ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672
6943 HOUSE JUDICIARY

HB

210

HB 210

WALTER J. HICKEL
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 11, 1991

The Honorable Ben Grussendorf
Speaker of the House
P.O. Box V
Juneau, AK 99811

Dear Speaker Grussendorf:

Under the authority of art. III, sec. 18 of the Alaska Constitution, I am transmitting a bill to amend the Alaska Securities Act of 1959. The bill addresses three administrative problems.

First, the bill would change existing statutes to allow the Department of Commerce and Economic Development (department) to set securities registration-related fees by regulation. Sections 1, 2, 4, and 6. Currently, almost all registration-related fees are expressly set by statute. Because those statutes have not been updated for many years, the fees are significantly below those charged by other jurisdictions and are inadequate to pay for the services provided. The intent of the department is to set the fees by regulation at an amount consistent with that charged by other states.

Second, in an effort to reduce the amount of duplicate filings and unnecessary paperwork handled by the department, the bill provides that the administrator of securities (the director of the division of banking, securities and corporations) may arrange with the National Association of Securities Dealers or the Securities and Exchange Commission to have coordinated national filings, and may accept certain uniform registration-related procedures. Section 3.

Third, the bill provides for new exemptions from the registration requirement for securities. At present, securities listed under a number of national stock exchanges are exempt from registration. AS 45.55.140(a)(10). The bill will add to that list two other recognized exchanges, the Chicago Board Options Exchange and the National Association of Securities Dealers Automated Quotation National Market System (NASDAQ/NMS). Additionally, the administrator would have the flexibility to add to that list as conditions dictated. Most jurisdictions have a similar form of administrator exemption approval.

The bill updates the Alaska Securities Act to bring it in line with current practice and to permit coordination with national enforcement authorities. I urge your support of this measure.

Sincerely,

Walter J. Hickel

Walter J. Hickel
Governor

NASD

National Association of
Securities Dealers, Inc.
1735 K Street, N.W.
Washington, D.C. 20006
(202) 728-8000

March 19, 1991

BY FAX

The Honorable David Finkelstein, Chairman
House Labor & Commerce Committee
Alaska State Legislature
State Capitol
P.O. Box V
Juneau, AK 99811

RE: House Bill 210

Dear Chairman Finkelstein:

On behalf of the National Association of Securities Dealers, Inc. (NASD), I am writing to urge your support of House Bill 210 to amend the Alaska Securities Act. The NASD is charged with the responsibility of regulating both the National Association of Securities Dealers Automated Quotation System (NASDAQ), which is the second largest securities market in the United States, and the over-the-counter securities markets. This task encompasses both regulation of virtually every broker/dealer firm in the country that conducts business with the public and the regulation and operation of the NASDAQ system.

The NASD strongly supports passage of HB 210 since it includes an important provision to exempt from state registration those securities that are listed on the NASDAQ National Market System (NMS). This legislation, like the Securities and Exchange Commission and the Federal Reserve, recognizes the equality of securities listed on NMS with those listed on the New York and American Stock Exchanges. Passage of HB 210 also promotes uniformity with other states since 41 states, to date, have provided this exemption for securities listed on NMS.

We urge you and your colleagues to favorably report this bill at the Labor & Commerce Committee hearing scheduled for March 21, 1991. If you have any questions, please call me at (202) 728-8289.

Sincerely,

Frank J. Formica
Vice President
Office of Congressional and
State Liaison

cc: Mr. Larry Carroll

NASD

National Association of
Securities Dealers, Inc.
1735 K Street, N.W.
Washington, D.C. 20006
(202) 728-8000

March 26, 1991

The Honorable Dave Donley, Chairman
House Judiciary Committee
Alaska State Legislature
State Capitol
P.O. Box V
Juneau, AK 99811

RE: House Bill 210

Dear Chairman Donley:

On behalf of the National Association of Securities Dealers, Inc. (NASD), I am writing to urge your support of House Bill 210 to amend the Alaska Securities Act. The NASD is charged with the responsibility of regulating both the National Association of Securities Dealers Automated Quotation System (NASDAQ), which is the second largest securities market in the United States, and the over-the-counter securities markets. This task encompasses both regulation of virtually every broker/dealer firm in the country that conducts business with the public and the regulation and operation of the NASDAQ system.

The NASD strongly supports passage of HB 210 since it includes an important provision to exempt from state registration those securities that are listed on the NASDAQ National Market System (NMS). This legislation, like the Securities and Exchange Commission and the Federal Reserve, recognizes the equality of securities listed on NMS with those listed on the New York and American Stock Exchanges. Passage of HB 210 also promotes uniformity with other states since 41 states, to date, have provided this exemption for securities listed on NMS.

We urge you and your colleagues to favorably report this bill when it is taken up by the Judiciary Committee. If you have any questions, please call me at (202) 728-8289.

Sincerely,

Frank J. Formica
Vice President
Office of Congressional and
State Liaison

cc: Mr. Larry Carroll

Nancy R. Crossman
General Counsel &
First Vice President

LaSalle at Van Buren
Chicago, Illinois 60605 312 786-7502
Fax: 312 786-7407

April 26, 1991

The Honorable Dave Donley
Chairman
House Judiciary Committee
State Capitol
P.O. Box V
Juneau, AK 99811-0101

Re: House Bill 210

Dear Chairman Donley:

On behalf of the Chicago Board Options Exchange, Inc.. (CBOE), I am writing to request your support for House Bill 210 , amending the Alaska Securities Act of 1959.

Among other things, the legislation will exempt from state registration securities listed or approved for listing on the CBOE. The exemption will put CBOE on equal footing with the New York Stock Exchange (NYSE), American Stock Exchange (AMEX), Midwest Stock Exchange (MSE), and Pacific Stock Exchange (PSE), all of which are currently recognized under Alaska's exchange listing exemption. CBOE's criteria for listing securities for trading are equal or superior to the criteria of other exchanges already recognized under the statute.

Since February 1973, the CBOE has been registered as a national securities exchange under Section 6 of the Exchange Act of 1934, as amended. Until recently, CBOE has listed and traded only standardized put and call options. (Such options are exempt from registration under Alaska's "equal rank" exemption because the securities underlying such options are listed and traded on the NYSE and the AMEX.)

On October 19, 1990, the Securities and Exchange Commission approved rules allowing the CBOE to list and trade stocks, warrants and other securities instruments. After reviewing CBOE's listing criteria, regulatory functions, and proposed securities for listing, an Ad Hoc Marketplace Committee of the North American Securities Administrators Association (NASAA) issued a report at its April 1991 conference recommending that the states accord CBOE a marketplace exemption.

Pursuant to legislative or administrative action, new products listed on CBOE are currently exempt from registration in 22 states. Five states, including Alaska, have legislation or rules pending to afford such recognition. An additional 16 states have assured CBOE of recognition after the issuance of a favorable NASAA Report, which as noted above, was released in April.

It should be noted that recognizing CBOE is not likely to have an adverse effect on state revenue. If a security is qualified to list on CBOE and CBOE does not have the necessary exchange listing exemptions, the security would most likely be listed on the AMEX or another recognized exchange and, therefore, would not be required to register in Alaska. However, another aspect of the pending bills could positively impact state revenues -- the amendments granting the department of regulation authority to establish registration fees, which we understand have not been adjusted since the 1950's.

All in all, HB210 will promote uniformity among the states in the regulation of securities and will benefit state revenues by allowing registration fees to be adjusted to reflect the cost of the state's regulatory function.

We, therefore, respectfully request that you and you colleagues favorably act on this bill prior to the May recess. If you have any questions, please contact me at (312) 786-7502.

Sincerely,

Nancy R. Crossman
First Vice President and
General Counsel

cc: Lawrence P. Carroll

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

OFFICE OF THE COMMISSIONER

PO. BOX D
JUNEAU, ALASKA 99811-0800
PHONE: (907) 465-2500

April 26, 1991

The Honorable Dave Donley
Chairman, House Judiciary
Committee
Room 122, Capitol
Pouch V
Juneau, AK 99811

Dear Representative Donley:

Re: HB 210, Amending the Alaska Securities Act

The House Judiciary Committee has before it House Bill 210, amending the Alaska Securities Act. Please be advised that the department would very much appreciate the committee's consideration and hearing on this bill. The legislation will permit the Division of Banking and Securities to revise securities fees which have not been modified since enactment of the Securities Act in 1955. In addition, the bill grants exemption from registration for certain securities listed on the National Automatic Quotation System (NASDAQ), as well as certain securities listed on the Chicago Board Options Exchange. These new exemptions are allowable in many jurisdictions and are needed to bring us mainstream with our fellow regulators.

This is a unique opportunity where industry is, in fact, supporting legislation which will result in increased fees and put us back in the middle of the road for securities regulation. This is important for us, and we would appreciate your consideration.

Sincerely,

Larry O. Galloway
Assistant Commissioner

LOG/LPC/jc4667q
042691b

THE FOLLOWING PAGES
WERE TREATED AS A UNIT
IN THE ORIGINAL FILE

CORRECTION

THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY

THE FOLLOWING PAGES
WERE TREATED AS A UNIT
IN THE ORIGINAL FILE

The ChicagoBoard Options Exchange

Nancy L. Nielsen
Assistant Corporato Secretary

LaSalle at Van Buren
Chicago, Illinois 60605 312 786-7466

May 3, 1991

Federal Express

Representative Dave Donley
Chairman
House Judiciary Committee
State Capitol
P.O. Box V
Juneau, AK 99811

Representative Max F. Gruenberg, Jr.
Vice Chairman
House Judiciary Committee
State Capitol
P.O. Box V
Juneau, AK 99811

Re: House Bill 210

Gentlemen:

We understand that a hearing on the House Bill 210 is scheduled for Wednesday, May 8, 1991. In connection with the hearing, we thought you might be interested in the enclosed report of the Ad Hoc Marketplace Committee of the North American Securities Administrators Association. The Committee conducted a due diligence study of the Chicago Board Options Exchange, the results of which are summarized in the report. As noted in Nancy Crossman's letter of April 26th, the Report, which recommended that the states accord CBOE a marketplace exemption, was delivered at the April NASAA Conference.

Sincerely,

Nancy L. Nielsen
Assistant Corporate Secretary

cc: Hayden Kaden, Esquire w/enclosure
Lawrence P. Carroll

MEMORANDUM

TO: NASAA Board of Directors
NASAA Members

FROM: Ad Hoc Marketplace Committee

DATE: March 8, 1991

RE: CBOE Exemption Request

In April, 1990, the Chicago Board Options Exchange ("CBOE") began contacting state administrators to request that it be treated as an exempt marketplace for purposes of the "exchange exemption." Subsequently, the NASAA Board established the Ad Hoc Marketplace Exemption Committee and directed it to review the request for an exemption for CBOE-listed securities, to make recommendations to the states with respect to that request, and to determine the appropriateness of entering into the Memorandum of Understanding Regarding a Model Marketplace Exemption with the CBOE. This document sets forth the findings and recommendations of the committee.

CRITERIA FOR MARKETPLACE EXEMPTIONS

In dealing with the CBOE request, the committee quickly recognized that in light of initiatives in other United States marketplaces and the globalization of the markets, it was necessary to consider the matter of marketplace exemptions from a broader perspective. Accordingly, the committee determined that its first task should be to establish criteria to apply to <u>any</u> marketplace seeking an exemption from state registration requirements.

The committee initially focused on the MOU which NASAA entered into with the NASD. That document essentially contains quantitative and qualitative listing criteria for issuers, plus a commitment to cooperate and share information. The Committee perceived this to be an excellent starting point, but has since developed additional minimum standards which deal with other aspects of a marketplace's operation.

As a result of the process briefly described above, the committee formulated the following four-part test which it believes a marketplace should be required to meet to qualify for a marketplace exemption:

1. Listing criteria. The marketplace should be willing to execute a Memorandum of Understanding with NASAA, which contains listing criteria at least as high as those included in the MOU which NASAA executed with the NASD.

2. Products. Except for products which are subject to listing criteria in the MOU, the marketplace should only include products which are not of significant regulatory concern from a corporate finance perspective.

3. Customer protection. The marketplace should provide an adequate level of customer protection. This would include mechanisms for handling customer complaints, reviewing sales practices, and implementating disciplinary measures for violations. Rules and institutional mechanisms should be in place to protect customers from sales and trading abuses.

4. Surveillance. The marketplace should provide for minimum levels of surveillance. This standard will be deemed to have been met if Securities and Exchange Commission oversight exists, and there is satisfactory compliance with SEC standards. The Committee does not propose, at this time, that NASAA make an independent analysis of the surveillance systems of a marketplace, but rather that it review SEC concerns and compliance.

