Assistance Date: 3/29/89
Approved by Commissioner: David C. Bellman Date: 3-30-89
Agency: Community & Regional Affairs

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

SUGGESTED BY COGHILL

WORK DRAFT

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6-0949J
Cook
4/24/89

Original sponsors: Adams and Coghill

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IN THE SENATE

HOUSE CS FOR CS FOR SENATE BILL NO. 207 ()

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to liens on real property to secure payment for services provided by a utility owned by a municipality."

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

* Section 1. AS 29.35.070 is amended by adding a new subsection to read:

(e) A municipality may by ordinance provide for creation, recording, and notice of a lien on real property to secure payment for sewer and water services provided by a utility owned by the municipality and for the interest, penalties, and administration costs charged in the event of delinquency. The lien may be enforced as provided in AS 29.45.320 - 29.45.490 for enforcement of a property tax lien, but the lien does not have priority over other liens recorded before it or over liens for property taxes, sales and use taxes, or special assessments.

Original sponsors: Adams and Coghill

1 IN THE SENATE

BY THE COMMUNITY AND
REGIONAL AFFAIRS COMMITTEE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 207 (C&RA)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to liens on real property to secure
7 payment for services provided by a utility owned by a
8 municipality."

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

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13 cording, and notice of a lien on real property to secure payment for
14 sewer and water services provided by a utility owned by the munic-
15 ipality and for the interest, penalties, and administration costs
16 charged in the event of delinquency. The lien may be enforced as
17 provided in AS 29.45.320 - 29.45.490 for enforcement of a property tax
18 lien.

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: "An Act..liens on real property to secure payment..services..utility.."
 Sponsor: Senate C&RA Committee
 Requestor: _____

Agency Affected: Community & Regional Affairs
 BRU: _____
 Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Jim Plasman

Prepared by: Jim Plasman, Deputy Director Phone: 465-4750
 Division: Municipal & Regional Assistance Date: 3/29/89

David O. Johnson

Approved by Commissioner: David O. Johnson Date: 3-30-89
 Agency: Community & Regional Affairs

Distribution (by preparer):

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



Alaska State Legislature

House of Representatives
Community & Regional Affairs

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HOUSE BILL 266

- ITEM 1: 0 FISCAL NOTE - DEPARTMENT OF COMMUNITY & REGIONAL AFF.
- ITEM 2: MEMO - TAMARA COOK, DIRECTOR, DIVISION OF LEGAL SERVICES
- ITEM 3: LETTERS OF SUPPORT
- ITEM 4: LETTER - ALASKA PUBLIC UTILITIES COMMISSION
- ITEM 5: REGULATIONS - APUC
- ITEM 6: STATUTES
- ITEM 7: HB 266

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: "An Act.. liens.. real property to
 secure payment for services.."
 Sponsor: Rep Shultz
 Requestor: _____

Agency Affected: Community & Regional Affairs
 BRU: _____
 Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Jim Plasman

Prepared by: Jim Plasman, Deputy Director Phone: 465-4750
 Division: Municipal & Regional Assistance Date: 4/10/89

Approved by Commissioner: *[Signature]* Date: 10 APR 89
 Agency: Community & Regional Affairs

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

514

(b) A utility shall inform customers applying for levelized billing as to how the levelized billing estimate was developed; how levelized billing will impact a customer's monthly utility bill; and that the utility may adjust the customer's monthly levelized bill under (c) of this section.

(c) A utility shall adjust a customer's levelized billing annually, or more frequently if the utility's estimate of the customer's usage or cost varies significantly from the customer's actual usage or cost. The utility or the customer may initiate the adjustment for causes including weather and rate changes.

(d) In the case of an overcollection determined at the time of the annual adjustment required by (c) of this section, a termination of service, or a termination of the levelized billing plan, a utility shall immediately refund or credit the excess payment to the customer account, as appropriate.

(e) A utility may not refuse enrollment in levelized billing to a customer whose current bill at the time of enrollment is past due or delinquent if the customer enters into a deferred payment agreement, as described in 3 AAC 52.445. (Eff. 1/1/87, Register 100)

Authority: AS 42.05.141
AS 42.05.151
AS 42.05.291

3 AAC 52.445. DEFERRED PAYMENT AGREEMENTS. (a) For a residential customer who demonstrates that economic hardship prevents payment in full of a delinquent bill, a utility may not refuse to restore or continue service unless the customer refuses to agree to or comply with a deferred payment plan meeting the requirements of this section.

(b) A deferred payment agreement between a utility and a residential customer must provide that service will continue if the customer meets all of the following conditions:

(1) the customer agrees to pay one-third, or less at the option of the utility, of the outstanding bill at the time the parties enter into the deferred payment agreement;

(2) the customer agrees to pay all future bills for utility service in accordance with the effective billing and collection tariffs of the utility; and

(3) the customer agrees to pay the remaining outstanding balance in installments over a period not to exceed 12 months.

(c) The duration of a deferred payment agreement must be at least three months unless the customer agrees to a shorter period.

(d) A utility may include provisions for deferred payment agreements with non-residential customers in its tariff, or may negotiate them by special contract.

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(e) In determining a reasonable deferred payment schedule, a utility and customer shall consider the following conditions, a list of which must be presented to the customer:

- (1) size of the delinquent account;
- (2) customer's ability to pay;
- (3) customer's payment history;
- (4) length of time the debt has been outstanding;
- (5) circumstances that resulted in the outstanding debt; and
- (6) any other relevant factors related to the circumstances of the customer.

(f) A deferred payment agreement must be in writing and must be signed by the customer and an authorized utility representative. A deferred payment agreement may include a finance charge as specified in the utility's effective tariff, but the charge may not exceed that allowed by AS 45.45.010(a).

(g) A utility shall offer comparable terms and conditions to customers with similar payment problems.

(h) If a customer fails to fulfill the terms of a deferred payment agreement, the utility may disconnect service under 3 AAC 52.450(d). The utility may offer a subsequent deferred payment agreement before disconnecting the customer's service. (Eff. 1/1/87, Register 100)

Authority: AS 42.05.141
AS 42.05.151
AS 42.05.291

3 AAC 52.450. DISCONNECTION OF SERVICE. (a) A utility may disconnect service to a customer without advance written notice under the following conditions:

- (1) an immediate hazard exists which threatens the safety or health of the customer or the general population or the utility's personnel or facilities;
- (2) the utility has evidence of meter tampering or fraud by the customer; or
- (3) a customer has failed to comply with the curtailment procedures imposed by a utility during emergency supply shortages.

(b) A utility may commence disconnection procedures in accordance with the notice requirements of (c) of this section for any of the following reasons:

- (1) failure of the customer to pay for utility service within 55 days after initial rendering of the bill unless the customer has entered into a deferred payment agreement;
- (2) failure of the customer to meet or maintain the utility's deposit requirements;
- (3) knowing and continued failure of the customer to provide the utility with reasonable access to its meter, equipment, or property;

(4) customer breach of a special contract between the utility and customer for utility service; or

(5) necessity of the utility to comply with an order or regulation of any governmental agency with proper jurisdiction.

(c) The following notice requirements apply to service disconnections permissible under (b) of this section:

(1) Except as provided in (2) of this subsection and in (d) of this section, a utility shall, at least 15 days before the scheduled date of disconnection, mail or deliver to the customer a written notice of its intent to disconnect service. A copy of the termination notice must be simultaneously forwarded to any third party designated by the customer on a service application. The notice must contain, at a minimum, the following information:

(A) the name and address of the customer whose service is to be disconnected and the service address, if different;

(B) the date on or after which service will be disconnected unless the customer takes appropriate action;

(C) an explanation of the reason for the proposed disconnection, including, if appropriate, a statement of the amount of the delinquent bill which the customer has failed to pay in accordance with the payment policy of the utility;

(D) if disconnection is premised on payment delinquency,

(i) a statement advising the customer to contact the utility for information regarding deferred payment and other procedures that the utility may offer to avoid disconnection of the customer's service; and

(ii) a list of any governmental or social assistance agencies, of which the utility is aware, that may offer energy assistance to qualified needy customers;

(E) a specific request that if a customer's residence is occupied by a person seriously ill, elderly, handicapped, or dependent on life support systems, the customer should notify the utility immediately of that circumstance for consideration in avoiding disconnection;

(F) a statement advising the customer that the utility's stated reason for the termination of service may be disputed and potentially resolved by contacting the utility at a specific address or telephone number;

(G) a statement that the utility retains the right to terminate service, after allowing a customer who disputes a bill the opportunity for a meeting, if the utility continues to find that the reason for the disconnection is just;

(H) the telephone number and address of the commission and a statement that the customer may file a complaint with the commission under 3 AAC 48.120 or 3 AAC 48.130 if not satisfied

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with the utility's response or resolution of a contested bill or tariff provision; and

(1) the amount of the utility's tarified charges for disconnection and reconnection of service.

(2) If a utility has been informed that a residence is occupied by a person seriously ill, elderly, handicapped, or dependent on life support systems, the utility shall provide the notice required by (1) of this subsection at least 30 days before the scheduled date of disconnection. In any case in which a utility is notified after issuance of a termination notice that a customer's residence is occupied by a person seriously ill, elderly, handicapped, or dependent on life support systems, the utility shall extend the disconnection date by 15 days and notify the customer of the extension.

(3) Not less than three working days prior to disconnection, the utility shall attempt personal contact with the customer either by telephone or by visit of an authorized utility representative to the premises. If by telephone, the utility shall attempt to make contact no less than three times at various periods in the day. A utility shall keep records of all attempted and completed telephone contacts, showing at least the time, the person making the attempt, and the outcome. If by visit to the premises, the utility's authorized representative shall hand-deliver a "Shut-Off Notice" to the customer or, if no personal contact is possible, leave the notice in a prominent place. The "Shut-Off Notice" or completed telephone call must provide the customer with the following information:

(A) the name and address of the customer and the service address, if different;

(B) a concise statement of the reasons for the impending disconnection of service;

(C) the date on or after which service will be disconnected;

(D) the business office telephone number, after-business-hours telephone number if applicable, and the address of the utility where the customer may pay the delinquent bill, enter into a deferred payment agreement, or file a bill dispute complaint; and

(E) the amount of the charges for disconnection and reconnection of service.

(4) If a utility knows that a landlord/tenant relationship exists, the following additional provisions apply:

(A) For individually metered premises where the landlord is the customer and the notice period provided for in (1) — (3) of this subsection has expired, the utility shall notify the tenant in writing of the option of subscribing for service in the tenant's own name. However, the utility may not attempt to recover from the tenant or condition service to the tenant on the payment of any outstanding bills or other charges due from the outstanding account of the landlord. If, however, the tenant has a previously

outstanding balance at the same service address, the utility may condition service to that tenant on terms acceptable to the utility for repayment of the outstanding balance plus a deposit in compliance with the utility's tariff. If the tenant declines to subscribe for individual service, or arrange for payment of the delinquency if applicable, within 10 days after written notice by the utility is mailed or delivered to the tenant, the utility may disconnect service without further notice.

(B) For master-metered premises where the landlord is the customer and the notice period provided for in (1) — (3) of this subsection has expired, the utility shall give individual notice of the pending disconnection to each tenant served through the master meter at least 14 days before disconnection.

(C) If the tenant is the customer and the notice period provided for in (1) — (3) of this subsection has expired, the utility shall notify the landlord in writing of the option of subscribing for the service provided at the tenant's premises. However, the utility may not attempt to recover from the landlord or condition service to the landlord on the payment of any outstanding bills or other charges due from the outstanding account of the tenant. If, however, the landlord has a previously outstanding balance at the same service address, the utility may condition service to that landlord on terms acceptable to the utility for repayment of the outstanding balance plus a deposit in compliance with the utility's tariff. If the landlord declines to subscribe for service, or arrange for payment of the delinquency if applicable, within 10 days after written notice by the utility is mailed to the landlord, then the utility may disconnect service without further notice.

(d) At least three working days before disconnection, a utility shall give written or telephone notice of disconnection, in accordance with (C)(3) of this section to a customer who has failed to comply with a deferred payment agreement.

(e) Within 10 days after the date specified on a "Shut-Off Notice", a utility may, without further notice, disconnect service to a customer between the daily business hours of 8:00 a.m. on Monday to 5:00 p.m. on Thursday. Service may not be disconnected on a Friday or a day preceding a holiday.

(f) A utility may not disconnect service to a customer for any of the following reasons:

(1) delinquency in payment for services rendered to a prior customer at the premises where service is being provided, except in the instance where the prior customer continues to reside on the premises;

(2) failure of the customer to pay for services or equipment not regulated by the commission;

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(3) nonpayment of a bill related to another class of service at a different service location;

(4) the customer disputes the amount due on the delinquent account, complies with the utility's tariffed rules on customer bill disputes, and the dispute remains under investigation by the utility or by the commission; however, a customer shall pay any undisputed amount, and the utility may proceed to disconnect service in accordance with this section for failure to pay any undisputed amounts; or

(5) the customer is unable to pay the full delinquent amount due, qualifies under the utility's tariffed eligibility requirements for deferred payment agreements, and is in compliance with a signed, or is in the process of timely negotiating a, deferred payment agreement.

