ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672
6360 SENATE JUDICIARY

764

(3) "sex crime" means a conviction for a violation or attempted violation of AS 11.41.410 — 11.41.470, AS 11.61.110(a)(7), or AS 11.66.100 — 11.66.130; former AS 11.15.120, 11.15.134, or 11.15.160; former AS 11.40.080, 11.40.110, 11.40.130, or 11.40.200 — 11.40.420; or the laws of another jurisdiction if the offense would have been a crime in this state under one of the sections listed in this paragraph if committed in the state. (§ 2 ch 66 SLA 1983; am § 44 ch 6 SLA 1984)

Editor's notes. — This section is set out above to correct a typographical error in the main pamphlet.

Sec. 12.62.070. Definitions. In this chapter

(1) "commission" means the Governor's Commission on the Administration of Justice established under AS 44.19.110 — 44.19.122;

(2) "criminal justice information" means information concerning an individual in a criminal justice information system and indexed under the individual's name, or retrievable by reference to the individual by name or otherwise and which is collected or stored in a criminal justice information system;

(3) "criminal justice information system" means a system, including the equipment, facilities, procedures, agreements, and organizations related to the system funded in whole or in part by the Law Enforcement Assistance Administration, for the collection, processing, or dissemination of criminal justice information;

(4) "intelligence information" means information concerning the background, activities or associations of an individual or group collected or obtained by a law-enforcement agency for preventive, precautionary or general investigative purposes not directly connected with the investigation of a specific crime which has been committed nor with the apprehension of a specific person in connection with the commission of a particular crime;

(5) "interstate systems" means agreements, arrangements and systems for the interstate transmission and exchange of criminal justice information, but does not include record keeping systems in the state maintained or controlled by a state or local agency, or a group of agencies, even if the agency receives information through, or otherwise participates in, systems for the interstate exchange of criminal justice information;

(6) "law enforcement" means any activity relating to crime prevention, control or reduction or the enforcement of the criminal law, including, but not limited to, police efforts to prevent, control or reduce crime or to apprehend criminals, activities of criminal prosecution, courts, public defender, corrections, probation or parole authorities;

(7) "law enforcement agency" means a public agency which performs as one of its principal functions activities pertaining to law

H B 53

Proposed Amendment to include minimum alcohol treatment program standards in statute:

"The minimum program standards adopted under this subsection for outpatient alcohol treatment programs must include provisions requiring that the alcohol treatment facility impose on its outpatients who are diagnosed as alcoholic the following conditions:

1) complete abstinence from alcoholic beverages and all controlled substances, unless prescribed by a physician;

2) consent to periodic unscheduled urinalysis testing designed to detect the presence of alcohol or controlled substances;

3) agreement to participate in at least 72 hours of intensive outpatient contact within 90 days after acceptance for treatment in addition to weekly participation in meetings of an alcoholism self-help recovery group; at least 24 hours of the 72 hours of intensive outpatient contact required under this paragraph must occur through sessions of at least two hours per day on at least three days of each week.

4) a contractual agreement with the facility to pay the full cost of the outpatient's proposed treatment program according to a schedule agreed upon by the parties."

Rationale:

In 1976, the State Office of Alcohol & Drug Abuse adopted, by reference, the 1974 Accreditation Manual for Alcohol Programs as approved by the Joint Commission on Accreditation of Hospitals (JCAH). While meeting the State's needs at the time of it's adoption, many agree that new regulations and statutory stardards are necessary.

A February 1990 Ombudsman's report concludes that standards are necessary. Treatment facilities in Alaska deal with more than 10,000 clients each year. Existing regulations for treatment programs are inadequate and outdated.

Additionally, a recent AG opinion states that the statutory language upon which draft regulations were based seemed ambiguous and did not clearly indicate that the SOADA could mandate compliance with the proposed regulatory standards.

Consequently, prescribed treatment implemented by the private sector as well as the state funded facilities vary dramatically around the state even though all practicing treatment facilities are required to be certified.

Providing statutory guidelines for minimum standards imposed upon a diagnosed alcoholic by a state certified treatment facility is a crucial and immediate remedy for treatment programs throughout the State. Additionally, if adopted, consistent treatment standards utilized by all certified programs statewide will significantly increase the effectiveness of both outpatient and intensive outpatient treatment.

Minimum standards would provide a consistent treatment structure to address the needs of many outpatient individuals who must temporarily move to other Alaskan communities for employment purposes while in treatment.

Most importantly, statutory treatment standards would play a significant role in reducing Alaska's rate of recidivism of DWI's. While attempting to strengthen our DWI laws, a close review of our treatment programs must go hand in hand if we are to effect a positive outcome.

FEB 12 '90 03:45 SENATOR BIDLEY

enterprise; and what should the state do with agricultural assets owned by the Agricultural Revolving Loan Fund.

Governor Cowper responded to the ombudsman's special report and investigative report by outlining his six-point agricultural policy. The policy he outlined provided: "Look to the marketplace—don't produce what you can't sell. Grow crops that suit Alaska's climate and that Alaskans want to buy."

The governor's second policy position was: "Don't give loans for venture capital—only make loans that are secured and repaid."

The third part of the governor's policy [illegible] stability before you expand—develop a solid base and then increase volume."

Fourth, the governor wrote, was: "Salvage what you can from past investments; don't just walk away from facilities in which you have already invested millions. Although state ownership of failed investments is not desirable, it can build much needed stability into the industry."

might occur.

The ombudsman noted there is some value to this policy even if the director of the Division of Agriculture was not aware of it during the course of an investigation that lasted several months. The ombudsman also noted that with the changing of very few words, the policy could be used for the fishing industry, the mining industry, the timber industry or a future finfish farming industry.

"I'm disappointed the governor and the commissioner of the Department of Natural Resources did not feel the need to enhance the very generic agriculture policy that they say guides the state," Fowler said. The very general guidelines do not help in an era when the state finds itself owner of the means of production—the creamery; the owner of the store which provides feed for the dairy cattle; and mortgage holder on the dairy farms. Alaskans need to know where we've been, where we're going and how we're going to get there."

Fowler noted that one major dairy farm has failed since he issued his special report to the governor and others are on the verge of failure.

either withdraw their judgement[illegible]es or see the dairy farmers go bankrupt. The ombudsman did recommend the state place special emphasis on clarifying the state's 'position' on dairy farmers' creamery checks.

The final complaint involved the sale of Alaska-grown hay and the Alaska preference law's applicability to the Matanuska Maid feed store. The ombudsman found that complaint was not supported but noted that Alaska hay of equal or better quality than hay imported from outside Alaska does qualify for Alaska product preference.

In all of the complaints involving Matanuska Maid, the ombudsman determined both the feed store and the creamery are the state's agencies. Managers of both enterprises deny they are running public companies and their management behaviors are those of private entrepreneurs. The ombudsman, though, found that both managers are using state money and must adhere to purchasing and other requirements applicable to functioning with state capital.

farmers
wl play'

the department, the farmers took their case to the game board.

Based primarily on testimony by department officials, the board turned down the farmers' proposal. Department spokesmen argued that opening the door for commercial export of wild Alaska game birds would also open the door for abuse. For example, they said the farmers' proposal would make it possible for others to sell Alaskan wild birds to restaurants.

The farmers argued the department's position was preposterous, and pointed to their own responsible track record as proof that abuses would not occur among serious game bird farmers. The farmers also pointed out that zoos and other hobbyists throughout the United States and the world are anxious to include Alaskan game birds in their aviaries.

The board deliberated for several hours and because of doubts raised by the department refused to grant the change in regulations. The ombudsman found the decisio[illegible] not to change regulations was properly exercised by the game board. He further found that testimony of department officials was an appropriate use of expert testimony by the board. Based on the facts, the complaint was ruled unsupported.

Frustrated, but still determined, the farmers plan to attack the problem from a new angle. They will take their request to local legislators in the hope that laws designating the department's commissioner "custodian" for wild game birds can be changed, thereby removing the policy from the jurisdiction of both the department and game board.

Programs not licensed

Alcohol and drug abuse programs may not need state licenses to operate in Alaska an ombudsman investigation revealed.

The question arose when a client of a residential drug treatment program complained to the ombudsman that the state was not adequately supervising the treatment and care of clients at the treatment center. Alaska law provides the Alaska Office of Alcoholism and Drug Abuse "shall establish standards for facilities" and that drug and alcohol treatment facilities "shall meet the applicable standards before it is approved as a public or private treatment facility".

The statute also establishes the state's right to review programs and suspend or revoke approvals.

The state in 1976 adopted regulations to implement the statute. Those initial regulations apply only to alcohol treatment programs in Anchorage, Fairbanks, Juneau, Ketchikan, Sitka and Kodiak or other programs affiliated with hospitals that have a budget of more than $200,000 or are part of a community mental health program.

The lack of more stringent regulations most likely reflected a lack of perceived need, the ombudsman found. Until recently, most drug and alcohol abuse programs were state or federal programs or non-profit programs funded by government. However, with increased social awareness of substance abuse and an emphasis on treatment that is often covered by insurance policies, there has been a proliferation of for-profit programs in recent years.

Because of the new programs, the state's Office of Alcoholism and Drug Abuse drafted new regulations almost three years ago. The draft regulations specify new state standards, apply to alcohol treatment programs and drug treatment programs, and require prior state approval before treatment can be offered.

The ombudsman noted after his investigation that the standards in the proposed regulations and the need for certification seems apparent since treatment facilities in Alaska deal with more than 10,000 clients each year. The existing regulations which apply only to alcohol treatment programs and which do not allow the state to close bogus or fraudulent operators are inadequate and outdated, the ombudsman noted.

After the investigation, the ombudsman found the complaint fully supported and recommended the agency expedite adoption of the proposed regulations which would give the state power to certify programs that meet minimum professional standards and close programs that did not meet the standards.

The agency agreed and accepted the finding and recommendation. Later, an assistant attorney general suggested the statutory language upon which the regulations were based seemed ambiguous and did not clearly indicate that the Office of Alcoholism and Drug Abuse could mandate compliance with the proposed regulatory standards.

RECEIVED FEB 5 1990

Pat: read story on pg 8

The Alaska Ombudsman Report 1989

Annual report of the Office of the Ombudsman, State of Alaska

Complaints leap dramatically

New decade begins on record note

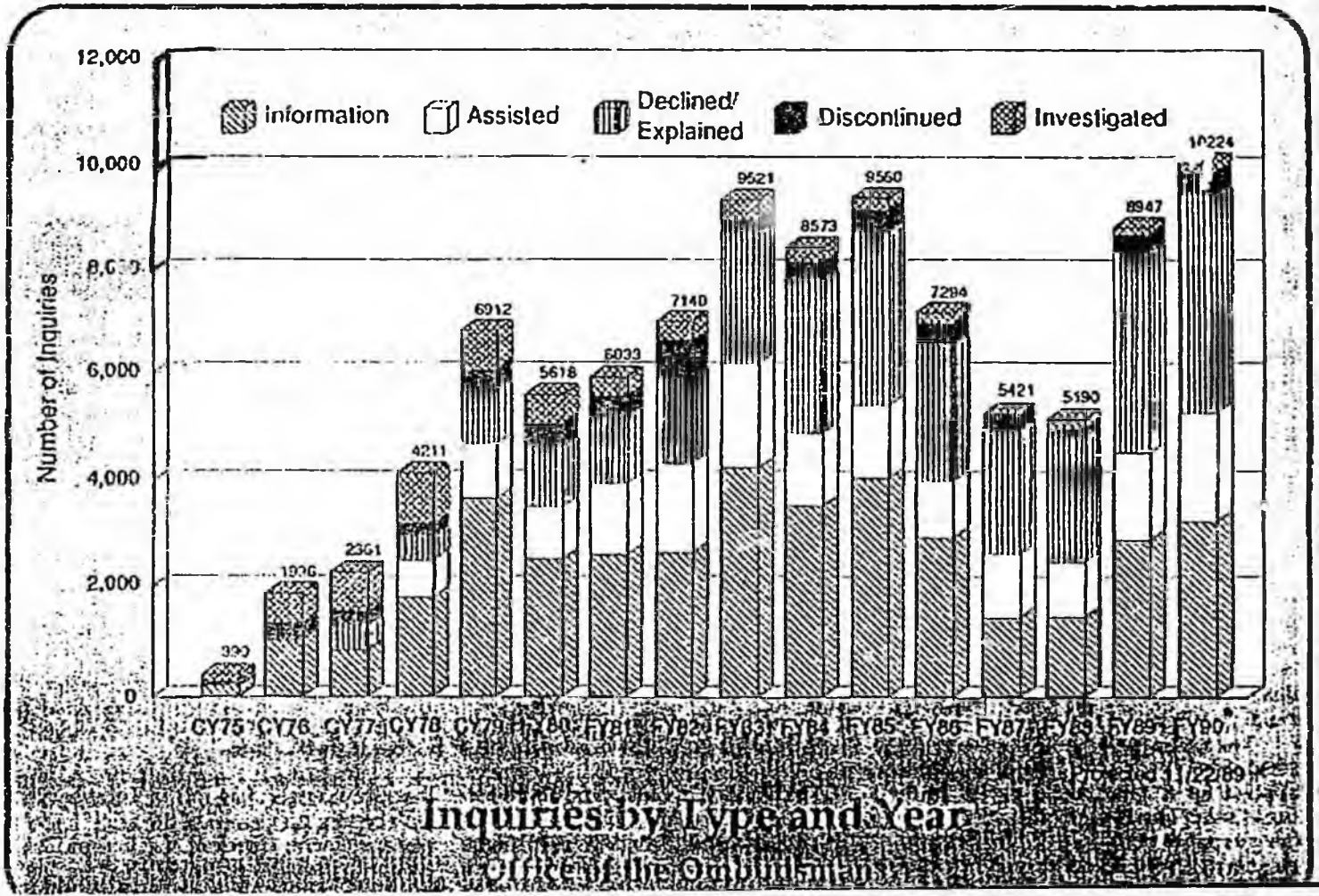
By Duncan Fowler
Alaska Ombudsman

Heinrich Pestalozzi said, "The important role of the ombudsman institution consists in humanizing governments instead of governing human beings." Zurich, Switzerland's ombudsman, Jacques Vontobel, recently reminded me of the quotation during the Christmas season. Jacques is retiring after 19 years on the job. The quotation aptly describes the need for ombudsman services in free societies. But it also intimates that ombudsmen are only effective working with departments or governments who want to be fair and responsive.

This past year we have humanized state and municipal government services for a record number of citizens. Complaints increased 63% and Alaskans asked for information-referral assistance a whopping 94% more than the previous year. The ratio of investigators to citizen inquiries hit a record setting 1193, not a happy workload record to set.

The first six months of FY'90 shows the record pace continuing. Projections indicate an additional 15% increase in complaints and inquiries. For the first time in the history of the office, we will exceed 10,000 citizen inquiries. An estimated 7,000 of those will be complaints. A staff of 15.5 provides those services. In comparison, 24.5 staff handled 5,400 complaints in FY'85.

The "average" number of days it took



Proposed Amendment to include <u>minimum</u> alcohol treatment program standards in statute:

"The minimum program standards adopted under this subsection for outpatient alcohol treatment programs must include provisions requiring that the alcohol treatment facility impose on its outpatients who are diagnosed as alcoholic the following conditions:

1) complete abstinence from alcoholic beverages and all controlled substances, unless prescribed by a physician;

2) consent to periodic unscheduled urinalysis testing designed to detect the presence of alcohol or controlled substances;

3) agreement to participate in at least 72 hours of intensive outpatient contact within 90 days after acceptance for treatment in addition to weekly participation in meetings of an alcoholism self-help recovery group

HDD → (4) ovens

CORRECTION

THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY

02–576(2/77)

Proposed Amendment to include <u>minimum</u> alcohol treatment program standards in statute:

"The minimum program standards adopted under this subsection for outpatient alcohol treatment programs must include provisions requiring that the alcohol treatment facility impose on its outpatients who are diagnosed as alcoholic the following conditions:

1) complete abstinence from alcoholic beverages and all controlled substances, unless prescribed by a physician;

2) consent to periodic unscheduled urinalysis testing designed to detect the presence of alcohol or controlled substances;

3) agreement to participate in at least 72 hours of intensive outpatient contact within 90 days after acceptance for treatment in addition to weekly participation in meetings of an alcoholism self-help recovery group

ADD → (4) other [illegible] each

(4) Modifications to the above minimum standards shall be specified in a prescribed alternative treatment plan in the best interest of the client.

H B 58

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: CSHB 58 (JUD)
PUBLISH DATE:

FISCAL NOTE

REQUEST:

Revision Date: 3/14/89
Title: An act relating to fire protection
Sponsor: House Judiciary
Requestor: Senate Judiciary

Agency Affected: Public Safety
BRU: Fire Prevention
Component: Fire Prevention Operations

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

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

No fiscal impact.

3/14/89 Prepared by: Gordon E. Brunton
Division: Fire Prevention
Phone: 465-4331
Date: March 14, 1989

Approved by Commissioner: D.A.H. for Arthur English
Agency: Department of Public Safety
Date: March 14, 1989

STEVE COWPER
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 9, 1989

The Honorable Sam Cotten
Speaker of the House
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Representative Cotten:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to fire protection laws.

The bill does four things: (1) it assists the division of fire prevention by allowing fire code enforcement to be handled by fire departments "recognized" by the Department of Public Safety, rather than just "city" fire departments; (2) it corrects an oversight that has left violations of hazardous materials laws unenforceable; (3) it requires compliance with a department order unless a motion for a stay has been filed with the court (current law permits noncompliance simply by filing a notice of appeal); and (4) makes enforcement of fireworks regulations more feasible.

Section 1 of the bill amends AS 18.70.090 to allow fire departments that are not city fire departments to be "recognized" under regulations adopted by the Department of Public Safety which provide standards and qualifications for that recognition. Non-city fire departments would then be able to enforce state fire safety regulations. Given the limited resources of the division of fire prevention, this change is needed to provide meaningful enforcement in many areas of the state. City fire departments would, of course, be "recognized" under those regulations and would continue to enforce state fire safety regulations.

Section 1's amendments to AS 18.70.090 also change two section-specific citations to include instead all of AS 18.70. This change will make certain provisions in AS 18.70.090 applicable to AS 18.70.310, regarding hazardous materials and wastes placards.

Sections 2 and 3 amend AS 18.70.100(a) and AS 18.70.310, respectively, to apply penalty provisions to violations of AS 18.70.310, regarding hazardous materials and wastes placards. Current law provides no penalty, leaving AS 18.70.310 essentially unenforceable.

Section 2 also amends AS 18.70.100(a) to make it a misdemeanor to be in noncompliance with a department order relating to fire protection, unless a motion for stay has been filed with the court. The existing language of AS 18.70.100(a) permits noncompliance with an order by merely filing a notice of appeal, thus unnecessarily delaying correction of life-threatening situations.

Finally, sec. 4 amends AS 18.72.040 to make prosecution of fireworks violations more feasible by allowing a conviction if the person "recklessly" fails to comply with fireworks laws. This change is consistent with other provisions of law which prohibit reckless creation of risks of injury and which provide that ignorance of the law is no excuse. See AS 11.41.250 (reckless endangerment) and AS 11.81.620(a). The current language of AS 18.72.040 requires proof that the person knew what the law was, and "willfully" violated it, which is often impossible to prove.

This bill has important health and safety implications and I urge your prompt and favorable action on it.

Sincerely,

Steve Cowper
Governor

7

No. 1

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: HB 58
PUBLISH DATE: HOUSE 1/9/89

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An act relating to fire protection
Sponsor: Rules Committee
Requestor: Governor

Agency Affected: Public Safety
BRU: Fire Prevention
Component: Fire Prevention Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)
No fiscal impact.

Prepared by: Gordon E. Brunton
Division: Fire Prevention
Phone: 465-4331
Date: 10/28/88

Approved by Commissioner: Arthur English
Agency: Department of Public Safety
Date: 11-14-88

page 1 of 1

AVCP

Association of Village Council Presidents
P. O. Box 219 • Bethel, Alaska 99559 • Phone 543-3521

March 31, 1989

Senator Jan Faiks
Senate Judiciary Committee
P.O. Box V
Juneau, Ak. 99811

RECEIVED
APR 6 1989
JAN FAIKS
SENATE OFFICE

Dear Senator Faiks:

The Association of Village Council Presidents goes on record as opposing the passage of committee substitute for House Bill #58 in its present form.

We feel this bill has the potential for causing great conflict between Village Public Safety Officers (VPSO's) and the local government he/she works for. The buildings which house the village local governments would most likely be those found in violation of the state fire codes.

