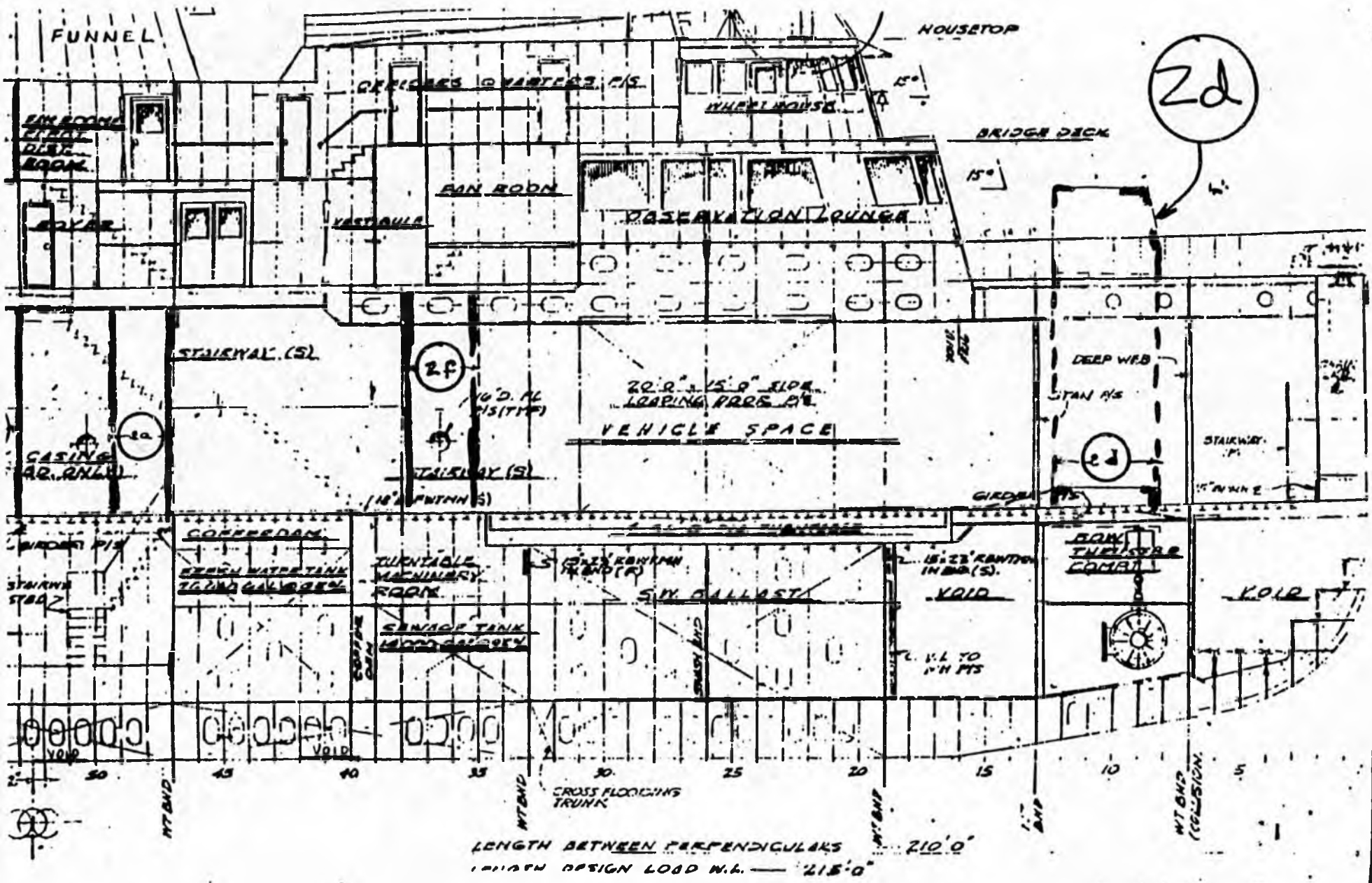


ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672

6819 HOUSE HEALTH EDUCATION & SOCIAL SERVICES



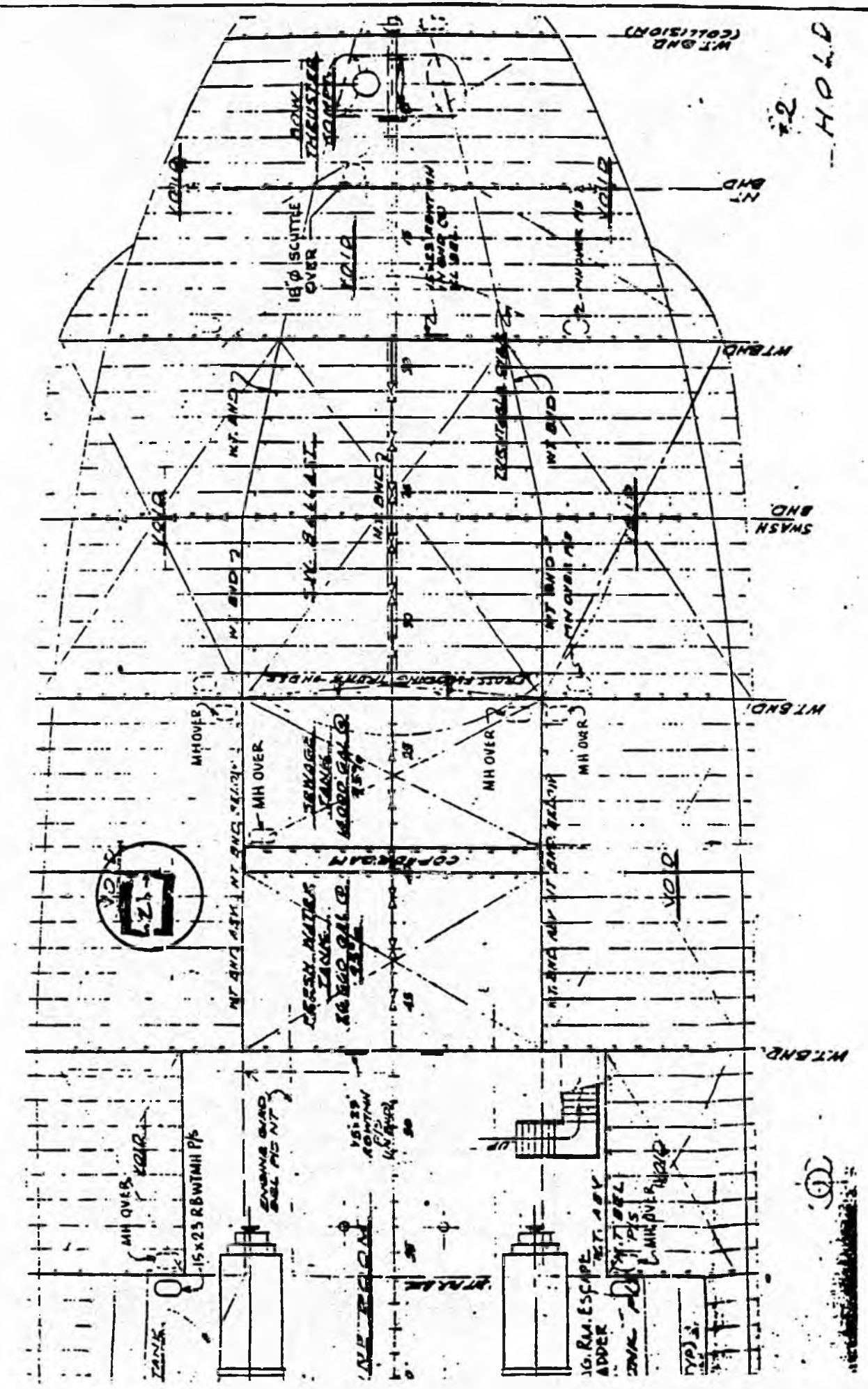
Zd

2f

2a

2d





#2  
HOLD

WT BND (COLLISION)

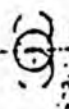
WT BND

MT BND

SMASH BND

MT BND

MT BND



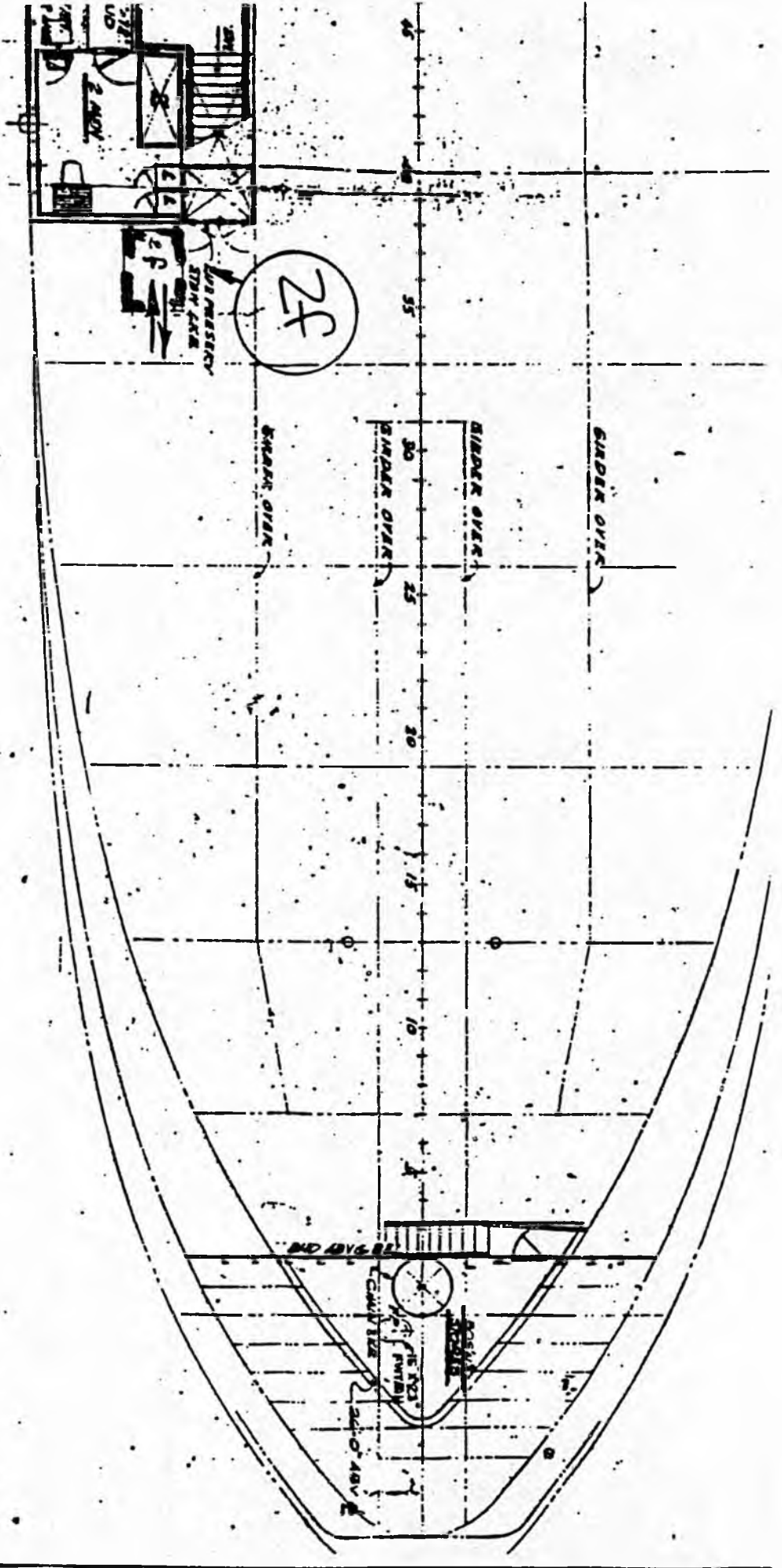
# MENT PLAN

SCALE: 1" = 1'-0"