(g) A utility may remove any or all of its property installed on a customer's premises upon disconnection of service.

(h) A utility shall restore service within three working days after correction of the conditions that resulted in the disconnection. Correction includes execution of a deferred payment agreement. If service is restored during a period other than regular working hours at the customer's request, the utility may impose an after-hours charge for reconnection.

(i) Each utility shall maintain a record of each disconnection of service, including the reason for the disconnection. This record must be maintained for two years and must be available for commission inspection. (Eff. 1/1/87, Register 100)

Authority: AS 42.05.141
AS 42.05.151
AS 42.05.291

3 AAC 52.455. LINE EXTENSIONS AND SERVICE CONNECTIONS. (a) A utility's tariff for line extensions and service connections, or, if appropriate, special contracts under 3 AAC 48.390, must include the following:

(1) the amount of the costs, maximum footage, or equipment allowance for a line extension and a service connection, to be provided by the utility at no charge; the utility may specify different allowances for different customer classes;

(2) a requirement, subject to the provisions of (3) and (4) of this subsection and to (c) and (d) of this section, that a customer requesting a line extension or service connection must pay all costs which exceed the amount for which the utility is responsible under (a)(1) of this section;

(3) a statement that the customer is not responsible for the cost of system upgrade that is incidentally the result of the customer's

Chapter 35. Municipal Powers and Duties.

Article

1. General Powers (§ 29.35.070)
3. Additional Powers (§ 29.35.210)
8. Hazardous Chemicals, Materials, and Wastes (§§ 29.35.500, 29.35.520, 29.35.530, 29.35.560, 29.35.590)

Article 1. General Powers.

Section

70. Public utilities

Sec. 29.35.070. Public utilities. (a) The assembly acting for the area outside all cities in the borough and the council acting for the area in a city may regulate, fix, establish, and change the rates and charges imposed for a utility service provided to the municipality or its inhabitants by a utility that is not subject to regulation under AS 42.05 unless that utility is exempted from regulation under AS 42.05.711(a) or (d) — (k).

(b) A municipality may provide for a reasonable deposit for meters and service to be given if interest is paid on the deposit.

(c) Unless the utility is owned by the municipality, all rates, charges, and regulations established under this section shall be established by ordinance and shall be reasonable and permit a fair return on invested capital.

(d) This section applies to home rule and general law municipalities. (§ 10 ch 74 SLA 1985)

Editor's notes. — This section is set out to correct an error in enactment.

Article 3. Additional Powers.

Section

210. Second class borough powers

Sec. 29.35.210. Second class borough powers. (a) A second class borough may by ordinance exercise the following powers on a nonareawide basis:

- (1) provide transportation systems;
- (2) regulate the offering for sale, exposure for sale, sale, use, or explosion of fireworks;
- (3) license, impound, and dispose of animals;
- (4) provide garbage, solid waste, and septic waste collection and disposal;
- (5) provide air pollution control in accordance with AS 46.03.140 — 46.03.230;
- (6) provide water pollution control;

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HOUSE COMMITTEE REPORT

(7)

Date Referred: January 18, 1990

FURTHER REFERRALS:

Date of Committee Action: 3-6-90

The JUDICIARY Committee considered:

CSSB 226(JUDICIARY)

CS SENATE BILL NO. 226 (Jud) POSSESSION OF GUNS WHILE INTOXICATED

"An Act relating to misconduct involving possession of a firearm by a person who is intoxicated or under the influence of drugs."

RECOMMENDATIONS:

- be replaced with ~~CS SB 226~~ the same title
- have attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

- fiscal impact _____
- 2 see zero fiscal note ^{Corrections} Pub. Safety
- 2 see zero with analysis ^{LAW} Admin

- fiscal note(s) _____
- zero fiscal note(s) _____
- zero fn/analysis _____

SIGNING DO PASS:

Greg Greenberg

Gerry Martin

Mike Miller

SIGNING:

(Check approp. column)

	Do Not Pass	No Rec	Amend
<i>Mike Deen</i>		✓	

Mr. J. Kennedy
 Chairman's Signature

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: "An Act relating to misconduct
 involving firearms...by intoxicated"
 Sponsor: Senator Binkley
 Requestor: _____

Agency Affected: Department of Corrections
 BRU: _____
 Components: _____

EXPENDITURES/REVENUES (Thousands of Dollars)

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

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

This legislation would have minimal impact on the Department of Corrections.

Susan E. Knighton

Prepared by: Susan E. Knighton, Director
 Division: Administrative Services

Phone: 465-3376
 Date: 01/16/90

Approved by Deborah Humphrey-Barnett
 Agency: Department of Corrections

Date: 01/16/90

Distribution (by preparer):

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

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: Possession of firearms while
Intoxicated
Sponsor: Senator Binkley, et al.
Requestor: House State Affairs

Agency Affected: Public Safety
BRU: Alaska State Troopers
Component: Detachments

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

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

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER/PROG RCPT						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

This bill will not have any fiscal impact on the Department of Public Safety.

Prepared by: Francis C. Allan
Division: Alaska State Troopers

Phone: 269-5691
Date: 12/19/89

Approved by Commissioner: S.O.H. Arthur English
Agency: Department of Public Safety

Date: 1-3-90
Page 1 of 1

Photo
12/22/89

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: "An Act relating to misconduct involving possession of a firearm..."
 Sponsor: Binkley, Faiks, Coghill & Jones
 Requestor: Senate

Agency Affected: Dept. of Administration
 BRU: Public Defender Agency
 Components: Third Judicial District

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary) FY 90 impact is zero.

(See attached)

Prepared by: John B. Salemi, Public Defender Phone: 279-7541
 Division: Public Defender Agency Date: 3/5/90
 Approved by Commissioner: Frank Baxter Date: 3/6/90
 Agency: Department of Administration

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

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: "An Act relating to misconduct
 involving possession of a firearm..."
 Sponsor: Senate Judiciary
 Requestor: Senate State Affairs

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

CAPITAL						
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REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Please see the attached analysis.

Richard I. Pegues

Prepared by: Richard I. Pegues, Director Phone: 465-3672

Division: Administrative Services Date: January 11, 1990

Approved by Commissioner: *Richard I. Pegues / FWR /* Douglas B. Baily, Attorney General Date: January 11, 1990

Agency: Department of Law

Distribution (by preparer):

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

HOUSE COMMITTEE REPORT

(7)

Date Referred: April 29, 1989

FURTHER REFERRALS: JUDICIARY

Date of Committee Action: _____

The STATE AFFAIRS Committee considered:

CSSB 226 (JUD)

~~FOR SENATE BILL NO. 226 (Judiciary)~~

[POSSESSION OF GUNS WHILE INTOXICATED]

"An Act relating to misconduct involving possession of a firearm by a person who is intoxicated or under the influence of drugs."

RECOMMENDATIONS:

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

ADOPTS: _____ letter of intent

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

- [] fiscal impact _____ [] fiscal note(s) _____
- [2] zero fiscal note ^{Dept Corrections 1/14/90} _{Pub Safety 1/8/90} [] zero fiscal note(s) _____
- [X] zero with analysis ^{Law 1/11/90} [] zero fn/analysis _____

SIGNING DO PASS:

SIGNING:

(Check approp. column)

	Do Not Pass	No Rec	Amend
Steve Hickey			
Eileen B. MacLean		✓	
David Donley		✓	

W.A. Bush

Chairman's Signature

Item 3

Senator John Binkley

Senate Finance Committee
P.O. Box V • Juneau, Alaska 99811 • (907) 465-4985




Finance Committee
Co-Chairman

MEMORANDUM

January 12, 1990

TO: Representative Red Boucher
Chairman, House State Affairs Committee

FROM: Senator John Binkley 

RE: SB 226, relating to misconduct involving possession of a firearm

The above-referenced bill is scheduled to be heard before your committee on Wednesday, January 17. If this bill were to become law, a person who commits criminal trespass in the first degree while under the influence of drugs or alcohol and who has a gun on his person would be guilty of misconduct involving possession of a firearm in the first degree. That offense is a Class C felony and would be subject to a penalty of up to \$50,000 and 5 years in jail.

First degree criminal trespass is entering and remaining in a person's home or land unlawfully. I've attached copies of the appropriate statutes for your easy reference.

Guns and alcohol or drugs don't mix under any circumstances. But to have a person in this condition in your home or on your property without your permission or consent is a frightening and potentially dangerous situation.

I appreciate your willingness to schedule this bill so quickly. Due to a scheduling conflict, Janice Adair of my staff will attend the meeting to answer any of the members' questions.

(b) It is an affirmative defense to a prosecution under (a)(1) of this section that

(1) the defendant took reasonable steps to remove the substance from the highway; and

(2) no person suffered physical injury as a result of the presence of the substance on the highway.

(c) Obstruction of highways is a class B misdemeanor. (§ 7 ch 166 SLA 1978)

Collateral references. — 39 Am. Jur. 2d. Highways, Streets and Bridges, §§ 281-310.
39A C.J.S., Highways, §§ 217-231.

Article 2. Weapons and Explosives.

Section	Section
200. Misconduct involving weapons in the first degree	230. Possession of burglary tools
210. Misconduct involving weapons in the second degree	240. Criminal possession of explosives
220. Misconduct involving weapons in the third degree	250. Unlawful furnishing of explosives

Collateral references. — Validity and construction of gun control laws, 28 ALR3d 845.

Sec. 11.61.200. Misconduct involving weapons in the first degree. (a) A person commits the crime of misconduct involving weapons in the first degree if the person

(1) knowingly possesses a firearm capable of being concealed on one's person after having been convicted of a felony by a court of this state, a court of the United States, or a court of another state or territory;

(2) knowingly sells or transfers a firearm capable of being concealed on one's person to a person who has been convicted of a felony by a court of this state, a court of the United States, or a court of another state or territory;

(3) manufactures, possesses, transports, sells, or transfers a prohibited weapon;

(4) knowingly sells or transfers a firearm to another whose physical or mental condition is substantially impaired as a result of the introduction of an intoxicating liquor or drug into that other person's body;

(5) removes, covers, alters, or destroys the manufacturer's serial number on a firearm with intent to render the firearm untraceable; or

(6) possesses a firearm on which the manufacturer's serial number has been removed, covered, altered, or destroyed, knowing that the serial number has been removed, covered, altered, or destroyed with the intent of rendering the firearm untraceable.

(b) It is an affirmative defense to a prosecution under (a)(1) or (2) of this section that

(1) the person convicted of the prior offense on which the action is based received a pardon for that conviction;

(2) the underlying conviction upon which the action is based has been set aside under AS 12.55.085 or as a result of post-conviction proceedings; or

(3) a period of five years or more has elapsed between the date of the person's unconditional discharge on the prior offense and the date of the possession, sale, or transfer of the firearm.

(c) It is an affirmative defense to a prosecution under (a)(3) of this section that the manufacture, possession, transportation, sale, or transfer of the prohibited weapon was in accordance with registration under 26 U.S.C. 5801-5872 (National Firearms Act).

(d) The provisions of (a)(3) of this section do not apply to a peace officer acting within the scope and authority of the officer's employment.

(e) As used in this section,

(1) "prohibited weapon" means any

(A) explosive, incendiary, or noxious gas

(i) mine or device that is designed, made, or adapted for the purpose of inflicting serious physical injury or death;

(ii) rocket, other than an emergency flare, having a propellant charge of more than four ounces;

(iii) bomb;

(iv) grenade;

(B) device designed, made, or adapted to muffle the report of a firearm;

(C) metal knuckles;

(D) switchblade or gravity knife;

(E) firearm that is capable of shooting more than one shot automatically, without manual reloading, by a single function of the trigger; or

(F) rifle with a barrel length of less than 16 inches, shotgun with a barrel length of less than 18 inches, or firearm made from a rifle or shotgun which, as modified, has an overall length of less than 26 inches;

(2) "unconditional discharge" has the meaning ascribed to it in AS 12.55.185.

(f) Misconduct involving weapons in the first degree is a class C felony. (§ 7 ch 166 SLA 1978)

Sec. 11.46.310. Burglary in the second degree. (a) A person commits the crime of burglary in the second degree if the person enters or remains unlawfully in a building with intent to commit a crime in the building.

(b) Burglary in the second degree is a class C felony. (§ 4 ch 166 SLA 1978)

NOTES TO DECISIONS

For cases construing former law, see notes to AS 11.46.300, analysis line II.

Applied in *McManners v. State*, Ct. App. Op. No. 123 (File No. 6065), 650 P.2d 414 (1982); *Linn v. State*, Ct. App. Op. No. 210 (File Nos. 6163, 6188), 658 P.2d 150 (1983).