Additionally, what effect would accidental death or injury, due to negligence on the part of the local governments, have on the VPSO's and the regional non-profit corporations who must assume liability for the VPSO's? I might add that this liability insurance is becoming increasingly difficult and expensive to obtain.

Please support us in opposing the passage of this bill.

Sincerely,

ASSOCIATION OF VILLAGE COUNCIL PRESIDENTS
Willie Kasayulie, Chairman
Gene Peltola, President

Gloria Simeon
VPSO Coordinator

cc: Senator Al Adams
Senator Johne Binkley
Representative Lyman Hoffman

MEMORANDUM

State of Alaska

MAIL STOP:

TO: Chris Christensen
Senate Judiciary Committee
Alaska State Senate

DATE: 3/16/89

FILE NO:

TELEPHONE NO: 465-4331

FROM: Gordon Brunton
Div. of Fire Prevention - DPS

SUBJECT: CSHB 58 (JUD)

Due to the apparent concerns with HB58 by Senator Adams, here is a suggested amendment that we think will resolve the issue.

RECEIVED

MAR 17 1989

JAN FAIKS
SENATE OFFICE

02-001B(Rev.4/80)

Amendment No. ___

CSHB 58 (JUD)

Amend Section 1 to read:

Section 1. AS 18.70.090 is amended to read:

Sec. 18.70.090. ENFORCEMENT AUTHORITY [OF REGULATIONS]. The Department of Public Safety and the chief of each municipal [CITY] fire department and their authorized representatives in their respective areas may enforce the regulations adopted by the Department of Public Safety for the prevention of fire or for the protection of life and property against fire or panic. All state peace officers may assist the Department of Public Safety in the enforcement of AS 18.70.010 - 18.70.100, 18.70.300 - 18.70.310, and the regulations adopted under those sections [IT]. The authority conferred in AS 18.70.010 - 18.70.100 and 18.70.300 - 18.70.310 extends to the enforcement of the provisions of AS 11.46.400 - 11.46.430.

IN THE SUPREME COURT FOR THE STATE OF ALASKA

ORDER NO. 957

Amending Appellate Rule 603(a)(2) concerning Stays in Administrative Appeals.

IT IS ORDERED:

Appellate Rule 603(a)(2) is amended to provide:

(2) Stay Upon Appeal - Supersedeas Bond. When an appeal is taken, the appellant may obtain a stay of proceedings to enforce the judgment by filing a supersedeas bond with the district court, or with the superior court in administrative appeals, not later than 30 days after the date shown in the clerk's certificate of distribution on the judgment or the date of mailing or delivery of the administrative order appealed from. The bond shall be conditioned for the satisfaction in full of any judgment (including interest and costs) which may be given against the appellant by the superior court, or for satisfaction in full of the judgment (including interest and costs) of the district court if the appeal is dismissed. The bond shall comply with the provisions of Civil Rule 80. <u>This subparagraph does not prohibit the court from considering the public interest in deciding whether to impose or continue a stay on that portion of an administrative judgment which is not limited to monetary relief.</u>

DATED: March 30, 1989

EFFECTIVE DATE: March 30, 1989

Chief Justice Matthews

Justice Rabinowitz

Justice Burke

Justice Compton

Justice Moore

CSHB 105(Jud)am

Representative Goll moved and asked unanimous consent that Amendment No. 9 be adopted.

Objection was heard.

The question being: "Shall Amendment No. 9 be adopted?" The roll was taken with the following result:

CSHB 105(JUD)AM AM9

Yeas:	17	Boucher, Cato, Davidson, Davis, M., Foster, Goll, Grussendorf, Hoffman, Hudson, Jacko, Koponen, Larson, Leman, MacLean, Shultz, Swackhammer, Wallis
Nays:	22	Barnes, Boyer, Brown, Collins, Cotten, Davis, C., Donley, Ellis, Furnace, Gruenberg, Hanley, Martin, Menard, Miller, Navarre, Phillips, Rieger, Sharp, Spohnholz, Taylor, Ulmer, Zawacki
Excused:	1	Pettyjohn
Absent:	0	

And so, Amendment No. 9 was not adopted.

Representative Taylor moved and asked unanimous consent that CSHB 105(Jud)am be returned to second reading for the specific purpose of considering Amendment No. 10.

Representative Collins objected.

Amendment No. 10 by Taylor:

Page 2, lines 26 and 27:

Delete "$15"
Insert "$40"

Representative Taylor moved and asked unanimous consent to withdraw his motion to return to second reading. There being no objection, it was so ordered.

CSHB 105(Jud)am

Representative Ulmer placed a call of the House.

The Speaker stated the call was satisfied.

The question to be reconsidered: "Shall CSHB 105(Jud)am pass the House?" The roll was taken with the following result:

CSHB 105(JUD)AM RECONSIDERATION

Yeas:	27	Boucher, Brown, Cato, Collins, Cotten, Davidson, Davis, C., Davis, M., Donley, Ellis, Furnace, Gruenberg, Hanley, Hudson, Koponen, Larson, Leman, Martin, Menard, Navarre, Phillips, Rieger, Sharp, Spohnholz, Swackhammer, Ulmer, Zawacki
Nays:	12	Barnes, Boyer, Foster, Goll, Grussendorf, Hoffman, Jacko, MacLean, Miller, Shultz, Taylor, Wallis
Excused:	1	Pettyjohn
Absent:	0	

Larson changed from 'nay" to "yea".

And so, CSHB 105(Jud)am passed the House on reconsideration and was referred to the Chief Clerk for engrossment.

CONSIDERATION OF THE DAILY CALENDAR

SECOND READING OF HOUSE BILLS

HB 58

The following was read the second time:

HOUSE BILL NO. 58
"An Act relating to fire protection; and providing for an effective date."

with the:

Zero fiscal note (Public Safety) published 1/9/89 page 35
Community & Regional Affairs Committee report with previous zero fiscal note page 132

HB 58

Judiciary Committee report with previous zero fiscal note page 389

Representative Navarre moved and asked unanimous consent that the following committee substitute be adopted in lieu of the original bill:

CS FOR HOUSE BILL NO. 58 (Judiciary)
"An Act relating to the enforcement and penalty provisions of certain laws on fire protection, fireworks, and warning placards for hazardous substances; authorizing the adoption and use of alternative designs for warning placards for hazardous substances; amending Alaska Rule of Appellate Procedure 603(a)(2); and providing for an effective date."

There being no objection, it was so ordered.

Representative Navarre moved and asked unanimous consent that CSHB 58(Jud) be considered engrossed, advanced to third reading and placed on final passage. There being no objection, it was so ordered.

CSHB 58(Jud) was read the third time.

The question being: "Shall CSHB 58(Jud) pass the House?" The roll was taken with the following result:

CSHB 58(JUD)

Yeas:	38	Barnes, Boucher, Boyer, Brown, Cato, Collins, Cotten, Davidson, Davis, C., Davis, M., Donley, Ellis, Foster, Goll, Gruenberg, Grussendorf, Hanley, Hoffman, Hudson, Jacko, Koponen, Larson, Leman, MacLean, Martin, Menard, Miller, Navarre, Phillips, Rieger, Sharp, Shultz, Spohnholz, Swackhammer, Taylor, Ulmer, Wallis, Zawacki
Nays:	0	
Excused:	1	Pettyjohn
Absent:	1	Furnace

And so, CSHB 58 (Jud) passed the House.

CSHB 58(Jud)

Representative Navarre moved and asked unanimous consent that the roll call on the passage of the bill be considered the roll call on the court rule change. There being no objection, it was so ordered.

Representative Navarre moved and asked unanimous consent that the roll call on the passage of the bill be considered the roll call on the effective date clause. There being no objection, it was so ordered.

CSHB 58(Jud) was referred to the Chief Clerk for engrossment.

HB 114

The following was read the second time:

HOUSE BILL NO. 114
"An Act relating to the examination of regulations and of opinions and decisions issued by courts and agencies on the law of the state."

with the:

State Affairs Committee report page 347
Zero fiscal note with analysis (LAA) published 2/15/89 page 347
Judiciary Committee report with previous zero fiscal note page 399

Representative Navarre moved and asked unanimous consent that HB 114 be considered engrossed, advanced to third reading and placed on final passage. There being no objection, it was so ordered.

HB 114 was read the third time.

The question being: "Shall HB , the House?" The roll was taken with the followin

HB 114

Yeas:	37	Barnes, Bo Boyer, Brown, Cato, Coll. otten, Davidson, Davis, C.. ., M., Donley, Ellis, Fos oll, Gruenberg, Grussendorf ley, Hoffman, Hudson, Jac. oponen, Larson, Leman, MacLe Martin, Miller, Navarre, Phil s, Rieger, Sharp, Shultz, Spohn z, Swackhammer, Taylor, Ulmer, Wallis, Zawacki

Chapter 68. Sexual Assault Investigations.

Legislative history reports. — For legislative letter of intent relating to ch. 168, SLA 1984 (HCS CSSSSB 72(HESS)), see 1984 Senate Journal, p. 2056.

Sec. 18.68.010. Sexual assault examination kit. (a) The Department of Public Safety and the Department of Law shall develop a uniform sexual assault examination kit.

(b) Under protocols developed under AS 18.68.020

(1) the Department of Public Safety shall distribute the kits throughout the state; and

(2) peace officers and health care providers shall use the kits for the gathering of evidence in cases of suspected sexual assault.

(c) The appropriate person under the protocols developed under AS 18.68.020 shall provide a sexual assault examination kit at no charge.

(d) This section does not prohibit the introduction in court of evidence obtained without the use of a sexual assault examination kit. (§ 1 ch 168 SLA 1984)

Sec. 18.68.020. Sexual assault investigations protocols. (a) The Department of Public Safety and the Department of Law in conjunction with the Department of Health and Social Services shall develop a manual of protocols governing the distribution and use of the sexual assault examination kit developed under AS 18.68.010.

(b) The Department of Public Safety shall distribute copies of the protocol manual developed under this section to the appropriate peace officers and health care providers in the state. (§ 1 ch 168 SLA 1984)

Sec. 18.68.030. Training in protocols and sexual examination kits. The Department of Public Safety and the Department of Law shall develop and implement training in the use of the protocols and the sexual assault examination kits for peace officers, district attorneys, and appropriate law enforcement agencies, health care providers, and sexual assault program personnel. (§ 1 ch 168 SLA 1984)

Chapter 70. Fire Protection.

Article 1. Prevention and Investigation.

Collateral references. — 13 Am. Jur. 2d, Buildings, §§ 18-28; 35 Am. Jur. 2d, Fires, §§ 1-4.

36A C.J.S., Fires, §§ 15-18, 39A C.J.S., Health and Environment, §§ 28, 29, 47.

Fire department as pertaining to the governmental or to the proprietary branch of municipality. 9 ALR 143; 33 ALR 688; 84 ALR 514.

Police power as authorizing statute imposing upon owner or occupant liability for expense of fighting fire starting on his land or property. 90 ALR2d 875.

Liability of one negligently causing fire for injuries sustained by person other than firefighter in attempt to control fire or to save life or property. 91 ALR3d 1202.

Liability of owner or occupant of premises to fireman coming thereon in discharge of his duty. 11 ALR4th 597.

Liability of owner or occupant of premises to police officer coming thereon in discharge of officer's duty. 30 ALR4th 81.

Sec. 18.70.010. General function of Department of Public Safety with respect to fire protection. The Department of Public Safety shall foster, promote, regulate, and develop ways and means of protecting life and property against fire, explosion, and panic. (§ 1 ch 66 SLA 1955)

NOTES TO DECISIONS

Common-law duty to take action concerning fire hazards after inspection. — Whether or not the state had a statutory duty to take action concerning hazards discovered at a hotel, where the state fire officials undertook to inspect a hotel for fire hazards, and in doing so they discovered a series of conditions constituting an "extreme life hazard," and there was evidence that they discussed some of these hazards with the manager of the hotel, promised him a more formal notification of fire code violations, and took no further action, the state fire officials had a duty to proceed further with regard to the recognized hazards, since the state assumed a common-law duty, owed to the victims of the fire, by its affirmative con-

duct. Adams v. State, Sup. Ct. Op. No. 1318 (File No. 2326), 555 P.2d 235 (1976).

Where the state had not undertaken to inspect a hotel and eliminate the fire hazards, it did not assume any common-law duty. State v. Jennings, Sup. Ct. Op. No. 1319 (File Nos. 2322, 2423), 556 P.2d 248 (1976).

Duty to exercise reasonable care in conducting inspections. — Once an inspection has been undertaken the state has a further duty to exercise reasonable care in conducting fire safety inspections, and liability will attach where there is a negligent failure to discover fire hazards which would be brought to light by an inspection conducted with ordinary care. Adams v. State, Sup. Ct. Op. No. 1318 (File No. 2326), 555 P.2d 235 (1976).

What constitutes reasonable care will vary with the circumstances and hazards involved. Adams v. State, Sup. Ct. Op. No. 1318 (File No. 2326), 555 P.2d 235 (1976).

Sec. 18.70.020. Duties of Department of Public Safety. The Department of Public Safety shall

(1) aid in the enforcement of all laws and ordinances and the regulations adopted under AS 18.70.010 — 18.70.100 and all other laws relating to fires or to fire prevention and protection;

(2) encourage the adoption of fire prevention measures by means of education;

(3) prepare or have prepared for dissemination information relating to the subject of fire prevention and extinguishment; and

(4) administer the state fire-service training program, including the administration of grants for fire-service training. (§ 2 ch 66 SLA 1955; am E.O. No. 62, § 4 (1986))

Effect of amendments. — The 1986 amendment designated the existing provisions of the section as present paragraphs (1)-(3) and added paragraph (4).

NOTES TO DECISIONS

Common-law duty to take action concerning fire hazards after inspection. — See note to AS 18.70.010. Adams v. State, Sup. Ct. Op. No. 1318 (File No. 2326), 555 P.2d 235 (1976).

Sec. 18.70.030. Investigation of fires resulting from crime. If there is reason to believe that a fire has resulted from crime or that crime has been committed in connection with a fire, the Department of Public Safety shall report that fact in writing to the district attorney of the judicial district in which the fire occurred. If the fire occurred in an incorporated city with a regularly organized fire department, the investigation and report shall be made in conjunction with the fire official of that area. (§ 3 ch 66 SLA 1955)

Sec. 18.70.040. Cooperation with fire insurance companies. The Department of Public Safety may assist, receive assistance from, and otherwise cooperate with an investigator or agent employed by a fire insurance company licensed to do business in the state, or with an investigator or agent employed by an association of insurance companies licensed to do business in the state. (§ 4 ch 66 SLA 1955)

Sec. 18.70.050. Power of department to inspect buildings. The Department of Public Safety may enter any building subject to regulation under AS 18.70.080 during reasonable hours for the sole purpose of inspecting the property or abating a fire hazard. (§ 5 ch 66 SLA 1955; am § 3 ch 176 SLA 1968)

NOTES TO DECISIONS

Purpose of fire inspection is to protect life and property from fire. Adams v. State, Sup. Ct. Op. No. 1318 (File No. 2326), 555 P.2d 235 (1976).

Common-law duty to take action concerning fire hazards after inspection. — See note to AS 18.70.010. Adams v. State, Sup. Ct. Op. No. 1318 (File No. 2326), 555 P.2d 235 (1976).

Fire inspector must obtain warrant. — Defendant could not be prosecuted for exercising his constitutional right to insist that the fire inspector obtain a warrant authorizing entry upon defendant's locked warehouse. See v. City of Seattle, 387 U.S. 541, 87 S. Ct. 1737, 18 L. Ed. 2d 943 (1967).

Sec. 18.70.060. Removal of property from fire. During a fire and in the absence of the owner or claimant, the Department of Public Safety may protect personal property affected by removing it. If the owner or claimant does not take charge of the property within 24 hours the Department of Public Safety may store it at the owner's or claimant's expense. (§ 1 ch 66 SLA 1955)

Sec. 18.70.070. Abatement of fire hazards. The Department of Public Safety may require the owner of a commercial business or public property to abate a fire hazard that exists in violation of law or regulations, and the Department of Public Safety may take appropriate action to assure abatement. (§ 7 ch 66 SLA 1955)

NOTES TO DECISIONS

Common-law duty to take action concerning fire hazards after inspection. — See note to AS 18.70.010. Adams v. State, Sup. Ct. Op. No. 1318 (File No. 2326), 555 P.2d 235 (1976).

Sec. 18.70.075. Authority of municipal fire department officers and their personnel. (a) An officer of a municipal fire department or an authorized representative, while providing fire protection services, has the authority to

(1) control and direct activities at the fire;

(2) order a person to leave a building or place in the vicinity of the fire, for the purpose of protecting the person from injury;

(3) blockade a public highway, street, or private right-of-way temporarily while at a fire;

(4) trespass upon property at or near the scene of a fire at any time of the day or night;

(5) enter a building, including a private dwelling, or upon premises where a fire is in progress, or where there is reasonable cause to believe a fire is in progress, for the purpose of extinguishing the fire;

(6) enter a building, including a private dwelling, or premises near the scene of the fire for the purpose of protecting the building or premises or for the purpose of extinguishing the fire that is in progress in another building or premises;

(7) upon 24-hour notice to the owner or occupant, inspect for preplanning all buildings, structures, or other places within the municipality, except the interior of a private dwelling, where combustible material is or may become dangerous as a fire menace to the building;

(8) direct the removal or destruction of a fence, house, motor vehicle, or other thing that the officer or authorized representative may judge necessary to remove or destroy to prevent the further spread of the fire.

(b) An owner or occupant of a building or place specified in this section or any other person on the site of a fire or other emergency who refuses to obey the order of an officer of a municipal fire department or an authorized representative in the exercise of official duties is guilty of a misdemeanor, and upon conviction, is punishable by imprisonment for one year, or by a fine of not more than $1,000, or by both.

(c) In this section, "inspect for preplanning" means to conduct limited inspections for purposes of preparing a fire attack plan in the event of a future emergency, but does not include inspections for purposes of determining compliance with statutory or municipal fire code requirements. (§ 2 ch 215 SLA 1975)

Opinions of attorney general. — The authority vested in an officer of a municipal fire department or his authorized representative under this section is not undercut by the authority of a state trooper addressed in AS 18.65.080. May 17, 1983 Op. Att'y Gen.

Sec. 18.70.080. Regulations. (a) The Department of Public Safety shall adopt regulations for the purpose of protecting life and property from fire and explosion by establishing minimum standards for

(1) fire detection and suppression equipment;

(2) fire and life safety criteria in commercial, industrial, business, institutional or other public building, and buildings used for residential purposes containing four or more dwelling units;

(3) any activity in which combustible or explosive materials are stored or handled in commercial quantities;

(4) conditions or activities carried on outside a building described in (2) or (3) of this section likely to cause injury to persons or property.

(b) The commissioner of public safety may establish by regulation and the department may charge reasonable fees for fire and life safety

plan checks made to determine compliance with regulations adopted under (a)(2) of this section. The commissioner of administration shall separately account for fees collected under this subsection that the Department of Public Safety deposits in the general fund. The annual estimated balance in the account may be used by the legislature to make appropriations to the department to carry out the purposes of this chapter. (§ 8 ch 66 SLA 1955; am §§ 1, 2 ch 176 SLA 1968; am § 1 ch 23 SLA 1971; am § 38 ch 138 SLA 1986)

Effect of amendments. — The 1986 amendment added subsection (b).

NOTES TO DECISIONS

Common-law duty to take action concerning fire hazards after inspection. — See note to AS 18.70.010. Adams v. State, Sup. Ct. Op. No. 1318 (File No. 2326), 555 P.2d 235 (1976).

