

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672

6106 HOUSE STATE AFFAIRS

570

b. Example / Checklist Contact sheet

LEGISLATIVE

SPONSOR: House State Affairs

TC DATE/DAY: Wed, Jan 24

Pub. Hear Work Ses. Inv. Hear

TIME: 8:30 AM - 10:00 AM

LEGISLATIVE REFERENCE: HB136

JUNEAU ROOM: Cap 102

SUBJECT: RATNet Council

BRIDGE: _____

OF PORTS: _____

CONTACT: Ann PH: 4931

DATE TAKEN/BY: 1/23/90 Pog

TELECONFERENCE SITES:

LIO'S

LTC'S

VTS'S

- Anchorage
- Barrow *
- Bethel
- Delta Junction *
- Dillingham *
- Fairbanks
- Glennallen *
- Juneau
- Ketchikan
- Kodiak
- Kotzebue
- Mat-Su
- Nome
- Petersburg *
- Sicka
- Soldotna
- Valdez *

- Homer
- Wrangell

See List on Reverse Side

ALL LIO'S

OTHER SITES WELCOME WITH PRIOR NOTIFICATION

• Linda Davidovics
 OFFNETS: ~~Bethel~~ 442-3311
 Kotzebue ext 134

• Harold Hopper
 HNS 716-2249
 Fox 716-2614

CHAIRING SITE: Juneau

CHAIRPERSON: Rep. Boucher

[] CONFORMS TO LEGISLATIVE COUNCIL POLICY 4/85

SIGNATURE OF SPONSOR/CONTACT PERSON

DATE

SPECIAL INSTRUCTIONS

Come on line @ 9:00, They call bridge 800-478-6532

Rhea Mae Knagie

P.O. Box 65

PORT LIONS, ALASKA 99550

907-454-2276

Kodiak Area Native Association

Bristol Bay Native Association

Russell S. Nelson V.P. RATNET

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A. Melchheimer 722 Ocean View TERRACE English Bay Alaska 99603

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Alaska State Legislature

House of Representatives
COMMITTEE ON STATE AFFAIRS
MEMORANDUM

DATE: August 30, 1989
TO: RATNet Council Members
FROM: Representative H. A. "Red" Boucher, Chair
House State Affairs Committee
SUBJECT: Draft Committee Substitute for HB 136

As you know, HB 136, sponsored by Representative Mike Davis, is presently under consideration in the House State Affairs Committee. Before I schedule this bill for further hearings, I would like to hear your views and recommendations regarding this legislation.

You will recall that the House State Affairs Committee held one public hearing on HB 136 last April. At that hearing, several members of the Council expressed concerns over certain provisions in the bill. Those concerns related to:

- (1) ensuring that regional appointees were selected from recommendations made by each of the 12 regional Native Corporations; and
- (2) that all members of the Council serve terms on an equal basis.

In response to the above concerns, Representative Eileen MacLean, Vice-Chair of the House State Affairs Committee, proposed several amendments to HB 136, and I have incorporated those amendments into a draft committee substitute - CSHB 136 (SA). Please note that you may already have a copy of a draft committee substitute for HB 136 dated 4/21/89 - please disregard that version.

CORRECTION

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

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Beta law.

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Jerry Brigham

Public Television Network of ALASKA

KYUK

Pouch 468

Bethel, AK 99559



Alaska State Legislature

House of Representatives
COMMITTEE ON STATE AFFAIRS
MEMORANDUM

DATE: August 30, 1989
TO: RATNet Council Members
FROM: Representative H. A. "Red" Boucher, Chair
House State Affairs Committee
SUBJECT: Draft Committee Substitute for HB 136

As you know, HB 136, sponsored by Representative Mike Davis, is presently under consideration in the House State Affairs Committee. Before I schedule this bill for further hearings, I would like to hear your views and recommendations regarding this legislation.

You will recall that the House State Affairs Committee held one public hearing on HB 136 last April. At that hearing, several members of the Council expressed concerns over certain provisions in the bill. Those concerns related to:

- (1) ensuring that regional appointees were selected from recommendations made by each of the 12 regional Native Corporations; and
- (2) that all members of the Council serve terms on an equal basis.

In response to the above concerns, Representative Eileen MacLean, Vice-Chair of the House State Affairs Committee, proposed several amendments to HB 136, and I have incorporated those amendments into a draft committee substitute - CSHB 136 (SA). Please note that you may already have a copy of a draft committee substitute for HB 136 dated 4/21/89 - please disregard that version.

The following compares HB 136 with the draft committee substitute CSHB 136 (SA):

Draft CSHB 136 (SA)

Section 1

No change from HB 136.

Section 2

No change from HB 136.

Section 3

Language is added in Section 3 (a) (1) requiring the governor to make appointments based on recommendations given by the 12 regional Native Corporations.

Language is deleted in Section 3 (b) referring to exceptions for staggered terms. In the draft CSHB 136 (SA), all members serve for staggered terms of three years.

Language is deleted in Section 3 (b) which limits the number of terms a member may serve.

Section 4

Termination of the Council is now June 30, 1993.

General Comments: Draft CSHB 136 (SA)

Section 1

Brings the RATNet Council under AS 39.50.200 Conflict of Interest Statute. You must file a financial disclosure statement within 30 days after taking office.

Section 2

Specifies that the Council makes all decisions and policies relating to programming. Existing statutory language was confusing since it designated several user groups as policy and decision makers.

Section 3

There have been concerns expressed by the Council regarding certain exceptions; that is, on page 2, lines 8 and 9 of HB 136, reference was made to excluding the University of Alaska and the Department of Education members from serving staggered terms of three years. Under the draft CSHB 136 (SA), however, these exceptions are deleted.

Under the draft CSHB 136 (SA), there is no limit on the number of three year terms a member can serve.

Section 4

Under the draft CSHB 136 (SA), the Council terminates, but is allowed until June 30th of the next succeeding year to conclude its affairs. However, the Council can be reestablished by the legislature for a period not to exceed four years ("Sunset" review).

Note: The Council can be established in Statute without termination and "Sunset" review.

Section 5

Language was deleted in HB 136 regarding certain exceptions (Section 3). Reference to these exceptions was also deleted in Section 5 for consistency.

Under the provisions set out in the draft CSHB 136 (SA), current members would continue to serve until their terms end - that process is spelled out in Section 5. After the term ends, each member could again be appointed to the Council by the Governor. *Note:* since all members under the draft CSHB 136 (SA) serve equally, the number of members whose terms end in 1991, 1992, and 1993 are 6, 6 and 5 respectively (17).

One last comment: How a board or commission elects a "chairperson" could be important to the structure of an organization. This process can also be set in statute and may be something you wish to discuss as well.

THE HOUSE STATE AFFAIRS COMMITTEE CHAIRED BY REP. BOUCHER
WILL BE HOLDING A HEARING ON HB 136 SPONSORED BY REP. MIKE
DAVIS. HB 136 MAKES CERTAIN CHANGES TO THE ALASKA STATUTES
WHICH GOVERN THE RATNET COUNCIL. IF YOU WOULD LIKE TO
RECEIVE A COPY OF THE PROPOSED LEGISLATION OR WOULD LIKE TO
TESTIFY, PLEASE CONTACT REP. BOUCHER AT 465-4963.

Original sponsors: M.Davis and Menard

1 IN THE HOUSE

BY THE STATE AFFAIRS COMMITTEE

2 CS FOR HOUSE BILL NO. 136 (State Affairs)

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 Rural Alaska Television
7 Network Council."

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

9 * Section 1. AS 39.50.200() is amended by adding a new paragraph to
10 read:

11 (50) Rural Alaska Television Network Council (AS 44.21.-
12 500).

13 * Sec. 2. AS 44.21.320(c) is amended to read:

14 (c) Decisions and policies relating to programming under the
15 satellite television project, including scheduling and allocation
16 policies, may not be made by the department, but may only be made by
17 the Rural Alaska Television Network Council established under AS 44.-
18 21.500 [A NETWORK THAT IS REPRESENTATIVE OF PARTICIPATING RURAL TELE-
19 VISION USERS, BY COMMERCIAL BROADCAST USERS OR BY OTHER AFFECTED
20 PARTICIPATING USER GROUPS AND ENTITIES UNDER PROCEDURES PROVIDED BY
21 STATUTE OR, IF NO STATUTE APPLIES, THEN BY AGREEMENT OF THE AFFECTED
22 USER NETWORKS OR GROUPS. THE DEPARTMENT SHALL ASSIST USERS IN PREPAR-
23 ING AGREEMENTS THAT MAY BE REQUIRED UNDER THIS SUBSECTION].

24 * Sec. 3. AS 44.21 is amended by adding a new section to read:

25 ARTICLE 9. RURAL ALASKA TELEVISION NETWORK COUNCIL.

26 Sec. 44.21.500. RURAL ALASKA TELEVISION NETWORK COUNCIL. (a)

27 There is established in the Department of Administration the Rural
28 Alaska Television Network Council. The council consists of 17 mem-
29 bers, including

1 (1) a consumer representative from each of the 12 areas in
2 the state served by the regional Native corporations organized under
3 43 U.S.C. 1601 - 1628 (Alaska Native Claims Settlement Act) appointed
4 by the governor; each corporation shall recommend a person to the
5 governor for the appointment; the governor shall appoint the recom-
6 mended person or request another recommendation from the corporation;

7 (2) two members from the general public appointed by the
8 governor;

9 (3) the president of the University of Alaska or the presi-
10 dent's designee;

11 (4) the commissioner of education or the commissioner's
12 designee; and

13 (5) one member appointed by the chair of the Alaska Public
14 Broadcasting Commission. *STILL 65-1120*

15 (b) Members serve for staggered terms of three years. A vacancy
16 shall be filled for the balance of the unexpired term and shall be
17 made in the same manner as the original appointment.

18 (c) Council members serve without compensation but are entitled
19 to receive per diem and travel expenses authorized by law for members
20 of boards and commissions under AS 39.20.180.

21 (d) The council shall

22 (1) establish procedures for its operation; and

23 (2) set policy and make programming decisions for the
24 satellite television project under AS 44.21.320(c).

25 (e) In this section "council" means the Rural Alaska Television
26 Network Council.

27 * Sec. 4. AS 44.66.010(a) is amended by adding a new paragraph to read:

28 (17) Rural Alaska Television Network Council -- June 30,
29 1993.

1 * Sec. 5. EXISTING MEMBERSHIP OF RATNET. The members currently serving
2 on the Rural Alaska Television Network Council shall continue to serve
3 until their terms terminate. The current members shall draw lots at the
4 next council meeting to determine which five members will serve until
5 June 30, 1991, which five members will serve until June 30, 1992, and which
6 five members will serve until June 30, 1993.

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Dennis, See me —

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RATNET: Saw advertising on RATNET called

OLNEY WEBB

BOX 3111

KETCHIKAN, AK 99901

Dennis ROBINSON (TOB)

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LIVE ON TENNOCK ISLAND

NO

DIANE HOELTING

PETERSBURG 772-3692

NO

Betty Murphy

SANDPOINT 383-2292

NO

Christopher Tulik

647-6898

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RUSSEL ^{NELSON} ~~JAMES~~

842-2370

ANCHORAGE

→

ISAAC KAYUTAK

562-2575

MACLEAN

LINDA →

CALL - 412-3311

→ TESTIFY? YES

Chapter 50. Conflict of Interest.

Section 200. Definitions

Sec. 39.50.200. Definitions. (a) In this chapter

(1) "assistant to the governor" includes any executive, legislative, special, administrative or press assistant to the governor, and any person similarly employed.

(2) "child" includes a biological child, an adoptive child, and a step-child;

(3) "commission" means the Alaska Public Offices Commission created under AS 15.13.020(a);

(4) "instrumentality of the state" means a state department or agency, whether in the legislative, judicial, or executive branch, including such entities as the University of Alaska and the Alaska State Building Authority;

(5) "judicial officer" means a person appointed as a justice to the supreme court or as a judge to the court of appeals, superior court, district court, or magistrate court;

(6) "mother or father" includes a biological parent, an adoptive parent, and a step-parent;

(7) "municipal officer" includes a borough or city mayor, borough assemblyman, city councilman, school board member, elected utility board member, city or borough manager, members of a city or borough planning or zoning commission within a home rule or general law city or borough, or a unified municipality;

(8) "public official" means a judicial officer, a member of the legislature, the fiscal analyst of the legislative finance division, the legislative auditor of the legislative audit division, the executive director of the Legislative Affairs Agency and the directors of the divisions within the Legislative Affairs Agency, the governor, the lieutenant governor, a person hired or appointed as the head or deputy head of, or director of a division within, a department in the executive branch, an assistant to the governor, chairman or member of a state commission or board, the executive director of the Alaska Tourism Marketing Council, and each appointed or elected municipal officer;

(9) "source of income" means the entity for which service is performed or which is otherwise the origin of payment; if the person whose income is being reported is employed by another, the employer is the source of income; but if the person is self-employed by means of a sole proprietorship, partnership, professional corporation, or a corporation in which the person, the person's spouse or children, or a combination of them, hold a controlling interest, the "source" is the client or customer of the proprietorship, partnership or corporation, but if the entity which is the origin of payment is not the same as the client or

customer for whom the service is performed, both are considered the source;

(b) In this chapter "state commission or board" means the

- (1) Agricultural Revolving Loan Fund Board (AS 03.10.050);
- (2) Alaska State Council on the Arts (AS 44.27.040);
- (3) Alcoholic Beverage Control Board (AS 04.06.010);
- (4) State Assessment Review Board (AS 43.56.040);
- (5) *[Repealed, § 1 ch 54 SLA 1981.]*
- (6) Board of Education (AS 14.07.075);
- (7) Alaska Public Broadcasting Commission (AS 44.21.256);
- (8) Alaska Public Offices Commission (AS 15.13.020);
- (9) Employment Security Advisory Council (AS 23.20.025);
- (10) Alaska Commercial Fisheries Entry Commission (AS 16.43.020);
- (11) Fishermen's Fund Advisory and Appeals Council (AS 23.35.010);
- (12) Alaska State Building Authority (AS 18.55.020);
- (13) State Commission for Human Rights (AS 18.80.010);
- (14) *[Repealed, § 86 ch 59 SLA 1982.]*
- (15) Alaska Judicial Council (art. IV, § 8, Alaska Constitution);
- (16) Commission on Judicial Conduct (art. IV, § 10, Alaska Constitution);
- (17) Governor's Commission on the Administration of Justice (AS 44.19.110);
- (18) Local Boundary Commission (AS 44.47.565);
- (19) Occupational Safety and Health Review Board (AS 18.60.057);
- (20) Board of Parole (AS 33.16.020);
- (21) State Personnel Board (AS 39.25.060);
- (22) *[Repealed, § 20 ch 110 SLA 1981.]*
- (23) Public Employees Retirement Board (AS 39.35.030);
- (24) Alaska Public Utilities Commission (AS 42.05.010);
- (25) University of Alaska Board of Regents (AS 14.40.120);
- (26) Alaska Royalty Oil and Gas Development Advisory Board (AS 38.06.020);
- (27) *[Repealed, § 86 ch 59 SLA 1982.]*
- (28) *[Repealed, § 86 ch 59 SLA 1982.]*
- (29) Alaska Teachers' Retirement Board (AS 14.25.035);
- (30) *[Repealed, 1983 Initiative Proposal No. 2, § 6.]*
- (31) Workers' Compensation Board (AS 23.30.005);
- (32) Alaska Commission on Postsecondary Education (AS 14.42.015);
- (33) Alaska Municipal Bond Bank Authority (AS 44.85.020);
- (34) *[Repealed, § 1 ch 54 SLA 1981.]*
- (35) Alaska Medical Facility Authority (AS 18.26);
- (36) Alaska Oil and Gas Conservation Commission (AS 31.05);