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

Cited in *Ozenna v. State*, Sup. Ct. Op. No. 2209 (File No. 4748), 619 P.2d 477 (1980); *Zurfluh v. State*, Sup. Ct. Op. No. 2238 (File No. 4697), 620 P.2d 690 (1980); *Kanipe v. State*, Sup. Ct. Op. No. 2242 (File No. 4993), 620 P.2d 678 (1980); *Nix v. State*, Ct. App. Op. No. 008 (File No. 4879), 624 P.2d 825 (1981); *Koteles v. State*, Ct. App. Op. No. 232 (File No. 6782), 660 P.2d 1199 (1983).

Sec. 11.46.320. Criminal trespass in the first degree. (a) A person commits the crime of criminal trespass in the first degree if the person enters or remains unlawfully

- (1) on land with intent to commit a crime on the land; or
- (2) in a dwelling.

(b) Criminal trespass in the first degree is a class A misdemeanor. (§ 4 ch 166 SLA 1978; am § 12 ch 102 SLA 1980)

Effect of amendments. — The 1980 amendment substituted "land" for "real property" at the beginning of paragraph (1) in subsection (a), and substituted "the land" for "that real property" near the end of paragraph (1) in subsection (a).

Collateral references. — 35 Am. Jur. 2d, *Forcible Entry and Detainer*, §§ 58 — 61; 52 Am. Jur. 2d, *Malicious Mischief*, § 1 et seq.; 75 Am. Jur. 2d, *Trespass*, §§ 86 — 94.

36 C.J.S. *Forcible Entry and Detainer*, § 1 et seq.; 54 C.J.S. *Malicious Mischief*, § 1 et seq.; 87 C.J.S. *Trespass* §§ 140 — 165.

Forcible detainer or trespass, where entry was peaceable, 49 ALR 597.

Sec. 11.46.330. Criminal trespass in the second degree. (a) A person commits the crime of criminal trespass in the second degree if the person enters or remains unlawfully

- (1) in or upon premises; or
- (2) in a propelled vehicle.

(b) Criminal trespass in the second degree is a class B misdemeanor. (§ 4 ch 166 SLA 1978)

Cross references. — For provisions authorizing arrest without warrant in certain cases where the police officer has reasonable cause to believe that the person has committed a crime under this section, see AS 12.25.030(b).

NOTES TO DECISIONS

Cited in *Moxie v. State*, Ct. App. Op. No. 246 (File No. 7192), 662 P.2d 990 (1983).

Sec. 11.46.340. Defense: emergency use of premises. In a prosecution under AS 11.46.300, 11.46.310, 11.46.320, or 11.46.330(a)(1), it is an affirmative defense that

(1) the entry, use, or occupancy of premises or use of personal property on the premises is for an emergency in the case of immediate and dire need; and

(2) as soon as a reasonably practical after the entry, use, or occupancy, the person contacts the owner of the premises, the owner's agent or, if the owner is unknown, the nearest state or local police agency, and makes a report of the time of the entry, use, or occupancy and any damage to the premises or personal property, unless notice waiving necessity of the report is posted on the premises by the owner or the owner's agent. (§ 4 ch 166 SLA 1978)

Sec. 11.46.350. Definition. (a) As used in AS 11.46.300 — 11.46.350, unless the context requires otherwise, "enter or remain unlawfully" means to

(1) enter or remain in or upon premises or in a propelled vehicle when the premises or propelled vehicle, at the time of the entry or remaining, is not open to the public and when the defendant is not otherwise privileged to do so;

(2) fail to leave premises or a propelled vehicle that is open to the public after being lawfully directed to do so personally by the person in charge; or

(3) enter or remain upon premises or in a propelled vehicle in violation of a provision in an order issued under AS 25.35.010(b) or 25.35.020.

(b) For purposes of this section, a person who, without intent to commit a crime on the land, enters or remains upon unimproved and apparently unused land, which is neither fenced nor otherwise enclosed in a manner designed to exclude intruders, is privileged to do so unless

(1) notice against trespass is personally communicated to that person by the owner of the land or some other authorized person; or

(2) notice against trespass is given by posting in a reasonably conspicuous manner under the circumstances. (§ 4 ch 166 SLA 1978; am § 9 ch 61 SLA 1982)

(10) "culpable mental state" means "intentionally", "knowingly", "recklessly", or with "criminal negligence", as those terms are defined in (a) of this section;

(11) "dangerous instrument" means any deadly weapon or anything which, under the circumstances in which it is used, attempted to be used, or threatened to be used, is capable of causing death or serious physical injury;

(12) "deadly force" means force which the person uses with the intent of causing, or uses under circumstances which he knows create a substantial risk of causing, death or serious physical injury; "deadly force" includes intentionally discharging or pointing a firearm in the direction of another person or in the direction in which another person is believed to be and intentionally placing another person in fear of imminent serious physical injury by means of a dangerous instrument;

(13) "deadly weapon" means any firearm, or anything designed for and capable of causing death or serious physical injury, including a knife, an axe, a club, metal knuckles, or an explosive;

(14) "deception" means to knowingly

(A) create or confirm another's false impression which the defendant does not believe to be true, including false impressions as to law or value and false impressions as to intention or other state of mind;

(B) fail to correct another's false impression which the defendant previously has created or confirmed;

(C) prevent another from acquiring information pertinent to the disposition of the property or service involved;

(D) sell or otherwise transfer or encumber property and fail to disclose a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether or not that impediment is a matter of official record; or

(E) promise performance which the defendant does not intend to perform or knows will not be performed;

(15) "defense", other than an affirmative defense, means that

(A) some evidence must be admitted which places in issue the defense; and

(B) the state then has the burden of disproving the existence of the defense beyond a reasonable doubt;

(16) "drug" has the meaning ascribed to it in AS 11.71.900(9);

(17) "dwelling" means a building that is designed for use or is used as a person's permanent or temporary home or place of lodging;

(18) "explosive" means a chemical compound, mixture, or device that is commonly used or intended for the purpose of producing a chemical reaction resulting in a substantially instantaneous release of gas and heat, including dynamite, blasting powder, nitroglycerin, blasting caps, and nitrojelly, but excluding salable fireworks as defined in AS 18.72.050, black powder, smokeless powder, small arms ammunition, and small arms ammunition primers;

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Senator Johne Binkley

Senate Finance Committee
P.O. Box V • Juneau, Alaska 99811 • (907) 465-4985



Finance Committee
Co-Chairman

MEMORANDUM

January 25, 1990

TO: Representative Peter Goll ✓
Representative Max Gruenberg
Co-Chairmen, House Judiciary Committee

FROM: Senator Johne Binkley *Johne*

RE: SB 226, relating to misconduct involving possession of a firearm

The above-referenced bill has been referred to your committee. If this bill were to become law, a person who commits criminal trespass in the first degree while under the influence of drugs or alcohol **and** who has a gun on his person would be guilty of misconduct involving possession of a firearm in the first degree. That offense is a Class C felony and would be subject to a penalty of up to \$50,000 and 5 years in jail.

First degree criminal trespass is entering and remaining in a person's home or land unlawfully. I've attached copies of the appropriate statutes for your easy reference.

Guns and alcohol or drugs don't mix under any circumstances. But to have a person in this condition in your home or on your property without your permission or consent is a frightening and potentially dangerous situation.

i would appreciate your scheduling this bill for hearing before your committee. Please let Janice Adair of my staff know when you will be able to hear SB 226. Thank you.

Janice Adair

Current Statutes

§ 11.61.200

ALASKA STATUTES

§ 11.61.200

(b) It is an affirmative defense to a prosecution under (a)(1) of this section that

(1) the defendant took reasonable steps to remove the substance from the highway; and

(2) no person suffered physical injury as a result of the presence of the substance on the highway.

(c) Obstruction of highways is a class B misdemeanor. (§ 7 ch 166 SLA 1978)

Collateral references. — 39 Am Jur
2d, Highways, Streets and Bridges,
§§ 281-310
39A C.J.S., Highways, §§ 217-231

Article 2. Weapons and Explosives.

Section	Section
200. Misconduct involving weapons in the first degree	230. Possession of burglary tools
210. Misconduct involving weapons in the second degree	240. Criminal possession of explosives
220. Misconduct involving weapons in the third degree	250. Unlawful furnishing of explosives

Collateral references. — Validity and construction of gun control laws, 25 ALR3d 845.

Sec. 11.61.200. Misconduct involving weapons in the first degree. (a) A person commits the crime of misconduct involving weapons in the first degree if the person

(1) knowingly possesses a firearm capable of being concealed on one's person after having been convicted of a felony by a court of this state, a court of the United States, or a court of another state or territory;

(2) knowingly sells or transfers a firearm capable of being concealed on one's person to a person who has been convicted of a felony by a court of this state, a court of the United States, or a court of another state or territory;

(3) manufactures, possesses, transports, sells, or transfers a prohibited weapon;

(4) knowingly sells or transfers a firearm to another whose physical or mental condition is substantially impaired as a result of the introduction of an intoxicating liquor or drug into that other person's body;

(5) removes, covers, alters, or destroys the manufacturer's serial number on a firearm with intent to render the firearm untraceable; or

§ 11.61.200

CRIMINAL LAW

§ 11.61.200

(6) possesses a firearm on which the manufacturer's serial number has been removed, covered, altered, or destroyed, knowing that the serial number has been removed, covered, altered, or destroyed with the intent of rendering the firearm untraceable.

(b) It is an affirmative defense to a prosecution under (a)(1) or (2) of this section that

(1) the person convicted of the prior offense on which the action is based received a pardon for that conviction;

(2) the underlying conviction upon which the action is based has been set aside under AS 12.55.085 or as a result of post-conviction proceedings; or

(3) a period of five years or more has elapsed between the date of the person's unconditional discharge on the prior offense and the date of the possession, sale, or transfer of the firearm.

(c) It is an affirmative defense to a prosecution under (a)(3) of this section that the manufacture, possession, transportation, sale, or transfer of the prohibited weapon was in accordance with registration under 26 U.S.C. 5801-5872 (National Firearms Act).

(d) The provisions of (a)(3) of this section do not apply to a peace officer acting within the scope and authority of the officer's employment.

(e) As used in this section,

(1) "prohibited weapon" means any

(A) explosive, incendiary, or noxious gas

(i) mine or device that is designed, made, or adapted for the purpose of inflicting serious physical injury or death;

(ii) rocket, other than an emergency flare, having a propellant charge of more than four ounces;

(iii) bomb;

(iv) grenade;

(B) device designed, made, or adapted to muffle the report of a firearm;

(C) metal knuckles;

(D) switchblade or gravity knife;

(E) firearm that is capable of shooting more than one shot automatically, without manual reloading, by a single function of the trigger; or

(F) rifle with a barrel length of less than 16 inches, shotgun with a barrel length of less than 18 inches, or firearm made from a rifle or shotgun which, as modified, has an overall length of less than 26 inches;

(2) "unconditional discharge" has the meaning ascribed to it in AS 12.55.185.

(f) Misconduct involving weapons in the first degree is a class C felony. (§ 7 ch 166 SLA 1978)

Sec. 11.46.310. Burglary in the second degree. (a) A person commits the crime of burglary in the second degree if the person enters or remains unlawfully in a building with intent to commit a crime in the building.

(b) Burglary in the second degree is a class C felony. (§ 4 ch 166 SLA 1978)

NOTES TO DECISIONS

For cases construing former law, see notes to AS 11.46.300, analysis line II.

Applied in *McManners v. State*, Ct. App. Op. No. 123 (File No. 6065), 650 P.2d 414 (1982); *Linn v. State*, Ct. App. Op. No. 210 (File Nos. 6163, 6188), 658 P.2d 150 (1983).

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

Cited in *Ozeuna v. State*, Sup. Ct. Op. No. 2209 (File No. 4748), 619 P.2d 477 (1980); *Zurfluh v. State*, Sup. Ct. Op. No. 2238 (File No. 4697), 620 P.2d 690 (1980); *Kanipe v. State*, Sup. Ct. Op. No. 2242 (File No. 4993), 620 P.2d 678 (1980); *Nix v. State*, Ct. App. Op. No. 008 (File No. 4879), 624 P.2d 825 (1981); *Koteles v. State*, Ct. App. Op. No. 232 (File No. 6782), 669 P.2d 1199 (1983).

Sec. 11.46.320. Criminal trespass in the first degree. (a) A person commits the crime of criminal trespass in the first degree if the person enters or remains unlawfully

- (1) on land with intent to commit a crime on the land; or
- (2) in a dwelling.

(b) Criminal trespass in the first degree is a class A misdemeanor. (§ 4 ch 166 SLA 1978; am § 12 ch 102 SLA 1980)

Effect of amendments. — The 1980 amendment substituted "land" for "real property" at the beginning of paragraph (1) in subsection (a), and substituted "the land" for "that real property" near the end of paragraph (1) in subsection (a).