Sec. 18.70.081. Approval of fire protection systems. Before October 30 of each year the Department of Public Safety shall prepare and make available a list of approved fire protection systems to the Department of Community and Regional Affairs, the Department of Commerce and Economic Development, and the public. (§ 1 ch 45 SLA 1980)

Sec. 18.70.082. Remote housing facilities. Any construction camp, logging camp, cannery, or oil or mining camp that has buildings not in a fire department service area in which persons are housed in dormitories or similar facilities shall be equipped with an automatic fire detection system in that portion of the building used for living or sleeping purposes. In this chapter an automatic fire detection system means a type of automatic fire detection system approved by the state fire marshal. (§ 1 ch 65 SLA 1970)

Sec. 18.70.084. Standard fire hose and hydrant threads required. All fire protection equipment to be purchased by state and municipal authorities, or any other authority having charge of public property, shall be equipped with national standard fire hose threads for fire hose couplings and hydrant fittings as adopted by the state fire marshal under AS 18.70.080. (§ 1 ch 48 SLA 1970)

Sec. 18.70.085. Sale of nonstandard equipment. A person may not sell or offer for sale in Alaska any fire engine, fire hose, hydrant, or other equipment for fire protection purposes unless the equipment is fitted and equipped according to minimum standards adopted by the state fire marshal under AS 18.70.080. Fire equipment for special

purposes or research programs, or special features of fire protection equipment found appropriate for uniformity within a particular protection area, may be exempted from this requirement by the state fire marshal. (§ 1 ch 48 SLA 1970)

Sec. 18.70.090. Enforcement of regulations. The Department of Public Safety and the chief of each city fire department and their authorized representatives in their respective areas may enforce the regulations adopted by the Department of Public Safety for the prevention of fire or for the protection of life and property against fire or panic. All state peace officers may assist the Department of Public Safety in the enforcement of AS 18.70.010 — 18.70.100 and the regulations adopted under it. The authority conferred in AS 18.70.010 — 18.70.100 extends to the enforcement of the provisions of AS 11.46.490 — 11.46.430. (§ 9 ch 66 SLA 1955; am § 8 ch 117 SLA 1968; am § 20 ch 166 SLA 1978)

NOTES TO DECISIONS

City fire chief can enforce standards without delegation by state fire marshal. — The language of this section would indicate that the fire chief in each city can enforce state fire standards independently of any delegation by the state fire marshal's office. State v. Jennings, Sup. Ct. Op. No. 1319 (File Nos. 2322, 2423), 555 P.2d 248 (1976).

State not liable for city's negligence. — Where the state fire marshal's office, in accordance with its policy, had deferred to the city's fire prevention agency for the purposes of fire prevention and inspection within the city limits, and, thus, the state fire marshal referred complaints about a hotel to the city fire marshal for action; and the city conducted inspection and initiated enforcement, there is no principal-agent relationship between the state and the city which would justify holding the state vicariously liable for the city's negligence. State v. Jennings, Sup. Ct. Op. No. 1319 (File Nos. 2322, 2423), 555 P.2d 248 (1976).

Common-law duty to take action concerning fire hazards after inspection. — See note to AS 18.70.010. Adams v. State, Sup. Ct. Op. No. 1318 (File No. 2326), 555 P.2d 235 (1976).

Collateral references. — Power to require closing of place of amusement or other place of public assembly because of fire hazard or unsanitary conditions. 140 ALR 1048.

Destruction of building in emergency. 14 ALR2d 78.

Sec. 18.70.095. Smoke detection devices. Smoke detection devices shall be installed in all living units built, manufactured or sold in the state. The devices shall be of a type and deployed in a manner approved by the state fire marshal. (§ 1 ch 148 SLA 1975)

NOTES TO DECISIONS

Applied in Northern Lights Motel, Inc. v. Sweaney, Sup. Ct. Op. No. 1386 (File No. 2476), 561 P.2d 1176, aff'd on rehearing, 563 P.2d 256 (1977).

Sec. 18.70.100. Violation. (a) A person who violates any provision of AS 18.70.010 — 18.70.100 or the published regulations or orders adopted under it from which no appeal has been taken within 30 days after the issuance of a final order is, severally, for each violation, guilty of a misdemeanor, and is punishable by a fine of not more than $500, or by imprisonment for not more than six months, or by both. A person aggrieved by a final order of the Department of Public Safety may appeal to the superior court within 30 days after the issuance of the order. The imposition of one penalty for a violation does not excuse the violation and a person guilty of a violation shall correct the violation within a reasonable time. When not otherwise specified, each 10 days that a prohibited condition is maintained is a separate offense.

(b) The application of the penalty prescribed in (a) of this section does not prevent the Department of Public Safety from enforcing the removal of the prohibited conditions. (§ 10 ch 66 SLA 1955; added by § 1 ch 113 SLA 1957)

Collateral references. — Giving false fire alarm by telephone as minor criminal offense. 97 ALR2d 510.

Secs. 18.70.110 — 18.70.140. Fire Escapes. [Repealed by § 2 ch 23 SLA 1971.]

Article 2. Mutual Fire Aid Agreements.

Collateral references. — 35 Am. Jur. 2d, Fires, §§ 1-4.

36A C.J.S., Fires, §§ 15, 16.

Constitutionality of statute or ordinance requiring proprietor of place of amusement to furnish fire or police protection at his own expense. 8 ALR 1628.

Fire department as pertaining to the governmental or to the proprietary branch of municipality. 9 ALR 143; 33 ALR 698; 84 ALR 514.

Statute relating to municipal fire departments as interference with local self-government. 100 ALR 1078; 141 ALR 903.

Police power as authorizing statute imposing upon owner or occupant liability for expense of fighting fire starting on his land or property. 90 ALR2d 875.

Sec. 18.70.150. Adoption of mutual fire aid agreements. A city, other incorporated entity, and other fire protection groups may organize a mutual-aid program by adopting an ordinance or resolution authorizing and permitting their fire department, fire company, emergency relief squad, fire police squad or fire patrol to go to the aid of another city, incorporated entity, or fire protection group, or territory outside of it. While extending aid under AS 18.70.150 and 18.70.160 the fire department, company, squad, or patrol has the same privileges and immunities it possesses when it performs the same functions in its own area. The ordinance or resolution may authorize the heads of the fire department to extend aid, subject to conditions and restrictions prescribed in the ordinance or resolution. (§ 1 ch 92 SLA 1957)

NOTES TO DECISIONS

This section represents an erroneous belief that cities are not liable in tort for negligence connected with firefighting activities. City of Fairbanks v. Schaible, Sup. Ct. Op. No. 97 (File Nos. 112, 113), 375 P.2d 201 (1962), overruled on other grounds, Scheele v. City of Anchorage, Sup. Ct. Op. No. 167 (File No. 307), 385 P.2d 582 (1963).

As a city which maintains a fire department may be held liable for injuries resulting from negligence connected with the department's firefighting activities. City of Fairbanks v. Schaible, Sup. Ct. Op. No. 97 (File Nos. 112, 113), 375 P.2d 201 (1962), overruled on other grounds, Scheele v. City of Anchorage, Sup. Ct. Op. No. 167 (File No. 307), 385 P.2d 582 (1963). But see City of Fairbanks v. Gilbertson, 16 Alaska 590 (1957), aff'd, 262 F.2d 734 (9th Cir. 1959), where § 56-2-2 ACLA 1949 (now AS 09.65.070) was ignored by both the district court and the Court of Appeals.

Collateral references. — Fire departments as pertaining to the governmental or to the proprietary branch of municipality. 9 ALR 143; 33 ALR 688; 84 ALR 514.

Sec. 18.70.160. Agreement not to affect insurance rates or liability. An agreement made under AS 18.70.150 and 18.70.160 shall be carried out in a manner that does not raise insurance rates. An agreement may not reduce the liability of an insurance company in case of loss during the absence of men and equipment. (§ 1 ch 92 SLA 1957)

Article 3. General Provisions.

Sec. 18.70.300. Definition of building. In this chapter "building" means a structure, installation, facility, or edifice erected or in the process of being erected and that is used or intended for use as a commercial, industrial, business, institutional, other public building, or residential building containing four or more dwelling units. (§ 4 ch 176 SLA 1968; am § 27 ch 32 SLA 1971)

Revisor's notes. — Enacted as AS 18.70.165. Renumbered in 1968.

Sec. 18.70.310. Hazardous materials and wastes placards. (a) A business or government agency that handles hazardous materials or hazardous wastes shall post placards, provided by the Department of Public Safety, division of fire prevention, in accordance with regulations adopted by the department under this section.

(b) The Department of Public Safety, division of fire prevention, shall adopt the United States Department of Transportation warning placards for hazardous materials and hazardous wastes. A municipality that establishes a program for the reporting of hazardous materials and hazardous wastes may, with the approval of the Department of Public Safety, division of fire prevention, adopt and use an alternative design for warning placards.

(c) The Department of Public Safety shall adopt regulations for the posting of placards that will give adequate warning to the public and to emergency response personnel of the type of hazardous materials and hazardous wastes.

(d) The Department of Public Safety shall establish a fee schedule to fully compensate for the costs of enforcement of, and placards provided under, this section. Fees collected under this subsection shall be deposited in the general fund. The commissioner of administration shall account separately for fees collected and deposited under this subsection. The annual estimated balance in the account may be appropriated by the legislature to the Department of Public Safety to carry out the purposes of this section.

(e) In this section, "handles," "hazardous material," and "hazardous waste" have the meanings given in AS 29.35.590. (§ 2 ch 108 SLA 1986)

Cross references. — For legislative intent in enacting this section, see § 1, ch. 108, SLA 1986, in the Temporary and Special Acts.

Effective dates. — Section 5, ch. 108, SLA 1986, provides: "This Act takes effect January 1, 1987."

SUPPLEMENT

Chapter 67. Violent Crimes Compensation Board.

Section
101. Incidents and offenses to which AS 18.67.010 — 18.67.180 apply

Sec. 18.67.101. Incidents and offenses to which AS 18.67.010 — 18.67.180 apply. The board may order the payment of compensation in accordance with the provisions of this chapter for personal injury or death th resulted from

(1) an attempt on the part of the applicant to prevent the commission of crime, or to apprehend a suspected criminal, or aiding or attempting to aid a police officer to do so, or aiding a victim of crime; or

(2) the commission or attempt on the part of one other than the applicant to commit any of the following offenses: murder in any degree, manslaughter, criminally negligent homicide, assault in the first or second degree, kidnapping, sexual assault in any degree, sexual abuse of a minor, robbery in any degree, threats to do bodily harm, or driving while intoxicated or another crime resulting from the operation of a motor vehicle, boat, or airplane when the offender is intoxicated. (§ 2 ch 35 SLA 1979; am § 2 ch 96 SLA 1983; am § 40 ch 14 SLA 1987)

Effect of amendments. — The 1987 amendment deleted "contributing to the delinquency of a minor under AS 11.51.130(a)(4)" following "robbery in any degree" in paragraph (2).

Chapter 70. Fire Protection.

Article
1. Prevention and Investigation (§§ 18.70.075, 18.70.095)
3. General Provisions (§ 18.70.310)

Article 1. Prevention and Investigation.

Section
75. Authority of fire department officers
95. Smoke detection devices

Sec. 18.70.075. Authority of fire department officers. (a) A fire officer of a municipal fire department or a fire department registered under AS 29.60.130, while providing fire protection or other emergency services, has the authority to

(1) control and direct activities at the scene of a fire or emergency;

(2) order a person to leave a building or place in the vicinity of a fire or emergency, for the purpose of protecting the person from injury;

(3) blockade a public highway, street, or private right-of-way temporarily while at the scene of a fire or emergency;

(4) trespass upon property at or near the scene of a fire or emergency at any time of the day or night;

(5) enter a building, including a private dwelling, or premises where a fire is in progress, or where there is reasonable cause to believe a fire is in progress, to extinguish the fire;

(6) enter a building, including a private dwelling, or premises near the scene of a fire for the purpose of protecting the building or premises or for the purpose of extinguishing the fire that is in progress in another building or premises;

(7) upon 24-hour notice to the owner or occupant, conduct a prefire planning survey in all buildings, structures, or other places within the municipality or the registered fire department's district, except the interior of a private dwelling, where combustible material is or may become dangerous as a fire menace to the building;

(8) direct the removal or destruction of a fence, house, motor vehicle, or other thing judged necessary to prevent the further spread of a fire.

(b) An owner or occupant of a building or place specified in this section or any other person on the site of a fire or other fire department emergency who refuses to obey the order of a fire officer of a municipal or registered fire department in the exercise of official duties is guilty of a misdemeanor, and upon conviction, is punishable by imprisonment for one year, or by a fine of not more than $1,000, or by both.

(c) In this section

(1) "emergency" means a situation in which the services of fire department personnel are necessary or appropriate to protect life, property, or public health;

(2) "prefire planning survey" means a limited inspection for the purpose of preparing a fire attack plan in the event of a future emergency. (§ 2 ch 215 SLA 1975; am § 1 ch 4 SLA 1987)

Effect of amendments. — The 1987 amendment rewrote this section to the extent that a detailed comparison is impracticable.

Sec. 18.70.095. Smoke detection devices. (a) Smoke detection devices shall be installed and maintained in all dwelling units in the state. The devices shall be of a type and installed in a manner approved by the state fire marshal.

(b) In a dwelling unit occupied under the terms of a rental agreement or under a month-to-month tenancy,

(1) at the time of each occupancy the landlord shall provide smoke detection devices in working condition and, after notification by the tenant, shall be responsible for replacement; and

(2) the tenant shall keep the devices in working condition by keeping charged batteries in battery-operated devices, if possible, by test-

ing the devices periodically, if possible, and by refraining from permanently disabling the devices.

(c) If a landlord did not know and had not been notified of the need to repair or replace a smoke detection device, the landlord's failure to repair or replace the device may not be considered as evidence of negligence in a subsequent civil action arising from death, property loss, or personal injury.

(d) In this section "dwelling unit," "landlord," "rental agreement," and "tenant" have the meanings given in AS 34.03.360. (§ 1 ch 148 SLA 1975; am §§ 1, 2 ch 129 SLA 1988)

Effect of amendments. — The 1988 amendment, in subsection (a), substituted "and maintained in all dwelling units" for "in all living units built, manufactured or sold" in the first sentence and "installed" for "deployed" in the second sentence; and added subsections (b)-(d).

Article 3. General Provisions.

Section
310. Hazardous chemicals, materials, and wastes placards

Sec. 18.70.310. Hazardous chemicals, materials, and wastes placards. (a) A business or government agency that handles hazardous chemicals, hazardous materials, or hazardous wastes shall post placards in accordance with regulations adopted under this section. A business or agency located in a municipality shall use placards specified by the municipality. Any other business or agency shall use placards provided by the Department of Public Safety, division of fire prevention.

(b) The Department of Public Safety, division of fire prevention shall adopt the National Fire Protection Association 704M system of warning placards for hazardous chemicals, hazardous materials, and hazardous wastes. A municipality may, with the approval of the Department of Public Safety, division of fire prevention, adopt and use an alternative design for warning placards that gives adequate warning to the public and emergency response personnel, if the 704M system placards are inappropriate.

(c) The Department of Public Safety shall adopt regulations for the posting of placards that will give adequate warning to the public and to emergency response personnel of the type of hazardous chemicals, hazardous materials, and hazardous wastes. A municipality that adopts placarding regulations shall adopt the Department of Public Safety regulations or regulations that are more stringent.

(d) The Department of Public Safety shall establish a fee schedule to fully compensate for the costs of enforcement of, and placards provided under, this section. Fees collected under this subsection shall be

deposited in the general fund. The commissioner of administration shall account separately for fees collected and deposited under this subsection. The annual estimated balance in the account may be appropriated by the legislature to the Department of Public Safety to carry out the purposes of this section.

(e) In this section,

(1) "handles," "hazardous chemical," "hazardous material," and "hazardous waste" have the meanings given in AS 29.35.590;

(2) "municipality" means a municipality that establishes a program for the reporting and placarding of hazardous chemicals, hazardous materials, and hazardous wastes. (§ 2 ch 108 SLA 1986; am §§ 1 — 4 ch 143 SLA 1988)

Effect of amendments. — The 1988 amendment repealed and reenacted subsection (a), which formerly related to the same subject matter; rewrote subsection (b); in subsection (c), added the second sentence and, in the first sentence, inserted "hazardous chemicals" and made a minor punctuation change; and, in subsection (e), divided the formerly undivided language into an introductory paragraph and paragraph (1), inserted "hazardous chemical'" in paragraph (1), and added paragraph (2).

Chapter 80. State Commission for Human Rights.

Article
1. Creation and Organization of Commission (§§ 18.80.050, 18.80.060)
4. Discriminatory Practices Prohibited (§§ 18.80.200, 18.80.210, 18.80.220 — 18.80.255)
5. General Provisions (§ 18.80.300)

NOTES TO DECISIONS

Alaska's civil rights statute should be broadly construed to further the goal of eradication of discrimination. Alaska USA Fed. Credit Union v. Fridriksson, Sup. Ct. Op. No. 2478 (File No. 5230), 642 P.2d 804 (1982).

Article 1. Creation and Organization of Commission.

Section
50. Regulations
60. Powers and duties of the commission

Sec. 18.80.050. Regulations. (a) The commission shall adopt procedural and substantive regulations necessary to implement this chapter.

(b) The commission shall adopt regulations relating to discrimination because of physical and mental disability. The regulations shall furnish guidance concerning the circumstances under which it is necessary to make a reasonable accommodation for a physically or mentally disabled person when providing employment, financing or credit, public accommodations, the sale or rental of real property, or other

cluding but not limited to ditch digging apparatus, well boring apparatus, construction and maintenance machinery such as asphalt spreaders, bituminous mixers, bucket loaders, tractors other than truck tractors, ditchers, leveling graders, finishing machines, motor graders, road rollers, scarifiers, earthmoving scrapers and carryalls and scrapers, power shovels and drag lines, and self-propelled cranes and earthmoving equipment; it does not include house trailers, mobile homes, off-highway vehicles, dump trucks, truck-mounted transit mixers, cranes, or shovels, or other vehicles designed for the transportation of persons or property to which machinery has been attached;

(53) "stand" or "standing" means the halting of a vehicle, whether occupied or not, except temporarily for the purpose of and while actually engaged in receiving or discharging passengers;

(54) "stop" or "stopping" means a complete cessation from movement, or the halting, even momentarily, of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic-control sign or signal;

(55) "street" means a highway as defined in AS 28;

(56) "through highway" means a highway or portion of highway on which vehicular traffic has preferential right-of-way, the entrances to which vehicular traffic from intersecting highways is required by law to yield the right-of-way to vehicles on the highway in obedience to a stop sign, yield sign, or other official traffic-control device;

(57) "tow car" means a motor vehicle which is equipped for towing vehicles by means of a crane, hoist, tow bar, tow line or dolly, and is used primarily for towing or otherwise rendering assistance to other vehicles;

(58) "trailer" means a vehicle, with or without motive power, designed for carrying persons or property and for being drawn by a motor vehicle; it includes semitrailers and pole trailers;

(59) "transporter" means a person in the business of delivering vehicles which are required to be registered under AS 28.10 when the delivery is from a manufacturing, assembling, or distributing plant to a dealer or sales agent of a manufacturer;

(60) "truck" means every motor vehicle designed, used or maintained primarily for the transportation of property;

(61) "truck-camper" means a structure designed, used or maintained primarily to be loaded on, or affixed to, a motor vehicle to provide a mobile dwelling, sleeping place, office or commercial space;

(62) "truck-tractor" means a motor vehicle designed and used primarily for drawing other vehicles, which is not designed or constructed to carry a load other than a part of the weight of the vehicle and load being drawn;

(63) "urban district" means the territory contiguous to and including a street with structures devoted to business, industry or dwelling houses situated at intervals of less than 100 feet for a distance of at least a quarter of a mile;

(64) "vehicle identification number" means the numbers and letters or other distinguishing marks designated by the department for the purpose of identifying a vehicle or its parts, placed on an engine, transmission, or other equipment by its manufacturer or by authority of the department, or in accordance with the laws of another jurisdiction;

(65) "wrecked vehicle" means a vehicle which is so disabled that the whole vehicle cannot be used for its primary function without substantial repair or reconstruction. (Eff. 6/28/79, Register 70)

Authority: AS 28.05.011

PART 2. FIRE PREVENTION

CHAPTER 50. CODES AND STANDARDS

13 AAC 50.010. OCCUPANCY CLASSIFICATIONS. All buildings or areas of a building are classified as to their occupancy according to the occupancy classifications defined in the Uniform Building Code (U.B.C.). (In effect before 7/26/59; am 6/25/69, Register 30; am 2/21/71, Register 37; am 1/14/81, Register 77)

Authority: AS 18.70.080

Editor's notes. — Copies of the U.B.C. may be obtained from the International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California 90601.