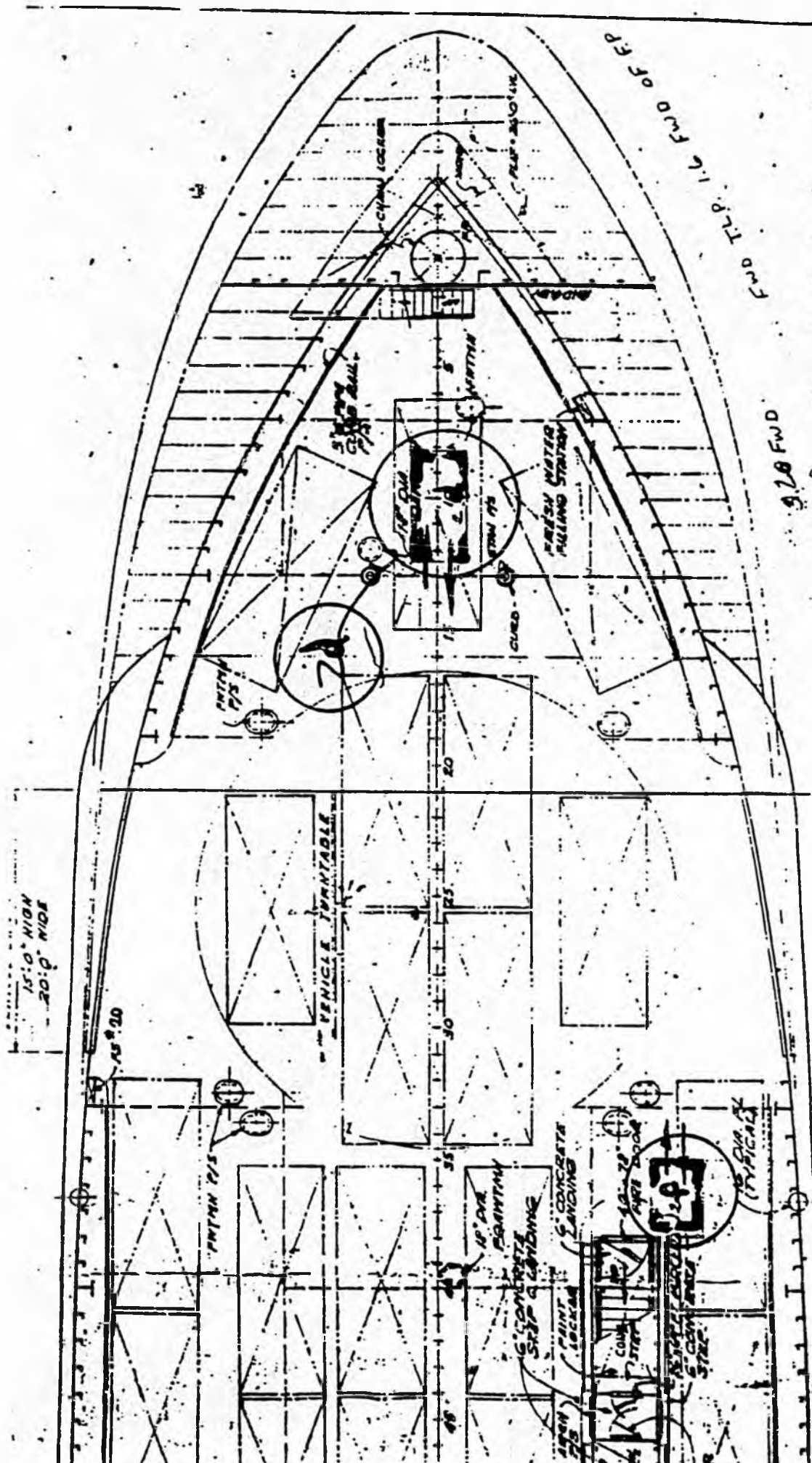
1. VEHICLE SIDE DOOR P/S

CHASSIS

137







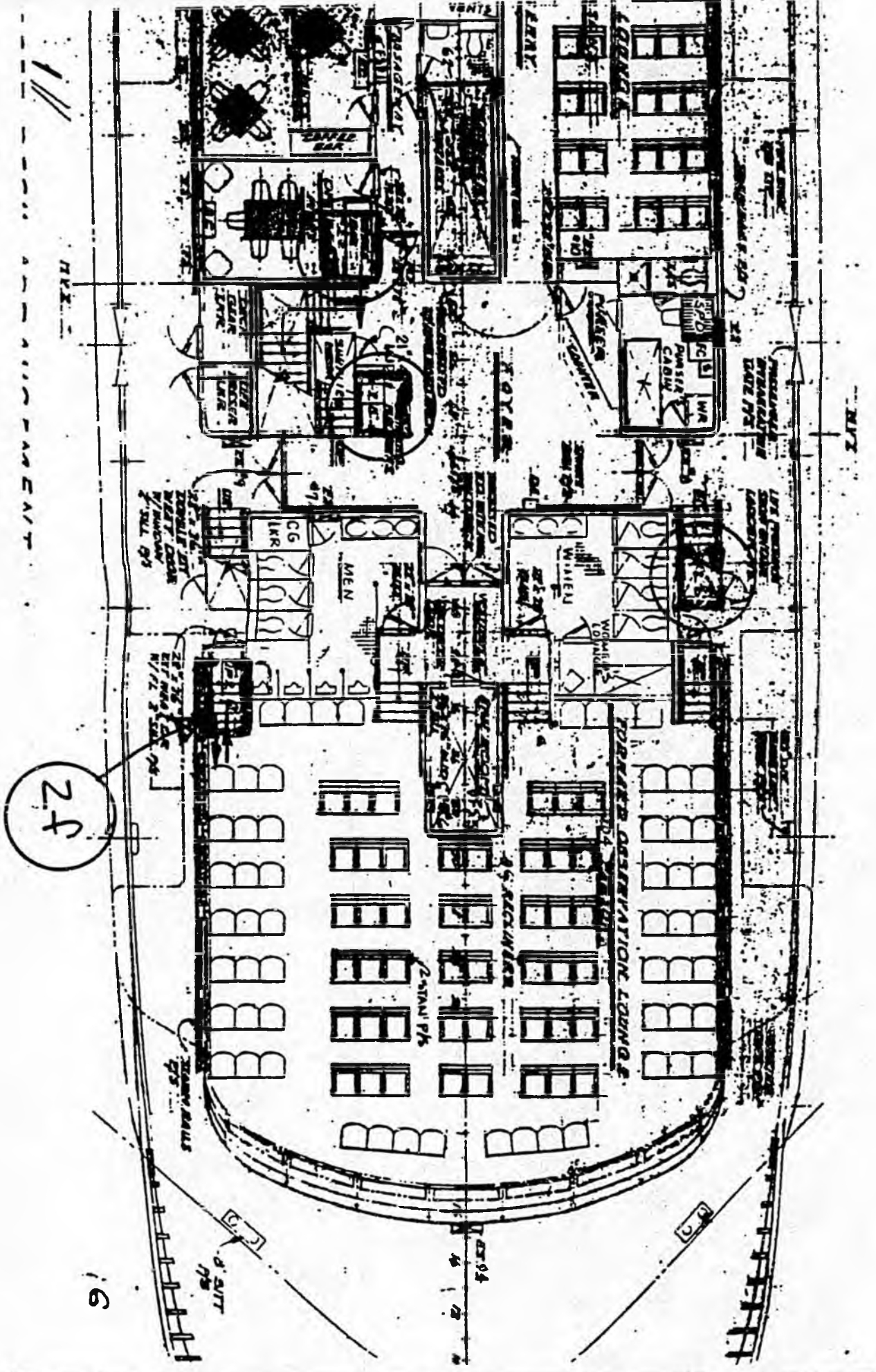
FWD TRIP IN FWD OF 60'

9.28 FWD

BETWEEN 210.9  
 41.5 AFT  
 219.35

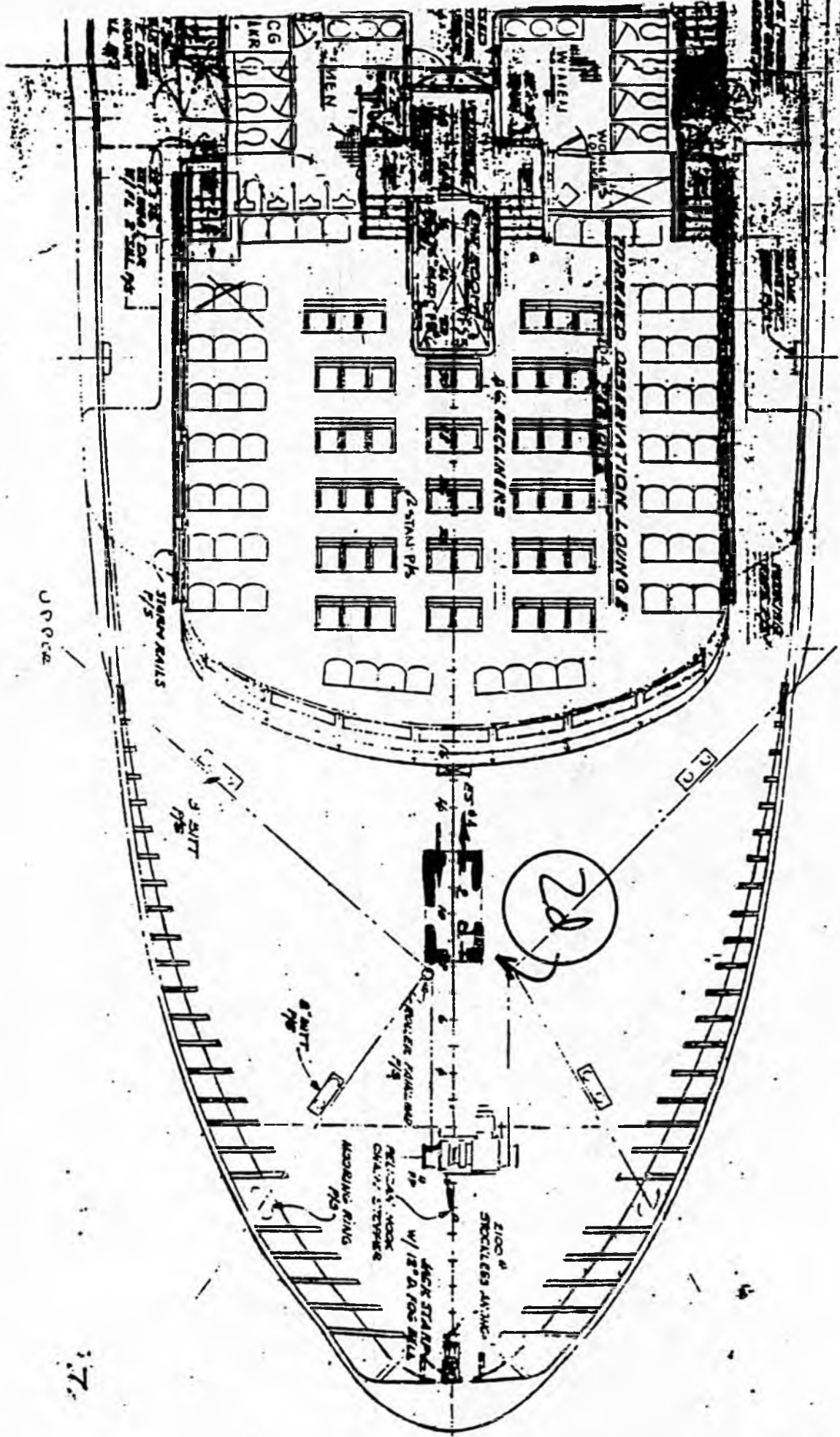
MAIN (CAE)

15



24

16



UPPER

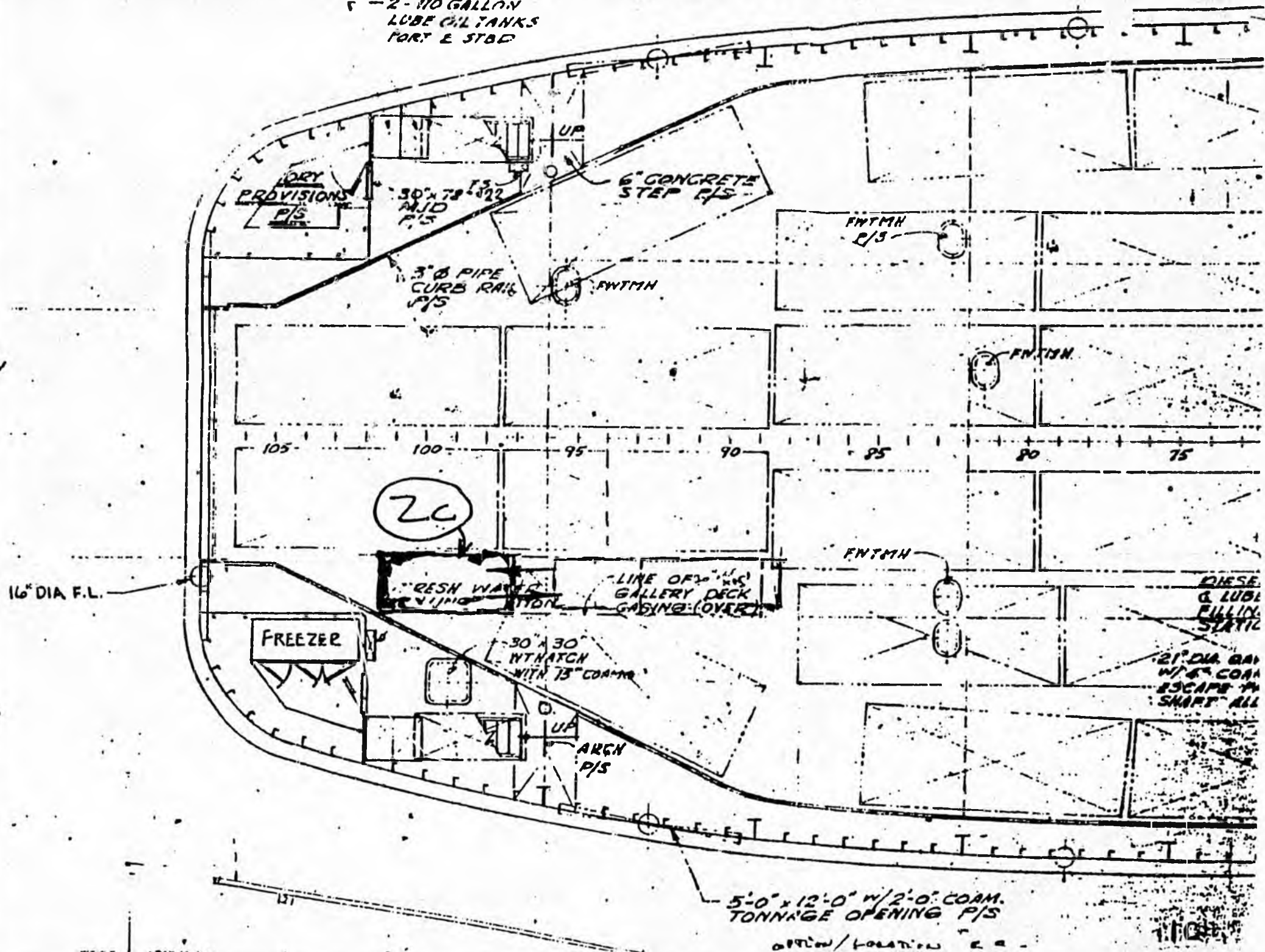
28

17



Main deck plan

2 - 110 GALLON  
LUBE OIL TANKS  
PORT & STBD



OPTION / LOCATION E.E.