Collateral references. — 35 Am. Jur. 2d, *Forcible Entry and Detainer*, §§ 58 — 61; 52 Am. Jur. 2d, *Malicious Mischief*, § 1 et seq.; 75 Am. Jur. 2d, *Trespass*, §§ 86 — 94.

36 C.J.S. *Forcible Entry and Detainer*, § 1 et seq.; 54 C.J.S. *Malicious Mischief*, § 1 et seq.; 87 C.J.S. *Trespass* §§ 140 — 165.

Forcible detainer or trespass, where entry was peaceable, 49 ALR 697.

Sec. 11.46.330. Criminal trespass in the second degree. (a) A person commits the crime of criminal trespass in the second degree if the person enters or remains unlawfully

- (1) in or upon premises; or
- (2) in a propelled vehicle.

(b) Criminal trespass in the second degree is a class B misdemeanor. (§ 4 ch 166 SLA 1978)

Cross references. — For provisions authorizing arrest without warrant in certain cases where the police officer has reasonable cause to believe that the person has committed a crime under this section, see AS 12.25.030(b).

NOTES TO DECISIONS

Cited in *Moxie v. State*, Ct. App. Op. No. 246 (File No. 7192), 662 P.2d 990 (1983).

Sec. 11.46.340. Defense: emergency use of premises. In a prosecution under AS 11.46.300, 11.46.310, 11.46.320, or 11.46.330(a)(1), it is an affirmative defense that

(1) the entry, use, or occupancy of premises or use of personal property on the premises is for an emergency in the case of immediate and dire need; and

(2) as soon as a reasonably practical after the entry, use, or occupancy, the person contacts the owner of the premises, the owner's agent or, if the owner is unknown, the nearest state or local police agency, and makes a report of the time of the entry, use, or occupancy and any damage to the premises or personal property, unless notice waiving necessity of the report is posted on the premises by the owner or the owner's agent. (§ 4 ch 166 SLA 1978)

Sec. 11.46.350. Definition. (a) As used in AS 11.46.300 — 11.46.350, unless the context requires otherwise, "enter or remain unlawfully" means to

(1) enter or remain in or upon premises or in a propelled vehicle when the premises or propelled vehicle, at the time of the entry or remaining, is not open to the public and when the defendant is not otherwise privileged to do so;

(2) fail to leave premises or a propelled vehicle that is open to the public after being lawfully directed to do so personally by the person in charge; or

(3) enter or remain upon premises or in a propelled vehicle in violation of a provision in an order issued under AS 25.35.010(b) or 25.35.020.

(b) For purposes of this section, a person who, without intent to commit a crime on the land, enters or remains upon unimproved and apparently unused land, which is neither fenced nor otherwise enclosed in a manner designed to exclude intruders, is privileged to do so unless

(1) notice against trespass is personally communicated to that person by the owner of the land or some other authorized person; or

(2) notice against trespass is given by posting in a reasonably conspicuous manner under the circumstances. (§ 4 ch 166 SLA 1978; am § 9 ch 61 SLA 1982)

(10) "culpable mental state" means "intentionally", "knowingly", "recklessly", or with "criminal negligence", as those terms are defined in (a) of this section;

(11) "dangerous instrument" means any deadly weapon or anything which, under the circumstances in which it is used, attempted to be used, or threatened to be used, is capable of causing death or serious physical injury;

(12) "deadly force" means force which the person uses with the intent of causing, or uses under circumstances which he knows create a substantial risk of causing, death or serious physical injury; "deadly force" includes intentionally discharging or pointing a firearm in the direction of another person or in the direction in which another person is believed to be and intentionally placing another person in fear of imminent serious physical injury by means of a dangerous instrument;

(13) "deadly weapon" means any firearm, or anything designed for and capable of causing death or serious physical injury, including a knife, an axe, a club, metal knuckles, or an explosive;

(14) "deception" means to knowingly

(A) create or confirm another's false impression which the defendant does not believe to be true, including false impressions as to law or value and false impressions as to intention or other state of mind;

(B) fail to correct another's false impression which the defendant previously has created or confirmed;

(C) prevent another from acquiring information pertinent to the disposition of the property or service involved;

(D) sell or otherwise transfer or encumber property and fail to disclose a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether or not that impediment is a matter of official record; or

(E) promise performance which the defendant does not intend to perform or knows will not be performed;

(15) "defense", other than an affirmative defense, means that

(A) some evidence must be admitted which places in issue the defense; and

(B) the state then has the burden of disproving the existence of the defense beyond a reasonable doubt;

(16) "drug" has the meaning ascribed to it in AS 11.71.900(9);

(17) "dwelling" means a building that is designed for use or is used as a person's permanent or temporary home or place of lodging;

(18) "explosive" means a chemical compound, mixture, or device that is commonly used or intended for the purpose of producing a chemical reaction resulting in a substantially instantaneous release of gas and heat, including dynamite, blasting powder, nitroglycerin, blasting caps, and nitrojelly, but excluding salable fireworks as defined in AS 18.72.050, black powder, smokeless powder, small arms ammunition, and small arms ammunition primers;

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230

HOUSE COMMITTEE REPORT

(7)

Date Referred: April 13, 1990

FURTHER REFERRALS:

FINANCE

Date of Committee Action: 4/20/90

The JUDICIARY Committee considered:

CSSB 230 (FINANCE)

CS SB NO. 230 (Finance)

COMPENSATION OF JUSTICES AND JUDGES

"An Act relating to compensation of justices and judges; and providing for an effective date."

RECOMMENDATIONS:

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

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

- fiscal impact _____
- zero fiscal note _____
- zero with analysis _____

- fiscal note(s) Crt System 3/7/90
- zero fiscal note(s) _____
- zero fn/analysis _____

SIGNING DO PASS:

SIGNING:

(Check approp. column)

Do Not Pass No Rec Amend

[Signature] Goll
[Signature] Groenbergs
[Signature] Miller
[Signature] Ellis

	Do Not Pass	No Rec	Amend
<u>[Signature]</u>			
<u>[Signature]</u> M. Davis		2	

[Signature]
Chairman's Signature

Original sponsor(s): Rules/State Officers Compensation Commission

1 IN THE SENATE

BY THE FINANCE COMMITTEE

2 CS FOR SENATE BILL NO. 230 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to compensation of justices and
7 judges; and providing for an effective date."

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

9 * Section 1. AS 22.05.140(a) is repealed and reenacted to read:

10 (a) The monthly base salary of the chief justice is \$8,333 and
11 for each other justice, the monthly base salary is \$8,292.

12 * Sec. 2. AS 22.05.140(c) is repealed and reenacted to read:

13 (c) In addition to the monthly salary, each justice is entitled
14 to receive a geographic cost-of-living adjustment under AS 22.35.010,
15 based on the location of the primary office assignment. Retirement
16 contributions and benefits shall be computed only on the monthly base
17 salary not including the geographic cost-of-living adjustment.

18 * Sec. 3. AS 22.07.090(a) is repealed and reenacted to read:

19 (a) The monthly base salary of a judge of the court of appeals
20 is \$7,833. The compensation of a judge may not be diminished during
21 the term of office, unless by a general law applying to all salaried
22 officers of the state.

23 * Sec. 4. AS 22.10.190(a) is repealed and reenacted to read:

24 (a) The monthly base salary for each superior court judge is
25 \$7,667.

26 * Sec. 5. AS 22.10.190(c) is repealed and reenacted to read:

27 (c) In addition to the monthly salary, each superior court judge
28 is entitled to receive a geographic cost-of-living adjustment under
29 AS 22.35.010, based on the location of the primary office assignment.
S

1 Retirement contributions and benefits shall be computed only on the
2 monthly base salary not including the geographic cost-of-living
3 adjustment.

4 * Sec. 6. AS 22.15.220(a) is repealed and reenacted to read:

5 (a) The monthly base salary for each district court judge is
6 \$6,500.

7 * Sec. 7. AS 22.15.220(d) is repealed and reenacted to read:

8 (d) In addition to the monthly salary, each district court judge
9 is entitled to receive a geographic cost-of-living adjustment under
10 AS 22.35.010, based on the location of the primary office assignment.
11 Retirement contributions and benefits shall be computed only on the
12 monthly base salary not including the geographic cost-of-living
13 adjustment.

14 * Sec. 8. AS 22 is amended by adding a new chapter to read:

15 CHAPTER 35. MISCELLANEOUS PROVISIONS.

16 Sec. 22.35.010. GEOGRAPHIC COST-OF-LIVING ADJUSTMENT. The
17 following geographic cost-of-living adjustments apply to the first
18 \$40,000 of the base salary of a justice of the supreme court or a
19 judge of the superior or district court earned during a fiscal year:

20 Location of Primary Office	Percent Change
21 First Judicial District	0
22 Second Judicial District	17.5
23 Third Judicial District other than	
24 Kodiak and Valdez	0
25 Kodiak and Valdez	10.5
26 Fourth Judicial District other than Bethel	3.5
27 Bethel	17.5

28 * Sec. 9. This Act takes effect July 1, 1990.
29

FISCAL NOTE

REQUEST:

Revision Date:	Agency Affected:	Alaska Court System
Title: <u>An Act relating to compensation of justices and judges</u>	BRU:	Appellate & Trial Courts
Sponsor: <u>Rules</u>	Components:	
Requestor: <u>Judiciary</u>		

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
Personal Services		797.1	797.1	797.1	797.1	797.1
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
TOTAL OPERATING	0.0	797.1	797.1	797.1	797.1	797.1

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

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

FUNDING: (Thousands of Dollars)

General Funds	0.0	797.1	797.1	797.1	797.1	797.1
Federal Funds						
Other						
TOTAL	0.0	797.1	797.1	797.1	797.1	797.1

POSITIONS:

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

See attached analysis.

Prepared by:	<i>Jan Strandberg</i> Jan Strandberg, General Counsel	Phone:	264-8228
Division:	Alaska Court System	Date:	03/29/89
Approved by:	<i>Arthur H. Snowden, II</i> Arthur H. Snowden, II, Administrative Director	Date:	03/29/89
Agency:	Alaska Court System		

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

Alaska Court System

SB 230 – Judicial Compensation

Fiscal Analysis

	<u>Amount</u>
Personal Services:	
Gross salary (adjusted for normal vacancy factor)	\$456,318
Benefits (variable & judicial retirement contributions)	<u>340,803</u>
Total Cost	<u><u>\$797,121</u></u>

Alaska Court System
 SB 230 - Judicial Compensation
 Analysis of Proposed Salaries

Position	Proposed	Existing	Change
Chief Justice - Anchorage	\$96,996	\$85,728	\$11,268
Supreme Court Justice - Anchorage	96,504	85,728	10,776
Supreme Court Justice - Fairbanks	97,896	97,728	168
Appellate Court Judge - Anchorage	91,200	79,992	11,208
Superior Court Judge - Anchorage	89,196	77,304	11,892
Superior Court Judge - Barrow	96,204	90,828	5,376
Superior Court Judge - Bethel	96,204	90,828	5,376
Superior Court Judge - Fairbanks	90,600	88,128	2,472
Superior Court Judge - Juneau	89,196	77,304	11,892
Superior Court Judge - Kenai	89,196	82,716	6,480
Superior Court Judge - Kodiak	93,396	85,416	7,980
Superior Court Judge - Kotzebue	96,204	90,828	5,376
Superior Court Judge - Nome	96,204	90,828	5,376
Superior Court Judge - Palmer	89,196	80,004	9,192
Superior Court Judge - Petersburg	89,196	80,004	9,192
Superior Court Judge - Sitka	89,196	80,004	9,192
Superior Court Judge - Valdez	93,396	90,828	2,568
District Court Judge - Anchorage	75,696	66,816	8,880
District Court Judge - Fairbanks	77,100	76,176	924
District Court Judge - Homer	75,696	71,496	4,200
District Court Judge - Juneau	75,696	66,816	8,880
District Court Judge - Palmer	75,696	69,156	6,540

SENATE COMMITTEE REPORT

FURTHER

3/31/89

DATE TURNED INTO OFFICE 4/6/90

Mr. President:

FINANCE

Committee considered SB 230

compensation of justices and judges; efd

and recommended

replace with _____ CS SB 230 (Finance.) same title
 or adopt _____ CS _____ new title
 attached amendment(s) and technical title change (HB only)
 _____ letter of intent adopted

do pass

do not pass

no recommendation

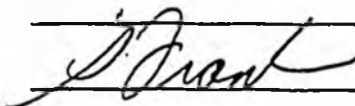
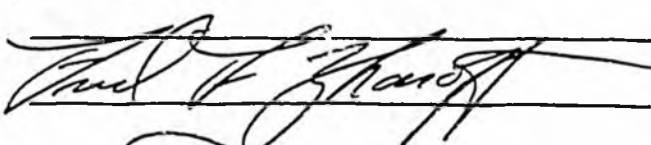
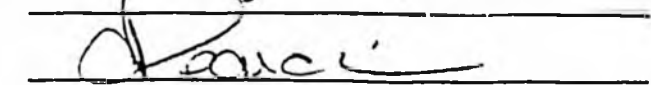
individual recommendations

further referral to _____

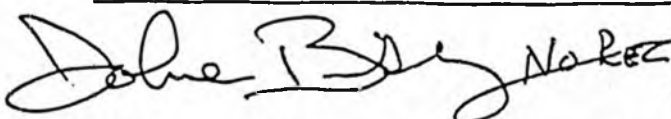
FISCAL NOTE(S) zero ^{Courts 944.7} fiscal impact appropriation no FN
 new updated previous
 same as previous fiscal note(s) published _____

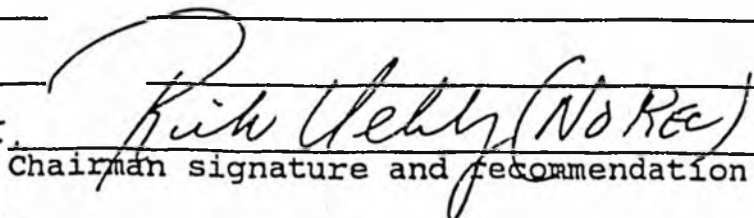
MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

Paul F. Sharpe (Do NOT Pass -
Now is not the time for
such a significant pay
raise for an elected position)




 Chairman signature and recommendation

Committee Backup attached

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of 5-DAY NOTICE 3-23-89
IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER

FIN

**FISCAL NOTE(S) MUST BE ATTACHED
IN ACCORDANCE WITH AS 24.08.035

DATE TURNED INTO OFFICE _____

3/17/89

Mr. President:

Judiciary Committee considered SB 230

compensation of justices and judges; efd

and a majority of the committee report it had no recommendation

and recommended:

replace with CS SB same title

attached amendment(s) and new title

_____ letter of intent adopted

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

FISCAL NOTE(S) attached zero

appropriation no FN attached

fiscal impact

Gov. FN introduced w/ bill

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

True X 100102 - NO REC

Rich Halford NO REC

Jan Fair No Rec
Chairman signature and recommendation

Committee backup attached



Superior Court
State of Alaska

FIRST JUDICIAL DISTRICT

415 MAIN STREET, ROOM 318
KETCHIKAN, ALASKA 99901

FIRST JUDICIAL DISTRICT

P.O. BOX 1008
PETERSBURG, ALASKA 99833-1008

FIRST JUDICIAL DISTRICT

P.O. BOX 869
WRANGELL, ALASKA 99929

Chambers of
JUDGE THOMAS M. JAHNKE

April 20, 1990

Committee on the Judiciary
Alaska House of Representatives
P.O. Box V
Juneau, Alaska 99811

RE: Judicial Salaries; SB 230

Dear Members of the Committee:

Senate Bill 230 is now in the House and I wanted to bring to your attention two recent developments.

First, I recently learned that the Alaska judiciary will lose 10 judges this year. Many of them are leaving the bench for financial reasons. That is a loss of talent and experience the people of Alaska simply cannot afford.

Second, at my last count, seven attorneys were applying for the upcoming vacancy on the superior court in Juneau, only one of whom is a private practitioner. It is difficult to resist the conclusion that most of our finest private practitioners are not considering judicial service because the salaries have fallen so far below the salaries in private practice.

I believe in the ideals of public service, one of which is that a public servant works to achieve the greater good and not to gain great financial reward. However, we have reached the point where dedicated public servants (good judges) and aspiring public servants can make so much more in private

Committee on the Judiciary

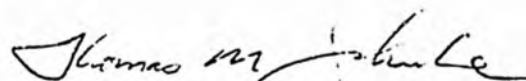
April 20, 1990

Page 2

practice that they cannot justify to their families their decision to remain in or enter the public service.

I urge your favorable action on SB 230 to stop the hemorrhage of talent and to foster an infusion of new talent that will maintain the excellent quality of the Alaska judiciary.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Thomas M. Jahnke".

Thomas M. Jahnke
Superior Court Judge

SB

250

HOUSE COMMITTEE REPORT

4/23

(7)

Date Referred: April 17, 1989

FURTHER REFERRALS: FINANCE

Date of Committee Action: 4/20/90

The JUDICIARY Committee considered:

CSSB 250(SA)

CS FOR SENATE BILL NO. 250 (State Affairs)

[UNIV. RESEARCH CONFIDENTIAL]

"An Act relating to the confidentiality of research conducted by the University of Alaska."

RECOMMENDATIONS:

- be replaced with HCS CS SB 250 (Judiciary) 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)

APPROVES PREVIOUS:

(Date/Dept)

- fiscal impact _____
- zero fiscal note W of A
- zero with analysis _____

- fiscal note(s) _____
- zero fiscal note(s) _____
- zero fn/analysis _____

SIGNING DO PASS:

SIGNING:

(Check approp. column)

Do Not Pass No Rec Amend

<u>Mr. Gruenberg</u>	Gruenberg			
<u>Ellis</u>	Ellis			
<u>Miller</u>	Miller			
<u>Goll</u>	Goll			

Peter J. ...
 CO- Chairman's Signature

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: HCSSB250
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____	Agency Affected: <u>University of Alaska</u>
Title: <u>"An Act Relating to Records Developed or Used During Research for the University of Alaska."</u>	BRU: <u>UAF Organized Research, UAA Organized Research, UAS</u>
Sponsor: _____	Components: _____
Requestor: _____	

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY91	FY92	FY93	FY94	FY95	FY96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Marsha Hubbard
 Division: Director, Statewide Budget
 Approved by: Vice President Brian Ragan
 Agency: University of Alaska

Phone: 474-7593
 Date: 4/23/90
 Date: 4/23/90

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

Original sponsor(s): Rules/Governor

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 250 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the confidentiality of research
7 conducted by the University of Alaska."

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

9 * Section 1. AS 14.40 is amended by adding a new section to read:

10 Sec. 14.40.453. CONFIDENTIALITY OF RESEARCH. The public records
11 inspection requirements of AS 09.25.110 - 09.25.121 do not apply to
12 writings or records that consist of intellectual property or proprie-
13 tary information received, generated, learned, or discovered during
14 research conducted by the University of Alaska or its agents or em-
15 ployees until publically released, copyrighted, or patented, or until
16 the research is terminated, except that the university shall make
17 available the title and a description of all research projects, the
18 name of the researcher, and the amount and source of funding provided
19 for each project.

FISCAL NOTE

REQUEST:

Revision Date: _____	Agency Affected: <u>University of Alaska</u>
Title: <u>"An Act Relating to Records Developed or Used During Research for the University of Alaska."</u>	BRU: <u>UAF Organized Research, UAA Organized Research, UAS</u>
Sponsor: _____	Components: _____
Requestor: _____	

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY91	FY92	FY93	FY94	FY95	FY96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						
REVENUE						

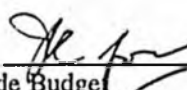
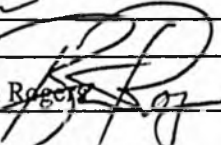
FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Marsha Hubbard 
 Division: Director, Statewide Budget
 Approved by VP Finance: Vice President Brian Rogers 
 Agency: University of Alaska

Phone: 474-7593
 Date: 4/23/90
 Date: 4/23/90

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

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: "An Act Relating to Records
 Developed or Used During Research for
 the University of Alaska."
 Sponsor: Rules Committee
 Requester: Governor

Agency Affected: University of Alaska
 BRU: UAF Organized Research,
 UAA organized Research, UAS
 Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Marsha Hubbard *Marsha Hubbard* Phone: 474-7593
 Division: Director, Statewide Budget Date: 2/21/89 4/20/90
 Approved by Commissioner: Vice President Brian Peters Date: 2/21/89
 Agency: University of Alaska

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

*Changes in the State Affairs
 CS have no fiscal effect
 This fiscal note is
 appropriate.
 SS 4-1089*

STEVE COWPER
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 31, 1989

The Honorable Tim Kelly
President of the Senate
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Mr. President:

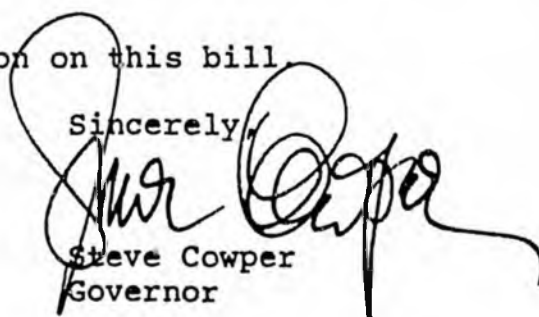
Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the confidentiality of research conducted by the University of Alaska. This bill would prevent valuable processes or procedures used in research from being taken from their inventors or the state.

Persons who engage in research often develop procedures or techniques that have substantial commercial value. This information usually is set out in written form that qualifies as a public record. A researcher might use the procedure or technique as a tool in performing a research project. However, some qualified researchers might not actively seek research grants from the university because they fear that the information used during the research by the researcher will be disclosed to competitors through a public records request and disclosure.

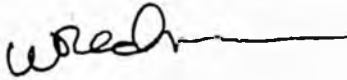
Under this bill, research in progress is exempted from the open records law (AS 09.25.110 -- 09.25.125) and the open meetings law (AS 44.62.310). Under this provision, information owned by a researcher could be protected by being made confidential while a research project is underway. The university may also protect other valuable information developed through university-sponsored research pending the perfection of a federal copyright or patent. The purpose of this bill is to provide formality to existing practices of the university. It is felt that this formality will protect the university and its faculty while at the same time providing the environment to encourage research in the state university system.

I urge your favorable action on this bill.

Sincerely,



Steve Cowper
Governor

TO: House Judiciary Committee
FROM: Wendy Redman, University of Alaska 
DATE: May 4, 1989
RE: SB 250 - Confidentiality of University Research

Attached here for your information is a summary of the key questions that have been raised regarding SB 250. Also attached is a sampling of relevant open records statutes from other states. Although I have not done a 50 state review, discussions with the University of Alaska Vice Chancellor for Research and with his counterparts in nine western states, I am told that Alaska is unique in providing no protection from public disclosure for research in progress. The issue has become important as research itself becomes more competitive, and as the potential for the University of Alaska to engage in federally sponsored research increases dramatically. There is great concern that our ability to remain attractive to research faculty and to funding agencies will hamper our ability to be competitive.

In summary, the attached statutes involve the following disclosure protections:

CALIFORNIA: Preliminary information is not public. The interpretation (per the Attorney General) has been that research information is "preliminary" until it is published.

COLORADO: Excludes "...specific details of bona fide research projects being conducted by a state institution.

FLORIDA: Excludes "...information received, generated, ascertained, or discovered during the course of research conducted within the state universities..."

MINNESOTA: Defines "trade secret information" as non-public; defines "trade secret information" in a way that excludes research in progress.

OREGON: Excludes all unpublished notes and findings of research faculty.

WASHINGTON: Excludes "valuable formulae, designs, drawings, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss."

MASSACHUSETTS: Excludes preliminary agency information. The interpretation (per the Attorney General) is that research information is "preliminary" until published.

I have had discussions with university research administrators in Nevada, Arizona, Montana, and Utah. In each case, the state interpretation of their open record statutes included an exclusion of research information that has not been published or for which a patent or copyright has not been sought.

SB 250 -- **An Act relating to confidentiality of research conducted by the University of Alaska**

- * **University of Alaska Research is an industry** generating nearly \$30 million per year in additional state revenue.
- * **Academic research is a highly competitive enterprise.** There is intense competition for federal research money and faculty guard their proposals and research in progress as closely as any business would guard its new product line.
- * **Copyrights and patents depend on confidentiality.** Application for patents and copyrights cannot even be applied for if the research or information is in the "public domain".
- * **Faculty need protection for their ideas.** "Intellectual property" needs some form of protection from theft and misuse.
- * **Alaska's model "sunshine" laws did not anticipate the need for the protection of research in progress.** Our statutes cannot be interpreted, according to the Attorney General, to exclude research in progress from public scrutiny, even though no formal results or publication have been issued.
- * **Alaska appears to be unique in its lack of protection for research information.** Arizona, California, Washington, Nevada, Oregon -- they all provide specific exemptions for research, or have received legal interpretations of their existing laws that define "public information" **only** as that information which has been published. Oregon passed an exemption in 1987 that simply states: "Writings prepared by or under the direction of faculty of public educational institutions, in connection with research, until publicly released, copyrighted or patented [shall be exempt from public disclosure laws]".
- * **Faculty will not do research in a state or at an institution that cannot provide protection for their work.** Research faculty are highly sought after because of the extramural funding that they bring to an institution. The grant funding is tied to them as individuals, not to the institutions where they are located. If we cannot provide the necessary protections, we will lose the highly productive faculty that we have, and the money that they generate will be lost with them.