13 AAC 50.020. BUILDING CODES. (a) The U.B.C. chs. 1, Table 3-A except for "other inspections and fees;" 4-12, 17-22, Sec. 2516(f), 30, 32-34, 36-40, 42, 43, 47, 50-52, 54, Appendix chapters 1, 7, and 55, and the U.B.C. Standards chapters 4, 6, 17, 18, 24-28, 32, 33, 37, 38, 42, 43, 47, 52, 54, and 55, are adopted to regulate all occupancies and buildings with the following revisions:

(1) sections 106, 510, 511, 1211 are deleted; sec. 1807 (b) is revised to read: "All mechanical and electrical equipment and other required life safety systems must be installed in accordance with plans and specifications in accordance with this section, and must be tested and proved to be in proper working condition"; such systems must be maintained in accordance with the Fire Codes described in 13 AAC 50.025;

(2) sanitation and water closet requirements contained in the U.B.C. chs. 6 — 10 and 12 are deleted;

(3) section 608 of the U.B.C. is revised by amending the "EXCEPTION" as follows: "EXCEPTION: Boilers, central heating plants or hot-water supply boilers if the combined pieces of fuel equipment do not exceed 400,000 Btu per hour input";

(4) section 708 of the U.B.C. is revised by amending the "EXCEPTION" as follows: "EXCEPTION: Boilers, central heating plants or hot-water supply boilers if the combined pieces of fuel equipment do not exceed 400,000 Btu per hour input";

(5) section 808 of the U.B.C. is revised by the deletion of "EXCEPTION: Boilers, central heating plants or hot-water supply boilers if the largest piece of fuel equipment does not exceed 400,000 Btu per hour input";

(6) section 1008 of the U.B.C. is revised by amending the "EXCEPTION" as follows: "EXCEPTION: Boilers, central heating plants or hot-water supply boilers if the combined pieces of fuel equipment do not exceed 400,000 Btu per hour input";

(7) section 1204 of the U.B.C. is revised to provide that windows used for egress or rescue must have a finished sill height of not more than 48 inches above the floor;

(8) repealed 8/2/86;

(9) repealed 8/2/86;

(10) U.B.C. Section 403 is revised to read: "'BUILDING EXISTING,' is a building that, before August 2, 1986;

(A) was erected;

(B) received a building permit from the authority having jurisdiction, granted under the provisions of 13 AAC 50.075; or

(C) has received a plan check approval under 13 AAC 50.027(a);"

(11) U.B.C. Section 3322(a) is revised by the deletion of the sentence: "When oil-fired boilers are used, a 6-inch noncombustible sill (dike) shall be provided";

(12) appendix chapter 1 of the U.B.C. is revised by the deletion of sections 110(b), 122, 123 and 124.

(b) The Uniform Mechanical Code (U.M.C.) sections referred to in the Uniform Building Code are adopted by reference, except for the following:

(1) repealed 8/2/86;

(2) section 1404(5), "EXCEPTIONS: 1," of the U.M.C. is revised to read, "Boilers, central heating plants, or hot-water supply boilers if the combined pieces of fuel equipment do not exceed 400,000 Btu per hour input";

(3) repealed 8/2/86;

(c) The electrical systems of all occupancies must meet the standards of the National Electrical Code (N.E.C.) as adopted by AS 18.60.580.

(d) All new buildings that are classified or that contain group A, division 1, 2, 2.1, or 3; group B, division 2; group E, division 1, 2, or 3; or group R, division 1, occupancies and that have floors used for human occupancy over 35 feet above the lowest level of fire department vehicle access, must be equipped throughout the building with an automatic sprinkler system that complies with U.B.C. Chapter 38.

(e) Repealed 8/2/86.

(f) Repealed 8/2/86.

(Eff. 6/25/69, Register 30; am 2/21/71, Register 37; am 6/15/79, Register 71; am 1/14/81, Register 77; am 8/2/86, Register 99)

Authority: AS 18.70.080

Editor's notes. — (1) Copies of the N.E.C. may be obtained from the National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02269.

(2) Copies of the U.B.C., U.B.C. Standards, U.M.C. and the Uniform Fire Code may be obtained from the International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California, 90601.

13 AAC 50.025. FIRE CODES. (a) The Uniform Fire Code (U.F.C.) articles 1, 2, 9-13, 24-34, 35, 36, 45, 47-51, 61-63, 74-76, 79-87, appendices Divisions I; II-A, B, C; III-A, C; IV-A and the U.F.C. Standards articles 9, 10, 24, 62, 74, 79, 81, 82, U.B.C. Standards (as printed in the U.F.C. Standards) Sections 9-1, 9-3, U.M.C. Standards (as printed in the U.F.C. Standards) 5-1 are adopted for the safeguarding of life and property from the hazards of fire and explosion arising from the storage, handling, and use of hazardous substances, materials and devices, and from other conditions hazardous to life and property, with the following revisions:

(1) article 1 of the U.F.C. is revised by the deletion of section 1.102(b);

(2) article 2 of the U.F.C. is revised by the deletion of Division I. "Organization and Authority";

(3) article 2 of the U.F.C. is revised by the deletion of Division II, "Duties and Procedures";

(4) article 2, Division III of the U.F.C. is revised by the deletion of section 2.301(a);

(5) article 2, Division III of the U.F.C. is revised by the deletion of section 2.302;

(6) article 2, Division III of the U.F.C. is revised by the deletion of section 2.303(b);

(7) permit requirements under the U.F.C. are deleted;

(8) article 10 of the U.F.C. is revised by the deletion of Division I;

(9) article 10, Division II of the U.F.C. is revised by the deletion of section 10.205;

(10) article 10, Division II of the U.F.C. is revised by the deletion of section 10.207;

(11) article 10, Division II of the U.F.C. is revised by the deletion of section 10.208 and 10.209;

(12) article 10, Division III of the U.F.C. is revised by the deletion of section 10.301(c) and (d);

(13) article 10, Division III of the U.F.C. is revised by the deletion of sections 10.303 — 10.306 and 10.313;

(14) article 11, Division I of the U.F.C. is revised by the deletion of sections 11.101(a), 11.105(a), (c), (e), 11.106 — 11.115;

(15) article 11, Division II of the U.F.C. is revised by the deletion of section 11.201(c);

(16) article 11 of the U.F.C. is revised by the deletion of Division III "Fire Reporting and False Alarms";

(17) article 11, Division IV of the U.F.C. is revised by the deletion of 11.401, 11.402, 11.409 — 11.412;

(18) article 12, section 12.101 of the U.F.C. is revised by the deletion of paragraph 2;

(19) article 13 of the U.F.C. is revised by the deletion of section 13.102;

(20) article 25, Division I of the U.F.C. is revised by the deletion of section 25.115; section 25.116, paragraph (a); and the last sentence in article 25.117;

(21) article 28 of the U.F.C. is revised by the deletion of section 28.105;

(22) article 30 of the U.F.C. is revised by the deletion of section 30.102(a);

(23) repealed 8/2/86;

(24) article 47 of the U.F.C. is revised by the deletion of sections 47.104 and 47.105;

(25) repealed 8/2/86;

(26) repealed 8/2/86;

(27) article 79 of the U.F.C. is revised by the deletion of section 79.1102(a) and (b);

(28) article 79 of the U.F.C. is revised by the deletion of Division XVII;

(29) article 82 of the U.F.C. is revised by the deletion of section 82.103;

(30) appendix I-A of the U.F.C. is revised by the deletion of section 1.6(b);

(31) appendix I-B of the U.F.C. is revised by the deletion of sections 2.1(c) and (e);

(32) appendix III-A, 1-6(a) of the U.F.C. is revised by the deletion of the words "five years" and amended to read "year."

(b) If no specific standards or requirements are set out in the U.F.C. or in this chapter, compliance with the National Fire Protection Association (N.F.P.A.) or other nationally recognized fire safety standards will be considered compliance with requirements of this chapter. (Eff. 1/14/81, Register 77; am 8/2/86, Register 99)

Authority: AS 18.70.080

Editor's notes. — (1) Copies of the N.F.P.A. Standards may be obtained from the National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02269.

(2) Copies of the U.B.C., U.B.C. Standards and the Uniform Fire Code and the U.F.C. Standards may be obtained from the Western Fire Chiefs Association, 5360 South Workman Mill Road, Whittier, California 90601.

13 AAC 50.027. PLAN CHECK, APPROVAL AND STOP ORDERS. (a) Before beginning construction of all occupancies and buildings regulated by the state fire marshal, plans and specifications regarding location on property, area, height, number of stories, type of construction, fire-resistive construction, interior finish, exit facilities, electrical systems, mechanical systems, automatic fire-extinguishing systems and fire alarm systems must be submitted to the state fire marshal for examination and approval. A copy of the approval must be posted as required in 13 AAC 55.100(b). It is prohibited to occupy a building for which plans have not been examined and approved if construction began on or after August 2, 1986. The following procedures apply to plan checks:

(1) Upon application for a plan check, a plan check fee must be paid to the state fire marshal if the value of the proposed construction exceeds $25,000; the value of the proposed construction will be determined by the state fire marshal.

(2) The plan check fee is 40 percent of the building permit fee schedule set out in Table No. 3-A of the U.B.C.

(3) If plans are altered so as to require additional plan checking, an additional plan check fee will be charged; the additional plan check fee rate will be at $25 per hour, or part of an hour.

(4) If plans are revised to an extent that requires a new plan check, the charge will be the same as for new plans.

(5) If the state fire marshal determines that it is advisable because of the complexity of plans submitted, the marshal will submit the plans to the International Conference of Building Officials (I.C.B.O.) for plan checking by that agency; the person submitting the plans to the state fire marshal is responsible for the fee of the I.C.B.O.

(6) The state fire marshal will, in the marshal's discretion, require plans for sprinkler systems to be submitted to the Insurance Services Office (I.S.O.) for examination.

(b) If, in the opinion of the state fire marshal, a municipality has enacted ordinances for the review and approval of plans and specifications, the marshal will, in the marshal's discretion, exempt the area from compliance with the requirements of (a) and (c) of this section. The state fire marshal may cancel this exemption following 30 days written notice if the marshal finds the city or borough plan review regulations and procedures do not provide adequate fire protection. An application for an exemption under this subsection must be made on forms provided by the state fire marshal.

(c) If work is being done contrary to the provisions of this section, the state fire marshal will, in the marshal's discretion, order the work stopped by notice in writing served on any persons engaged in or causing the work to be done. The persons doing the work shall immediately stop the work until authorized by the fire marshal to proceed. (Eff. 9/15/79, Register 71; am 8/2/86, Register 99)

Authority: AS 18.70.050
AS 18.70.090

Editor's notes. — International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California 90601. The I.C.B.O. regular plan check fee is 55 percent of the building permit fee schedule set out in Table No. 3-A of the U.B.C. The fire and life safety plan check fee is 75 percent of the regular plan check fee.

Insurance Services Office, Sprinklered Risk Section, 10 United Nations Plaza, San Francisco, California 94102. The I.S.O. does not charge for examination of sprinkler system plans for risks insured through one of their member companies.

13 AAC 50.030. FIRE PROTECTION SYSTEMS (INSTALLED AND PORTABLE). (a) Fire-extinguishing systems including automatic sprinkler systems must be installed as required by the U.B.C., U.F.C., and 13 AAC 50.020, and must meet the requirements of the U.B.C. Standards 38-1, 38-2; N.F.P.A. Volume 1, Standards 11, 11A, 11C, 12, 12A, 12B, 13, 15-18, 20, 22, and 24; and N.F.P.A. Volume 4, Standards 96.

(b) Fire detection systems must be installed as required by the U.B.C., U.F.C., and Table No. 1 set out in (c) of this section, and must meet the requirements of the standards of the U.B.C. Standard 18-1;

U.F.C. Standard 10-2, and N.F.P.A. Volume 3, Standards 71, 72A, 72B, 72C, 72D and 72E.

(c) Single-station smoke detection devices must be installed as required by AS 18.70.095 and Table No. 1 set out in (c) of this section.

(d) Smoke detection devices required by AS 18.70.095 must comply with U.B.C. Standard 43-6.

(e) Fire alarm systems must be installed as required by the U.B.C., U.F.C. and Table No. 1 of this subsection, and must meet the requirements of the U.B.C. Standard 18-1; U.F.C. Standard 10-2, and N.F.P.A. Standards 71, 72B, 72C, 72D and 74.

Table No. 1

Requirements for the Installation of Detection and Alarm Systems

OCCUPANCY GROUPS	TYPE SYSTEMS					
	Manual Fire Alarm System		Supervised Smoke Detection		Single Station Detectors	
	Class	Type	Through Out	Corridors Stairways	Dwelling/ Sleeping/ Living Units	Other Areas
1. All buildings that are classified or contain Group A Occupancies having an occupant load of 100 or more.	IV	A				
2. Group E Occupancies having more than 50 occupants	I	A				
Group E, Division 3.	I	A		X(9)	X(2)	
3. Group I, Div. 1 & 2 occupancies and mental hospitals.	III	A, B, C, or D	X			
4. Group I, Div. 3 occupancies other than mental hospitals.	IV	A, B, C or D	X			
5. Groups B-2 and R-1 greater than 75' in height.	III	A, B, C or D		X(6)	X(2)	X(5)
6. Group R-1 (except those in #5 above).						

OCCUPANCY GROUPS	TYPE SYSTEMS					
	Manual Fire Alarm System		Supervised Smoke Detection		Single Station Detectors	
	Class	Type	Through Out	Corridors Stairways	Dwelling/ Sleeping/ Living Units	Other Areas
a. Apartment houses three or more stories in height or containing more than 15 apartments.	II(7)	A, B, C or D		X(1)	X(2)	X(1,3)
b. Hotels either three or more stories in height or containing 20 or more guest rooms.	II	A, B, C or D		X(1)	X(2)	X(1, 3)
c. Apartment houses and hotels smaller than those in a & b.					X(2)	
7. Group H, Div. 1 manufacturing organic coatings.	I(4)	A, B, C or D				
8. Group R, Div. 3 dwellings and lodging houses.					X(2,8)	
9. Group R. Div. 1 remote housing facilities	I	A, B, C or D		X(10)	X(10)	

NOTES TO TABLE NO. 1:

1. See UFC Appendix III-C, Section 9(c)
2. See UBC Section 1210(a) for power source requirements
3. See UBC Section 1210(a) for basement coverages
4. See UFC Article 50, Section 50.113(a)
5. See UBC Section 1807(d)
6. See UBC Section 1807(e)
7. See exception, UFC Appendix III-C, Section 9(c)
8. See AS 18.70.095
9. Group E Occupancies having more than 50 occupants that are equipped throughout with an approved fire extinguishing system are exempt from this requirement.
10. See AS 18.70.082

(f) Portable and manual fire control equipment must be installed and maintained as required in 13 AAC 50.025 and must meet the requirements of U.F.C. Standard 10-1, N.F.P.A. Volume 1, Standards 14, and Volume 6, Standards 1961, 1962, and 1963.

(g) Automatic fire-extinguishing systems must be maintained as required in 13 AAC 50.025 and must meet the requirements of U.B.C. Standard 38-1; 38-2; U.F.C. Standards 79-1 and 79-2; N.F.P.A. Volume 1, Standards 11, 11A, 11C, 12A, 12B, 13, and 17; Volume 1, Standards 15 through 18, 20, 22 and 24, and Volume 7, Standard 26.

(h) A person may not commercially inspect, service, repair, recharge, install, or hydrostatic test portable fire extinguishers unless a permit from the state fire marshal has been issued. The following apply to permits under this subsection:

(1) each applicant for a fire extinguisher permit must pass a written examination given by the state fire marshal in order to qualify for a permit;

(2) a permit endorsed with the type of qualification will be issued to each qualified person;

(3) a permit issued under this section is presumed to contain the requirement that the applicant carry out the permitted activity in compliance with all the requirements of state statute and this chapter; a permit is nontransferrable; an infraction of this chapter or prescribed manuals may be cause for revocation of the permit; a person now holding a permit from the state fire marshal has three years after August 2, 1986, to comply with (1) of this subsection.

(4) permits are classified and defined as follows:

(A) Class I — inspection of portable fire extinguishers;

(B) Class II — inspect, recharge, distribute, and maintain portable fire extinguishers;

(C) Class III — hydrostatic testing;

(D) Class IV — recharge, maintain, and hydrostatic test extinguishers;

(E) Class V — inspect, recharge, distribute, maintain and hydrostatic test extinguishers.

(i) No person, directly or through an agent, may sell or offer for sale in the state a fire extinguisher or extinguishing system, either new or used, unless it has been tested, approved, and labeled by the Factory Mutual Laboratories, Underwriters Laboratories, Inc., or other testing laboratory recognized by the state fire marshal.

(j) No portable fire extinguisher or fixed fire extinguishing system may be sold, leased, or installed in the state if the extinguisher or system uses as an extinguishing agent carbon tetrachloride, methyl bromide, or other halogenated hydrocarbon that is toxic or has not been accepted by a recognized laboratory as specified in (i) of this section; a halon extinguishing system must be reviewed by the state fire marshal before installation.

(k) No person may sell or offer for sale any compound, powder, or liquid used as a fire retardant, or for flameproofing or for fire-extinguisher refilling purposes unless the product has been approved by the Underwriters Laboratories, Inc., Factory Mutual Laboratories, or other testing laboratory recognized by the state fire marshal.

(l) For the recharging of any dry chemical fire extinguisher to be valid, the person must date and initial an approved self-sticking internal maintenance tag with the date and initials corresponding to the exterior service tag. The internal maintenance tag must be placed securely on the top, most exposed portion of the pick-up tube before reassembly and recharging. Failure to initial, date, and place an internal maintenance tag is grounds for suspension or revocation of a person's permit. The tag must be an uncoated litho-gum-backed label (tag) approved by the state fire marshal. The minimum size acceptable is one-half inch by three inches; however, when in place, it must overlap itself on the pick-up tube by at least one-quarter inch. The tube must be clean and dry before tab application. (Eff. 6/25/69, Register 30; am 2/21/71, Register 37; am 1/14/81, Register 77; am 8/2/86, Register 99)

Authority: AS 18.70.010
AS 18.70.080
AS 18.70.095

13 AAC 50.040. HAZARDOUS SUBSTANCES. Repealed 1/14/81.

13 AAC 50.050. HAZARDOUS PROCESSES. Repealed 1/14/81.

13 AAC 50.060. OCCUPANCY STANDARDS. (a) Fire-retardant paints or solutions, if required in an occupancy, must be renewed as often as necessary to maintain the required flame-retardant properties.

(b) Emergency evacuation drills must be conducted in the following occupancies, and a record of each drill must be kept. The person in charge of the occupancy shall make the records available for inspection by the state fire marshal or the marshal's authorized representative:

(1) in educational (group E of the U.B.C.) and institutional occupancies, emergency evacuation drills must be conducted monthly;

(2) in educational (group B, division 2 of the U.B.C.) occupancies, emergency evacuation drills must be conducted quarterly;

(3) in hospital and nursing home occupancies, emergency evacuation drills must be conducted quarterly on each shift to familiarize employees with signals and emergency action required under varied

conditions; the movement of infirm or bedridden patients to safe areas or to the exterior of the building is not required.

(4) emergency evacuation drills in (1), (2), and (3) of this subsection may be postponed during severe weather.

(c) Furnishings and decorations in assembly, educational, and institutional occupancies must be flame-retardant; and must meet the standards of the large and small scale tests of N.F.P.A. Standard 701, Standard Method of Fire Tests for Flame-Resistant Textiles and Films.

(d) In institutional occupancies, window draperies and curtains for decorative and acoustical purposes must be flame-retardant; and cubicle curtains must be noncombustible or flame retardant. Window draperies, curtains, and cubicle curtains must meet the standards of the large and small scale tests of N.F.P.A. Standard 701, Standard Method of Fire Tests for Flame-Resistant Textiles and Films.

(e) Wastebaskets and other waste containers in educational and institutional occupancies must be of noncombustible material or approved for intended use by Underwriters Laboratories, Inc., Factory Mutual Laboratories or other testing laboratory approved by the state fire marshal.

(f) Repealed 8/2/86.

(In effect before 7/28/59; am 6/25/69, Register 30; am 2/21/71, Register 37; am 1/14/81, Register 77; am 8/2/86, Register 99)

Authority: AS 18.70.010
AS 18.70.080

13 AAC 50.070. INSPECTIONS, ORDERS, AND APPEALS. (a) If an officer of the state fire marshal's office finds a building or premises in which the following dangerous conditions or materials exist, the officer shall order the conditions or materials to be remedied or removed as directed by the state fire marshal:

(1) dangerous amounts of combustible, explosive, or otherwise hazardous materials;

(2) hazardous conditions arising from defective or improperly installed equipment for handling or using combustible, flammable, explosive, or otherwise hazardous materials;

(3) dangerous accumulations of rubbish, waste paper, boxes, shavings, or combustible or flammable liquids or materials;

(4) accumulations of dust or waste materials in air conditioning or ventilating systems or of grease in kitchen or other exhaust ducts;

(5) obstructions to or on fire escapes, stairs, passageways, doors, or windows, which will interfere with operations of the fire department or egress of occupants in case of fire or explosion;

(6) ineffective fire assembly, exit door, attic separation, area separation, fire separation, or occupancy separation;

(7) a chimney, smokestack, stove, oven, incinerator, furnace or other heating device, or electric fixture found to be defective or unsafe so as to create a fire danger;

(8) a building or structure which because of a lack of repairs, adequate exit facilities, automatic or other fire-alarm apparatus or fire-extinguishing equipment, or any other cause including age, is hazardous; or

(9) any other condition that violates this chapter, and which the state fire marshal finds is hazardous.