140MR

RECNLIGHT

Upper Deck ... 1/4 2 11 00

STERN RAMP  
IN LOWERED  
POSITION

STERN RAMP  
IN STOWED  
POSITION

VENT  
LOUVERS  
P/S

ROOFED  
DOCK  
P/S

36" x 36" RWTH  
1/8" CORR  
SPRING BAL

EASTON  
STAIR

REPAIRS  
WINCH  
(ELECT)

2C

DAVID M/  
D. S. DIS

UP  
8" BITT  
P/S  
32" x 72" EXT  
WEA T DR  
6" SILL P/S

PROJECT  
WATCH  
P/S  
75/15

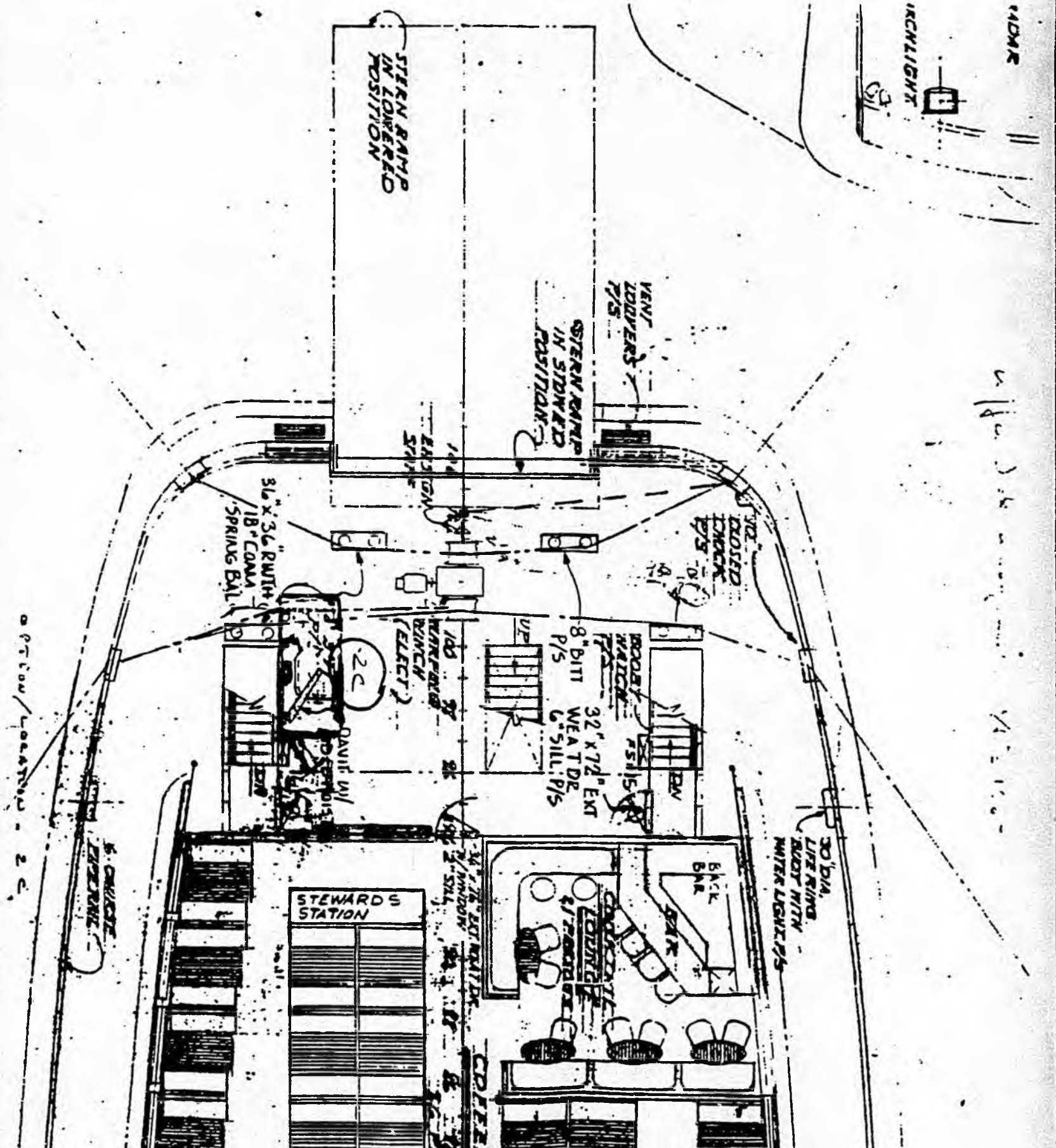
30" DIA.  
LIFE RINGS  
READY WITH  
WATER LIGHT P/S

STEWARDS  
STATION

COFFEE

OPTION LOCATION - 2C

5. CHECKS



**DIVISION OF LEGAL SERVICES**

**LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA**

*P.O. Box Y, Juneau, Alaska 99811  
(907) 465-3867 or 465-2450  
FAX (907) 465-2029*

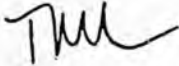
*Deliveries to: 240 Main Street  
Court Plaza, Room 500  
Mail Stop 3101*

**MEMORANDUM**

March 12, 1991

**SUBJECT:** Ferry Accessibility (W.O. 7-LS0888A)

**TO:** Representative Richard Foster  
Attn: Wendy Mulder

**FROM:** Terri Lauterbach   
Legislative Counsel

Enclosed is a new draft relating to the LeConte and the Aurora.

In addition to your requested changes in the "Resolve" clause, I have taken the liberty of adding a new "Whereas" clause; it is the fourth one. I have also added a couple of references to "infirmities" in keeping with the original draft language you submitted.

I hope you find these changes satisfactory. Please let me know if I can be of further assistance.

TML:pl  
91-151.plm

Enclosure

7-LS0888A ✓  
Lauterbach  
3/12/91

**HOUSE CONCURRENT RESOLUTION NO.**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**SEVENTEENTH LEGISLATURE - FIRST SESSION**

**BY THE HOUSE TRANSPORTATION COMMITTEE**

**Introduced:**  
**Referred:**

**A RESOLUTION**

**1 Relating to improving accessibility of ferries in the Alaska marine highway system.**

**2 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

**3 WHEREAS** mobility is a basic human need for living a fully productive independent life; and

**4 WHEREAS** many persons who experience physical disabilities or infirmities could be more  
**5 mobile** in our society with the addition of primarily minor improvements to facilitate their access to  
**6 various** modes of transportation; and

**7 WHEREAS** the Alaska marine highway system is a mode of transportation that is crucial to the  
**8 mobility** of persons who live and travel in Southeast Alaska; and

**9 WHEREAS** the legislature has expressed its intent in AS 35.10.015(c) that all ferries owned or  
**10 operated** by the state be accessible to and usable by physically handicapped or infirm passengers; and

**11 WHEREAS** the ferry vessels LeConte and Aurora are currently not accessible to many persons  
**12 experiencing** physical disabilities or infirmities because they lack the proper equipment and structural  
**13 modifications** that have been made to other vessels in the Alaska marine highway system;

**14 BE IT RESOLVED** that the Alaska State Legislature respectfully requests the Governor to direct  
**15 the Department** of Transportation and Public Facilities to

**16 (1)** develop a plan for providing the proper equipment and structural modifications that  
**17 will make** the ferry vessels LeConte and Aurora more accessible to passengers who are physically

1 disabled or infirm;

2 (2) schedule these accessibility improvements, for fiscal year 1993 or 1994, subject to  
3 the availability of state and federal funding, in the next six-year plan developed by the department; and

4 (3) request federal funds in a timely manner so that they may be available to assist in  
5 making the necessary accessibility modifications to the LeConte and the Aurora in fiscal year 1993 or  
6 1994; and be it

7 **FURTHER RESOLVED** that the legislature requests the commissioner of transportation and  
8 public facilities to report to the legislature by February 1, 1992, on the extent to which the department  
9 has carried out the intent of this resolution.

H B

1 3 3

**TABLE OF CONTENTS**

- HB 133      An Act relating to the school term.**
1.            HB 133
  2.            NEA-Alaska support letter  
             Homer High School support letter  
             Kenai Peninsula Borough School District support
  3.            Zero Fiscal Note - DOE
  4.            SPONOR STATEMENT

**ALASKA STATE LEGISLATURE**  
**REPRESENTATIVE MIKE NAVARRE**

Co-Chair  
House Finance Committee  
P.O. Box V  
Juneau, Alaska 99811  
(907) 465-3779

April 3, 1991

**MEMORANDUM**

**TO:** Representative Pat Carney, Co-Chair HESS Committee  
Representative Georgianna Lincoln, Co-Chair HESS Committee

**FROM:** Representative Mike Navarre *Mike*

**SUBJECT:** House Bill 133, An Act relating to the school term.

.....  
**Purpose of HB133**

HB 133 proposes a change in statute to add flexibility to the mandatory school term. This measure, if passed, will allow schools to create alternatives to the 180-day rule. It would also provide necessary flexibility to allow for unanticipated extenuating circumstances which could affect the traditional school year.

**Benefits of HB133**

**1. Alternatives** - This legislation would allow schools to implement alternatives to the mandatory 180 day attendance rule which could substantially reduce operational costs in rural areas, and increase time-on-task for both educators and students.

Earlier this year Homer High School was provided with a grant to study restructuring of schools. Administrators found that a school week of four extended days for classes, and the fifth day for activities, would allow the students to participate in extracurricular travel without conflicting with academic time. This change would increase time-on-task for educators and students, and decrease the cost of operations.

Thirtyfive rural school districts in Colorado adopted this system and have found that it increased parent, student, and educator satisfaction with school performance.

**2. Flexibility** - In the event that unanticipated circumstances would force a school to close for a period of time greater than currently allowed, the administrators could adopt an emergency structure for remainder of the term to meet mandatory attendance requirements.

**\*\*Plans for restructuring will be subject to the commisioner's approval\*\***

**Costs of HB 133**

A zero fiscal note was issued by the Department of Education. A copy is included in this packet.

**\* Support letters for HB 133 can be found in the back of this packet**

DISTRICT 5

34824 K-Beach Road • Soldotna, Alaska 99669 • (907) 262-7842



PRINTED ON RECYCLED PAPER



# NEA-ALASKA

AFFILIATED WITH THE NATIONAL EDUCATION ASSOCIATION

## ANCHORAGE REGIONAL OFFICE

1411 W. 33RD AVENUE  
ANCHORAGE, ALASKA 99503  
(907) 274-0536  
FAX: (907) 274-0551

## JUNEAU OFFICE

105 MUNICIPAL WAY, SUITE 302  
JUNEAU, ALASKA 99801  
(907) 586-3090  
FAX: (907) 586-2744

## FAIRBANKS REGIONAL OFFICE

2118 CUSHMAN STREET  
FAIRBANKS, ALASKA 99701  
(907) 456-4435  
FAX: (907) 456-2159

March 19, 1991

To: **Representatives Carney and Lincoln, Co-Chairs  
Members, House HESS Committee**

Re: **HB 133: "An Act relating to the school term."**

NEA-Alaska supports and encourages your favorable consideration of HB 133.

It provides necessary flexibility for unanticipated extenuating circumstances which might require changes in the traditional school year.

With the continued requirement of approval by the commissioner and the new provision of sub-paragraph (C), the public and student interests as well as the integrity of employee collective bargaining agreements will be protected.

Thank you for your consideration of our position.

Respectfully submitted,

Bob Manners  
Executive Director

Don Oberg  
President

cc: **Representative Navarre**

FISCAL NOTE

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

BILL NO. CS HB 133 (HESS)

Revision Date: \_\_\_\_\_ Department Affected: Education  
 Title: School Term BRU: K-12 Support  
 Component: Foundation

Sponsor: House HESS  
 Requestor: Navarre COMPONENT SERIAL NO. 

	1	4	1
--	---	---	---

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

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

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

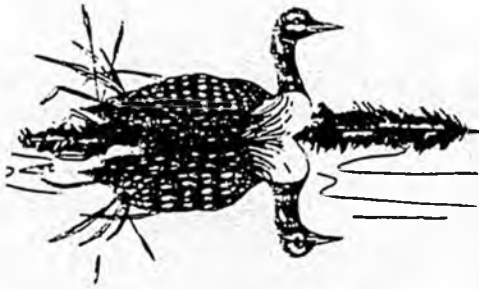
FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Mary Hakala Phone: 465-2800  
 Division: Commissioner's Office Date: 3/18/91  
 Approved by Commissioner: Steve Hole Acting Commissioner  
 Agency: Education Date: 3/18/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).



Nikolaevsk

Николаевск



BOX 5129, NIKOLAEVSK C. P. O.  
ANCHOR POINT, ALASKA 99556

Feb. 4, 1991

Senator Paul Fischer  
Representative Mike Navarre  
Representative Gail Phillips  
Representative Max F. Gruenberg, Jr.

Dear Representative Navarre,

This letter is to request your efforts to reintroduce legislation providing for flexibility in school terms.

Attached is a copy of a bill introduced and passed during the last legislative session. Also attached is a copy of a letter from Governor Hickel indicating his willingness to conscientiously consider similar legislation should it pass again.

In these times of limited state support for education, I believe this non-cost legislation provides alternatives which can reduce operational costs and increase time-on-task for both educators and students while improving parental satisfaction with school performance.

Thanks for your efforts. Please be assured that I stand ready to testify or communicate to anyone in support of this legislation.

Respectfully,

Bob Moore  
Principal

Mike —  
Thanks for your work before — perhaps this time  
we will make it!!

Bob



**HOMER HIGH SCHOOL**  
KENAI PENINSULA BOROUGH SCHOOL DISTRICT



600 E. FAIRVIEW  
HOMER, ALASKA 99603-7661  
PHONE: (907) 235-8186  
FAX: (907) 235-8933

**"MARINERS"**

DENNIS DEMPSEY, PRINCIPAL  
MICHAEL BUNDY, ASST. PRINCIPAL  
BOB MACAULAY, ATH. DIRECTOR

March 20, 1991

Mike Navarre, Representative  
State of Alaska  
P.O. Box V  
Juneau, AK 99811

SUBJECT: HB 133

Homer High School greatly appreciates your introduction of HB 133. The administration and staff of Homer High School is very anxious to explore alternatives to the current school plan that this Bill will allow for us to do. Earlier this school year, Homer High School was one of a few in the state to receive a grant on restructuring schools for the future. In our research, one of the possibilities in order to better orchestrate all the inherent activities of a high school, is altering the time schedule. At Homer High School we have an amazing amount of class attendance lost due to school sponsored athletic activities on the weekends. It is our opinion, after doing some extensive research on a 4-day school week, that this might be one of the workable possibilities of our restructuring proposal.

But to do so, HB 133 would have to be passed and signed by the governor, which allows for an alternative plan to the 180-day school year. A school week of 4 extended days for classes, and the fifth day for activities, would allow for the students to participate in extracurricular travel that doesn't conflict with academic time. We believe there is excellent potential in just better managing our time, and have consequently researched some real-life data from Colorado, Utah, and New Mexico. For example, Colorado has over 35 school districts on a 4-extended day school week, K-12.

Please continue vigorous support of HB 133. With its passage the option to incorporate more time flexibility in a school program would be possible, and could lead to improvement of our educational program.

Sincerely

Dennis Dempsey  
Principal

*Dennis Dempsey*  
United States Department of Education  
"School of Excellence"

HB

136



February 26, 1991

Representative Georgianna Lincoln, Co-Chair  
House HESS Committee  
PO Box V  
Juneau, Ak. 99811

Re: House Bill 136

Dear Representative Lincoln,

The purpose of this letter is to request that the committee pass House Bill 136: An act giving children of divorce legal access to grandparents and others who are important in the child(rens) lives.

Research is showing that when children are denied access to their biological parents, grandparents, and other loved ones, serious developmental psychological problems often occur. Many of these children do not do well in school, have low self esteem, have a high incidence of drug and alcohol abuse, and are involved in crime.

We support this bill because we believe it is good public policy to provide emotional as well as monetary support for children.

Sincerely,

*Handwritten:* P.O. Box 521155  
Steven P. Staube, President

*Handwritten:* P.O. Box 521155  
Big Lake, AK 99652

TO: PATTI BEARDMAN;  
HOUSE HESS COMM.

PLEASE DISTRIBUTE  
TO COMMITTEE MEMBERS

THANKS,  
STEVE  
STAUBE

\*\*\*\*\*  
 FAX TRANSMITTAL MEMO  
 TO: Hous Hess Cmte  
 DEPT: \_\_\_\_\_ FAX #: members  
 FROM: \_\_\_\_\_ PHONE: \_\_\_\_\_  
 CO: S JPK FAX #: \_\_\_\_\_  
 Post-It® brand fax/transmittal memo 7671

NO. OF  
 PAGES

NATIONAL  
FAMILIES

A Clearinghouse For FAMILIES And CHILDREN For Information About  
 Interaction With Legal, Governmental, And Private Sector Sources.