EVALUATION OF CBOE

In order to apply these criteria to CBOE, as required by its charge, the committee took a number of steps. First, Susan Bryant and Craig Goettsch visited the CBOE headquarters on November 29, 1990. In the course of that visit, they toured the floor of the exchange and met some of its officers, its legal counsel, and key members of its Regulatory Services Division. The visiting committee members subsequently delivered a report of their observations to the full committee. Second, the committee received considerable written information from CBOE concerning its operations and procedures, as well as the products it intends to list. Indeed, much of the discussion in this memorandum of the more technical aspects of the CBOE's operation is taken from the information provided by the exchange. Third, the committee reviewed an SEC examination report on CBOE procedures.

With respect to the committee's evaluation of CBOE, it is important to note the Committee's expertise is in state corporate finance matters. Monitoring the operation of securities marketplaces is not a traditional state function, a fact which the committee does not propose to change. Similarly, state regulators generally have limited involvement with certain types of products which CBOE intends to list. Thus, to some extent, the recommendations set forth in this memorandum rest on the existence of SEC oversight and on the belief that some of the more exotic products to be listed on CBOE are not likely to involve individual investors in general, and small investors in particular.

The format for the rest of this memorandum will be as follows. There will be a brief background discussion of CBOE, to be followed by a section outlining the current status, in terms of state registration requirements, of the exchange and the options which trade there. After that, CBOE will be analyzed against each of the standards set forth above, namely: listing criteria, products, customer protection, and surveillance. Finally, the memorandum will summarize the committee's conclusions and set forth its recommendations.

CBOE - BACKGROUND

CBOE is a national securities exchange registered as such under the Securities Exchange Act of 1934 and regulated by the SEC. CBOE was created in 1973 by members of the Chicago Board of Trade, but is has always been an entity wholly independent of the Board of Trade. Prior to 1973, the only available stock options were non-standardized, unregistered options guaranteed by individual brokerage firms and traded "over-the-counter." CBOE introduced trading in options with standardized terms that are issued and guaranteed by a registered clearing agency and registered and regulated under the federal securities laws. Today standardized options are traded on five national securities exchanges including the New York Stock Exchange and the American Stock Exchange.

In 1980, CBOE acquired the Midwest Stock Exchange's options business. CBOE now lists options on over 200 widely-traded stocks. During 1990, over 60 percent of all U.S. listed securities options trading took place at CBOE. CBOE also developed options on broad-based stock indexes, a major innovation in the securities markets. The first such index, now known as the Standard and Poor's 100 Index (ticker symbol OEX), was introduced on March 11, 1983. OEX has become the most active index product on the market, trading an average of over 275,000 contracts per day during fiscal 1990. CBOE also trades options on the Standard and Poor's 500 Index (SPX), the index that many U.S. money managers use as a benchmark for portfolio performance. During 1990, trading in these two indexes at CBOE represented more than 91 percent of the total U.S. index option market.

Due to increased volume in the early 1980s, CBOE outgrew its original trading facilities and in 1984 moved into its own building which it had designed and built. Trading takes place in a 45,000 square foot space (the world's largest exchange trading floor) with another floor of the same size in reserve. CBOE also appears to be well-capitalized. Total members' equity at June 30, 1990 stood at $58,070,000, with a working capital of almost $35,000,000.

CURRENT STATUS

CBOE is currently exempt as a marketplace in 21 states pursuant to statute or rule. Only a few states would need a statutory amendment to provide for an exemption for CBOE.

The standardized options currently listed on CBOE, like standardized options listed on the four other national securities exchanges that trade options, are issued by The Options Clearing Corporation ("OCC"), a clearing agency registered under the Securities Exchange Act of 1934. OCC-issued options are currently registered in Alabama, Maryland, Ohio and Virginia. In the remaining jurisdictions, options are sold in reliance upon one or more exemptions from registration.

In 21 states, CBOE is an approved exchange and options traded thereon are accordingly exempt under the exchange exemption. The exchange exemption is also applicable to OCC-issued options traded on CBOE in most states where CBOE is not currently a recognized exchange. This is so because the typical exchange exemption applies to "any security listed or approved for listing upon notice of issuance on [certain approved exchanges, which always include NYSE and AMEX]; *any other security of the same issuer which is of senior or substantially equal rank.*" OCC-issued options listed on CBOE are of equal rank with other OCC-issued options that are listed on NYSE and AMEX. Accordingly, CBOE-listed options are exempt under the "equal rank" provision of the exemption.

The RUSA option exemption or some other form of option exemption is applicable to OCC-listed options in states having such an exemption; and OCC-issued options listed on CBOE are generally eligible for the "blue chip" exemption in states having a "blue chip" exemption. Unique exemptions or special exemptive orders are applicable in three states.

LISTING CRITERIA

At the time that CBOE initiated its current effort to expand the number of states in which CBOE is recognized under the exchange exemption, CBOE had just filed with the SEC proposed rule changes that would permit CBOE to list common stocks and other securities in addition to standardized options. The listing criteria for stocks and other securities were substantially identical to the corresponding criteria of AMEX. CBOE has indicated that it originally patterned its listing criteria after AMEX in part because it was aware that AMEX is an approved exchange in virtually every state and therefore thought that AMEX criteria were acceptable to state securities administrators.

Largely in response to subsequent comments and concerns expressed by state administrators, CBOE amended its proposed standards to: (i) insure that CBOE standards would be at least equal to those of the NASDAQ/NMS in every respect and (ii) make clear that CBOE's listing criteria are strict minimum standards and not simply "guidelines." As originally filed, CBOE's listing criteria were referred to as "guidelines" which "will be considered in evaluating listing eligibility together with all other pertinent data." The final rules approved by the SEC state that "the Exchange has established certain numerical and other criteria (Rules 31.9 through 31.36), which issuers will be required to meet." CBOE's listing criteria for each type of security that it proposes to list are attached as Appendix 1 to this report.

CBOE has informed us that it has never waived or made exceptions to its criteria for the listing of options and that it has no committee for the purpose of considering such exceptions. CBOE has also said that it does not intend to make exceptions to its criteria for the listing of other securities and that, as noted above, its rules would not permit it to do so.

CBOE's listing standards also require delisting if the minimum maintenance criteria are not met. Delisting proceedings would be initiated promptly and would take about 20 days.

CBOE has agreed to enter into a Memorandum of Understanding ("MOU") with NASAA substantially identical to the MOU between NASAA and the NASD except that CBOE has agreed to an additional condition, which is described below, relating to new products. NASAA's purpose would be to "lock in" minimum uniform listing criteria for a marketplace exemption.

CBOE PRODUCTS

CBOE currently lists only standardized put and call options. It has also obtained unlisted trading privileges in 500 stocks listed on NYSE, AMEX and NASDAQ/NMS for the purpose of trading in "baskets" comprised of such stocks, although trading in such baskets has been discontinued. CBOE is the only options exchange that does not also trade stocks and other securities. CBOE has accordingly adopted listing standards for equity securities and certain other securities referred to below. CBOE cannot predict what proportion of its trading activity will be represented by any of the specific types of securities because that will depend upon its success in attracting issuers. CBOE has stressed that the availability of the exchange exemption for its listed securities is an important factor in attracting issuers. Its principal competitors, NYSE and AMEX, are able to offer exempt status in nearly every state.

CBOE's new listing standards, which were approved by the SEC in October of 1990, cover common stock, preferred stock, debt securities, stock warrants and currency and index warrants. Listing standards covering certain unit investment trusts are pending SEC approval. Listing standards covering "other securities" were approved by the SEC in November, 1990. The "other securities" category corresponds to identical rules of NYSE and AMEX and is intended to cover "hybrid" securities having characteristics of more than one of the other categories of securities. The numerical listing criteria for "other securities" are generally higher than for equity securities and are similar to, and in some respects higher than, the standards applicable to index warrants. Although the rule gives the exchange some flexibility in listing securities with unique combinations of features, the SEC made clear in its approval order that "the listing of securities that raise significant new regulatory issues would require a separate filing with the Commission." At the request of the Committee, CBOE has agreed to furnish to NASAA and/or the states a copy of all its SEC filings seeking to list new products, and this agreement will be set forth in the MOU.

Common Stocks. The exchange has prepared and printed a listing application and related informational materials to be distributed to prospective listed companies. CBOE has sent out four such packets to date. CBOE anticipates that the most likely source for stock listings would be Midwestern companies.

Hybrid Debt Securities. CBOE currently expects to approve an application to list zero-coupon S&P 500-Linked Notes that meet its listing criteria for bonds and debentures as well as the stricter criteria for "other securities." The securities are repayable at the option of the holder after 6 months at a repurchase price linked to the S&P 500 Index. At maturity, the issuer is obligated to redeem the notes at the greater of their par value or the index-linked repurchase price. These notes are intended to provide the holder a potential participation in any appreciation of the S&P 500 index over a five year period. These securities are an example of the hybrid securities intended to be covered by CBOE's "other securities" category. In general, hybrid securities allow the investor to obtain in a single transaction risk and reward characteristics that would otherwise be obtainable only by the purchase or sale of a combination of traditional securities.

Index Warrants. CBOE anticipates that among the first securities that it expects to list under its new listing criteria will be warrants. The Exchange is preparing to begin trading in various domestic and foreign stock index warrants. The Exchange has filed for, or obtained, SEC approval to trade warrants on the following stock indexes:

Compagnie des Agents de Change (CAC 40)
Deutscher Acktien Index (DAX)
Financial Times - Stock Exchange (FT-SE 100)
Standard and Poors 100 (S & P 100)
Standard and Poors 500 (S & P 500)

Index warrants are securities based on the movement in a stock market index. Warrant holders are entitled to receive an amount of cash determined by the difference between the current value of the index at the time the warrant is exercised and the fixed exercise price of the warrant. There has been much recent growth in the trading of index warrants. Warrants on several foreign indexes are now listed on AMEX, and NYSE has also proposed to list index warrants. AMEX-listed warrants are also traded on other exchanges pursuant to unlisted trading privileges, and CBOE itself has been trading one such warrant on a UTP basis since January in order to test its systems. CBOE believes that it is in a good position to attract listings of index warrants because of their similarity to standardized options. CBOE believes that these warrants have the characteristics of options, and will require that investors in index warrants meet the same suitability requirements applicable to options customers. Risk disclosure and suitability requirements similar to those applicable to options trading are also being required by the SEC, and approval to trade warrants on domestic indexes will not be granted until the risk disclosure procedures have been approved.

CBOE's listing standards for index warrants are the same as those of the AMEX and are actually higher than the listing standards for issuers of common stock. They require that: (1) the issuer shall have assets in excess of $100,000,000 and otherwise substantially exceed the Exchange's size and earnings requirements; (2) the term of the warrants shall be for a period ranging from one to five years from the date of issuance; and (3) the minimum public distribution of such issues shall be 1,000,000 warrants together with a minimum of 400 public holders, and have an aggregate market value of $4,000,000.

Index warrants have been issued primarily by sovereign governments such as the Kingdom of Denmark and the Republic of Austria, and by investment banking firms such as Saloman, Paine Webber, and Merrill Lynch. Other entities could issue index warrants so long as they meet CBOE's listing standards.

Unit Investment Trusts. CBOE also has proposed listing standards for unit investment trusts. CBOE has indicated to the committee that these standards are intended primarily to permit the listing of "Super Shares", a product which they have been developing for some time. Super Shares are securities consisting of four components that may be traded separately: Appreciation Super Shares, which provide leveraged participation in market advances; Priority Super Shares, which provide additional income in flat or declining markets; Protection Super Shares, which provide protection for a stock portfolio in a market decline of up to 30 percent; and Income and Residual Super Shares which provide additional income in flat or rising markets. Super Shares are intended to allow sophisticated investors to separate (and to retain or dispose of) specific elements of the risk and return characteristics of a portfolio of stocks that replicates the S&P 500. Applications to register Super Shares have been filed in many states, and they are still under review at the SEC.

CBOE has emphasized that its listing standards for unit investment trusts are intended to provide only for the listing of Super Shares and perhaps other innovative products of a generally similar nature. CBOE has emphasized that it does not intend to list traditional unit investment trusts of the type that are now registered in large numbers in many jurisdictions.