- (37) Alaska Housing Finance Corporation (AS 18.56.010 — 18.56.900);
- (38) Alaska Coastal Policy Council members and their alternates (AS 44.19.155);
- (39) *[Repealed, § 1 ch 75 SLA 1979.]*
- (40) Board of Fisheries (AS 16.05.221(a));
- (41) Board of Game (AS 16.05.221(b));
- (42) Board of Trustees and executive director of the Alaska Permanent Fund Corporation (AS 37.13.040);
- (43) *[Repealed, § 69 ch 14 SLA 1987.]*
- (44) Alaska Seafood Marketing Institute (AS 16.51.010);
- (45) Council on Domestic Violence and Sexual Assault (18.66.010);
- (46) Alaska Power Authority public directors (AS 44.83.030);
- (47) Alaska Resources Corporation (AS 37.12.010);
- (48) Guide Board (AS 08.54.010); and
- (49) Alaska Tourism Marketing Council (AS 44.33.700). (1974 Initiative Proposal No. 2, § 1; am §§ 18, 19 ch 25 SLA 1975; am § 3 ch 79 SLA 1975; am § 2 ch 170 SLA 1975; am § 18 ch 263 SLA 1976; am § 2 ch 67 SLA 1977; am § 2 ch 141 SLA 1978; am § 2 ch 158 SLA 1978; am § 9 ch 167 SLA 1978; am § 2 ch 66 SLA 1979; am § 3 ch 75 SLA 1979; am § 37 ch 3 SLA 1980; am § 28 ch 12 SLA 1980; am § 8 ch 18 SLA 1980; am §§ 39 — 42 ch 94 SLA 1980; am § 5 ch 148 SLA 1980; am E.O. No. 44 § 2 (1980); am § 1 ch 54 SLA 1981; am § 2 ch 101 SLA 1981; am § 5 ch 106 SLA 1981; am § 20 ch 110 SLA 1981; am § 86 ch 59 SLA 1982; am 1983 Initiative Proposal No. 2, § 6; am § 107 ch 6 SLA 1984; am § 1 ch 52 SLA 1984; am § 63 ch 74 SLA 1985; am § 5 ch 88 SLA 1985; am § 26 ch 71 SLA 1986; am § 69 ch 14 SLA 1987; am §§ 3, 4 ch 78 SLA 1988)

Effect of amendments. — The 1988 Alaska Tourism Marketing Council" in amendment, effective July 1, 1988, inserted "the executive director of the subsection (a)() and added subsection (b)(49).

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missions

**Chapter
67. General State Policy (Renumbered)**

**Chapter 65. Interdepartment and Interagency
Services.**

[Repealed, § 69 ch 106 SLA 1986, § 27 ch 65 SLA 1987.]

**Chapter 66. Review of the Activities of Agencies,
Boards and Commissions.**

**Section
10. Termination of state boards and
commissions**

Sec. 44.66.010. Termination of state boards and commissions.
(a) Boards and commissions listed in this subsection expire on the date set out after each:

- (1) Alcoholic Beverage Control Board (AS 04.06.010) — June 30, 1990;
- (2) *[Repealed, 1983 Initiative Proposal No. 2, § 6.]*
- (3) Board of Parole (AS 33.16.020) — June 30, 1989;
- (4) Alaska Public Utilities Commission (AS 42.05.010) — June 30, 1989;
- (5) *[Repealed, § 20 ch 110 SLA 1981.]*
- (6) *[Repealed, § 63 ch 21 SLA 1985.]*
- (7) *[Repealed, § 16 ch 161 SLA 1984.]*
- (8) Alaska Code Revision Commission (AS 24.20.075) — June 30, 1989;
- (9) *[Repealed, § 2 ch 97 SLA 1986.]*
- (10) Older Alaskans Commission (AS 44.21.200) — June 30, 1989;
- (11) Council on Domestic Violence and Sexual Assault (AS 18.66.010) — June 30, 1989;
- (12) Alaska Women's Commission — June 30, 1987;
- (13) Alaska State Fire Commission — June 30, 1990;
- (14) Special Education Service Agency (AS 14.30.600) — June 30, 1989;
- (15) Alaska Tourism Marketing Council (AS 44.33.700) — June 30, 1993;
- (16) Tourism Coordinating Committee (AS 44.33.122) — June 30, 1993.

(b) Upon termination, a commission listed in (a) of this section shall continue in existence until June 30 of the next succeeding year for the purpose of concluding its affairs.

(c) A commission scheduled for termination under AS 44.66.010 — 44.66.060 may be continued or reestablished by the legislature for a

period not to exceed four years. (§ 3 ch 149 SLA 1977; am § 3 ch 101 SLA 1978; am § 10 ch 179 SLA 1978; am § 3 ch 44 SLA 1980; am § 1 ch 115 SLA 1980; am § 11 ch 131 SLA 1980; am § 11 ch 136 SLA 1980; am § 3 ch 172 SLA 1980; am § 1 ch 32 SLA 1981; am § 1 ch 64 SLA 1981; am § 4 ch 79 SLA 1981; am § 3 ch 101 SLA 1981; am § 20 ch 110 SLA 1981; am E.O. No. 48, § 5 (1981); am § 1 ch 65 SLA 1982; am § 31 ch 142 SLA 1982; am § 3 ch 52 SLA 1983; am § 1 ch 20 SLA 1983; am § 1 ch 74 SLA 1983; am § 1 ch 76 SLA 1983; am 1983 I.P. No. 2, § 6; am § 16 ch 161 SLA 1984; am § 1 ch 163 SLA 1984; am § 63 ch 21 SLA 1985; am § 1 ch 29 SLA 1985; am § 1 ch 36 SLA 1985; am § 1 ch 38 SLA 1985; am § 6 ch 88 SLA 1985; am § 3 ch 84 SLA 1986; am § 1 ch 95 SLA 1986; am § 2 ch 97 SLA 1986; am § 6 ch 104 SLA 1986; am § 5 ch 112 SLA 1986; am § 1 ch 121 SLA 1986; am § 1 ch 71 SLA 1987; am § 10 ch 78 SLA 1988)

Revisor's notes. — Paragraph (a)(14) was enacted as paragraph (a)(13). Renumbered in 1986.

Effect of amendments. — The first 1985 amendment repealed paragraph (2) of subsection (a), which provided a termination date for the Alaska Transportation Commission.

The second 1985 amendment repealed paragraph (6) of subsection (a), concerning the Alaska Council on Science and Technology.

The third 1985 amendment substituted "1986" for "1985" in paragraph (4) of subsection (a).

The fourth 1985 amendment in paragraph (11) of subsection (a) inserted "(AS 18.66.010)" and substituted "1989" for "1985."

The fifth 1985 amendment in paragraph (10) of subsection (a) substituted "1989" for "1985."

The sixth 1985 amendment in paragraph (3) of subsection (a) deleted "State" preceding "Board" and substituted "AS

33.16.020" for "AS 33.15.010" and "1989" for "1985."

The first 1986 amendment added paragraph (13) of subsection (a).

The second 1986 amendment substituted "1990" for "1986" at the end of paragraph (1) of subsection (a).

The third 1986 amendment repealed paragraph (9) of subsection (a), which provided a termination date for the Rural Development Council.

The fourth 1986 amendment substituted "1989" for "1986" at the end of paragraph (4) of subsection (a).

The fifth 1986 amendment added paragraph (14) of subsection (a).

The sixth 1986 amendment substituted "1989" for "1985" at the end of paragraph (8) of subsection (a).

The 1987 amendment substituted "1989" for "1987" at the end of subsection (a)(14).

The 1988 amendment, effective July 1, 1988, in subsection (a), added paragraphs (15) and (16).

Chapter 67. General State Policy.

[Renumbered as AS 44.99.100.]

Part 6. State Property.

Chapter

71. Surplus Property (§ 44.71.010)

74. Management and Disposition (§§ 44.74.010, 44.74.020)

36 ch 1 SLA 1974; am 75; am §§ 9, 10, 15 ch §§ 22, 23 ch 123 SLA SLA 1976; am §§ 6, 7 ; am § 54 ch 128 SLA A 1979; am § 14 ch 82 8 ch 13 SLA 1980; am 7 SLA 1982; am §§ 2, 1986; am § 50 ch 117 58 SLA 1989; am § 2

1989 amendment, effective 9, inserted "incentive cash AS 39.51.120" near the end 3). 1989 amendment, effective added "or the optional uni- ent program" at the end of . The amendments were the revisor. See the revi- es. — Chapter 205, SLA ended this section, was ie voters by referendum d.

s Retirement

ng former AS 39.37.060 17, SLA 1986, the surviv- elected public officer who ights under the Elected etirement System is eli- receiving survivors' ben- efiage. If there is no sur- r surviving dependent enefits under former AS er payment of all survi- ue under former AS n the amount of contri- he elected public officer 39.37.070 and interest paid, the difference be-

between the amount of contributions and the amount of benefits paid shall be paid to the designated beneficiary of the elected public officer. If there is no designated beneficiary or if no designated beneficiary survives the elected public office, the balance of the contributions and interest accepted shall be paid to the

- "(1) surviving spouse; or, if there is none surviving,
- "(2) surviving children in equal parts; or, if there is none surviving,
- "(3) surviving parents in equal parts; or, if there is none surviving,
- "(4) elected public officer's estate."

Chapter 50. Conflict of Interest.

Section	Section
Report of financial and business in-	200. Definitions

Sec. 39.50.020. Report of financial and business interests. Any judicial officer, commissioner, chairman or member of a state commission or board specified in AS 39.50.200(b), a person hired or appointed as head or deputy head of, or director of a division within, a department in the executive branch, a person appointed as assistant to the governor, and a municipal officer, shall file a statement giving income sources and business interests, under oath and on penalty of perjury, within 30 days after taking office as a public official. Candidates for state elective office shall file such a statement with the director of elections at the time of filing a declaration of candidacy or within 30 days of the filing of any nominating petition, or within 30 days of becoming a candidate by any other means. Candidates for elective municipal office shall file such a statement at the time of filing a nominating petition, declaration of candidacy, or other required filing for the elective municipal office. Refusal or failure to file within the time prescribed shall require that the candidate's filing fees, if any, and filing for office be refused or that a previously accepted filing fee be returned and the candidate's name removed from the filing records. A statement shall also be filed by public officials no later than April 15 or 15 days after the person files a federal income tax return in each following year, whichever comes first. Persons who, on or after December 11, 1974, were members of boards or commissions not named in AS 39.50.200(b) are not required to file financial statements.

The governor, lieutenant governor, members of the legislature, judicial officers, each commissioner, head or deputy head of, or director of a division within, a department in the executive branch, assistant to the governor or chairman or member of a commission or board nominated to report under this chapter, shall file the statement with the Alaska Public Offices Commission. Candidates for the office of governor, lieutenant governor, and the legislature shall file the statement under AS 15.25.030 or 15.25.180. Municipal officers, and candidates

Title 38
Public Lands

Title 38
Public Offices
and Employees

RATNET COUNCIL
February 1989

* Denotes Executive Council

- *ISAAC KAYUTAK, President Inupiat Community
Box 764
Barrow, AK 99723
852-2070 (Msg. Phone)
852-4750 (H)
- *LINDA DAVIDOVICS, Vice President Manillaq Association
c/o Manillaq Assn.
Box 256
Kotzebue, AK 99752
442-3311 (W)
442-3711 (H)
- *KAY SHEPHERD, Secretary *Will check other members and call me back. 4/7 3:15 pm* Governor's Appointee
Box 727
Whittier, AK 99693
472-2350 (H)
- TIM TOWARAK Kawerak, Inc.
Box 89
Unalakleet, AK 99684
624-3003 (H)
- *RUSSELL NELSON Bristol Bay Native Assn.
Box 161
Dillingham, AK 99576 2389
842-5471 (Msg. Phone)
842-2370 (H)
- *HAROLD HOPPER *4/7 3:15 pm* Governor's Appointee
Box 245
Haines, AK 99827
766-2249
Travel Connection 766-2681
- *PETER TWITCHELL AVCP (Assn. of Village Council Presidents)
Box 703
Bethel, AK 99559
543-3131 (W)
543-3640 (H)
- CHRIS GENE Copper River Native Assn.
Box 124
Gakona, AK 99586
822-3497
- RHEA MAE KNAGIN Kodiak Area Native Assn.
Box 265
Port Lions, AK 99550
454-2276 (H)

VELMA SCHAFFER
Box 70
Huslia, AK 99746
829-2258 (H)

NELLIE M. VALE
Box 193
Yakutat, AK 99689
784-3423

GARY HARRISON
Box 1105
Chickaloon, AK 99674
745-7184 (H)

ARNOLD MELSHEIMER
722 Ocean View
English Bay via Homer, AK 99603
281-2231

DIMITRI PHILEMONOF
c/o APIA
1689 C Street
Anchorage, AK 99503
248-5341 (H)
276-2700 (W)

JERRY BRIGHAM
c/o KYUK TV
P.O. Box 468
Bethel, AK 99559
543-3131 (W)

LOIS STIEGEMEIER
Box F
Juneau, AK 99811
465-2884 (W)

EDIE LYNCH
ACC/K-102
2533 Providence Dr.
Anchorage, AK 99508-4670
786-1990 (W)

ALTERNATES:

Billie Benedict (Russell Nelson)
Box 1011
Dillingham, AK 99576

Reggie Cleveland (L. Davidovics)
General Delivery
Shungnak, AK 99773
437-2168

Tanana Chiefs Conference

Tlingit & Haida Indians

Cook Inlet Native Assn.

