

ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672
7476 SENATE JUDICIARY

1 by-product material, production facility, or utilization facility, or act as an operator of a
2 production or utilization facility wholly within the state without first obtaining a license or permit
3 for the activity in which the person proposes to engage from the Nuclear Regulatory [UNITED
4 STATES ATOMIC ENERGY] Commission if the commission requires a license or permit to be
5 obtained by persons proposing to engage in the activities.

6 * Sec. 25. AS 18.45.900(7) is amended to read:

7 (7) "special nuclear material" means plutonium, uranium 233, and uranium
8 enriched in the isotope 233 or in the isotope 235, and any other material that the governor
9 declares by order to be special nuclear material after the Nuclear Regulatory Commission
10 [UNITED STATES ATOMIC ENERGY COMMISSIONER] has determined the material to be
11 special nuclear material; or material artificially enriched by any of the foregoing material;

12 * Sec. 26. AS 18.60.210(a)(2) is amended to read:

13 (2) unfired pressure vessels meeting the requirements of the federal Department
14 of Transportation [AND PUBLIC FACILITIES] for shipment of liquids or gases under pressure;

15 * Sec. 27. AS 18.60.370 is amended to read:

16 Sec. 18.60.370. APPEALS. A person aggrieved by an order or act of a deputy inspector
17 may, within 15 days after notice of the order or act, appeal to the Department of Labor. The
18 Department of Labor shall hold a hearing within 30 days of the appeal but shall give at least 10
19 days' written notice of the hearing to all interested parties. Within 30 days after the hearing, the
20 Department of Labor shall issue an order approving or disapproving the order or act and shall
21 give a copy of the order to all interested parties. Within 30 days after the order of the
22 Department of Labor, a person aggrieved may file an appeal [A PETITION] in the superior court
23 for review. The court shall summarily hear the appeal [PETITION] and may make an
24 appropriate order or decree.

25 * Sec. 28. AS 18.60.590(b) is amended to read:

26 (b) AS 18.60.580 - 18.60.660 do [THIS CHAPTER DOES] not affect the authority of
27 any municipality or rural electrification association to prescribe by ordinance, rule, or order
28 standards for their respective areas of jurisdiction not less stringent than the standards prescribed
29 by the department or those established under AS 18.60.580.

30 * Sec. 29. AS 18.60.735 is amended to read:

31 Sec. 18.60.735. BOROUGH OR CITY REGULATION. AS 18.60.705 - 18.60.740 do

1 not affect the authority of any municipality to prescribe by ordinance, rule, or order, standards
2 for their respective areas of jurisdiction no less stringent than those established under
3 AS 18.60.705. AS 18.60.705 - 18.60.740 are [THIS CHAPTER IS] not intended to duplicate
4 or preempt code administration or enforcement by municipalities. Any organized municipality
5 or unorganized village having less than 2,500 population is exempt from the provisions of
6 AS 18.60.705 - 18.60.740.

7 * Sec. 30. AS 18.67.020(d) is amended to read:

8 (d) A [EACH MEMBER OF THE BOARD IS ELIGIBLE FOR REAPPOINTMENT
9 AND ANY] member of the board may be removed by the governor for inefficiency, neglect of
10 duty, or malfeasance in office after due notice and hearing.

11 * Sec. 31. AS 18.85.100(a) is amended to read:

12 (a) An indigent person who is being detained by a law enforcement officer in connection
13 with a serious crime, or is under formal charge of having committed, or is being detained under
14 a conviction of a serious crime, or is on probation or parole, or is entitled to representation under
15 the Supreme Court Delinquency or Child in Need of Aid Rules [OF CHILDREN'S
16 PROCEDURE], or against whom commitment proceedings for mental illness have been initiated,
17 is entitled

18 (1) to be represented by an attorney to the same extent as a person retaining an
19 attorney is entitled; and

20 (2) to be provided with the necessary services and facilities of this representation,
21 including investigation and other preparation.

22 * Sec. 32. AS 21.36.360(j) is amended to read:

23 (j) A criminal insurance act is committed by a person in this state who acts as an
24 insurance agent, broker, solicitor, or adjuster without being licensed by the director. A criminal
25 insurance act is committed by an agent, broker, or solicitor who solicits or takes application for,
26 procures, or places for others any insurance for which the person is not licensed or for which the
27 license of the person has been suspended or revoked. This subsection does not apply to a person
28 described in AS 21.90.910 [AS 21.27.520] or to a person securing and forwarding information
29 required for the purpose of a group insurance covering the unpaid balance or remaining payments
30 proposed to be made in connection with the purchase of merchandise or services if no
31 commission or other compensation is payable on account of the insurance to the person.

1 * Sec. 33. AS 21.78.100(b) is amended to read:

2 (b) The director may apply for and secure an order dissolving the corporate existence of
3 a domestic insurer [, EXCEPT THE MEDICAL INDEMNITY CORPORATION OF ALASKA,]
4 upon the director's application for an order of liquidation of the insurer or at any time after the
5 order has been granted.

6 * Sec. 34. AS 21.80.180(5) is amended to read:

7 (5) "member insurer" means a person, except an assessable reciprocal insurer
8 formed by and insuring only municipalities or nonprofit public utilities, a reciprocal insurer
9 formed under AS 21.75 to provide marine insurance, and a joint insurance arrangement formed
10 under AS 21.76, [AND THE MEDICAL INDEMNITY CORPORATION OF ALASKA,] who

11 (A) writes insurance to which this chapter applies under AS 21.80.020
12 including the exchange of reciprocal or interinsurance contracts; [,] and

13 (B) is licensed to transact insurance in the state;

14 * Sec. 35. AS 27.21.210 is amended to read:

15 Sec. 27.21.210. PERFORMANCE STANDARDS. The [WITHIN 120 DAYS AFTER
16 MAY 2, 1983, THE] commissioner shall adopt [PROPOSE] regulations consistent with the
17 environmental performance standards of the Surface Mining Control and Reclamation Act of
18 1977 and the regulations promulgated under that Act for both surface coal mining and
19 reclamation operations and surface effects of underground mining with appropriate adjustments
20 to the special physical, hydrological, biological, and climatic conditions in the state [ALASKA].
21 All permits issued under this chapter shall require that surface coal mining and reclamation
22 operations and coal exploration activities must comply with those environmental performance
23 standards.

24 * Sec. 36. AS 28.10.431(b)(9) is amended to read:

25 (9) vehicles 40
26 eligible for
27 dealer plates under
28 [SPECIFIED IN]
29 AS 28.10.421(d)(10).

30 * Sec. 37. AS 34.50.020(b) is amended to read:

31 (b) A state agency or its agents, including a person working in or responsible for the

1 operation of a foster, receiving, or detention home, or children's institution, is not liable under
2 (a) of this section for the acts of unemancipated minors in its charge or custody.

3 * Sec. 38. AS 38.05.965(22) is amended to read:

4 (22) "timber land" means [AND "MATERIAL LAND" MEAN] state land chiefly
5 valuable for [MATERIALS, INCLUDING, BUT NOT LIMITED TO, SAND, STONE, GRAVEL,
6 PUMICE, COMMON CLAY, OR] timber and other forest products;

7 * Sec. 39. AS 38.05.965 is amended by adding a new paragraph to read:

8 (24) "material" includes sand, stone, gravel, pumice, and common clay.

9 * Sec. 40. AS 44.81.250(c) is amended to read:

10 (c) If the debtor is unable to nominate a qualified person to assume the note under (b)
11 of this section, the permit must be made available to a qualified person, chosen as provided in
12 this section, who shall assume the note subject to all rights and liabilities of the original debtor.
13 The commission shall provide the bank with a list of persons chosen by lottery who qualify as
14 transferees of entry permits under AS 16.43 and regulations adopted by the commission and who
15 have met the residency [AND COMMERCIAL FISHING PARTICIPATION] requirements of
16 AS 44.81.210(a)(20). The bank shall then determine, in order of presentation, any remaining
17 qualifications. The bank shall allow the first applicant meeting all qualifications to assume the
18 note.

19 * Sec. 41. AS 14.11.135(2), 14.11.135(4); AS 14.17.250(3), 14.17.250(8); AS 14.30.350³(~~8~~);
20 AS 16.05.050(19); AS 18.31.500(3); AS 18.35.230(3); AS 18.55.950(5), 18.55.950(9); AS 18.60.775;
21 and AS 26.05.040 are repealed.

22 * Sec. 42. This Act takes effect immediately under AS 01.10.070(c).

S B

4 3 7

SB 437

SB 437 was amended slightly by the Senate Judiciary Committee to give the intent of the proposed legislation a legitimate governmental purpose when weighed against a student's constitutional right to privacy. The amendment was also intended to tighten up the language so that the bill could not be construed as an authorization to search lockers for any reason whatsoever, so long as a two week notice had been furnished. To accomplish this, the original wording from page 2, line 21 & 22 which was taken out, was put back; "to determine compliance with school regulations, school district regulations, and local, state, and federal laws".

The second amendment changes slightly the language adopted in a previous amendment. Sections 3 and 4 of the adopted CS contains the language, "... (c) nothing in this section, "affects" the ability of a peace officer, ..."etc. The wording "affects the ability" is changed to, "limits the ability".

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. S.B. 437

Revision Date: _____ Department Affected: Department of Corrections
 Title: "An Act concerning keeping of BRU: Statewide Operations
firearms in...schools." Component: Various
 Sponsor: Senator Collins
 Requestor: Senate Judiciary COMPONENT SERIAL NO.

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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						
FUND SOURCE:						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: 0

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

Prepared By: *Diane Schenker* Diane Schenker, Legislative Liaison Phone: 465-3376
 Division: Office of the Commissioner Date: 02/28/92
 Approved by Commissioner: Lloyd Hames, Commissioner
 Agency: Department of Corrections *Lloyd Hames* Date: 02/28/92

CONTINUATION OF FISCAL ANALYSIS

BILL: SB 437 "An Act concerning keeping of firearms in certain lockers, and other containers in preschools, elementary, junior high, and secondary schools, and postsecondary educational institutions, and the right of schools, school districts, and postsecondary educational institutions to search and examine certain lockers and other containers."

The bill would expand the crime of Misconduct Involving Weapons in the Third Degree to include keeping a firearm on school grounds, including in lockers. The bill adds postsecondary schools to the list of schools at which possessing or keeping a firearm would be prohibited. The bill grants school administrators the authority to search lockers.

In a one day "snapshot" profile of offenders on December 31, 1991, there were no offenders under the Department's supervision on probation for MIW III unless this offense was included as an additional charge with a more serious offense. There was one inmate incarcerated whose most serious offense was MIW III.

By expanding search authority and by extending prohibition of weapons to postsecondary institutions, it is possible the bill would result in additional cases of MIW III. However, it is assumed that the majority of locker searches would involve minors not subject to the jurisdiction of the Department. Even a 100% increase in adult cases of MIW III resulting in incarceration would only mean two offenders incarcerated instead of one. Therefore, the Department does not expect significant fiscal impact from this proposed change in law.

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. SB 437

Revision Date: _____

Department Affected: Education

Title: An act concerning fire arms in schools and school rights to search

BRU: Educational Program Support

Component: Special Projects

Sponsor: Sen. Collins

Requestor: (S) Judiciary

COMPONENT SERIAL NO.

	1	7	3
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
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REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER FUND SOURCE:						
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.)

This zero fiscal note assumes the Department of Education will have no responsibilities related to enactment of this legislation.

Prepared by: Mike Maher

Phone: 465-2800

Division: Commissioner's Office

Date: 3-3-92

Approved by Commissioner: _____

Jerry Covey

Agency: Education

Date: 3-3-92

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. CSSB 437 (JUD)

Revision Date: _____ Department Affected: Education
 Title: An Act concerning keeping of BRU: Postsecondary Education Commission
firearms in certain lockers and other
containers Component: Program Administration
 Sponsor: Senator Collins
 Requestor: Judiciary COMPONENT SERIAL NO.

0	2	1	2
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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE LOANS BUDGET						
FUND SOURCE:	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: \$-0-

ANALYSIS: (Attach a separate page if necessary.)

This new statutory requirement would be added to a preexisting packet of information which is periodically supplied to all postsecondary institutions in the state. No new costs would be added.

Prepared By: Allan Barnes, Executive Director Phone: 465-2165

Division: Alaska Commission on Postsecondary Education Date: April 2, 1992

Approved by Commissioner: _____

Agency: _____ Date: _____

Alaska State Legislature

During Session
State Capitol
Juneau, Alaska 99801-1132
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Senator Virginia Collins

SB 437

SPONSOR STATEMENT

SB 437 amends the statutes pertaining to weapons on school grounds. The bill changes the weapon's misconduct statutes to include Alaska's postsecondary institutions. In addition the definition of school "grounds" is amended to clearly state that school lockers or other containers provided by the institution are included in the term "grounds". The bill also provides for notice and search of school lockers or other provided school containers.

The policy question is, whether this type of legislation is necessary? The answer is yes. Times have changed. Violence is everywhere in American society. Our schools are becoming unsafe. Students, parents and teachers need the assurance that schools will not be allowed to become armed camps.

Most of us can remember the class bullies. They would corner other students and beat them up for all kinds of reasons. There have always been bullies but now, bullies have armed themselves with guns and knives.

Our responsibility as lawmakers is to establish public policy. We need to anticipate problems and offer solutions to those problems before they become overwhelming burdens. Our highest priority should be safe schools that allow students the opportunity to learn and provide teachers an environment in which to teach.

Questions have surfaced as to whether or not a search of a student's locker compromises their civil rights. There is an overwhelming public safety issue involved in the goal of safe schools. Weapon-free schools overshadow any privacy claim. We need to view this subject in the same context as driving while intoxicated. As long as students are on notice that weapons are prohibited and lockers will be searched, the likelihood of students bringing weapons to schools may be eliminated.

SB 437 is a good bill and I would welcome your support.

Sponsor Statement

To: Committee Members

From: Sen Collins

I have had legal prepare two committee substitutes for the committee.

Committee Substitute No. 1:

Changes the CS passed by the committee

- a. It adds back the language that Gail Horeski wanted deleted. The original bill had the language in both section 3 and section 4, "...to determine compliance with school regulations, school district regulations, and local, state, and federal laws." The CS as amended by Adams deleted the above language. The committee substitute that I had prepared addresses Mr. Casey's concerns as stated in his advisory memo dated March 5, 1992. CS 7-LS2039\M dated 3/11/92 puts the language back in the bill with a minor change. The language would now read, "...to encourage compliance with school regulations...etc.

Both Margot Knuth of Dept of Law and Bob Casey of LAA Legal think the compromise language takes care of Gail Horeski's concern. Ms. Horeski does not think it does.

- b. Secondly, it changes slightly the language adopted by the Adams amendment. The sections 3 and section 4 of the adopted CS contains the language, "... (c) Nothing in this section, 'affects' the ability of a peace officer,..." etc. The wording "affects the ability" is changed to, "limits the ability".

All three attorneys think this new language is okay.

- c. The deletion of the words "or keeps" in section 1 in the CS that was adopted is still deleted.

DIVISION OF LEGAL SERVICES

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MEMORANDUM

March 5, 1992

SUBJECT: Changes to SB 437 ()

TO: Senator Virginia M. Collins
Attention: Shirley Armstrong

FROM: Robert Glennon Casey *RG C 3-5-92*
Legislative Counsel

I. SUMMARY

The changes to SB 437 ordered in yesterday's meeting of the Senate Judiciary Committee could prevent achievement of SB 437's purpose. There are two problems.

II. DISCUSSION

The first problem would be the effect of adding the following subsection at page 2, following line 26:

(c) Nothing in this section ~~affects~~ the ability of a peace officer, chief administrative officer, or other appropriate person, acting in compliance with local, state, or federal laws, to search a locker or other container provided in a public or private school by the school district.

Change word to limits

Virtually the same subsection - equally troublesome - is to be added at page 3, following line 5.

If "nothing in this section [would] affect the ability . . . to search a locker," then the bill as a whole would not enlarge the power of authorities to search lockers for guns. That would conflict with the intent of the bill, which is to enhance the power of authorities to search lockers for guns.