- * **Funding agencies are not interested in supporting research activities with an institution that cannot provide some assurance of confidentiality for the research in progress.**
Many basic and applied university research projects, funded by the private sector, lead to new product development, mineral discoveries, or other results that might provide a marketplace advantage to competitors.

- * **Research projects and funding sources will still be public information.**
All federal research requests for proposals are listed in public documents, including the Federal Register. The University releases regular reports detailing the proposals that are submitted by faculty as well as those that are accepted for funding.

- * **The University is not engaged in "secret" research, nor does this legislation anticipate such activity. This legislation simply protects faculty from public disclosure of information and results prior to the time of publication of the final results or the application of the relevant copyright or patent protections.**

for that offense. This section establishes the following minimum amounts for the described categories of traffic offenses:

- (1) Vehicle registration violations, \$20.
- (2) Equipment defects, \$20.
- (3) Violation of a specific speed limit imposed under law or of a posted speed limit, based on number of miles per hour in excess of speed limit as follows:
 - (a) 0 to 10 miles per hour in excess of speed limit, \$20.
 - (b) 11 to 20 miles per hour in excess of speed limit, \$50.
 - (c) Over 20 miles per hour in excess of speed limit, \$100.
- (4) Speed racing, \$300.
- (5) Passing violations, \$25.
- (6) Pedestrian violations, \$5.
- (7) Bicycle violations, \$15.
- (8) Dealer or wrecker license violations, \$300.
- (9) License plate violations, \$150.
- (10) Truck license violations and prorated violations, \$50.
- (11) Failure to obtain Public Utility Commission permit, \$50.
- (12) Violations of laws on open liquor containers in vehicles, \$50.
- (13) Violations of laws relating to yielding or stopping for school busses or worker transport busses, \$100.
- (14) Careless driving, \$100.
- (15) Violation of winter parking permit requirements, \$10.
- (16) Failure to have driver license in possession, \$5.
- (17) Operating without driver license, \$100.
- (18) Misuse, failure to surrender or false application for driver license, \$150.
- (19) False name or identification to police officer, \$150.
- (20) Reckless driving, \$300.
- (21)(a) Infraction driving with suspended or revoked driver license, \$300.
- (b) Misdemeanor driving with suspended or revoked driver license, \$500.
- (c) Felony driving with suspended or revoked driver license, \$1,000.
- (22) Failure to perform duties of driver or witness, \$300.
- (23) Driving under the influence of intoxicants, \$300.
- (24) Attempting to elude police officer, \$300.
- (25) Overload violations other than ORS 818.040 and 818.340 based on weight in excess of allowable weight as follows:
 - (a) Up to 1,000 pounds over allowable weight, \$2.
 - (b) More than 1,000 pounds but not more than 2,000 pounds over allowable weight, \$15.
 - (c) More than 2,000 pounds but not more than 3,000 pounds over allowable weight, one cent per pound for each pound of excess weight.
 - (d) More than 3,000 pounds but not more than 5,000 pounds over allowable weight, two cents per pound for each pound of excess weight.
 - (e) More than 5,000 pounds over allowable weight, seven cents per pound for each pound of excess weight.
- (26) Overload violation under ORS 818.230, \$100 plus 10 cents per pound for each pound of excess weight.
- (27) Overload violations under ORS 818.040, based on weight in excess of allowable weight as follows:
 - (a) Up to 1,000 pounds over allowable weight, \$50.
 - (b) More than 1,000 pounds but not more than 2,000 pounds over allowable weight, six cents per pound for each pound of excess weight.
 - (c) More than 2,000 pounds but not more than 5,000 pounds over allowable weight, eight cents per pound for each pound of excess weight.
 - (d) More than 5,000 pounds over allowable weight, 10 cents per pound for each pound of excess weight.
- (28) Failure or refusal to stop for and submit to measurement or weighing, \$350.
- (29) Parking in a disabled parking space in violation of ORS 811.615, \$25.
- (30) Violations not otherwise provided for in this section, as follows:
 - (a) \$25 if the violation is not a contributing factor to an accident.
 - (b) \$50 if the violation is a contributing factor to an accident.

SECTION 28. ORS 809.200 is repealed.

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CHAPTER 731

AN ACT

HB 3224

Relating to classified research; amending ORS 182.000 and 351.870.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 351.870 is amended to read:

351.870. (1) The Legislative Assembly finds and declares that basic research is fundamental to the continuation and expansion of applied research and is thus a necessary ingredient in economic growth. The Legislative Assembly further finds that basic research is itself an important activity which should be promoted.

(2) It is the policy of this state that basic research is an appropriate and necessary activity of our public universities. Further, the State of Oregon has an obligation with other states and the Federal Government to encourage and finance basic research if the state and nation are to be active participants in a future which will require ever increasing levels of knowledge and understanding.

(3) The Legislative Assembly acknowledges that a characteristic of basic research is that no defined result

can be guaranteed and asserts that only through scholarly investigation can knowledge be advanced to be later developed and applied.

(4) The Legislative Assembly believes that moneys for basic research should be regularly appropriated and that such moneys should be used for support of qualified investigators and funding of research projects.

(5) The Legislative Assembly intends that in implementing the policy on basic research or any other research policy, the State Board of Higher Education, in keeping with the principle of academic freedom, shall insure open and free inquiry and publication in all institutions under its jurisdiction.

SECTION 2. ORS 192.500 is amended to read:

192.500. (1) The following public records are exempt from disclosure under ORS 192.410 to 192.500 unless the public interest requires disclosure in the particular instance:

(a) Records of a public body pertaining to litigation to which the public body is a party if the complaint has been filed, or if the complaint has not been filed, if the public body shows that such litigation is reasonably likely to occur. This exemption does not apply to litigation which has been concluded, and nothing in this paragraph shall limit any right or opportunity granted by discovery or deposition statutes to a party to litigation or potential litigation;

(b) Trade secrets. "Trade secrets," as used in this section, may include, but are not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article of trade or a service or to locate minerals or other substances, having commercial value, and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it;

(c) Investigatory information compiled for criminal law purposes, except that the record of an arrest or the report of a crime shall not be confidential unless and only so long as there is a clear need in a particular case to delay disclosure in the course of a specific investigation. Nothing in this paragraph shall limit any right constitutionally guaranteed, or granted by statute, to disclosure or discovery in criminal cases. For purposes of this paragraph, the record of an arrest or the report of a crime includes, but is not limited to:

(A) The arrested person's name, age, residence, employment, marital status and similar biographical information;

(B) The offense with which the arrested person is charged;

(C) The conditions of release pursuant to ORS 135.230 to 135.290;

(D) The identity of and biographical information concerning both complaining party and victim;

(E) The identity of the investigating and arresting agency and the length of the investigation;

(F) The circumstances of arrest, including time, place, resistance, pursuit and weapons used; and

(G) Such information as may be necessary to enlist public assistance in apprehending fugitives from justice;

(d) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination before the examination is given and if the examination is to be used again;

(e) Information consisting of production records, sale or purchase records or catch records, or similar business records of a private concern or enterprise, required by law to be submitted to or inspected by a governmental body to allow it to determine fees or assessments payable or to establish production quotas, and the amounts of such fees or assessments payable or paid, to the extent that such information is in a form which would permit identification of the individual concern or enterprise. This exemption does not include records submitted by long term care facilities as defined in ORS 442.015 to the state for purposes of reimbursement of expenses or determining fees for patient care. Nothing in this paragraph shall limit the use which can be made of such information for regulatory purposes or its admissibility in any enforcement proceeding;

(f) Information relating to the appraisal of real estate prior to its acquisition;

(g) The names and signatures of employees who sign authorization cards or petitions for the purpose of requesting representation or decertification elections;

(h) Investigatory information relating to any complaint filed under ORS 659.040 or 659.045, until such time as the complaint is resolved under ORS 659.050, or a final administrative determination is made under ORS 659.060;

(i) Investigatory information relating to any complaint or charge filed under ORS 243.676 and 663.180;

(j) The circulation records of a public library showing use of specific library materials by named persons;

(k) Records, reports and other information received or compiled by the director under ORS 697.732;

(l) Information concerning the location of archaeological sites or objects as those terms are defined in ORS 358.005, except if the governing body of an Indian tribe requests the information and the need for the information is related to that Indian tribe's cultural or religious activities. This exemption does not include information relating to a site that is all or part of an existing, commonly known and publicized tourist facility or attraction; [and]

(m) A personnel discipline action, or materials or documents supporting that action; and []

(n) Writings prepared by or under the direction of faculty of public educational institutions, in connection with research, until publicly released, copyrighted or patented.

(2) The following public records are exempt from disclosure under ORS 192.410 to 192.500:

(a) Communications within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to any final agency determination of policy or action. This exemption shall not apply unless the public body shows that in the particular instance the public interest in encouraging frank communication between officials and employees of public bodies clearly outweighs the public interest in disclosure;

(b) Information of a personal nature such as but not limited to that kept in a personal, medical or similar file, if the public disclosure thereof would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance. The party seeking disclosure shall have the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy;

(c) Information submitted to a public body in confidence and not otherwise required by law to be submitted, where such information should reasonably be considered confidential, the public body has obliged itself in good faith not to disclose the information, and when the public interest would suffer by the disclosure;

(d) Information or records of the Corrections Division, including the State Board of Parole, to the extent that disclosure thereof would interfere with the rehabilitation of a person in custody of the division or substantially prejudice or prevent the carrying out of the functions of the division, if the public interest in confidentiality clearly outweighs the public interest in disclosure;

(e) Records, reports and other information received or compiled by the Supervisor of the Savings and Loan, Credit Union and Consumer Finance Section in the administration of ORS chapters 723 and 725 and the Supervisor of the Banking Section in the administration of ORS chapter 726, not otherwise required by law to be made public, to the extent that the interests of lending institutions, their officers, employees and customers in preserving the confidentiality of such information outweighs the public interest in disclosure;

(f) Reports made to or filed with the court under ORS 137.077 or 137.530;

(g) Any public records or information the disclosure of which is prohibited by federal law or regulations;

(h) Public records or information the disclosure of which is prohibited or restricted or otherwise made confidential or privileged under ORS 1.440, 7.211, 7.215, 9.545, 40.225 to 40.295, 41.675, 56.100, 57.850, 135.155, 146.780, 147.115, 173.230, 179.495, 181.540, 251.145, 308.290, 308.410, 014.836, 314.840, 326.106, 341.200, 342.860,

344.600, 346.165, 346.167, 351.065, 351.070, 410.150, 410.690, 411.320, 418.135, 418.770, 419.567, 441.113, 441.671, 469.090, 476.090, 656.702, 657.665, 671.550, 673.415, 673.710, 677.425, 678.126, 679.280, 684.023, 684.100, 706.720, 706.730, 722.419, 731.264, 731.312, 734.850, 734.830, 744.017, 756.075, 760.140, 761.421, 767.644, 802.220, 807.710 or ORS chapter 432;

(i) Public records or information described in this section, furnished by the public body originally compiling, preparing or receiving them to any other public officer or public body in connection with performance of the duties of the recipient, if the considerations originally giving rise to the confidential or exempt nature of the public records or information remain applicable;

(j) Records of the Energy Facility Siting Council concerning the review or approval of security programs pursuant to ORS 449.530 (3);

(k) Employee and retiree address, telephone number and other nonfinancial membership records maintained by the Public Employees' Retirement System pursuant to ORS 237.001 to 237.320;

(L) Records submitted by private persons or businesses to the State Treasurer or the Oregon Investment Council relating to proposed acquisition, exchange or liquidation of public investments under ORS chapter 293 may be treated as exempt from disclosure when and only to the extent that disclosure of such records reasonably may be expected to substantially limit the ability of the Oregon Investment Council to effectively compete or negotiate for, solicit or conclude such transactions. Records which relate to concluded transactions are not subject to this exemption;

(m) The monthly reports prepared and submitted under ORS 293.761 and 293.766 concerning the Public Employees' Retirement Fund and the Industrial Accident Fund may be uniformly treated as exempt from disclosure for a period of up to 90 days after the end of the calendar quarter; and

(n) Reports of abandoned property filed by the holders of such property pursuant to ORS 98.352, until such time as the Director of the Division of State Lands has provided public notice of the abandoned property as required by ORS 98.356 and the property has been delivered to the director pursuant to ORS 98.362.

(3) If any public record contains material which is not exempt under subsection (1) or (2) of this section, as well as material which is exempt from disclosure, the public body shall separate the exempt and nonexempt material and make the nonexempt material available for examination.

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the subject of the record is under legal disability, "person in interest" means and includes his parent or duly appointed legal representative.

(5) "Political subdivision" means and includes every county, city and county, city, town, school district, and special district within this state.