North Pacific Rim

Aleutian/Pribilof
Island Assn.

Alaska Public Broadcasting

Dept. of Education

UAA/ACC Instructional
Telecommunications

Larry Sinyon (Chris Gene)
Star Rt. Box 150
Gakona, AK 99586

Debbie Harris (Nellie Vale)
P.O. Box 233
Yakutat, AK
784-3288/3233

Bonnie Eastburn (Gary Harrison)
c/o CINA
1569 S. Bragaw, Ste. 200
Anchorage, AK 99508

Margaret Galovin
(Dimitri Philemonof)
c/o APIA
1689 C Street
Anchorage, AK 99503

HB

138

HOUSE COMMITTEE ON STATE AFFAIRS

RECAP OF
HB 138

State Employees Incentive Award System

Received February 1, 1989
by Reps. Ulmer, Koponen, Ellis, Hudson and
Gruenberg

Heard February 28, 1989

Committee Substitute adopted February 28, 1989

Passed Out of Committee February 28, 1989
1 Do Pass
2 No Recommendation
1 Amend

TABLE OF CONTENTS

HB 138: State Employees Incentive Award System

- Item 1: HB 138 by Ulmer, Koponen, Ellis, Hudson and Gruenberg
- Item 2: Fiscal Note
- Item 3: Memorandum from Rep. Ulmer, February 28, 1989
- Item 4: Sectional Analysis of HB 183
- Item 5: Related *Anchorage Times* Newspaper Article
- Item 6: Research Request 87.205
Employee Suggestion Award Programs in Other States and Inclusion of Universities
March 30, 1987

HOUSE COMMITTEE REPORT

(7)

Date Referred: February 1, 1989

FURTHER REFERRALS: FINANCE

Date of Committee Action: _____

The STATE AFFAIRS Committee recommends that:

HOUSE BILL NO. 138 [STATE EMPLOYEES INCENTIVE AWARD SYSTEM]
"An Act establishing a state employee incentive award system."

be replaced with CSHB 138(SA) the same title
 a new title

have attached amendment(s)

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

ADOPTS: _____ letter of intent

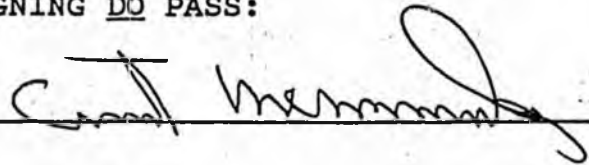
ATTACHES NEW FISCAL NOTE(S):

- fiscal impact
- zero fiscal note
- zero with analysis DOA

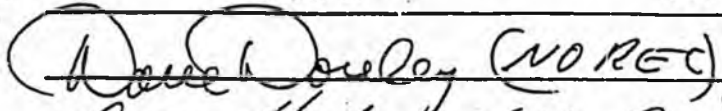
APPROVES PREVIOUS:

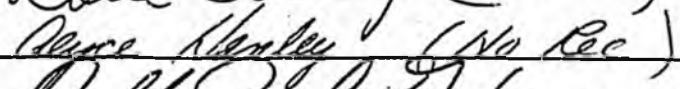
- fiscal note(s) published: _____
- zero fiscal notes(s) published: _____

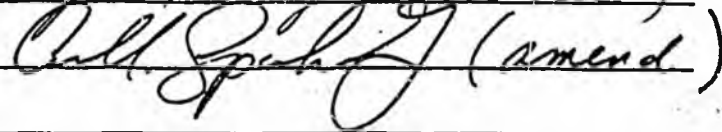
SIGNING DO PASS:

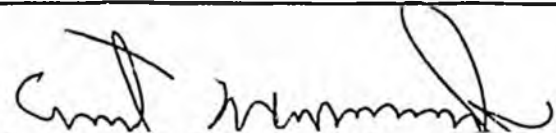


SIGNING OTHER THAN DO PASS:
(Do Not Pass, No Recommendation, Amend)

 David Dowley (NO REC)

 Bruce Kerley (No Rec)

 Chuck Spahn (amend)

 _____
Acting Chairman's signature

Introduced: 2/1/89
Referred: State Affairs
and Finance

Item 1

6-0662A

Protection for employees.
Wage & Salary Bill
would take - CWP RUU

BY ULMER, KOPONEN, ELLIS,
HUDSON AND GRUENBERG

1 IN THE HOUSE

2

HOUSE BILL NO. 138

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act establishing a state employee incentive award
7 system."

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

9 * Section 1. AS 39.51 is amended by adding new sections to read:

10 ARTICLE 2. INCENTIVE AWARD PROGRAM.

11 Sec. 39.51.110. INCENTIVE AWARDS. The Incentive Awards Board
12 may authorize the commissioner of a department or the executive head
13 of an agency other than a department to pay an employee a cash award
14 and incur necessary expense for the honorary recognition of the em-
15 ployee if the employee has contributed to the efficiency, economy, or
16 other improvement of state operations by a superior suggestion, in-
17 vention, accomplishment, or other superior personal effort in con-
18 nection with or related to the employee's official employment.

19 Sec. 39.51.120. PAYMENT OF AWARDS. (a) A cash award under
20 AS 39.51.110 - 39.51.200 is in addition to the regular pay of the
21 recipient. Acceptance of a cash award constitutes an agreement that
22 the use by the state of an idea, method, or device for which the award
23 is made does not form the basis of a further claim of any nature
24 against the state by the employee.

25 (b) A department or agency may pay a cash award and the expense
26 for the honorary recognition of an employee from the appropriation
27 available to the activity or activities primarily benefiting from the
28 idea, method, or device that forms the basis for the award. The
29 commissioner of the department or head of the agency shall recommend

Whistle blower

→ p 4, 010 procedure - get amount point that can not be...
about suggestion - would not give it...
it was described -

SAVINGS...
A SAVING...
NEW...
- SET UP...
IN REQUIRED...
QUESTION

1 to the board the amount to be paid by each activity for an award.

2 (c) An employee may receive a cash award only if the [commissioner
3 er of the department or the executive head of the agency] has demon-
4 strated to the satisfaction of the board that a net savings has been
5 realized by the department or agency as a direct result of the em-
6 ployee's concept or idea.

7 (d) The board may not grant an award to an employee whose idea
8 or concept requires a change in law before it may be implemented.

9 Sec. 39.51.130. AMOUNT OF AWARDS. The board may not grant a
10 cash award under AS 39.51.110 - 39.51.200 that exceeds \$25,000. The
11 amount of the award is determined by multiplying each increment of the
12 state's actual cost savings during the first 12 months of implementa-
13 tion, as determined by the board, by the following percentages and
14 adding the results:

- 15 (1) five percent of the first \$10,000 in savings;
- 16 (2) four percent of the next \$20,000 in savings;
- 17 (3) three percent of the next \$30,000 in savings;
- 18 (4) two percent of the amount of savings that exceeds
19 \$60,000.

20 Sec. 39.51.140. MERITORIOUS ACHIEVEMENT. When the commissioner
21 of a department or the executive head of an agency certifies to the
22 board that an employee's superior suggestion, invention, accomplish-
23 ment, or other meritorious effort is highly exceptional and unusually
24 outstanding, but does not result in a direct savings to state govern-
25 ment, the board may approve an award consisting of a certificate of
26 merit issued by the Office of the Governor.

27 Sec. 39.51.150. LIMITATION ON AWARDS. The board may not make an
28 award to an employee

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SUBJECT LOCAL OF BOARD CHAIR, N

TRANS
FORWARD

- 1 (1) for a suggestion that represents a part of the normal
- 2 duties of the employee;
- 3 (2) who has sole authority to implement the suggestion;
- 4 (3) whose duties include research or planning, unless the
- 5 subject matter of the suggestion is unrelated to the employee's normal
- 6 work assignments; or
- 7 (4) is developed by more than one person unless each person
- 8 is an employee eligible for an award under this section.

9 Sec. 39.51.160. AWARDS TO FORMER EMPLOYEES. Notwithstanding the
 10 death or separation from state service of the employee concerned, a
 11 department or agency may pay or grant an award under AS 39.51.110 -
 12 39.51.200 if the award is based on events that happened while the
 13 employee was in the employ of the state.

14 Sec. 39.51.170. INCENTIVE AWARDS BOARD. (a) The Incentive
 15 Awards Board is established in the division of personnel in the De-
 16 partment of Administration.

17 (b) The board consists of the director of the division of per- ^{public MEMBER}
 18 sonnel in the Department of Administration, and the directors of the
 19 division of strategic planning and the office of management and budget
 20 in the Office of the Governor. The board shall elect a chair.

21 (c) The board shall ~~meet four times~~ ^{meet as necessary} a year at a time and place
 22 determined by the chair. The meetings are open to the public. A
 23 majority of the membership of the board constitutes a quorum. The
 24 board may not take action on a matter except by affirmative vote of a
 25 majority of the board members.

26 (d) A member of the board may not act on a matter in which the
 27 relationship of the member with another person creates a conflict of
 28 interest.

29 (e) A member of the board may not receive an award under this

*
HIA
HMC
PLACE

1 chapter.

2 (f) The board shall adopt regulations and conduct hearings under
3 the Administrative Procedure Act (AS 44.62).

4 Sec. 39.51.180. ANNUAL REPORT. The board shall submit a report
5 regarding the operation of the awards program to the governor by
6 January 15 of each year.

7 Sec. 39.51.200. DEFINITIONS. In AS 39.51.110 - 39.51.200

8 (1) "board" means the Incentive Awards Board;

9 (2) "employee" includes a permanent, probationary, season-
10 al, nonpermanent, temporary, or provisional employee of the executive
11 branch of state government whether in the classified, partially ex-
12 empt, or exempt service.

Original sponsors: Ulmer, Koponen,
Ellis, et al.

1 IN THE HOUSE BY THE STATE AFFAIRS COMMITTEE
2 CS FOR HOUSE BILL NO. 138 (State Affairs)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act establishing a state employee incentive award
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8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

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2 (2) who has sole authority to implement the suggestion;

3 (3) whose duties include research or planning, unless the
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24 of the board members.

25 (d) A member of the board may not act on a matter in which the
26 relationship of the member with another person creates a conflict of
27 interest.

28 (e) A member of the board may not receive an award under this
29 chapter.

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(2) "employee" includes a permanent, probationary, seasonal, nonpermanent, temporary, or provisional employee of the executive branch of state government whether in the classified, partially exempt, or exempt service.

Item 2.

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Department of Administration
 Title: An act establishing a State employee incentive award system. BRU: Personnel
 Sponsor: Ulmer, Koponen, Ellis, * Components: Centralized Administrative Services
 Requestor: _____
 * Hudson, Gruenberg

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES	0	32.5	24.4	24.4	24.4	24.4
TRAVEL	0	4.7	4.7	4.7	4.7	4.7
CONTRACTUAL	0	12.0	12.0	12.0	12.0	12.0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	49.2	41.1	41.1	41.1	41.1
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	49.2	41.1	41.1	41.1	41.1
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	49.2	41.1	41.1	41.1	41.1

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	1	1	1	1	1
TEMPORARY	0	1	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

See attached.

Prepared By: David K. F. Otto, Director Phone: 465-4430
 Division: Personnel Date: _____

Approved by Commissioner: John M. Andrews Date: 2/27/89
 Agency: Department of Administration

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

CONTINUATION of FISCAL NOTE ANALYSIS

For House Bill No. 138

SUBJECT OF PROPOSED BILL:

This legislation places the Incentive Award Board in the Division of Personnel and requires the Board to hold four hearings per year, draft and adopt regulations, and administer the program. The bill does not authorize the Board to employ a secretary or additional staff.

Section 39.51.170(f) requires the board to adopt regulations under the administrative procedure act. The Division of Personnel does not employ a regulations specialist. This fiscal note assumes that a regulations specialist would be employed for three months to draft proposed regulations, answer public inquiries regarding the regulations, explain the proposal to the board and the public at a public hearing, and draft the changes directed by the board after a hearing is held. Regulations specialists are paid at a range 16.

The bill places the Board in the Division of Personnel. The division does not have staff to administer the legislation. In a 1985 report, the Illinois Legislative Council surveyed ten state governments that had incentive award programs. That report contained the following recommendations:

States stress the importance of prompt handling of suggestions, computerized recordkeeping and continuing publicity with emphasis on recognition of winners and saving tax dollars.

Other advice included in the report is listed below:

- require one year of implementation before making the award;
- set a 60, 90, or 120-day time limit for agency review;
- keep a supply of suggestion forms and return envelopes at each agency;
- announce and promote the program with material inserted in pay envelopes;
- hold a training seminar for agency coordinators.

While not all of these individual recommendations may be desirable in Alaska it is logical to assume the program needs extensive publicity and timely processing of nominations to succeed. This fiscal note assumes that an Information Officer II, range 17, employee half-time would be sufficient to administer the program.

This is a modest proposal. Other states have employed small staffs and have budgeted \$100,000 to administer similar programs.

ATTACH TO SA REPORTING OF FISCAL NOTE
OF BILL

The legislation also requires the Board to hold four hearings per year. It will be appropriate to hold the hearing at the location closest to the work station of the employee or employees who made the cost savings suggestion. This note assumes that one hearing will be held in Fairbanks and one in Anchorage each year.

Finally, the bill makes the boards hearing procedures subject to the Administrative Procedure Act (APA). Under the APA contested cases must be heard by a hearing officer. We have assumed that one case will be heard before a hearing officer each year at a cost of \$3,000.00 per hearing.

The specific cost of the program for years covered by this fiscal note are outlined below:

FY 90

Personal Services

✓ Regulations Specialist, Range 16A, 3 months, Juneau. (\$2,702 x 3)	8.1
✓ Information Officer II, Range 17A, 6 months, Juneau	<u>24.4</u>
Personal services subtotal	32.5

✓ Board Related Travel

Travel costs are based on (3) board members and one staff person, all from Juneau.

Travel to board meetings by board members and staff in the first year is based on one Anchorage and one Fairbanks meeting.

Travel	3.3
Per diem	<u>1.4</u>
Subtotal	4.7

✓ Contractual

Printing (flyers, annual report, pamphlets, newsletters, bulletins)	5.0
Advertising (meetings, awards, and regulations)	2.0
Legal Services--Hearing Officer	3.0
Telephones, Postage	<u>2.0</u>
Contractual Subtotal	12.0

FY 91-FY 94

Costs for FYs 91-94 are the same as those for FY 90 less the one time FY 90 cost for a Regulations Specialist.