(b) If an order is issued to eliminate a dangerous or hazardous condition described in (a) of this section and the condition is not corrected within the time specified in the order, the state fire marshal will, in the marshal's discretion, post at the entrance to the building or premises a notice to read "DO NOT ENTER, UNSAFE TO OCCUPY. DEPARTMENT OF PUBLIC SAFETY, DIVISION OF FIRE PREVENTION." The notice must remain posted until the required repair, demolition or removal is completed, and may not be removed without written permission of the state fire marshal. No person may enter a posted building unless the person does so to make required repairs or to demolish or remove the hazardous condition.

(c) The service of an order for the correction of a violation of (a) of this section must be made upon the owner, occupant, or other persons responsible for the condition by

(1) delivering a copy to the person responsible for the condition or to the person in charge of the premises;

(2) affixing a copy in a conspicuous place on the door to the entrance of the premises; or

(3) mailing a copy of the report to the responsible person by certified mail at his or her last known address.

(d) If a building or other premises is owned by one person and occupied by another under lease or similar agreement, orders issued under (a) of this section apply to the occupant unless the rule or order requires additions to or changes in the premises which would become the real property of the owner of the premises. In which case, the rule or order must be sent to the owner.

(e) If an order is made by the state fire marshal or the marshal's authorized representative, the owner or occupant may, within seven days after receiving the order, file a written appeal to the state fire marshal who will, within 10 days after receiving the appeal, review the order and issue a written decision. The order must be complied with within the time specified in the order unless the state fire marshal revokes the order. The state fire marshal's decision on an appeal under this subsection is a final order of the Department of Public Safety for purposes of AS 18.70.100. (In effect before 7/28/59; am

6/25/69, Register 30; am 2/21/71, Register 37; am 1/14/81, Register 77; am 8/2/86, Register 99)

Authority: AS 18.70.070
AS 18.70.080
AS 18.70.090

13 AAC 50.075. DEFERRING TO LOCAL AUTHORITIES. (a) If the state fire marshal determines that a municipality has the expertise to conduct fire safety inspections and to enforce state fire safety regulations, the state fire marshal will, in the marshal's discretion, defer to the local authorities for fire safety inspection and enforcement activities; the deferral is effective upon acceptance by the local governing body of the municipality.

(b) The state fire marshal will, in the marshal's discretion cancel a deferral under (a) of this section after 30 days' written notice if the marshal finds the fire safety inspection and enforcement activities of the local political subdivision do not adequately enforce state statutes and regulations. (Eff. 1/14/81, Register 77; am 8/2/86, Register 99)

Authority: AS 18.70.090

13 AAC 50.080. FIRE CHIEF DEFINED. In this chapter "chief," or "chief of fire department," "chief of the bureau of fire prevention," or "chief engineer," where used in the Uniform Fire Code, means the state fire marshal or the chief of an organized municipal fire department. (Eff. 6/25/69, Register 30; am 2/21/71, Register 37; am 1/14/81, Register 77)

Authority: AS 18.70.080

CHAPTER 51. FIREWORKS

13 AAC 51.010. USE OF DANGEROUS FIREWORKS. (a) A pyrotechnic operator's permit under AS 18.72.010(b) is required for the use or display of dangerous fireworks. The permit will be granted upon verified application on forms provided by the state fire marshal.

(b) There must be attached to the application for a permit under this section a policy or certified true copy of a policy of public liability insurance coverage and products liability insurance coverage, including both accident and occurrence insurance for not less than $500,000

for bodily injury and death and not less than $300,000 for property damage. The insurance must be provided by the applicant or his or her employer.

(c) An applicant for a pyrotechnic operator's permit must take and pass a written examination administered by the state fire marshal and must provide verification of at least six public displays as an assistant. (Eff. 6/25/69, Register 30; am 2/21/71, Register 37; am 1/14/81, Register 77; am 8/2/86, Register 99)

Authority: AS 18.70.010
AS 18.72.010

13 AAC 51.020. PERMITS FOR THE SALE OF SALABLE FIREWORKS. (a) A permit is required for the sale of salable fireworks under AS 18.72.020(a) and will be granted upon verified application to the state fire marshal on forms provided by him or her.

(b) A permit will not be granted to a person who plans to sell fireworks at retail within 250 feet of any place of habitation or public assembly. (Eff. 6/25/69, Register 30; am 2/21/71, Register 37; am 1/14/81, Register 77)

Authority: AS 18.70.010
AS 18.72.020
AS 18.72.030

13 AAC 51.030. STORAGE OF DANGEROUS AND SALABLE FIREWORKS. (a) N.F.P.A. Standard 1124, chapters 3 and 4, is adopted for regulating the storage of dangerous and salable fireworks.

(b) The license of a wholesaler of either dangerous or salable fireworks, issued under AS 18.72, who fails to comply with this section is subject to revocation under 13 AAC 51.050. (Eff. 6/25/69, Register 30; am 1/14/81, Register 77; am 8/2/86, Register 99)

Authority: AS 18.70.010

Editor's notes. — Copies of the N.F.P.A. Standards may be obtained from the National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02269.

13 AAC 51.040. DISCHARGE OF FIREWORKS. (a) No fireworks of any kind may be discharged in the state within 250 feet of an establishment that sells fireworks at retail or wholesale.

(b) The discharge of dangerous fireworks in the state, unless for a purpose authorized by a permit under AS 18.72.010 and this chapter, is prohibited. (Eff. 6/25/69, Register 30; am 1/14/81, Register 77)

Authority: AS 18.70.080
AS 18.72.010

13 AAC 51.050. REVOCATION OF LICENSES AND PERMITS. The state fire marshal will, in the marshal's discretion, revoke a permit or license if the permittee or licensee fails to comply with the requirements of this chapter or with AS 18.72, or if the permittee or licensee conducts business in a way that is hazardous to life and property. (Eff. 6/25/69, Register 30; am 1/14/81, Register 77; am 8/2/86, Register 99)

Authority: AS 18.70.010
AS 18.70.080
AS 18.70.090
AS 18.72.010
AS 18.72.020
AS 18.72.030

13 AAC 51.060. SEIZURE. The state fire marshal will seize, at the expense of the owner of the fireworks, dangerous or salable fireworks from persons who do not have a valid permit or license to possess those fireworks under AS 18.72 of this chapter. (Eff. 6/25/69, Register 30; am 1/14/81, Register 77)

Authority: AS 18.70.070

CHAPTER 52. FIRE SERVICE OPERATIONS

13 AAC 52.010. INVESTIGATION OF FIRES. (a) The state fire marshal, or the marshal's authorized representative, will investigate, or cause to be investigated, the origin, cause, and circumstances of each fire occurring in the state which is of suspicious nature or which involves loss of life, or injury to a person, or by which property is destroyed or substantially damaged. The investigation will begin immediately upon the occurrence of the fire, and if it appears that the fire is of suspicious origin, the fire marshal must be immediately notified of the facts. The marshal's authorized representative will immediately take charge of the physical evidence and if there is reason to believe that a fire resulted from crime or that a crime has been committed in connection with a fire, the state fire marshal or the marshal's authorized representative will report the fact in writing to the district attorney of the judicial district in which the fire occurred.

(b) At any time during the course of a fire investigation, the state fire marshal will, in the marshal's discretion, post at the entrance to a building or premises, a notice to read "KEEP OUT. BY ORDER OF THE STATE FIRE MARSHAL." After the sign is posted, it is unlawful for persons other than those authorized by the state fire marshal to

enter the premises so posted. (In effect before 7/28/59; am 6/25/69, Register 30; am 2/21/71, Register 37; am 8/2/86, Register 99)

Authority: AS 18.70.030
AS 44.17.030

13 AAC 52.020. FIRE RECORDS. (a) Every fire or other related incident must be reported in writing to the state fire marshal within the first 10 days of the month following the month in which the fire occurred, by the fire official in whose jurisdiction the fire occurred, or, lacking such an official, the investigating officer. The report must be as prescribed by the fire marshal and must contain the statement of facts relating to the cause, origin, and circumstances of the fire, injury to persons, extent of the damage, and the insurance upon the property.

(b) The state fire marshal will keep a record of all fires and of all the facts concerning them, including statistics as to the extent of fires and the damage caused, and whether the losses were covered by insurance and, if so, in what amount. The record will be compiled from the reports made by fire department officers and inspectors. All the records are public, except when a criminal matter is pending.

(c) Each fire insurance company authorized to transact business in this state, or its authorized agent or adjustor, shall report to the state fire marshal all fire losses on property insured, giving the name and address of the insured, the date of the fire, the amount of probable loss, the character of the property destroyed or damaged and the probable cause of the fire. The loss must be reported to the state fire marshal within three days after the final adjustment is made. (In effect before 7/28/59; am 7/25/60, Register 30; am 2/21/71, Register 37; am 8/2/86, Register 99)

Authority: AS 18.70.030
AS 44.17.030

13 AAC 52.030. STANDARDS OF ORGANIZATION AND SERVICES OF A FIRE DEPARTMENT. (a) The state fire marshal will recognize a fire department which is authorized to perform its duties by municipal ordinance. The state fire marshal may recognize a volunteer fire department outside a municipality.

(b) A fire department must have operating regulations which

(1) define the boundaries of the area served;

(2) provide for the appointment of chiefs of the department;

(3) provide for programs of inspection, training and fire prevention;

(4) provide for the investigation and determination of the cause of each fire occurring within its boundaries and a report of each fire to the state fire marshal;

(5) provide for a liaison with a water authority on matters of importance to the fire department;

(6) provide for regular meetings of fire department personnel for business and training purposes. (Eff. 2/21/71, Register 37; am 1/14/81, Register 77)

Authority: AS 18.70.010
AS 43.18.010(a)

13 AAC 52.040. WORKERS' COMPENSATION FOR VOLUNTEER FIREFIGHTERS. (a) A fire department of any political subdivision or service area recognized by the state fire marshal under 13 AAC 52.030 may also be eligible under AS 23.30.220(a)(4) and AS 23.30.243 regarding workers' compensation if a complete list of members is submitted annually to the state fire marshal. The list must include the name, age, and rank or office of each member.

(b) Each addition or deletion from the membership list must be forwarded to the state fire marshal within 10 days after the addition or deletion. (Eff. 2/21/71, Register 37; am 8/2/86, Register 99)

Authority: AS 18.70.010
AS 23.30.243

CHAPTER 55. GENERAL PROVISIONS FOR 13 AAC 50 — 13 AAC 55

13 AAC 55.010. INTENT. It is the intent of 13 AAC 50 — 13 AAC 55 to prescribe regulations consistent with nationally recognized good practices for the safeguarding of life and property from fire and explosion arising from the storage, handling and use of hazardous substances, materials, and devices, and from conditions hazardous to life and property in the use or occupancy of buildings or premises. (In effect before 7/28/59; am 6/25/69, Register 30; am 2/21/71, Register 37)

Authority: AS 18.70.080
AS 18.72.010

13 AAC 55.020. PRIMA FACIE EVIDENCE. Repealed 1/14/81.

13 AAC 55.030. APPLICATION. (a) Chs. 13 AAC 50 — 13 AAC 55 apply equally to new and existing conditions except that existing conditions not in strict compliance with the terms of those chapters are permitted to continue where the exceptions do not constitute a distinct hazard to life and property in the opinion of the state fire marshal.

(b) Nothing contained in 13 AAC 50 — 13 AAC 55 may be construed to apply to the transportation of an article or thing shipped under the jurisdiction of and in compliance with the regulations prescribed by the United States Department of Transportation, or as applying to the military forces of the United States.

(c) No local political subdivision may set minimum standards that are less stringent than those set out in 13 AAC 50 — 13 AAC 55 unless that action is approved in writing by the state fire marshal after receipt of justification from the local jurisdiction. (In effect before 7/28/59; am 6/25/69, Register 30; am 8/2/86, Register 99)

Authority: AS 18.70.080

13 AAC 55.040. AUTHORITY TO ENTER PREMISES. Repealed 2/21/71.

13 AAC 55.050. INSPECTION OF BUILDINGS AND PREMISES. Repealed 2/21/71.

13 AAC 55.060. ORDERS TO ELIMINATE DANGEROUS OR HAZARDOUS CONDITIONS. Repealed 2/21/71.

13 AAC 55.070. SERVICE OF ORDERS. Repealed 2/21/71.

13 AAC 55.080. INVESTIGATION OF FIRES. Repealed 2/21/71.

13 AAC 55.090. FIRE RECORDS. Repealed 2/21/71.

13 AAC 55.100. PERMITS. (a) Application for a permit or approval, if required by 13 AAC 50 — 13 AAC 55, must be made in such form and detail as the state fire marshal prescribes. An application for a permit or approval must be accompanied by such plans as are required by the state fire marshal.

(b) Permits or approvals must, at all times, be kept on the premises designated in the permit or approval, and are subject to inspection by the state fire marshal.

(c) The state fire marshal will revoke a permit or approval if a violation of 13 AAC 50 — 13 AAC 55 is found upon inspection or if a false statement or misrepresentation as to a material fact was made in

the application or plans on which the permit or approval was based. (In effect before 7/28/59, am 6/25/69, Register 30; am 2/21/71, Register 37; am 8/2/86, Register 99)

Authority: AS 18.70.080
AS 18.72.010

13 AAC 55.110. FIRE DRILLS. Repealed 2/21/71.

13 AAC 55.120. DEPUTY FIRE MARSHALS. Repealed 2/21/71.

13 AAC 55.130. MODIFICATIONS AND WAIVERS. The state fire marshal may modify or waive 13 AAC 50 — 13 AAC 55 if there are practical difficulties which make strict compliance with these requirements difficult. However, modifications or waivers will be granted only when the intent as provided in 13 AAC 55.010 is met and public safety is secured. Applications for modifications or waivers must be made in writing and include reasons why the regulatory provisions cannot be followed, including the applicant's reasons why any proposed alternative method meets the intent of 13 AAC 50 — 13 AAC 55 as provided in 13 AAC 55.010. All requests will be answered in writing and a record maintained in the fire marshal's office. (In effect before 7/28/59; am 6/25/69, Register 30; am 2/21/71, Register 37; am 1/14/81, Register 77)

Authority: AS 18.70.080

13 AAC 55.140. LIABILITY FOR DAMAGES. 13 AAC 50 — 13 AAC 55 may not be construed to hold the state responsible for any damage to persons or property by reason of the inspection or reinspection authorized in these chapters or failure to inspect or reinspect or by reason of a permit issued as provided in these chapters or by reason of the approval or disapproval of any equipment authorized in these chapters. (In effect before 7/28/59; am 6/25/69, Register 30; am 2/21/71, Register 37)

Authority: AS 18.70.080

13 AAC 55.150. DEFINITIONS. (a) In 13 AAC 50 — 13 AAC 55, unless the context indicates otherwise

(1) "U.B.C." means the Uniform Building Code and Uniform Building Code Standards published by the International Conference of Building Officials, 1985 Edition;

(2) "U.M.C." means the Uniform Mechanical Code and Uniform Mechanical Code Standards published by the International Conference of Building Officials, 1985 Edition;

(3) "U.F.C." means the Uniform Fire Code and Uniform Fire Code Standards published by the International Conference of Building Officials and Western Fire Chiefs Association, 1985 Edition;

(4) repealed 8/2/86;

(5) "N.E.C." means the National Electrical Code, published by the National Fire Protection Association and approved by the American Standards Association, as described in AS 18.60.580;

(6) "I.C.B.O." means the International Conference of Building Officials;

(7) "N.F.P.A." means the National Fire Protection Association, National Fire Codes Volumes 1 through 8, (Except NFPA Pamphlet #70 or "N.E.C."), 1985 Edition;

(8) "I.S.O." means Insurance Services Office, Sprinklered Risk Section, 10 United Nations Plaza, San Francisco, California 94102;

(9) repealed 8/2/86;

(10) "approved by the state fire marshal" means approved after investigation or testing conducted by the state fire marshal;

(11) "bureau of fire prevention" means the State Division of Fire Prevention or the fire prevention division of an organized fire department;

(12) repealed 8/2/86;

(13) repealed 8/2/86;

(14) "furnishings" means window draperies and curtains, cubicle curtains, stage and platform draperies and curtains, and fixed seating that is permanently attached within a building; "furnishings" does not include upholstered furniture, mattresses, or floor coverings;

(15) repealed 8/2/86;

(16) "municipality" means a borough or city of any class;

(17) "manual fire alarm system" means a local manual alarm system installed in conformance with U.B.C. Standard 18-1; U.F.C. Standard 10-2; N.F.P.A. Standard 72A; and approved by the state fire marshal;

(18) "occupancy" means the purpose for which a building or part of a building is used or intended to be used, and includes the building or room housing the use; "change of occupancy" does not include change of tenants or proprietors;

(19) "organized fire department" means a fire department or fire protection group that has filed a certificate of existence with the state fire marshal and has received official recognition;

(20) repealed 8/2/86;

(21) "rural or rural areas" means areas where there is no organized fire department with a recognized water system;

(22) "sleeping area" means one or more habitable rooms, including guest rooms and bedrooms, which are occupied or intended to be occupied for sleeping purposes;

(23) "state fire marshal, fire marshal, or marshal" means the chief officer of the division of fire prevention in the Department of Public Safety.

(b) In 13 AAC 50 — 13 AAC 55, the definitions in the U.B.C., U.F.C., and the N.F.P.A. standards are adopted as modified by this section. (In effect before 7/28/59; am 6/25/69, Register 30; am 2/21/71, Register 37; am 1/14/81, Register 77; am 8/2/86, Register 99)

Authority: AS 18.70.080

Editor's notes. — (1) Copies of the N.F.P.A. Standards may be obtained from the National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02269.

(2) Copies of the U.B.C., U.B.C. Standards and the Uniform Fire Code and the U.F.C. Standards may be obtained from the Western Fire Chiefs Association, 5360 South Workman Mill Road, Whittier, California 90601.

(3) Copies of the codes adopted in 13 AAC 50 — 13 AAC 55 may be examined in offices of the State Fire Marshal in Fairbanks, Anchorage, and Fairbanks. Copies of 13 AAC 50 — 13 AAC 55 may be obtained from these offices.

PART 3. OFFICE OF THE COMMISSIONER

CHAPTER 60. LICENSING OF SECURITY GUARDS AND SECURITY GUARD AGENCIES

Article 1. Security Guard Agencies

13 AAC 60.010. AGENCY LICENSE QUALIFICATIONS. (a) In order to be eligible to receive a license as a security guard agency, each applicant or each partner of a partnership and the qualified agent employed by an agency must be

(1) a United States citizen or resident alien with work permit;

(2) a resident of the State of Alaska for at least 30 days before application;

Article 6. Definitions.

Section
900. Definitions

Sec. 11.81.900. Definitions. (a) For purposes of this title, unless the context requires otherwise,

(1) a person acts "intentionally" with respect to a result described by a provision of law defining an offense when the person's conscious objective is to cause that result; when intentionally causing a particular result is an element of an offense, that intent need not be the person's only objective;

(2) a person acts "knowingly" with respect to conduct or to a circumstance described by a provision of law defining an offense when the person is aware that the conduct is of that nature or that the circumstance exists; when knowledge of the existence of a particular fact is an element of an offense, that knowledge is established if a person is aware of a substantial probability of its existence, unless the person actually believes it does not exist; a person who is unaware of conduct or a circumstance of which the person would have been aware had that person not been intoxicated acts knowingly with respect to that conduct or circumstance;

(3) a person acts "recklessly" with respect to a result or to a circumstance described by a provision of law defining an offense when the person is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists; the risk must be of such a nature and degree that disregard of it constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation; a person who is unaware of a risk of which the person would have been aware had that person not been intoxicated acts recklessly with respect to that risk;

(4) a person acts with "criminal negligence" with respect to a result or to a circumstance described by a provision of law defining an offense when the person fails to perceive a substantial and unjustifiable risk that the result will occur or that the circumstance exists; the risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.

(b) In this title, unless otherwise specified or unless the context requires otherwise,

(1) "affirmative defense" means that

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

(B) the defendant has the burden of establishing the defense by a preponderance of the evidence;

Rule 603 (a), a bond for costs on appeal shall be filed with the notice of appeal. The amount of the bond, if any, shall be fixed by the superior court and it shall be regulated by the terms of Rule 204 (c) and Civil Rule 80. The bond shall be filed with the superior court.

(2) Notwithstanding subparagraph (1), a bond for costs on appeal shall not be required of the claimant in an appeal from the Alaska Workers' Compensation Board or in an appeal from a denial of a claim for benefits under the Employment Security Act.