It is likely that the proponent of this change intended something else. Perhaps she meant something such as the following:

Senator Virginia Collins

March 5, 1992

Page 2

(c) This section does not ~~diminish~~ the authority otherwise provided by law of a peace officer, chief administrative officer, or other appropriate person to search a locker or other container provided in a public or private school by the school district.

*try some
language
except*

A second problem could arise from deletion of the phrase "to determine compliance with school regulations, school district regulations, and local, state, and federal laws" at page 2, lines 21 and 22 and page 2, line 31 - page 3, line 1. Without this phrase, the bill could be construed as an authorization to search lockers for any reason whatsoever, so long as the two week notice had been furnished.

Such a broad statutory authorization would expose the legislation to constitutional challenges. The legislation could be attacked as overbroad and authorizing arbitrary and capricious searches. If the new AS 14.03.105 and AS 14.48.205 added by this bill were ruled unconstitutional, then replacement legislation might be needed before the intent of SB 437 could be achieved.

It is my opinion that this legislation could more easily be defended from constitutional challenges, if the statutory power to search school lockers were statutorily linked to some legitimate school purpose such as conforming the use of school property to regulations and laws.

It is arguable that the legitimate school purpose would be implicit in the bill. Unfortunately, it is also arguable - especially in a context involving fundamental constitutional rights - that a legitimate purpose for conducting searches is not part of a law unless the law expressly so provides.

Perhaps the proponent of this change was only concerned with the word "determine." I recall from her testimony that she did not believe that school authorities were empowered to "determine" whether laws were violated. If that were the intent, then perhaps the word "determine" could have been replaced with some term such as "investigate."

III. CONCLUSION

The changes discussed above would change this bill from one expanding the authority to search lockers, to one merely preserving the level of existing authority. Even worse, they could cause the entire scheme of facilitating locker searches to be thrown out as unconstitutional.

RGC:pl
92-160.plm

DIVISION OF LEGAL SERVICES

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MEMORANDUM

March 2, 1992

SUBJECT: Sectional Analysis of SB 437 ()

TO: Senator Virginia Collins
Attention: Shirley Armstrong

FROM: Robert Glennon Casey *RGC 3-2-92*
Legislative Counsel

You have requested a sectional analysis of the above-described bill. The following is an explanation of the contemplated effect of various provisions, but this is not to be considered an authoritative interpretation of the bill. The bill itself is the best statement of its contents.

Section 1 amends an existing statute, AS 11.61.220 ("misconduct involving weapons in the third degree"). Although existing subsection (a)(4) of that statute already criminalizes "knowing possession" of a firearm "within the grounds" of certain educational institutions, it does not specifically address storage of guns in lockers.

So, section 1 of this bill adds the phrase "or keeps" to ensure that possession of a gun on one's person at school was not the only way to break the law. A student who kept a handgun in a locker would also break the law.

Section 1 works another change. The existing law does not reach possession or storage of guns at institutions beyond the high school level. Section 1 therefore adds "postsecondary educational institutions[s]" to the list of places where it would be unlawful to possess or keep a firearm.

Section 2 adds a definitional subsection to the statute described above. "Grounds" are defined to include lockers and other containers provided in the school by the school, school district, or postsecondary educational institution.

This section is designed to thwart a defendant's argument that keeping a gun in a student's locker could not possibly violate the law, since the locker was a private place not to be understood as falling within the meaning of "school grounds." Such an argument would probably fail in court anyway, but this section would help to

Senator Virginia Collins
March 2, 1992
Page 2

ensure the argument's failure. It would also anticipate certain constitutional challenges based on a defendant's expectation of privacy, discussed below in this sectional analysis.

Section 3 is an enforcement section. It adds a new section to AS 14.03 ("Public Schools Generally"). Under subsection (a), educational institutions would be permitted under certain circumstances to conduct and authorize searches of lockers and other containers on school grounds.

Educational institutions arguably already possess some right to conduct such searches, but the boundaries of that right are unclear, variable, and subject to constant constitutional challenges based on the argument that students have a "legitimate expectation of privacy" in their lockers. A school might believe that it needed a separate legal clearance for every locker that it searched.

This section would announce that educational institutions could generally conduct or authorize the searches, so long as students were warned ahead of time not to expect that their lockers were private. Subsection (b) clarifies that advance warning must consist of the posting of notices throughout the school for at least two weeks before the searches occur. Schools wishing to conduct a policy of continual searches could simply keep the notices permanently posted.

The purpose of such searches would not be confined to detection of guns. Instead, the purpose would be generally "to determine compliance with the institution's regulations and local, state, and federal laws." Thus a school might also search for miscellaneous illegal explosives, fire hazards, and health hazards, along with searching for illegal firearms.

Despite the chapter title of "Public Schools Generally," this section's wording covers private as well as public schools.

Section 4 repeats the search and warning rule provided in Section 3, this time making it applicable to public and private postsecondary institutions.

RGC:pl
92-149.plm

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR COLLINS

TO: SB 437

Page 2, line 1:

Delete "or keeps"*already adopted*

Page 2, line 21:

Delete "determine"

Insert "encourage"

Page 2, following line 26:

Insert a new subsection to read:

"(c) Nothing in this section limits the ability of a peace officer, chief administrative officer, or other appropriate person, acting in compliance with local, state, or federal laws, to search a locker or other container provided in a public or private school by the school district."

Page 3, line 31:

Delete "determine"

Insert "encourage"

Page 3, following line 9

Insert a new subsection to read:

"(c) Nothing in this section limits the ability of a peace officer, chief administrative officer, or other appropriate person, acting in compliance with local, state, or federal laws, to search a locker or other container provided at a public or private postsecondary educational institution by the institution."

7-LS2039M

Casey

3/11/92

CS FOR SENATE BILL NO. 437 ()
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:

Referred:

Sponsor(s): SENATOR COLLINS

A BILL

FOR AN ACT ENTITLED

1 "An Act concerning keeping of firearms in certain lockers and other containers in
2 preschools, elementary, junior high, and secondary schools, and postsecondary educational
3 institutions, and the right of schools, school districts, and postsecondary educational
4 institutions to search and examine certain lockers and other containers."

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

6 * Section 1. AS 11.61.220(a) is amended to read:

7 (a) A person commits the crime of misconduct involving weapons in the third degree if
8 the person

9 (1) knowingly possesses a deadly weapon, other than an ordinary pocket knife or
10 a defensive weapon, that is concealed on the person;

11 (2) knowingly possesses a loaded firearm on the person in any place where
12 intoxicating liquor is sold for consumption on the premises;

13 (3) being an unemancipated minor under 16 years of age, possesses a firearm
14 without the consent of a parent or guardian of the minor;

1 (4) knowingly possesses a firearm

2 (A) within the grounds of or on a parking lot immediately adjacent to a
3 public or private preschool, elementary, junior high, or secondary school, or
4 postsecondary educational institution, without the permission of the chief administrative
5 officer of the school [OR] district, or postsecondary educational institution, or the
6 designee of the chief administrative officer, except that a person 21 years of age or older
7 may possess an unloaded firearm in the trunk of a motor vehicle or encased in a closed
8 container in a motor vehicle; or

9 (B) within the grounds of or on a parking lot immediately adjacent to a
10 center, other than a private residence, licensed under AS 47.35.010 - 47.35.075 or
11 recognized by the federal government for the care of children; or

12 (5) possesses or transports a switchblade or a gravity knife.

13 * Sec. 2. AS 11.61.220 is amended by adding a new subsection to read:

14 (h) In (a)(4) of this section, "grounds" includes lockers and other containers provided in
15 a preschool, a school, or postsecondary educational institution by the preschool, school, school
16 district, or postsecondary educational institution.

17 * Sec. 3. AS 14.03 is amended by adding a new section to read:

18 Sec. 14.03.105. SCHOOL LOCKERS. (a) Subject to (b) of this section, a locker or
19 other container provided in a public or private school by the school or the school district may
20 be searched and examined with the permission of the chief administrative officer of the school
21 or the school district or the designee of the chief administrative officer to encourage compliance
22 with school regulations, school district regulations, and local, state, and federal laws.

23 (b) Notices in letters at least two inches high stating the right and the intention of school
24 and school district officers to permit searches and examinations under (a) of this section shall be
25 posted in prominent locations throughout a school for two weeks before a search or examination
26 is conducted. Notices under this subsection may be continuously posted.

27 (c) Nothing in this section limits the ability of a peace officer, chief administrative
28 officer, or other appropriate person, acting in compliance with local, state, or federal laws, to
29 search a locker or other container provided in a public or private school by the school district.

30 * Sec. 4. AS 14.48 is amended by adding a new section to read:

31 Sec. 14.48.205. SEARCH OF LOCKERS AND CONTAINERS. (a) Subject to (b) of

1 this section, a locker or other container provided at a public or private postsecondary educational
2 institution by the institution may be searched and examined with the permission of the chief
3 administrative officer of the institution to encourage compliance with the institution's regulations
4 and local, state, and federal laws.

5 (b) Notices in letters at least two inches high stating the right and the intention of a
6 postsecondary educational institution to permit searches and examinations under (a) of this
7 section shall be posted in prominent locations throughout the institution for two weeks before a
8 search or examination is conducted. Notices under this subsection may be continuously posted.

9 (c) Nothing in this section limits the ability of a peace officer, chief administrative
10 officer, or other appropriate person, acting in compliance with local, state, or federal laws, to
11 search a locker or other container provided at a public or private postsecondary educational
12 institution by the institution.

CS FOR SENATE BILL NO. 437 (JUDICIARY)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:

Referred:

Sponsor(s): SENATOR COLLINS

A BILL

FOR AN ACT ENTITLED

1 "An Act concerning keeping of firearms in certain lockers and other containers in
2 preschools, elementary, junior high, and secondary schools, and postsecondary educational
3 institutions, and the right of schools, school districts, and postsecondary educational
4 institutions to search and examine certain lockers and other containers."

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

6 * Section 1. AS 11.61.220(a) is amended to read:

7 (a) A person commits the crime of misconduct involving weapons in the third degree if
8 the person

9 (1) knowingly possesses a deadly weapon, other than an ordinary pocket knife or
10 a defensive weapon, that is concealed on the person;

11 (2) knowingly possesses a loaded firearm on the person in any place where
12 intoxicating liquor is sold for consumption on the premises;

13 (3) being an unemancipated minor under 16 years of age, possesses a firearm
14 without the consent of a parent or guardian of the minor;

1 (4) knowingly possesses a firearm

2 (A) within the grounds of or on a parking lot immediately adjacent to a
3 public or private preschool, elementary, junior high, or secondary school, or
4 postsecondary educational institution, without the permission of the chief administrative
5 officer of the school [OR] district, or postsecondary educational institution, or the
6 designee of the chief administrative officer, except that a person 21 years of age or older
7 may possess an unloaded firearm in the trunk of a motor vehicle or encased in a closed
8 container in a motor vehicle; or

9 (B) within the grounds of or on a parking lot immediately adjacent to a
10 center, other than a private residence, licensed under AS 47.35.010 - 47.35.075 or
11 recognized by the federal government for the care of children; or

12 (5) possesses or transports a switchblade or a gravity knife.

13 * Sec. 2. AS 11.61.220 is amended by adding a new subsection to read:

14 (h) In (a)(4) of this section, "grounds" includes lockers and other containers provided in
15 a preschool, school, or postsecondary educational institution by the preschool, school, school
16 district, or postsecondary educational institution.

17 * Sec. 3. AS 14.03 is amended by adding a new section to read:

18 Sec. 14.03.105. SCHOOL LOCKERS. (a) Subject to (b) of this section, a locker or
19 other container provided in a public or private school by the school or the school district may
20 be searched and examined with the permission of the chief administrative officer of the school
21 or the school district or the designee of the chief administrative officer, to investigate compliance
22 with school regulations, school district regulations, and local, state, and federal laws.

23 (b) Notices in letters at least two inches high stating the right and the intention of school
24 and school district officers to permit searches and examinations under (a) of this section shall be
25 posted in prominent locations throughout a school for two weeks before a search or examination
26 is conducted. Notices under this subsection may be continuously posted.

27 (c) This section does not diminish the authority otherwise provided by law of a peace
28 officer, chief administrative officer, or other appropriate person to search a locker or other
29 container provided in a public or private school by the school district.

30 * Sec. 4. AS 14.48 is amended by adding a new section to read:

31 Sec. 14.48.205. SEARCH OF LOCKERS AND CONTAINERS. (a) Subject to (b) of

1 this section, a locker or other container provided at a public or private postsecondary educational
2 institution by the institution may be searched and examined with the permission of the chief
3 administrative officer of the institution, to investigate compliance with the institution's regulations
4 and local, state, and federal laws.

5 (b) Notices in letters at least two inches high stating the right and the intention of a
6 postsecondary educational institution to permit searches and examinations under (a) of this
7 section shall be posted in prominent locations throughout the institution for two weeks before a
8 search or examination is conducted. Notices under this subsection may be continuously posted.

9 (c) This section does not diminish the authority otherwise provided by law of a peace
10 officer, chief administrative officer, or other appropriate person to search a locker or other
11 container provided at a public or private postsecondary educational institution by the institution.

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION

March 10, 1992

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

Senator Virginia Collins
Alaska State Senate
P.O. Box V
Juneau, Alaska 99811

Re: SB 437, An Act relating to firearms in lockers

Dear Senator Collins:

I have had the opportunity to review the memorandum of March 5, 1992, written to you by Robert Casey, Legislative Counsel, addressing the changes to SB 437 that were proposed at the Senate Judiciary Committee hearing of March 4, 1992. I understand the first concern raised in Mr. Casey's memorandum and I believe that it can be addressed by changing the word "affects" to "limits" in the first line of the proposed amendment. This would clarify the author's intent, while minimizing the changes in the proposed language.

mk I concur with Mr. Casey on his second point and believe that it would be dangerous to remove from the proposed statute the language "to determine compliance with school regulations" This language clarifies that the purpose for which locker searches are being authorized is to find and dispose of illegal weapons (and drugs) and not simply to (unconstitutionally) invade the privacy of students. I do^{not} believe that any changes in the original wording are warranted or appropriate.

If I may be of other assistance to you in this or any other matter, please do not hesitate to contact me.

Very truly yours,

CHARLES E. COLE
ATTORNEY GENERAL

By: Margot O. Knuth
Margot O. Knuth
Assistant Attorney General

cc: Paul Fuhs, Governor's Office
Deborah Behr, AGO

ANCHORAGE SCHOOL DISTRICT
ANCHORAGE, ALASKA

MEMORANDUM

May 7, 1991

TO: TOM O'ROURKE, SUPERINTENDENT
FROM: *Bob Christal*
BOB CHRISTAL, ASSISTANT SUPERINTENDENT OF
INSTRUCTION

SUBJECT: Survey Results - Gun Incident Report

Attached is the summary report of the survey we conducted in April regarding incidents of possession of guns on school grounds.

At the elementary level three schools reported having dealt with guns this school year. In all cases parents were contacted, the police department was contacted in two cases. The police department was not contacted in the case where the student brought a musket for Show and Tell.

The secondary schools reported twelve (12) cases. The police were contacted in all but one of the cases. The one where the police were not contacted involved a toy gun. Disciplinary action was taken in each case and involved the parents. The District has taken action to prohibit the possession of guns on school grounds. The Anchorage School District and the Municipality of Anchorage worked together last fall to develop the local ordinance, passed by the Assembly, to prohibit the possession of guns on school grounds.

Currently the secondary schools are involving parents and staff in a review of existing policies and procedures on the issues of weapons. A set of recommendations is due by the end of May for administration and School Board action.

S2.75

Attachment

cc Carol Comeau
Bill Mell
School Principals

ANCHORAGE SCHOOL DISTRICT
INSTRUCTIONAL DIVISION
GUN INCIDENT REPORT
April 29, 1991

The Instructional Division conducted a survey of the elementary and secondary schools the week of April 15, 1991 to determine the number of incidents of guns being brought onto the school grounds.

Following is a compilation of the survey results. If a school is not listed by name that indicates there were no reported incidents of guns at that school. We have provided detailed information of schools where a gun was reported. The names of the students have been deleted for confidentiality reasons.

In every case when the school was informed the incident was dealt with immediately and disciplinary action was taken. The issue is one that warrants continued vigilance and positive action as has been the past practice in the District.