It should be noted that innovative products such as index warrants and unit investment trusts are not only subject to the disclosure requirements under the Securities Act of 1933, but they are also subject to substantive review by the SEC under the Securities Exchange Act of 1934. The products are intended for sophisticated investors with specific investment objectives, and they will be subject to the same suitability requirements that apply to trading in standardized options. CBOE's listing standards for these products are the same as those of the AMEX and require the issuer to meet financial requirements that are generally higher than the requirements applicable to issuers of common stocks. CBOE believes that there is demand for innovative products and that it is a preferred marketplace for such instruments. CBOE also believes, however, that potential issuers of these securities as well as issuers of stock and debt securities will likely list on NYSE or AMEX if

listing on CBOE involves the expense and potential delay of numerous state registrations when the securities would be exempt if listed on those exchanges.

TRADING SYSTEMS AND CUSTOMER PROTECTION

Most option classes listed at CBOE are traded in an open outcry system where certain members of the Exchange may trade as market-makers. Market-makers provide liquidity in option trading by risking their own capital for personal trading, and are the backbone of CBOE's trading system. They take the opposite side of public orders by competing in an open outcry auction market. Floor brokers, on the other hand, act only as agents, executing orders for others. "Dual trading," which refers to a member simultaneously trading for his own account and for customers, is prohibited at the CBOE in that a market-maker may not also act as a floor broker in the same or a related class of options on the same business day.

Although institutional participation has increased in recent years, the principal users of the securities options markets are retail customers. CBOE's rules provide special protections for the transactions of those customers. For example, CBOE recently developed the RAES system, which provides for computerized and automatic execution of smaller customer orders on a priority basis. RAES acts much like the NASD's SOES system. The Retail Automatic Execution System (RAES) automatically executes 10-contracts or less customer market orders and marketable limit orders at the prevailing market quote in the most active series. RAES provides retail customers with a guaranteed firm quote, instantaneous turnaround time to the originating branch office, and reduces member firms' execution, fill reporting and trade match costs. It makes CBOE's price reporting more timely and efficient while facilitating an accurate time and sales audit trail. RAES executes one in five customer orders at CBOE.

Another development took effect in July, 1989, when the SEC approved a CBOE rule filing which codified the "Firm Quote" program, a policy which had been in effect since June, 1988. Under this rule, which applies only to non-broker/dealer orders for options which expire in the two near-term trading months, the trading crowd (made up of "market-makers") is required (except during trading rotations and fast markets) to fill at least 10 contracts of a customer order at the posted bid or offer when the order reaches the crowd. In conjunction with the firm quote rule, CBOE instituted rule changes that narrowed the bid/ask spreads that are allowed under normal market conditions. Additionally, public customer limit orders that are not close to the current market quote are routed to the "public limit order" book. The public limit order book is available only to public customers at CBOE. Market orders that arrive prior to the opening and limit orders are the only types of orders accepted in the book and have priority over all other similar orders from the trading crowd at a given price. Exchange-employed order book officials execute the orders in the book and are prohibited from trading for their own account. The book's highest bid, lowest offer and the size of those orders

are displayed to market-makers on the trading floor. Orders on the book are executed on a first-in/first-out basis at each price, regardless of the order's size.

CBOE has informed us that during the "mini crash" of October, 1989 CBOE honored all orders on the public customer order book at the opening prices even though the large number of orders placed on the book at the opening could not be sorted and effected at the opening in an orderly manner. In so doing, CBOE incurred a loss of over $2.5 million from assigning opening prices to such orders as if they had been effected at the opening prices when in fact the orders had to be executed in the rising market after the opening. CBOE has continued to automate its systems by expanding the use of the electronic order book in order to avoid another such loss in the future.

SEC OVERSIGHT

Prior to our visit, the Committee reviewed the most recent SEC inspection report of CBOE surveillance and the response of CBOE to that inspection. The SEC had raised two areas of critical concern. Firstly, they asked whether the implementation of the CBOE's Comprehensive Automated Surveillance System, termed The Market Surveillance Systems ("MSS"), was on track. Management of CBOE reported to us that the MSS is on track with all three areas mentioned by the SEC after their November, 1988 inspection being completed within time lines promised by the CBOE. "Front running" was completed in December of 1989. "Mini-manipulation" and "capping and pegging" were operational in March and May of 1990 respectively, and it is expected that MSS will be operational for index options surveillance by May of 1991.

The second SEC concern pertained to audit trails. CBOE has responded to this concern by adopting a new rule providing for summary fines. On page three of their response letter to the SEC there is a chart of these fines. There has also been a recidivism provision added to this system to escalate fines for repeat offenders. A rule was adopted in December, 1989 which imposes a fine if fewer than 70% of a trader's reported times are accurate. Another provision of the rule imposes a $1000 fine if fewer than 50% of a trader's OEX trades are reported with the required degree of accuracy. More stringent parameters are being added for all classes of options. From September 21st to October 20th, 69 people were fined pursuant to this rule. From October 21st to November 20th, only 27 people were fined. CBOE has more recently received a letter from the SEC which says they are doing well, but could continue to improve. The letter was not pursuant to an audit but was limited to a review of accuracy rates. CBOE has filed rules requiring that the percentage of mistakes go down from 30 percent to 25 percent. They later cut that figure to 20 percent.

SURVEILLANCE AND REGULATION

The Regulatory Services Division of CBOE consists of 89 people. A current summary of the structure and functions of the Regulatory Services Division was provided to us by the exchange and is attached as Appendix 2.

CBOE's Department of Compliance investigates sales practice violations and terminations. The most frequent complaints involve suitability or unauthorized use of discretion. The exchange receives approximately 30 notifications of termination per month, of which about 10% involve customer complaints. Complaints of sales practice abuses are responded to immediately in writing. The customer is advised that the complaint is under review and that the exchange cannot award compensation to customers, although the exchange's arbitration facilities are available to customers seeking to recover losses. Sales practice cases average 7 to 12 months from the beginning of the investigation before going to the Business Conduct Committee.

CBOE is an active participant in the Options Self Regulatory Council. Other participants in the Council include representatives of the American Stock Exchange, Midwest Stock Exchange, National Association of Securities Dealers, New York Stock Exchange, Philadelphia Stock Exchange and Pacific Stock Exchange. The Council facilitates an equitable distribution of regulatory responsibilities for all aspects of the sales practices of organizations that are members of more than one exchange or the NASD. The Council also acts as a forum for the development, revision or interpretation of rules and regulations in an effort to ensure consistent enforcement of such rules and regulations. The council coordinates yearly examinations and investigations of such matters as terminations for cause and customer complaints. For such purposes, each firm is assigned to one of four Designated Options Examining Authorities (CBOE, AMEX, NASD, or NYSE) and it is reassigned every two years. Routine examinations are performed primarily at the firm's main office, extending to the branch office level on an "as needed" basis. Routine examinations include such matters as supervision of branch offices by the main office, account approvals, and suitability of trading.

The exchange's Department of Market Regulation investigates possible violations of exchange and SEC rules governing business conduct on the trading floor, supports exchange committees which deal with floor policies to insure compliance with the rules, and educates the exchange membership and the public regarding trading floor rules and policies. At February 12, 1991 the total number of open investigations was 164. The average number of customer complaints received per month during 1990 was 10. As in the case of sales practice violations, customers are sent an acknowledgment letter immediately upon receipt of the complaint advising them of the exchange's procedures. Customer complaints in which the staff determines there is no apparent rule violation are generally closed within two weeks of receipt. Cases in which the staff believes that there may be a rule violation take an average of about 8 months before they are reviewed by the Business Conduct Committee. The SEC's August 23, 1989 inspection letter states: "The 1988 inspection found that, overall, the CBOE surveillance, investigatory and disciplinary programs for trading abuses continue to function effectively."

The exchange's Business Conduct Committee is similar to that of the NASD. This committee determines, based on staff investigations and recommendations, when probable cause exists to bring charges of rule violations, authorizes charges against members, and either settles or holds hearings with regard to those violations. For sales practice violations it

can take up to a maximum of two years from initiation to resolution of the problems. The Business Conduct Committee has used consent procedures very successfully to expedite a resolution. A chart favorably comparing the number of actions taken and sanctions imposed by CBOE with other SROs was provided.

CBOE also participates in the Intermarket Surveillance Group ("ISG"), which is comprised of the major national securities exchanges with the major commodities exchanges and certain foreign exchanges as affiliated members. The ISG was created originally to serve as a forum to negotiate routine sharing of information between exchanges for regulatory purposes. It also serves as a forum for negotiating uniform rules and regulatory policies when appropriate. The CFTC and SEC staff also attend these meetings.

CBOE has worked actively with Florida, California and Wisconsin, as well as with NASAA, to provide training for securities department staff. CBOE is currently assisting the Colorado Securities Department in connection with a large case involving options trading by an investment advisor (over whom the CBOE had no jurisdiction). CBOE has indicated its willingness to share complaint information with the states as it is authorized under its rules to do and otherwise to cooperate with the regulatory activities of the states. It should also be noted that CBOE disciplinary decisions are reported on the CRD system on Form U-6.

CONCLUSIONS

The committee developed a four-part test to determine whether to recommend that NASAA execute an MOU with CBOE and whether states should accord the exchange a marketplace exemption. After applying that test, we are satisfied that an MOU should be executed and that the exchange should be granted the exemption.

CBOE's listing criteria match those of NASDAQ-NMS, and CBOE is more than willing to enter into an MOU and to include a notice requirement in the event it takes steps to list new products. Most of the products currently listed or planned for listing are not subject to state registration review. Moreover, those products, particularly options and index warrants, raise market regulation, rather than traditional corporate finance issues.

From a regulatory perspective, CBOE operates much like the NASD, with a business conduct committee and a separate regulatory division. Restrictions on certain types of trading practices, along with systems like the SOES, provide further consumer protection. In addition, the regulatory and surveillance systems are subject to SEC audit and oversight. Finally, CBOE welcomes visits by state administrators to examine its operations and it is prepared to cooperate with the states in handling investigations and customer complaints.

For the reasons stated above, the committee recommends that:

1. NASAA execute an MOU with CBOE; and
2. States accord CBOE a marketplace exemption

APPENDIX ONE

CBOE
LISTING CRITERIA

APPENDIX TWO

REGULATORY SERVICES DIVISION

Booklets will be provided at the Spring Conference.

January 1991

SUMMARY OF CBOE REGULATORY AND LEGAL FUNCTIONS

The following memoranda provide profiles of the regulatory, legal and enforcement programs of the Chicago Board Options Exchange ("Exchange" or "CBOE"), primarily as these programs relate to the disciplinary process.

REGULATORY STRUCTURE

The Exchange is a self-regulatory organization ("SRO"), subject to the oversight authority of the Securities and Exchange Commission ("SEC"). The Exchange is responsible to enforce compliance by its members with SEC rules, provisions of the Securities Exchange Act of 1934 (the "Act"), Federal Reserve Board credit requirements, and the rules of the Exchange. The Regulatory Services Division, which is separate from the Legal Division, performs the surveillance, examination and investigative functions of the self-regulatory process. The Division also plays a vital role in the development of new, and the modification of existing, rules and policies to ensure reasonable and effective regulation of the options markets.

When it is the Division's belief that probable cause exists for determining that a violation of Exchange or other relevant rules has occurred, the Division presents a written case to the Business Conduct Committee ("BCC"), along with a recommendation that a Statement of Charges, or some lesser action, be authorized by the BCC. Should the BCC authorize Charges, the Division supports the efforts of the Legal Division's Office of Enforcement in its settlement negotiations, and generally acts as the expert witness for the Enforcement staff in a hearing.

Both the Regulatory Services Division and the Office of Enforcement are subject to routine inspections by the SEC's Division of Market Regulation, which oversees Exchange effectiveness as an SRO. The SEC staff review and comment upon the procedures used in the regulatory and enforcement process, as well as the results of cases brought before the BCC.

There are four departments in the Regulatory Services Division. The breakdown of the regulatory areas, by function and personnel is as follows:

REGULATORY SERVICES DIVISION - DEPARTMENT OF FINANCIAL COMPLIANCE

The Department of Financial Compliance is responsible for enforcing the financial, margin, books and records requirements of the SEC, Federal Reserve Board and the Exchange, with respect to those broker-dealers for which CBOE is the designated examining authority ("DEA"). This is accomplished through financial monitoring, routine examinations and special investigations.

The financial monitoring program includes a daily net capital computation for clearing members, to insure that the net capital is sufficient to meet SEC and Exchange minimum requirements. The Department also monitors deficit market maker accounts to determine that appropriate notification has been received or liquidation is proceeding. The Department reviews on a monthly basis, the financial statements and net capital computations (the FOCUS Report) submitted by members subject to the SEC net capital rule. Additionally, the Department reviews the haircut methodologies used by member firms and monitors the risk analysis procedures of market maker clearing firms.