Total cost per year \$41.1

Position Title Information Officer II		No. of Positions 1/2	Range/Step	Barg. Unit K
Time Status Hourly (PPT)	Staff Months 6	Location Juneau	Election District 4	
Type of Expenditure		Justification		
Amount		Recommendations from other states that have employee incentive programs stress the importance of handling suggestions promptly and publicizing the program. This position will be necessary to:		
1	2	3		
Salary	17.4		1. Develop a publicity campaign for the program to ensure that all employees and supervisors are aware of the programs requirements and the procedure used to nominate candidates for awards.	
Benefits	7.0		2. Prepare the Boards agenda and advertise quarterly meetings.	
Premium Pay			3. Schedule, coordinate, publicize and supervise award ceremonies.	
Other			4. Prepare an annual report for the Governor.	
Total Personal Services		24.4	5. Respond to public inquiries regarding the program and its regulations.	
Travel		1.2		
Contractual		9.0		
Commodities				
Equipment				
Other				
Total Cost		34.6		
Funding Source for Total Cost				
Federal Receipts	1002			
G. F. Match	1003			
General Fund	1004	34.6		
GF Program Receipts	1005			
Other				

6/4/86/022417 9/5
**Request For
 New Position**

Agency Department of Administration
 BRU Personnel
 Component Centralized Administrative Services

Page 4 of 4
 Revised Date _____

FY 90

Alaska State Legislature

Representative Fran Ulmer

P.O. Box V
Juneau, Alaska 99811
(907) 465-4947

HOUSE OF REPRESENTATIVES

M E M O R A N D U M

TO: Representative Red Boucher, Chairman
Members
House State Affairs Committee

FROM: Rep. Fran Ulmer

DATE: Feb. 28, 1989

RE: HB 138-State Employee Incentive Award System

HB 138 would establish a monetary incentive program to encourage state employees to improve state operations by promoting efficiency and reducing costs without decreasing services.

An incentive awards board would be established within the Division of Personnel in the Department of Administration. This board would review cost saving ideas and grant cash awards in accordance with the amount of money being saved by the state. Awards could total from a low of 5% of the first \$10,000 in savings, to an amount not to exceed \$25,000. Please see the attached chart for actual calculations of awards.

This type of legislation has been established in many states, and the Federal government has had a similar program in place since 1954. Federal data shows a long term saving of over \$12 for every dollar awarded.

EXPLANATION OF CALCULATION OF INCENTIVE AWARDS

The amount of the award is determined by multiplying each increment of the state's actual cost savings during the first 12 months of implementation by the percentages listed below:

5% of savings up to \$10,000

4% of savings between \$10,000 and \$30,000 = \$400 minimum

3% of savings between \$30,000 and \$60,000 = \$900 minimum

2% of savings between \$60,000 and \$1,250,000 = \$1,200 minimum

The maximum award would be \$25,000 for a savings to the state of \$1,250,000.

Example: if an employee saved the state \$27,500 in a 12 month period, the award would equal \$1,100. ($\$27,500 \times 4\%$)

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 27, 1989

SUBJECT: Sectional Analysis of HB 138
(State employee incentive award system)

TO: Representative Fran Ulmer

FROM: Teresa B. Cramer *TBC*
Legislative Counsel

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

As a preliminary matter, note that a sectional analysis or summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Section 1 adds a new article to title 39 to implement a state employee incentive award system.

Sec. 39.51.110 permits the Incentive Awards Board to authorize payment of a cash award in recognition of an employee's superior accomplishment.

Sec. 39.51.120 makes acceptance of a cash award constitute an agreement that the use of the idea does not form the basis for a further claim against the state. Subsection (c) requires the head of the department or agency to demonstrate that implementation of the suggestion results in a net savings to the state. Subsection (d) prohibits an award if implementation requires a change in law.

Sec. 39.51.130 sets out the formula for computing the amount of the award.

Sec. 39.51.140 permits an agency to award a certificate, issued by the Office of the Governor, to employees whose suggestions are outstanding but do not result in a direct savings to the state.

Representative Fran Ulmer
Page 2
February 27, 1989

Sec. 39.51.150 prohibits awards if the suggestion represents a part of the normal duties of the employee, is made by an employee with sole authority to implement the suggestion, is made by an employee whose duties include research or planning (with some exceptions), or is developed by more than one person unless each person is eligible for the award.

Sec. 39.51.160 permits awards to former employees.

Sec. 39.51.170 establishes the incentive awards board, composed of the directors of the division of personnel, division of strategic planning, and the office of management and budget. Subsection (f) requires that the board comply with the Administrative Procedure Act in adopting regulations and conducting hearings.

Sec. 39.51.180 requires the board to submit an annual report to the governor.

Sec. 39.51.200 defines "employee" and limits coverage of the bill to executive branch employees.

If I may be of further assistance, please advise.

TC:kb
wkk2/058

ps. 1-1 Anchorage Times 2-17-87
Worker saves military \$7 million

MONTPELIER, Vt. (AP) — A military technician who was worried about the safety of a \$4,500 infrared light tester used on helicopters went to the local hardware store and built his own — for \$8.75.

Now, after saving the military more than \$6 million a year, John Ledoux is getting his reward: a check for \$25,000.

Ledoux, a part-time sergeant in the Vermont Army National Guard and a full-time civilian employee of an Army National Guard base in Burlington, Vt., received a \$10,000 incentive prize from the government more than a year ago.

Today he was to receive the larger prize from the federal Office of Personnel Management.

"I'm just kind of glad I'm finally getting the monetary award. It seems like it's a long time coming," said Ledoux, who explained that bureaucratic errors delayed the check.

"I feel like it's been put off for so long it's lost its glow," he said. "But I'm glad things are finally coming to a head."

The award is the maximum allowed by law and the largest given to a federal employee, said Joseph Jamele, press secretary for Sen. Patrick Leahy, D-Vt. He said only 20 such awards have

ever been granted.

Ledoux, 33 and father of five, said the money would come in handy.

"My wife and I have a big family so, of course, the money is nice," he said.

Ledoux said he developed his hand-held device in 1986 after watching engineers with the Lockheed Aircraft Corp. install infrared lights on helicopters using the standard-issue testing device, which was built into a pair of goggles.

Ledoux said the engineers often perched in precarious positions on the helicopters to test the lights. Concerned for their safety, he went down to a local electronics store and picked up a phototransistor, a light-emitting diode, a switch and a nine-volt battery. After fiddling around with the parts for a couple of days, he put the device together.

He said it took the Army a bit longer to realize the potential savings. First he sent a diagram of the device, but it was only after he sent the device itself that the Army congratulated him on his ingenuity.

Army officials are crediting the device with saving 987,000 hours of labor a year, for a total of \$6.85 million.



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Item 6

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

March 30, 1987

MEMORANDUM

TO: Representative Niilo Koponen

ATTN: Lisa McLaren

FROM: Mary Jennings *MJ*
Legislative Analyst

RE: Employee Suggestion Award Programs in Other States
Research Request 87.205 (Supplemental Information)

You requested that we provide a description of the appeal process used in three other states with employee suggestion award programs.

Florida

Although the Florida Department of Personnel administers the suggestion award program, each agency handles appeal cases internally. The state used to have a centralized committee for appeals, but had difficulty enforcing the committee's decisions. Currently, the Department of Personnel oversees the proceedings of any appeal within an agency, provides documentation and may make suggestions, but the case is ultimately decided by the particular agency. According to Derek Daniels of the department, the state had one past case of an employee who felt he had made a suggestion that was later implemented without any compensation to the employee. The employee appealed to the agency and was compensated for the suggestion.

Michigan

Each of the state departments in Michigan has a committee that accepts or rejects suggestions to the suggestion award program. Appeals are handled by the Suggestion Award Program Central Board. The board makes a decision based upon the employee's claim and documentation kept by the particular agency. The decision is then sent to the agency involved for comment. If the agency agrees, the process is complete. If the agency disagrees with the decision, the board reviews the case again and makes a final decision. Mr. Leo Bell, coordinator for the suggestion award program, stated that employees frequently appeal because they feel a suggestion has been implemented but they have not been compensated. Mr. Bell stated that the solution to this type of problem is to keep accurate records of all suggestions. Mr. Bell added that in Michigan, suggestion records are kept for five years.

Representative Koponen
March 30, 1987
Page 2

Connecticut

Last year the Connecticut suggestion award program was opened to the public as well as state employees. As a result, the Suggestion Award Oversight Panel was created to review suggestions and handle appeals. The panel, which represents the general public, meets monthly and receives no compensation. (Prior to last year, appeals were handled informally by the program coordinator.) Currently, if an appeal situation arises, the panel monitors the decision process of the involved agency as the suggestion is sent through the system again. The panel then accepts or rejects the decision of the agency. A decision of the panel may be appealed to the State Claim Commission. Tom Barnett, communications coordinator for the program, stressed that well maintained records of the suggestion award program are always helpful in an appeal situation.

I hope you find this information useful. I have requested program regulations from Florida, Michigan and Connecticut and will forward them to you upon receipt. It should be noted that the National Association of Suggestion Systems recommends that a formal appeal process be adopted by states with award programs. Please contact me if you have any questions.



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

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

March 27, 1987

MEMORANDUM

TO: Representative Niilo Koponen

ATTN: Lisa McLaren

FROM: Mary Jennings *mg*
Legislative Analyst

RE: Employee Suggestion Award Programs in Other States and Inclusion
of Universities
Research Request 87.205

You requested that we determine if other states with employee suggestion award programs include state university employees in the program. You also requested that we determine the level of control that these states have over state university funding.

Conclusion

I contacted the states of California, Florida, Georgia, Missouri, New Jersey, New York and Washington--all of which have employee suggestion award programs. In California, New Jersey, and New York, where the level of legislative control over university funding is moderate to high, state university employees are included in the suggestion award program.¹ In Washington, where legislative control is relatively low, university employees are also included in the program, although these employees have a history of nonparticipation. The state university employees of Georgia, where funding control is low, are not eligible for participation. In Missouri, where legislative control is moderate, state agencies participate at their discretion and the university system has chosen not

¹The following criteria were used to determine the level of legislative control over university funding: the nature of the funding appropriation (e.g., lump sum; campus by campus; or line item); the university's ability to move funds among programs; and the percentage of state funds relative to total funds.

to participate. Florida, where control is also moderate, has a separate suggestion award program for university employees. The following section of this memorandum provides details of my conversations with state personnel departments and state university system budget offices.

California

California includes State University System employees in the suggestion award program. According to Dr. James Jenson, Legislative Analyst for the California State University System, the legislature has a fairly high level of control over the State University System. He stated that funding is received on a program by program basis, although the university has the discretion to transfer funds between programs. According to Mr. Jenson, state funds account for over 90 percent of total funds. He added that state university employees are unionized and that the personnel policies for state university employees are very similar to other state employees.

New Jersey

According to the New Jersey Department of Personnel, State University employees are included in the employee suggestion award program and are active participants. The majority of university employees are unionized and follow personnel policies similar to other state employees. Each institution within the State University System receives an appropriation which is then allocated by the institution. Institutions with more than one campus receive one appropriation which is allocated among the campuses. State funds account for approximately 70 percent of total funds.

New York

According to Carl Reynolds, coordinator for the New York employee suggestion award program, state university employees are included in the program. He added that university employees do not seem to participate as actively as other State employees. All University employees, except certain management personnel, are unionized. A major faction of employees are represented by the Civil Service Union, which represents other state civil service employees.

State universities in New York are funded on a campus-by-campus basis. Within each campus appropriation, the legislature makes four line item appropriations. Each university may make transfers among these line item appropriations. State funds account for approximately 57 percent of total funding.

Washington

According to Carolyn Smith of the Washington State Productivity Board, the State University System is included in the employee suggestion award program, although the employees do not participate at this time. Ms. Smith explained that, due to a lack of staff, it has not been possible to implement the program within the university system. She added that the board hopes to obtain funding this year that would allow for additional staff and a liaison that could work with the university system in order to implement the program. University civil service employees are unionized, although they do not have collective bargaining power.

The Washington State University System is funded by a single appropriation which is allocated among the institutions by the Board of Regents. According to Bill Robinson, Legislative Analyst for the State University System, the legislature may include some line item appropriations within the general appropriation but this does not happen on a regular basis. State funds account for approximately 85 percent of the funding for regional universities and approximately 33 percent of the funding for larger research-related universities.

Georgia

Georgia's State University employees are not included in the state's suggestion award program. According to Jacob Wamslee of the State University System, state university employees have personnel policies that are completely separate from other state employees. Mr. Wamslee said that the State University System receives an annual appropriation which is allocated among the various institutions by the Board of Regents. State funds account for approximately 65 percent of total funding. Mr. Wamslee stated that the university system has not considered adopting its own suggestion award program.

Missouri

Participation in the Missouri employee suggestion award program is at the option of each agency of the state. According to the State Personnel Department, the university system has chosen not to participate in the program. University employees and all other state employees are nonunion and have similar personnel policies. Appropriations to the State University System are made on a campus-by-campus basis and each campus may allocate these funds at their discretion. State funds account for approximately 69 percent of all funds.

Representative Koponen
March 27, 1987
Page 4

Florida

Florida State University employees have an employee suggestion program that is separate from the program for other state employees. According to Anna Gray of the State University Office of Human Relations, as a result of legislation adopted last year, the State University System was given an autonomous personnel department for programs such as employee suggestion award. Ms. Gray stated that her office is currently promulgating regulations for the suggestion award program, which is statutorily identical to the state program. She added that the program will differ in one major aspect because, beside career service employees, faculty will also be allowed to participate.

The Florida State Universities System is funded by a single appropriation to the Board of Regents which is then allocated among the institutions. The state legislature frequently designates line item appropriations within the general appropriation. State funds account for approximately 90 percent of total funding.

I hope you find this information useful. Please feel free to contact me if you have any questions.