(6) "Public records" means and includes all writings made, maintained, or kept by the state or any agency, institution, or political subdivision thereof for use in the exercise of functions required or authorized by law or administrative rule or involving the receipt or expenditure of public funds. It does not include criminal justice records which are subject to the provisions of part 3 of this article.

(7) "Writings" means and includes all books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials, regardless of physical form or characteristics.

Source: L. 68, p. 201, § 2; C.R.S. 1963, § 113-2-2; L. 77, p. 1250, § 2; L. 85, p. 867, § 1.

Autopsy reports are "public records", as defined in this section. *Denver Publishing Co. v. Dreyfus*, 184 Colo. 288, 520 P.2d 104 (1974).

Police records are not "public records". Police department files and records showing arrests, convictions, and other information are not public records. *Losavio v. Mayber*, 178 Colo. 184, 496 P.2d 1032 (1972).

Records of university not included. Reference to "institution" in definition of "public records" is not specific enough to demonstrate legislative intent to make open records law applicable to the university of Colorado. *Uberoi v. University of Colorado*, 686 P.2d 785 (Colo. 1984) (decided prior to 1985 enactment of subsection (1.5)).

24-72-203. Public records open to inspection. (1) All public records shall be open for inspection by any person at reasonable times, except as provided in this part 2 or as otherwise provided by law, but the official custodian of any public records may make such rules and regulations with reference to the inspection of such records as are reasonably necessary for the protection of such records and the prevention of unnecessary interference with the regular discharge of the duties of the custodian or his office.

(2) If the public records requested are not in the custody or control of the person to whom application is made, such person shall forthwith notify the applicant of this fact, in writing if requested by the applicant. In such notification he shall state in detail to the best of his knowledge and belief the reason for the absence of the records from his custody or control, their location, and what person then has custody or control of the records.

(3) If the public records requested are in the custody and control of the person to whom application is made but are in active use or in storage and therefore not available at the time an applicant asks to examine them, the custodian shall forthwith notify the applicant of this fact, in writing if requested by the applicant. If requested by the applicant, the custodian shall set a date and hour within three working days at which time the records will be available for inspection.

Source: L. 68, p. 202, § 3; C.R.S. 1963, § 113-2-3.

Colorado

First amendment does not guarantee the press a constitutional right of special access to information not available to the public generally. This is true where the information sought is personal in nature and is to be published primarily for commercial purposes. *Eugene Cervi & Co. v. Russell*, 184 Colo. 282, 519 P.2d 1189 (1974).

Court considers and weighs public interest in determining disclosure question. The limiting language making certain of the open records provisions applicable except as "otherwise provided by law" is a reference to the rules of civil procedure and expresses the legislative intent that a court should consider and weigh whether disclosure would be contrary to the public interest. *Martinelli v. District Court*, 199 Colo. 163, 612 P.2d 1083 (1980).

Construction of open records law. Open records law is a general act and will not be interpreted to repeal a conflicting special provision unless the intent to do so is clear and unmistakable. *Uberoi v. University of Colorado*, 686 P.2d 785 (Colo. 1984) (decided prior to 1985 enactment of § 24-72-202 (1.5)).

Implied duty to delete exempt information. Under our public records act, there exists an implied duty to delete exempt information from that which may be disclosed and to structure the record to provide the information which the public is entitled to have. *Western*

Serv., Inc. v. Sargent School Dist., RE 719 P.2d 355 (Colo. App. 1986).

Vital statistics records held confidential exempt from right to inspect. *Eugene Co. v. Russell*, 31 Colo. App. 525, 506 748 (1972), aff'd, 184 Colo. 282, 519 1189 (1974).

Claim that transportation contracts entered into between city department of public utility and railroad were confidential comm. matters did not preclude disclosure of tracts under open records act, where governmental body is involved. *Freedom News Denver & Rio Grande R. Co.*, 731 P.2d (Colo. App. 1986).

Federal law, i.e. the Staggers Act of which provides that certain information contracts filed with Interstate Commerce Commission is available only where required by certain specified parties does not preclude disclosure under open records act. *Transportation contracts entered into by city and railroad. Freedom News v. Denver Rio Grande R. Co.*, 731 P.2d 740 (Colo. 1986).

Privileges for attorney-client communication and attorney work product established by common law, though incorporated into records law, are waived by any voluntary disclosure by privilege holder to a third party. *Denver Post Corp. v. University of Colorado*, 739 P.2d 874 (Colo. App. 1987).

24-72-204. Allowance or denial of inspection - grounds - procedure - ap

(1) The custodian of any public records shall allow any person the right of inspection of such records or any portion thereof except on one or more of the following grounds or as provided in subsection (2) or (3) of this section:

(a) Such inspection would be contrary to any state statute.

(b) Such inspection would be contrary to any federal statute or regulation issued thereunder having the force and effect of law.

(c) Such inspection is prohibited by rules promulgated by the supreme court or by the order of any court.

(2) (a) The custodian may deny the right of inspection of the following records, unless otherwise provided by law, on the ground that disclosure of the records to the applicant would be contrary to the public interest:

(I) Any records of the investigations conducted by any sheriff, prosecuting attorney, or police department, any records of the intelligence information or security procedures of any sheriff, prosecuting attorney, or police department, or any investigatory files compiled for any other law enforcement purpose;

(II) Test questions, scoring keys, and other examination data pertaining to administration of a licensing examination, examination for employment or academic examination; except that written promotional examination questions and results thereof conducted pursuant to the state personnel law

reproduction, by the person in interest after the conducting and grading of any such examination;

(III) The specific details of bona fide research projects being conducted by a state institution; and

(IV) The contents of real estate appraisals made for the state or a political subdivision thereof relative to the acquisition of property or any interest in property for public use, until such time as title to the property or property interest has passed to the state or political subdivision; except that the contents of such appraisal shall be available to the owner of the property at any time, and except as provided by the Colorado rules of civil procedure. If condemnation proceedings are instituted to acquire any such property, any owner thereof who has received the contents of any appraisal pursuant to this section shall, upon receipt thereof, make available to said state or political subdivision a copy of the contents of any appraisal which he has obtained relative to the proposed acquisition of the property.

(b) If the right of inspection of any record falling within any of the classifications listed in this subsection (2) is allowed to any officer or employee of any newspaper, radio station, television station, or other person or agency in the business of public dissemination of news or current events, it shall be allowed to all such news media.

(3) (a) The custodian shall deny the right of inspection of the following records, unless otherwise provided by law; except that any of the following records, other than letters of reference concerning employment, licensing, or issuance of permits, shall be available to the person in interest under this subsection (3):

(I) Medical, psychological, sociological, and scholastic achievement data on individual persons, exclusive of coroners' autopsy reports and group scholastic achievement data from which the individual cannot be identified; but either the custodian or the person in interest may request a professionally qualified person, who shall be furnished by the said custodian, to be present to interpret the records;

(II) Personnel files, except applications and performance ratings; but such files shall be available to the person in interest and to the duly elected and appointed public officials who supervise his work;

(III) Letters of reference;

(IV) Trade secrets, privileged information, and confidential commercial, financial, geological, or geophysical data furnished by or obtained from any person;

(V) Library and museum material contributed by private persons, to the extent of any limitations placed thereon as conditions of such contributions;

(VI) Addresses and telephone numbers of students in any public elementary or secondary school;

(VII) Library records disclosing the identity of a user as prohibited by section 24-90-119; and

(VIII) Data collected by and furnished to the Colorado health data commission pursuant to article 28 of title 25, C.R.S.

(b) Nothing in this subsection (3) shall prohibit the custodian of records from transmitting data concerning the scholastic achievement of any student

... shall anything in this sub-

inspection, from making copies, print-outs, or photographs of, or from transmitting data concerning the scholastic achievement or medical, psychological, or sociological information of any student to any law enforcement agency of this state, of any other state, or of the United States where such student is under investigation by such agency and the agency shows that such data is necessary for the investigation.

(c) Nothing in this subsection (3) shall prohibit the custodian of the records of a school, including any institution of higher education, or a school district from transmitting data concerning standardized tests, scholastic achievement, or medical, psychological, or sociological information of any student to the custodian of such records in any other such school or school district to which such student moves, transfers, or makes application for transfer, and the written permission of such student or his parent or guardian shall not be required therefor. No state educational institution shall be prohibited from transmitting data concerning standardized tests or scholastic achievement of any student to the custodian of such records in the school including any state educational institution, or school district in which such student was previously enrolled, and the written permission of such student or his parent or guardian shall not be required therefor.

(d) Notwithstanding the provisions of subparagraph (VI) of paragraph (a) of this subsection (3), under policies adopted by the local board of education, the names and addresses of students in any secondary school may be released to a recruiting officer for any branch of the United States armed forces who requests such information, unless the student requests in writing that said information not be released. The recruiting officer shall use the data released for the purpose of providing information to students regarding military service and shall not use it for any other purpose or release such data to any person or organization other than individuals within the recruiting services of the armed forces.

(4) If the custodian denies access to any public record, the applicant may request a written statement of the grounds for the denial, which statement shall cite the law or regulation under which access is denied and shall be furnished forthwith to the applicant.

(5) Any person denied the right to inspect any record covered by this part 2 may apply to the district court of the district wherein the record is found for an order directing the custodian of such record to show cause why he should not permit the inspection of such record. Hearing on such application shall be held at the earliest practical time. Unless the court finds that the denial of the right of inspection was proper, it shall order the custodian to permit such inspection and, upon a finding that the denial was arbitrary or capricious, it may order the custodian personally to pay the applicant's court costs and attorney fees in an amount to be determined by the court.

(6) If, in the opinion of the official custodian of any public record, disclosure of the contents of said record would do substantial injury to the public interest, notwithstanding the fact that said record might otherwise be available to public inspection, he may apply to the district court of the district in which such record is located for an order permitting him to restrict such disclosure. Hearing on such application shall be held at the earliest practical time and an order upon a finding of

istration. A university may limit or deny the privilege for courses which are in programs for which the Board of Regents has established selective admissions criteria. Persons paying full fees and state employees taking courses on a space-available basis shall have priority over those persons whose fees are waived in all cases where classroom spaces are limited.

(5) Students enrolled in a dual enrollment or early admission program pursuant to s. 240.116 shall be exempt from the payment of registration, matriculation, and laboratory fees. Students enrolled in accordance with this subsection may be calculated as the proportional shares of full-time equivalent enrollments each such student generates for state funding purposes.

History.—s. 19, ch. 79-222, s. 1, ch. 80-14, s. 1, ch. 80-237, s. 25, ch. 81-193, s. 3, ch. 83-326, s. 8, ch. 86-177, s. 11, ch. 87-212.

240.237 Student records.—The university may prescribe the content and custody of records and reports which the university may maintain on its students. Such records shall be open to inspection only as provided in s. 226.093.

History.—s. 15, ch. 73-338, s. 3, ch. 77-60, s. 26, ch. 79-222, s. 3, ch. 86-65, s. 8, ch. 86-145.

Note.—Former s. 239.77.

240.239 Associate in arts degrees; issuance.—

(1) The purpose of this section is to require state universities to present associate in arts certificates upon request to qualified students.

(2) Students at state universities may request associate in arts certificates if they have successfully completed the minimum requirements for the degree of associate in arts (A.A.).

(3) An associate in arts degree shall not be granted unless a student has successfully completed minimum requirements for college-level communication and computation skills adopted by the State Board of Education and a minimum of 60 academic semester hours or the equivalent, with not less than 36 of the semester hours in general education courses such as communications, mathematics, social sciences, humanities, and natural sciences.

History.—ss. 1, 2, 3, 4, ch. 71-178, s. 28, ch. 79-222, s. 5, ch. 82-180.

Note.—Former s. 241.478.

240.241 Divisions of sponsored research at state universities.—

(1) Each university, with the approval of the Department of Education, is authorized to create, as it deems advisable, divisions of sponsored research which will serve the function of administration and promotion of the programs of research, including sponsored training programs, of the university at which they are located.

(2) The university shall set such policies to regulate the activities of the divisions of sponsored research as it may consider necessary to effectuate the purposes of this act and to administer the research programs in a manner which assures efficiency and effectiveness, producing the maximum benefit for the educational programs and maximum service to the state. To this end, materials that relate to methods of manufacture or production, potential trade secrets, potentially patentable material, actual trade secrets, business transactions, or proprietary information received, generated, ascer-

tained, or discovered during the course of research conducted within the state universities shall be exempt from the provisions of chapter 119, except that a division of sponsored research shall make available, upon request, the title and description of a research project, the name of the researcher, and the amount and source of funding provided for such project.

(3) A division of sponsored research created under the provisions of this act shall be under the supervision of the president of that university, who is authorized to appoint a director, to employ full-time and part-time staff, research personnel, and professional services; to employ on a part-time basis personnel of the university; and to employ temporary employees whose salaries are paid entirely from the permanent sponsored research development fund or from that fund in combination with other nonstate sources, with such positions being exempt from the requirements of the Florida Statutes relating to salaries, except that no such appointment shall be made for a total period of longer than 1 year.