Dedicated to Strengthening and Supporting The FAMILY Offering Hope and  
 Guidance for CHILDREN

(National Office)  
 P.O. Box 1648 Palmer, Alaska 99648  
 (907) 735-1011

(Western Regional Office)  
 P.O. Box 210594  
 Anchorage, Alaska 99501-0594

Refer To: 0006.091

March 6, 1991

Representative Georgiana Lincoln  
 Chairperson, Health, Ed. & Social Services  
 P.O. Box V  
 Juneau, Alaska 99811

Madam Chairman,

My name is Emil Portscheller, Jr. I am here today representing the National  
 Center For Families And Children. I would like to thank each of you for the  
 opportunity to provide information regarding House bill No. 136, and I would  
 like to offer thanks that each of you has exhibited the refreshing  
 responsibility to address key issues of families and children in Alaska.

We are currently in the process of establishing a informational clearinghouse,  
 national library and computer information network dealing with a broad scope of  
 family and children related subject areas.

One of the very most alarming issues that we are encountering more and more  
 frequently is the highly unstable circumstances and general position that  
 families and children in Alaska are faced with. We find ever increasing  
 evidence that in Alaska we have perhaps the most destabilized society of any of  
 the 50 U.S. States. We base this not on the indicators of drug involvement in  
 our state, although certainly this is a factor in the general destabilization,  
 but rather on the extremely high rates of family disruption, disfunction,  
 dissolution, and family child separation.

As we referenced to the Senate Health and Social Services Committee yesterday  
 in discussion of Senate Bill No. 100, we feel that before the legislature and  
 representatives of this committee pursue changes in existing legislation or  
 initiate entirely new legislation regarding family, marriage, and children we  
 recommend strongly establishing as a basic principle and top priority for this  
 legislature and this committee that the family unit is yet the basis or  
 cornerstone for our state's society.

When considering legislation affecting families, marriages, and children we must clearly place our focus on the present and future welfare of families, marriages, and children and not an emphasis on further entrenching power fiefdoms in the judiciary and its affiliates. In simpler terms we must afford every option to families and children as there "cases" enter into and "progress" through the legal arena and we must not continue to concentrate the power of the judiciary.

We feel this proposed legislation HB No. 136 not only further concentrates the power of the judiciary but the legislation clearly puts the judiciary in the drivers seat in regard to making decisions affecting families and children as opposed to quite simply implementing the laws derived in the legislature. We feel this bill must not go forth as proposed.

We feel there is an imperative existing in Alaska that bespeaks ever so loudly of the need for virtual total revision of the statutes dealing with family, marriage, and children. We are in the process of drawing together interested professionals, legislators, and members of the public to a general conference on statute revision. In the interim we have developed several option recommendations for the committee regarding this proposed legislation: *HB 136*

(1) LINE 5 The court shall award custody on the basis of the best interests of the child. In determining the best interests of the child the court shall consider all relevant factors including those factors enumerated in AS 25.24.150(c).

Recommendation:

Here we have one of the key flaws in our child related law... Child custody is such a very delicate and far ranging issue that it demands input from private sector sources wholly unaffiliated with the judiciary to achieve the best possible objective input and decisions and determinations. It is terribly wrong to place the judiciary in the position of acting as the professional sector representative in determining custody. The judiciary should be permitted only to implement existing statutory requirements. The judiciary should not should not be given the authority to make DETERMINATION as to what is "In the best interest of the child". The court should implement STATUTE which requires professional private sector determination. In other words do not permit the judiciary in effect to pass law, but rather require the judiciary to simply implement statute. The judiciary is not in a position to make professional determination of the best interests of a child. Our judiciary in this state is dramatically ill equipped in training and education to function as professional sector representative. The judiciary is in strong position to function in the implementation of statute. This is a key distinction needed in family and child law in Alaska.

Proposed amendment:

Delete: In determining the best interests of the child the court shall consider all relevant factors including those factors enumerated in AS 25.24.150(c).

Insert: The court in initiating custody award shall consider all relevant factors including those factors enumerated in AS 25.24.150(c). Custody award shall be made based on implementation of PRIVATE SECTOR determination of custody that is in the best interests of the child which includes the specific input of the child(ren) whenever possible.

(2) LINE 7-8-9 In a custody Determination under this section, the court shall provide for visitation by a grandparent or other person if that is in the best interests of the child.

Recommendations:

The basic thrust in the proposed amendment of providing for avenue for contact by grandparents with a child(ren). However, two problems exist in the wording and the general approach to this subject area. The first problem area is quite similar to that noted in the first recommendation and amendment we have offered. The amendment to the proposed existing legislation leaves the judiciary once again in the drivers seat as to determination. We must restate here that the judiciary should function to implement statute and not make determination. The second problem area with the line 7-9 proposed amendment to the existing statute is that as written it fails to give any to say nothing of adequate recognition to the fact that grandparents are, based on statistical information, frequently the perpetrators of marriage and family disfunction and dissolution, and child family separation. One of the cases serving as best example of this is that of Carolyn Smith v. Smith in Houston, Texas. It has become a landmark in this particular area of family and child law. Therefore in addressing whether there is an indication of a need for grandparents to play a role in contact with the child(ren) we feel strongly that such determination should not be left to the judiciary but rather to the private sector professional community (and clergy).

Proposed Amendment:

Delete: In a custody Determination under this section, the court shall provide for visitation by a grandparent or other person if that is in the best interests of the child.

Insert: In a custody determination under this section the court shall provide for visitation by a grandparent or other person if that is determined to be in the best interests of the child to include the direct input of the child(dren) whenever possible.

W

(3) LINE 11-12 A divorce may be granted for an incompatibility of temperment that has caused irremedial breakdown of the marriage.

Recommendation:

Our state statutes addressing dissolution and divorce already provide for many ways out of marriage and often out of marriages that can be saved and strengthened if our judiciary and support service sector had the proper tools.

Line 11-12 is definitely the groundwork for an easy way out. However if the negative attitude toward marriage unity or lack thereof is so deeply entrenched in the minds of our lawmakers that we must retain this section then we recommend at least the one following amendment:

Proposed Amendment:

Delete: A divorce may be granted for an incompatibility of temperment that has caused irremedial breakdown of the marriage.

Insert: A divorce may be granted, for an incompatibility of temperment that has caused irremedial breakdown of the marriage, except where mental incapacity has been documented to be affecting the marriage partner seeking the divorce.

(4) LINES 16-19 support, and visitation are just as between the spouses and in the best interests of the children of the marriage; in determining whether the parents' agreement on visitation is in the best interests of the children under this paragraph, the court shall also consider whether the agreement should include visitation by grandparents and other persons;

Recommendation:

The first and gutt level response to this proposed amendment is that it is yet another attempt at encroachment by the judiciary on the rights and responsibilities of parents.

Second, we see some of the same problems with this amendment that we described in previous discussion and recommendations.

Proposed Amendment:

Delete: support, and visitation are just as between the spouses and in the best interests of the children of the marriage; in determining whether the parents' agreement on visitation is in the best interests of the children under this paragraph, the court shall also consider whether the agreement should include visitation by grandparents and other persons;

Insert: support, and visitation are just as between the spouses, and in the best interests of the children of the marriage as achieved through private sector determination and report; the court may direct that visitation by grandparents and or others shall be considered (in the achievement of determination) as to whether the parents' agreement on visitation is in the best interests of the children under this paragraph;

We would like once again to thank the committee for the opportunity to provide input on this proposed legislation. I will be glad to provide a written copy of our position on this legislation and our proposed amendments.

Sincerely

  
Emil Partscheller, Jr.

EPJR/e

cc: Senate Family Law Review Task Force Committee

Lt. Governor

Coghill

Alaska family Support Group  
Governor's Commission On Children And Youth  
Rep. Terry Martin  
Rep. Randy Phillips  
Rep. Ron Larson  
Rep. Ramona Barnes

5

# ALASKA STATE LEGISLATURE

## ELECTIVE DISTRICT 1

HYDER  
KETCHIKAN  
KUPREANOF  
MEYERS CHUCK  
PETERSBURG  
SAXMAN  
WRANGELL



## IN KETCHIKAN

352 FRONT ST.  
KETCHIKAN, AK 99901  
PHONE 225-9449

## DURING SESSION

P.O. BOX V  
STATE CAPITOL BUILDING  
JUNEAU, AK 99811  
PHONE 465-3424

**Representative Cheri L. Davis**

## **STATEMENT ON HOUSE BILL 136**

Current Alaska Statutes allow grandparents to petition the court to allow visitation with their grandchildren in the event of a divorce.

The intent of this bill is to insure grandparents have the right to petition for visitation in the event there is no marriage, and thus, no divorce.

Section 5 of the bill is simply language to "clean up" the divorce statutes and to eliminate unnecessary criteria for divorce which are no longer used by the courts.

———— SPONSOR STATEMENT ————

# HOUSE COMMITTEE REPORT

(7)

Date Referred: February 13, 1991

FURTHER REFERRALS:

Judiciary

Date of Committee Action: 3-7-91

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee considered:

HB 136

HOUSE BILL NO. 136

MISC. DIVORCE AND CHILD CUSTODY LAWS

"An Act relating to divorce, dissolution, and child custody."

**RECOMMENDATIONS:**

be replaced with \_\_\_\_\_  the same title

[ ] a new title

[ ] have attached amendments(s)

[ ] do pass

[ ] do not pass

[ ] no recommendations

individual recommendations

[ ] additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of Intent

ATTACHES NEW FISCAL NOTE(s): \_\_\_\_\_ (Dept)

APPROVES PREVIOUS: \_\_\_\_\_ (Dept/Date)

[ ] fiscal impact \_\_\_\_\_

[ ] fiscal note(s) \_\_\_\_\_

zero fiscal note AKCOURT SYSTEM

[ ] zero fiscal note(s) \_\_\_\_\_

**SIGNING DO PASS:**

**SIGNING OTHER RECOMMENDATIONS:**

	Check appropriate column:	Do Not Pass	No Rec	Amend
<i>Cheri Davis</i>				
	<i>Mary Miller</i>			X
	<i>Mark Hanley (HANLEY)</i>		X	
	<i>Bettye Davis (DAVIS)</i>			X
<i>J. G. Gonzales (GONZALES)</i>				
<i>Patricia Carney (CARNEY)</i>				
	<i>Lincoln</i> (LINCOLN)			X

*[Signature]*  
CO-Chairman's Signature

Propriety of exhibition of child to jury to show family resemblance or lack of it on issue of paternity, 55 ALR3d 1087.

Death of putative father as precluding action for determination of paternity or child support, 58 ALR3d 188.

Admissibility, in disputed paternity proceedings, of evidence to rebut mother's claim of prior chastity, 59 ALR3d 659.

Statute of limitations in illegitimacy or bastardy proceedings, 59 ALR3d 685.

Long-arm statutes, obtaining jurisdiction over nonresident parent in filiation or support proceeding, 76 ALR3d 708.

Legitimation by marriage to natural

father of child born during mother's marriage to another, 80 ALR3d 219.

Proof of husband's impotency or sterility as rebutting presumption of legitimacy, 84 ALR3d 495; 14 Am. Jur. POF2d, pp. 409-481.

Who may dispute presumption of legitimacy of child conceived or born during wedlock, 90 ALR3d 1032.

Right of indigent defendant in paternity suit to have assistance of counsel at state expense, 4 ALR4th 363.

Right of illegitimate child to maintain action to determine paternity, 19 ALR4th 1082.

**Sec. 25.20.060. Custody of the child.** (a) If there is a dispute over child custody, either parent may petition the superior court for resolution of the matter under AS 25.20.060 — 25.20.130. The court shall award custody on the basis of the best interests of the child. In determining the best interests of the child, the court shall consider all relevant factors including those factors enumerated in AS 25.24.150(c).

(b) Neither parent, regardless of the question of the child's legitimacy, is entitled to preference in the awarding of custody.

(c) The court may award shared custody to both parents if shared custody is determined by the court to be in the best interests of the child. An award of shared custody shall assure that the child has frequent and continuing contact with each parent to the maximum extent possible. (§ 6 ch 63 SLA 1977; am § 5 ch 88 SLA 1982)

**Effect of amendments.** — The 1982 amendment added the subsection (a) and (b) designations, substituted "AS 25.20.060 — 25.20.130" for "this section unless an action between the parents is pending under AS 09.55" at the end of the first sentence in subsection (a), substituted "AS 09.55.205(c)" for "AS 09.55.205" at the end of the subsection (a), and added subsection (c).

**Editor's notes.** — Section 1, ch. 88, SLA 1982, provides: "LEGISLATIVE INTENT. (a) The legislature finds that it is generally desirable to assure a minor child frequent and continuing contact with both parents after the parents have separated or dissolved their marriage and that it is in the public interest to encourage parents to share the rights and responsibilities of child rearing. While actual physical custody may not be practical or appropriate in all cases, it is the intent of the legislature that both parents have the opportunity to guide and nurture their child and to meet the needs of the child on an equal footing beyond the considerations

of support or actual custody.

(b) The legislature also finds that it is in the best interests of a child to encourage parents to implement their own child care agreements outside of the court setting."

**Collateral references.** — 10 Am. Jur. 2d, Bastards, §§ 60-66.

Modification of child support order as justified by change in circumstances, 1 Am. Jur. POF2d, pp. 1-63.

Pleadings in custody litigation, 22 Am. Jur. Trials, pp. 347-516.

Court's power in habeas corpus proceedings relating to custody of child to adjudicate questions as to child's support, 17 ALR3d 764.

Award of custody of child where contest is between child's father and grandparent, 25 ALR3d 7.

Award of custody of child where contest is between child's parents and grandparents, 31 ALR3d 1187.

Modern status of maternal preference rule or presumption in child custody cases, 70 ALR3d 262.

Award of custody is between natural parents, 10 ALR4th 76  
Right of inheritance

**Sec. 25.2**  
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**Editor's note**  
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**Sec. 25.2**  
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§ 25.20.060

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MARITAL AND DOMESTIC RELATIONS

§ 25.20.090

Award of custody of child when contest  
is between natural parent and step-parent,  
10 ALR4th 767.

Right of incarcerated mother to retain

custody of infant in penal institution, 14  
ALR4th 748.

Propriety of awarding joint custody of  
children, 17 ALR4th 1013.

**Sec. 25.20.070. Temporary custody of the child.** Unless it is shown to be detrimental to the welfare of the child, the child shall have, to the greatest degree practical, equal access to both parents during the time that the court considers an award of custody under AS 25.20.060 — 25.20.130. (§ 6 ch 88 SLA 1982)

**Editor's notes.** — For legislative intent behind the 1982 change in the child custody law, see editor's note to AS 25.20.060.

**Collateral references.** — Necessity of notice of application for temporary custody of child, 31 ALR3d 1378.

**Sec. 25.20.080. Mediation of child custody matter.** (a) At any time within 30 days after a petition for child custody is filed under AS 25.20.060 the court may order the parties to submit to mediation. Each party shall have the right to challenge peremptorily one mediator appointed.

