ALASKA LEGISLATURE COMMITTEE FILES 1993-1994

7871 HOUSE JUDICIARY 8672

136

(12)

PETITION

We, the undersigned, are supporters of SB155/HB222, as introduced. These bills revise the Landlord Tenant Act to make the laws apply more equally between landlords and tenants.

#	Signature	Print Name	Address	Landlord	No.Units	Tenant	Other
1	[illegible]	Cathy S Boitz	PO Box 875241 Wasilla AK 99687			X	
2	[illegible]	Marcus TAVARES	1318 23 Ave #4 FBKS, AK 99701			X	
3	Tiffany Slaughter	Tiffany Slaughter	1212 Hampstead AVE Fbks, AK 99701			X	
4	Erin Hill	Erin Hill	815 McGrath rd. 2-J Fbks, AK 99712			X	
5	[illegible]	[illegible]	3040 Lois Rd Apt 7 A-59			X	
6	Diane M Hebert	Diane M Hebert	PO Box 10188 FBKS AK 99710			X	
7	Noma R Johnson	Noma R Johnson	PO Box 74333 FBKS, AK. 99707			X	
8	Shaunon Butler	SHAUNON BUTLER	PO Box 83661 Fbx AK 99708			X	
9	Aaron Malzahn	Aaron Malzahn	P.O. Box 70063 Fbks, AK 99707			X	
10	Susan Rieckmann	SUSAN RIECKMANN	1200 W. DIMOND #1442 Anch, AK 99515			X	
11	[illegible]	BOB RAMER	PO Box 108 Kasilof AK 99610			X	
12	[illegible]	James Houston	330 wedgewood dr			X	
13	CASONDRA NORRIS	[illegible]	P.O BOX 58953 FBKS, 99711				X
14	Cathy L Clements	Cathy L. Clements	P.O. Box 2072 / FBKS 99701	X	L		
15	Dora Buchea	Dora Buchea	PO Box 853 Slana, AK	X	L		
16	Kim Brady	Kim Brady	1313 23rd AVE			X	
17	Susan Boehlke	Susan Boehlke	7785 Curtis Ln Salcha 99714	X	1		
18	[illegible]	Robert M Clayton	154 Pebble Dr Eagle River				X

(13)

PETITION

We, the undersigned, are supporters of SB155/HB222, as introduced. These bills revise the Landlord Tenant Act to make the laws apply more equally between landlords and tenants.

#	Signature	Print Name	Address	Landlord	No.Units	Tenant	Other
1	Rebecca R. McCauley	Rebecca R. McCauley	905 Joyce Dr. Fbks 99701			X	
2	Art Saarloos	ART SAARLOOS	P.O. BOX 197 D.J AK 99737			X	
3	Michael G. Ridley	MICHAEL G. RIDLEY	GEN. DELIVERY ESTER AK. 99725			X	
4	Sue G. Yi	Sue G. Yi	1004 Joyce D. Fbks AK				X
5	John A Wilson	John A Wilson	4820 Palo Occidente 99701 Fbks				X
6	[illegible]	Charles Wanderer	Box 2275 Fbks AK 99701			X	
7	Mee Jung Tavares	Mee Jung Tavares	1318 23 AVE # 99701				X
8	Dave Brenner	Dave Brenner	1038 Prague St. 99712			X.	
9	Sonya Paschal	Sonya Paschal	4427 Mayfield Ct. #1	X	2		
10	Melissa Applebee	Melissa Applebee	1816 Bridgewater 99709			X	
11	Lola Easterling	LOLA EASTERLING	5 KATHRYN				X
12	Candy Dyer	Candy Dyer	1226 20th Ave	X	4		
13	Rod V. Wakefield	Rod V. Wakefield	560 Hilltop Ave. Fbks				X
14	Charles H. Wallace	Charles H. Wallace	4051 Mallard Way, Fbks	X	3		
15	Jeffrey J. Miller	JEFFREY J. MILLER	PSC 5 BOX 85 EAFB AK				X
16	Brendan Santora	BRENDAN SANTORA	P.O. Box 83583 FBKS AK				X
17	[illegible]	John Burnette	318 Wedgewood Ct				X
18	[illegible]	Pearl Johnson	18 15 Kathryn St.			V	

PETITION

We, the undersigned, are supporters of SB155/HB222, as introduced. These bills revise the Landlord Tenant Act to make the laws apply more equally between landlords and tenants.

#	Signature	Print Name	Address	Landlord	No.Units	Tenant	Other
1	Darlene A Means	Darlene Means	1232 20th Apt #4			X	
2	[illegible]	Robert Berg	1013 Cordova				owner
3	[illegible]	JOHNSON	1506 HOSELTON RD				OWER
4	Jody Rummer	Jody Rummer	1023 LAURENO			X	
5	Betty R Johnson	Betty R Johnson	1508 Hoselton Rd				owner
6	David E. Pennington	David E Pennington	P.O.B. 425 Healy			X	
7	Teresa L Pennington	Teresa L Pennington	PO 425 Healy			X	
8	Gary W. McQueen	Gary W. McQueen	207 Steelhead Rd.	X			
9	Melvin T. Apassingole	Melvin T. Apassingole	P.O. Box 91 Gambell, AK.				X
10	Clement Ungott	Clement Ungott	P.O. Box 75 Gambell, AK				✓
11	Jan Spring	Jan Spring	Box 3914 Palmer, AK				✓
12	[illegible]	GARY W SPRING	" " "				✓
13	Darcy Goad	Darcy J. Goad	PO Box 71504 Fbks, Ak			✓	
14	[illegible]	Heidi A Stallman	830 Highlandale Way Fbks Ak				owner
15	Todd A Irvystad	Todd A. Irvystad	524 Craig St. Fbks			✓	
16	Marvin Sluka	MARVIN SLUKA	3450 Airport WAY FBKS	X			
17	Jan A. Aries	JAN A. ARIES	4750 Yvonne Ave, Fbks			X	
18	Rodney L. Haker	RODNEY L. HAKER	615 DITCH ST FBKS			X	

PETITION

We, the undersigned, are supporters of SB155/HB222, as introduced. These bills revise the Landlord Tenant Act to make the laws apply more equally between landlords and tenants.