For your eyes only

PROPOSED LETTER OF INTENT-HB 138-EMPLOYEE INCENTIVE AWARDS

It is the intent that regulations pertaining to the establishment of the incentive award system address the following concerns:

- 1) The regulations should include a system to protect the confidentiality and impartial review of all suggestions and establish a time limit for agency review.
- 2) Members of the Incentive Awards Board should participate in a training seminar.
- 3) The regulations should provide that the incentive award shall be computed on the actual savings for a twelve month period from the time the proposed change is instituted. The award shall be paid to the employee in a lump sum at the end of the twelve month period.
- 4) The regulations should provide for the overview of the program in general, and for the overview of each department's participation in the program be specific.
- 5) The regulations should provide for the continuing publicity of the program with emphasis on the recognition of winners and the savings of state revenues. the state will announce and promote the program with material inserted in pay envelopes.
- 6) The regulations should provide for the review of suggestions within 90 days of their submission.
- 7) The regulations should provide that the awards are separate from any collective bargaining agreements.
- 8) The regulations should provide for a appeals process for an employee who believes that his or her idea has been successfully implemented by the state, but who has not received due compensation.

9) The regulations should provide that an employee who is not eligible to participate in the incentive awards system may not indirectly participate by having his or her idea presented to the awards board by an eligible employee in the expectation of shoring the eligible employee's cash award.

H B

140

HOUSE COMMITTEE ON STATE AFFAIRS

**RECAP OF
HB 140**

Open Meetings Violations

Received February 3, 1989
by the State Affairs Committee

Heard February 15, 1989

Zero Fiscal Note with Analysis Adopted February 15, 1989

Passed Out of Committee February 15, 1989
5 Do Pass

TABLE OF CONTENTS

HB 140: Open Meetings Violations

- Item 1: HB 140 by the State Affairs Committee
- Item 2: Fiscal Note by Legislative Affairs Agency
- Item 3: Fiscal Note by House State Affairs

HOUSE COMMITTEE REPORT

(7)

Date Referred: February 3, 1989

FURTHER REFERRALS: JUDICIARY

Date of Committee Action: _____

The STATE AFFAIRS Committee recommends that:

HOUSE BILL NO. 140 [OPEN MEETING VIOLATIONS]

"An Act relating to violations of the open meetings section of the Constitution of the State of Alaska; and amending Alaska Rule of Civil Procedure 82 and Alaska Rule of Appellate Procedure 508; and providing for an effective date.

[] be replaced with _____ [] the same title
[] a new title

[] have attached amendment(s)

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

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- fiscal impact
- zero fiscal note
- zero with analysis

APPROVES PREVIOUS:

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

SIGNING DO PASS:

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

David Douley

Alvin Hunter

Carl Spahr

James Fawcett

W. C. Bunker

W. C. Bunker

 Chairman's signature

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act relating to violations of the open meetings section of the Constitution...
Sponsor: House State Affairs
Requestor: House State Affairs

Affected Agency: Legislative Affairs Agency
BRU: Legislative Council
Components: Legal Services

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

July 1, 1991

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
Personal Services	0	0	0	0	0	0
Travel	0	0	0	0	0	0
Contractual	0	61.0	61.0	61.0	61.0	61.0
Supplies	0	0	0	0	0	0
Equipment	0	0	0	0	0	0
Land & Structures						
Grants, Claims						
Miscellaneous						
TOTAL OPERATING	0	61.0	61.0	61.0	61.0	61.0

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
---------	---	---	---	---	---	---

FUNDING: (THOUSANDS OF DOLLARS)

General Fund	0	61.0	61.0	61.0	61.0	61.0
Federal Fund						
Other						
TOTAL	0	61.0	61.0	61.0	61.0	61.0

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)

It is difficult to estimate how many cases will be litigated against members of the legislature each year. The contractual amount requested is for hiring a private attorney for a member of the legislature. It is based on the amount expended in defending the the Legislative Affairs Agency in the Behrends lawsuit - \$61.0.

100,000 lawsuit

Prepared By: Pamela Stoops, Director
Division: Administrative Services

Pamela Stoops

Phone: 465-3850
Date: 2/9/89

Approved By: Warren Endicott, Executive Director
Agency: Legislative Affairs Agency

Warren Endicott

Date: 2/9/89

DISTRIBUTION (BY PREPARER)
LEGISLATIVE FINANCE
LEGISLATIVE SPONSOR

REQUESTOR
OFFICE OF MANAGEMENT & BUDGET
AGENCY (IES)

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: Open Meeting Violations
Sponsor: House State Affairs
Requestor: _____

Agency Affected: Leg. Affairs Agency
BRJ: Leg. Council
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-
CAPITAL		-0-	-0-	-0-	-0-	-0-
REVENUE		-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

The House State Affairs Committee adopted a zero fiscal note dated Feb. 15, 1989. The committee felt the fiscal note dated Feb. 9, 1989, showing operating costs of \$61,000, was unrealistic.

Prepared by: House State Affairs Phone: 465-4963
Division: _____ Date: Feb 15, 1989
Approved by Commissioner: Rep. H.A. "Ped" Eoucher Date: Feb 15, 1989
Agency: Leg. Council

Distribution (by preparer):

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

Handwritten initials

WORK DRAFT

WORK DRAFT

WORK DRAFT

6-0605A✓
Bradley
1/27/89

1 IN THE HOUSE

2 HOUSE BILL NO.

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 violations of the open meetings
7 section of the Constitution of the State of Alaska;
8 and amending Alaska Rule of Civil Procedure 82 and
9 Alaska Rule of Appellate Procedure 508; and providing
10 for an effective date.

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

12 * Section 1. AS 24.40 is amended by adding new sections to read:

13 ARTICLE 2. LITIGATION INVOLVING THE OPEN MEETINGS REQUIREMENT.

14 Sec. 24.40.050. DEFENSE ON CHARGES OF VIOLATING THE OPEN MEETING
15 REQUIREMENTS. The Legislative Council shall underwrite the costs and
16 attorney fees reasonably necessary to the defense of a member of the
17 legislature who has been charged with a violation of the open meetings
18 requirements of the Constitution of the State of Alaska.

19 Sec. 24.40.060. FRIVOLOUS OR MALICIOUS COMPLAINTS. If the court
20 determines that a lawsuit charging a violation of the open meeting
21 requirements of the Constitution of the State of Alaska was brought
22 frivolously or maliciously, the court shall assess as attorney fees
23 and costs the actual expenses of the Legislative Council expended in
24 the defense of the charges and may assess a civil penalty on the
25 plaintiff of not to exceed \$1,000.

26 Sec. 24.40.070. ARBITRATION. If the Legislative Council be-
27 lieves that the amount incurred in a defense under AS 24.40.050 by
28 private counsel for costs and attorney fees was unreasonable or exces-
29 sive, it shall offer to reimburse the member a portion of the costs

1 and attorney fees. If the member does not accept the offer of the
2 Legislative Council, the matter shall be resolved by binding arbitra-
3 tion under AS 09.43.010 - 09.43.180. If the member and the Legisla-
4 tive Council do not agree on the selection of an arbitrator, the
5 arbitrator shall be selected under the rules of the American Arbitra-
6 tion Association.

7 Sec. 24.40.080. LIMITATIONS OF ACTIONS. A person may not bring
8 an action for a violation of the open meeting requirements of the
9 Constitution of the State of Alaska unless the action is commenced
10 within 180 days of the violation.

11 Sec. 24.40.090. VIOLATION OF OPEN MEETING REQUIREMENTS. An
12 individual member of the legislature determined by the court to have
13 violated a provision of the open meetings requirements of the Consti-
14 tution of the State of Alaska may be assessed a fine not in excess of
15 \$1,000 for each violation.

16 * Sec. 2. The provisions of sec. 1 of this Act have the effect of
17 changing Alaska Rule of Civil Procedure 82 and Alaska Rule of Appellate
18 Procedure 508 by limiting the courts' discretion in awarding costs and
19 attorney fees.

20 * Sec. 3. This Act takes effect on the effective date of a constitu-
21 tional amendment proposed by the Sixteenth Alaska State Legislature relat-
22 ing to open meetings.
23
24
25
26
27
28
29

FISCAL NOTE

REQUEST:

Revision Date: _____ Affect Agency Legislative Affairs Agency
 Title: An Act relating to violations of the BRU: Legislative Council
open meetings section of the Constitution...
 Sponsor: House State Affairs Components Legal Services
 Requestor: House Judiciary

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

OPERATING	FY91	FY92	FY93	FY94	FY95	FY96
Personal Services	0	0	0	0	0	0
Travel	0	0	0	0	0	0
Contractual	61.0	61.0	61.0	61.0	61.0	61.0
Supplies	0	0	0	0	0	0
Equipment	0	0	0	0	0	0
Land & Structures						
Grants, Claims						
Miscellaneous						
TOTAL OPERATING	61.0	61.0	61.0	61.0	61.0	61.0

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

REVENUE	0	0	0	0	0	0
---------	---	---	---	---	---	---

FUNDING: (THOUSANDS OF DOLLARS)

General Fund	61.0	61.0	61.0	61.0	61.0	61.0
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Other						
TOTAL	61.0	61.0	61.0	61.0	61.0	61.0

POSITIONS:

Full-Time	0	0	0	0	0	0
Part-Time	0	0	0	0	0	0
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ANALYSIS: (ATTACH A SEPARATE PAGE IF NECESSARY)

It is difficult to estimate how many cases will be litigated against members of the Legislature each year. The contractual amount requested is for hiring a private attorney for a member of the Legislature. This amount does not assume there are any costs for appeal. It is based on the amount expended in defending the Legislative Affairs Agency in the Behrends lawsuit - \$61.0.

Prepared By Pamela A. Stoops, Director *Pamela Stoops* Phone: 465-3850
 Division: Administrative Services Date: 1/17/90

Approved By: Warren Endicott, Executive Director *Warren Endicott*
 Agency: Legislative Affairs Agency Date: 1/17/90

DISTRIBUTION (BY PREPARER)
 LEGISLATIVE FINANCE
 LEGISLATIVE SPONSOR

REQUESTOR
 OFFICE OF MANAGEMENT & BUDGET
 AGENCY (IES)

1 IN THE HOUSE BY THE STATE AFFAIRS COMMITTEE

2 HOUSE BILL NO. 140

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

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18 Procedure 508 by limiting the courts' discretion in awarding costs and
19 attorney fees.

20 * Sec. 3. This Act takes effect on the effective date of a constitu-
21 tional amendment proposed by the Sixteenth Alaska State Legislature relat-
22 ing to open meetings.

HB

142

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2

CS HOUSE BILL NO. 142

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act amending Rule 5(c) of the Alaska
7 Rules of Criminal Procedure to require
8 court instruction on possible immigration
9 and naturalization consequences of guilty
10 or no contest pleas."

11

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

12

* Section 1. Rule 5(c), Alaska Rules of Criminal Procedure,
13 is amended to read:

14

(c) STATEMENT BY JUDGE OR MAGISTRATE--RIGHT TO COUNSEL--BAIL.

15

The judge or magistrate

16

(1) shall inform the defendant of the complaint against

17

him and of any affidavit filed herewith, and

18

(2) shall require that a copy of the complaint and of

19

any affidavit filed therewith be delivered to the defendant if
20 this has not already been done, and

21

(3) shall inform the defendant

22

(i) of his right to retain counsel, and

23

(ii) of his right to request the assignment of

24

counsel if he is unable to obtain counsel, and

25

(iii) of his right to have a preliminary

26

examination, and

1 (iv) that, if the defendant is not a citizen of the
2 United States, a conviction may result in deportation, exclusion
3 from admission to the United States, or denial of naturalization
4 under federal law, and

5 (4) shall inform the defendant that he is not required
6 to make a statement and that any statement may be used against
7 him. The judge or magistrate shall allow the defendant
8 reasonable time and opportunity to consult counsel and shall
9 admit the defendant to bail as provided by law and by these
10 rules.

11 * Section 2. This Act takes effect on January 15, 1990.

Item 2

STATE OF ALASKA 1989 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version: HB 142
 Publish Date: 2/3/89

REQUEST:

Revision Date:
 Title: An act amending Rule 11 of
 Alaska Rules of Criminal Procedure...
 Sponsor: Judiciary
 Requestor: State Affairs

Agency Affected: Alaska Court System
 BRU: Trial Courts
 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	
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	

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

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

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

POSITIONS:		(Thousands of Dollars)					
Full-time	
Part-time	
Temporary	

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: *Janna Stewart*
 Janna Stewart, Magistrate Educ. Coordinator Phone: 264-8228
 Division: Alaska Court System Date: 02/21/89

Approved by: *Stephanie Cole, for*
 Arthur H. Snowden, II, Administrative Director Date: 02/21/89
 Agency: Alaska Court System

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

State of Alaska

House Majority Leader

COMMITTEES

HOUSE HEALTH, EDUCATION
AND SOCIAL SERVICES
HOUSE JUDICIARY
HOUSE RULES



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Representative Max F. Gruenberg, Jr.
District 11
Spenard, Upper Midtown Anchorage

February 7, 1989

MEMORANDUM

To: Rep. H.A. "Red" Boucher
Chair, House State Affairs

From: Rep. Max F. Gruenberg, Jr. *MF*

Re: HB 142, "An Act amending Rule 11 of the Alaska Rules of Criminal Procedure to require court instructions on possible immigration and naturalization consequences of guilty or no contest pleas."

I would very much appreciate it if you would schedule a hearing for HB 142 as soon as it is possible.

The bill requires a judge to advise a defendant that conviction of a crime may result in deportation or denial of naturalization before the judge accepts a plea of guilty or no contest. Aliens may suffer deportation by pleading guilty to certain offenses. This bill simply requires judges to warn defendants of these possible consequences.

If you have any problems with or questions about this bill, please contact me or my staff attorney, Mark Handley.

Item 4

TAFUYA v. STATE

Alaska 247

Cite as, Alaska, 500 P.2d 247

BOOCHEVER, Justice (concurring).

I concur for the reasons stated in my concurring opinion in Taggard v. State, supra.

3. Criminal Law §641.13(5)

Failure of defense counsel to inform guilty pleading defendant of possibility of deportation as collateral consequence of conviction did not constitute denial of right to effective assistance of counsel as guaranteed by Federal and State Constitutions. Const. art. 1, § 11; U.S.C.A.Const. Amends. 6, 14.

4. Criminal Law §641.13(1)

Standard to test competency of counsel is whether his conduct was so incompetent as to deprive his client of a trial in genuine sense by making the trial a mockery and a farce.

5. Criminal Law §641.13(1)

In determining competency of defense counsel, entire proceedings and whole record must be considered to decide whether his conduct fell short of test of making trial a mockery and a farce, and the only workable standard is to determine whether the proceedings as a whole have judicial character; particular errors or claimed errors of counsel are not enough, and the proceedings must be so tainted that there was an absence of a general trial in any reasonable sense.