(b) Mediation shall be conducted informally as a conference, or by telephone, or series of conferences, as determined by the mediator. The parties to the action and a court-appointed representative of the minor children shall attend.

(c) If the mediator determines that mediation efforts are unsuccessful, the mediator shall terminate mediation and notify the court that mediation efforts have failed. The custody proceeding shall proceed in the usual manner.

(d) Upon submission of the parties to mediation under this section, a pending child custody proceeding shall be stayed for a period of 30 days or until the court is notified that mediation efforts have failed. All court orders made during the pending custody proceeding remain in effect during the period of mediation.

(e) Costs of mediation shall be paid as ordered by the court by one party, by both parties, or by the state if both parties are indigent. (§ 6 ch 88 SLA 1982)

**Sec. 25.20.090. Factors for consideration in awarding shared child custody.** In determining whether to award shared custody of a child the court shall consider

- (1) the child's preference if the child is of sufficient age and capacity to form a preference;
- (2) the needs of the child;
- (3) the stability of the home environment likely to be offered by each parent;
- (4) the education of the child;



(2) if there are minor children of the marriage or the wife is pregnant, the spouses have agreed on which spouse or third party shall be awarded custody of each minor child of the marriage and the extent of visitation, including visitation by grandparents and other persons, and support to be provided on the children's behalf, whether the payments are to be made through the child support enforcement agency and the tax consequences of that agreement;

(3) the spouses have agreed as to the distribution of all jointly owned real and personal property and the payment of spousal support, if any, and the tax consequences resulting from these payments; and

(4) the spouses have agreed as to the payment of all unpaid obligations incurred by either or both of them, and as to payment of obligations incurred jointly in the future.

(b) A husband or wife may separately petition for dissolution of their marriage under AS 25.24.200 — 25.24.260 if the following conditions exist at the time of filing the petition:

(1) incompatibility of temperament, as evidenced by extended absence or otherwise, has caused the irremediable breakdown of the marriage;

(2) the petitioning spouse has been unable to ascertain the other spouse's position in regard to the dissolution of their marriage and in regard to the division of property, payment of debts, and custody, support and visitation because the whereabouts of the other spouse is unknown to the petitioning spouse after reasonable efforts have been made to locate the absent spouse; and

(3) the other spouse cannot be personally served with process inside or outside the state.

(c) Nothing in this section prohibits a spouse who has been personally served with a copy of a petition made under (a) of this section from executing an appearance, waiver of time to answer, and waiver of notice of hearing. The appearance and waivers shall include an acknowledgment signed before an officer authorized to administer an oath or affirmation that the spouse being served has read the petition; assents to the terms relating to custody of the children, child support, visitation, spousal support and resultant tax consequences, division of property, and allocation of debts; agrees that the conditions otherwise required by (a) of this section exist; understands fully the nature and consequences of the action; and is not signing the appearance and waivers under duress or coercion.

(d) The action created under this section is separate from the action created by AS 25.24.010. The procedures prescribed by AS 25.24.200 — 25.24.260 do not apply to an action brought under AS 25.24.010, nor do procedures prescribed under AS 25.24.010 — 25.24.180 apply to an action brought under this section, except as specifically provided. (§ 1 ch 260 SLA 1976; am § 2 ch 15 SLA 1982)

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MARITAL AND DOMESTIC RELATIONS

§ 25.24.210

Revisor's notes. — Formerly AS 09.55.231. Renumbered in 1983.

Cross references. — For jurisdiction of court to consider child custody, see AS 25.30.020.

Effect of amendments. — The 1982 amendment, in subsection (a), inserted "including visitation by grandparents and other persons" in the middle of paragraph (2).

NOTES TO DECISIONS

Jurisdiction. — The superior court has no jurisdiction to make the "child custody determination" that is a prerequisite to the entry of a decree of dissolution under AS 25.24.230(a) unless one of the conditions listed in AS 25.30.020(a) exists.

Layne v. Niles, Sup. Ct. Op. No. 2396 (File No. 5887), 632 P.2d 234 (1981).

Cited in Szmyd v. Szmyd, Sup. Ct. Op. No. 2472 (File No. 5854), 641 P.2d 14 (1982).

**Sec. 25.24.210. Petition for dissolution.** (a) The caption in a petition for dissolution of marriage under AS 25.24.200 — 25.24.260 shall be styled substantially "In the Matter of the Dissolution of the Marriage of . . . . . and . . . . ."

(b) The petition shall be filed with the superior court and shall either

(1) recite that the conditions enumerated under AS 25.24.200(a) exist and shall be signed and verified by both of the petitioners or by one petitioner, if that petitioner personally serves the petition on the other spouse in accordance with the Alaska Rules of Civil Procedure in anticipation that the spouse will comply with AS 25.24.200(c); or

(2) recite that the conditions enumerated under AS 25.24.200(b) exist and be signed and verified by one of the petitioners.

(c) The petition shall state that the spouse or spouses executing the petition consent to the jurisdiction of the court.

(d) The petition shall request that the marriage be dissolved and that the prior name of a spouse be restored, if desired by that spouse.

(e) If the petition is brought by both spouses under AS 25.24.200(a), the petition shall state in detail the terms of agreement as between the spouses with regard to the custody of children, child support, visitation, spousal support and tax consequences, if any, division of property, and allocation of debts, and, in addition, shall state

- (1) the respective occupations of the spouses;
- (2) the income, assets, and liabilities of the respective spouses at the time of filing the petition;
- (3) the date and place of the marriage;
- (4) the name, date of birth, and current custodial status of each minor child born of the marriage or adopted by the petitioners;
- (5) whether the wife is pregnant;
- (6) other facts and circumstances which the petitioners believe should be considered; and
- (7) any other relief sought by the spouses. (§ 1 ch 260 SLA 1976)

Revisor's notes. — Formerly AS 09.55.232. Renumbered in 1983.

Sec. 25.24.220. Hearing. (a) After a petition for dissolution is filed under the provisions of AS 25.24.210, a hearing shall be scheduled in accordance with the Alaska Rules of Civil Procedure.

(b) If the petition is brought by both spouses under AS 25.24.200(a), both the husband and wife are required to attend the hearing personally and not through counsel unless the court, for good cause, provides otherwise, or unless a spouse has complied with AS 25.24.200(c), in which case only the spouse filing the petition is required to attend. Either spouse may have counsel at the hearing.

(c) If the petition is brought by one spouse under AS 25.24.200(b), that spouse shall submit proof of diligent inquiry as to the whereabouts of the absent spouse and provide notice by publication, posting, or other means as ordered by the court in accordance with the Alaska Rules of Civil Procedure.

(d) If the petition is brought by both spouses under AS 25.24.200(a), the court shall examine the petitioners or petitioner present and consider whether

(1) the spouses fully understand the nature and consequences of their action;

(2) the agreements between the spouses concerning child custody, child support, and visitation are fair, just, and equitable as between the spouses and in the best interests of the children of the marriage;

(3) the agreements between the spouses relating to the division of property, spousal support, and the allocation of obligations are fair, just, and equitable; and

(4) the conditions in AS 25.24.200(a) have been met.

(e) If the petition is brought by one spouse under AS 25.24.200(b), the court shall examine the petitioner and consider whether the petitioner fully understands the nature and consequences of the action and whether the conditions in AS 25.24.200(b) have been met.

(f) The court may appoint a guardian ad litem to represent the best interests of the child. Appointment of a guardian ad litem or attorney for the child shall be made under the terms of AS 25.24.310.

(g) The court may amend the agreements between the spouses relating to child custody, child support, visitation, spousal support, division of the property, and allocation of obligations, but only if both petitioners concur in the amendment. (§ 1 ch 260 SLA 1976)

Revisor's notes. — Formerly AS 09.55.233. Renumbered in 1983.

Sec. 25.24.230. Judgment. (a) If the petition is brought by one or both spouses under AS 25.24.200(a), the court may grant the spouses a final decree of dissolution and shall provide the other relief as pro-

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**Alaska State Legislature**  
**House of Representatives**  
 COMMITTEE ON HEALTH, EDUCATION  
 AND SOCIAL SERVICES

DATE: March 7, 1991

PLACE: Capitol Room 106

SUBJECT OF MEETING:  
 \*HB 136 MISC. DIVORCE & CUSTODY LAWS

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?		WHAT SUBJECT/ WHICH BILL?
SHERRIE GON	AWL	22156 JSD	99802		463-6744	<input checked="" type="radio"/> Y	<input type="radio"/> N	HB 136
						<input type="radio"/> Y	<input type="radio"/> N	
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\* DELIVER TO: LHSCHES \*  
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\* ORIGINAL \*  
\* SENT: 03/07/91 TIME: 10:08 \*  
\* FROM: LTCCSOL \*  
\* SUBJECT: 91-03-012:FS-HB50,93,136;3-7 \*  
\* PRINT DATE: 03/07/91 TIME: 10:08 \*  
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SUBJECT LINE TO READ: TC NO.;SHORT SUBJECT;DATE

T/C NO: 91-03-012  
DATE: 3-7-91  
SPONSOR: HOUSE HEALTH EDUCATION AND SOCIAL SERVICES  
SUBJECT: HB50,93,136  
MODERATOR: ALYSON  
SITE: SOLDOTNA

FINAL STATS

\*\*\*\*\*  
WE HAD NO PARTICIPANTS AND DID NOT DIAL INTO THE TELECONFERENCE

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* DELIVER TO: LHSCHES
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* ORIGINAL
* SENT: 03/07/91 TIME: 10:50
* FROM: LTCCMAT
* SUBJECT: 012 FS HHESS FAM 3/7/91
* PRINT DATE: 03/07/91 TIME: 10:50
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SUBJECT LINE TO READ: TC NO,; PL/FS;SHORT SUBJECT;DATE

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T/C NO: 91-03-012
DATE: 3/7/91
SPONSOR: H HESS
SUBJECT: HOUSE BILLS 50, 93, AND 136--FAMILY
MODERATOR: MARY
SITE: MAT-SU LIO

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FINAL STATS

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TESTIFIED:  
NAME/REPRESENTING ADDRESS PHONE BILL NO.

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1 EMIL PORTSCHELLER JR NATIONAL-CENTER-FOR-FAMILIES-AND-CHILDREN
   FOR 1645 PALMER 99645 746-3011
2 JIM COLVER FOR 427 PALMER 99645 745-8474
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OBSERVED  
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TESTIFIED: 2
UNABLE:
OBSERVED:
TOTAL: 2

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START TIME: 8:30 AM END TIME: 10

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* DELIVER TO: LHSCHES
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* ORIGINAL
* SENT: 03/07/91 TIME: 10:26
* FROM: LIOCMIL
* SUBJECT: 91-03-012;FS;CHILD;3/7
* PRINT DATE: 03/07/91 TIME: 10:26
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SUBJECT LINE TO READ: TC NO.; PL FS;SHORT SUBJECT;DATE

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T/C NO: 91-03-012
DATE: 3/7
SPONSOR: H HESS
SUBJECT: CHILDREN'S TRUST
MODERATOR: JUDY
SITE: ANCHORAGE

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FINAL STATISTICS

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TO TESTIFY
NAMES/REPRESENTING ADDRESS PHONE BILL NO.
1. PAT WILLIAMS/CHILD ADVOCACY NETWORK HB 50
2. RICHARD HERMOSILLO HB 93/136
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TO OBSERVE:
NAME/ REPRESENTING ADDRESS PHONE BILL NO.
1. SUE MILES POB 772196 ER 696-0604 50,93,136
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TESTIFIED: 2
UNABLE: 0
OBSERVED: 1
TOTAL: 3

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START TIME: 8:30 END TIME: 10:00

# HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

DATE 3/7/91

JOINT \_\_\_\_\_

TAPE # 18

JOINT \_\_\_\_\_

TIME CALLED TO ORDER 8:35 am pm

TIME ADJOURNED 10:05 A.M.

ROLL CALL:	PRES	ABST	TIME ARRVD	JOINT MEMBERS PRESENT:
Rep. Patrick Carney	✓			
Rep. Georgiana Lincoln	✓			
Rep. Bettye Davis	✓			
Rep. Cheri Davis	✓			
Rep. John Gonzales	✓			
Rep. Mark Hanley	✓			late @ 8:38 AM
Rep. Mary Miller	✓			late @ 8:37 AM

**AGENDA:**

BILL NO.	SHORT TITLE	ACTION TAKEN
*HB 50①	Approp.: Children's Trust Fund	Passed w/ ind. recommendations
*HB 93③	Child Custody Investigators	Need to be heard Fri Mar 8 <sup>th</sup>
*HB 136②	Misc. Divorce and Custody Laws	Passed w/ ind. Recommendations

**OTHER:**

Rep. Fran Ulmer?

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**SPECIAL ANNOUNCEMENTS:** Teleconference bet. Juneau, Anch, Alaska, Soldotna + Chicago

**FISCAL NOTE**

**STATE OF ALASKA**  
**1991 LEGISLATIVE SESSION**

**Bill No. HB 196**

Revision Date: \_\_\_\_\_ Department Affected: Alaska Court System  
 Title: An Act relating to divorce, dis- BRU: Trial Courts  
           solution, and child custody Components: \_\_\_\_\_  
 Sponsor: C. Davis  
 Requestor: House HESS COMPONENT SERIAL NO. 

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**EXPENDITURES/REVENUES: (Thousands of Dollars)**

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
<b>TOTAL OPERATING</b>	0.0	0.0	0.0	0.0	0.0	0.0
<b>CAPITAL</b>						
<b>REVENUE</b>						

**FUNDING: (Thousands of Dollars)**

GENERAL FUNDS	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	0.0	0.0	0.0	0.0	0.0	0.0

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

**ANALYSIS: (Attach a separate page if necessary)**

No fiscal impact.

Prepared by: C. S. Christensen III, Staff Counsel Phone: 264-8228  
 Division: Alaska Court System Date: 03/04/91

Approved by: Arthur H. Snowden, II, Administrative Director Date: 03/04/91  
 Agency: Alaska Court System

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

HB

139



# Alaska State Legislature

## HOUSE OF REPRESENTATIVES

Official Business

P.O. Box V  
State Capitol  
Juneau, Alaska 99811

TO: Representative Pat Carney, Co-chair  
Representative Georgianna Lincoln, Co-chair  
Health, Education and Social Services Committee

FROM: Representative Kay Brown *KB*

DATE: March 12, 1991

SUBJ: House Bill 139/Waste Reduction and Recycling Awards

In reference of the House Health, Education and Social Services Committee hearing on House Bill 139 on Wednesday, March 13 please find attached the following materials:

1. Sponsor Statement
2. Sectional Analysis
3. Copy of HB 139
4. Additional Background Material
  - Survey of Consumer Interest in Recycling
  - Summary of the Waste Not Washington Act

If you have questions concerning this legislation, please let me know or contact Cathy Donadio of my staff at 465-4998.

enclosures



## Alaska Environmental Lobby, Inc.

P.O. Box 22151 Juneau, Alaska 99802

907-463-3366

### AEL TESTIMONY

#### HB 139 - POLLUTION PREVENTION RECOGNITION

I am a volunteer with the Alaska Environmental Lobby which is a coalition of 19 member groups throughout the State. We strongly support HB 139 and applaud the Representatives who introduced and support this bill.