Elementary Schools - 55 schools reporting

Fifty-two (52) elementary schools reported no incidents of guns on school grounds. Three elementary schools did report a gun having been on the school grounds and following are the details on a school by school basis.

BAYSHORE:

Incident: Musket in backpack for sharing time. (Show N Tell)

Action Taken: Principal and parent dealt with the incident at the building level.

Police Contacted: Police were not contacted.

MULDOON:

Incident: Special Education student brought non-functioning hand gun to school.

Action Taken: Police and parent contacted. Conference held. Student suspended for one day out-of-school suspension.

Police Contacted: Police were contacted.

RUSSIAN JACK:

Incident: Child brought a pellet gun to school in his back pack.

Action Taken: Gun confiscated. All three students that played with gun were suspended for one day for their part with the gun. Parents worked closely and concurred with suspension.

Police Contacted: Police were contacted.

-
- ① This year we had a 10th grader at Mt View Elementary bring a loaded gun to school. Suspended for 45 days.
- ② 2nd grader Dennis loaded semi automatic pistol lost Monday 2/24/92
- ③ 2 months ago West High School Stabbing.

Secondary schools/programs 20 reporting

Twelve (12) secondary schools reported no incidents of guns on school grounds. Eight secondary schools did report incidents of a gun on school grounds and following are the details on a school by school basis.

BARTLETT: (1 incident)

Incident: A gun was seen by other students who reported it to classroom teacher.

Action Taken: Security was notified and asked student for the weapon outside the classroom. Gun surrendered to Security without resistance. Student and weapon brought to office. Student expelled by Board Action 11/13/90.

Police Contacted: Police were contacted. Student was arrested and detained.

CLARK: (2 incidents)

Incident: (1) An administrator and teacher received information that a student had a gun in school. No gun was found but the student admitted to bringing a so-called plastic gun to school and made statements to the students while pointing it at them such as "Don't worry, it's not loaded". As a result of the investigation, it is believed that the gun involved was a real gun. (2) Window on employee's vehicle had been shot out with a BB gun while parked on school parking lot. An ex-student did the shooting, was not in school

Action Taken: (1) Security was notified and asked student for the weapon outside the classroom. (2) Police contacted/charges filed, weapon seized on school grounds, pending action by youth authorities.

Police Contacted: (1) Police were contacted. Student was arrested and detained. (2) Police were contacted, charges were filed for possession of weapon on school campus.

DIMOND: (2 incidents)

Incident: (1) An estranged father appeared on the student parking lot after school and noticed his daughter sitting in a student car. Earlier that day the father had requested assistance from the school in gaining custody of his daughter, who he considered a runaway. When a band of students surrounded the girl to prevent his taking custody, the father (apparently frightened) pointed a hand gun toward/above the students. (2) On November 28, 1990, a tip received by the Federal Bureau of Alcohol, Firearms and Tobacco was telephoned to Principal. The Dimond security person and the Assistant Principal, interviewed the suspect, received a full confession, and took custody of a large caliber hand gun which was reported by the student to be in his car.

Action Taken: (1) No action taken against the students. Counseling if requested. (2) Suspended pending recommendation to expel. Expulsion recommended. School Board suspended for first semester.

Police Contacted: (1) Police were contacted. Police took custody of the father until students were gone. (2) Immediately arrested by police for possession of weapon on school grounds.

GRUENING: (1 incident)

Incident: On March 1, a student brought a plastic toy gun which shoots small plastic discs. He was shooting this gun in the lunchroom.

Action Taken: Suspension for 3 days, conference with parents.

Police Contacted: Police were not contacted. Gun was a toy but fit under the School District's definition of a weapon.

SERVICE: (1 incident)

Incident: Gun under seat in truck in school parking lot - found during search for Drugs/Alcohol. Student gave permission for search on 3/26/91.

Action Taken: Suspension for 3 days. Transporting gun to Dad's house with parent permission.

Police Contacted: Police were contacted. Gun was taken to family.

STELLER: (1 incident)

Incident: The student brought an unloaded handgun to school in his backpack. He showed it to other students, one of whom reported it to a teacher who then reported to the principal.

Action Taken: Student was given a 9-day suspension. Recommendation for long-term suspension was made. Hearing to be scheduled.

Police Contacted: Police were contacted.

WENDLER: (1 incident)

Incident: A student reported that another student had a "stun gun" at school. The student was questioned and admitted possession. Student willingly produced the weapon.

Action Taken: Student was given a 9-day suspension.

Police Contacted: Police were contacted.

WEST: (3 incidents)

Incident: (1) A student was wearing a loaded 9mm hand gun in a shoulder under sweater. Other students reported incident to school administrators. (2) Students reported to school administrators that another student was in possession of a gun. (3) The third incident of a firearm on West High School grounds was in December. In December it was reported by

Action Taken: (1) Student was suspended under emergency suspension rules with recommendation for expulsion presented to School Board. The School Board expelled the student. (2) Student was suspended under emergency suspension rules with recommendation for expulsion presented to School Board. The School Board expelled the student. (3) The student was suspended for 9 days for having the unloaded weapon in his vehicle. Another student who had accompanied the first student at lunch was suspended for 5 days. Both students served the suspensions and there were no appeals.

Police Contacted: (1) Police were contacted. Citizen arrest made. (2) Police were contacted. Citizen arrest made. (3) Police were contacted, confiscated the weapon but made no arrests.

Fairbanks North Star Borough School District

ADDRESS TO THE FAIRBANKS CHAMBER OF COMMERCE

By Richard S. Cross, Superintendent of Schools

October 22, 1991

The purpose of Red Ribbon Week is to raise public awareness about problems caused by drug and alcohol abuse, and to recognize that this abuse is a wide-spread social problem which only a community-wide effort will solve. Our school district recognized the seriousness of this social issue years ago and implemented programs in the district not only to educate our children about the hazards of substance abuse but also to help those whose health and safety was endangered because of drugs and alcohol.

Some very committed people in our district took a leadership role in the campaign against substance abuse. The first was Terry Marquette, the North Pole High School principal, who has been involved with youth in our community both as a teacher and administrator for over twenty years. Terry instituted a program at North Pole High which has been duplicated at all of our secondary schools. Last spring, North Pole High was selected by the United States Department of Education to receive national recognition in the 1990-91 Drug Free Schools Program. Terry and his faculty were flown to Washington D.C. to be honored by President Bush and others for their efforts. Mike Thibodeau and Terry Solomon are two other individuals who have worked extremely hard over the past several years to ensure that every school in the district has a successful substance abuse program. Approximately 2,000 students are involved in school-sponsored drug-free clubs or activities and we have experienced a significant reduction in the number of students suspended due to drug and alcohol problems.

I believe this demonstrates that our school district is able to take a serious social issue and develop educationally sound, nationally recognized strategies to help students. However, most young people who drink or do drugs do so after school and on weekends. Red Ribbon Week is ~~to~~ remind us that substance abuse is a community-wide problem, not just a school problem. Schools alone cannot and will not "solve" the drug and alcohol problem.

We will continue our efforts in the area of substance abuse prevention but this is not the only problem we must face as a community. I am here today to talk about another social issue of grave concern--the escalation of violence in our schools and community.

I became aware of changes in people's perceptions about school safety late last spring. Jerry Hartsock, our assistant superintendent for secondary education, was one of the first to bring this problem to my attention. Jerry has been involved in the community over ten years, primarily working in the district's alternative education programs. He is not one to overreact just because a few kids start talking tough, boys start wearing earrings or dye their hair pink. When Jerry came to me and told me he was concerned because a number of incidents indicated that our students didn't feel safe in school, I took him very seriously. We brought outside experts from the National School

Safety Center to advise us and we formed a community-wide safety task force consisting of law enforcement agencies, social service agencies, school leaders and concerned community members to develop way of addressing school safety.

Jerry wasn't the only one to come to me with well-founded concerns. Recently, we have had, either in our schools or in our community, a series of occurrences that are unrelated, but whose sum total paints an alarming picture. It used to be that whenever something terrible happened in Fairbanks or nearby, such as the gruesome murders at Manley several years ago, the general perception was that it was an isolated act of random violence. No one felt the need to change their lifestyle or to question their basic assumptions about the quality of their life as a result.

Now, the violence is no longer random and isolated. It is reoccurring, it is accelerating and people's attitudes are changing as result. The violence in our community no longer has as its victims drug dealers, criminals or other unsavory characters. The violence we are experiencing is perpetrated against children, against families and against innocent bystanders. People are becoming fearful, and I believe with good reason. Let me give you some examples.

In the school district, we are seeing numerous instances of violent fights--on athletic fields, (in our schools) at events after games, and outside of dances. Not adolescent pushing and shoving contests, but fights which involve a level of violence that is shocking, fights which result in bodily injury and which involve weapons. The fighting and the potential for violence at football games and other athletic events has caused us to ask referees to blow quick whistles, to penalize any violation of rules and to treat fighting on the field the same as fighting off the field. In some instances, we have rescheduled sporting events to the daytime because principals are not sure they can control the crowd after dark.

We are closing school dances to all non-school people, even to students from other schools who would like to attend as someone's guest. We have had to hire security guards for dances, athletic events and even for our lunch periods.

We had a homemade bomb explode in the hands of a student in a high school cafeteria. The incident was down played in the media because the bomb was "only" made of firecrackers. It was made of hundreds of firecrackers and had they gone off all at once, as was intended, we would have had a serious injury or even a death.

We have had to remove students from school for possessing weapons--not only knives, not only guns, but loaded automatic weapons. We have had several serious attacks on teachers. Last week, a student being chased by police out of one of our schools threatened to "blow away" a teacher who was blocking the doorway. The police were chasing the student because he was suspected of stealing guns.

I have reviewed a number of essays written as part of a language arts class in one of our high schools that clearly lead me to believe that for a variety of reasons, students don't feel safe in their neighborhoods, they don't feel safe on their way to school, and they don't feel safe once they are in school. The essays were written after a student was suspended for carrying a gun to school. One young person wrote:

"I don't blame him for bringing a gun to school. I did it last year. I brought a loaded 44 magnum to school for a week for a reason much the same.

I no longer feel the need to carry a gun or knife but I'm never without protection. It's fear, fear of many people beating me 'till I can't walk. I won't let that happen, not if I can help it. If it has to be me or them, I'll make it them."

There is behavior in our community that shows tell-tale signs of the formation of gangs. If not gangs in the formal sense, then certainly groups of young people who are behaving in organized ways to intimidate and harass both students and parents. There has been a high incidence of thefts in our community and the police tell us that jewelry and guns are being taken, they're being taken by children, and it is their belief the guns are not being turned over to fences, but are being either sold or given to other children. We have had parents tell us that they're afraid to report certain things because their children tell them that the other kids will not only harm them, but they will harass the parents and threaten their homes.

Racism is becoming overt and wide-spread. Racial incidents are occurring on playgrounds, on buses, in hallways, and in other places where young people gather with minimal supervision. Children are hearing and repeating racial slurs. Derogatory names are being painted on lockers. Students tell us that racism is the number one cause of school violence as the chain-reaction of threats, intimidation, and retaliation escalates. Young people are gathering and socializing along racial lines as never before, and these groups are becoming increasingly hostile and polarized.

We have had two incidents of children being shot by air rifles and BB pistols, one causing serious injury. A little girl was shot on the playground of one of our elementary schools by two boys who were hiding in the woods. A little boy was abducted from his yard and injured. Several weeks ago, at a weekend party, a middle school boy shot at a high school girl with a .357 magnum. He missed. No adults were present. We have had several random drive-by shootings. Three young people have been murdered--Kathy Stockholm, Johnny Jackson, and Cara Zastrow.

We used to live in a community where we were fairly confident bad things would not happen to our children. Children could walk safely to and from the school bus. High school students could go back to school in the evening to get their homework. They could drive from the shopping mall to their job at the pizza shop. Now most of us think twice before letting our children out of sight. It used to be that if you lost sight of your child in the store or around your yard, your first reaction was not alarm but rather exasperation toward the child who had wandered away. Now the automatic reaction is fear. We're afraid something terrible has happened to the child.

People are afraid. Our community is beginning to appear like an armed camp. We have had reports of neighborhood watches where adults are patrolling the community and are arming themselves. At a recent neighborhood safety meeting, 50 people were expected to attend. Four hundred showed up. At least one was armed.

I do not believe as a school community we are overreacting when we say that our schools have changed, that our community has changed, and that the situation is at a very critical point. People have asked me what I think has caused these changes to our community. It is true that very often you have to identify causes to develop solutions but what I find in this case is that people aren't looking for solutions but are trying to blame

the changes in our community on one single event or another. If we are going to identify what has caused the problem, I believe we should identify every single reason. Otherwise, what we end up with is a not a long list of causes but a short list of scapegoats. Naming scapegoats will not solve anything but will only escalate the atmosphere of fear and distrust we are trying to alleviate. I refuse to lay blame on any one factor for this problem.

I can tell you that the problems we are having are not limited to any one sector of the community. Some of the violence we are experiencing is in schools where you would least expect it and has come from the children of longstanding, respectable members of our community. The violence is simply a reality that we must face. This is Alaska, but it is also America.

Certain people in the community say the situation in other parts of America is hopeless. Therefore, the situation in Fairbanks is hopeless. They say all our school district can do is ensure student safety in our schools and that what happens outside the school is out of control and we cannot do anything about it. I refuse to accept this premise.

Not only do we have a moral responsibility to accept that this situation is not hopeless, but there are very real and tangible reasons why it isn't. Fairbanks is different from other communities. We have some very important factors working for us that other urban areas in America do not. We have a significantly higher percentage of two parent households than similar communities in the United States. We are a relatively small community and have not experienced the alienation that exists in larger communities. We know our neighbors and the people in the stores. We talk with one another. As a state, we have financial and technical resources available that other states only dream about. Finally, there is a "can-do" spirit that exists in us; we believe we can solve problems and take charge of our destiny.

Therefore, in some important ways, we are bucking the trend that causes despair and hopelessness in other urban areas. If we collectively take a caring and concerned attitude toward the conditions in our community, we should not have to accept, nor should we tolerate, an atmosphere of fear or violence or hopelessness.

My reason for coming to the community rather than tackling this problem from the perspective of the school district is one of equilibrium. We can and will guarantee that children will be safe in our schools. After all, schools are restricted environments that are fairly easy to control. They can be monitored and additional restrictions added as necessary. If, in order to ensure student safety in school, we have to place metal detectors at our doorways, place armed guards in our schools, have guards on our school buses, guards in the hallways, close our lunch periods and not allow students to leave our secondary campuses, we will do that.

However, what we will create if we have to go to those extreme measures is a disequilibrium between the child's life in school and out of school. This disparity will likely exacerbate rather than reduce the violence and fear that exists in the community at large. Students will be in schools they find so restrictive that they will react even more violently to the freedom outside. So while I make the pledge that our students will be safe in our schools no matter what we have to do, I don't say that with any degree of comfort.

Without the cooperation of the rest of the community, safety in the schools will become a hollow accomplishment because it will be achieved at the cost of even more fearful and chaotic behavior outside of schools.

Another student wrote:

"We talk about closed campus and things but there's still the weekends.

You still go to the movies and to parties. They can jump you there."

The appropriate action, it seems to me, is for the community and the schools to bring things under control together, so that an equal amount of restraint is being applied both in and out of school. To do so, we will have to change some rules. We can't accept behaviors that were accepted--or at least tolerated--in the past.

We need more adult presence wherever children are present. We must not let young people intimidate us so that we ignore inappropriate behavior. We must define and enforce clear expectations for their behavior at all times and in all situations. We cannot police what a child says or does at home but we can make it clear we will not tolerate inappropriate action or language in our presence or in public places. We must be concerned for other children, not just our own. Sue Wilken has told us that when she was a child growing up in Fairbanks, adults would stop and ask a young person on the street what they were doing out of school. Nowadays, the tendency is to ignore it.

We must communicate that violence is not an acceptable way to handle conflict and we must model the behavior we want young people to emulate. We must teach them acceptable ways to handle conflict. We need to offer young people constructive alternatives to unsupervised and unwholesome activities. We have no teen center, no public recreation center, no YMCA, no boy's club. We tell young people to make healthy choices but then we give them no real alternatives to being on the street.