(d) **Failure to File or Insufficiency of Bond.** If a cost bond on appeal is not filed within the time specified by paragraph (c), application for leave to file any such bond must be made to the superior court.

(SCO 439 effective November 15, 1980; amended by SCO 460 effective June 1, 1981; by SCO 495 effective January 4, 1982; by SCO 510 effective August 30, 1982; by SCO 514 effective October 1, 1982; by SCO 554 effective April 4, 1983; by SCO 575 effective February 1, 1984; by SCO 847 effective January 15, 1988; and by SCO 888 effective July 15, 1988)

Annotations

Cases

Thirty-day limit for appeal from administrative agency does not apply when administrative process is not adjudicatory. Moore v. State, Op. No. 1284, 553 P2d 8 (Alaska 1976).

Where dismissed tenured teacher first knew of need to appeal in April, was served with decision in June, and did not attempt to appeal until August, it was not abuse of discretion to refuse to relax rules to permit appeal. Jerrel v. Kenai Peninsula Borough School District, Op. No. 1458, 567 P2d 760 (Alaska 1977).

Time for appeal begins to run with service of written findings, conclusions, and decision. Jerrel v. Lenai Peninsula Borough School District, Op. No. 1458, 567 P2d 760 (Alaska 1977).

Time period for appeal of property tax assessment was not tolled by action of borough assembly on an ordinance that would have mooted the appeal. North Star, Inc. v. Fairbanks North Star Borough, Op. No. 2258, 621 P2d 1335 (Alaska 1981).

A claim for damages resulting from an administrative order and an action for injunctive relief which seeks the same review by the superior court as could be had in an appeal from the administrative order are to be treated as administrative appeals, but a request for declaratory judgment on the constitutionality of statutes and regulations governing the administrative agency is an independent action. Owsichek v. Alaska Guide Licensing and Control Board, Op. No. 2328, 627 P2d 616 (Alaska 1981).

The essential question in determining whether a case before the superior court is an administrative appeal is whether the claim challenges a prior administrative decision. Ballard v. Stich, Op. No. 2363, 628 P2d 918 (Alaska 1981).

Considerations to be balanced in deciding whether to relax the appellate time limit rules include the right to appellate review, the willfulness and extent of the rules violation and the possible injustice that might result from a dismissal. Estate of Smith v. State, Op. No. 2428, 635 P2d 465 (Alaska 1981).

Trial court abused its discretion in failing to relax the thirty-day appeal period of this rule in situation where late filing was due to appellant's mistaken but not unreasonable belief that he was entitled to reconsideration of an agency decision denying his request for an administrative hearing. Anderson v. State Commercial Fisheries Entry Comm., Op. No. 2588, 654 P2d 1320 (Alaska 1982).

Reconsideration decision by Commercial Fisheries Entry Commission reversing hearing officer's recommended decision to grant appellant's entry permit application constituted a final administrative determination which could be appealed to superior court within 30 days. Ostman v. State, Commercial Fisheries Entry, Op. No. 2792, 678 P2d 1323 (Alaska 1984).

Although a final determination denying appellant's application for an entry permit was made more than 3 years prior to his request that the case be reopened due to administrative error, entry commission's letter to applicant rejecting his claim of administrative error on the merits was a final administrative determination subject to judicial review. Moore v. State, Commercial Fisheries, Op. No. 2870, 688 P2d 582 (Alaska 1984).

Superior court order which would have exempted all administrative appeals from the bond requirements of the appellate rules was invalid. State, Dept. of Public Safety v. Wilkinson, Op. No. 2875, 688 P2d 939 (Alaska 1984).

An appeal to superior court from a decision of a state administrative agency requires service of notice upon the attorney general. Vincent v. State, Commercial Fish. Entry, Op. No. 3041, 717 P2d 391 (Alaska 1986).

Failure of applicant to serve attorney general's office with a notice of appeal from state administrative agency's denial of permit application did not deprive superior court of jurisdiction over the appeal, thus court, after allowing late service of notice upon the attorney general, could hear the appeal, absent proof of prejudice to the state from the late notification. Vincent v. State, Commercial Fish. Entry Commission, Op. No. 3041, 717 P2d 391 (Alaska 1986).

Civil Rule 210, which places the ultimate responsibility on the appellant for preparation of a record within 40 days from the date of filing the notice of appeal from an agency decision and provides for dismissal as a sanction for noncompliance, did not relieve the agency of its obligation to prepare the record on appeal and did not excuse the superior court clerk's failure to notify the agency of the date by which the record had to be prepared. King v. State Dept. of Natural Resources, Op. No. 3226, 742 P2d 253 (Alaska 1987).

In light of the fact that superior court order holding appellant's appeal from an administrative agency decision in abeyance was never vacated, that the agency did not furnish the superior court clerk with a copy of its decision on reconsideration, that the agency did not prepare and certify the record on appeal; and that the clerk of the superior court never notified the agency of the date by which it was to complete the record on appeal; appellant's counsel reasonably could have been in doubt as to how to proceed with the administrative appeal, thus superior court erred in dismissing the appeal for lack of prosecution. King v. State Dept. of Natural Resources, Op. No. 3226, 742 P2d 253 (Alaska 1987).

Administrative appeals, even when they are labeled independent actions, mut be taken within 30 days. Haynes v. State Comm. Fisheries Entry, Op. No. 3254, 746 P2d 892 (Alaska 1987).

However denominated, a claim is functionally an administrative appeal if it requires the court to consider the propriety of an agency determination; accordingly, appellant's claim for injunctive relief had to be considered an administrative appeal since the relief sought — a remand of his fishing application to the Commercial Fisheries Entry Commission — could only be granted if the court determined that the commission's prior decision denying the application was erroneous. Haynes v. State Comm. Fisheries Entry, Op. No. 3254, 746 P2d 892 (Alaska 1987).

Rule 603. Stays.

(a) Civil Appeals.

(1) *Automatic Stay.* Stays of execution or enforcement of district court judgments shall be as set forth in District Court Civil Rule 24(a).

(2) *Stay Upon Appeal — Supersedeas Bond.* When an appeal is taken, the appellant may obtain a stay of proceedings to enforce the judgment by filing a supersedeas bond with the district court, or with the superior court in administrative appeals, not later than 30 days after the date shown in the clerk's certificate of distribution on the judgment or the date of mailing or delivery of the administrative order appealed from. The bond shall be conditioned for the satisfaction in full of any judgment (including interest and costs) which may be given against the appellant by the superior court, or for satisfaction in full of the judgment (including interest and costs) of the district court if the appeal is dismissed. The bond shall comply with the provisions of Civil Rule 80.

(3) *Proceedings on Stay.* When an appeal is taken, the district court judge or magistrate shall enter a written order indicating whether or not the proceedings to enforce a judgment have been stayed. If the proceedings are stayed, and process has been issued to enforce the judgment, the judge or magistrate must recall the same by written notice to the officer holding the process. Thereupon the process must be returned to the magistrate, and all property seized or levied upon by virtue of such process must be released if it has not been sold, and in cases of civil arrest, the person arrested must be released from custody. This subdivision of this rule shall not be construed as making any stay retroactive or as invalidating any proceedings or levies prior to the time the stay becomes effective.

(b) **Criminal Appeals.** If a sentence of imprisonment is imposed, admission to bail shall be allowed and the sentence stayed, pending appeal. A sentence to pay a fine or a fine and costs may be stayed, if an appeal is taken, by the district judge or magistrate or by the superior court upon such terms as the court deems proper. During appeal the court may require the defendant to deposit the whole or any part of the fine and costs in the registry of the superior court, or to give bond for the payment thereof, or to submit to an examination of assets, and it may make an appropriate order to restrain the defendant from dissipating his assets. An order placing the defendant on probation shall be stayed if an appeal is taken.

(SCO 439 effective November 15, 1980; amended by SCO 554 effective April 4, 1983)

Annotations

Cases

An employer must make a showing of irreparable damage as well as filing a supersedeas bond in order to obtain a stay of a disability award in worker's compensation cases. Wise Mechanical Contractors v. Bignell, Op. No. 2329, 626 P2d 1085 (Alaska 1981).

A monetary enforcement judgment on an adminstrative order may be stayed as a matter of right upon the posting of an appropriate supersedeas bond under this rule. Pipeliners Union v. Alaska State Commission, Op. No. 2820, 681 P2d 330 (Alaska 1984).

In a consolidated review and enforcement proceeding pertaining to an order of the Alaska State Commission for Human Rights, the court could enter an enforcement judgment before entering a judgment on the appeal. Pipeliners Union v. Alaska State Commission, Op. No. 2820, 681 P2d 330 (Alaska 1984).

Superior court improperly stayed the payment of taxes during its review of administrative agency's order where the supersedeas bond filed with the court for the principal amount of taxes due did not include costs and interest. City of Nome v. Catholic Bishop of Northern Alaska, Op. No. 2986, 707 P2d 870 (Alaska 1985).

Even if AS 29.53.390(a), which authorizes judicial review of a disputed tax assessment, were interpreted to require payment of taxes before appeal, this rule supersedes it. City of Nome v. Catholic Bishop of Nome Alaska, Op. No. 2986, 707 P2d 870 (Alaska 1985).

Rule 604. Record.

(a) **Preparation of Record.** The original papers and exhibits filed in the district court or with the administrative agency, and the record of proceedings before the district court or agency, shall constitute the record on appeal unless otherwise ordered by the court or unless the parties designate an abbreviated record. A party is not required to submit a designation of the record unless the court so requires. The record of proceedings before the district court will include cassette tapes rather than transcripts unless the superior court orders the submission of transcripts. Otherwise, the record on appeal must be prepared and certified in conformity with Appellate Rule 210. The clerk of the trial courts shall prepare the record on appeal in an appeal of district court judgments. The administrative agency shall prepare the record on appeal in an appeal of an administrative decision. All reasonable costs incurred in connection with preparing the record on appeal shall be borne by the appellant; in the instance of a cross-appeal, the costs may be apportioned. The preparing agency may require in advance the costs as reasonably estimated by the agency.

(b) **Time.** The time for certification of the record on appeal shall run from service of the notice required by Rule 602 (b)(1) on the person who is to prepare the record. If the record is to be prepared by the clerk with whom the notice of appeal was initially filed, the time for certification of the record shall run from the date of filing of the notice of appeal.

(c) **Power of Court to Correct or Modify Record of District Court.** If any differences arise as to whether the record on appeal truly discloses what occurred in the district court, the difference shall be submitted to and settled by the superior court and the record made to conform to it. If anything material to either party is omitted from the record on appeal by error or accident or is misstated therein, the parties by stipulation, or the superior court on motion or of its own initiative may direct that the omission or misstatement shall be corrected, and if necessary that a supplemental record shall be certified and transmitted by the district court.

(SCO 439 effective November 15, 1980 as amended

Cross references. — For definition of terms used in this title, see AS 11.81.900.

Effect of amendments. — The 1982 amendment added paragraph (3) to subsection (a).

Article 3. Arson, Criminal Mischief, and Related Offenses.

Collateral references. — 5 Am. Jur. 2d, Arson and Related Offenses, § 1 et seq.; 52 Am. Jur. 2d, Malicious Mischief, § 1 et seq.

6A C.J.S., Arson, § 1 et seq.; 54 C.J.S., Malicious Mischief, § 1 et seq.

Burning as element of offense of arson, 1 ALR 1161.

Evidence of other offenses in prosecution for arson, 3 ALR 1544; 22 ALR 1016; 27 ALR 357; 63 ALR 602.

Criminal responsibility of one cooperating in offense of arson which he is incapable of committing personally, 5 ALR 783; 74 ALR 1110; 131 ALR 1322.

Ownership of property as affecting criminal liability for burning thereof, 17 ALR 1168.

Intent as essential element of crime of burning property to defraud insurer, 17 ALR 1180.

Ratification or sanction by owner of property or interest therein as affecting criminal liability of person burning same, 34 ALR 1230.

Death resulting from arson as within contemplation of statute which makes homicide in perpetration of felony murder in first degree, 87 ALR 414.

Sufficiency of evidence on issue of negligence in action for spread of fire purposely and lawfully kindled, 24 ALR2d 241.

Vacancy or nonoccupancy of building as affecting its character as "dwelling" as regards arson, 44 ALR2d 1456.

Burning of building by mortgagor as burning property of another so as to constitute arson, 76 ALR2d 524.

Single act affecting multiple victims as constituting multiple assaults or homicides, 8 ALR4th 960.

Sec. 11.46.400. Arson in the first degree. (a) A person commits the crime of arson in the first degree if the person intentionally damages any property by starting a fire or causing an explosion and by that act recklessly places another person in danger of serious physical injury. For purposes of this section, "another person" includes but is not limited to fire and police service personnel or other public employees who respond to emergencies, regardless of rank, functions, or duties being performed.

(b) Arson in the first degree is a class A felony. (§ 4 ch 166 SLA 1978; am § 1 ch 39 SLA 1983)

Effect of amendments. — The 1983 amendment removed a personal pronoun in the first sentence and added the second sentence.

Legislative history reports. — For Senate letter of intent relating to ch. 39, SLA 1983, see 1983 Senate Journal, pp. 106 and 171; for House letter of intent on that Act, see 1983 House Journal, p. 1250; see also 1983 House Journal, p. 1699.

NOTES TO DECISIONS

For cases construing former first degree arson statute, see Salmas v. United States, 277 F.2d 914 (9th Cir. 1960); Rank v. State, Sup. Ct. Op. No. 92 (File No. 167), 373 P.2d 744 (1962), overruled on another point in Shafer v. State, Sup. Ct. Op. No. 561 (File No. 1034), 456 P.2d 466 (1969); Stumbaugh v. State, Sup. Ct. Op. No. 1919 (File No. 3037), 599 P.2d 166 (1979); Williams v. State, Sup. Ct. Op. No. 2147 (File No. 3901), 611 P.2d 1381 (1980).

Sentences upheld. See Faulkenberry v. State, Ct. App. Op. No. 116 (File No. 6231, 6235), 649 P.2d 951 (1982).

Cited in Williams v. State, Sup. Ct. Op. No. 2147 (File No. 3901), 611 P.2d 1381 (1980); Putnam v. State, Sup. Ct. Op. No. 2251 (File No. 3475), 629 P.2d 35 (1980).

Sec. 11.46.410. Arson in the second degree. (a) A person commits the crime of arson in the second degree if the person intentionally damages a building by starting a fire or causing an explosion.

(b) In a prosecution under this section, it is an affirmative defense

(1) that no person other than the defendant had a possessory, proprietary, or security interest in the building or that all persons having such an interest consented to the defendant's conduct; and

(2) that the sole intent of the defendant was to damage or destroy the building for a lawful purpose.

(c) Arson in the second degree is a class B felony. (§ 4 ch 166 SLA 1978)

NOTES TO DECISIONS

For cases construing former second degree arson statute, see Salmas v. United States, 277 F.2d 914 (9th Cir. 1960); Tarnef v. State, Sup. Ct. Op. No. 911 (File No. 1486), 512 P.2d 923 (1973); Jacinth v. State, Sup. Ct. Op. No. 1829 (File No. 3567), 593 P.2d 264 (1979).

Sec. 11.46.430. Criminally negligent burning. (a) A person commits the crime of criminally negligent burning if with criminal negligence the person damages property of another by fire or explosion.

(b) Criminally negligent burning is a class A misdemeanor. (§ 4 ch 166 SLA 1978)

Sec. 11.46.450. Failure to control or report a dangerous fire. (a) A person commits the crime of failure to control or report a dangerous fire if the person knows that a fire is endangering life or a substantial amount of property of another and fails to take reasonable measures to put out or control the fire, when the person can do so without substantial personal risk, or to give a prompt fire alarm if

(1) the person knows that the person is under an official, contractual, or other legal duty to prevent or combat the fire; or

(2) the fire was started by the person, with the person's consent, or on property in the person's custody or control.

H B

63

STEVE COWPER
GOVERNOR

cc
HB63

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 9, 1989

The Honorable Sam Cotten
Speaker of the House
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Representative Cotten:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill extending the board of parole for the customary four-year period (see AS 44.66.-010(c)). Under current law the board is scheduled to "sunset" June 30, 1989. Under AS 44.66.010(b), it will then go into its wind-down year.

Article III, sec. 21, of the Alaska Constitution requires a parole system to be provided by law. The state board of parole was created by ch. 81, SLA 1960, and has existed ever since. Parole remains an essential component of the state's criminal justice system. The board has been an effective vehicle in administering the parole process. I urge your support of this bill.

Sincerely,

Steve Cowper
Governor

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: HB 63
PUBLISH DATE: HOUSE 2/13/89

FISCAL NOTE

REQUEST:

Revision Date:
Title: Continuing the state Board of Parole
Sponsor: Rules/Governor
Requestor: House Finance

Agency Affected: Corrections
BRU:
Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

The proposed funding for the state Board of Parole is included in the Governor's FY 90 budget request for the Department of Corrections. See attached budget detail.

Prepared by: House Finance Committee
Division: Co-Chairman Ron Larson
Phone: 465-3727
Date: 2/10/89

Approved by Commissioner:
Agency:
Date:

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

07-20-01-05-00 (0-00-50520-0695) STATE OF ALASKA -- COMPONENT BUDGET SUMMARY SALSFRMA 14:14 1/05/89

AGENCY: DEPARTMENT OF CORRECTIONS
CATEGORY: ADMINISTRATION OF JUSTICE

PROGRAM: ADMINISTRATION AND SUPPORT
SUB-PROGRAM: PAROLE BOARD

LEG. FIN.

FISCAL YEAR 1990

EXPENDITURES & FUNDING	(01) FY88 ACT	(02) FY89 CC	(03) COL 03	(24) FY89 ATH	(25) FY90BASE	(26) FY90ADJD	(27) FY90 AGY	(28) FY90 GOV	(09) HOUSE	(10) SENATE	(11) C. C.	(12) BILLS	(13) LEG.REC.
01 PERS. SERV.	206.1	212.6		212.6	219.0	219.0	234.1	219.0					
02 TRAVEL	91.6	107.5		107.5	107.5	107.5	119.3	107.5					
03 CONTRACTUAL	82.0	72.6		72.6	72.6	72.6	82.9	72.6					
04 COMMODITIES	1.7	2.1		2.1	2.1	2.1	2.1	2.1					
05 EQUIPMENT	4.0												
06 LANDS/BLDGS													
07 GRANTS, CLMS													
08 MISC.													
** TOTAL EXPEND	385.4	394.8		394.8	401.2	401.2	438.4	401.2					
09 I-A TRANSFER		2.3		2.3	2.3	2.3	2.3	2.3					
1004 GEN FUND	385.4	394.8		394.8	401.2	401.2	438.4	401.2					
15 FULL TIME	4.0	4.0		4.0	4.0	4.0	4.0	4.0					
16 PART TIME													
17 TEMPORARY													
18 STAFF MONTHS	48.0	48.0		48.0	48.0	48.0	48.0	48.0					

(c) A prisoner who is not eligible for discretionary parole, or who is not released on discretionary parole, shall be released on mandatory parole for the term of good time deductions credited under AS 33.20, if the term or terms of imprisonment exceed 180 days.

(d) A prisoner released on discretionary or mandatory parole is subject to the conditions of parole imposed under AS 33.16.150. Parole may be revoked under AS 33.16.220. (§ 2 ch 88 SLA 1985)

Legislative history reports. — For House letter of intent related to this section, see 1985 House Journal, p. 821.

Sec. 33.16.020. Board of parole. (a) There is in the Department of Corrections a board of parole consisting of five members appointed by the governor, subject to confirmation by a majority of members of the legislature in joint session.

(b) Members of the board serve for staggered terms of five years and until their successors are appointed.

(c) The governor shall choose the presiding officer of the board from among the membership.

(d) The governor shall make appointments to the board with due regard for representation on the board of the ethnic, racial, sexual, and cultural populations of the state.

(e) The governor shall appoint at least one member who resides in the First Judicial District, one member who resides in the Third Judicial District, and one member who resides in either the Second or Fourth Judicial District. (§ 2 ch 88 SLA 1985)

Cross references. — For transitional provisions relating to board members, see § 8, ch 88, SLA 1985 in the Temporary and Special Acts.

NOTES TO DECISIONS

There is no authority which would sanction the expansion of the superior court's jurisdiction to pass sentence into a realm of review and modification which is statutorily vested in either the supreme court or the executive branch of government. Davenport v. State, Sup. Ct. Op. No. 1218 (File No. 2202), 543 P.2d 1204 (1975); Szeratics v. State, Sup. Ct. Op. No. 1525 (File No. 3390), 572 P.2d 63 (1977), decided under former AS 33.15.-010.