I believe we are all familiar with the merits of recycling and waste reduction. We know it will save energy and natural resources, reduce air and water pollution, and reduce the amount of waste entering our landfills.

This bill through public recognition will make a positive step toward reducing the waste stream in Alaska.

By encouraging recycling and waste reduction in schools we can provide environmentally sound knowledge and skills to future generations.

We encourage you to approve this bill and provide the recognition that those involved in preventing pollution deserve.

Theresa Svancara, AEL Volunteer  
House Education and Social Services Committee  
March 13, 1991

CLEAN AIR COALITION • PRINCE WILLIAM SOUND CONSERVATION ALLIANCE • ALASKA CENTER FOR THE ENVIRONMENT  
ALASKA CHAPTER, SIERRA CLUB • JUNEAU GROUP, SIERRA CLUB • KNIK GROUP, SIERRA CLUB • DENALI GROUP, SIERRA CLUB  
ANCHORAGE AUDUBON SOCIETY • ARCTIC AUDUBON SOCIETY • DENALI CITIZENS' COUNCIL • ALASKA FRIENDS OF THE EARTH  
JUNEAU AUDUBON SOCIETY • KACHEMAK BAY CONSERVATION SOCIETY • KENAI PENINSULA AUDUBON SOCIETY • KODIAK AUDUBON SOCIETY  
LYNN CANAL CONSERVATION • SITKA CONSERVATION SOCIETY • NORTHERN ALASKA ENVIRONMENTAL CENTER  
SOUTHEAST ALASKA CONSERVATION COUNCIL • KNIK CANOERS AND KAYAKERS



# Alaska State Legislature

## HOUSE OF REPRESENTATIVES

Official Business

P.O. Box V  
State Capitol  
Juneau, Alaska 99811

Rep. Kay Brown  
3/12/91

### Sectional Analysis

HB 139

#### Waste Reduction and Recycling Recognition Awards

##### Section 1

Findings include that public education regarding recycling is necessary to ensure that the public is aware of recycling opportunities.

##### Section 2

Provides authority for the Department of Environmental Conservation to "identify, document, and publicly acknowledge exemplary pollution prevention achievements by individuals, businesses or government agencies in the state."

##### Section 3

Establishes a school recycling awards program to be administered by the Department of Environmental Conservation, in consultation with the Department of Education. Subject to available funding, DEC would be authorized to award recognition grants of up to \$5,000 each to public schools in recognition of their efforts and the efforts of their students to reduce and recycle waste generated by the school. The department would provide technical assistance to schools upon request.

##### Section 4

Effective date.

Rep. Kay Brown  
2/11/91

## Sectional Analysis

### Waste Reduction and Recycling Recognition Awards (work draft dated 11/28/90)

#### Section 1

Findings include that public education regarding recycling is necessary to ensure that the public is aware of recycling opportunities.

#### Section 2

Provides authority for the Department of Environmental Conservation to "identify, document, and publicly acknowledge exemplary pollution prevention achievements by individuals, businesses or government agencies in the state."

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#### Section 4

Effective date.

## SPONSOR STATEMENT

HB 139 — Pollution Prevention and Recycling Recognition Awards

### House Bill 139

House Bill 139 would provide for the public recognition of pollution prevention, waste reduction and recycling efforts.

Specifically, the legislation would:

- 1) Establish an Alaska school recycling awards program. Subject to available funding, DEC would be authorized to award grants of up to \$5,000 each to public schools in recognition of their waste reduction and recycling efforts; and
- 2) Authorize DEC to "identify, document and publicly acknowledge exemplary pollution prevention achievements by individuals, businesses or government agencies."

### Discussion

Each day Alaskans produce approximately 3 to 5 pounds of solid waste per person. Each year, it is estimated that the state produces as much as 1 billion pounds of trash per year. Many communities throughout Alaska are confronted with landfill capacity shortfalls that will require substantial capital investments to address. The Department of Environmental Conservation has identified the need for tens of millions of dollars in additional capital investment needed to develop additional landfill and to address solid waste management problems.

Last legislative session, the legislature enacted a statutory hierarchy as part of HB 478 (AS 46.06.021) that promotes solid and hazardous waste management practices in the following order of priority:

- 1) waste source reduction
- 2) recycling of waste
- 3) waste treatment; and
- 4) waste disposal.

Waste reduction and recycling must be a fundamental part of Alaska's solid waste management effort. While significant opportunities exist for waste reduction and recycling, public education is essential to ensure that

Project 2000: jaws II Board of Directors in support of House Bill 139

Thank you for the opportunity to discuss this important bill with the committee today.

We have come here today to voice our support for House Bill 139.

The need for aluminum recycling has become increasingly evident and has gained tremendous momentum since the first aluminum pop can was made, in 1963.

As of 1985 Americans have used over 70-Billion beverage cans, 94% of them made from aluminum. Solid waste experts say that one aluminum can will last over 500 years in the environment. Clearly Americans need to change their habits about recycling.

As a part of the Alaska Youth Ready for Work Project . Project 2000, an alternative program within Juneau Douglas High School, has taken a direct interest in the recycling of aluminum. Part of the Alaska Youth Ready for Work Project is a focus on entrepreneurship as vocational education. Within this program a small group of students are expanding upon, JAWS, an already existing recycling business.

JAWS started approximately ten years ago by a young entrepreneur named Marty French. Marty French transferred ownership of JAWS to the Juneau Youth Football League. For the past several years funds raised by aluminum recycling have helped to fund the football program. JAWS was acquired by project 2000 in the winter of 1991. For the past several years JAWS has been an integral part of the local recycling effort. Project 2000 plans to reopen the business under the new name of JAWS TWO in the spring of 1991. Our plans are to explore and understand the workings of a small business, with an emphasis on reaching more people and increasing the volume of recycled material in Juneau as well as other communities in Southeast Alaska.

School is a place to learn. Students learn a multiple of ideas from the mathematics to language. Education could provide an excellent forum to present the importance of protecting the environment and recycling of all materials, giving that students a lasting concern and interest in recycling. House Bill 139 supports that and for that we support House Bill 139. Because if we make a stand now eventually it will make an impact on our community and others.

thank you.

# **CORRECTION**

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

## SPONSOR STATEMENT

HB 139 — Pollution Prevention and Recycling Recognition Awards

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- 3) waste treatment; and
- 4) waste disposal.

Waste reduction and recycling must be a fundamental part of Alaska's solid waste management effort. While significant opportunities exist for waste reduction and recycling, public education is essential to ensure that

individuals are aware of these opportunities. Furthermore, the future success of Alaska waste reduction and recycling is critically dependent upon the positive attitudes and behavior of young Alaskans.

By establishing a recognition awards program for waste reduction and recycling efforts, the state can help educate and promote opportunities for pollution prevention. House Bill 139 is a cost-effective investment in Alaska's future. The extent to which Alaskans can succeed in diverting solid waste from our landfills and establish successful recycling programs will enable the state to avoid the needless expenditure of millions of dollars for costly landfill capacity additions.

In addition, recognition awards for successful pollution prevention efforts will help small businesses by identifying positive solutions to pollution problems that can have economic as well as environmental benefits. Some examples include,

- the efforts of an Anchorage manufacturing company to automate its bottle filling process resulting in the reduction of discharged ammonia;
- the decrease in solvent waste by an Anchorage drycleaner through a modification of its process allowing for the reuse of solvent and a reduction in solvent discharges; and
- the success of an Alaska newspaper to substitute non-toxic soy-based inks for petroleum based inks resulting a reduction in the paper's hazardous waste management liabilities as well as a reduction in occupational health hazards.

These are the kinds of the pollution prevention, waste reduction and recycling efforts that House Bill 139 will encourage and recognize.

A recent survey of Alaska consumers found that 90% of the respondents felt that solid waste recycling was a community priority. The survey also found that about a third (31%) of the respondents lacked sufficient information about how to recycle more. In significant part, these impediments can be overcome by better education together with the kind of positive incentives and reinforcement provided through House Bill 139.

Project 2000: laws II Board of Directors in support of House Bill 139

Thank you for the opportunity to discuss this important bill with the committee today.

We have come here today to voice our support for House Bill 139.

The need for aluminum recycling has become increasingly evident and has gained tremendous momentum since the first aluminum pop can was made, in 1963. As of 1985 Americans have used over 70-Billion beverage cans, 94% of them made from aluminum. Solid waste experts say that one aluminum can will last over 500 years in the environment. Clearly Americans need to change their habits about recycling.

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thank you.

Survey by Anchorage Recycling Center-Sent to Anchorage  
Refuse customers in April 1990:

1. Do you consider a solid waste recycling program a community priority?

YES: 3162/3514 90%                      NO: 367/3514 10%

2. Do you currently recycle?

YES: 2701/3514 77%                      NO: 812/3514 23%

3. Would you be willing to separate your recyclables if pick-up occurred at your home?

YES: 3307/3514 94%                      NO: 207/3514 6%

4. The value of recyclables will not support curbside pick-ups. Will you be willing to pay more than your current refuse bill for curbside pick-up of recyclables?

YES: 1994/3514 57%                      NO: 1520/3514 43%

5. If yes, how much more?

\$5.00: 1617/3514 46%                      \$10.00: 291/3514 8%

\$15.00: 75/3514 2%                      N/A: 1532/3514 44%

6. Should recycling be subsidized by:

Grants: 969/3514 28%                      Taxes: 673/3514 19%

User: 967/3514 27%                      None: 1018/3514 29%

N/A: 545/3514 16%

7. What prevents you from recycling more?

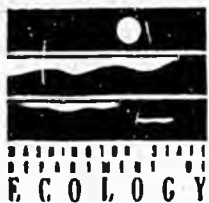
Does not pay:	437/3514	13%
Not sure where to take it:	1095/3514	31%
Inconvenient	1894/3514	54%
Not interested	44/3514	1%
N/A	702/3514	20%

8. Do you believe garbage pick-up should be mandatory in Anchorage?

Yes: 1901/3514	54%	NO: 1611/3514	46%
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9. Business using cardboard: Will you put cardboard in a separate dumpster if you receive a 10% rebate on disposal pick-up?

YES: 1139/3514	32%	NO: 2313/3514	66%
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# Focus

## THE WASTE NOT WASHINGTON ACT

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The 1989 Washington Legislature passed ESHB 1671, a comprehensive solid waste bill that will bring about significant changes in the way Washington citizens handle their garbage. The bill calls for waste reduction and source separation to become the fundamental strategies of solid waste management and establishes an aggressive state goal to achieve a fifty percent recycling rate by 1995. Local governments will play a very important role in meeting this goal by including waste reduction and recycling elements in their comprehensive solid waste management plans. Other key provisions of the bill are outlined below.

Funding for the activities under the bill will be provided partly through a surcharge of one percent on solid waste collection. A family setting out one garbage can per week will pay a maximum of 96¢ per year. Those with two cans or more per week will pay up to \$1.44 per year. Counties may also impose a fee on collection services in unincorporated areas to pay for solid waste planning and administration expenses.

### Waste Reduction and Recycling Elements of Local Plans

Local governments have been required to prepare solid waste management plans detailing how they will manage their garbage since the early 1970s. Now, cities and counties will be required to include waste reduction and recycling elements in their solid waste management plans written according to guidelines developed by the Department of Ecology. Curbside collection of recyclable materials will likely be required in most urban areas of the state. The plans must also address collection of recyclables in rural areas, monitoring of collection at nonresidential sites, and collection of yard wastes.

### Waste Reduction and Recycling Education

A comprehensive statewide public information program to encourage waste reduction, source separation, and recycling will be developed by the Department of Ecology. Local governments must also conduct educational programs to inform residents how to reduce and recycle their wastes. The Department will provide grants to local governments to assist with their educational efforts.

### Waste Composition/Recycling Survey

The Department of Ecology will conduct a yearly waste composition and recycling survey to track the progress toward meeting waste reduction and recycling goals. Washington was one of the first states in the nation to conduct waste stream analysis and will continue to lead the way in this regard.

### Collection Authority for Recyclables

The bill clarifies under what circumstances a city, county, or the Utilities and Transportation Commission has the authority to arrange for the collection of recyclable materials. Haulers regulated by the UTC will be required to use rate structures which encourage waste reduction and recycling.

### State Agency Waste Reduction and Recycling

State government will put additional emphasis on its own waste reduction and recycling program to ensure that all employees have the opportunity to participate in waste reduction and recycling at work. State agencies must also increase their use of recycled paper products by 50 percent.

### School Recycling

Public schools will be required to implement waste reduction and recycling programs according to guidelines developed by the Department. Schools will be provided with an incentive to maximize waste reduction and recycling through a new awards program. Three awards of \$10,000 will be given each year to public schools in the state.

3/13/91  
Rep. Kay Brown

AMENDMENT

by BROWN

OFFERED IN THE HOUSE  
TO: HB 139

Page 2, line 7, after "up to":

Delete "\$5,000", insert "\$2,000"

Page 2, after line 15:

Insert a new subsection to read:

"(d) The Department of Environmental Conservation may accept and use restricted grants of money or other assistance from private persons or groups to fund the awards made under (a) of this section.

(e) The Department of Environmental Conservation may not use state money to fund awards made under (a) of this section unless an appropriation is made specifically for the purposes of (a) of this section."

Revision Date: \_\_\_\_\_ Department Affected: Environmental Conservation  
 Title: An Act relating to public recognition of BRU: Environmental Quality  
pollution prevention and waste reduction ... Component: Environmental Quality Projects  
 Sponsor: Rep. Brown COMPONENT SERIAL  
 Requestor: House HESS Committee NUMBER 1016

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	10.0	10.0	10.0	10.0	10.0	10.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	20.0	20.0	20.0	20.0	20.0	20.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL OPERATING</b>	<b>30.0</b>	<b>30.0</b>	<b>30.0</b>	<b>30.0</b>	<b>30.0</b>	<b>30.0</b>

CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
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REVENUE	0.0	0.0	0.0	0.0	0.0	0.0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	30.0	30.0	30.0	30.0	30.0	30.0
FEDERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
OTHER	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL</b>	<b>30.0</b>	<b>30.0</b>	<b>30.0</b>	<b>30.0</b>	<b>30.0</b>	<b>30.0</b>

POSITIONS:

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

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.)

\$10.0 will be used to publicly recognize exemplary pollution prevention efforts by individuals, businesses, or government agencies and to promote the waste reduction and recycling awards for schools. \$20.0 will be used to award grants of up to \$5.0 each to public schools in recognition of their waste reduction and recycling efforts.