The Department conducts routine annual examinations which focus on the following areas: net capital, status of the books and records, customer protection, margin, financial reporting, proprietary trading, risk control and operational efficiency. Additional inspections are performed if problems arise at a particular firm. The Department conducts joint examinations with the NYSE and cooperates with the CME and CBOT in their exam programs. The Department also conducts exams on a contract basis for other SRO's which have no examining authority.

The Department works with staff members of the SEC and Federal Reserve Board to interpret and develop financial regulations and to seek relief where appropriate. Interpretive advice is provided to members and non-members on a regular basis.

The Department provides input to the Exchange's Clearing Procedures Committee and provides support for the administration of the Business Conduct Committee. It also participates in the Securities Industry Association's Net Capital Committee and Credit Division, and the Intermarket Financial Surveillance Group, which includes all U.S. securities and commodities exchanges.

REGULATORY SERVICES DIVISION - DEPARTMENT OF COMPLIANCE

The Department of Compliance is responsible for monitoring adherence to sales practice rules by member firms and their associated persons. The Department's main tasks in enforcing the sales practice rules (set forth in Chapter 9 of the Exchange's rules) are as follows:

Ensure sales practice compliance by conducting periodic examinations of main and branch offices of member firms for whom CBOE is the Designated Options Examining Authority ("DOEA"). CBOE is one of four authorized DOEA's.

Participate in the Options Self-Regulatory Council, to allocate sales practice regulatory responsibilities among self-regulatory organizations, and to insure uniform sales practice rules.

Conduct sales practice investigations of member firms and persons associated with member firms, including investigations initiated by complaints, matters discovered during examinations, referrals, and notifications of terminations and claims (i.e., U-5, RE-3 notifications). Major areas of concern are unsuitable recommendations, inappropriate risk disclosure, unauthorized trading, improper use of discretion, excessive trading, lack of supervision.

Ensure compliance with rules relating to options communications, including sales literature, advertising, and option "program" descriptions. The function includes the review of sales literature as well as providing informal guidance to member firms and their associated persons.

Participate in development of appropriate examinations to assure minimum level of competency of registered representatives, including development and maintenance of examination Series 4, 5, 7, 8, 15.

Provide informal interpretive advice to member firms on rules compliance, including assistance in devising appropriate supervisory structures and compliance with Exchange rules and provisions of the Act.

REGULATORY SERVICES DIVISION - DEPARTMENT OF MARKET SURVEILLANCE

The purpose of the Department of Market Surveillance is to detect virtually all types of trading-related violations, both on and off the floor, including improper activity involving related market places. Major areas of effort are discussed below.

Stock and option activity are compared and evaluated to detect stock\option manipulation, notably capping, pegging and manipulation, as well as to detect possible front-running. Trading of index options, index futures and stock program trades are monitored to detect potential manipulation or misuse of non-public information.

Trading-floor related abuses which are monitored include, but are not limited to, pre-arranged trading, abuse of error accounts, marking, failure to adhere to market-maker obligations, market-makers entering orders from off-floor, book executions of firm and market-maker orders, dual representation of orders/market-maker in

crowd while floor broker representing order, joint account participants trading with the joint accounts, and improper use of adjustments.

The Department examines significant activity in customer, firm and market-maker accounts prior to important news announcements in order to detect possible insider trading. As most such suspicious activity occurs in customer accounts, such activity is generally referred to the SEC for further review.

Most types of potential violations are referred to the Department of Market Regulation for formal investigation. However, the Department has complete responsibility for detection and presentation to the Committee of position limit, exercise limit, and index exercise advice violations. In addition, the department spearheaded development, and is responsible for administration, of a recently adopted summary fine program for failure to record accurate times of trades or failure to submit trades to price reporting. The Department will present egregious and recidivist violations to the Committee.

In addition to its violation-detection role, The Department provides staff support to the Exemption Committee, administers the customer index hedge exemption program, and helps administer registration of joint accounts, including RAES group accounts. Furthermore, the Department, along with the Systems Division, continues to develop new computer applications to increase efficiency and effectiveness.

The Department also provides the Exchange representation to the Intermarket Surveillance Group.

REGULATORY SERVICES DIVISION - DEPARTMENT OF MARKET REGULATION

The Department of Market Regulation investigates all regulatory complaints and referrals relating to possible violations of rules concerning conduct of business on the trading floor including the following: complaints and/or referrals from individual members, member firms, customers, the SEC, other self-regulatory organizations, Exchange employees and floor officials.

Complaints and referrals are investigated by the use, as appropriate, of document review, interviews of witnesses, and analysis of data.

The primary areas of concern are noted above in the discussion of market surveillance functions concerning trading floor related abuses.

The Department also performs the following functions:

Provides informal rule interpretations to members, the public and Exchange staff.

Acts as primary support to the Equity Floor Procedure and Floor Officials Committees.

Prepares educational materials concerning rules which are used to introduce new rules and interpret existing rules.

Prepares tests and study guide materials for the New Member Orientation Program.

LEGAL AND MEMBERSHIP DIVISION

Counsel to the Business Conduct Committee is provided by the Legal and Enforcement Departments. The Legal Division, which is headed by the General Counsel, is divided into four departments which perform the following functions.

1. Corporate

General - Provides legal counsel regarding corporate matters. Includes drafting or reviewing contracts and agreements. Advising on new products, procedures and policies with emphasis on overcoming legal obstacles and avoiding placing the Exchange at risk of litigation.

Regulatory - Formulates, drafts and files rule changes with SEC. Issues regulatory bulletin and oversees circulars distributed to membership. Monitors and comments on applications and rule changes proposed by other exchanges. Advises and assists other departments regarding interpretations of rules and other matters.

Committees - Provides general support including attendance at meetings and advising on proposed actions.

Stock List - Processes and approves listing applications. Interprets equity rules. Seeks to obtain exchange exemptions from state securities commissioners.

Appeals and Litigation - Represents Exchange committees or other bodies at appeals hearings and represents the Exchange in arbitration matters. Engages and works with outside counsel on litigation matters.

2. Enforcement

General - Prepares statements of charges authorized by Business Conduct Committee and handles all such cases to their conclusion. Includes negotiating with all respondents, preparing settlement offers, and representing the Exchange at hearings and on appeal.

Prepares summaries of completed cases for dissemination.

3. Arbitration and Appeals - Administers Exchange's arbitration facility which is available to members, member firms, associated persons, and public customers. Determines whether matters qualify for arbitration, selects arbitration panels, and prepares written decisions. Performs similar functions for appeals of Exchange actions by members or member organizations.

4. Membership

General - Handles applications for membership, changes in status, and other matters. Administers the seat sale market and operates the Members Library.

Office of Secretary - Records minutes of board and executive meetings and carries out other duties of the Secretary of the Exchange.

THE PRECEDING PAGES
WERE TREATED AS A UNIT
IN THE ORIGINAL FILE

NASD

National Association of
Securities Dealers, Inc.
1735 K Street, N.W.
Washington, D.C. 20006
(202) 728-8000

May 14, 1991

BY FAX

The Honorable Dave Donley
House Rules Committee
Alaska State Legislature
State Capitol
Box V
Juneau, Alaska 99811

RE: House Bill 210

Dear Representative Donley:

On behalf of the National Association of Securities Dealers, Inc. (NASD), I am writing to urge your support in scheduling House Bill 210 for a vote by the House of Representatives. This is a non-controversial bill with a broad base of support that amends the Alaska Securities Act. It has been favorably reported by the House Labor & Commerce, Judiciary, and Finance Committees. HB 210 must now be brought to the House floor for a vote before the legislature adjourns on May 21.

The NASD is charged with the responsibility of regulating both the National Association of Securities Dealers Automated Quotation System (NASDAQ), which is the second largest securities market in the United States, and the over-the-counter securities markets. This task encompasses both regulation of virtually every broker/dealer firm in the country that conducts business with the public and the regulation and operation of the NASDAQ system.

The NASD strongly supports passage of HB 210 since it includes an important provision to exempt from state registration those securities that are listed on the NASDAQ National Market System (NMS). This bill will modernize Alaska's Securities Act and promote uniformity with the 45 other states that have already provided this exemption for securities listed on NMS. This legislation recognizes the equality of securities listed on NMS, like National Bancorp of Alaska, MCI and Apple Computer, with those listed on the New York and American Stock Exchanges.

We respectfully request your support and leadership in bringing House Bill 210 to the floor for a vote before May 21. If you have any questions, please feel free to call me at (202) 728-8289.

Sincerely,

Frank J. Formica
Vice President
Office of Congressional and
State Liaison

cc: Mr. Larry Carroll

HOUSE COMMITTEE REPORT

(7)

Date Referred: March 25, 1991 FURTHER REFERRALS: Finance

Date of Committee Action: 5-8-91

The JUDICIARY Committee considered: HB 210

HOUSE BILL NO. 210 REGISTRATION OF SECURITIES

"An Act amending the Alaska Securities Act of 1959 to allow fees related to registration to be established by regulation, to provide for registration, examination, and other procedures that avoid duplication, and to provide for exemption from registration for certain securities."

RECOMMENDATIONS: [ ] the same title
be replaced with _____ [ ] 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 _____ [⋈] zero fiscal note(s) Comm + Econ Dev. 3-11-91

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
Terry Martin	✓				
Mark Stanley	X				
Mike Miller	X				
Kevin Pat Parnell	✓				
Al Vezey	—	John Ellis		X	
		Debbie Dowley		X	

Debbie Dowley
CHAIRMAN'S SIGNATURE

FISCAL NOTE

No. 1
Bill Version: HB 210
(H) Publish Date: 3/11/91

STATE OF ALASKA
1991 LEGISLATIVE SESSION

Revision Date:
Department Affected: Commerce & Economic Dev.
Title: Amend the Alaska Securities Act of 1959
BRU: Banking, Securities & Corporations
Component: Banking & Securities
Sponsor: Rules Committee
Requestor: Governor
COMPONENT SERIAL NO. 1 2 3 3

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	0	0	0	0	0	0
REVENUE	400.0	500.0	500.0	550.0	550.0	550.0

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact:

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Willis F. Kirkpatrick, Director
Phone: 465-2521
Division: Banking, Securities & Corporations
Date: 2/20/91
Approved by Commissioner: Glenn A. Olds
Agency: Department of Commerce & Economic Development
Date: 2/20/91

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

Rev 10/90
WFK/KP/dg18954D/022091a

COMMITTEE COPY

HB

229

WALTER J. HICKEL, GOVERNOR

REPLY TO

☑ CRIMINAL DIVISION CENTRAL OFFICE
P.O. BOX KC
JUNEAU, ALASKA 99811-0310
PHONE: (907) 465-3428

☐ OFFICE OF SPECIAL PROSECUTIONS AND APPEALS
1031 WEST 4TH AVENUE, SUITE 318
ANCHORAGE, ALASKA 99501-5993
PHONE: (907) 279-7424

DEPARTMENT OF LAW

CRIMINAL DIVISION

March 29, 1991

RECEIV
APR -. A.M.

The Honorable Pat Carney and Georgianna Lincoln
Co-Chairmen
Health, Education, & Social Services Committee
Alaska House of Representatives
P.O. Box V
Juneau, Alaska 99811

Re: HB 224 (An act relating to population management in the state correctional system)

Dear Representatives Carney and Lincoln,

I am writing to you in my role as counsel to the Alaska Department of Corrections on behalf of the Administration regarding HB 224. This bill, which deals with a proposed short-term solution to prison crowding in Alaska, has been referred to the House HESS Committee for a hearing.

On behalf of the Administration, I respectfully request that you set the bill on for a hearing before your committee. To assist you and the members of your committee in better understanding HB 224, I have prepared and enclosed a sectional analysis of the bill as well as a flow chart which displays how the provisions of the bill will be implemented. While the concept of HB 224 is relatively simple, the mechanics of the bill are a bit complicated; thus I look forward to testifying before the committee to explain its provisions.

In addition, I have enclosed a proposed amendment to HB 224 which the Administration respectfully requests that you consider at the time that HB 224 is calendared for a hearing. The proposed amendment is self-explanatory, and is addressed in the sectional analysis.

03-C31LH

D.O.L. Stmt

Thank you for your anticipated response to this request to calendar HB 224 for a hearing.