Collateral references. — Statute conferring power upon administrative body in respect to parole of prisoners or discharge of parolees, as unconstitutional infringement of power of executive. 143 ALR 1488.

invasion. The governor, as provided by law, shall appoint all general and flag officers of the armed forces of the State, subject to confirmation by a majority of the members of the legislature in joint session. He shall appoint and commission all other officers.

Martial Law

SECTION 20. The governor may proclaim martial law when the public safety requires it in case of rebellion or actual or imminent invasion. Martial law shall not continue for longer than twenty days without the approval of a majority of the members of the legislature in joint session.

Executive Clemency

SECTION 21. Subject to procedure prescribed by law, the governor may grant pardons, commutations, and reprieves, and may suspend and remit fines and forfeitures. This power shall not extend to impeachment. A parole system shall be provided by law.

Executive Branch

SECTION 22. All executive and administrative offices, departments, and agencies of the state government and their respective functions, powers and duties shall be allocated by law among and within not more than twenty principal departments, so as to group them as far as practicable according to major purposes. Regulatory, quasi-judicial, and temporary agencies may be established by law and need not be allocated within a principal department.

Reorganization

SECTION 23. The governor may make changes in the organization of the executive branch or in the assignment of functions among its units which he considers necessary for efficient administration. Where these changes require the force of law, they shall be set forth in executive orders. The legislature shall have sixty days of a regular session, or a full session if of shorter duration, to disapprove these executive orders. Unless disapproved by resolution concurred in by a majority of the members

A PERFORMANCE REPORT ON THE DEPARTMENT OF CORRECTIONS ALASKA STATE BOARD OF PAROLE

July 1, 1984 - June 30, 1988

Audit Control Number

20-1346-89-R

Commissioner, Department of Corrections	Susan Humphrey-Barnett
Deputy Commissioner, Department of Corrections	J. Frank Prewitt

Members of the
Alaska State Board of Parole

Member	Donald R. Bruce
Member	David F. Cooper
Member	Mike Miller
Member	Alonzo Patterson, Jr.
Member	Dolores G. Weiler

STATE OF ALASKA

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

AUDIT DIVISION
PO BOX W
JUNEAU, ALASKA 99811-3300

October 13, 1988

Members of the Legislative Budget and Audit Committee:

According to the provisions of Titles 24 and 44 of the Alaska Statutes, the Division of Legislative Audit is required to conduct a "sunset" review of the Alaska State Board of Parole.

At the request of the Chairman, during Fiscal Year 1988 budget deliberations, the Audit Division's budget was revised to reflect certain changes in the organization of the Committee's two Divisions. The revised budget of the Audit Division reflected efficiencies that might be obtained by utilizing the staff of the Legislative Finance Division on selected audit assignments during the interim.

As a result, the audit of the Alaska State Board of Parole was conducted and this report has been prepared by the Legislative Finance Division. We feel this report discharges our responsibility under Titles 24 and 44. The report is submitted for your review.

Randy S. Welker, CPA
Legislative Auditor
Division of Legislative Audit

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

FINANCE DIVISION
P.O. BOX WF
JUNEAU, ALASKA 99811
PHONE: (907) 465-3795

August 8, 1988

Members of the Legislative Budget
and Audit Committee:

In accordance with the provisions of Title 24 and 44 of the Alaska Statutes (sunset legislation), the attached report is submitted for your review.

A PERFORMANCE REPORT
ON THE
ALASKA STATE BOARD OF PAROLE

July 1, 1984 - June 30, 1988

Audit Control Number

20-1346-89-R

Mike Greany, Director
Division of Legislative Finance

TABLE OF CONTENTS

PURPOSE AND SCOPE OF THE REPORT

PURPOSE

In accordance with Title 24 and 44 of the Alaska Statutes (sunset legislation), an examination of the activities of the Alaska State Board of Parole for the past four years was conducted to determine if the Board has been operating in an effective and efficient manner.

Legislative intent requires consideration of this report during legislative oversight hearings to determine whether the Alaska State Board of Parole should be reestablished. The law now specifies that the Board will terminate June 30, 1989, and have one year from that date to conclude its affairs.

SCOPE

The major areas of our examination were program evaluation, administrative functions, and board proceedings. We reviewed and evaluated the following:

1. Applicable statutes and regulations.

2. Discussions with Board members and staff.

3. Tests of records maintained in conjunction with review of statistics reported by the Board.

4. Complaints filed with the Attorney General's Office, the Ombudsman's Office, the Human Rights Commission, and the Equal Employment Opportunity Office.

5. Memos related to Board meetings.

6. Discussions with the Attorney General's Office.

ORGANIZATION AND FUNCTION

Article III, Section 21, of the Alaska Constitution states that a parole system shall be established by law. AS 33.16 is the law that establishes the Alaska State Board of Parole and its authority. The Board consists of five part-time members who are appointed by the Governor and serve without salary, although travel costs and per diem are provided. The Board has an administrative staff which currently consists of an Executive Director, Parole Board Officer, and two clerical personnel.

The Board basically conducts two types of hearings: release hearings and revocation hearings. By statute, an inmate may not be considered for parole release until a statutory minimum time in prison has been satisfied. Upon application, an eligible inmate will be considered for parole and appear before the Board. The Board will consider the case in view of certain criteria (e.g., institutional behavior, release plans, past record, recommendations, etc.). A parole decision will either release an inmate on parole, continue the case for future consideration, or deny parole. The Board is also responsible for setting parole conditions and supervising prisoners released on parole.

When it has been determined that a parolee has violated a law or condition of parole, the Board will hold a revocation hearing to decide upon the course of action to take in the case. The Board may choose to revoke the violator's parole and return the parolee to prison, whereby no credit is allowed against the sentence for time served on parole; parole may be revoked and the parolee reparoled without time credited against the sentence for prior time on parole; or no action may be taken. The Board has the authority to establish terms and conditions of parole. Enforcement is accomplished through revocation proceedings.

In each parole release case, the Board weighs the benefits of granting parole release against the inherent risks involved. The benefits of parole embrace opportunities for successful community life and reduced monetary and social costs which follow successful parole release cases. The risks involve additional social and monetary costs that will result from parole violations.

The Board receives General Fund appropriations to support its operations. The Board's primary expenditures are for personal services relating to the administrative staff and travel associated with the various Board meetings and hearings.

Report Conclusion

Article III, Section 21, of the Alaska Constitution requires the establishment of a parole system. The current system comprises a parole release program administered by the Alaska State Board of Parole. We found no viable alternative to the present system at this time; therefore, in our opinion, the Board should continue to administer the parole release program.

The parole decision process requires a great deal of dedication, time, and effort on the part of the uncompensated Board members. We commend the members for their service in what is oftentimes a complex and difficult job.

CORRECTION

THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY

02–576(2/77)

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ANALYSIS OF PUBLIC NEED

Limited Analysis

The following analyses of board activities relate to the public need factors defined in the "sunset" law. These analyses are not intended to be comprehensive, but address those areas we were able to cover within the scope of our review.

I. The extent to which the board, commission, or program has operated in the public interest.

A. Revised statutes and regulations have clarified procedures and guidelines for both the public and parolees/inmates.

B. Rights of parolees/inmates are scrupulously maintained.

II. The extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personnel matters.

A. The Board has identified specific objectives and has maintained proper information for performance evaluation.

B. The Attorney General's Office took nearly three years to review the draft parole guidelines, but the final document should be published in December of 1988.

III. The extent to which the board, commission, or agency has recommended statutory changes which are generally of benefit to the public interest.

Statutes were completely revised by Chapter 88, SLA85.

IV. The extent to which the board, commission, or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service which it has provided.

The Board actively solicits input from interested persons and groups as well as receiving information from public comments to the Department of Corrections.

V. The extent to which the board, commission, or agency has encouraged public participation in the making of its regulations and decisions.

Public participation has been limited to the legislative hearings which resulted in the revision of the parole statutes.

VI. The efficiency with which public inquires or complaints regarding the activities of the board, commission, or agency filed with it, with the department to which a board or commission is administratively assigned, or with the Office of the Ombudsman have been processed and resolved.

A. Twenty cases were opened by the Ombudsman's Office since the last audit. Nine cases were declined, three discontinued, and the Ombudsman advised the inmate/parolee on proper procedures in six cases. Of two fully investigated cases, an error was found in an agency booklet concerning pardons (subsequently withdrawn for correction) and a parole revocation was found to be justified.
B. Complaints filed directly with the Department or the Board are handled as requests for rehearings or special hearings.

VII. The extent to which a board or commission which regulated entry into an occupation or profession has presented qualified applicants to serve the public.

The Parole Board does not regulate an occupation or profession.

VIII. The extent to which state personnel practice, including affirmative action requirements, have been complied with by the board, commission, or agency to its own activities and the area or activity or interest.

All hires and Board appointments complied with appropriate regulations.

IX. The extent to which statutory, regulatory, budgeting, or other changes are necessary to enable the agency, board, or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

Additional staff may be necessary if the workload increases at the present rate (see Appendix A).

APPENDIX

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APPENDIX A

ALASKA STATE BOARD OF PAROLE

WORKLOADS

Work Activity	1982	1983	1984	1985	1986	1987
Parole Hearings	166	238	244	231	233	210
Mandatory Parole Revocation Hearings	7	26	37	40	57	128
Preliminary Revocation Hearings	26	32	26	31	67	75
Arrest Warrants Issued	27	45	41	88	86	151
Supplemental Mandatory Conditions Set	26	N/A	141	179	373	515
Emergency Conditional Commutation Release	none	104	107	174	350	0
Consider Non-Award of HB 106 Good Time	none	0	0	0	144	303
TOTAL	252	445	596	743	1,310	1,382

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STATE OF ALASKA

DEPARTMENT OF CORRECTIONS

STEVE COWPER, GOVERNOR

REPLY TO:

P.O. BOX T
JUNEAU, ALASKA 99811-2000
PHONE (907) 465-3376

DEC 2 1988

December 15, 1988

Randy S. Welker
Legislative Auditor
Division of Legislative Audit
P.O. Box W
Juneau, Alaska 99811-3300

RE: Parole Board
Preliminary Audit Report

Dear Mr. Welker:

Thank you for the copy of the preliminary audit report on the Alaska Parole Board and for the opportunity to respond to the report.

We agree with the report conclusion and the analysis of public need. I would suggest several minor changes as noted below.

The last phrase of the 3rd sentence in the first paragraph on page 3 should be amended to read "although travel costs, compensation and per diem are provided."

The last sentence in the first paragraph on page 3 needs to reflect an administrative staff of Executive Director, Parole Administrator, Parole Board Officer, and one clerical personnel.

Finally, clarification needs to be provided on Appendix A attached to the report. In an attempt to keep the chart simple, the Parole Board did not provide the numbers of "other work activity" included in the totals for each year. In retrospect that was a mistake. A corrected appendix is attached for your information including the additional line with the accurate numbers for each of the years.

Please contact me or Parole Board Executive Director Sam Trivette if you need additional information.

Sincerely yours,

Susan Humphrey-Barnett

Susan Humphrey-Barnett
Commissioner

20-01LH

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68

FILE 1

LAW OFFICES
Mark R. Moderow
880 "N" STREET, SUITE 203
ANCHORAGE, ALASKA 99501
TELECOPIER (907) 276-7321
TELEPHONE (907) 277-5955

JERALD M. REICHLIN
ASSOCIATE

DATE: 4/27

TO: Chris Christensen c/o / Sen. Faiks

CITY: Juneau

FROM: Mark Moderow
Law Offices of Mark R. Moderow
880 "N" Street, Ste 203
Anchorage, Alaska 99501

TOTAL NUMBER OF PAGES (including cover page): 2

FILE NUMBER: ofc genl.

RECEIVING TELECOPIER NUMBER: 465-4923

OTHER INSTRUCTIONS: please call on this issue - I understand there is talk of a rewrite of this bill and the native community, esp. the villages who could be most affected, is not aware of the "ownership" implications.

WE ARE TRANSMITTING FROM A RICOH FAX20

OUR TELECOPIER NO. (907) 276-7321

IF YOU DO NOT RECEIVE ALL THE PAGES, PLEASE CALL BACK AS SOON AS POSSIBLE TO: (907) 277-5955

TIME: _____

Also, there is existing litigation on this issue between the State and the Federal gov't arising out of an ANCSA transfer near new Chenega in the Prince William Sound. State v. Block U.S. Dist. Ct. Anch. A85-280-Civ.

PROPOSED AMENDMENT TO SCS CSHB 68 (O&G)

BEFORE THE SENATE JUDICIAL COMMITTEE

*AMENDMENT #1, PAGE 3, LINE 27: add a new subsection (2) and renumber the existing subsection to conform. The new subsection shall read:

(2) "The person is a corporation, organized under 43 U.S.C.1601-1628 (Alaska Native Claims Settlement Act) that acquired the facility under the Federal Act; or"

The purpose of this amendment is to allow the defense conceptualized by currently proposed subsection (2) for governmental entities to apply also to Alaska Native Corporations. The lands from which the Native Corporations were allowed to select their entitlement were withdrawn by the Federal Government and in most cases the selections within the withdrawals were mandated by an application of the administrative procedures for selection. Thus in the same way the governmental entities could acquire land through involuntary acquisition, the Native Corporations "involuntarily acquired" their land under the Federal Act. As long as they meet the other requirements set forth in the section, they should be entitled to the same protection.

PROPOSED AMENDMENT TO SCS CSHB 68 (O&G)

BEFORE THE SENATE JUDICIAL COMMITTEE

*AMENDMENT #2, PAGE 2, LINE 8-19: delete subsections (5) & (6)

PAGE 3, LINE 19: delete the word "disposal" and replace with the word "release"

PAGE 3, LINE 25: change the line to read in its entirety "or was released or threatened to be released"

PAGE 4, LINE 3: delete the words "disposed of" and replace with the phrase "released or threatened to be released"

Reason: It is an illogical extension of hazardous substance law to include an imposition of strict enterprise liability through the use of a format developed for hazardous wastes. Most hazardous substances encompassed by the revised act, certainly the newly encompassed uncontaminated refined oil, have useful applications in the stream of commerce. The concepts of "disposal", "storage", and "treatment" are all keyed to substances that have no commercial use and must be disposed of or treated. They are so defined at A.S. 46.03.900(7), (28) & (29), with "dispose" and "treat" referencing the provisions of CERCLA which specifically does not include petroleum in its definition of a hazardous substance. 42 U.S.C. §9601(14). The idea of transport as a liability producing act is logical to deal with the midnight dumping of hazardous waste. It is however illogical that mere ownership, control, possession or transport of items of commerce while they are moving between ordinary users should impose liability once the substance has been safely passed on. A significant amount of the petroleum products delivered within the state are sold by jobbers who own the petroleum for the length the time it takes to transport the product to the retail outlets from another parties wholesale facility. This deminimus ownership and an interpretation that the jobber "selected" the retail facility to would yield unconscionable liability as against the minimal participation in the economic enterprise.

The balance of the changes would simply conform the rest of the language of the act with the remain subsections.

PROPOSED AMENDMENT TO SCS CSHB 68 (O&G)

BEFORE THE SENATE JUDICIAL COMMITTEE

*AMENDMENT #3, PAGE 2, LINE 14: insert the following phrase after the semicolon:

"This paragraph does not apply to the ownership, control or possession of uncontaminated refined oil products;"

PAGE 2, LINE 19: add the words "uncontaminated" and "products" so that the line reads:

"apply to the transport of uncontaminated refined oil products."

REASON: While the retention of a hazardous waste strict enterprise liability standard in the area of hazardous substances remains illogical, the proposed exclusions would allow this segment of ordinary commerce to continue. (See reasons to Proposed Amendment #2) A large amount of the retail petroleum industry in the State is conducted by independent jobbers and dealers who, at present, are barely able to obtain adequate insurance coverage. The imposition of a continuing liability on the jobbers which supply these independent dealers and the lack of insurance availability, could eliminate this segment of the economy. The proposed amendment would retain the extension of liability contained in Subsections (3) and (4) of the Bill as to all substances. It, however, would limit the less well thought out provisions of Subsections (5) and (6) to allow for an independent distribution system within the State.

MEMORANDUM

State of Alaska

Department of Law

Comm	
Deputy	
So Asst	
So Asst	
Info Off	
Adm Asst	
Int Aud	
ASD	
ESD	
LS&S	
W/C	
cc:	
cc:	

TO: The Honorable Jim Sampson
Commissioner
Department of Labor

RECEIVED
JAN 26 1989
OFFICE OF THE COMMISSIONER

DATE: January 25, 1989

FILE NO:

TEL. NO: 465-3603

SUBJECT: HB 71 - "An Act relating to elevator safety standards; and provided for an effective date"

Deborah E Behr

FROM: Deborah E. Behr
Assistant Attorney General
Human Services-Juneau

In response to a House Labor and Commerce Committee inquiry, you have asked whether the latest edition of elevator standards code or inspection manual should be enacted in the statute, instead of naming a particular edition by year. I understand that this information is needed for a committee meeting to be held Thursday, January 26, 1989.

It is our opinion, that the incorporation of all future editions of the code or manual by reference cannot be adopted in law by inclusion of the phase "latest edition." We reach this conclusion for the following reasons.

First, under Article II, Section 14 of the Constitution of Alaska, the Alaska State Legislature has been assigned the function to enact bills into law. In this situation, the legislature would be delegating the development of the content of future legislation to a non-state agency, the American Society of Mechanical Engineers which presently develops the code in question. We believe this delegation to be impermissible under these circumstances, since the legislature would be unaware of the contents of future amendments at time of enactment of the bill into law. Second, contents of future editions of the code may be contrary to state law or violative of the state constitution. There would be no legislative review to avoid such law taking effect. Third, the adoption of a future code by reference may violate Article II, Section 15 of the Constitution of Alaska, since the Governor would have no meaningful way to exercise his veto power over future unknown amendments, which may be contrary to law or not in the best interest of Alaska. Finally, the adoption of the latest edition may cause confusion to the courts and the general public as to which standards apply. Under such a situation, the Department of Labor may find difficulty enforcing compliance with the standards under AS 18.60.820.

If the legislature wishes to avoid having frequently to amend the statute to keep pace with current editions of the code or manual, one approach might be to authorize the Department of Labor to adopt standards in regulation. By giving regulatory authority, the department could have the flexibility to adopt standards to changing conditions, without having to seek legislative modification. Since the legislature has the power to annul regulations, the legislature could still perform its oversight of these functions. See AS 44.62.320.

If you have further questions, please do not hesitate to contact me.

DEB:jh

cc: Arthur H. Peterson
Assistant Attorney General

Bob Evans
Legislative Liason

FLOOR MEMO -- SCS CSHB 68 (JUD) "AN ACT RELATING TO LIABILITY FOR THE RELEASE OR THREATENED RELEASE OF A HAZARDOUS SUBSTANCE; RECOVERY OF STATE COSTS FOR AN OIL OR HAZARDOUS SUBSTANCE RELEASE; LIABILITY OF RESPONSE ACTION CONTRACTORS; AND PROVIDING FOR AN EFFECTIVE DATE.

JAN, THE ATTORNEY GENERAL HAS PREPARED A SECTIONAL ANALYSIS OF THE JUDICIARY CS WHICH THE MEMBERS HAVE ON THEIR DESKS. IT IS A BRIEF, LAYMAN'S LANGUAGE SECTIONAL THAT IS FAIRLY ACCURATE.

AS PASSED BY THE HOUSE, CSHB 68 (JUD) AM DID THREE PRIMARY THINGS:

1. IT PROVIDED THE STATE WITH A LIEN FOR ITS COSTS IN RESPONDING TO A RELEASE OR THREATENED RELEASE OF A HAZARDOUS SUBSTANCE, INCLUDING OIL SPILLS. THE LIEN EXISTS WITH RESPECT TO THE PROPERTY OF THE PERSON WHO IS RESPONSIBLE FOR THE RELEASE OF THE HAZARDOUS SUBSTANCE. THE JUDICIARY SCS DID NOT CHANGE THIS LANGUAGE; IT IS FOUND IN SECTIONS 1 AND 7 OF THE JUDICIARY SCS.