Prepared By: Jeff Mach  
 Division: Environmental Quality

Phone: 465-2671  
 Date: \_\_\_\_\_

Approved by Commissioner: *Jan Schuler*  
 Agency: Environmental Conservation

Date: 2-12-91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency (ies).

TABLE OF CONTENTS

HB 139      An Act relating to public recognition of  
pollution prevention and waste reduction and  
recycling efforts; and providing for an effective  
date.

1.            HB 139

2.            Sponsor's Sectional Analysis

3.            Fiscal Note

~~Department of Education~~

Department of Environmental Conservation

HB

146



OFFICIAL BUSINESS

# Alaska State Legislature

House of Representatives

REPRESENTATIVE  
**RAMONA L. BARNES**  
DISTRICT 14

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JUNEAU, ALASKA 99811  
(907) 465-3438

## SPONSOR STATEMENT

HB 146

HB 146 would prohibit a court from allowing a divorce decree while reserving property division issues for a later time. Although there may be some advantages to separating the issues, I believe that the disadvantages far outweigh the advantages.

Disadvantages include the following:

Incentive to finalize financial matters is reduced, particularly for the party with the majority of the assets.

Delay prolongs and exacerbates litigation.

Lack of settlement and/or remarriage can complicate new lives for both parties.

Involved parents can seem to put their own needs ahead of those of their children.

Gaps in medical insurance can occur.

Real property title can be in question if one party dies.

The party with fewer assets has no control over the property in question.

If either party dies, the ex-spouse has lost status in life insurance and inheritance rights.

The one advantage that can be cited is that it accelerates the actual dissolving of the relationship as the time needed for a divorce is less than the time needed for the settlement and disposition of the marital estate.

I have attached information supplied by the Legislative Research Agency. After reading this material I believe you will agree that the disadvantages far outweigh the advantages and I urge your serious consideration on this matter.

*SPONSOR STATEMENT*

# Alaska State Legislature

Legislative Research Agency



P.O. Box Y  
Juneau, AK 99811-3100  
Phone: (907) 165-3991  
Fax: (907) 163-3351

February 25, 1991

## MEMORANDUM

TO: Representative Ramona Barnes

FROM: Patricia Young *PM*  
Legislative Analyst

RE: Bifurcated Divorce Proceedings  
Research Request 91.171

You requested information on the number of states which allow bifurcated divorces, i.e., divorces in which the actual divorce and economic and child custody issues are handled separately. You asked for any statistics readily available on the number of divorces handled in this manner and for information on problems and benefits associated with the practice.

Bifurcation is a standard court practice, applicable to a variety of case types. Divorce is one type of case which may be bifurcated. According to Sidney Siller, president of the Institute for the Study of Matrimonial Laws, most states allow for bifurcated divorce actions either by rule or by practice, rather than by statute. Determination of the exact number of states which do bifurcate divorce proceedings is, therefore, difficult to determine. Neither Mr. Siller nor researchers at the American Bar Foundation, which is the research arm of the American Bar Association, were aware of any compilations of data on this subject.

The primary justification generally cited for the practice of bifurcating divorce proceedings is that the separation of divorce from custody or property settlement issues expedites matters, encourages settlements (rather than continued litigation) and allows individuals with irretrievably broken marriages to begin to disentangle their affairs and to restructure their separate lives. Not uncommonly, one or both individuals wish to remarry, and requests for bifurcation issue from a desire to move toward that goal. Sometimes matters are compounded by a sense of urgency to legitimize the birth of an expected child. Bifurcation also allows for certain tax advantages: rather than filing in the less advantageous married-but-separate category, spouses may file as single adults or jointly if they have remarried. Additionally, the practice may allow individuals with irreparably eroded relationships to discontinue financial responsibility for family members for whom they no longer wish to be responsible. The theory behind the practice of bifurcation, as it relates to divorce proceedings, is that people who wish to be divorced ought to be allowed to do so, and should not have their personal lives held hostage to economic demands.

*Legis. Research Report*

Opponents of bifurcated divorce proceedings contend that allowing individuals to delay such basic human responsibilities as the care of one's children and the resolution of one's financial affairs inevitably complicates and aggravates the original problems. According to Lynn Gold-Bikin, a representative of the American Bar Association on this issue, problems usually outweigh benefits. The following represent the major problems associated with bifurcated divorces.

- The granting of a final decree of divorce separate from resolution of custody and/or financial matters may reduce the incentive to finalize those issues expeditiously, particularly for the party with more money. The party who stands to lose assets in an economic distribution may delay settlement in the hope that the dependent party will eventually agree to accept less in order to have the issue finally resolved.
- In cases without the possibility of a mutually agreeable settlement, bifurcation prolongs and exacerbates litigation.
- Unresolved and unreconciled old business hinders the parties' efforts to restructure their lives. Remarriage, although it may satisfy the emotional needs of one or both parties, further complicates matters and almost inevitably further reduces the wealthier party's incentive to resolve financial and/or custody issues.
- Bifurcated divorces, especially when followed by remarriages, may prove very disruptive for children, particularly if they come to believe that their parents consider their own needs and wishes as more important than those of their children.
- Eligibility for medical insurance coverage provided through one party's employment and extending to the spouse and children is no longer available for the ex-spouse. Although alternate insurance may be available, gaps in coverage can occur at a time when individuals are particularly vulnerable due to increased stress.
- The real property ownership status of tenancy by the entirety--which carries a right of survivorship--is available only to married couples. Once a dissolution is final, ownership status converts, by operation of law, to tenancy in common. More like a partnership, tenancy in common does not afford the same protections--such as right of survivorship--as does tenancy by the entirety.
- In a bifurcated divorce proceeding, the party with fewer assets has lost the protection afforded by statute to a spouse and yet has not gained the protection of a valid property settlement agreement. Property owned at the time of divorce may have diminished, increased, or disappeared by the time of economic distribution.

Any of these events may cause thorny problems, particularly if the court has deferred valuation of assets until distribution. Little protection exists for the rightful assets of an ex-spouse if the wealthier party diminishes or hides assets, retires, or declares bankruptcy after the divorce but prior to the property settlement.

In the event of the death of either party, as an ex-spouse without the protection of a valid property settlement agreement, the surviving party or heirs would have difficulty claiming beneficiary status under any life insurance policy the other might have held. Likewise, complex inheritance questions would ensue. Establishing a clear right to inherit would be particularly complex if one or both parties had remarried.

Attached is a copy of *Wolk v. Wolk* 464 A.2d 1359 (PA Super.1983), which is considered the lead case in Pennsylvania. Judges in this case held that although unusual situations could occur in which a single order would not suffice, divorces actions should not be bifurcated as a matter of course. *Wolk v. Wolk* clearly summarizes benefits and potential problems of the practice, and delineates under what conditions and circumstances it should be considered.

Ms. Gold-Bikin notes that in 1979, a judicial inquiry held in New Jersey--generally considered a rather forward-thinking state--produced the Pashman Report which recommended against the practice of bifurcated divorces for many of the reasons noted above, despite the length of time needed to resolve most cases through the overloaded trial courts in that state. Subsequent to the Pashman Report, New Jersey's chief justice sent out a judicial directive against the practice. Since that time, bifurcation of divorce cases in New Jersey is generally discouraged and extremely rare: one must show exceptional circumstances for the court to exercise its discretion to grant bifurcation. The attached copy of *Leventhal v. Leventhal* 571 A.2d 348 (NJ Super.Ch.1989) provides a summary of arguments for and against bifurcation, as discussed in the Pashman Report, as well as a review of case law on the subject.

In its discussion, the New Jersey court noted that New York case law concludes that when complex financial issues are involved, settlements or easy answers may be less likely once dissolutions are granted. (Because of this, according to Mr. Siller, final judgments in New York frequently are not entered until all issues are finalized.) The Florida court was also cited as holding that the split procedure should be used only if *clearly* in the best interests of the parties and children. Florida holds that the "convenience of one of the parties for early remarriage" does not justify" a bifurcation.

Interestingly, the New Jersey court concludes that "realistically, . . . the actual divorce appears to be ancillary to the financial issues." The ideal of the insular family unit--two adults and their biological children--is no longer the reality in this society. Thus, problems which might at first reading seem unlikely may, in fact, be commonplace. Ann Moss, deputy director

Representative Barnes  
February 25, 1991  
Page 4

of the Pension Rights Center--an independent, nonprofit organization funded in part by the American Association of Retired Persons--cautions that the practice necessitates very carefully worded temporary orders, and that, in general, a more highly sophisticated than normal approach by divorce attorneys is required to adequately protect all parties.

Sources agree that any state which permits bifurcation should think seriously about the potential problems. No divorce is identical to another, however, and no rule is applicable to every situation. A middle ground, in which petitioners have specifically addressed all substantive issues is, therefore, frequently recommended. Public policy that allows courts to evaluate cases on their individual merits and to use discretion in allowing bifurcations when parties have considered the potential problems and no just reasons exist to deny the requests, is generally favored by the courts and by the citizenry as well.

I hope that this information is useful to you. If you have questions or need further information, please don't hesitate to call.

Attachments

# BIFURCATE DIVORCE? WELL, . . .

## Critics say 2-step process often leads to delay

The bifurcated divorce—granting the divorce first and deciding economic issues later—can give couples a quick break so they can get on with their lives.

But the practice is coming under increasing criticism from lawyers who say it leads to long delays and favors the party with more money.

Divorce attorney Harry Fain of Beverly Hills favors bifurcation for the traditional reason: "When you get into a case and the parties are mortal enemies . . . our public policy in California encourages the two people to get divorced first. That cleanses the air a little bit."

Section 302(a)(4) of the Uniform Marriage and Divorce Act allows the judge to bifurcate the divorce, and many states have adopted the practice even if they have not adopted the uniform act.

Chicago divorce attorney Donald Schiller says the biggest problem with bifurcating economic issues is delay. After the divorce is granted, the party who stands to lose some of his property and paycheck in an economic distribution has no incentive to press for a quick resolution.

Schiller, immediate past chairperson of the ABA Section of Family Law, says some bifurcated cases have dragged on for as long as four years. As a result, Schiller thinks Illinois judges use bifurcation less often.

"When judges started realizing that the cases weren't getting finished, they stopped bifurcating, unless the parties agreed or unless there was a real good reason, because these cases were just lying around and not getting disposed of," Schiller said.

Beverly Anne Groner of Bethesda, Md., chairperson of the ABA Section of Family Law, has even gone so far as to get injunctions to prevent bifurcation.

Groner is one of several lawyers who say that big problems can arise between the dissolution and economic division. For example, what happens when the divorce is granted, and then one spouse dies, or the wealthier spouse spends or hides his assets?

"It opens in some cases a verita-



▲ Donald Schiller: Bifurcated cases have dragged on for as long as four years.

ble Pandora's Box of problems that weren't contemplated," said Groner.

If the wealthier spouse should die after the dissolution, the other party would not have a clear right to inherit, and would not yet have any rights under the divorce decree, Groner says.

Or, if the economically dependent spouse should die, the heirs may have problems getting property not yet distributed by the divorce decree.

Another problem arises when the property owned at the time of the divorce isn't there at the time of economic distribution. "Assets can diminish, increase, or disappear," Groner said. "There are some who will deliberately hide assets."

State statutes vary as to whether assets should be valued at the time of divorce, or at distribution, according to Groner.

The wealthier spouse could even lose assets in a bankruptcy proceeding, according to Norristown, Pa., attorney Lynne Z. Gold-Bikin. In *In Re Murray*, 31 B.R. 499 (Bkrtcy E.D. Pa. 1983), the bankruptcy court forced the sale of the divorced husband's home, giving only 50 percent of the proceeds to the divorced wife. If the economic distribution had occurred first, the wife could have been entitled to more.

Before the advent of no-fault divorce, property issues were decided

more quickly because they were part of the bargaining process. One party would agree to the grounds for a divorce in exchange for property.

For example, in New York, where some degree of fault is still required for a divorce, attorney Sanford S. Dranoff says the bargaining chip is frequently used by the economically dependent party: "I represent the man, and the woman says, 'You don't have any grounds, unless you give me the title to the house.'"

Ironically, with the advent of bifurcation and no-fault, the bargaining chip is now in the hands of the economically superior party.

"The person with the most property wants to give up as little as possible, and he will sometimes prolong the case in the hope that the other party will accept less to get it over with," said DePaul College of Law Associate Dean Vincent Vitullo.

Many who criticize bifurcated divorce as favoring the economically advantaged party—often the husband—say it is part of a larger problem in which women are treated unfairly in divorce proceedings.

But there are some cases when bifurcation actually prevents delay, according to Fain. He has used bifurcation to resolve thorny issues like valuation of a business or the validity of a prenuptial agreement first. Once those issues are resolved, a quick settlement is likely, he said.

—Debra Cassens Moss



▲ Beverly Anne Groner

ty, Civil Division, No. 930 Oct. Term 1980, Kaplan, J., which stated that court would not adjudicate wife's new matter alleging that divorce code was constitutionally defective and that economic claims would be severed from divorce claims. The Superior Court, Nos. 333 and 538 Pittsburgh 1981, Cirillo, J., held that: (1) economic claims may be severed from divorce claims, and (2) trial court failed to exercise its discretionary power in deciding whether to bifurcate the issues; thus, case would be reversed and remanded for new hearing.

Reversed and remanded.

1. Trial ⇌ 3(5)

Economic claims may be severed from divorce claims under the new divorce code. 23 P.S. § 401(b); Rules Civ.Proc., Rule 1920.52(c), 42 Pa.C.S.A.

2. Trial ⇌ 3(5)

The decision to bifurcate economic claims from divorce claims, although permissible, should not be made pro forma; rather, such determination should be made only after disadvantages and advantages have been carefully explored and analyzed; each case must be reviewed on its own facts and only following court's determination that consequences of bifurcating case would be of greater benefit than not bifurcating, should permission be granted. 23 P.S. § 401(b); Rules Civ.Proc., Rule 1920.52(c), 42 Pa.C.S.A.

3. Divorce ⇌ 184(5)

So long as trial judge, in deciding whether to sever economic claims from divorce claims, assembles adequate information, possibly studies information, and then explains his decision regarding bifurcation, the Superior Court will defer to trial court's discretion.

4. Trial ⇌ 3(5)

Trial court failed to exercise its discretionary powers when it ordered bifurca-

Jacob WOLK

v.

Thelma Dym WOLK, Appellant.

Jacob WOLK

v.

Thelma Dym WOLK, Appellant.

Superior Court of Pennsylvania.

Argued May 25, 1983.

Filed Aug. 26, 1983.

Appeal was taken from decree of the Court of Common Pleas of Allegheny Coun-

tion of economic claims and divorce claims since its decision to bifurcate was based upon accepted practice in county and not upon particular facts of case; thus, case would be reversed and remanded for new hearing. 23 P.S. § 401(b); Rules Civ.Proc., Rule 1920.52(c), 42 Pa.C.S.A.