6. Criminal Law §641.13(5)

Standard, establishing that defense counsel is considered to have been incompetent if his conduct made trial a mockery and farce, applies to counsel representing a defendant entering a guilty plea as well as counsel representing a defendant at trial.

7. Criminal Law §641.13(1)

Not every error by counsel constitutes incompetent representation.

Stanley P. Cornelius, Anchorage, for appellant.

Seaborn J. Buckalew, Jr., Dist. Atty., Anchorage, John E. Havelock, Atty. Gen., Juneau, Robert L. Eastaugh, Asst. Dist. Atty., Anchorage, for appellee.

Before BONEY, C. J., and CONNOR and ERWIN, JJ.



Not a comment on Requirement

Francisco TAFUYA, Appellant, v. STATE of Alaska, Appellee. No. 1429.

Supreme Court of Alaska. Aug. 11, 1972.

Appeal by defendant from a decision of the Superior Court, Third Judicial District, Anchorage, Ralph E. Mood, J., denying his postconviction application to withdraw guilty plea. The Supreme Court, Boney, C. J., held that defendant's ignorance of deportation possibility which was collateral consequence of conviction did not render his plea involuntary, and that failure of defense counsel to inform defendant of such possibility did not constitute denial of right to effective assistance of counsel as guaranteed by Federal and State Constitutions.

Affirmed.

Rabinowitz, J., dissented and filed opinion.

Boochener, J., not participating.

1. Criminal Law §264

Accused need not be informed about every conceivable collateral effect the conviction might have prior to acceptance of a guilty plea.

2. Criminal Law §273

Guilty pleading defendant's ignorance of deportation possibility which was collateral consequence of conviction did not render his plea involuntary.

10.2(2) appear before officer who testified informant had from defendant sale, conviction from an in-ive because of vidence which

efender, Mere- J. Kulik, Asst. ge, for appel-

Gen., Juneau, ty., Fairbanks,

nd RABINO- and BOOCH-

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) stated in my v. State, su-

OPINION

. BONEY, Chief Justice.

Francisco Tafoya appeals from the denial of his motion to withdraw his guilty plea.

On December 30, 1965, Tafoya, together with his codefendant Alberto Castro, pleaded not guilty to charges of kidnap and rape. Almost a year later, as a result of plea bargaining, they were permitted to withdraw their pleas. The kidnap charge was then dismissed, and they pleaded guilty to rape. The court followed the prosecutor's recommendation that Tafoya be sentenced to three years, suspended, and that he serve two years on probation.

Tafoya is an alien, a Mexican citizen. He is thus deportable for conviction of a crime involving moral turpitude under 8 U.S.C. § 1251(a) (4).¹ However, such a conviction will not furnish grounds for deportation if the sentencing court, at the time of sentencing or within 30 days thereof, makes a recommendation to the Attorney General of the United States that the alien not be deported.²

From the record it is apparent that the attorneys then representing Tafoya and

Castro knew that their clients were aliens. A recommendation against deportation was not sought either during plea bargaining or at the time that the guilty pleas were entered apparently neither attorney was aware either of the possibility of deportation or of the means to forestall such a possibility. Counsel for Castro was first informed of the threat of deportation by Castro and Tafoya on December 1, 1966, twenty-seven days after they had pleaded guilty.

Counsel for Castro immediately moved to amend the judgments to include a recommendation that neither Castro nor Tafoya be deported.³ The superior court denied the motion to amend the sentences of Tafoya and his codefendant. In so ruling, the court specifically declined to recommend either that Tafoya be deported or that he not be deported. Approximately two months later, Tafoya, through his own attorney, again sought to amend the sentence by having the trial court make a recommendation to the Attorney General against deportation. Contrary to the state's earlier position, on this occasion it did not oppose Tafoya's motion. Apparently, because of the lack of opposition the

- 1. 8 U.S.C. § 1251(n) (4) provides:
 - (a) Any alien in the United States . . . shall, upon the order of the Attorney General, be deported who—

(4) is convicted of a crime involving moral turpitude committed within five years after entry and either sentenced to confinement or confined therefor in a prison or corrective institution, for a year or more, or who at any time after entry is convicted of two crimes involving moral turpitude, not arising out of a single scheme of criminal misconduct, regardless of whether confined therefor and regardless of whether the convictions were in a single trial

- 2. 8 U.S.C. § 1251(b) provides:
 - The provisions of subsection (a) (4) of this section respecting the deportation of an alien convicted of a crime or crimes shall not apply (1) in the case of any alien who has subsequent to such conviction been granted a full and un-

conditional pardon by the President of the United States or by the Governor of any of the several States, or (2) if the court sentencing such alien for such crime shall make, at the time of first imposing judgment or passing sentence, or within thirty days thereafter, a recommendation to the Attorney General that such alien not be deported, due notice having been given prior to making such recommendation to representatives of the interested State, the [Immigration and Naturalization Service], and prosecution authorities, who shall be granted an opportunity to make representations in the matter. The provisions of this subsection shall not apply in the case of any alien who is charged with being deportable from the United States under subsection (a) (11) of this section.

- 3. Counsel for Castro represented both men because counsel for Tafoya was then out of town.

Assumption by Boney 2/1/67

superior court granted Tafoya's motion to amend the sentence.⁴

Tafoya's two-year probationary period expired in November 1968, at which time the Division of Corrections recommended that his probation be terminated. The recommendation that probation be terminated was approved by the sentencing judge. One year later, when Tafoya's three-year suspended sentence was completed, he moved to withdraw his plea of guilty and to vacate the sentence he had fully served.⁵ The reasons advanced for taking this action were that he had been ordered to leave the United States as a result of his conviction of the crime of rape and that he would not have pleaded guilty had he known of the possibility of deportation. After the hearing, Tafoya's petition for post-conviction relief was denied. Tafoya brings this appeal from the superior court's denial of his application for post-conviction relief.

4. The amended judgment reads in part as follows:

IT IS FURTHER RECOMMENDED BY THE COURT to the Attorney General of the United States of America that the above-named defendant, who is an alien, not be deported from the United States of America, such recommendation being made by the Court pursuant to the provisions of Title 8, U.S.C., Section 1251(a) (4) and (b).

IT IS FURTHER ORDERED AND ADJUDGED that the foregoing amendment provisions shall be considered for all purposes as having been included in the original Judgment and Order of Probation rendered and entered in the above-entitled case.

From the record it is unclear what effect this nunc pro tunc recommendation has for purposes of 8 U.S.C. § 1251(b). Since Tafoya's deportation is still being sought, we assume that the nunc pro tunc recommendation against deportation was not given any consideration by the Attorney General of the United States.

5. Tafoya's motion to withdraw his guilty plea was made under Alaska R.Crim.P. 35(b) which provides generally for post-conviction relief rather than under Alaska R.Crim.P. 32(d) which provides as follows for the withdrawal of guilty pleas:

A motion to withdraw a plea of

500 P.2d—164

Tafoya argues first that his unawareness of all of the consequences of a guilty plea renders his plea involuntary and that therefore he must be allowed to withdraw it.

Alaska Rule of Criminal Procedure 11 provides in pertinent part that:

A defendant may plead not guilty, guilty or, with the consent of the court, nolo contendere. The court may refuse to accept a plea of guilty, and shall not accept such plea without first determining that the plea is made voluntarily with understanding of the nature of the charge.

Unlike Federal Rule of Criminal Procedure 11, the federal counterpart to our rule, Alaska Rule of Criminal Procedure 11 does not explicitly require that the trial court first address the defendant personally to determine whether the plea is made voluntarily and with understanding of the nature of the charge and "the consequences of the plea."⁶ In *Ingram v. State*⁷ this

guilty or of nolo contendere may be made only before sentence is imposed or imposition of sentence is suspended; but to correct manifest injustice, the court, after sentence, may set aside the judgment of conviction and permit the defendant to withdraw his plea.

We decline, however, to dispose of this appeal on the basis of this procedural error. We recognize that Tafoya's present counsel could reasonably have read *Nichols v. State*, 425 P.2d 247 (Alaska 1967), and *Thompson v. State*, 412 P.2d 628 (Alaska 1966), as approving the use of Rule 35(b) as a vehicle for the post-conviction withdrawal of a guilty plea.

In future cases, when a defendant wishes to withdraw a plea of guilty or of nolo contendere after the imposition of sentence, he should seek his relief under Alaska R.Crim.P. 32(d). Alaska R.Crim.P. 35(b) is not to be used as a substitute for Alaska R.Crim.P. 32(d).

6. At the time Tafoya withdrew his not guilty plea and entered his plea of guilty, the trial court made what was at best only a perfunctory inquiry as to whether Tafoya's plea was made "voluntarily with understanding of the nature of the charge."

7. 450 P.2d 161 (Alaska 1969).

court construed Alaska's Rule 11 in a manner which in effect brought our Rule 11 into conformity with the provision found in Federal Rule 11, which conditions the voluntariness of a guilty plea on the accused's understanding of the nature of the charge and the consequences of the plea. As we stated in *Ingram*:

We need not explore here the scope of the term 'consequences'. Suffice it to say that an 'understanding of the nature of the charge', within the meaning of Criminal Rule 11, encompasses an awareness of the consequences of a guilty plea, that one of the consequences an accused must have knowledge of, gained either from his counsel or the court, is not only the maximum sentence that might be imposed, but the mandatory minimum sentence as well. . . .⁸

In reaching this interpretation in *Ingram*, we relied in part on *Kercheval v. United States*, where the Court said:

Out of just consideration for persons accused of crime, courts are careful that a plea of guilty shall not be accepted unless made voluntarily after proper advice and with full understanding of the consequences.⁹

We are thus faced with the necessity of exploring the scope of the term "consequences," as used in this court's interpretation in *Ingram*, of Alaska Rule of Crimi-

nal Procedure 11 in order to reach the ultimate question whether Tafoya has made a sufficient showing of manifest injustice under Rule 32(d) to warrant relief.¹⁰ As in *Ingram*, we turn to federal law.

In *United States v. Cariola*,¹¹ which we cited in *Ingram*, the defendant discovered, sixteen years after entering his guilty plea, that his conviction disenfranchised him in a state to which he had moved. The court rejected his application to withdraw his plea, stating that:

[U]nsolicited advice concerning the collateral consequences of a plea which necessitates judicial clairvoyance of a superhuman kind can be neither expected nor required.¹²

[1] Federal judicial precedent, in line with *Cariola*, has established that an accused need not be informed about every conceivable collateral effect the conviction might have prior to the acceptance of a plea of guilty.¹³ The leading federal case concerning deportation as a consequence of a guilty plea is *United States v. Parrino*.¹⁴ Like Tafoya, Parrino had fully served his sentence and was faced with deportation as a result of his conviction when he attempted to withdraw his guilty plea. The court denied Parrino's request, holding that the possibility of deportation was a collateral consequence.¹⁵

8. *Id.* at 165 (footnotes omitted).

9. 274 U.S. 220, 223, 47 S.Ct. 582, 71 L.Ed. 1009, 1012 (1927).

10. Wright states that "[a]lthough somewhat different considerations may be involved, the factors relevant on a motion to withdraw a plea of guilty are closely related to those the court must examine before accepting such a plea in the first instance." 2 C. Wright, *Federal Practice and Procedure* § 537, at 465 (1969) (footnote omitted). *Kadwell v. United States*, 315 F.2d 667, 669 n. 6 (9th Cir. 1963); *United States v. Mack*, 240 F.2d 421 (7th Cir. 1957).

11. 323 F.2d 180 (3d Cir. 1963).

12. *Id.* at 186. The distinction between collateral and direct consequences for the purposes of Fed.R.Crim.P. 11 has been

implicitly recognized by the United States Supreme Court. See *Brady v. United States*, 397 U.S. 742, 755, 90 S.Ct. 1463, 25 L.Ed.2d 747, 760 (1970).

13. See, e.g., *Meaton v. United States*, 328 F.2d 370 (5th Cir. 1964), cert. denied, 380 U.S. 916, 85 S.Ct. 902, 13 L.Ed.2d 801 (1965) (conviction might result in loss of voting rights and right to travel abroad); *Redwine v. Zuckert*, 115 U.S. App.D.C. 130, 317 F.2d 336 (1963) (conviction might result in an undesirable dis-

14. 212 F.2d 919 (2d Cir. 1954). charge from the Air Force).

15. *Parrino* presents a situation even more sympathetic than the instant case. Parrino's counsel specifically, but erroneously, informed him that his conviction would not lead to deportation. Tafoya's counsel offered no such misinformation.

The *Parrino* rule has been consistently followed in the federal courts.¹⁶ In *Joseph v. Esperdy*¹⁷ the defendant argued that the federal court should vacate his state conviction because the failure of the state judge to advise him that his conviction would subject him to deportation made his plea involuntary. The court denied him relief, explaining its reliance on the direct-collateral consequences dichotomy as follows:

[E]ven in this Court, where it is mandated that the full range of consequences be set out [citation to Federal Rule of Criminal Procedure 11] it seems onerous and absurd to expect a judge to explain to each and every defendant who pleads guilty the full range of collateral consequences of his plea and, indeed, to anticipate what those collateral consequences are.¹⁸

We agree. It would indeed be onerous and absurd to require the trial judge to delve into all the peculiarities of each defendant's birth, nationality, occupation, and other circumstances, and to apprise him of all the collateral consequences possibly flowing therefrom. That burden should properly fall on the defendant and his counsel.

[2] We therefore hold that the possibility of deportation is a collateral consequence of conviction, Tafuya's ignorance of which did not render his plea involuntary.

[3] Having concluded that the burden of advising a defendant of collateral con-

sequences falls not on the court, but on the defendant's counsel, we must now consider Tafuya's argument that he was denied adequate assistance of counsel. The essence of his argument is that the failure of his counsel to advise him of the possibility of deportation constituted a deprivation of the effective assistance of counsel as guaranteed him by the United States¹⁹ and Alaska Constitutions.²⁰

[4-6] The standard employed in Alaska to test the competency of counsel is well settled. As we stated in *White v. State*:

The criterion employed is that if the conduct of counsel was so incompetent as to deprive his client of a trial in any genuine sense—making that trial a mockery and a farce—then the defendant is entitled to a new trial

The 'mockery and farce' test is a relatively stringent one. . . . [W]e must consider the entire proceedings and the whole record to decide whether counsel's conduct fell short of the mark. The only workable standard is to determine whether the proceedings as a whole have judicial character. Particular errors or claimed errors of counsel are not enough. The proceedings must be so tainted that there was an absence of a genuine trial in any reasonable sense.²¹

The standard was further elaborated upon by this court in *Dimmick v. State*:

The right to the effective assistance of counsel requires only that counsel be conscientious and diligent in assisting a de-

16. *E. g.* *United States v. Sambro*, 454 F.2d 918 (D.C.Cir. 1971); *United States ex rel. Durante v. Holton*, 228 F.2d 827 (7th Cir.), cert. denied, 351 U.S. 963, 76 S.Ct. 1027, 100 L.Ed. 1484 (1956); *Joseph v. Esperdy*, 267 F.Supp. 492 (S.D. N.Y.1966); cf. *United States v. Briscoe*, 130 U.S.App.D.C. 289, 432 F.2d 1351 (1970).