This is a tall order, but we can do it. We can do it because we are not a typical urban community. We have all the ingredients here for a high quality life. The majority of us in Fairbanks have come here from somewhere else and we continue to live here at some sacrifice in terms of being separated from relatives and having to deal with isolation and cold, dark winters. Why do we stay? We stay because we believe Fairbanks has a quality of life which cannot be found outside. We stay because we believe this is a good place to raise children. We stay because we feel that we have gained more than we have given up in terms of quality of life.

I think in the last twelve months we've begun to recognize that the quality of life here is changing in a way that is alarming, and that what is required is an entire community effort to bring this concern of safety under control. The school district will do its part. But if the school district does it alone, all we can do is assure the safety of students in our schools and not in our community at large.

I am very proud of our district and I think we have good people who can be a tremendous resource to the community. Superintendents Jerry Hartsock, Betty Farni, and I have an average of 16 years committed to this community (Jerry and I admit we use Betty's heavy numbers to boost our stats!). As a comparison, James Ryan, who served longer than any of Fairbanks' twenty-five superintendents, was here for only ten years (1951-1961). Our principals have served the community for an average of 11 years and our teachers for an average of 9 years. Some of our classified staff have even more

seniority. We are Fairbanksans, this is our home--our community; we want it to be safe. But we cannot do it alone.

The reason I asked to speak to the Chamber of Commerce today is that you are all people who understand teamwork and commitment. You are actively involved in improving the quality of life in this community and you are people who can get things done. From now on, whenever someone asks the school district to do something about safety, if it makes sense and we can do it, we will. Then we are going to say to the community, "Now, what are you going to do to help make students safe outside of school?"

This community involvement is essential. From the time a child is born until they graduate from high school, they only spend 15 percent of the time they are awake in school. That means 85 percent of what influences them occurs outside of school. As a school district, we can guarantee their safety 15 percent of the time and we will work with you on the other 85 percent. But we cannot do it alone.

We all have the responsibility to make this community one in which our children can live with a feeling of relative safety and a lack of fear; to make this community one in which we as adults can live in relative safety and a lack of fear. Safety and comfort has to exist in our homes, in our schools, and in the rest of our community. To live in fear is to give up your liberty--people who live in fear are not free people. What we are experiencing in Fairbanks today is a basic loss of liberty. I, for one, am convinced we do not have to accept it. We do not have to raise and educate our children in a climate of fear and racism. Nor do we have to become vigilantes to prevent it. The problem will be solved when each of us accepts it as his or her responsibility.

I thank the Chamber for granting my request to speak to you today. I realize this subject is painful to listen to and to think about. I wouldn't have asked to come if I thought the situation couldn't be resolved. It can be resolved. I ask for your leadership and your help.

ASD STATEMENT OF RIGHTS AND RESPONSIBILITIES

1991-92

PREAMBLE

1. A primary responsibility of the Anchorage School District and its professional staff shall be the development of an understanding and appreciation of our representative form of government, the rights and responsibilities of the individual and the legal processes whereby necessary changes are brought about.
2. The school is a community and the rules and regulations of a school are the laws of that community. All those enjoying the rights of citizenship in the school community must also accept the responsibilities of citizenship. Among the responsibilities of school citizenship are respecting the laws of the community and the rights of other citizens and contributing to the fulfillment of educational purposes through cooperative conduct.
3. Young people in the United States have the right to receive a free public education, and deprivation of that right may occur only for just cause and in accordance with due process of law.
4. Students have the rights of citizenship as delineated in the United States Constitution and its amendments; and these rights may not be abridged, obstructed or in other ways altered except in accordance with due process of law. The First and Fourteenth Amendments to the Constitution of the United States prohibit states from unduly infringing upon the rights of speech and expression. In the school setting this restriction on state action limits the manner and extent to which schools may regulate the speech and expression of students. In order to curtail First Amendment rights, school authorities must show that the failure to do so would create a material and substantial disruption of school work and discipline.
5. Administrators and teachers also have rights and duties. The teacher is required by law to maintain a suitable environment for learning, and administrators have the responsibility for maintaining and facilitating the educational program.
6. The principal is authorized to recommend expulsion, and to suspend or discipline students for cause. The teacher has the authority to temporarily remove students from a class or discipline students for cause. The following rules, regulations and due process procedures statement are designed to protect all members of the educational community in the exercise of their rights and duties.
7. Nothing in this statement of student rights shall be held to limit the due process rights of educators or noncertificated school employees nor their use of District grievance procedures.

Rights, Responsibilities and Limitations

Any conduct prescribed by the following statement of rights, responsibilities and limitations shall be subject to appropriate corrective action from simple discipline to expulsion:

1. CRIMINAL ACTS

The following acts are among those crimes defined in detail under the laws of the State of Alaska:

AIDING AND ABETTING — Assisting in the commission of a crime, with the result of being treated as a principal. AS 11.16.100 - 130

ARSON — Damaging any property by intentionally or negligently starting a fire or causing an explosion, or attempting to start a fire or cause an explosion. AS 11.46.400 - 430

ASSAULT — Physically injuring or threatening to physically injure another person. AS 11.41.200-230

BURGLARY — Entering unlawfully or remaining unlawfully with intent to commit a crime. AS 11.46.300 - 310

EXTORTION OR BLACKMAIL — Obtaining money, property, or actions by violence or threat of violence or untrue accusations or public ridicule. AS 11.41.520 - 530

FORGERY — Falsely making or altering a written instrument or knowingly possessing a forged instrument. AS 11.46.500 - 11.46.50

LARCENY — Theft without force or violence against another person. AS 11.46.100-210

MALICIOUS MISCHIEF — Willful property damage or interference with property rights. A.S. 11.46.480-486

RECKLESS ENDANGERMENT — Engaging in conduct which creates a substantial risk of serious physical injury to another person. A.S. 11.41.250

ROBBERY — Stealing from the person of another by force or threat of force. A.S. 11.41.500-510

SALE, USE OR POSSESSION OF INTOXICATING LIQUOR OR ILLEGAL DRUGS* — A.S. 17.10.010, 17.12.010, 4.16.010

TRESPASS — Presence on another's property without permission and/or refusal to leave another's property upon request. A.S. 11.46.320-330

The commission of, or participation in, any criminal activity in school buildings, on school property, or at school-sponsored events is prohibited. Disciplinary action may be taken by the school regardless of whether or not criminal charges or prosecution result.

2. **WEAPONS AND FIREARMS:** Students on school property or attending a school-sponsored event shall not carry on their person or place anywhere on school property, or in the vicinity of a school-sponsored event, any firearms or other weapons, except as assigned to students for, and used during, a regular course of instruction. Students found with any firearms or weapons at school or at school activities are subject to expulsion and arrest.

3. **SMOKING:** Students are not permitted to smoke on school property.

4. **ATTENDANCE:** Daily attendance of all who are enrolled in the ASD schools is required in accordance with State law and School Board rules. Students will attend regularly scheduled classes unless officially excused.

5. **DISRUPTIVE CONDUCT:** Conduct which materially and substantially interferes with the educational process or the lawful activities of others is prohibited.

6. **COOPERATION WITH SCHOOL PERSONNEL:** Students must obey the lawful instructions of all school district personnel.

7. **SELF IDENTIFICATION:** All students in school buildings, on school grounds, or at school-sponsored events must, upon request, identify themselves to authorized school district personnel or their designee.

8. **OFF-CAMPUS EVENTS:** Students at school sponsored, off-campus events shall be governed by school district rules and regulations and shall be subject to the authority of school district personnel.

9. FREEDOM OF SPEECH AND ASSEMBLY

a. Students are entitled to express verbally their personal opinions in a manner that does not interfere with the freedom of others to express themselves. Obscenity and slander are prohibited.

* THE SCHOOL DISTRICT OF ANCHORAGE ASSUMES NO LIABILITY FROM THE SCHOOL DISTRICT FOR THE SALE OR USE OF ALCOHOLIC BEVERAGES OR DRUGS BY STUDENTS OR PERSONNEL.

1. Students have the freedom to assemble peacefully. There is an appropriate time and place for such assemblies. Meetings of school-sponsored organizations on school property shall be conducted at times and places approved by the principal or his/her designee. Conducting demonstrations or meetings which interfere with the educational process or the lawful activities of others is prohibited.

10. FREEDOM OF SYMBOLIC EXPRESSION

- a. **STUDENT DRESS CODE:** Each student shall attend school clothed in a manner which is clean, not hazardous to the safety of him/herself or others, and which does not detract from the required educational environment. Students may not wear clothing or items that are associated with gangs or gang-like groups. Students who do will be excluded from school until such time that they cease wearing the clothing or items to school or school events.
- b. **BUTTONS AND ARMBANDS:** Students may wear or display buttons, armbands, flags, decals and other badges of symbolic expression, unless the manner of expression materially or substantially interferes with the orderly process of the school or the rights of others. Items that are associated with gangs or gang-like groups are deemed in and of themselves to substantially interfere with the orderly process of school.
- c. **PATRIOTIC ASSEMBLY:** A student may abstain from the pledge or salute if he/she desires.

11. FREEDOM TO PUBLISH

- a. Generally, the restrictions and regulations governing responsible journalism*, as defined by the American Society of Newspaper Editors, should be applied to ASD student publications with the clear understanding that school officials have the authority, indeed the duty, to provide for an ordered educational atmosphere free from constant turmoil and distraction. (Note School Board Policy 490.1 Student Publications)
Prohibited material: Material which is libelous or violates the rights of privacy; obscene according to community standards; profane or vulgar slang language which would not be used by the local newspapers; advocating the breaking of school policy or law; critical, demeaning or attacks any race, religion, sex, handicap or ethnic group; commercial solicitation for products, i.e., cigarettes, liquor, drugs or any product prohibited for any person 18 years of age or younger; endorsements of or solicitations regarding partisan causes, political candidates or ballot measures of a nature that it would cause a disruption of the school. (Note School Board Policy 490.14)
- b. Students are entitled to express in writing their personal opinions but are expected to exercise responsibility and good judgment. The distribution of such material may not interfere with or disrupt the educational process. A written expression of opinion must be signed by its author except that editorials representing a newspaper position may be printed without signature if all members of the editorial board are identified elsewhere in the paper. (Note School Board Policy 490.13)
- c. Students have the right to distribute leaflets and handbills at times and places as determined by the unit administrator or his/her designee. The students who edit, publish or distribute such leaflets and handbills among their fellow students assume the responsibility for the content of such publications. The administrator or his/her designee shall be entitled to predistribution examination of materials to ascertain whether these materials would disrupt the orderly educational process.

Non-school publications being distributed on school property may be seized by the unit administrator or his/her designee who has reasonable cause to believe that such publications contain libelous or obscene material. Seized publications must be returned to the student or made available to the parent/guardian at the end of the school day.

* Codes of the Canons of Journalism are available in the school office and the school library.

- d. Commercial solicitation not authorized by the Superintendent or designee will not be allowed on school property at any time. An exception to this rule will be the sale of non-school-sponsored student newspapers published by students of the school district. Nonschool newspapers may be distributed only at times and places as determined by the unit administrator or his/her designee.

- e. Students have the right to do necessary research for articles, including public opinion polls, and shall have the responsibility not to abuse that right. Polls shall be authorized by the unit administrator or his/her designee if they interrupt class time, and the unit administrator or his/her designee shall be informed of polls taken during students' free time in school.

12. SEARCH AND SEIZURE

The following rules shall apply to search and seizure pertaining to students and school property assigned to them (e.g., lockers, desks):

- a. Search of a specific area assigned to a student should be for a specific item and take place in the presence of the student and that of a third person if each, respectively, can be located.
- b. The school administration retains control over lockers and desk space loaned to students. The unit administrator or his/her designee has the right and duty to inspect and search students' lockers and desks, if he/she has reasonable cause to believe, upon information received from the police or otherwise, that drugs, weapons, dangerous illegal, or prohibited matter, or goods stolen from the school or from members of the staff or student body, are likely to be found therein. The unit administrator or his/her designee has the right and duty to search a student's person if he/she has reasonable cause to believe that drugs, weapons, dangerous illegal or prohibited matter, or such stolen goods, are likely to be found on the student's person. The fruits of such searches may be turned over to the police or used in school disciplinary proceedings.
- c. No search shall be conducted without attempting to secure the permission of the person possessing the property to be searched except if the suspected possession poses threat to life or property. Searches of lockers specifically for the purpose of locating weapons or firearms may be conducted by school authorities. Students will be notified at least once each semester that such searches will be conducted at the discretion of the unit administration.
- d. Illegal items (firearms, weapons) or other possessions reasonably determined to be a threat to the safety or security of others may be seized temporarily by school authorities and at the discretion of the unit administrator or his/her designee turned over to the police authorities. All legal items shall, upon request, be made available to the parent/guardian or the student at the end of the school day.
- e. The above provisions shall not apply to general searches conducted for a specific purpose and with announcement at least one day prior to the day of the search.
 1. Items which are used to disrupt or interfere with the educational process may be seized temporarily by school authorities. Such items shall, upon request, be returned to the student or the parent/guardian at the end of the school day.
 2. The unit administrator or his/her designee may search automobiles which are parked on school grounds if he/she wishes to determine that drugs, alcohol, weapons, dangerous illegal matter or goods stolen from members of the staff or student body are likely to be found therein.

13. STUDENT SEARCH PROCEDURES

A. Lockers and Desks

The School District retains control over locker and desk space

provided to students, as stated in the ASD Statement of Rights and Responsibilities. (See School Board Policy #430) The unit administrator and/or his/her designee may inspect and search students' lockers and desks, if he/she has reasonable cause to believe that drugs, weapons, illegal or dangerous materials, or stolen goods will be found inside.

B. Possessions and Outer Garments

The school administration has the authority to inspect and search the possessions (e.g., purses, gym bags, instrument cases) and outer garments (e.g., jackets, coats, shoes or boots) of students when the unit administrator has reasonable cause to believe that drugs, alcohol, weapons, illegal or dangerous materials, or stolen goods are likely to be found. No probable cause or warrant is required before a search may be conducted. A search may be conducted if a school official believes that a violation of a school rule or State law has taken place. Any such search must be conducted in private by the unit administrator or an assistant principal, and witnessed by a staff person. School authorities will make a reasonable effort to contact the student's parent/guardian to obtain his/her consent prior to the search. Searches will be limited to the examination of the contents of a student's possessions and outer garments, although a student may be requested to empty pockets or all contents. Materials discovered in a search may be used in school disciplinary proceedings, and turned over to the police.

C. Search of a Student's Person

Should an administrator have reason to believe that a student has drugs, weapons, illegal or dangerous materials, or stolen goods concealed on his/her person, the administrator may conduct a search of the student's person. No such search may be undertaken, unless, in the administrator's judgment, there is adequate information based on direct observation by school personnel or reliable information from third parties, that a student is likely to have prohibited material on his/her person.

Prior to commencing a search of a student's person, the student must be told the nature of the information against him/her, and reasonable efforts must be made by school authorities to notify the student's parents/guardian and permit the parent/guardian the opportunity to be present. The student, or the student's parent/guardian if present, will be asked to sign a written consent form, specifying the nature of the search, the rights of the student, and the possible consequences faced by the student. If consent is refused, the student, or parent/guardian if present, will be asked to sign a written statement to that effect. In case of refusal, the search procedure will be immediately halted, and the matter turned over to the police.

Initial searches of a student's person shall be confined to a pat-down search unless the student specifically requests that the search proceed with the removal of garments rather than a pat-down search. Male students will be searched by men and female students only by women. During such a search, procedures to assure the privacy and dignity of the student will be followed.

Should a pat-down search provide reasonable cause to believe that the student has prohibited material concealed upon his/her person, the student will be requested to surrender the materials. If the pat-down search does not reveal any prohibited material, but based on information received, the administrator continues to have reasonable cause to believe there is a strong likelihood that prohibited material is concealed upon the student's person, the administrator may request the student to remove or adjust clothing to the degree necessary to ascertain whether the student does in fact possess prohibited material. Prohibited material uncovered in a search may be used in school disciplinary proceedings, and turned over to the police. Any such search will be conducted with the utmost respect for the

utmost respect for the student's privacy and dignity.

Should a student, or student's parent/guardian, at any point refuse permission to continue a search, the school authorities will immediately discontinue the search procedure. The student, and parent/guardian will be informed that unless permission is granted to continue the search, the matter may be turned over to law enforcement officials. Should permission still be withheld, the student will be placed in a supervised area and the police called.