Very truly yours,

CHARLES E. COLE
ATTORNEY GENERAL

By: Michael J. Stark
Michael J. Stark
Assistant Attorney General

Enclosures

cc: Commissioner Lloyd Hames (w/enclosures)
Commissioner Richard Burton (w/enclosures)
Malcolm Roberts (w/enclosures)
Bruce Kendall (w/enclosures)
Jeff Bush (w/enclosures)
Alaska Sentencing Commission (w/enclosures)

MJS:mm-047

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION

WALTER J. HICKEL, GOVERNOR

REPLY TO:

☑ *CRIMINAL DIVISION CENTRAL OFFICE*
P.O. BOX KC
JUNEAU, ALASKA 99811-0310
PHONE: (907) 465-3428

☐ *OFFICE OF SPECIAL PROSECUTIONS AND APPEALS*
1031 WEST 4TH AVENUE, SUITE 318
ANCHOHAGE, ALASKA 99501-5993
PHONE: (907) 279-7424

September 18, 1991

The Honorable Dave Donley
Chairman House Judiciary Committee
Alaska House of Representatives
3111 C Street, Suite 450
Anchorage, Alaska 99503

Re: CS for HB 224 (HESS) (An Act Relating to Sentencing and Population Management in the State Correctional System)

Dear Representative Donley,

I am writing to you in my role as counsel to the Alaska Department of Corrections on behalf of the Administration regarding CS for HB 224 (HESS). This bill, which deals with a proposed short-term solution to prison crowding in Alaska, passed out of the HESS committee last session, and is awaiting action by the Judiciary committee next session.

I am writing you at this time to request an opportunity to meet with you sometime in the next several weeks to discuss the bill and its importance to the state. I believe that an opportunity to discuss the bill outside the pressures of an ongoing legislative session will enable you to better understand the bill and the reasons why the Administration is seeking its passage. It would also provide an opportunity for me to respond to the Note in the June 1991 issue of the Alaska Law Review, which argues against passage of CSHB 224.

As you may already be aware, I have served as counsel for the state in the prisoner class action suit, Cleary v. Smith since the case was filed in 1981. CSHB 224 (HESS) is one approach to responding to the problem of prison crowding, and the state is obligated to seek its approval by the legislature under the Final Settlement Agreement and Order in Cleary. If agreeable with you, Philip Volland, plaintiffs' counsel in the Cleary case, would also like to participate in the meeting. Mr. Volland and I are available to meet with you, at your convenience, except for the two week period beginning October 7th.

To assist you and the members of your staff in better understanding CSHB 224, I have prepared and enclosed a sectional analysis of the bill as well as a flow chart which displays how the

provisions of the bill will be implemented. While the concept of CSHB 224 is relatively simple, the mechanics of the bill are a bit complicated; thus I look forward to explaining its provisions to you in person.

Thank you for your attention on this matter. I look forward to hearing from you soon.

Very truly yours,

CHARLES E. COLE
ATTORNEY GENERAL

By: Michael J. Stark
Michael J. Stark
Assistant Attorney General

Enclosures

cc: Philip Volland
Jeff Bush
Bruce Geraghty
Commissioner Lloyd Hames

SECTIONAL ANALYSIS FOR AN ACT
RELATING TO POPULATION
MANAGEMENT IN THE STATE
CORRECTIONAL SYSTEM (HB 224)

Introduction

This Act is a recognition of the universal view of corrections experts that a correctional system cannot adequately function when every prison bed is full. When all areas of correctional facilities designed for housing prisoners are full, violence is much more likely to occur, and correctional administrators have no flexibility to respond to the ever-changing demands of a growing prison population. Rehabilitative resources are stretched too thin to effectively fulfill their purpose of reforming offenders; and the public safety is thus adversely affected upon the release of prisoners from a crowded correctional system.

Because the prison population in Alaska is continuing to increase, this Act represents an effort to provide short term assistance in managing the prison population during overcrowding emergencies while more long term solutions to prison crowding can be explored by the legislative and executive branches of government. Recommendations that will address this problem in a more comprehensive way are anticipated to come from the Alaska Sentencing Commission over the next few years.

Under this Act, when the prison population in the correctional system exceeds its maximum capacity for an extended period, the Commission must notify the governor and parole board,

Sectional Analysis

and certain offenders not otherwise eligible for parole become eligible after serving at least half their sentences. If the parole board, after careful scrutiny, deems such a prisoner a safe risk to the public, then he or she may be released on discretionary parole subject to supervision by a parole officer and conditions set by the board.

If the correctional system has not been provided adequate relief such that the prison population has dropped below its maximum capacity within 120 days of the notification to the governor, then certain low risk offenders within 120 days of their release date would be released early into supervised probation or parole.

This two step proposal is similar to ones utilized in a number of states with prison crowding problems. Following is a brief analysis of each section of the bill.

Section 1. Legislative Findings And Purpose.

This section is a statement of the purpose of the bill: to manage the population in state correctional facilities so as to better enable state correctional officials to achieve the dual constitutional goals of reformation of the offender and protection of the public. See, Alaska Constitution, Art. I, § 12.

Those offenders affected by this Act are deemed to present a lesser risk to the public than those whose release are not affected.

Section 2. AS 12.55.125(g).

This section cross references the provisions which provide the authority for special discretionary parole and early release of eligible prisoners when crowding conditions persist.

Section 3 & 4. AS 33.16.090(b); AS 33.16.090(c).

These sections cross reference the provision which provides that after prolonged prison crowding conditions, a limited exception may be made to the general rule that presumptively sentenced prisoners are not eligible for parole.

Section 5. AS 33.16.100(c).

This section does the same thing as sections 3 and 4; and, in addition, makes two technical amendments to better clarify existing law.

Section 6. AS 33.25.010 -- 33.25.090, Prison Population Management Act.

This section adds a new chapter to Title 33 in Alaska's statutes. The sections in this chapter provide the statutory scheme to help manage Alaska's prison population when overcrowding conditions persist. A brief analysis of each section and its intent follows:

CHAPTER 25. PRISON POPULATION MANAGEMENT ACT

Section 33.25.010. Capacity of Correctional System.

This section requires the commissioner of corrections to adopt regulations under the Administrative Procedure Act (AS 44.62) specifying the maximum capacity of each state correctional facility and of the correctional system. The term "maximum capacity" is defined in proposed AS 33.25.910(5) as the maximum number of prisoners that can be accommodated in areas of a correctional facility designed for the general housing of prisoners. This excludes temporary holding areas. The commissioner will utilize generally accepted principles of correctional management in setting the maximum capacities including such factors as square footage in common and living areas, time out of living units, inmate/staff ratios, physical plant limitations, custody levels of inmates, and program resources. These factors are set out in the Final Settlement Agreement and Order in Cleary v. Smith, 3AN-81-5274 Civ.

Section 33.25.020. Duties of the Commissioner.

This section sets out the duties of the commissioner so as to implement the provisions of this chapter. If the average daily prisoner population exceeds the maximum capacity of the system for a 30-day period, the commissioner is required to notify the governor and parole board; prepare a list of prisoners who would be eligible for special discretionary parole under AS 33.25.030; and explore alternatives for reducing prison

crowding, including increasing the maximum capacity, with executive and legislative branch leaders.

Under subsection (b), if the population continues to exceed the maximum capacity, the prisoners on the list become eligible for special discretionary parole, and the commissioner must notify the prisoners of their eligibility.

Under subsection (c), if the provisions regarding special discretionary parole are implemented, and the prison population nonetheless continues to exceed maximum capacity, the commissioner shall again notify the governor and parole board and immediately prepare a list of prisoners eligible for early release under AS 33.25.070.

If the early release of prisoners into supervised probation or parole under AS 33.25.050 does not reduce the prison population below maximum capacity, then the commissioner is obliged to again perform the duties relating to special discretionary parole consideration.

Finally, subsection (d) provides that this statutory population management tool (i.e., special discretionary parole consideration and early release) may not be utilized and the relevant time periods begin to run anew if the prison population falls below maximum capacity during certain relevant time periods.

Section 33.25.030. Special Discretionary Parole Eligibility.

This section sets out actual periods of eligibility and eligibility requirements for special discretionary parole for

classes of prisoners set out in AS 33.25.040.

Subsection (b) recognizes the due process right of a prisoner to retain his or her parole eligibility once it is achieved, even if the prison population falls below maximum capacity. Subsection (c) provides that, notwithstanding other provisions, no prisoner will become eligible for special discretionary parole if, at the time prisoners would otherwise become eligible, the commissioner determines that the maximum capacity of the prison system will be increased within the next 45 days such that it will exceed the prison population.

Section 33.25.040. Classes of Prisoners Eligible for Special Discretionary Parole.

A state prisoner who has not previously been revoked after being released on special discretionary parole or early release under this chapter is eligible for special discretionary parole when prison crowding conditions warrant, if the prisoner is serving a sentence of at least 181 days (minimum eligibility for parole under AS 33.16.090(a)) for a crime other than an unclassified or A Felony under AS 11, an equivalent offense under Alaska's former criminal code, or certain serious class B felonies (any B felony against a person under AS 11.41, arson in the second degree, criminal mischief in the first degree, and attempt or solicitation to commit a class A felony offense); and the prisoner is not otherwise eligible for parole due to the service of a presumptive sentence.

The critical element in this section which serves to

protect the public, in addition to excluding the most serious felons, is that a prisoner eligible for special discretionary parole may not be released on parole unless the parole board determines, with reasonable probability, that the prisoner will not violate the law or otherwise pose a threat to the public. AS 33.16.100(a). This provision along with AS 33.25.030 provides the opportunity, after prison crowding conditions persist, for certain less serious felons who have served one half of their sentences and who are not otherwise eligible for parole, and who have demonstrated a strong commitment toward rehabilitation, to be considered for discretionary parole.

Section 33.25.050 Early Release And Probation or Parole Supervision.

Subsection (a) requires the commissioner to release early each prisoner eligible under AS 33.25.070 into supervised probation or parole if crowding conditions still exist 120 days after eligible prisoners have been considered for special discretionary parole. A prisoner may not be released early until he or she agrees in writing to follow the conditions of behavior required while on supervision.

Subsection (b) dictates whether a person released early is to be under parole or probation supervision. Each prisoner released early will be under either parole or probation supervision except for a prisoner who has less than 10 days remaining to serve on a sentence at the time of early release, and who is not subject to probation or parole after the term of incarceration. Such a

prisoner requires no supervision upon release.

Subsection (c) makes clear that the prohibition in AS 12.55.090(c) against probation lasting more than five years does not apply to a prisoner released early under (a) of this section.

Section AS 33.25.060. Violation of Conditions of Early Release.

This section provides authority for a court to revoke the probation resulting from early release and the probation following early release, if a prisoner on early release violates a law or condition of probation. The same authority is provided to the parole board for a prisoner on parole resulting from early release.

Section 33.25.070. Prisoners Eligible for Early Release.

This section lists seven requirements that must be met for a prisoner to be released early under As 33.25.050. As in AS 33.25.040 (eligibility for special discretionary parole), the most serious offenders are not eligible for early release. The seven requirements are self-explanatory and are aimed at releasing early only those prisoners who have served at least one-half of their period of confinement, are least likely to endanger the public and who are very close to the end of their sentences.

Section 33.25.080. Limitation on Civil Action.

This section prohibits anyone from bringing a civil action against the state or a state employee for failure to comply with any of the time limits established in this chapter. If this

Act is adopted, it is possible that time pressures caused by prison crowding and an effort to safeguard the public while complying with the provisions in this chapter may result in missing certain time frames. No liability will flow from such an occurrence.

Section 33.25.900. Definitions.

This section defines the terms in AS 33.25.

Section 7.

With the Administration's proposed amendment, this section provides for this chapter to be repealed in four years. This sunset provision is a recognition that the relief provided to prison crowding by this chapter is a short-term emergency measure that should no longer be needed after the comprehensive recommendations of the Alaska Sentencing Commission (AS 44.19.561 -- 44.19.577) are presented to the legislature, and long-term solutions to prison crowding are implemented.

Section 8. Immediate Effective Date.

This section provides for an immediate effective date for this Act.

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION

STEVE COWPER, GOVERNOR

REPLY TO:

☑ *CRIMINAL DIVISION CENTRAL OFFICE*
P.O. BOX KC
JUNEAU, ALASKA 99811-0310
PHONE: (907) 465-3428

☐ *OFFICE OF SPECIAL PROSECUTIONS AND APPEALS*
1031 WEST 4TH AVENUE, SUITE 318
ANCHORAGE, ALASKA 99501-5993
PHONE: (907) 279-7424

January 22, 1992

The Honorable Dave Donley
Chairman House Judiciary Committee
Alaska House of Representatives
P.O. Box V
Juneau, Alaska 99811

Re: CS for HB 224 (HESS) (An Act Relating to Sentencing and Population Management in the State Correctional System)

Dear Representative Donley,

I am writing to you in my role as counsel to the Alaska Department of Corrections on behalf of the Administration regarding CS for HB 224 (HESS). This bill, which deals with a proposed short-term solution to prison crowding in Alaska, passed out of the HESS committee last session, and is awaiting action by the Judiciary committee.