17. 267 F.Supp. 492 (S.D.N.Y.1966).

18. *Id.* at 494 (emphasis in original).

19. Amends. VI, XIV.

20. Art. I, § 11.

21. 457 P.2d 650, 653 (Alaska 1969); accord, *Condon v. State*, Op.No. 802, 498 P.2d 276 (Alaska 1972); *Thessen v. State*, 454 P.2d 341, 352 (Alaska 1969), cert. denied, 396 U.S. 1029, 60 S.Ct. 588, 24 L.Ed.2d 525 (1970); *Mend v. State*, 445 P.2d 229, 233 (Alaska 1968); *Anderson v. State*, 438 P.2d 228, 230-231 (Alaska 1968). See also *Johnson v. State*, 486 P.2d 379, 380 (Alaska 1971); *Dimmick v. State*, 473 P.2d 616, 618 (Alaska 1970); *Lewis v. State*, 469 P.2d 689, 692 n. 3 (Alaska 1970).

order to reach the other Tafuya has owing of manifest 32(d) to warrant . we turn to federal

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precedent, in line lished that an ac- rmed about every fect the conviction e acceptance of a ading federal case s a consequence of tates v. Parrino.¹⁴ d fully served his with deportation tion when he at- guilty plea. The quest, holding that ation was a col-

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501

defendant in having a genuine trial in a reasonable sense. . . .²²

The same "mockery and farce" standard applies to counsel representing a defendant entering a guilty plea.²³

We thus must determine if Tafoya was provided genuine proceedings in a reasonable sense and if those proceedings were of a judicial character. Indirectly, the dichotomy between direct and collateral consequences again enters into our consideration. Our focus in examining the proceedings below must be on those facets intrinsic to the proceedings themselves. Thus if counsel had failed to warn Tafoya of certain direct consequences of his plea, we would not only have concluded above that his plea was involuntary, but we would also conclude now that he had not been provided with a genuine proceeding and therefore that he had been denied the effective assistance of counsel. However, error on counsel's part with regard to collateral consequences cannot be said to have infected the proceedings to such an extent as to have prevented their being either genuine or of a judicial character. We therefore agree with the federal courts²⁴ that failure of counsel to inform of the possibility of deportation does not constitute denial of the right to the effective assistance of counsel.

22. 473 P.2d 616, 618 (Alaska 1970) (footnote omitted).

23. *United States v. Wight*, 176 F.2d 376 (2d Cir. 1949), cert. denied, 338 U.S. 850, 70 S.Ct. 478, 94 L.Ed. 586 (1950).

24. *United States v. Sambro*, 454 F.2d 918 (D.C.Cir. 1971); *United States v. Briscoe*, 139 U.S.App.D.C. 289, 432 F.2d 1351 (1970); *United States v. Parrino*, 212 F.2d 919 (2d Cir. 1954).

25. We do not discuss, for we consider unfounded, Tafoya's third argument, that he was deprived of due process by virtue of the superior court's refusal to determine whether or not he should be deported. 8 U.S.C. § 1251(b) allows, but does not require, the sentencing court to recommend either for or against deportation. Moreover, here the superior court considered the motion to add a recommendation to the judgment. In denying

[7] Superficially, there may appear to be an anomaly in holding both that defense counsel has the burden of informing his client of collateral consequences and that failure to inform of such consequences does not constitute denial of the effective assistance of counsel. The appearance of anomaly results from the collateral character of the consequence of deportation. Not every error by counsel constitutes incompetent representation. While we may sympathize with Tafoya, we cannot accept either of his arguments discussed above.²⁵

The decision of the superior court denying Tafoya's application for post-conviction relief is affirmed.

BOOCHEVER, J., not participating.

RABINOWITZ, Justice (dissenting).

In my view, the central issue in this appeal is whether Tafoya has made a sufficient showing of "manifest injustice" under Criminal Rule 32(d) to warrant the setting aside of the judgment of conviction which was entered against him and to permit him to withdraw his guilty plea.¹ Criminal Rule 32(d) provides:

A motion to withdraw a plea of guilty . . . may be made only before sentence is imposed or imposition of sentence is suspended; but to correct manifest injustice, the court, after sentence,

that motion, the superior court judge stated that he thought that the possibility of deportation was an appropriate element of judgment and that the court would have been more comfortable with the light sentence imposed had the judge known deportation was a possibility.

1. Federal authority has established that, prior to imposition of sentence, withdrawal of a plea of guilty should be allowed if it was induced by fraud, mistake, imposition, misrepresentation, or misapprehension by the defendant of his legal rights. *Kienlen v. United States*, 379 F.2d 20 (10th Cir. 1967); *Williams v. United States*, 192 F.2d 39 (5th Cir. 1951).

In *Kereheval v. United States*, 274 U.S. 220, 224, 47 S.Ct. 582, 583, 71 L.Ed. 1009, 1012 (1927), the Supreme Court said:

[O]n timely application, the court will vacate a plea of guilty shown to have

there may appear to
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ts discussed above.²⁵
superior court deny-
n for post-conviction

not participating.

Justice (dissenting).
The central issue in this
Tafoya has made a suf-
ficiently manifest injustice" un-
der (d) to warrant the
reversal of conviction
against him and to
allow his guilty plea.¹
The Court provides:

"To allow a plea of guilty
to be entered only before sen-
tencing and the imposition of sen-
tence is a correct mani-
pulation of the law to correct man-
ifest injustice, after sentence,

where the superior court judge
has stated that the possibility
of a plea of guilty is an
appropriate element
of the court would
be consistent with the light
of the judge known de-
termining it.

It is established that,
if a plea of guilty is
allowed before sen-
tencing, withdrawal
should be allowed
in the event of a
mistake, in-
advice, or misappre-
hension of his legal rights.
See, 370 F.2d 20
(Williams v. United
States, 10th Cir. 1951).
See, 274 U.S.
583, 71 L.Ed.
Supreme Court

and, the court will
be shown to have

may set aside the judgment of conviction
and permit the defendant to withdraw
his plea.

Resolution of this Criminal Rule 32(d) is-
sue turns on whether the possibility of
Tafoya's deportation was one of the con-
sequences of his guilty plea of which he
must have had knowledge in order to have
pled "voluntarily" to the rape charge.

In my view, the court's reliance upon the
majority opinion in *United States v. Par-
rino*, 212 F.2d 919 (2d Cir. 1954), is mis-
placed. In *Parrino*, the defendant had
fully served a two-year sentence and was
faced with deportation as a result of his
conviction when he attempted to withdraw
his guilty plea. Withdrawal was not al-
lowed because

[g]enerally . . . the defendant's
surprise as to the severity of sentence
imposed after a plea of guilty, standing
alone, is not such manifest injustice as
to require vacation of the judgment.
. . . 212 F.2d at 921.

been unfairly obtained or given through
ignorance, fear or inadvertence. Such
an application does not involve any ques-
tion of guilt or innocence. The court
in exercise of its discretion will permit
one accused to substitute a plea of not
guilty and have a trial if for any reason
the granting of the privilege seems fair
and just. (citation omitted.)

According to Professor Wright, the
sounder view "supported both by the lan-
guage of the rule and by the reasons for
it, would be to allow withdrawal of the
plea prior to sentencing unless the prose-
cution has been substantially prejudiced
by reliance upon the defendant's plea."
2 C. Wright, *Federal Practice and Pro-
cedure* § 538, at 4474-75 (1969) (foot-
note omitted); See *United States v. Stayton*,
408 F.2d 559 (3rd Cir. 1969).

After sentence has been imposed, *Crim.
R. 32(d)* provides that withdrawal of a
plea of guilty or nolo contendere will be
allowed only "to correct manifest injus-
tice." The grounds for the presentence
post sentence distinction drawn by the
rule was explained in *Kadwell v. United
States*, 315 F.2d 667, 670 (9th Cir. 1963):

This distinction rests upon practical
considerations important to the proper
administration of justice. Before sen-
tencing, the inconvenience to court and
prosecution resulting from a change of

plea is ordinarily slight as compared
with the public interest in protecting
the right of the accused to trial by jury.
But if a plea of guilty could be retracted
with ease after sentence, the accused
might be encouraged to plead guilty to
test the weight of potential punishment,
and withdraw the plea if the sentence
were unexpectedly severe. The result
would be to undermine respect for the
courts and fritter away the time and
painstaking effort devoted to the sen-
tencing process. (emphasis in original)
(footnotes omitted)

Judge Frank's view in *Parrino* has been
cited with approval by Professor Moore
who states that "the vigorous dissent of
Judge Frank more likely reflects the pres-
ent attitude of the federal judiciary."⁴ On

2. Judge Frank goes on to say:

For the Supreme Court has said that
"deportation is a drastic measure, at
times the equivalent of banishment or
exile" and "is a penalty." Mr. Jus-
tice Jackson has described it as "a life
sentence of banishment". I cannot be-
lieve that no "manifest injustice" exists
merely because of the sentence of ban-
ishment for life was not imposed di-
rectly by the judge.

United States v. Parrino, 212 F.2d 919,
924 (2d Cir. 1954) (dissenting opinion)
(footnotes omitted).

3. Alaska's *Crim.R. 32(d)* is identical to
Fed.R.Crim.P. 32(d).

4. SA J. Moore, *Federal Practice* § 32.07
[3], at 32-106 (2d ed. 1972) (footnotes

the other hand, most federal decisions on the point have held that the possibility of deportation is not a *direct* consequence of a guilty plea, and therefore it is not necessary that the accused be informed of the likelihood of deportation prior to acceptance of his plea. *See, e. g.*, United States ex rel. Durante v. Holton, 228 F.2d 827 (7th Cir.), cert. denied, 351 U.S. 963, 76 S.Ct. 1027, 100 L.Ed. 1484 (1956); Joseph v. Esperdy, 267 F.Supp. 492 (S.D.N.Y.1966). The only explanation for these deportation decisions is found in the *Joseph* case where it is stated:

[I]n this Court, where it is mandated that the full range of consequences be set out . . . it seems onerous and absurd to expect a judge to explain to each and every defendant who pleads guilty the full range of *collateral* consequences of his plea⁵

I do not find such reasoning persuasive. On the particular facts of this record, I would hold that Tafoya has made out a case of "manifest injustice" under Criminal

Rule 32(d), which showing requires that his judgment of conviction be set aside and that he be permitted to withdraw his plea of guilty to the charge of rape.⁶ Here Tafoya's own counsel, as well as counsel for his codefendant, although aware that Tafoya and his codefendant were aliens, did not at any time prior to the change of plea advise Tafoya that he was subject to deportation as a possible consequence of his pleading guilty to the rape count. Nothing in the record before us contradicts Tafoya's assertion that it was only after he was sentenced upon his plea of guilty that he first learned deportation proceedings against him were being contemplated because of his conviction of rape. In such circumstances, I think the stringent "manifest injustice" standard of Criminal Rule 32(d) was met. I am not persuaded that the *Parrino* line of federal authority, which holds that the possibility of deportation is only a collateral consequence for purposes of determining whether the plea is voluntary, should be followed.⁷ In light of the

omitted). *See also* United States v. Briscoe, 130 U.S.App.D.C. 289, 432 F.2d 1351, 1353 (1970).

Legal commentary, to the limited extent it addresses itself to the consequences of deportation, favors the approach taken by Judge Frank in his *Parrino* dissent. A Note in the Yale Law Journal concluded:

[A] defendant who is able to establish that his plea was entered because of mistake as to consequences should be allowed withdrawal [T]here still exists the possibility of a guilty plea being entered by an innocent person relying on the security of a known outcome. This possibility is present whether the mistake concerns 'collateral' or 'direct' consequences. Note, 64 Yale L.J. 590, 599 (1955) (footnotes omitted).

A Note in 55 Colum.L.Rev. 360, 378 (1955), concluded that its argument against allowing withdrawal "is less persuasive where serious consequences, like deportation or expatriation, are involved." A Note in the Wash. University Law Quarterly states in part that although it is clear that the collateral consequences of a conviction need not be understood by the defendant about to plead guilty "[w]hat constitutes a 'collateral' conse-

quence remains obscure." The Note then states:

For example, parole ineligibility is now characterized as a direct consequence, although one classified as a collateral consequence about which a defendant need not be informed. Other collateral consequences, deportation conspicuously have chimerical characteristics of 'directness' which may eventually lead to a similar shift in dissatisfaction. Note, 1970 Wash.U.L.Q. 289, 320.

5. Joseph v. Esperdy, 267 F.Supp. 492, 494 (S.D.N.Y.1966) (emphasis in original).
6. In my view, the accused's guilt or innocence is not relevant in regard to a motion to withdraw a guilty plea under Crim.R. 32(d). Kercheval v. United States, 274 U.S. 220, 224, 47 S.Ct. 592, 71 L.Ed. 1009, 1012 (1927); 2 C. Wright, Federal Practice and Procedure § 537, at 469-71 (1969). A.B.A. Minimum Standards on Pleas of Guilty § 2.1(a) (iii) (approved Draft, 1968).
7. I do not necessarily find that Tafoya's plea of guilty was involuntary in the Crim.R. 11 sense, for a Crim.R. 32(d) motion to withdraw a guilty plea need not assert that the trial court failed to comply

foregoing, I would reach the conclusion that under the circumstances of this record the "manifest injustice" criterion of Criminal Rule 32(d) has been satisfied. For here Tafoya would not have pled guilty to the charge of rape were it not for the fact that neither his counsel nor co-defendant's counsel advised him that he was deportable if he entered such plea.