D. Emergency Exception

When an administrator believes with a reasonable certainty on the basis of information provided through direct observations by school personnel, that a student possesses any weapon or dangerous material which poses an imminent threat to life or property, he/she may authorize an immediate search of the student's person or possessions. In such a case, the student's parent/guardian will be notified of the search as soon as possible. No physical force may be applied during any search of the student unless there is an immediate threat of imminent danger to persons or property.

STUDENTS RIGHTS AND RESPONSIBILITIES

The ASD Statement of Rights and Responsibilities updated August, 1991, constitutes Board policy on matters pertaining to students' rights and responsibilities. In any case of conflict between the Statement of Rights and Responsibilities and any other District policy or procedure, the Statement of Rights and Responsibilities shall take precedent unless specifically limited by such other Board policy.

DUE PROCESS

The constitutional rights assured to individuals includes the guarantee that no person shall be deprived of life, liberty or property without due process of law. Students are recognized as "Persons" under the constitution and a system of constitutionality and legally sound procedure has been developed for the administration of discipline in the schools.

1. The hallmark of the exercise of disciplinary authority shall be fairness.
2. Before the imposition of a sanction, a student shall be given an opportunity to contest any alleged facts leading to the proposed disciplinary action and to present his or her version of the facts.

SANCTIONS

1. **SIMPLE DISCIPLINE:** Any disciplinary action against a student other than suspension or expulsion. No simple disciplinary action shall be taken in such a manner as to prevent a student from accomplishing specific academic grade, level or graduation requirement, provided that credit may not be granted for irregular attendance as described in the Secondary Administrative Manual. Simple disciplinary actions will be subject to the procedures established in Section 2(b) below.
2. **SHORT TERM SUSPENSIONS:** Denial, without a formal hearing, of the right of school attendance either from a single class or any full schedule of classes for a limited period of time not to exceed three (3) school days.
 - a. **Short Term Suspension:** A short term suspension is a suspension ordered for any reason by the school administrator where the total sanction will not exceed three (3) school days.
 - b. Prior to a student being placed on short term suspension, the student must be given written or oral notice of the charges against him/her, and, if he/she denies them, an explanation of the evidence the administrator has, and an opportunity to present his/her side of the case. This explanation and opportunity to present facts may occur immediately after notice of the charges is given to the student.
 - c. **Notice to Parent/Guardian:** Except in most extreme situations

for students whose presence poses an immediate or continuing danger to themselves, other persons or property, or an ongoing threat of disruption of the academic process, the school administrator shall endeavor to notify the parent/guardian of the student of the pending suspension. In addition, the student and/or his/her parent/guardian shall be provided written notice of the suspension prior to the time the suspension is to commence.

2. **Appeal of Suspension.** After notification of the suspension, the student or his/her parent/guardian may request an informal hearing. The request shall be in writing. The hearing shall be held as soon as possible after receipt of the written request and shall be before an individual other than the individual who imposed the suspension. No persons other than the student, the parents/guardians and the individual who imposed the suspension may attend the hearing, although the individual designated to hold the hearing may, in his/her sole discretion, allow other persons with knowledge of facts relevant to the suspension to attend the hearing to describe their knowledge of the facts. The decision of the designated individual will be announced in writing within one school day after the hearing ends and shall be final.

The submission of a written request for a hearing shall stay further imposition of any remaining portion of the suspension. Failure to submit a written request for a hearing until after the completion of a suspension shall constitute a waiver of any right to such a hearing.

3. **LONG TERM AND EMERGENCY SUSPENSIONS:** Denial of the right of attendance from any single class or any full schedule of classes for a stated period of time greater than three (3) school days. The following limitations shall apply to all long term suspensions:

a. No student shall be suspended from an elementary school for more than forty-five (45) consecutive school days.

b. No student shall be suspended from a secondary school for more than ninety (90) consecutive school days.

c. **Emergency Suspension**—Suspension to be used in the most extreme situations for students whose presence poses an immediate or continuing danger to self, persons or property or whose behavior threatens to disrupt the academic process. Immediate removal from school may occur. In such cases, the necessary notice and opportunity for a hearing shall follow as soon as is practical, with the hearing and any subsequent proceedings to be governed by the procedures set out in Sections 3, 4 and 5.

4. **EXPULSION:** The denial of the right of school attendance, either from a specific school or from the District, for an indefinite period of time. No student shall be expelled unless other means of correction have failed or would not be adequate in bringing about proper conduct. In addition, the matter of an expelled student's further education shall be referred to the appropriate authority.

5. **PROCEDURAL REQUIREMENTS:** The following guidelines will govern the procedures when suspension or expulsions under Sections 3 or 4 above are proposed by school authorities.

a. When the school administrator, the Superintendent or his designee recommends long term suspension or expulsion, a written notice shall be delivered by mail or in person to the student and his/her parent/guardian. This notice shall state the student's right to a hearing, the specific charges lodged against him/her, and the recommended sanctions. The student and/or his/her parent/guardian may reply in writing within five (5) school days of receipt of the notice, indicating whether he/she wishes to have a hearing. If a reply is not received within the five (5) day period, the student and his/her parent/guardian shall be deemed to have waived his/her right to a hearing. If a hearing is requested, it shall be held as promptly as possible after receipt of the request. The long term suspension or expulsion may be imposed after notice if:

(1) The student and/or parent/guardian does not request the formal hearing at the time of the suspension or expulsion.

(2) In extreme situations where the presence of the student poses an immediate or continuing danger to him/herself, other persons or property or an ongoing threat of disruption of the educational process.

2. The Hearing Officer. The Hearing Officer shall be appointed by the Superintendent or his designee and shall conduct the hearing in accordance with these rules.

3. The following procedural guidelines shall govern the hearing:

(1) Parent/guardian may be present at the hearing.

(2) The student, parent/guardian may be represented by legal counsel (or other spokesperson).

(3) The student or his/her representative shall be permitted to inspect in advance of such hearing any affidavits or exhibits which school authorities intend to submit at the hearing.

(4) The student shall be given an opportunity to present his/her version as to the charges by oral or written argument, affidavits, exhibits and such witnesses as desired.

(5) All relevant, not unduly repetitious, evidence shall be accepted.

(6) The student shall be allowed to observe all evidence offered against his/her. In addition, he/she shall be allowed to question any witness.

(7) All witnesses presenting testimony before the hearing officer shall be sworn to testify truthfully.

(8) The hearing authority shall make his/her determination solely upon the evidence presented at the hearing.

(9) Either a tape-recorded or verbatim record shall be made of the hearing by the School District.

(10) Within three (3) school days after completion of the hearing, the hearing officer shall render a written decision upholding, modifying, or rejecting the recommended sanction. The student and his/her parent/guardian shall be provided a copy of the decision within five (5) school days after completion of the hearing.

d. The student and his/her parent/guardian shall have five (5) school days after receipt of the written decision to appeal the decision to the School Board. If an appeal is not made, the decision shall take effect at the end of this five (5) day period. If an appeal is requested, the imposition of the decision shall be stayed until the appeal is decided by the School Board except under the circumstances described in Section 5(a) (2) above.

e. The following procedural guidelines shall govern an appeal to the School Board:

(1) The Board or its designee will convene and hold a meeting to review the matter as promptly as possible after the receipt of such an appeal. The Board shall notify the student and his/her parent/guardian at least three (3) days prior to the scheduled meeting.

(2) At that time, the student, his/her parent/guardian or spokesperson shall have the right to present oral and/or written argument. Consideration by the Board will be restricted to evidence in the record submitted during the hearing, although the Board may consider, in its sole discretion any new, relevant evidence not available at the time of the hearing.

The Board, in deciding the appeal, shall determine:

(a) Whether the decision was arbitrary or capricious.

(b) Whether the decision was supported by substantial evidence in the record; and

(c) Whether the sanction was fair and reasonable in light of all circumstances.

(3) The Board, or its designee, shall issue a written decision, within five (5) school days after the meeting. The student and his/her parent/guardian shall be provided a written copy of the decision, which shall be final and binding.

f. In no circumstances shall either a long term suspension or expulsion prevent a student from submitting an application for readmission prior to the termination of the sanction. Applications for readmission shall be submitted to the Superintendent.



Lots of advice, no examples

Dear Editor:

I am a student at Service High School. Two of my classmates and I are doing a report on weapons and gun control in schools for our U.S. government class. While doing the research for this report, I have had to observe people and their reactions to the topic.

I have found that teen-agers realize more about what is going on around them than they let on. We teen-agers know that guns are bad, that stabbing someone is bad, that anything to do with gangs, drugs and sex is usually bad. Everyday we get bombarded with more facts on why we shouldn't do this or why we shouldn't do that.

We aren't as stupid as a lot of people say. It's not that teen-agers don't care about important issues like gun control, it's just that adults sit there and act like we're so dumb that we can't understand.

So, we show that we understand by getting adults' attention as well as we can, with the means that we have on hand. Unfortunately, some teen-agers have taken up arms, thinking, "If you aren't going to listen to us, then we'll make you listen."

I agree that teen-agers have become more violent, but then, so has everything else. There are adults fighting in wars. There's prejudice everywhere, with lots of fighting and no solution in sight. Anywhere you look, you'll most likely find violence — on television, in the newspapers, on the radio.

All our lives, we have been surrounded by some sort of violence, and people can't understand why we're so violent.

Talking usually brings no solutions, so try demonstrating this to us. Try showing us that adults can be as non-violent and peace-loving as they want us to be. Try for our sakes, as well as yours.

Anzimee Harris, 18
Anchorage

ADN 2/26/92

Classroom stabbing kills girl, 14

The Associated Press

ARCHDALE, N.C. — A 14-year-old girl died Tuesday after being stabbed in a classroom as 25 other eighth-graders watched, and her former boyfriend was arrested on a murder charge, authorities said.

"Everybody was running down the hall screaming," said 14-year-old Karalee Cameron.

The attacker entered the Archdale-Trinity Middle School classroom and asked to speak to Patricia Mounce, but she refused, said Police Chief Larry Allen.

He stabbed her once near the heart and fled the classroom. The youth ran to a

nearby business, telephoned police and surrendered, Allen said.

"We understand that it was an ex-boyfriend," said Worth Hatley, associate Randolph County school superintendent. "I can't remember anything this terrible happening in our school system."

Willis Odell Gravely Jr., 16, of High Point was charged with murder and held without bond in the Randolph County Jail.

The former boyfriend had been a student at the school but no longer lives in the district. He had been charged with kidnapping recently in another incident

involving her and may have been upset about the charge, Allen said.

The girl died during surgery at High Point Regional Hospital near Archdale, about 15 miles southeast of Winston-Salem in central North Carolina.

Classes continued and other students were told of the slaying. Counselors were brought in to talk to students.

"I think everyone is still trying to remain calm and trying to understand the tragedy that's occurred," said George Fleetwood, county school superintendent.

NATION NEWS ADN 2/27/92

Student shoots 2 schoolmates dead

NEW YORK — A 15-year-old student shot and killed two schoolmates Wednesday in a high school swarming with security guards preparing for a visit from the mayor, police said. Ian Moore, 17, and Tyrone Sinkler, 16, were shot point-blank in a second-floor hallway at violence-plagued Thomas Jefferson High School in the rough East New York neighborhood of Brooklyn. The suspect went to school looking for them, then "walked right up to them without saying a word and shot them," said Deputy Inspector Patrick Carroll. The suspect apparently carried a grudge, authorities said. The shooting occurred 90 minutes before Mayor David Dinkins arrived for a speech.

Opinion

Charles Pottit President
Steve M. Wilson Editor
Gary Nelson News Editor
Tom Herrmann City Editor
Darrin Hostetler Opinion

Arizona should hold parents responsible

As a society, we hold parents responsible for the safety of their young children. We require that parents erect fences around their swimming pools to keep children from drowning. We demand that infants be placed in car seats specially designed to protect them in case of an accident. When parents don't provide a safe and healthy home environment, we take away their children and charge them with neglect.

That is, indisputably, the right approach. Children, especially the youngest and smallest kids, are unable to take proper care of themselves and need the guidance and supervision of a loving adult.

Yet when it comes to something every bit as deadly as swimming pools and car accidents — loaded guns — Arizona inexplicably has refused to make parents responsible for their children's safety. The omission is inexcusable.

The danger of having loaded guns within reach of children was made more obvious earlier this month when a 3-year-old Phoenix boy, Stefan Whitmore, was fatally shot by his 4-year-old brother. The older child, unable to tell the difference between a deadly weapon and a toy, found a loaded weapon that police said belonged to his baby sitter's boyfriend and shot his brother in the head.

This sad incident is far from isolated. In just the past three months, two children and a teen-ager have been killed with guns which they or their friends had easy access to. A fourth teen-ager was wounded.

Two years ago, Florida was shocked by the deaths of 11 youngsters in less than two months from just such negligence. That state quickly adopted laws making adults legally accountable for their loaded firearms. California, Connecticut, Virginia and Iowa have adopted similar laws.

All Arizona group, Advocates

State law does not require loaded guns to be kept out of the reach of children. Recent tragedies have shown it should.

Against Adolescent Suicide, is pushing for a similar statute in Arizona. After three tragic deaths in three months, such a proposal ought to attract considerable interest. But in Arizona, where the reactionary National Rifle Association holds such strong influence, it will probably die as quickly and quietly — and as regrettably — as Stefan Whitmore.

We fail to see the rationale for opposing a measure requiring that guns be locked safely out of the reach of children. There is no hint of gun control here, no registration of firearms or waiting periods. While no law can prevent all senseless killings, the law would make more people be more careful with their firearms.

Opponents argue that no purpose is served by telling a parent already grieving for a lost child that he must serve time in jail. While we agree jail may be the wrong punishment, we could not disagree more with the contention that negligent adults should be unpunished by the state. Those convicted could serve their time in community service, furthering the cause of gun safety. And the punishment would serve to deter other parents from putting their own children in the same dangerous situation.

Arizona must stop playing Russian roulette with our children's lives and begin requiring parents to make sure their guns are locked safely away. For lawmakers to stop short of adopting such a law would itself be criminally negligent.

A school, a child — and a gun — become props for a nightmare

An 8-year-old walking around with a gun.

In school. With hundreds of other little kids everywhere, laughing, horsing around, bumping into each other.

I don't know what picture came into your head when you read the story about the second-grader at Denali Elementary School who came to school with a loaded .25-caliber pistol. But that was my picture.

The props, in all, for a nightmare. Understand that this is *elementary school* we're talking about. These are little boys and girls. These are folks who don't always think before acting, who might be what they see, who will try anything they can get their hands on.

Including guns.

And some of them, no doubt, get most of what they know about guns from television day in and day out.

Which means some also think the way guns are used on television — day in and day out — are the way guns are sup-



Terry Carr
TIMES
COLUMNIST

posed to be used.

A nightmare.

We talk a lot about school in my house. Part of the family is a kid in seventh grade. Another part is a junior high teacher. Another part is a newspaper columnist who talks about schools and would like to write more about teachers and schools but can't because there is an obvious conflict there.

But there wasn't a heck of a lot to say at my house about a kid in second grade bringing a gun to school.

"It's just another pressure you have to deal with," the teacher said. "You'd think

you could send your kids to school, and they'd be safe."

You just reach a point, I suppose, where you have to realize that anything is possible in school. Not every kid, not every teacher, not every administrator is going to qualify for heaven.

And not every home is going to lock up the gun so the kid won't take them to school.

That, of course, is at the bottom of it all. I sought a policeman's view. I called Capt. George Novnyk at the Anchorage Police Department.

Who, it turns out, has a kid in the second grade at Denali Elementary School.

"How does the child get access to the gun?" Novnyk said. "This is not just an issue of having possession of a firearm. This is an issue regarding parenting."

Which states it well.

Still, like some of the rest of us, Novnyk had a bunch of other questions.

"Why wasn't the weapon secure? Why wasn't it at a place where it's locked up and the child can't get access to it? What

if it goes off in recess?"

And, given the kid he has in the school, he also took the whole episode very personally.

"We tell young people it is bad to use drugs," he said. "We talk to them about AIDS. I'm not so sure that agencies like the National Rifle Association ... shouldn't be pushing national advertising that says weapons aren't meant to be taken into schools."