On behalf of the Administration, I respectfully request that you set the bill on for a hearing before your committee. To assist you and the members of your committee in better understanding CS for HB 224 (HESS), I have prepared and enclosed a sectional analysis of the bill as well as a flow chart which displays how the provisions of the bill will be implemented. While the concept of CSHB 224 is relatively simple, the mechanics of the bill are a bit complicated; thus I look forward to testifying before the committee to explain its provisions.

Thank you for your attention on this matter. I look forward to hearing from you soon.

Very truly yours,

CHARLES E. COLE
ATTORNEY GENERAL

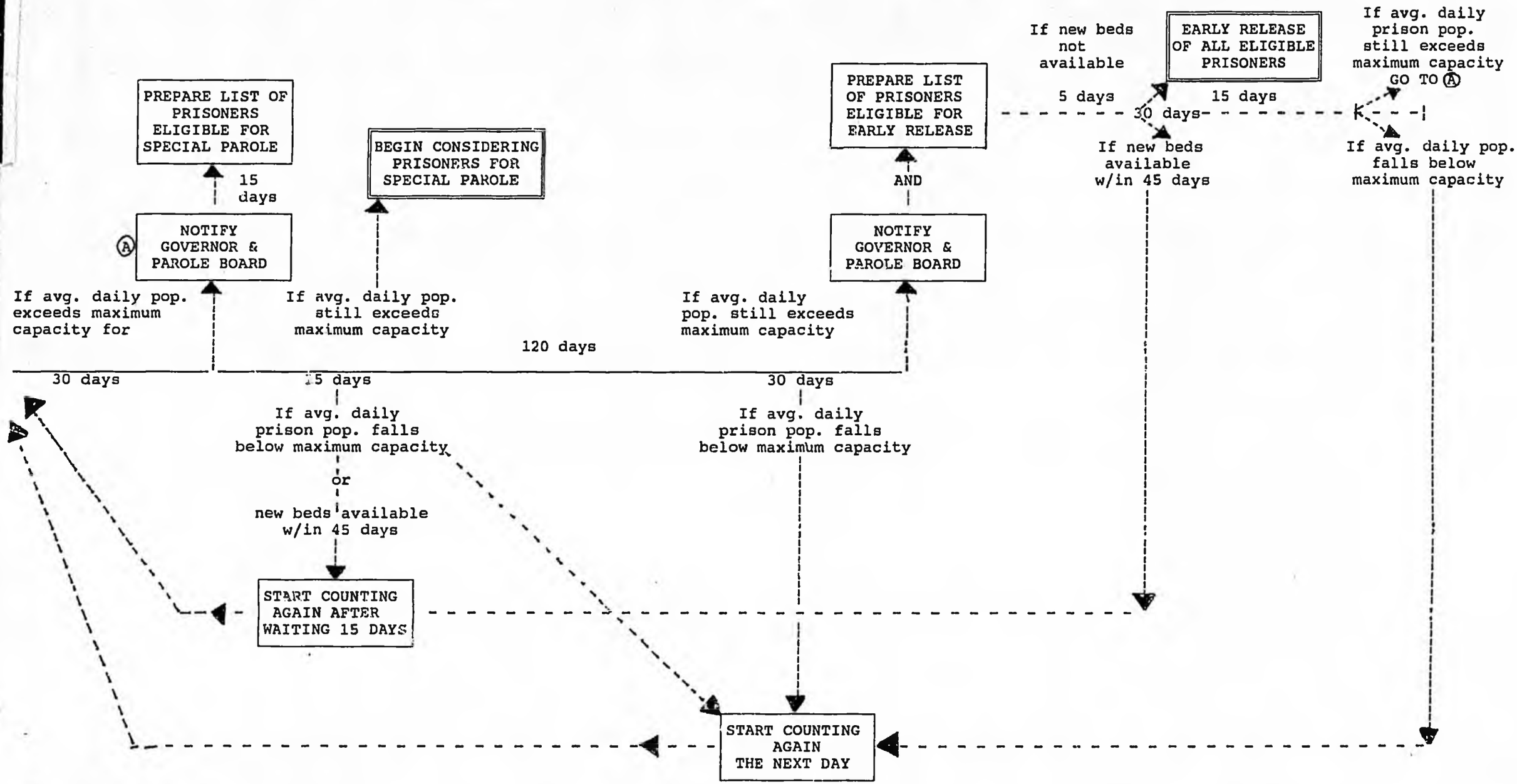
By: Michael J. Stark
Michael J. Stark
Assistant Attorney General

Enclosures

MJS/sf

cc: Deborah Behr
Paul Fuhs (w/ enclosures)
Diane Schenker (w/ enclosures)

FLOW CHART FOR PRISON POPULATION MANAGEMENT ACT



1/22/92

SECTIONAL ANALYSIS FOR AN ACT
RELATING TO POPULATION
MANAGEMENT IN THE STATE
CORRECTIONAL SYSTEM CSHB 224 (HESS)

Introduction

This Act is a recognition of the universal view of corrections experts that a correctional system cannot adequately function when every prison bed is full. When all areas of correctional facilities designed for housing prisoners are full, violence is much more likely to occur, and correctional administrators have no flexibility to respond to the ever-changing demands of a growing prison population. Rehabilitative resources are stretched too thin to effectively fulfill their purpose of reforming offenders; and the public safety is thus adversely affected upon the release of prisoners from a crowded correctional system.

Because the prison population in Alaska is continuing to increase, this Act represents an effort to provide short term assistance in managing the prison population while more long term solutions to prison crowding can be explored by the legislative and executive branches of government. Recommendations that will address this problem in a more comprehensive way are anticipated to come from the Alaska Sentencing Commission over the next few years.

Under this Act, when the prison population in the correctional system exceeds its maximum capacity for an extended period, the Commissioner must notify the governor and parole board, and certain offenders not otherwise eligible for parole become

eligible after serving at least half their sentences. If the parole board, after careful scrutiny, deems such a prisoner a safe risk to the public, then he or she may be released on discretionary parole subject to supervision by a parole officer and conditions set by the board.

If the correctional system has not been provided adequate relief such that the prison population has dropped below its maximum capacity within 120 days of the notification to the governor, then certain low risk offenders within 120 days of their release date would be released early into supervised probation or parole. Among those released, offenders with 30 days or longer remaining to serve on their sentences would be required to reside at a community residential center.

This two step proposal is similar to ones utilized in a number of states with prison crowding problems. Following is a brief analysis of each section of the bill.

Section 1. Legislative Findings And Purpose.

This section is a statement of the purpose of the bill: to manage the population in state correctional facilities so as to better enable state correctional officials to achieve the dual constitutional goals of reformation of the offender and protection of the public. See, Alaska Constitution, Art. I, § 12.

Those offenders affected by this Act are deemed to present a lesser risk to the public than those whose release are not affected.

This section also acknowledges that the legislature views this Act as an extraordinary remedy to reduce prison crowding which should only be utilized after the commissioner of corrections has exhausted all available options to address the problem.

Section 2. AS 12.55.125(g).

This section cross references the provisions which provide the authority for special discretionary parole and early release of eligible prisoners when crowding conditions persist.

Section 3 & 4. AS 33.16.090(b); AS 33.16.090(c).

These sections cross reference the provision which provides that after prolonged prison crowding conditions, a limited exception may be made to the general rule that presumptively sentenced prisoners are not eligible for parole.

Section 5. AS 33.16.100(c).

This section does the same thing as sections 3 and 4; and, in addition, makes a technical amendment to better clarify existing law.

Section 6. AS 33.22.010 --33.22.080, Prison Population Management Act.

This section adds a new chapter to title 33 in Alaska's statutes. The sections in this chapter provide the statutory scheme to help manage Alaska's prison population when overcrowding conditions persist. A brief analysis of each section and its

intent follows:

CHAPTER 22. PRISON POPULATION MANAGEMENT ACT

Section 33.22.010. Capacity of Correctional System.

This section requires the commissioner of corrections to adopt regulations under the Administrative Procedure Act (AS 44.62) specifying the maximum capacity of each state correctional facility and of the correctional system. The term "maximum capacity" is defined in proposed AS 33.22.910(6) as the maximum number of prisoners that can be accommodated in areas of a correctional facility designed for the general housing of prisoners. This excludes temporary holding areas. The commissioner will utilize generally accepted principles of correctional management in setting the maximum capacities including such factors as square footage in common and living areas, time out of living units, inmate/staff ratios, physical plant limitations, custody levels of inmates, and program resources. These factors are set out in the Final Settlement Agreement and Order in Cleary v. Smith, 3AN-81-5274 Civ.

Section 33.22.020. Duties of the Commissioner.

This section sets out the duties of the commissioner so as to implement the provisions of this chapter. If the average daily prisoner population exceeds the maximum capacity of the system for a 30-day period, the commissioner is required to notify the governor and parole board; prepare a list of prisoners who would be eligible for special discretionary parole under AS

33.22.030; and explore alternatives for reducing prison crowding, including increasing the maximum capacity, with executive and legislative branch leaders.

Under subsection (b), if the population continues to exceed the maximum capacity, the prisoners on the list become eligible for special discretionary parole, and the commissioner must notify the prisoners of their eligibility.

Under subsection (c), if the provisions regarding special discretionary parole are implemented, and the prison population nonetheless continues to exceed maximum capacity, the commissioner shall again notify the governor and parole board and immediately prepare a list of prisoners eligible for early release under AS 33.22.070.

If the early release of prisoners into supervised probation or parole under AS 33.22.050 does not reduce the prison population below maximum capacity, then the commissioner is obliged to again perform the duties relating to special discretionary parole consideration..

Finally, subsection (d) provides that this statutory population management tool (i.e., special discretionary parole consideration and early release) may not be utilized and the relevant time periods begin to run anew if the prison population falls below maximum capacity during certain relevant time periods.

Section 33.22.030. Special Discretionary Parole Eligibility.

This section sets out actual periods of eligibility and

eligibility requirements for special discretionary parole for classes of prisoners set out in AS 33.22.040.

Subsection (b) recognizes the due process right of a prisoner to retain his or her parole eligibility once it is achieved, even if the prison population falls below maximum capacity. Subsection (c) provides that, notwithstanding other provisions, no prisoner will become eligible for special discretionary parole if, at the time prisoners would otherwise become eligible, the commissioner determines that the maximum capacity of the prison system will be increased within the next 45 days such the it will exceed the prison population.

Section 33.22.040. Classes of Prisoners Eligible for Special Discretionary Parole.

A state prisoner whose special discretionary parole or early release under this chapter has not previously been revoked is eligible for special discretionary parole when prison crowding conditions warrant, if the prisoner is serving a sentence of at least 181 days (minimum eligibility for parole under AS 33.16.090(a)) for a crime other than an unclassified or A Felony under AS 11, an equivalent offense under Alaska's former criminal code, or certain serious class B felonies (any B felony against a person under AS 11.41, arson in the second degree, criminal mischief in the first degree, and attempt or solicitation to commit a class A felony offense); and the prisoner is not otherwise eligible for parole due to the service of a presumptive sentence.

The critical element in this section which serves to

protect the public, in addition to excluding the most serious felons, is that a prisoner eligible for special discretionary parole may not be released on parole unless the parole board determines, with reasonable probability, that the prisoner will not violate the law or otherwise pose a threat to the public. AS 33.16.100(a). This provision along with AS 33.22.030 provides the opportunity, after prison crowding conditions persist, for certain less serious felons who have served one half of their sentences and who are not otherwise eligible for parole, and who have demonstrated a strong commitment toward rehabilitation, to be considered for discretionary parole.

Section 33.22.050 Early Release And Probation or Parole Supervision.

Subsection (a) requires the commissioner to release early each prisoner eligible under AS 33.22.070 into supervised probation or parole if crowding conditions still exist 120 days after eligible prisoners have been considered for special discretionary parole. A prisoner may not be released early until he or she agrees in writing to follow the conditions of behavior required while on supervision.

Subsection (b) dictates whether a person released early is to be under parole or probation supervision. Each prisoner released early will be under either parole or probation supervision except for a prisoner who has less than 10 days remaining to serve on a sentence at the time of early release, and who is not subject to probation or parole after the term of incarceration. Such a

prisoner requires no supervision upon release.