John J. Dean, Pittsburgh, for appellant.

Frederick N. Frank, Pittsburgh, for appellee.

Before CAVANAUGH, ROWLEY and CIRILLO, JJ.

CIRILLO, Judge:

The parties were married on October 25, 1959 and lived together until a domestic dispute arose in June, 1975. The husband filed a divorce action on September 3, 1980, alleging that the marriage was irretrievably broken,<sup>1</sup> and requesting equitable distribution of marital property as well as counsel fees. The wife filed an Answer and New Matter averring, *inter alia*, that the Divorce Code was constitutionally defective. She also entered a counterclaim for alimony, alimony pendente lite, counsel fees and maintenance of insurance policies.

A hearing was held on March 2, 1981, at which time the court found the marriage to be irretrievably broken. The court did not adjudicate the New Matter or property rights at that time. On March 3, 1981 the wife appealed at No. 333 Pittsburgh, 1981.

Subsequently, the lower court signed a series of Orders, dated March 2, 1981, which stated that the court would not adjudicate the New Matter, would enter a bifurcated divorce and a decree of divorce dissolving the marriage. These orders were then docketed with the prothonotary and on May 15, 1981 the wife appealed at No. 538 Pittsburgh, 1981.

1. The Act of April 2, 1980, P.L. 63, No. 26.

[I] Initially, we are compelled to address the issue of the propriety of severing economic claims from divorce claims in this matter. The New Divorce Code provides in pertinent part:

... In the event that the court is unable for any reason to determine and dispose of the matters provided for in this subsection within 30 days after the master's report has been filed, it may enter a decree of divorce or annulment ...

Act of April 2, 1980, P.L. 63, No. 26, § 401, 23 P.S. § 401(b). Similarly, the Pennsylvania Rule of Civil Procedure concerning court hearings in divorce or annulment actions states:

(c) The court need not determine all claims at one time but may enter a decree adjudicating a specific claim or claims.

Pa.R.C.P. 1920.52(c), Adopted June 27, 1980; effective July 1, 1980.

The preceding language demonstrates a legislative awareness that situations could arise in which a single order would not suffice. It is clear, therefore, that the intent of the legislature is to permit bifurcation. However, there is no requirement which mandates bifurcation nor obligates the court to find clear and compelling necessity before it bifurcates a proceeding.

There are several advantages which appertain to the concept of bifurcation. First, it accelerates the actual dissolution of a marriage found to be irretrievably broken since the time needed to obtain a divorce is substantially shorter than the time needed for the disposition of marital property. This allows the parties to quickly begin the task of restructuring their lives. We note that the objectives of the Assembly in enacting the Divorce Code are set forth in Section 102(a) which provides in pertinent part:

(a) The family is the basic unit in society and the protection and preservation of the family is of paramount public con-

§ 201. 23 P.S. § 201(d).

cern. Therefore, it is hereby declared to be the policy of the Commonwealth of Pennsylvania to:

(1) Make the law for legal dissolution of marriage effective for dealing with the realities of matrimonial experience.

(3) Give primary consideration to the welfare of the family rather than the vindication of private rights or the punishment of matrimonial wrongs.

(4) Mitigate the harm to the spouses and their children caused by the legal dissolution of the marriage.

Act of April 2, 1980, P.L. 63, No. 26, § 102, 23 P.S. § 102(a)(1), (3) and (4).

It is apparent that a speedy resolution of the divorce issue is within the purview of the Code. Moreover, as the Honorable Eugene B. Strassburger III of the Court of Common Pleas of Allegheny County commented in the case of *Casey v. Casey*, 129 P.L.J. 42, 44 (1981):

... [T]hese goals [of the divorce code] can be accomplished only by the prompt dissolution of a marriage that is demonstrably over (as defined by the code), and allowing the parties to restructure their lives. The goals cannot be accomplished by tying the parties to a dead marriage while all of the conflicts and time-consuming financial details are litigated. . . .

Bifurcation separates the termination of the marriage from the distribution of property so that the marriage and each party's personal life are not held hostage to economic demands. At the same time, the

2. In *Klein v. Klein*, *supra*, at 657-58 Judge Wettick reasoned:

Alimony pendente lite, if literally construed, means alimony while the litigation is pending. (citation omitted). Under prior law, the duty to pay alimony pendente lite ended with the divorce because this was the only subject of the litigation. In *Ponthus v. Ponthus*, 70 Pa.Superior Ct. 39 (1918), the court held that alimony pendente lite continued while an appeal from the issuance of a divorce decree is pending. According to this court, the pur-

pose of alimony pendente lite is to permit a dependent spouse to meet the expenses of carrying on or defending *his* action (including reasonable living expenses), so payments should continue as long as the action is pending. *Also see: Commonwealth ex rel. Entler v. Entler*, 33 Lehigh 23 (1968). Thus so long as any claims raised in the divorce litigation are still pending, the principles enunciated in *Ponthus* bar automatic termination of alimony pendente lite.

There are also several tax advantages that come into play when considering bifurcation, such as; a spouse may remarry and file a joint federal income tax return with the new spouse; a spouse may avoid filing status as married filing separately; stock redemption attribution rules may be avoided [I.R.C. § 318]; losses on transfers and sales between ex-spouses may be recognized [I.R.C. § 267]; an individual spouse may elect the capital gain exclusion on sale of family residence [I.R.C. § 121]; and gain on the sale of depreciable realty may be taxed as capital gain rather than as ordinary income. [I.R.C. § 1239]. *Rounick, Pennsylvania Matrimonial Practice*, Section 18.3, page 148.

Finally, as revealed by the experience in Allegheny County, bifurcation encourages case settlements between the time the divorce decree is issued and the property distribution issues reach trial. These settlements are an obvious benefit to our inundated courts.

On the other side of the coin, there are many disadvantages related to bifurcation. If the cases are not settled by the parties, then oftentimes two hearings are necessary, thus burdening an already overcrowded court calendar. Also, despite the fact that divorce is achieved rapidly, there is still a

significant delay in the resolution of economic issues, thus having a dilatory effect on the parties' efforts to reshape their lives. From a tax standpoint, bifurcation prevents the parties from filing a joint federal income tax return and therefore a favorable tax rate is unavailable.

Another problem which arises where a case has been bifurcated involves the impact that the death of one of the parties, subsequent to the issuance of the divorce decree but prior to a determination of the economic issues, has on the surviving spouse's right to equitable distribution. This issue was painstakingly analyzed in an article authored by the Honorable Lawrence W. Kaplan.<sup>3</sup> Judge Kaplan noted that where a case has been bifurcated and one party dies before there has been a resolution of the ancillary issues, the other spouse is precluded from enjoying the benefits provided under the Probate, Estates and Fiduciaries Code.<sup>4</sup> Furthermore, the death of one of the parties would have an adverse effect on the surviving party's equitable distribution claim. Though this spouse would still have a claim against the decedent's estate under the Divorce Code's equitable distribution process, that claim would be seriously hampered by the surviving spouse being rendered incompetent as a witness by the Dead Man's Rule.<sup>5</sup>

Still another issue which could arise relates to the effect that a bifurcated divorce has on a divorced spouse's right to receive the proceeds of a life insurance policy in which that spouse was named a beneficiary. In *Simpkins v. Dodolak*, 1 Pa.Fiduc.2d 120 (1980), a Clearfield County case, the court held that since the husband had retained the right to change his beneficiary at any time, then under the Act of April 18, 1978, P.L. 42, No. 23, Sec. 8, 20 Pa.C.S.A. § 6111-

1, the rights of the wife were revoked regarding the proceeds of the policy in question. Undoubtedly, to this list of detriments associated with bifurcation, numerous other possibilities can be added.

[2] In light of the antecedent discussion, it is obvious that the decision to bifurcate, though permissible, should not be made *pro forma*, as in the case of *Klein v. Klein*, *supra*. Rather, such a determination should be made only after the disadvantages and the advantages have been carefully explored and analyzed. Each case must be reviewed on its own facts and only following the court's determination that the consequences of bifurcating the case will be of greater benefit than not bifurcating, should it grant the petition. In so holding, we reject the rationale of *Smolinsky v. Smolinsky*, 5 Phila. 364 (1981), whereby the trial court required compelling reasons to be shown before granting a petition to bifurcate. Such a strict test is not demanded by the legislature. The eventual decision should be the approach which is fair to both parties.

[3] Since the decision to bifurcate is discretionary, we will review lower court decisions pertaining to bifurcation by using an abuse of discretion standard. So long as the trial judge assembles adequate information, thoughtfully studies this information, and then explains his decision regarding bifurcation, we defer to his discretion. In other words, this determination should be the result of a reflective examination of the individual facts of each case.

This scope of review is consistent with other Superior Court decisions which deal with the Divorce Code. See: *Ruth v. Ruth*, — Pa.Super. —, 462 A.2d 1351 (1983); *Gee v. Gee*, — Pa.Super. —, 460 A.2d 358

3. Kaplan, "The impact of death on a pending divorce," *Pennsylvania Law Journal—Reporter*, January 18, 1982, at 3 and 24.

4. Act of June 30, 1972, P.L. 508, No. 164, § 2, 20 Pa.C.S.A. § 101 *et seq.*

5. Act of July 9, 1976, P.L. 586, No. 142, § 2, as amended by the Act of April 28, 1978, P.L. 202, No. 53 § 10(75), 42 Pa.C.S.A. § 5930.

(1983) (in determining the propriety of property distribution, the Superior Court uses an abuse of discretion standard of review); See also: *Geyer v. Geyer*, — Pa. Super. —, 456 A.2d 1025 (1983) (abuse of discretion standard is appropriate when reviewing awards of alimony); See also: *Remick v. Remick*, — Pa.Super. —, 456 A.2d 163 (1983) (orders for alimony pendente lite, counsel fees and permanent alimony should be reviewed for an abuse of discretion by the lower court). Likewise, our position in this matter, of requiring the trial judge to articulate reasons for his decision and then reviewing this determination for an abuse of discretion, is analogous to the procedure used under the Sentencing Code.<sup>6</sup> See: *Commonwealth v. Wilson*, — Pa.Super. —, 452 A.2d 772 (1982); *Commonwealth v. Rooney*, 296 Pa.Super. 288, 442 A.2d 773 (1982).

431 Pa. 585, 246 A.2d 661 (1968); *Campbell v. Heilman Homes, Inc.*, 233 Pa.Super 366, 371, 335 A.2d 371, 373 (1975) (HOFFMAN, J., dissenting).

[4] In the case at bar, the lower court failed to exercise its discretionary powers. Its decision to bifurcate was based upon an accepted practice in Allegheny County, not upon the particular facts of this case. Therefore, we must reverse the Orders and Decree of Divorce entered by the trial court on March 2, 1981 and remand for a hearing in accordance with this opinion. Because of this decision, we need not address the other contentions in appellant's brief. Jurisdiction is relinquished.

Reverse and Remand.

The wife in this instance has the burden of proving that the trial judge abused his discretion. In defining this standard, the courts of this Commonwealth have articulated the following:

... When the court has come to a conclusion by the exercise of its discretion, the party complaining of it on appeal has a heavy burden; it is not sufficient to persuade the appellate court that it might have reached a different conclusion if, in the first place, charged with the duty imposed on the court below; it is necessary to go further and show an abuse of the discretionary power. "An abuse of discretion is not merely an error of judgment, but if in reaching a conclusion the law is overridden or misapplied, or the judgment exercised is manifestly unreasonable, or the result of partiality, prejudice, bias or ill-will, as shown by the evidence or the record, discretion is abused." (Citation omitted).

*Garrett's Estate*, 335 Pa. 287, 292-93, 6 A.2d 858, 860 (1939); See also: *Mackarus Estate*,

6. Act of December 30, 1974, P.L. 1052, No. 345. § 1, as amended by the Act of October 5, 1980.



571 A.2d 348  
(N.J. SUPER. CH. 1989)

to the jury were materially deficient and because they did not apprise the jury of the essential elements of the legal malpractice cause of action applied with equal force and effect to the judgment against Conte. The judgment against Conte, therefore, should be reversed. However, because the judgment against Conte is vacated solely for the reason of trial error the matter must be remanded for a new trial. Plaintiffs should be afforded an opportunity to retry their claims against Conte based on conventional proofs, evaluating the value of the medical malpractice suit that was lost against Dr. Brown and the other defendants in accordance with the principles discussed broadly in *Gautam v. De Luca*, *supra*, 215 N.J. Super. at 397-400, 521 A.2d 1343 and the cases cited therein.

1370The other issues raised by plaintiffs on this appeal do not pertain to the trial court's post-judgment order under review. Rather, they all appear to address our prior decision in *Gautam v. De Luca*, *supra*, and, therefore, are not properly raised on this appeal and we do not address them.

Accordingly, we affirm the order vacating the judgment against Conte and remand the matter to the trial court for a new trial as to Conte only, consistent with the views expressed in this opinion. We leave to the trial court the management of the trial of Conte's cross-claim against De Luca.



239 N.J. Super. 370

1370Richard B. LEVENTHAL, Plaintiff

v.

Rosalyn LEVENTHAL, Defendant.

Superior Court of New Jersey,  
Chancery Division,  
Family Part, Bergen County.

Decided Oct. 11, 1989.

Party to divorce moved for bifurcation of action. The Superior Court, Chancery

Division, Family Part, Bergen County, Krafte, J.S.C., held that party was not entitled to bifurcation of issues of dissolution and custody from those of support and equitable distribution, notwithstanding lengthy delay in trial due to court congestion, in that trial on dissolution, no matter how short, would do nothing to simplify or reduce prospect of further proceedings in case.

Motion denied.

13711. Trial  $\Rightarrow$  3(1)

Decision to bifurcate proceeding should be made only after balancing advantages and disadvantages and determining if there would be greater benefit to court with bifurcation than without; purpose is not to ensure absolute necessity of second proceeding, but rather reduce probability of multiple litigation.

2. Divorce  $\Rightarrow$  146

Party to divorce proceeding was not entitled to bifurcation of issues of dissolution and custody from those of support and equitable distribution, notwithstanding lengthy delay in trial due to court congestion, in that trial on dissolution, no matter how short, would do nothing to simplify or reduce prospect of further proceedings in case.

Gary N. Skoloff, Skoloff & Wolfe, Livingston, for plaintiff.

Barry I. Croland, Stern, Steiger, Croland, Tanenbaum & Schielke, Morristown, for defendant.

KRAFTE, J.S.C.

This matter is before the court on a motion requesting the bifurcation of the matrimonial dissolution and custody dispute from the issues of support and equitable distribution. This court finds that there has been no showing of "unusual and extenuating circumstances" which would require affording a preferential treatment to this particular case by granting the husband a divorce prior to a resolution, by trial