2. IT PROVIDED THAT A RESPONSE ACTION CONTRACTOR, WHO IS A PERSON HIRED TO CLEAN UP A HAZARDOUS SUBSTANCE RELEASE, IS NOT STRICTLY LIABLE FOR HIS ACTIONS, UNLESS HE IS ALSO THE PERSON WHO IS RESPONSIBLE FOR THE ACTUAL RELEASE AND IS SIMPLY TRYING TO CLEAN UP HIS OWN MESS. THIS IS THE STANDARD SET BY FEDERAL LAW, AND IT RECOGNIZES THAT A PERSON HIRED TO CLEAN UP SOMEONE ELSE'S MISTAKE SHOULD ONLY BE LIABLE FOR HIS OWN NEGLIGENCE, AND NOT THE NEGLIGENCE OF THE PERSON WHO ACTUALLY CREATED THE PROBLEM. TO DO OTHERWISE WOULD DISCOURAGE PEOPLE FROM PROVIDING THIS NECESSARY SERVICE. THE JUDICIARY SCS DID NOT CHANGE THE SUBSTANCE OF THIS LANGUAGE; IT IS FOUND IN SECTION 3 OF THE JUDICIARY SCS. THE SCS MAKES ONE MINOR TECHNICAL CHANGE, DRAFTED BY THE AG, THAT CLARIFIES THE ORIGINAL DRAFTER'S INTENT (JAN, THIS IS ON PAGE 7, LINE 3, MARKED ON YOUR COPY).

3. THE THIRD AND MAJOR PORTION OF THE BILL RECEIVED BY THE SENATE REPEALS AND REENACTS AS 46.03.822, WHICH SETS THE STANDARD OF LIABILITY FOR PERSONS RESPONSIBLE FOR THE RELEASE OF A HAZARDOUS SUBSTANCE. CURRENT LAW PROVIDES THAT THE PERSON WHO OWNS OR CONTROLS A HAZARDOUS SUBSTANCE, INCLUDING OIL, IS STRICTLY LIABLE FOR DAMAGES AND RESPONSE COSTS IF THAT SUBSTANCE IS RELEASED. STRICT LIABILITY IS LIABILITY WITHOUT REGARD TO FAULT.

THE BILL RECEIVED BY THE SENATE CHANGED THIS, BY SETTING FORTH A LAUNDRY LIST OF PERSONS WHO WOULD BE HELD STRICTLY LIABLE IN THE EVENT OF A HAZARDOUS SUBSTANCE RELEASE. THIS LIST WAS SO COMPREHENSIVE THAT IT INCLUDED VIRTUALLY EVERYONE IN THE CHAIN

OF COMMERCE WHO HAD EVER HANDLED THE SUBSTANCE, EVEN IF THAT PERSON HAD ABSOLUTELY NOTHING TO DO WITH THE RELEASE. THE BILL ALSO HELD EACH OF THOSE PARTIES 100% RESPONSIBLE FOR THE DAMAGES AND CLEAN UP COSTS, EVEN IF IT COULD BE PROVEN BEYOND DOUBT THAT THE PERSON ONLY CAUSED 1% OF THE HARM. THE FEDERAL COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT, KNOWN AS CERCLA, WAS USED AS A PARTIAL MODEL BY THE DRAFTER OF THE ORIGINAL BILL.

IN LOOKING AT THE BILL, AND AT CERCLA, THE COMMITTEE FELT THAT A NUMBER OF MAJOR ISSUES HAD NOT YET BEEN ADDRESSED, AND IN THE HEARING PROCESS AND IN MEETINGS WITH THE AG, WE MADE CHANGES TO THE BILL TO RESOLVE ITS MAJOR PROBLEMS, YET TO STILL ALLOW IT TO ACCOMPLISH ITS ORIGINAL PURPOSE, THAT BEING TO MAKE THE PARTIES RESPONSIBLE FOR A HAZARDOUS SUBSTANCE RELEASE TO PAY, AS WELL AS TO ENCOURAGE PEOPLE HANDLING HAZARDOUS SUBSTANCES TO BE MORE CAREFUL WITH THEM.

ONE MAJOR WAY IN WHICH CERCLA DIFFERED FROM THE ORIGINAL VERSION OF HB 68 IS THAT HB 68 TREATED ALL HAZARDOUS SUBSTANCES IDENTICALLY, WHETHER THEY BE WASTE PRODUCTS OR USEFUL COMPOUNDS STILL IN THE CHAIN OF COMMERCE. CERCLA, ON THE OTHER HAND, IMPLICITLY TREATS WASTES DIFFERENTLY THAN IT TREATS USEFUL SUBSTANCES. IT DOES THIS BY MAKING VIRTUALLY EVERYONE IN THE CHAIN WHOEVER HAD POSSESSION OF A WASTE PRODUCT RESPONSIBLE IN THE EVENT THAT ONE OF THEM SPILLS IT. HOWEVER, FOR USEFUL SUBSTANCES, NOT EVERYONE IN THE CHAIN IS STRICTLY LIABLE; ONLY THE PERSONS IN POSSESSION OF IT AT THE TIME THE SPILL OCCURRED.

THE JUDICIARY COMMITTEE BELIEVED THAT IT WOULD BE USEFUL TO TREAT WASTE PRODUCTS AND USEFUL PRODUCTS STILL IN THE STREAM OF COMMERCE SLIGHTLY DIFFERENTLY. THIS IS PARTICULARLY IMPORTANT IN ALASKA, SINCE SO MANY USEFUL PRODUCTS THAT ARE TECHNICALLY HAZARDOUS SUBSTANCES GET SHIPPED OUT TO THE BUSH. WE WANTED TO CRAFT AN SCS THAT WOULD GIVE PERSONS AN INCENTIVE TO BE CAREFUL, YET DID NOT GIVE THEM A DISINCENTIVE TO CONTINUE PROVIDING RURAL ALASKANS WITH THE NECESSITIES OF LIFE.

WHILE CERCLA WAS A USEFUL MODEL IN CONCEPTUALIZING THE DISTINCTION BETWEEN HAZARDOUS WASTES AND USEFUL HAZARDOUS SUBSTANCES, IT WENT TOO FAR FOR OUR PURPOSES. THE REASON IT WENT TOO FAR IS BECAUSE CERCLA DOES NOT APPLY TO OIL; OIL PRODUCTS ARE COVERED BY OTHER FEDERAL STRICT LIABILITY STATUTES. IN CONTRAST, CURRENT ALASKA LAW AND HB 68 INCLUDE OIL IN THE DEFINITION OF A HAZARDOUS SUBSTANCE. OBVIOUSLY, WHILE OIL IS A USEFUL PRODUCT STILL IN THE STREAM OF COMMERCE, AND NOT A WASTE, LARGE ENOUGH QUANTITIES ARE SHIPPED THROUGH OUR STATE THAT WE DID NOT WANT TO LIMIT RESPONSIBILITY TO ONLY THE PERSON IN POSSESSION; IT IS NECESSARY TO ALSO HOLD STRICTLY LIABLE THE PERSON WHO OWNS IT, AND THE PERSON WHO HAS CONTROL OVER IT, AND THE PERSON OPERATING THE FACILITY OR

VESSEL IN WHICH IT IS CONTAINED.

THUS, THE SCS STRIKES A BALANCE BETWEEN CERCLA AND THE ORIGINAL VERSION OF HB 68. IT ADOPTS SOME LANGUAGE FROM CERCLA, IN AN EFFORT TO BRING SOME OF ITS FAIRNESS IN THE IMPOSITION OF STRICT LIABILITY INTO HB 68. AT THE SAME TIME, IT DOES NOT GO NEARLY AS FAR AS CERCLA IN LIMITING THE LIABILITY OF PERSONS DEALING IN USEFUL SUBSTANCES.

THE SCS RETAINS THE LIABILITY PROVISION OF CURRENT LAW, MAKING THE OWNER OF, AND THE PERSON IN CONTROL OF A HAZARDOUS SUBSTANCE, STRICTLY LIABLE FOR A RELEASE (PAGE 1, LINES 27 - 28). IT THEN SUBSTITUTES THE LIABLE PARTIES LAUNDRY LIST FOUND IN CERCLA, WITH SOME MODIFICATIONS, FOR THE LIABLE PARTIES LAUNDRY LIST FOUND IN THE ORIGINAL VERSION OF HB 68 (PAGE 2 LINES 1 - 21). WHILE THE LANGUAGE CONTAINED IN BOTH BILLS IS DIFFICULT TO COMPREHEND, THE EFFECTS OF THIS SUBSTITUTION ARE FAIRLY SIMPLE:

1. THIS GIVES OUR ALASKA COURTS ACCESS TO THE VAST BODY OF FEDERAL CASE LAW INTERPRETING CERCLA; IT MEANS THAT PERSONS DEALING IN HAZARDOUS SUBSTANCES WILL HAVE AN IDEA OF WHAT BURDENS OUR NEW LAW IS IMPOSING WITHOUT WAITING YEARS FOR THE ALASKA COURTS TO SLOWLY TELL THEM; AND

2. IT MAKES VIRTUALLY EVERYONE IN THE CHAIN OF COMMERCE STRICTLY LIABLE IF THE SUBSTANCE IS A WASTE PRODUCT THAT IS BEING DISPOSED OF. THIS INCLUDES NOT ONLY THE OWNERS AND PERSONS IN POSSESSION AT THE TIME OF THE RELEASE, BUT ALSO THOSE WHO ARRANGED FOR DISPOSAL, THOSE WHO TRANSPORTED THE WASTE TO A DISPOSAL SITE THEY SELECTED, AND THE PERSONS WHO OWN THE DISPOSAL SITE. ON THE OTHER HAND, IF THE PRODUCT IS NOT A WASTE BEING SHIPPED FOR DISPOSAL, IF IT IS INSTEAD A USEFUL PRODUCT STILL IN THE CHAIN OF COMMERCE, NOT EVERYONE WHO HAS EVER TOUCHED IT IS AUTOMATICALLY STRICTLY LIABLE. INSTEAD, THE PERSONS WHO ARE STRICTLY LIABLE INCLUDE THE OWNER OF THE SUBSTANCE, THE PERSON IN CONTROL OF THE SUBSTANCE, THE PERSON IN POSSESSION OF THE SUBSTANCE, THE PERSON WHO OWNS THE LAND ON WHICH THE SUBSTANCE IS SPILLED AND THE PERSON WHO OWNS THE CONTAINER, SUCH AS A VESSEL, FROM WHICH THE SUBSTANCE IS SPILLED.

ONE EXAMPLE MIGHT ILLUSTRATE THE DIFFERENCE BETWEEN THE SCS AND THE ORIGINAL BILL. UNDER THE ORIGINAL BILL, A PERSON WHO LOADED A USEFUL PRODUCT LIKE HEATING OIL OR AV GAS INTO A DRUM FOR SHIPMENT TO A RURAL COMMUNITY, AND THEN SOLD IT TO SOMEONE ELSE, WOULD BE HELD STRICTLY LIABLE IF AT ANY POINT IN THE FUTURE SOMEONE RELEASED THAT SUBSTANCE FROM THE DRUM AND CAUSED DAMAGE. REALISTICALLY, WHO WOULD SELL NECESSITIES TO THE BUSH UNDER SUCH CONDITIONS OF LIABILITY? UNDER THE SCS, THE ORIGINAL SELLER OF THE DRUM WOULD NOT BE HELD LIABLE IF <u>AFTER THE SALE</u>. FOR CIRCUMSTANCES TOTALLY OUT OF HIS CONTROL, SOME

THIRD PARTY RELEASED THE CONTENTS OF THE DRUM. OF COURSE, UNDER THE SCS, EVEN AFTER THE SALE THE DEALER COULD BE HELD LIABLE FOR THE RELEASE IF HE IN SOME WAY CONTRIBUTED TO IT BY HIS OWN NEGLIGENCE.

THE SECOND MAJOR CHANGE MADE IN HB 68 IS IN THE APPORTIONMENT OF LIABILITY (PAGE 5, LINE 28). THE STANDARD OF LIABILITY IS STILL STRICT LIABILITY IN THE SCS. PERSONS ON THE LAUNDRY LIST OF RESPONSIBLE PARTIES ARE STILL STRICTLY LIABLE WITHOUT REGARD TO FAULT. HOWEVER, WHILE HB 68 APPORTIONED LIABILITY ABSOLUTELY, THE SCS USES THE FEDERAL METHOD OF APPORTIONMENT FOUND IN CERCLA. WHAT THIS MEANS IS THAT UNDER THE ORIGINAL BILL, A PARTY WHO WAS STRICTLY LIABLE BUT WHO COULD PROVE THAT HE HAD ONLY CAUSED 1% OF THE HARM WOULD HAVE TO PAY 100% OF THE DAMAGES AND RESPONSE COSTS. THE SCS USES THE FEDERAL METHOD OF APPORTIONMENT, WHICH PROVIDES THAT IF A PARTY CAN SHOW A) THAT THE HARM IS DIVISIBLE, AND B) THAT THERE IS A REASONABLE BASIS FOR APPORTIONMENT OF THE COSTS AND DAMAGES, THEN THE PARTY WILL BE RESPONSIBLE FOR PAYING ONLY HIS SHARE OF THOSE COSTS AND DAMAGES. THE BURDEN OF PROOF IS ON THE PARTY. A QUICK REVIEW OF THE FEDERAL CASE LAW SHOWS THAT ONLY VERY RARELY CAN A PARTY TO A SPILL MEET THIS BURDEN OF PROOF. HOWEVER, FOR THAT ONE CASE OUT OF 10 WHERE IT WOULD WORK A SUBSTANTIAL INEQUITY TO ORDER ABSOLUTE JOINT AND SEVERAL LIABILITY, BOTH CERCLA AND THE JUDICIARY SCS ALLOW FOR APPORTIONMENT.

THE SCS MAKES A NUMBER OF MORE MINOR CHANGES, THAT PRIMARILY IMPACT THE LITTLE GUY:

1. AS ORIGINALLY DRAFTED, HB 68 NOT ONLY IMPOSED STRICT LIABILITY ON COMMERCIAL ACTIVITIES, BUT ALSO ON PEOPLE WHO WEREN'T EVEN IN BUSINESS, AND WHO POSSESSED "HAZARDOUS SUBSTANCES" SUCH AS THE GASOLINE IN THEIR CAR. LIKE CERCLA, THE SCS MAKES A SPECIFIC EXEMPTION FOR "CONSUMER PRODUCTS IN CONSUMER USE." THIS MEANS THAT A HOMEOWNER IS NOT STRICTLY LIABLE FOR THE RELEASE OF THE PAINT THINNER IN HIS GARAGE, OR THE CAN OF RAID UNDER THE KITCHEN SINK, OR THE PROPANE IN HIS CAMPER. THE HOMEOWNER WOULD ONLY BE LIABLE FOR HIS OWN NEGLIGENCE IN THE RELEASE OF THOSE PRODUCTS (PAGE 1, LINE 29; PAGE 9, LINES 11-12)

2. AS ORIGINALLY DRAFTED, HB 68 IMPOSED STRICT LIABILITY ON A RURAL HOMEOWNER WHO HAD A HONEYBUCKET CARTED OFF BY A BUSINESS, OR A CITY DWELLER WHO HAD HIS SEPTIC TANK PUMPED BY A BUSINESS. IF THE HONEY WAGON SPILLED ITS LOAD INTO CAMPBELL CREEK, FOR EXAMPLE, ANY HOMEOWNER WOULD HAVE BEEN STRICTLY LIABLE FOR THE FULL COSTS OF THE SPILL, EVEN IF THE TRUCK CONTAINED THE WASTE OF 25 OTHER HOMES. SINCE THE MOST COMMON KIND OF HAZARDOUS SUBSTANCE THE AVERAGE ALASKAN HAS TRANSPORTED IS DOMESTIC SEWAGE, THE COMMITTEE FELT THAT IT WAS APPROPRIATE TO EXEMPT HOMEOWNERS FROM STRICT LIABILITY FROM ITS TRANSPORT BY ANOTHER PARTY. (PAGE 2, LINE 12) THIS EXEMPTION DOES NOT

RELIEVE THE COMMERCIAL SERVICE CARRYING THE SEWAGE FROM STRICT LIABILITY.

3. HB 68 PROVIDED AN EXEMPTION FROM STRICT LIABILITY FOR THE STATE AS THE OWNER OF LAND WITH PREEXISTING SPILLS ON IT, IF THE STATE ACQUIRED THE LAND BY ESCHEAT, TAX FORECLOSURE, ETC. IT IS UNFAIR TO PENALIZE THE STATE FOR SOMETHING THAT THE PRIOR OWNER LEFT ON THE LAND, IF THE STATE ACQUIRED THE LAND INVOLUNTARILY. THE SCS EXTENDS THIS EXEMPTION TO OTHER CASES OF INVOLUNTARY ACQUISITION OF LAND THAT ARE COMMON IN ALASKA: ANCSA LAND GIVEN TO NATIVE CORPORATIONS; LAND ACQUIRED BY INHERITANCE OR BEQUEST; AND LAND GIVEN TO THE STATE UNDER THE STATEHOOD ACT. (PAGE 4, LINES 4 - 11)

4. A PERSON WHO HAS BEEN HELD STRICTLY LIABLE FOR A RELEASE WOULD UNDER THE COMMON LAW BE ABLE TO INITIATE AN ACTION FOR CONTRIBUTION TO GET THE OTHER LIABLE PARTIES TO REIMBURSE HIM FOR THE DAMAGES HE HAS PAID. WE REPEALED OUR CONTRIBUTION STATUTES IN THE LAST FEW YEARS AS PART OF TORT REFORM, AND TO BE CERTAIN THAT THIS RIGHT OF CONTRIBUTION STILL EXISTS WITH RESPECT TO AS 46.03.822, THE SCS INSERTS A PARAGRAPH RELATING TO CONTRIBUTION ON PAGE 6, LINES 7 - 16.

5. THE SCS ADDS CLARIFICATION OF WHO IS THE OWNER OR OPERATOR OF A VESSEL ON PAGE 9, LINE 17 THROUGH PAGE 10, LINE 7. THIS IS SIMILAR TO THE CERCLA DEFINITION. PERHAPS THE MOST SIGNIFICANT CLARIFICATION IS THE PROVISION MAKING IT CLEAR THAT A PERSON WHO MERELY HAS A SECURITY INTEREST IN A FACILITY, SUCH AS A BANK THAT LOANED MONEY TO A PERSON TO BUY LAND, IS NOT CONSIDERED THE OWNER OF THE LAND.

6. A DEFINITION OF "RELEASE" IS ADDED, SIMILAR TO THE CERCLA DEFINITION, ON PAGE 10, LINES 8 - 17. THIS CLARIFIES THAT THE BILL DOES NOT APPLY TO PERSONS ALREADY COVERED BY THOSE LAWS THAT RELATE TO HAZARDOUS SUBSTANCE RELEASES IN THE WORKPLACE, AND THAT AUTOMOBILE EXHAUST IS NOT SOMETHING THAT A PERSON IS STRICTLY LIABLE FOR. A LOOPHOLE IN THE ORIGINAL BILL WOULD HAVE ALLOWED ANY PERSON EFFECTED BY EXCESSIVE LEVELS OF CARBON MONOXIDE TO SUE ANY MOTOR VEHICLE OWNER IN THE CITY WHOSE VEHICLE EMITTED EXCESSIVE LEVELS OF CARBON MONOXIDE, AND HOLD THAT PERSON LIABLE FOR THE ENTIRE CARBON MONOXIDE PROBLEM. OF COURSE, A DEEP POCKET LIKE THE MUNICIPALITY WITH ITS FLEET OF BUSSES WOULD HAVE BEEN THE TARGET. A LAW THAT IS SUITABLE FOR DEALING WITH TOXIC WASTE DUMPS IN NOT NECESSARILY SUITED FOR AUTOMOBILE EXHAUST.

7. ON PAGE 12, LINES 22 - 28, A RETROACTIVITY SECTION IS ADDED. AS YOU KNOW, ALASKA LAW REQUIRES RETROACTIVE BILLS TO SAY SO. SINCE A MAJOR PURPOSE OF THIS LEGISLATION IS TO FORCE PEOPLE TO CLEAN UP HAZARDOUS SUBSTANCES THAT HAVE ALREADY BEEN SPILLED AND ARE STILL A PROBLEM, THE COMMITTEE FELT IT ADVISABLE TO MAKE CERTAIN THAT THE BILL DOES JUST THAT. OTHERWISE, PEOPLE MIGHT ARGUE THAT SINCE THE HARM

WAS CREATED BEFORE THE LAW PASSED, IT DOESN'T APPLY TO THEM.

THE COMMITTEE WISHED TO ADD A WHISTLEBLOWER PROVISION TO THE BILL, WHICH WOULD HAVE PROTECTED EMPLOYEES FROM EMPLOYER RETRIBUTION FOR WARNING THE GOVERNMENT ABOUT A RELEASE OR SERIOUS THREAT OF RELEASE OF A HAZARDOUS SUBSTANCE. UNFORTUNATELY, THE BILL DRAFTER ADVISED US THAT THIS WOULD NOT FIT IN THE TITLE.