Subsection (c) provides that prisoners released early into supervised probation or parole, who have 30 days or longer remaining to serve on their sentences, are required to reside at a community residential center. If insufficient space exists at community residential centers to accomodate all, of these prisoners, the commissioner shall determine which prisoners shall reside at a center considering factors related to the protection of the public and cost-effective use of resources.

Subsection (d) provides, similar to AS 33.22.030(c), that notwithstanding other provisions, no prisoner may be released early if, at the time prisoners would otherwise become eligible for release, the commissioner determines that the maximum capacity of the prison system will be increased within the next 45 days such the it will exceed the prison population.

Subsection (e) makes clear that the prohibition in AS 12.55.090(c) against probation lasting more than five years does not apply to a prisoner released early under (a) of this section.

Section 33.22.060. Violation of Conditions of Early Release.

This section provides authority for a court to revoke the probation resulting from early release and the probation following early release, if a prisoner on early release violates a law or condition of probation. The same authority is provided to the parole board for a prisoner on parole resulting from early release.

Section 33.22.070. Prisoners Eligible for Early Release.

This section lists six requirements that must be met for a prisoner to be released early under AS 33.22.050. As in AS 33.22.040 (eligibility for special discretionary parole), the most serious offenders are not eligible for early release. The six requirements are self-explanatory and are aimed at releasing early only those prisoners who have served at least one-half of their period of confinement, are least likely to endanger the public and are very close to the end of their sentences.

Section 33.22.080. Limitation on Civil Action.

This section prohibits anyone from bringing a civil action against the state or a state employee for failure to comply with any of the time limits established in this chapter. If this Act is adopted, it is possible that time pressures caused by prison crowding and an effort to safeguard the public while complying with the provisions in this chapter may result in missing certain time frames. No liability will flow from such an occurrence.

Section 33.22.900. Regulations.

This section authorizes the commissioner to adopt regulations which may be necessary to carry out the provisions of this chapter.

Section 33.22.910. Definitions.

This section defines the terms in AS 33.22.

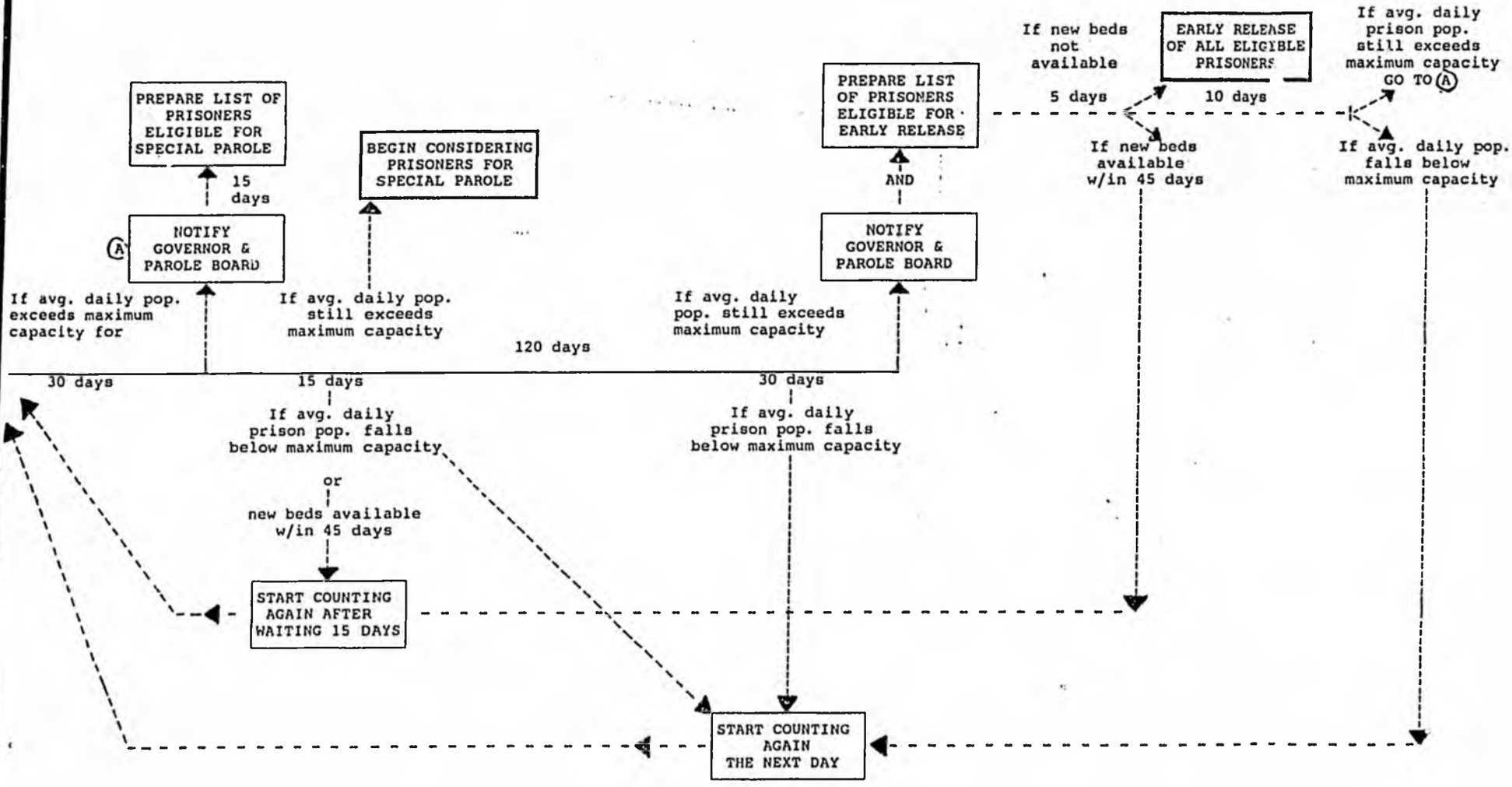
Section 7. Sunset Provision.

This section provides for this chapter to be repealed on July 1. 1995. This sunset provision is a recognition that the relief provided to prison crowding by this chapter is a short-term emergency measure that should no longer be needed after the comprehensive recommendations of the Alaska Sentencing Commission (AS 44.19.561 -- 44.19.577) are presented to the legislature, and long-term solutions to prison crowding are implemented.

Section 8. Immediate Effective Date.

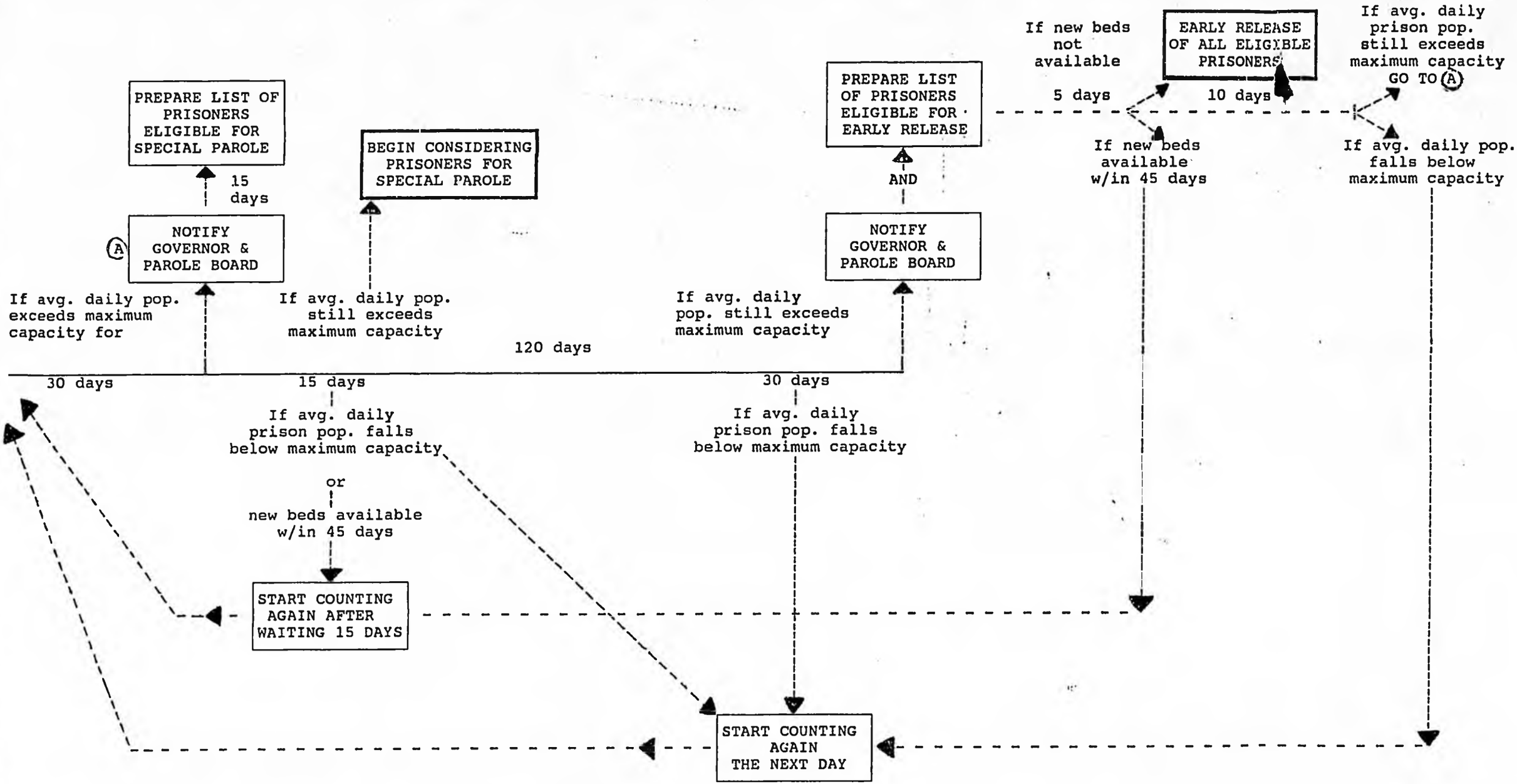
This section provides for an immediate effective date for this Act.

FLOW CHART FOR PRISON POPULATION MANAGEMENT ACT



4/2/91

FLOW CHART FOR PRISON POPULATION MANAGEMENT ACT



4/2/91

[redacted]OUSE COMMITTEE REPO[redacted]

(7)

Date Referred: March 20, 1991 FURTHER REFERRALS: Judiciary

Date of Committee Action: _____

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee considered: HB 224

HOUSE BILL NO. 224 PRISON POPULATION MANAGEMENT

"An Act relating to population management in the state correctional system; and providing for an effective date."

RECOMMENDATIONS: CS HB 224 (HES)
be replaced with _____
[ ] the same title
[X] a new title

[ ] have attached amendments(s)
[ ] do pass
[ ] do not pass
[ ] no recommendations
[X] individual recommendations
[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)
[ ] fiscal impact _____
[X] zero fiscal note Dept. of Corrections

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

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
[redacted]	✓	Betty Davis		X	
[redacted]	—	Mark Stanley		X	
J. C. Hayes	✓	Mary Miller		✓	
		Cheri Davis		✓	
		[redacted]		✓	

Patrick Cox
CHAIRMAN'S SIGNATURE

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. H.B. 224

Revision Date: _____ Department Affected: Corrections

Title: "An Act relating to population management...state correctional system.." BRU: Statewide Operations

Component: _____

Sponsor: _____

Requestor: Governor **COMPONENT SERIAL NO.** | | | | |

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Tom Sutton, Director Tom Sutton Phone: 465-3376

Division: Administrative Services Date: 04-12-91

Approved by Commissioner: _____

Agency: Department of Corrections Date: 04-12-91

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

Rev 10/90

FN & Corrections

HB

231

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF BANKING, SECURITIES & CORPORATIONS

P.O. BOX D
JUNEAU, ALASKA 99801-0800
Banking & Securities (907) 465-2521
Corporation Section (907) 465-2530
ANCHORAGE
Corporation Information (907) 563-2161

February 21, 1991

Mr. Gary Roth
President and CEO
Denali State Bank
P.O. Box 74568
Fairbanks, AK 99707-4568

Dear Mr. Roth:

You have asked if a bank president must be elected director by the shareholders. Alaska Statute 06.05.435 requires directors to be elected by the shareholders and Alaska Statute 06.05.437 requires a bank president to be elected by the board of directors and must also be a director. Although there is confusion in statutory language, it is clear the Legislature did not intend that the president stand for shareholder election.