"I'm a police officer. I've got guns. I have a safe in my house, and it is locked."

Darryl Jordan, Anchorage School Board president, said much of the same.

"It is a parent problem, in general," he said. "But we can't ignore it, though. We can't say this is a parent problem and ignore it."

Which is true, too, and is the justification for stiff penalties — up to expulsion — for kids who bring weapons to school.

But banging on the problem kids isn't going to solve the entire problem. "There are still the parents."

From what I read, it's becoming routine in big cities for kids to bring weapons to school. Guns, and the violence they inevitably harvest, are a fact of life there.

A survey last year of gun possession on school grounds in Anchorage revealed 16 incidents. Three of them took place at elementary schools.

A nightmare.

Alaskans covet their guns. They use them for hunting, for protection, for fun-
kerng.

Talk to an Alaska gun owner, and he or she will tell you guns are a fundamental, inviolable human right.

And most of them will go to the wall defending their right to own as many as they want of any type they want.

We've all heard the arguments again and again.

But some of us know nothing about the responsibility that comes with them.

Terry Carr's commentary appears Tuesday, Thursday and Sunday.

Times 2/25/92

Second-grader takes loaded gun to school

By DIANA ELLIOTT
TIMES WRITER

A second-grader played a dangerous game of show and tell Monday when he brought his father's loaded gun to school and flaunted it in front of his classmates at Denali Elementary School, police said.

The weapon, a .25-caliber semiautomatic pistol, was confiscated by school officials after a classmate took the gun away from the boy and turned it over to teacher Joey Jigiotti.

Jigiotti, a substitute teacher, was approached by a girl who handed her a gun and pointed out the boy who brought the weapon to school.

"It was a case of students self-policing themselves," said police Sgt. Marilyn Bailey. "It sounds like there are some kids who won't tolerate this."

The boy, whose name was not released because of his age, told police he took the gun from his father, loaded it and brought it to school because he was afraid.

"The explanation he offered was that he was scared, but he wasn't being specific," Bailey said.

The boy's father told police

he had taken his son shooting in the past. The man said he stored the gun separately from the ammunition, so the boy must have gotten into both, police said.

The student was taken to the principal's office, and police were called.

Bob Christal, assistant superintendent of the Anchorage School District, said some action had been taken against the child, probably some form of suspension.

"It's an extraordinary situation," Christal said.

Christal said this is the second time an elementary school student has brought a loaded gun to a district school. The other incident was last year at Mountain View Elementary School.

Carol Comeau, the district's executive director of elementary education, said the child's parents "have been very, very cooperative."

Bailey said it is disturbing to police that students get their hands on guns so easily.

"It's sad that children who have no concept of deadly weapons have such easy access to them," Bailey said.

S B

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SENATE COMMITTEE REPORT

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DATE: 2/28/92

FURTHER:

DATE TURNED INTO OFFICE: 4/2/92

Judiciary Committee considered SENATE BILL NO. 441

"An Act exempting the University of Alaska from the administrative adjudication provisions of the Administrative Procedure Act; and providing for an effective date."

and recommends:

- replace with _____ CS _____ () same title
- or adopt previous _____ CS _____ () new title
- attaches amendment(s) technical title change (HB only)

adopts _____ Letter of Intent

further referral to the _____

do pass

do not pass

no recommendation

individual recommendations

NEW FISCAL NOTES: Dept/Date

zero fiscal notes _____

fiscal notes _____

appropriation--no fiscal note

PREVIOUS FISCAL NOTES: Dept/Date

zero fiscal notes _____

12 of A 12/23/91

fiscal notes _____

DO PASS:

Handwritten signatures

OTHER RECOMMENDATIONS:

Handwritten signature: Rick Halford

Chair: Signature and Recommendation

FISCAL NOTE

**STATE OF ALASKA
1992 LEGISLATIVE SESSION**

BILL NO. 92-008

Revision Date:
Title: Exempt U of A from Admin. Procedures Act

Department Affected: University of Alaska
BRU:
Component:

Sponsor: Governor
Requestor: University of Alaska

Component Serial No.

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY93	FY94	FY95	FY96	FY97	FY98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

FUNDING: (Thousands of Dollars)	FY93	FY94	FY95	FY96	FY97	FY98
GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:	FY93	FY94	FY95	FY96	FY97	FY98
FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

There is no cost associated with passage of this legislation. However, if this legislation fails to pass, the cost to the University to administer faculty/staff and student grievances, could add tens of thousands of dollars in litigation costs each year.

Prepared by: Wendy Redman
Division: Statewide Administration

Phone: 474-7582
Date: 12/23/91

Approved by: Brian Rogers, Vice President for Finance
Agency: University of Alaska

Date: 12/23/91

Distribution: (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 19, 1992

*The Honorable Richard I. Eliason
President of the Senate
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182*

Dear President Eliason:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that would exempt University of Alaska student and employee grievances from the Administrative Procedure Act (APA).

The Alaska Supreme Court recently ruled that, under AS 44.62.330(a)(45), the administrative adjudication procedures of the APA (AS 44.62.330 - 44.62.630) apply to the university. Internal disputes such as employee and student grievances traditionally have been resolved through the university's grievance procedure. That procedure is built around a process of peer review, with a multi-step appeal process. Compared to the university's grievance procedure, in which grievances are often resolved with little or no expense in the earlier stages, the APA procedure is cumbersome and expensive, and not as readily accessible to the individual grievant. Therefore, the bill simply deletes the university from the list of state agencies that must use those procedures.

This legislation would permit the university to continue to use its longstanding dispute resolution and grievance process, which is consistent with practices found in the public sector and with the collegial atmosphere that characterizes a university setting.

I urge your prompt and favorable attention to this bill.

Sincerely,

A handwritten signature in cursive script that reads "Walter J. Hickel".

Walter J. Hickel
Governor

University of Alaska

Statewide System

HB 549/SB 441 Exempt UA Grievance from APA

In June 1990, the Alaska Supreme Court overturned a Superior Court decision and found that because the University of Alaska was not specifically excluded from the adjudication procedures of the Alaska Administrative Procedures Act (APA), it must implement grievance procedures pursuant to APA, or "...seek a remedy from the legislature."

The APA adjudication procedures apply to boards and commissions listed in Sec. 44.62.330, in third party actions dealing with the granting or denying "...a right, authority, license, or privilege..." For instance, when an individual is denied a real estate license, that person is entitled to a hearing before the Real Estate Commission through the process outlined in this statute. The quasi-judicial proceedings included in the APA are not intended for employee or student grievances, but rather for what are essentially licensing decisions and disputes involving state boards and commissions.

The statute as currently written applies to the University of Alaska, "...except to the extent that its inclusion is inconsistent with the provisions of AS 14.40," the statute specifically outlining the responsibility and authority of the Board of Regents and the President of the University of Alaska. AS 14.40 gives the Board of Regents the right to "...adopt reasonable rules, orders, and plans...for the good government of the University." Taken together with the strong constitutional powers in Title 14, Article VII, Section 3 of the Alaska Constitution, the Board has plenary authority to govern and manage the University. Transcripts of the legislative history of the APA statute reveal that the legislators had no intention that this section be interpreted in a way that would negate internal grievance procedures. The Supreme Court, however, did not consider legislative intent, and because the APA does not specifically exempt the University, and because the referenced statutory language in AS 14.40 does not specifically grant the Board the authority to establish grievance procedures, they essentially directed the University to seek the appropriate legislative action for clarification.

contact: Wendy Redman
UA Statewide System
463-3086 or 474-7582

The University is seeking a clear exemption from the requirements in AS 44.62.330(a)(45). The APA grievance procedures do not apply to any employee group in the state. Provisions in the state statutes covering collective bargaining require that grievance procedures be part of all collective bargaining contracts, and non-covered state employees are included in grievance procedures established within their specific agencies and departments.

Employee and student grievance procedures, which incorporate constitutionally required due process protections, are traditionally built around a process of peer review and consideration with appeal rights at several levels all the way to the President. The majority of University grievances are resolved at an early stage of review, and are done so at little or no cost to the grievant or to the University. The imposition of the APA procedures, however, will now impose a quasi-judicial proceeding on all University grievances, including the utilization of a formal hearing officer. The additional cost, complexity, and formality of the APA requirements are contradictory to the resolution of student and employee grievances, and are contradictory to the collegial approach that characterizes a University setting.

If this legislation is not passed, it is anticipated that the University will have to pay approximately \$200,000 per year for hearing officers, and associated costs involved with this complex process.

A "grandfather" clause is included with the legislation that provides the APA procedures be utilized for all grievances filed prior to the final passage of this legislation.



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FAX COVER SHEET

TO: (Name) Wendy Redman
 (Department or Business) _____
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FROM: (Name) William Kauffman
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DATE: 2/27/92

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COMMENTS: Hard Copy to Follow: Yes No

Excerpts from the University's Brief before the Supreme Court. pages 13-30

this Court engages in a de novo review, adopting the rule of law that is "most persuasive in light of precedent, reason and policy." 52/

In a case such as this one involving statutory interpretation, the Court applies its own independent judgment and is not bound by that of the Superior Court. 53/ In interpreting the statute, the Court will construe the language of the statute in light of the purpose of its enactment, and will not construe a statutory provision in a manner that is inconsistent with the express objective of the legislation. 54/

Finally, where this Court reviews a trial judge's refusal to apply the doctrine of collateral estoppel, the question for the Court on appeal is whether the trial judge abused his discretion in doing so. 55/

VII. ARGUMENT

A. THE TRIAL COURT DID NOT ERR IN RULING THAT THE ADMINISTRATIVE ADJUDICATION PROVISIONS OF THE APA DO NOT APPLY TO THE UNIVERSITY OF ALASKA'S GRIEVANCE PROCEEDINGS

In his memorandum and order, Judge Shortell ruled on only one issue -- whether the administrative adjudication provisions of the APA applied to the University's grievance proceedings. In

52/ Langdon v. Champion, 745 P.2d 1371, 1372 n.2 (Alaska 1987).

53/ Waller v. Richardson, 757 P.2d 1036, 1039 n.4 (Alaska 1988).

54/ Morkunas v. Anchorage Tel. Util., 754 P.2d 1117, 1120 n.12 (Alaska 1988); Anchorage Mun. Emp. Assoc. v. Municipality of Anchorage, 618 F.2d 575, 580 (Alaska 1980).

55/ Parklane Hosiery v. Shore, 439 U.S. 322, 331 (1975).

concluding that they did not, Judge Shortell reasoned as follows: (1) AS 44.62.330(a)(45) requires the University to comply with the procedural requirements of the APA "except to the extent that [the APA's] inclusion is inconsistent with the provisions of AS 14.40;" (2) AS 14.40 specifically authorizes the Board to "adopt reasonable rules, orders and plans . . . for the good government of the University;" (3) the Alaska Legislature did not intend the University to be required by law to conduct APA grievance procedures if the University were to adopt valid, adequate, and fair grievance procedures of its own; (4) under AS 14.40.170(b)(1), grievance procedures adopted by the Board need only be "reasonable," and the procedures instituted by the University meet this test of reasonableness; and (5) to the extent that the APA would require the University to hold substantially more extensive, time consuming, and expensive procedures than would be required under the validly adopted and reasonable University grievance procedures, application of the APA would be inconsistent with AS 14.40.170(b)(1). The University respectfully submits that for all the reasons set forth below, Judge Shortell's ruling is absolutely correct.

1. The APA, By Its Own Terms, Does Not Apply To The University's Grievance Proceedings.

The administrative adjudication provisions of the APA apply to the University only where their inclusion is not "inconsistent with the provisions of AS 14.40." ^{56/} Thus, where the provisions

^{56/} AS 44.62.330(a)(45).

of the APA are inconsistent with AS 14.40, the APA, by its own terms, does not apply to the University.

The University of Alaska is a constitutionally created land-grant university 57/ whose powers are derived primarily from the Alaska Constitution and secondarily from the Alaska Statutes in Title 14. Article VII, Section 3 of the Alaska Constitution states:

BOARD OF REGENTS OF UNIVERSITY. The University of Alaska shall be governed by a Board of Regents The Board shall, in accordance with law, formulate policy and appoint the president of the University.

Title 14 of the Alaska Statutes, the title specifically referenced by the APA, provides that the University of Alaska "shall be governed by a Board of Regents" 58/ Alaska Statute 14.40.170(a)(2) mandates that the Board shall be the body to determine the compensation of all professors, instructors, etc. Further, AS 14.40.170(b)(1) gives the Board the right to "adopt reasonable rules, orders, and plans . . . for the good government of the University"

Taken together, these constitutional and statutory provisions grant the University's Board plenary authority to govern and manage the University. Pursuant to that authority, the Board promulgated a reasonable regulation and policy governing grievance proceedings for its employees. Having done so, and thus having exercised its powers to manage and govern the University under AS 14.40 and the Alaska Constitution, applying the provi-

57/ Alaska Const., Art. VII, § 2.

58/ AS 14.40.120.

sions of the APA to the University's grievance procedures would be "inconsistent with the provisions of AS 14.40."

Since the Legislature did not enunciate ways in which the inclusion of the APA might be "inconsistent with the provisions of AS 14.40," it is helpful to examine the legislative history of subparagraph (a)(45) to determine the intent of the Legislature with regard to making the administrative adjudication provisions applicable to the University. 59/

The AFA, enacted in 1959, did not originally designate the University of Alaska as one of the agencies to which it was intended to apply. The amendment to the APA adding subparagraph (a)(45) was one of several sections of Senate Bill 261, which was enacted during the 1977 Legislative Session. To put this in a proper historical context, it was during this period of time that the University was receiving intense criticism from the Legislature for deficiencies in its accounting and fiscal management procedures. Specifically, the Legislature was concerned about such matters as, for example, the University's perceived improper utilization of internal audit staff; bank account reconciliation problems; a perceived lack of adequate control over cash receipts and disbursements; perceived inadequate accounts receivable, billing, reconciliation, and collection procedures; a lack of expenditure control; deficiencies in purchasing procedures, etc. 60/ This criticism resulted in two very similar bills being

59/ Alaska Pub. Emp. Assoc. v. City of Fairbanks, 753 P.2d 725, 727 (Alaska 1988).

60/ R. 716-17.

introduced into the Legislature -- one in the House and one in the Senate -- both of which were directed at the fiscal management issues of the University and both of which contained proposed language amending the APA to include the University of Alaska in limited situations.

Senate Bill 261 was introduced into the Senate by the Rules Committee at the request of the Legislative Budget and Audit Committee, 61/ and contained three sections. Section 1 amended AS 44.62.330(a) by adding the University to the list of agencies subject to administrative adjudication procedures of the APA, with the limitation that it would not apply where inconsistent with AS 14.40. Section 2 proposed to add the University of Alaska to the definition of "state agency" for purposes of being included in the Fiscal Procedures Act provisions of AS 37.05, so that the University would be required, along with state agencies, to, for example, submit financial reports to the Department of Administration 60 days before the Legislature convened, 62/ participate in a centralized state accounting system, 63/ etc. Section 3 of Senate Bill 261 proposed to add the University of Alaska to the definition of "agency" for purposes of the Executive Budget Act, AS 37.07, so that the University would be required, along with state agencies, to submit its budget and

61/ R. 820.

62/ AS 37.05.030.

63/ AS 37.05.140.

goals and objectives to the Legislative Finance Division 64/ and to submit a performance report to the state's Office of Management and Budget. 65/

At the same time that the Senate was considering Senate Bill 261, the House was considering House Bill 361. 66/ That bill was introduced in the House by Representatives Miles, Malone, and Gardner and referred to the Health, Education and Social Services ("HESS") Committee and to the Finance Committee. The first three sections of House Bill 361 were identical to the three sections of Senate Bill 261. 67/ The House bill went on to add a fourth section deleting the Regents' control over the University's money (as opposed to its real and personal property), and a fifth section repealing several provisions of AS 14.40 dealing with fiscal matters. The House HESS Committee considered this bill at three separate meetings. 68/

The House HESS Committee adopted a proposed committee substitute for House Bill 361 which retained the three original sections of Senate Bill 261 but added sections requiring the University to appoint a comptroller, requiring the commissioner of administration to set criteria and guidelines for fiscal

64/ AS 37.07.050.