(4) The president of the university where a division of sponsored research is created, or his designee, is authorized to negotiate, enter into, and execute research contracts; to solicit and accept research grants and donations; and to fix and collect fees, other payments, and donations that may accrue by reason thereof. The president or his designee may negotiate, enter into, and execute contracts on a cost-reimbursement basis and may provide temporary financing of such costs prior to reimbursement from moneys on deposit in the sponsored research development fund, except as may be prohibited elsewhere by law.

(5) A division of sponsored research shall be financed from the moneys of a university which are on deposit or received for use in the research or related programs of that particular university. Such moneys shall be deposited by the university in a permanent sponsored research development fund in a depository or depositories approved for the deposit of state funds and shall be accounted for and disbursed subject to regular audit by the Auditor General.

(6) The fund balance on hand in any existing research trust fund in the respective university, at the time a division of sponsored research is created, shall be transferred to a permanent sponsored research development fund established for the university, and thereafter the fund balance of the sponsored research development fund at the end of any fiscal period may be used during any succeeding period for the purposes and in the manner authorized by this act.

(7) Moneys deposited in the permanent sponsored research development fund of a university shall be disbursed in accordance with the terms of the contract, grant, or donation under which they are received. Moneys received for overhead or indirect costs and other moneys not required for the payment of direct costs shall be applied to the cost of operating the division of sponsored research. Any surplus moneys shall be used to support other research or sponsored training programs in any area of the university. Moneys allocated for the payment of salaries from the sponsored research development fund shall be paid out by the Comptroller of the state in the same manner as salaries from other state

Historical Note

R.S. 1836, c. 2, § 6, cl. 14 P.S. 1882, c. 3, § 3, cl. 18
 G.S. 1860, c. 3, § 7, cl. 14 R.L. 1902, c. 8, § 5, cl. 18

"Public records". Twenty-sixth, "Public records" shall mean all books, papers, maps, photographs, recorded tapes, financial statements, statistical tabulations, or other documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee of any agency, executive office, department, board, commission, bureau, division or authority of the commonwealth, or of any political subdivision thereof, or of any authority established by the general court to serve a public purpose, unless such materials or data fall within the following exemptions in that they are:

(a) specifically or by necessary implication exempted from disclosure by statute;

(b) related solely to internal personnel rules and practices of the government unit, provided however, that such records shall be withheld only to the extent that proper performance of necessary governmental functions requires such withholding;

(c) personnel and medical files or information; also any other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy;

~~(d) inter-agency or intra-agency memoranda or letters relating to policy positions being developed by the agency; but this subparagraph shall not apply to reasonably completed factual studies or reports on which the development of such policy positions has been or may be based;~~

~~(e) notebooks and other materials prepared by an employee of the commonwealth which are personal to him and not maintained as part of the files of the governmental unit;~~

(f) investigatory materials necessarily compiled out of the public view by law enforcement or other investigatory officials the disclosure of which materials would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest;

~~(g) trade secrets or commercial or financial information voluntarily provided to an agency for use in developing governmental policy and upon a promise of confidentiality; but this subparagraph shall not apply to information submitted as required by law or as a condition of receiving a governmental contract or other benefit;~~

(h) proposals and bids to enter into any contract or agreement until the time for the opening of bids in the case of proposals or bids to be opened publicly, and until the time for the receipt of bids or proposals has expired in all other cases; and inter-agency or intra-agency communications made in connection with an evaluation process for reviewing bids

or proposals, prior to a decision to enter into negotiations with or to award a contract to, a particular person.

(i) appraisals of real property acquired or to be acquired until (1) a final agreement is entered into; or (2) any litigation relative to such appraisal has been terminated; or (3) the time within which to commence such litigation has expired.

(j) The names and addresses of any persons contained in, or referred to in, any applications for any licenses to carry or possess firearms issued pursuant to chapter one hundred and forty or any firearms identification cards issued pursuant to said chapter one hundred and forty and the names and addresses on sales or transfers of any firearms, rifles, shotguns, or machine guns or ammunition therefor, as defined in said chapter one hundred and forty and the names and addresses on said licenses or cards.

(k) that part of the registration or circulation records of every public library which reveals the identity of a borrower.

(l) test questions and answers, scoring keys and sheets, and other examination data used to administer a licensing examination; provided, however, that such materials are used to administer another examination.

Any person denied access to public records may pursue the remedy provided for in section ten of chapter sixty-six.

Amended by St.1958, c. 626, § 1; St.1962, c. 427, § 1; St.1969, c. 831, § 2; St.1973, c. 1060, § 1; St.1977, c. 691, § 1; St.1978, c. 247; St.1979, c. 230; St.1982, c. 189, § 2; St.1983, c. 113; St.1985, c. 220.

Historical Note

St.1897, c. 489, § 1.

R.L.1902, c. 85, § 5.

St.1928, c. 192, § 8.

As appearing in G.L.1982 (Ter.Ed) this section read:

'Twenty-sixth, 'Public records' shall mean any written or printed book or paper, any map or plan of the commonwealth, or of any county, city or town which is the property thereof, and in or on which any entry has been made or is required to be made by law, or which any officer or employee of the commonwealth or of a county, city or town has received or is required to receive for filing, and any book, paper, record or copy mentioned in sections five to eight, inclusive, and sixteen of chapter sixty-six, including public records made by photographic process as provided in section three of said chapter.'

St.1958, c. 626, § 1, approved October 7, 1958, inserted "district," twice following "county," and inserted "section eleven A of chapter thirty A, where applicable, section nine F of chapter thirty-four, section twenty-three A of chapter thirty nine, or" following "mentioned in".

Section 11 of St.1958, c. 626, provided: "Upon the effective date of this act, the provisions of all special acts which are inconsistent with the provisions of this act shall, only to the extent that they conflict with this act, become null and void."

St.1962, c. 427, § 1, approved May 10, 1962, inserted "any official correspondence of any officer or employee of the commonwealth or of a county, district, city or town," following "received for filing".

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13.34 EXAMINATION DATA.

Data consisting solely of testing or examination materials, or scoring keys used solely to determine individual qualifications for appointment or promotion in public service, or used to administer a licensing examination, or academic examination, the disclosure of which would compromise the objectivity or fairness of the testing or examination process are classified as nonpublic, except pursuant to court order. Completed versions of personnel, licensing, or academic examinations shall be accessible to the individual who completed the examination, unless the responsible authority determines that access would compromise the objectivity, fairness, or integrity of the examination process. Notwithstanding section 13.04, the responsible authority shall not be required to provide copies of completed examinations or answer keys to any individual who has completed an examination.

History: 1980 c 603 s 14; 1981 c 311 s 10,39; 1982 c 545 s 24

13.35 FEDERAL CONTRACTS DATA.

To the extent that a federal agency requires it as a condition for contracting with a state agency or political subdivision, all government data collected and maintained by the state agency or political subdivision because that agency contracts with the federal agency are classified as either private or nonpublic depending on whether the data are data on individuals or data not on individuals.

History: 1980 c 603 s 19; 1981 c 311 s 39; 1982 c 545 s 24

13.36 FIREARMS DATA.

All data pertaining to the purchase or transfer of firearms and applications for permits to carry firearms which are collected by state agencies, political subdivisions or statewide systems pursuant to sections 624.712 to 624.719 are classified as private, pursuant to section 13.02, subdivision 12.

History: 1981 c 311 s 20,39; 1982 c 545 s 24; 1987 c 384 art 2 s 1

13.37 GENERAL NONPUBLIC DATA.

Subdivision 1. Definitions. As used in this section, the following terms have the meanings given them.

(a) "Security information" means government data the disclosure of which would be likely to substantially jeopardize the security of information, possessions, individuals or property against theft, tampering, improper use, attempted escape, illegal disclosure, trespass, or physical injury.

(b) "Trade secret information" means government data, including a formula, pattern, compilation, program, device, method, technique or process (1) that was supplied by the affected individual or organization, (2) that is the subject of efforts by the individual or organization that are reasonable under the circumstances to maintain its secrecy, and (3) that derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.

(c) "Labor relations information" means management positions on economic and noneconomic items that have not been presented during the collective bargaining process or interest arbitration, including information specifically collected or created to prepare the management position.

Subd. 2. Classification. The following government data is classified as nonpublic data with regard to data not on individuals, pursuant to section 13.02, subdivision 9, and as private data with regard to data on individuals, pursuant to section 13.02, subdivision 12: Security information; trade secret information; sealed absentee ballots prior to opening by an election judge; sealed bids, including the number of bids received, prior to the opening of the bids; and labor relations information, provided that specific labor relations information which relates to a specific labor organization is classified as protected nonpublic data pursuant to section 13.02, subdivision 13.

History: 1980 c 603 s 15; 1981 c 311 s 11,39; 1982 c 545 s 24; 1984 c 436 s 15; 1985 c 248 s 4

educational agency or of business, relate to employee, and are not subject to section 13.43.

Controlled or registered, by the agency or institution, or by a public agency or

on a temporary basis shall include an individual's record.

Records, including but not limited to physical or mental health records, shall be maintained by the agency or institution, or by a public agency or

except as provided in section 13.43, shall not be disclosed.

Private data; records maintained pursuant to the Freedom of Information Act, 5 U.S.C. 552, and Code of Federal Regulations, 16 CFR 1700.01, 1979; or

Records maintained pursuant to sections 1232g(b)(1), 1232g(b)(2), title 45, sections 1700.01, 1979; or

Records maintained to administer immunization, which the commission has the authority to investigate is being

Records shall not have the right of access to financial records maintained therein.

Records of directory information, pursuant to section 1232g and regulation 1700.01, 1979 is public data on

Records of institutions, for example, admissions form, and the following data on

The data shall not be used for the purpose of determining the accuracy of inconsistent provisions.

1982 c 545 s 24; 1984 c 436 s 15

13.38 PRIVATE DATA.

Private data on individuals shall not be disclosed.

(d) For petitions circulated pursuant to Section 5091 of the Education Code, the person or persons having charge of the petition who submit the petition to the county superintendent of schools.

(e) For petitions circulated pursuant to Article 1 (commencing with Section 35700) of Chapter 4 of Part 21 of the Education Code, the person or persons designated as chief petitioners under Section 35701 of the Education Code.

(f) For petitions circulated pursuant to Part 46 (commencing with Section 74000) of the Education Code, the person or persons designated as chief petitioners under Sections 74102, 74133, and 74152 of the Education Code.

Amended Stats 1982 ch 163 § 2; Stats 1985 ch 1053 § 1.

Amendments:

1982 Amendment: (1) Amended the first paragraph by adding (a) ", and petitions circulated pursuant to Section 5091 of the Education Code," before "and all memoranda"; and (b) ", a school district or a community college district attorney" near the end of the paragraph; and (2) added subd (d).

1985 Amendment: (1) Amended the first paragraph by (a) deleting "and" after "recall petitions,"; (b) adding "petitions for the reorganization of school districts submitted pursuant to Article 1 (commencing with Section 35700) of Chapter 4 of Part 21 of the Education Code, petitions for the reorganization of community college districts submitted pursuant to Part 46 (commencing with Section 74000) of the Education Code"; and (2) added subds (e) and (f).

Cal Jur 3d (Rev) Elections § 289.

§ 6253.6. Requests for bilingual election materials

(a) Notwithstanding the provisions of Sections 6252 and 6253, information compiled by public officers or public employees revealing the identity of persons who have requested bilingual ballots or ballot pamphlets, made in accordance with any federal or state law, or other data that would reveal the identity of the requester, shall not be deemed to be public records and shall not be provided to any person other than public officers or public employees who are responsible for receiving those requests and processing the same.

(b) Nothing contained in subdivision (a) shall be construed as prohibiting any person who is otherwise authorized by law from examining election materials, including, but not limited to, affidavits of registration, provided that requests for bilingual ballots or ballot pamphlets shall be subject to the restrictions contained in subdivision (a).

Added Stats 1982 ch 1260 § 1; Amended Stats 1985 ch 1129 § 1.

Amendments:

1985 Amendment: Amended subd (a) by substituting (1) "information compiled by public officers or public employee revealing the identity of persons who have requested" for "requests for"; and (2) "provided to any person other than" for "open to inspection except by the precinct board and other".

§ 6254. Records exempt from disclosure requirements

Except as provided in Section 6254.7, nothing in this chapter shall be construed to require disclosure of records that are any of the following:

(a) Preliminary drafts, notes, or interagency or intraagency memoranda which are not retained by the public agency in the ordinary course of business, provided that the public interest in withholding those records clearly outweighs the public interest in disclosure.

(b) Records pertaining to pending litigation to which the public agency is a party, or to claims made pursuant to Division 3.6 (commencing with Section 810), until the pending litigation or claim has been finally adjudicated or otherwise settled.