Research of legislative history and laws has revealed the following:

> AS 06.05.300. General Corporate Powers. Upon filing the Articles of Incorporation, a bank becomes a legal corporation and may (1) - (4) . . . (5) elect directors who may appoint officers when necessary or convenient.
>
> AS 06.05.435. Directors. (a) . . . (b) In the first instance, the director shall be elected at a meeting held before the bank is authorized to do business by the department and thereafter at the annual meeting of the stockholders held each year.
>
> AS 06.05.437(a) . . . The president of a bank or other chief officer responsible for the management of the bank must be a member of the board of directors. This provision was a result of an amendment in Am. Sec. 29, Ch. 169, SLA 1978. It was the only change made by that amendment. In review of legislative history, we note a letter dated January 28, 1977 to Senator John L. Rader, President of the Senate, in which Governor Hammond wrote: "Section 29 amends AS 06.05.437(a) in order to preclude the possibility that an employee might be given the title of president but have no voice in the overall management of the bank."

08-H14LH

It is clearly evident that there was no intent to require the president of a bank to solicit shareholders' votes. Such a practice would jeopardize the ability of the president to be objective in business decisions. This matter could be handled in the Articles of Incorporation. AS 06.05.345(a)(5) requires the Articles of Incorporation to specify the number of directors. At that section of the articles, it could be stated that there shall be X number of directors elected by shareholders and that on appointment of officers, the president/CEO becomes an additional director by virtue of AS 06.05.437(a).

I have been advised that while intent of the Legislature is apparent, construction of law is confusing. The division will take no action if the president does not stand for shareholder election. We urge, however, that you propose an amendment to the banking code to address this confusion. We will also draft corrective legislation for consideration for the second session of the current Legislature.

I hope this will answer the question of a bank president having to be elected by the shareholders.

Sincerely,

Willis F. Kirkpatrick
Director

WFK/TLL/mst2294m
022091a
cc: Anchorage Field Office

DENALI STATE BANK

119 N. Cushman Street • (907) 456-1400 • FAX (907) 456-2140 • P.O. Box 74568 • Fairbanks, Alaska 99707-4568

April 8, 1991

Representative Tom Moyer
Alaska State House of Representatives
P.O. Box V
State Capital
Juneau, Alaska 99811

RE: HB231

Dear Representative Moyer:

Thank you for your introduction and support of House Bill 231. The purpose of this bill is to clarify the election of a State Bank President to the position on the Board of Directors.

A.S. 06.05.437(a) states "the President of a bank or other Chief Officer responsible for the management of the bank must be a member of the Board of Directors." With this statute in mind, I, as President and Chief Executive Officer, stood for re-election by the shareholders at our first three annual meetings. This posed no problem as the proposed slate of Directors for the Bank was unanimously elected the first three years. However, at the fourth annual shareholders meeting, a nominee for Director was nominated from the floor. Thus a run off election was required. At this point in time we became uncertain as to whether the President or Chief Officer of the Bank had to stand for election to the Board of Directors because of the statutory requirement.

To solve the immediate question before the body, I stood for re-election and was elected. However, in so doing, I had to solicit the support of several shareholders at the meeting to assure this re-election. At our next Directors meeting, it was the unanimous consensus of our Board of Directors that the President should not have to solicit such political favors from the shareholders as it could compromise the management of the Bank. A request was made to the Division of Banking, Securities and Corporations to clarify this issue. Willis Kirkpatrick responded to the undersigned on February 21, 1991 indicating that research into the matter by his department indicated that "it was clearly evident that there was no intent to require the President of a Bank to solicit shareholder votes." He also stated, "although there is confusion in statutory language, it is clear the legislature did not intend that the President stand for shareholder election." He also refers to other legislative research which indicates that a vacant board seat should be withheld at the shareholder election which will later be filled by the Board of Directors annually as they elect officers of the Bank, including the President or Chief Executive Officer. He states "this would then preclude the possibility that an employee might be given the title of President but have no voice in the overall management of the Bank."

State statutes require that all officers of a bank be re-elected annually by the Board of Directors. This then would accomplish the placing of the President on the Board of Directors of the Bank in compliance with statute. HB231 properly addresses this scenario and we appreciate your involvement. Thank you.

Sincerely,

Gary Roth

Gary Roth
President and Chief Executive Officer

GR/aj

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 April 22, 1991

SUBJECT: Effect of HB 231 on AS 06.05.435 (Work Order No. 7-LS1037)

TO: Representative David Finkelstein
Chair, House Labor & Commerce Committee
Attn: Cliff

FROM: Theresa L. Bannister TLB
Legislative Counsel

You have asked whether the new language ("amendment") contained in lines 9-10 of HB 231, "An Act relating to the presidents and other chief executive officers of banks" eliminates certain provisions of AS 06.05.435 for the chief executive officer ("CEO") of a bank and the other directors of the bank. In determining which provisions to address in this memo, I have talked with your staff and I have examined Representative Parnell's notations on HB 231.

The amendment reads: "but is not subject to the election requirements under AS 06.05.435". The full sentence containing the amendment reads as follows:

> "Upon election to the position by the board of directors, the [THE] president of a bank or other chief officer responsible for the management of the bank becomes [MUST BE] a member of the board of directors, but is not subject to the election requirements under AS 06.05.435 for directors."

First of all, the amendment clearly applies just to the CEO and does not apply to the other directors. The amendment only states that the CEO is not subject to the election requirements for directors. Second, the new language applies only to election requirements, not to other requirements.

In AS 06.05.435(a)[1/], the amendment has the effect of saying the CEO is not to be elected by the stockholders. The rest of the directors are still to be elected by the stockholders and hold office for one year and until their successors are elected and have qualified. The amendment does not change the rest of the subsection. The requirement remains that a majority of the board of directors must be bona fide residents of the state.

In AS 06.05.435(b)[2/], the amendment has the effect of removing the CEO from the election requirements of the section. The amendment does not change any of these election requirements in the subsection for the other directors.

In AS 06.05.435(c)[3/], the amendment does not change any of the provisions, since the subsection does not address the election of directors. Each director, including the CEO, must satisfy the capital stock ownership requirements of the subsection.

If I can be of further assistance, please advise.

TLB:pl
91-284.plm

[1/] AS 06.05.435(a) reads as follows:

> (a) The affairs of every bank incorporated under this chapter shall be managed by not less than five directors, nor more than 25, who shall be elected by the stockholders and hold office for one year and until their successors are elected and have qualified. A majority of the board of directors shall be bona fide residents of the state and a majority constitutes a quorum for the transaction of business.

[2/] AS 06.05.435(b) reads as follows:

> (b) In the first instance the directors shall be elected at a meeting held before the bank is authorized to do business by the department and thereafter at the annual meeting of the stockholders held each year. If no election is held at that time, it may be held at an adjourned meeting or at a subsequent meeting called for that purpose, notice of which shall be given as provided in the bylaws.

[3/] AS 06.05.435(c) reads as follows:

> (c) Each director of a bank shall own in the director's own right free of any encumbrance capital stock of the bank in an amount equal to at least $1,000 in par value.

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF BANKING, SECURITIES & CORPORATIONS

P.O. BOX D
JUNEAU, ALASKA 99801-0800
Banking & Securities (907) 465-2521
Corporation Section (907) 465-2530
ANCHORAGE
Corporation Information (907) 563-2161

DATE: April 23, 1991

TO: Honorable Tom Moyer
House of Representatives

FROM: Willis F. Kirkpatrick, Director
Division of Banking, Securities and Corporations
Department of Commerce and Economic Development

SUBJECT: Representative Kevin Parnell's Concerns of HB 231

The purpose of HB 231 as you stated is to correct the dichotomy inadvertently created by an amendment to the banking code in 1978 (Sec. 29, Ch. 169, SLA 1978). This amendment provided that " . . . the president of a bank or other chief officer responsible for the management of the bank must be a member of the board of directors." When Governor Hammond transmitted the proposed amendments in 1978 to Senator Rader, President of the Senate, he wrote "Sec. 29 amends AS 06.05.437(a) in order to preclude the possibility that an employee might be given the title of president but have no voice in the overall management of the bank." (Emphasis added.) It is apparent that the intent is to give the employee who is hired as a chief officer (CEO) a vote (voice) on the board.

In the administration of the Alaska Banking Code, we recognize that in corporate powers and structure shareholders elect the board of directors who in turn appoint (elect) the officers of the bank. It is not the focal point that management (CEO) has a voice on the board and is successful in a shareholders' election but rather than whether he is successful in safe and sound bank management. If the CEO is elected by the shareholders and is not a good manager, can he be removed by the board action "at any time" as is provided by AS 06.05.437(a).

It is clear that HB 231 offers a simple solution to a confusing situation created by an ambiguous amendment to the Alaska Banking Code in 1978. While exempting the CEO from shareholder election provisions, the law retains the requirements of oath of office and qualifying shares as for other directors.

We applaud your effort in trying to correct this inadvertent dichotomy.

WFK/sh9273M
042391b

08-H14LH

REPRESENTATIVE TOM MOYER

DISTRICT 19 • 119 N. CUSHMAN ST., SUITE 203 • FAIRBANKS, AK 99701 • (907) 456-8161

International Trade & Tourism, Chair • State Affairs, Vice Chair • Resources, Member

MEMORANDUM

To: Representative Dave Donley
Chair, Judiciary Committee

April 25, 1991

From: Representative Tom Moyer TM

Re: HB231, relating to bank presidents

With this memo, I would like to request the Judiciary Committee to hold a hearing on HB231 at your earliest convenience.

The bill is designed to clarify confusion in current statutes about whether a bank president or other chief executive officers must be elected in a shareholder election. As indicated in the attached material, the intent of the legislature is that such officers should be elected by their boards and not in shareholder elections. This bill would eliminate the confusion.

I am happy to testify at your convenience or supply additional information if necessary.

ALASKA STATE LEGISLATURE • P.O. BOX V • JUNEAU, AK 99811 • (907) 465-4930

Steele Creek/Gilmore • Steese East • Steese West • Goldstream • Ester • Ft. Wainwright • Two Rivers • Fox • Central • Livengood • Circle • Chatanika

REPRESENTATIVE TOM MOYER

DISTRICT 19 • 119 N. CUSHMAN ST., SUITE 203 • FAIRBANKS, AK 99701 • (907) 456-8161

International Trade & Tourism, Chair • State Affairs, Vice Chair • Resources, Member

MEMORANDUM

To: Representative Dave Donley
Chair, House Judiciary

May 10, 1991

From: Representative Tom Moyer

Re: HB231, relating to the election of bank presidents

With this memo, I am submitting for your bill files additional letters of support for HB231. Additionally, I would like to request a hearing on the bill at your earliest convenience.

ALASKA STATE LEGISLATURE • P.O. BOX V • JUNEAU, AK 99811 • (907) 465-4930

Steele Creek/Gilmore • Steese East • Steese West • Goldstream • Ester • Ft. Wainwright • Two Rivers • Fox • Central • Livengood • Circle • Chatanika

Key Bank of Alaska
A KeyCorp Bank

101 West Benson Boulevard
Post Office Box 100420
Anchorage, Alaska 99510-0420
(907) 564-0250 or (907) 562-6100

Michael J. Burns
President and
Chief Executive Officer

May 2, 1991

The Honorable Tom Moyer
119 N. Cushman St., Suite 203
Fairbanks, Alaska 99701

Dear Representative Moyer,

Please accept my apologies for the tardiness of this letter of support for HB 231 which you recently introduced. Key Bank of Alaska, as the largest state chartered bank, and the Alaska Bankers Association, of which I am currently serving as President, both whole heartedly support the intent of this legislation. Your interests in the well being of the banking system is greatly appreciated.

Should you have any questions about Key Bank's or the Association's position on legislation, please contact me at your convenience.

Sincerely,

Michael J. Burns
President

MJB:jr

Northrim Bank

May 1, 1991

Mr. Tom Moyer,
Representative
District 19
Alaska State Legislature
P. O. Box V
Juneau, AK 99811

RE: HOUSE BILL NO. 231

Dear Mr. Moyer:

Thank you very much for your letter of April 11, 1991 and the copies of pertinent information concerning House Bill No. 231.

Your legislative efforts to clarify the current statutes with regard to the election of bank presidents and chief executive officers have our total support.

Sincerely,

Marc Langland
President

RECEIVED MAY 06 1991

3111 C Street • P.O. Box 241489
Anchorage, Alaska 99524-1489
907/562-0062
FAX 907/562-1758 Member FDIC