65/ AS 37.07.090.

66/ R. 837-38.

67/ Id.

68/ The minutes of those meetings show extensive discussion about the University's fiscal management problems and no mention of the amendment to the APA's administrative adjudication section. R. 839-58.

management practices under the Executive Budget Act and to delegate the performance of those functions to the Board, and giving the legislative auditor the "same right of access" to University management information "as exists with respect to every other state agency." 69/

House Bill 361 next went to the House Finance Committee. That Committee held a hearing on the bill, at which time the discussion concerned only the fiscal management provisions of the bill -- particularly a proposal to include in the bill a provision allowing the commissioner of administration to provide the University with cash advances on receivables to cure the University's cash flow problems. 70/ There were also general statements about the need to bring the University under the same fiscal and "other procedures" as those used by other agencies; however, no specific mention was made of the administrative adjudication provisions of the APA. 71/ No action was taken by the Committee at this meeting. Instead, Chairman Cowper appointed a subcommittee to prepare a proposed Finance Committee substitute for the House bill to be considered later that week. 72/ Thereafter, the Committee decided to hold off any

69/ R. 837-38.

70/ R. 859-60.

71/ Id.

72/ Id.

action on House Bill 361 until it had received Senate Bill 261, which had just been passed by the Senate. 73/

While the House had been considering House Bill 361, the Senate HESS Committee had met on Senate Bill 261 and had moved the bill from the Committee with a "do pass" recommendation. 74/ The minutes of that meeting indicate that the discussions of the bill focused solely on the University's fiscal management problems. Thereafter, the Rules Committee considered Senate Bill 261 and recommended that it be placed on the calendar. 75/

At the first Senate debate on Senate Bill 261, the bill was moved from second to third reading by unanimous consent. 76/ Senator Hohman, speaking in favor of the bill, spoke almost exclusively about the financial problems of the University and the need for legislation to require the University to conform its accounting and budgeting procedures to those of state agencies. 77/

Senator Kerttula, on the other hand, spoke vehemently against the bill, expressing his view that, while the problems resulting from the University's bad fiscal management practices were serious, the Regents should be left to solve the problems themselves, without undue interference from the executive and

73/ R. 861.

74/ R. 862.

75/ R. 866.

76/ R. 867.

77/ R. 716-19.

legislative branches. 78/ He argued strongly that placing the University under the Fiscal Procedures Act and the Executive Budget Act would ultimately bring the University too far under the control of the executive, and would result in undue interference with the University's academic freedom. 79/ Ultimately, the bill was taken from the calendar and held in third reading for a later calendar. 80/

Thereafter, Senator Kerttula moved that the bill be returned to second reading, where he proposed an amendment that would bring the Legislature and the Judiciary under the provisions of the Fiscal Procedures Act and the Executive Budget Act. 81/ Senator Kerttula's purpose in proposing the amendment was to illustrate how unnecessarily intrusive it would be to place the University under these provisions. 82/ Explaining his purpose to the Senate President, Senator Kerttula stated:

Mr. President, I believe that the framers of the constitution intended that the Judiciary, of course, and the Legislature be separated from the state government, and they also, in their wisdom, passed on that same intent for the University of Alaska.

Mr. President, I just insert this amendment to show you a bit of what we are doing. We are opening up through the budget process the possibility of petty governors and petty bureaucrats and petty finance officers to influence the direction of the University.

78/ R. 719-21.

79/ Id.

80/ R. 868.

81/ R. 869-70.

82/ R. 731-33.

It's a big error, as big an error as it would be if you inserted the Legislature and the Judiciary.

The molding of the students, the molding of the secondary institutions' functions, are not the prerogative of the Legislature. They shouldn't be done through the back door. I can't say to you how much I am opposed to approaching it this way.

* * *

Mr. President, that's the reason I bring this amendment before you. It is as important not to do it to the University as it is not to do it to the Legislature or the Judiciary. 83/

Having illustrated his point, Senator Kerttula withdrew the amendment. 84/

The next day, the bill was again before the Senate in third reading. Again, Senator Kerttula voiced his concerns that the bill entangled the government with the University to too great a degree. In response, Senator Tillion reminded the Senate that the bill was directed to a very limited area of University operations -- fiscal accountability. As he stated:

The bill is designed, really, just to make them run [their fiscal operations] the same as every other component of the state government so that we don't have the mental gymnastics of trying to figure out what really happened. 85/

Thereafter, the bill passed the Senate. 86/

Senate Bill 261 was read for the first time in the House and referred only to the House Finance Committee. That committee

83/ R. 731-32.

84/ R. 732-33.

85/ R. 745.

86/ R. 871.

met to consider Senate Bill 261 87/ and adopted a proposed House Finance Committee Substitute incorporating all three of the original Senate Bill 261 sections, but adding several sections from the House bill -- specifically, provisions requiring the University to appoint a comptroller, provisions giving the commissioner of administration authority to establish procedures for the care, control and management of all money of the University, provisions allowing the commissioner of administration to delegate to the Board the performance of any functions required by the commissioner and to be performed under the Fiscal Procedures Act, and provisions allowing the Department of Administration to make advances to the University during a fiscal year against non-state revenue sources. 88/

In addition to adopting a proposed Committee Substitute, the Finance Committee also adopted a letter of intent to accompany the substitute which discussed only the fiscal management issues and made it clear that the purpose of the bill was to mandate budgeting and accounting procedures for the University that are the same as those "for other state agencies." 89/ As stated clearly in that letter:

This legislation reflects the concern of the Legislature that implementation of sound budgeting, accounting, and fiscal management systems are essential to the University in carrying out its fundamental missions of teaching, research, and public service.

87/ R. 890-91.

88/ R. 893.

89/ R. 879.

However, it is the express intent of the Legislature that the establishment of policies and directives for the actual conduct of teaching, research, and public service functions of the University within the limitations of legislative appropriations and pertinent statutes are clearly the responsibility of the Board of Regents and not that of the Executive or Legislative branch. 90/

On second reading, the House unanimously adopted the House Committee Substitute for Senate Bill 261. 91/ During debates, two legislative concerns were obvious. The first was that the entire purpose of the legislation was to insure that the University was treated like other state agencies with respect to fiscal and budgetary procedures, primarily because the lack of uniform procedures had made it impossible for the Legislature to exercise any fiscal controls over the University's use of state funds. 92/ The second concern was that, whatever the magnitude of the University's problems in the area of fiscal management, the Legislature should not do anything that would impinge upon the University's independence in pursuit of its constitutional and statutory responsibilities. No mention was made at all during these debates of the administrative adjudication provisions of the APA.

The House then unanimously adopted a motion to advance the bill. Representative Carpenter, however, moved to amend it to delete what was then section 9 of the bill, the APA provi-

90/ Id.

91/ R. 881.

92/ R. 751-794.

sion. 93/ Carpenter's arguments in support of the amendment were brief. He stated that his amendment would "remove a section of the bill pertaining to the Administrative Procedures Act, specifically the adjudicatory provision." He then added:

I question whether this has any value in a bill designed to appreciate the fiscal management of the University of Alaska. In deleting the obligatory provision, I think it leaves a bill which (indiscernible) with the normal day-to-day functioning of the University. 94/

There was no further debate on the issue, and the motion to return the bill to second reading for purposes of Representative Carpenter's amendment was defeated. 95/ The House then proceeded to adopt the bill, which was concurred by the Senate, and the final version of the bill was transmitted to the Governor as HCS SB-261 am H. 96/

This lengthy description of the legislative history of AS 44.62.330(a)(45) shows beyond doubt that in passing the legislation, the Legislature had no intent whatsoever to make the APA applicable to the University's grievance procedures. Indeed, two themes that clearly emerge from the legislative history show just the opposite. First, in enacting HCS SB 261 am H, the Legislature's ultimate goal was to insure public accountability and instill control and responsibility in the University's fiscal

93/ R. 888.

94/ R. 804.

95/ R. 805.

96/ R. 824-26, 839.

management procedures. As capsulized by then-Representative

Cowper:

Now, the bill itself, as it stands right now, is a good bill. I agree that the University of Alaska has got to become publicly accountable for the funds that it gets from public sources. You're right. That's the reason for the legislation. That's the reason all of us support it. 97/

At the same time, the legislators were acutely concerned that they not interfere in any manner with the Board of Regents' and President's constitutional and statutory powers to govern and manage the University in its day-to-day academic and administrative functions. The clear evidence supporting this crucial concern is overwhelming. From the outset, Senator Sackett, the original proponent of the bill, never intended to impinge upon the Board's sovereignty in governing the personnel matters and other internal affairs of the University. In a memorandum to Senator Sackett responding to the Senator's request for a draft bill, Billy G. Berrier, Director of the Legal Services Division, explained to Senator Sackett:

As you have requested, we have drawn an act relating to accounting and fiscal matters of the University of Alaska which has the [e]ffect of providing that the accounting for the University will be done by the Department of Administration and that all of the fiscal controls applicable to any other unit of government are applicable to the university.

As you have instructed, this bill does not impair in any way the management function of the university, except in the area of fiscal controls. This would not, for example, in any way infringe upon the powers of the board of regents in academic matters, in matters relating to selection, retention or dismissal of faculty and other employees, in matters relating to

97/ R. 775.

admission of students, or curriculum, or in matters relating to management of university property, except of course, as limited by the amounts appropriated and available for expenditure. 98/

Thus, it was never Senator Sackett's intent, in proposing Senate Bill 261 in the first instance, to intrude into the internal management of the University in any way other than in fiscal controls.

The legislators who considered the bill shared Senator Sackett's concerns. As stated by Representative Miles during the House debates:

In the letter of intent, we specifically -- and I wholeheartedly concur -- that we specifically say that the Legislature doesn't want to move into the academic area, and it is the expressed intent of the Legislature that the establishment of policies, directives, etc., pertinent statutes, are clearly the responsibility of the Board of Regents and not that of the Executive or the Legislative branch.

I don't foresee any commissioner down the pike or any executive getting into the policy decisions of the University. I think that would be a terrible thing, we are speaking to the financial procedures and the method of financial management of the University. 99/

In response to those comments, Representative Meekins added:

Speaker, to add a little to what Representative Miles is just saying, I, too, am very concerned that no one interfere with the academic freedom of the University, and certainly this bill, in my opinion, does not do that. 100/

98/ R. 892. (emphasis added).

99/ R. 762-63.

100/ R. 764.

Two further statements made during the debates show the legislators' intent to stay out of the internal management functions of the Board. As Representative Rudd stated:

I think it is very important to remember that we don't have any business telling the University who is going to teach and what they are going to teach and where they are going to teach it, but we do have business, because we have been elected by the people of the state, to make sure that the state funds are used correctly, that they are not misused, and that the records are kept so that they are understandable to us and to the rest of the people of the state. . . . 101/

Representative Miles added:

Mr. Speaker, I think if there is any question on intent of the bill, it is very, very carefully spelled out in the letter of intent, which says that the Legislature does not want to get into the policy decisions of the University.

Thus, as can be so clearly seen from the legislative history, the Legislature had no intent to interfere with the Board's sovereign power to manage and govern the internal affairs of the University. Accordingly, there was no intent to have the administrative adjudication provisions of the APA apply to the University's grievance proceedings -- proceedings that are clearly matters of internal management.

The second theme that emerges from a review of the legislative history is that the Legislature was attempting, by passing this bill, to treat the University of Alaska in the same manner as state agencies with respect to fiscal management controls. For example, as mentioned earlier, Senator Tillion saw the purposes of the bill as requiring the University to conduct its

fiscal management procedures "the same as every other component of the state government. . . ." 102/ Similarly, Representative Meekins stated:

We are just trying to make the University fall under the same procedures and be treated as any other state agency. 103/

Another document associated with HCS SB 261 and H sheds further light on the legislative intent to treat the University as other state agencies are treated for purposes of fiscal management. As then-Attorney General Avrum M. Gross reported to Governor Hammond prior to the Governor's approval of the bill:

In effect, the bill places the university in a position analogous to all executive branch agencies for purposes of fiscal management while maintaining the University's constitutional academic autonomy. The underlying concept was developed jointly by the legislature and the executive branch, and the bill follows the concept developed. 104/

Thus, it is abundantly clear that one of the legislature's main goals in passing this bill was to insure that the University would be treated as other state agencies are treated with respect to fiscal controls. Even if one were to assume that the Legislature intended this similar treatment to extend to personnel matters, which is an assumption that is not supported by any evidence, that would still not have the effect of requiring the application of the APA to the University's grievance proceedings for, as is discussed in detail below, the internal personnel

102/ R. 745.

103/ R. 764.

104/ R. 893.

matters of state agencies are not subject to the administrative adjudication provisions of the APA, but instead are governed by the State Personnel Act. ^{105/} Accordingly, the administrative adjudication provisions of the APA, by their very terms, simply do not apply to the University's grievance procedures.

a. The University's Grievance Procedures Are Reasonable.

Under AS 14.40.170(b)(1), rules adopted by the Board for the government of the University need only be "reasonable" in order to constitute valid Board action. After a full review of the University's grievance procedures, Judge Shortell ruled that the procedures were "reasonable" and constituted valid Board action for purposes of AS 14.40, thus making the APA inapplicable. That finding should be affirmed on appeal.

Appellants concede on appeal that, in order to be reasonable, a rule need only be "just" or "sensible." They argue, however, that the grievance procedures do not meet that definition since they do not specifically provide for a method of preserving a record for appeal, an impartial hearing body, pre-hearing discovery, an appointed hearing officer, subpoena power, or representation by legal counsel.

The University respectfully submits that a grievance procedure need not meet all of the prerequisites of a full judicial trial in order to be "reasonable," as apparently argued by

^{105/} AS 39.25.010 - .220.



A

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*University's brief in support of
Motion for Summary Judgment
before Superior Court, pgs. 25-59.*

*University's brief in support
of motion for summary judgment
before Superior Court. pgs. 25-59*

again, since plaintiffs have no valid grievance pending before the Council, they have no standing before this Court and the University is entitled to judgment as a matter of law on their complaint.

In summary, in order properly to ask this Court to determine whether or not the provisions of the APA apply to the University's grievance procedures, plaintiffs must have a personal stake in the outcome of that determination, or standing before this Court. In order to obtain that requisite standing, plaintiffs must have filed a valid grievance with the Grievance Council in the first instance. Plaintiffs have not done that, however, for their complaint pending before the Council fails to meet the definition of a grievance contained in the relevant Interim Grievance Policy. Even if they had filed a valid "grievance," that grievance would not have been filed in a timely manner. Since, under either theory, plaintiffs do not have a valid grievance pending before the University Grievance Council, they have no standing before this Court. Accordingly, the University is entitled to judgment as a matter of law on plaintiffs' complaint.

B. THE APA DOES NOT APPLY TO THE UNIVERSITY OF ALASKA'S GRIEVANCE PROCEEDINGS.

Should the Court determine that plaintiffs have sufficient standing to pursue this action, the main issue before the Court becomes whether the administrative adjudication

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provisions of Alaska's Administrative Procedure Act ("APA") 81/ apply to the University's grievance proceedings. Defendants submit that, for all of the reasons set forth below, those provisions do not apply to the University's grievance proceedings. First, a careful analysis of the statute and its legislative history shows that the APA, by its own terms, does not apply to the University's grievance proceedings. Second, a review of the substantive provisions of the APA shows that the Act, by its nature, does not apply to matters of internal University management such as grievance proceedings. Third, the University has broad constitutional and statutory powers in the area of personnel management that were not intended to be circumscribed by the APA. Fourth, a review of the statutory framework governing personnel matters for state agencies and other public employers reveals that the APA was not intended to apply to University grievance proceedings. Finally, the due process clauses of the Alaska and United States Constitutions do not require the application of the administrative adjudication provisions of the APA to plaintiffs' grievance proceedings. Accordingly, the University is entitled to judgment as a matter of law on plaintiffs' complaint.

1. The APA, by its own terms, does not apply to the University's grievance proceedings.

81/ AS 44.62.330 - .360.

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The administrative adjudication provisions of the APA are not applicable to the University in a wholesale fashion, but rather in only a very limited manner. As AS 44.62.330(a)(45) clearly states, the administrative adjudication procedures of the APA apply to the University only where their inclusion is not "inconsistent with the provisions of AS 14.40." ^{82/} Thus, where the provisions of the APA are inconsistent with AS 14.40, the APA, by its own terms, does not apply to the University.