My analysis of the case at bar necessarily involves an assessment of the record as well as application of Criminal Rule 32(d) to the pertinent portions of the record. In making this analysis, I have taken into consideration the roles played by plea bargaining and guilty pleas in the administration of criminal justice in the federal and various state systems, as well as in Alaska's system of criminal justice. A high percentage of all criminal cases are disposed of on guilty pleas.⁸ Professor Moore notes:

Were the proportion of pleas to trials reduced, the machinery of justice . . . would break down. These facts of judicial life are worth emphasizing on

with the provisions of Crim.R. 11. *United States v. Sambro*, 454 F.2d 918, 925-926 (D.C.Cir. 1971) (separate opinion of Chief Judge Bazelon); *Pilkington v. United States*, 315 F.2d 204, 209 (4th Cir. 1963). In *Pilkington*, the court stated:

While there may be a considerable overlap, the concept of 'manifest injustice' under Rule 32(d) permits the judge a greater latitude than the requirements of constitutional 'due process.' The facts disclosed in a hearing might not be sufficient for the court to conclude that the guilty plea was involuntary and violative of due process, yet the court may be of the opinion that clear injustice was done. 315 F.2d at 209. (citations omitted)

Compare Professor Wright's statement that

[t]here is one apparent exception to the 'manifest injustice' standard. This is that if the court has failed to scrutinize a guilty plea properly, as required by Rule 11, before accepting it, an application after sentencing to withdraw the plea must be judged by the same liberal standard that applies before sentence has been imposed.

occasions when the courts express irritation with alleged abuse of post-conviction remedies.⁹

Given the dependence of our system of criminal justice upon waivers by defendants of their constitutional rights, embodied in jury trial determinations of their innocence or guilt, our courts have the concomitant obligation to insure that a guilty plea is "made voluntarily after proper advice and with full understanding of the consequences."¹⁰

Criminal Rule 32(d) affords the accused the procedural vehicle for withdrawal from plea bargains which were entered into without the necessary information to make an intelligent decision.¹¹ Prior to imposition of sentence, "[t]he court in exercise of its discretion will permit one accused to substitute a plea of not guilty and have a trial if for any reason the granting of the privilege seems fair and just."¹² After sentencing, the defendant must surmount the more stringent standard of "manifest injustice." The reasons for the higher standard after sentence appear to

2 C. Wright, *Federal Practice and Procedure* § 539, at 476 (1969) (footnote omitted). In support of the text, Professor Wright cites *United States v. Cody*, 438 F.2d 287 (8th Cir. 1971), and *Bishop v. United States*, 121 U.S.App.D.C. 243, 349 F.2d 220 (1965).

8. SA J. Moore, *Federal Practice* ¶ 32.07 [3], at 32-97 (2d ed. 1972); President's Commission on Law Enforcement and The Administration of Justice, Task Force Report: *The Courts*, at 9 (1967); Note, *Plea Bargaining: A Model Court Rule*, 4 J. L. Reform 487 (1971).

9. SA J. Moore, *Federal Practice* ¶ 32.07 [3], at 32-97 (2d ed. 1972) (footnotes omitted).

10. *Kercheval v. United States*, 274 U.S. 220, 223, 47 S.Ct. 582, 583, 71 L.Ed. 1009, 1012 (1927).

11. *United States v. Sambro*, 454 F.2d 918, 925 (D.C.Cir. 1971) (separate opinion of Chief Judge Bazelon).

12. *Kercheval v. United States*, 274 U.S. 220, 223, 47 S.Ct. 582, 583, 71 L.Ed. 1009, 1012 (1927).

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be considerations of judicial economy and a reluctance to let the defendant have two chances to secure favorable disposition of his case.¹³ Neither consideration is particularly relevant to the case at bar. The superior court time expended in securing Tafoya's guilty plea has not been wasted under my analysis since the sentence imposed has been fully served. Moreover, it cannot be said that Tafoya, having heard his sentence, is attempting a second go around at sentencing. Here Tafoya has not only heard his sentence but has served it fully.¹⁴

In regard to the question as to precisely what an accused should be advised of by the court in order for the court to determine whether the plea of guilty is made with an understanding of its consequences as required by Criminal Rule 11,¹⁵ I think that this is a matter which should be referred to this court's Standing Advisory Committee on Criminal Rules for study and recommendation to this court. In the interim, I would require that an alien be informed of the possibility of deportation before he will be considered to have pled voluntarily with an understanding of the consequences of a guilty plea. For I do not think it too onerous a burden to determine prior to acceptance of a guilty plea whether an accused is an alien, and if

he is, to inform him that he may face deportation as a result of his plea and conviction in a given case.

I also cannot agree with the court's holding that Tafoya was accorded effective assistance of counsel as guaranteed him by the United States¹⁶ and Alaska Constitutions.¹⁷ Tafoya's showing remains uncontradicted that prior to pleading guilty both his own attorney and counsel for his codefendant knew that Tafoya and his codefendant were aliens. But at no time preceding the entry of his guilty plea was Tafoya advised that because of his alien status he was subject to deportation upon conviction of a crime involving moral turpitude. Both counsel for Tafoya and his codefendant admit they were unaware that Tafoya was deportable under 8 U.S.C. Section 1251(a) (4) if he pled guilty to the crime of rape.

In order to reach the conclusion that deportation of an alien is merely a collateral consequence of his guilty plea, one must necessarily view the right to live in the United States of America, as well as banishment therefrom, as matters of small moment. I am not prepared to mute the drastic ramifications deportation can have for the individual involved. In my view, effective assistance of counsel in the circumstances of this case required Tafoya's

13. See discussion in note 1, *supra*.

14. A procedural problem should be mentioned in my view. In the superior court, Tafoya denominated his application seeking leave to withdraw his guilty plea as an application for post-conviction relief. My study of this application and the relief sought therein suggests that procedurally Tafoya should have moved pursuant to Crim.R. 32(d), which governs withdrawals of guilty pleas, rather than under Crim.R. 35(b), which generally governs post-conviction relief matters.

Since counsel for Tafoya could have reasonably read *Nichols v. State*, 425 P.2d 247 (Alaska 1967), and *Thompson v. State*, 412 P.2d 628 (Alaska 1966), as approving use of Crim.R. 35(b) as the proper procedural vehicle for seeking withdrawal of a guilty plea after sentence had been imposed, I think the matter should be

considered as properly before us in the procedural sense. In future cases where a defendant desires to withdraw a plea of guilty or of *nolo contendere* after imposition of sentence, such relief should be sought by way of motion made, pursuant to Crim.R. 32(d).

15. *McCarthy v. United States*, 394 U.S. 459, 465, 89 S.Ct. 1160, 1170, 22 L.Ed.2d 418, 425 (1969) (footnote omitted):

[T]he more meticulously the Rule [Rule 11] is adhered to, the more it tends to discourage, or at least to enable more expeditious disposition of the numerous and often frivolous post-conviction attacks on the constitutional validity of guilty pleas.

16. Amends. VI, XIV.

17. Art. I, § 11.

attorney to acquaint himself with the federal law governing convictions of aliens and to inform Tafuya of deportation possibilities arising from his plea. Absent any such minimal legal assistance, I cannot join in this court's conclusion that Tafuya received competent legal representation prior to and at the time he pled guilty.²⁰

For the foregoing reasons I would reverse the superior court's order denying Tafuya post-conviction relief and remand the case with directions to set aside Tafuya's judgment of conviction and, pursuant to Criminal Rule 32(d), to permit Tafuya to withdraw his guilty plea to the charge of rape.

20. Nor can I find that through the conscientious and diligent efforts of his trial counsel Tafuya was given effective assistance of counsel in accordance with 500 P.2d—17

established notions of fair play and substantial justice. Condon v. State, Opinion No. 802, 498 P.2d 276 (Alaska 1972).

507

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SAN DIEGO LAW REVIEW

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VOLUME 21 NUMBER ONE DECEMBER 1983

CONTENTS

IMMIGRATION AND NATIONALITY SYMPOSIUM

FOREWORD *James J. Orlow* 1

ARTICLES

IMMIGRATION LAW REFORM: PROPOSALS IN THE 98TH CONGRESS *William French Smith* 7

THE NATIONAL LABOR RELATIONS ACT AND UNDOCUMENTED WORKERS: THE DE-ALIENATION OF AMERICAN LABOR *José A. Bracamonte* 29

A CHILD IS A CHILD — OR IS IT? LEGITIMATION UNDER FOREIGN LAW AND ITS IMMIGRATION CONSEQUENCES *Sana Loue* 87

DOMICILE FOR IMMIGRATION AND FEDERAL GIFT AND ESTATE TAX PURPOSES — IS A HARMONIOUS RULE POSSIBLE? *Leon Wildes & David Grunblatt* 113

COMMENTS

“ENTRY” AS AN ISSUE IN IMMIGRATION LAW 137

POLITICAL ASYLUM AND WITHHOLDING OF DEPORTATION: DEFINING THE APPROPRIATE STANDARD OF PROOF UNDER THE REFUGEE ACT OF 1980 171

THE RIGHT OF THE ALIEN TO BE INFORMED OF DEPORTATION CONSEQUENCES BEFORE ENTERING A PLEA OF GUILTY OR NOLO CONTENDERE 195

SYNOPSIS

SIGNIFICANT DEVELOPMENTS IN THE IMMIGRATION LAWS OF THE UNITED STATES 1982-1983 225

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THE RIGHT OF THE ALIEN TO BE INFORMED OF DEPORTATION CONSEQUENCES BEFORE ENTERING A PLEA OF GUILTY OR NOLO CONTENDERE

The Immigration and Nationality Act provides for deportation of aliens convicted of specified crimes. Frequently, alien defendants offer guilty pleas unaware—or misinformed—that they thereby subject themselves to potential deportation. Traditionally, courts have not had to inform defendants of deportation consequences. Deportation, however, can be devastating to the alien and his family. This Comment suggests that a plea is not fully voluntary if offered unaware of such serious implications. Courts should be required to inform alien defendants of deportation consequences before accepting pleas of guilty.

INTRODUCTION

Alien residents¹ of the United States encounter two separate modes of punishment when convicted of certain crimes. They, as all citizens, are first subject to the criminal sentence meted out by the criminal justice system. In addition, they then become vulnerable to the myriad consequences that arise from various specified convictions, chief of which for the alien is deportation.² Given the enormous consequences for the alien and his family that result from such convictions,³ it is anomalous to the American judicial system that the alien, his attorney, and even the court frequently are unaware of the resultant and often inevitable deportation proceeding that arises from the alien's conviction.⁴

1. The Immigration and Nationality Act defines an alien as "any person not a citizen or national of the United States." Immigration and Nationality Act § 101(a)(3), 8 U.S.C. § 1101(a)(3) (1982).

2. Immigration and Nationality Act § 241(a), 8 U.S.C. § 1251(a) (1982).

3. For example, upon conviction of a crime involving moral turpitude, such as petty theft or simple fraud, an alien can be subject to near imminent deportation, even though the actual sentence is slight, or even suspended.

4. For a discussion of the alien facing criminal charges see generally Bastone, *What Every Attorney Who Defends a Criminal Case Should Know—and Usually Doesn't—About the Immigration and Nationality Act*, 22 B.B.J. 3, 17 (1978); Hol-lander, *Defending the Criminal Alien in New Mexico: Tactics and Strategy to Avoid Deportation*, 9 N.M.L. REV. 45 (1978-1979).

The alien's plea to a criminal charge assumes critical dimensions for three primary reasons. First, a plea of guilty or nolo contendere is itself a conviction.⁵ Second, an overwhelming number of convictions arise not from actual trial proceedings, but from offered and accepted pleas of guilty.⁶ Third, aliens commonly offer pleas of guilty without any awareness that they are thereby subjecting themselves to possible deportation.

Studies have estimated that as many as ninety-five percent of all criminal cases result in guilty pleas,⁷ a substantial number of which are induced by plea bargains or discussions.⁸ Moreover, defendants frequently plead guilty while believing in or maintaining their innocence.⁹ The evidence against an accused can be so considerable that the offer of a lesser charge or the likelihood of a reduced or suspended sentence appears to be in his best interest.¹⁰ The United States Supreme Court, in *North Carolina v. Alford*,¹¹ has held that

5. *Boykin v. Alabama*, 395 U.S. 238, 242 (1969). "A plea of guilty is more than a confession which admits that the accused did various acts; it is itself a conviction; nothing remains but to give judgment and determine punishment." See *infra* note 134 (plea of nolo contendere tantamount to conviction).

6. See, e.g., FED. R. CRIM. P. 11 advisory committee notes [hereinafter cited as Advisory Notes]: "Administratively, the criminal justice system has come to depend upon pleas of guilty and, hence, upon plea discussions;" BOND, PLEA BARGAINING AND GUILTY PLEAS, § 1.2 (2d ed. 1983); NEWMAN, CONVICTION: THE DETERMINATION OF GUILT OR INNOCENCE WITHOUT TRIAL 3 (1966).

7. E.g., STANDARDS RELATING TO PLEAS OF GUILTY, 1-2 (Approved Draft 1968); 1976 DIRECTOR OF THE AD. OFF. OF THE U.S. CTS. ANN. REP. 360 table D-4 (of 40,112 convictions, 34,041 were by pleas of guilty or nolo contendere).

8. PRESIDENT'S COMM'N ON LAW ENFORCEMENT AND THE AD. OF JUST.—TASK FORCE ON THE AD. OF JUST., TASK FORCE REPORT: THE COURTS 9 (1967) [hereinafter cited as PRESIDENT'S COMM'N].

The question of guilt or innocence is not contested in the overwhelming majority of criminal cases. A recent estimate is that guilty pleas account for 90 percent of all convictions; and perhaps as high as 95 percent of misdemeanor convictions.

A substantial percentage of guilty pleas are the product of negotiations between prosecutor and defense counsel or the accused.

Id.

9. PRESIDENT'S COMM'N *supra* note 8, at 11. "The most troublesome problem is the possibility that an innocent defendant may plead guilty because of the fear that he will be sentenced more harshly if he is convicted after trial or that he will be subjected to damaging publicity of a repugnant charge."

10. FED. R. CRIM. P. 11(e)(1)(A)-(C) provides that the government, in exchange for a plea of guilty or nolo contendere, can (1) move for dismissal of other charges; (2) make a recommendation or agree not to oppose the defendant's request for a particular sentence; or (3) agree that a specific sentence is the appropriate disposition of a given case.

11. 400 U.S. 25, 37 (1970). *But cf.* *United States v. Russell*, 686 F.2d 35, 41 (D.C. Cir. 1982) which says:

The serious consequences of involuntary deportation . . . clearly [demonstrate] how the threat of deportation could be abused during plea negotiations. It can readily be imagined that some resident aliens might prefer to avoid even the risk of deportation rather than stand trial for crimes of which they believe them-

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14. *Id.* at § 1
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17. *Id.* at § 1
18. *Galvan v.*
19. 344 F.2d
20. *Id.* at 805
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