The University of Alaska is a constitutionally created land-grant university whose powers are derived primarily from the Alaska Constitution and secondarily from the Alaska Statutes in Title 14. Article VII, Section 3 of the Alaska Constitution states:

BOARD OF REGENTS OF UNIVERSITY. The University of Alaska shall be governed by a Board of Regents The Board shall, in accordance with law, formulate policy and appoint the president of the University.

Title 14 of the Alaska Statutes, the title specifically referenced by the APA, provides that the University of Alaska "shall be governed by a Board of Regents" ^{83/} Alaska Statute 14.40.170(a)(2) mandates that the Board shall be the body to determine the compensation of all professors, instructors, etc. Further, AS 14.40.170(b)(1) gives the Board of

^{82/} AS 44.62.330(e)(45).

^{83/} AS 14.40.120.

Regents the right to "adopt reasonable rules, orders, and plans . . . for the good government of the University"

As recently recognized by this Court, taken together, the constitutional and statutory provisions referenced above grant the University's Board of Regents "plenary authority to govern and manage the University." 84/ Pursuant to that authority, the Board promulgated a reasonable regulation and policy governing grievance proceedings for its employees. Having done so, and thus having exercised its powers to manage and govern the University under AS 14.40 and the Alaska Constitution, applying the provisions of the APA to the University Grievance Procedures would be "inconsistent with the provisions of AS 14.40."

Since the Legislature did not enunciate ways in which the inclusion of the APA might be "inconsistent with the provisions of AS 14.40," it is helpful to examine the legislative history of subparagraph (a)(45) to determine the intent of the Legislature in making the administrative adjudication provisions applicable to the University. 85/

84/ Decision and Order on Cross-Motions for Summary Judgment in Community College Coalition of Alaska, Inc. et al. v. University of Alaska, et al., No. JAN-87-3216 Civil, at 11 (Sept. 7, 1988, Shortell, J.).

85/ Alaska Public Employees Association v. City of Fairbanks, 753 P.2d 725, 727 (Alaska 1988).

The APA, enacted in 1959, did not originally designate the University of Alaska as one of the agencies to which it was intended to apply. The amendment to the APA adding subparagraph (a)(45) was one of several sections of Senate Bill 261, which was enacted during the 1977 Legislative Session. To put this in a proper historical context, it was during this period of time that the University was receiving intense criticism from the Legislature for deficiencies in its accounting and fiscal management procedures. Specifically, the Legislature was concerned about such matters as the University's perceived improper utilization of internal audit staff; bank account reconciliation problems; deficiencies in payroll systems and procedures; a perceived lack of adequate control over cash receipts and disbursements; perceived inadequate accounts receivable, billing, reconciliation, and collection procedures; a lack of expenditure control; untimely billings; grants and contracts; deficiencies in purchasing and accounts payable procedures, etc. ^{86/} This criticism resulted in two very similar bills being introduced into the Legislature -- one in the House and one in the Senate -- both of which were directed at the fiscal management issues of the University and both of which contained proposed language

^{86/} See Excerpts from the Alaska State Legislature Proceedings Before the Senate and House of Representatives, attached hereto as Ex. 4, at 3-4.

amending the APA to include the University of Alaska in limited situations.

Senate Bill 261 was introduced into the Senate on March 17, 1977 by the Rules Committee at the request of the Legislative Budget and Audit Committee, 87/ and contained three sections. Section 1 amended AS 44.62.330(a) by adding the University to the list of agencies subject to administrative adjudication procedures of the APA, with the limitation that it would not apply where inconsistent with AS 14.40.

Section 2 proposed to add the University of Alaska to the definition of "state agency" for purposed of being included in the ~~APA~~. Under that amendment, the University would be required, along with state agencies, to submit financial reports to the Department of Administration 60 days before the Legislature convened, 88/ to submit annual reports of the aggregate of all loans that it made or purchased during the year, 89/ to participate in a centralized

87/ See attachment 1 to Affidavit of Susan A. Burke, attached hereto as Ex. 5. Senator Sackett had asked the Budget and Audit Committee to seek introduction of the bill at the committee's March 16, 1977 meeting. See attachment 2 to Ex. 5. The draft bill is identical to the Senate Bill 261 that was introduced at the Committee's request. The Budget and Audit Committee minutes do not reflect any discussions on the provisions of the bill. The Committee voted 9 to 1 to sponsor the bill, with only Senator Kerttula voting not to do so.

83/ AS 37.05.030.

89/ AS 37.05.035.

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state accounting system, 90/ and to be subjected to other rigorous reporting and auditing requirements of the Fiscal Procedures Act.

Section 3 of Senate Bill 261 proposed to add the University of Alaska to the definition of "agency" for purposes of being included in the ~~Executive Budget Act, AS 27.07~~. Under that amendment, the University would be required, along with state agencies, to submit its budget and goals and objectives to the Legislative Finance Division 91/ and to submit a performance report to the state's Office of Management and Budget. 92/

At the same time that the Senate was considering Senate Bill 261, the House was considering House Bill 361. 93/ That bill was introduced in the House by Representatives Miles, Mallone, and Gardner on March 16, 1977, and referred to the Health, Education and Social Services ("HESS") Committee and to the Finance Committee. The first three sections of House Bill 361 were identical to the three sections of Senate Bill 261 discussed above. 94/ The House bill went on to add a fourth section deleting the Regents' control over the University's money

- 90/ AS 37.05.140.
- 91/ AS 37.07.050.
- 92/ AS 37.07.090.
- 93/ Ex. 5, att. 3.
- 94/ Id.

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(as opposed to its real and personal property), and a fifth section repealing several provisions of AS 14.40 dealing with fiscal matters. The House HESS Committee considered this bill at three separate meetings. 25/

On April 2, 1977, the House HESS Committee adopted a proposed committee substitute for House Bill 361 which retained the three original sections of Senate Bill 251 but added sections reflecting a somewhat different approach to the fiscal management issues. 26/ Specifically, the substitute added provisions requiring the University to appoint a comptroller, requiring the commissioner of administration to set criteria and guidelines for fiscal management practices under the Executive Budget Act and to delegate the performance of those functions to the Board of Regents, and giving the legislative auditor the "same right of access" to University management information "as exists with respect to every other state agency." 27/

From the House HESS Committee, House Bill 361 went to the House Finance Committee. That Committee held a hearing on the House bill on April 19, 1977, at which time the discussion

25/ The minutes of those meetings show extensive discussion about the University's fiscal management problems and no mention of the amendment to the APA's administrative adjudication section. Ex. 5, atts. 5, 6, 7.

26/ Ex. 5, att. 4.

27/ Id.

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concerned only the fiscal management provisions of the bill -- particularly a proposal to include in the bill a provision allowing the commissioner of administration to provide the University with cash advances on receivables to cure the University's cash flow problems. 98/ There were also general statements about the need to bring the University under the same fiscal and "other procedures" as those used by other agencies; however, no specific mention was made of the administrative adjudication provisions of the APA. 99/ No action was taken on the bill by the Committee at this meeting. Instead, Chairman Cowper appointed a subcommittee to prepare a proposed Finance Committee substitute for the House bill to be considered later that week. 100/ On April 22, 1977, the Committee met and decided to hold off any action on House Bill 361 until it had received Senate Bill 261, which had just been passed by the Senate. 101/

While the House had been considering House Bill 361, the Senate HESS Committee had met on Senate Bill 261 on March 23, 1977, and had moved the bill from the Committee with a "de pass" recommendation without making any changes in the bill. 102/ The

98/ Ex. 5, att. 9.

99/ Id.

100/ Id.

101/ Ex. 5, att. 9.

102/ Ex. 5, att. 10.

minutes of that meeting indicate that the discussions of the bill focused solely on the University's fiscal management problems. 103/ On April 12, 1977, the Rules Committee considered Senate Bill 261 and recommended that it be placed on the April 13 calendar. 104/

The Senate first debated Senate Bill 261 on April 13, 1977. 105/ The bill was moved from second to third reading by unanimous consent. 106/ Senator Hohman, speaking in favor of the bill, spoke almost exclusively about the financial problems of the University and the need for legislation to require the University to conform its accounting and budgeting procedures to those of state agencies. 107/ Senator Hohman's only mention of Section 1 of the bill, the APA provision, came when he quoted from portions of a sectional analysis of the bill that had been prepared by Glen Vernon, a fiscal analyst for the Division of

103/ Id. The Senate Judiciary Committee also considered Senate Bill 261, but there are no records of the Committee's deliberations or actions except for the report of the "do pass" recommendation appearing in the Senate Journal of April 11, 1977. The Committee made no change in the bill. Ex. 5, att. 11.

104/ Ex. 5, att. 11 at 307.

105/ Ex. 4 at 2.

106/ Ex. 5, att. 11 at 829.

107/ Ex. 4 at 3-6.

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Legislative Finance. 108/ The entire portion of the analysis dealing with section 1 stated:

Section 1 of the bill would have the effect of placing the University of Alaska under the Administrative Procedures Act. This section would require the University to promulgate regulations and procedures so as to assure uniformity in administration of the University. Don Dafoe, retained as a consultant to the House Finance Committee feels this section is of dubious value, but sees no problem for the University if it is left in. 109/

Senator Kerttula spoke vehemently against the bill, expressing his view that, while the problems resulting from the University's bad fiscal management practices were serious, the Regents should be left to solve the problems themselves, without undue interference from the executive and legislative branches. 110/ According to Senator Kerttula, placing the University under the Fiscal Procedures Act and the Executive Budget Act would ultimately bring the University too far under the control of the executive, and would result in undue interference with the University's academic freedom. 111/ Apparently believing, however, that section 1 would not interfere signifi-

108/ See Ex. 5, Att. 12.

109/ Id.

110/ Ex. 4 at 6-8.

111/ Id.

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cantly with the Regent's control over the University, Senator Kerttula stated, in passing, that section 1 did not trouble him. 112/ Ultimately, the bill was taken from the calendar and held in third reading for the April 20th calendar. 113/

On April 20, 1977, Senator Kerttula moved that the bill be returned to second reading, where he proposed an amendment that would bring the Legislature and the Judiciary under the provisions of the Fiscal Procedures Act and the Executive Budget Act. 114/ Senator Kerttula's purpose in proposing the amendment was to illustrate how unnecessarily intrusive it would be to place the University under these provisions. 115/ Explaining his purpose to the Senate President, Senator Kerttula explained:

Mr. President, I believe that the framers of the constitution intended that the Judiciary, of course, and the Legislature be separated from the state government, and they also, in their wisdom, passed on that same intent for the University of Alaska.

Mr. President, I just insert this amendment to show you a bit of what we are

112/ Id. at 8.

113/ During the April 13 hearing, Senator Ray moved that the bill be held over until April 14. On April 14, Senator Hohman moved that the bill be taken from the calendar and held in third reading for April 20. That motion was adopted by unanimous consent. See Ex. 5, att. 11 at 849.

114/ Id. at 905-06.

115/ Ex. 4 at 18-20.

doing. We are opening up through the budget process the possibility of petty governors and petty bureaucrats and petty finance officers to influence the direction of the University. It's a big error, as big an error as it would be if you inserted the Legislature and the Judiciary.

The molding of the students, the molding of the secondary institutions' functions, are not the prerogative of the Legislature. They shouldn't be done through the back door. I can't say to you how much I am opposed to approaching it this way.

* * *

Mr. President, that's the reason I bring this amendment before you. It is as important not to do it to the University as it is not to do it to the Legislature or the Judiciary. 116/

Having illustrated his point, Senator Kerttula withdrew the amendment. 117/

On April 21, 1977, the bill was again before the Senate in third reading. 118/ Again, Senator Kerttula voiced his concerns and his opposition to the bill in that it entangled the government with the University to too great a degree. In

116/ Id. at 18-19.

117/ Id. at 19-20.

118/ Also on April 21, 1977, Jay Hogan, Director of Legislative Finance, sent George Hohman a memo in which he describes Senate Bill 261 and House Bill 361 and concludes that Senate Bill 261 is "the best bid." Ex. 5, att. 13. Hogan describes the Senate Bill's provisions as making "the University of Alaska a state agency with regards to the Administrative Procedures Act, the Executive Budget Act, and the Uniform Accounting Act." Id.

response, Senator Tillion reminded the Senate that the bill was directed to a very limited area of University operations -- fiscal accountability. As he stated:

The bill is designed, really, just to make them run [their fiscal operations] the same as every other component of the state government so that we don't have the mental gymnastics of trying to figure out what really happened. 119/

The bill passed the Senate on April 21, 1977 on a vote of 17 Yeas and two Nays, in exactly the form in which it had been introduced. 120/

Senate Bill 261, as passed by the Senate, was read for the first time in the House on April 22, 1977 and referred only to the House Finance Committee. 121/ The House Finance Committee met to consider Senate Bill 261 on April 23, 1977, 122/ and adopted a proposed House Finance Committee Substitute. 123/ This version of the Senate Bill incorporated all three of the original Senate Bill 261 sections, but added several sections from the House bill -- specifically, provisions requiring the University to appoint a comptroller, provisions giving the commissioner of

119/ Ex. 4 at 32.

120/ Ex. 5, att. 11 at 920.

121/ Id. at 965.

122/ Ex. 5, att. 15.

123/ Ex. 5, att. 1-b.

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administration authority to establish procedures for the care, control and management of all money of the University, provisions allowing the commissioner of administration to delegate to the Board of Regents the performance of any functions required by the commissioner and to be performed under the Fiscal Procedures Act, and provisions allowing the Department of Administration to make advances to the University during a fiscal year against non-state revenue sources. 124/

In addition to adopting a proposed Committee Substitute, the Finance Committee also adopted a letter of intent to accompany that proposed Committee Substitute. 125/ The letter of intent discussed only the fiscal management issues, and made it clear that the purpose of the bill was to mandate budgeting and accounting procedures for the University that are the same as those "for other state agencies." As stated clearly in that letter:

This legislation reflects the concern of the Legislature that implementation of sound budgeting, accounting, and fiscal management systems are essential to the University in carrying out its fundamental missions of teaching, research, and public service.

However, it is the express intent of the Legislature that the establishment of policies and directives for the actual conduct of teaching, research, and public

124/ Id.

125/ Ex. 5, att. 14 at 1019.

service functions of the University within the limitations of legislative appropriations and pertinent statutes are clearly the responsibility of the Board of Regents and not that of the Executive or Legislative branch. 126/

Senate Bill 261 was before the House in second reading on April 27, 1977. The House unanimously adopted the House Committee Substitute for Senate Bill 261 in lieu of Senate Bill 261. 127/ During these debates, two legislative concerns were obvious. The first was that the entire purpose of the legislation was to insure that the University was treated like other state agencies with respect to fiscal and budgetary procedures, primarily because the lack of uniform procedures had made it impossible for the Legislature to exercise any fiscal controls over the University's use of state funds. 128/ The second concern was that, whatever the magnitude of the University's problems in the area of fiscal management, the Legislature should not do anything that would impinge upon the University's independence in pursuit of its constitutional and statutory responsibilities. No mention was made at all during these debates of the administrative adjudication provisions of the House Committee Substitute.

126/ Id.

127/ Id. at 1063.

128/ Ex. 4 at 38-81.

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Two amendments to the House Committee Substitute were proposed during these debates and both were defeated. 129/ Ultimately, the bill was held over two times 130/ and was eventually taken up in the House on May 2, 1977. During the May 2 floor session, the bill was returned to second reading for purposes of an amendment. 131/ This amendment, which was adopted by the House, addressed the fiscal management provisions of the bill and made it clear that the procedures adopted by the commissioner of administration for the management of the University's money would be "in accordance with existing procedures for other state agencies." 132/

The House then unanimously adopted a motion to advance the bill to third reading. Representative Carpenter, however, moved to return the bill again to second reading for purposes of amending it to delete what was then section 9 of the bill, the administrative adjudication provision. 133/ Carpenter's arguments in support of the amendment were brief. He stated that his amendment would "remove a section of the bill pertaining to

129/ Ex. 5, att. 14 at 1063-65.

130/ Id. at 1096, 1118.

131/ Id. at 1149-50.

132/ Id.

133/ Id. at 1151.