#	Signature	Print Name	Address	Landlord	No.Units	Tenant	Other
1	Marvin L Lund	MARVIN L LUND	3431 KALTAG DR NORTH POLE				HOME OWNER
2	Carolyn J Lund	Carolyn J. Lund	3431 Kaltag Dr.				Home Owner
3	Darrell Akshear	DARRELL AKSHEAR	3521 Ross Lake			✓	
4	A Thomas Leyka	A Thomas Leyka	P.O. Box 71093, Fbks 99707				Home Owner
5	David Magar	DAVID MAGAR	P.O. BOX 75251 FBK, AK 99707			✓	
6	Roger L. Moore	Roger L. Moore	288 Rambling Rd #26 Fbks 99712	✓	72		
7	Don Beaumonville	Don Beaumonville	643 Hayes St Fbks 99701	✓	1		Resid Owner
8	James P Sullivan	JAMES P SULLIVAN	125 INA FBKS AK 99701	✓	1		Homeowner
9	Charles A. Creamer	CHARLES A. CREAMER	339 CHURCH ST			✓	
10	James J Thomas	JAMES J. THOMAS	1739 CROSSON ST				HOME OWNER
11	Jay W Sadler	JAY W SADLER	390 HAMILTON		NONE		HOME OWNER
12	Don Elbert	DON Elbert	1544 Scenic Lp	✓	4		
13	Juliet M Shier	Juliet Shier	4753 Dalhousie #4		12		Manager
14	Peter M Shier	PETER M SHIER	4753 DALHOUSIE #4		12		MGR
15	Eugene E Reed III	EUGENE E. REED III	GEN. DEL ESTER	✓	2		
16	S. CLAY CAMPBELL	S. CLAY CAMPBELL	1481 BLACKBERRY	✓	1		
17	Janet A. Thompson	JANET A. THOMPSON	457 Wellhouse Rd.				Home Owner
18	Mark Blong	Mark Blong	1625 Parks Hwy			✓	

(16)

PETITION

We, the undersigned, are supporters of SB155/HB222, as introduced. These bills revise the Landlord Tenant Act to make the laws apply more equally between landlords and tenants.

#	Signature	Print Name	Address	Landlord	No.Units	Tenant	Other
1	Irene K. Hotaling	IRENE K. Hotaling	990 Deere St Fbks			X	
2	Barbara Kerber	BARBARA KERBER	404 BETTY				X
3	Karl Jones	KARL JONES	1500 FoolsGold Rd				X
4	Ralph Aiken	Ralph Aiken	218 Beritly			X	
5	Bob Walsh	BOB WALSH	P.O. Box 70044			X	
6	Woodrow Hill	Woodrow Hill	455 3rd Ave Apt 518			X	
7	Rick Mensik	Rick Mensik	462 Carlton	X	2	X	
8	Harold A Johnson	Harold A Johnson	P.O. Box 10440 Fairbanks AK.				X
9	Nelson B. Miles	Nelson B. Miles	P.O. Box 75006 Fairbanks AK 99707	X	1	X	
10	Cindy Armstrong	Cindy Armstrong	4379 Bishop Cir				X
11	Joleen K. Cooper	Joleen Cooper	615 Ginko Rd			X	
12	Dennis W. Smith	Dennis W. Smith	440 old Rich #217			X	
13	Garry Lee Hahn	Garry Lee Hahn	1910 Turner			X	
14	Wanda L. Davis	Wanda Lee Davis	1910 Turner			X	
15		Rosalind C. Perez	1141 Coppet St Fbks 99709			X	
16	Daniel Day	DANIEL DAY	440 OLD RICHARDSON HWY.			X	
17	Edward W. Roach	Edward W Roach	440 old Richardson Hwy			X	
18	Jeanette Hopson	Jeanette Hopson	440 old Richardson Hwy			X	

(17)

PETITION

We, the undersigned, are supporters of SB155/HB222, as introduced. These bills revise the Landlord Tenant Act to make the laws apply more equally between landlords and tenants.

#	Signature	Print Name	Address	Landlord	No.Units	Tenant	Other
1	Mike Ricci	Michael Ricci	1732 Tamarack				✓
2	Stacey Eggers	Stacey Eggers	120 Charles St			✓	
3	Beverley J. Million	BEVERLEY J. MILLION	2765 Hordon Rd.	✓	4		
4	Virginia M. Ned	Virginia Ned	227 Woodridge Dr.			✓	
5	Rose Marie Smith	ROSEMARIE SMITH	3371 STOREY DR	✓			
6	Barbara Moore	Barbara Moore	23B Eureka	✓	2	✓	
7	Jeffrey J. Ball	Jeffrey J. Ball	356 Driveway			✓	
8	Marina G Ball	MARINA G. BALL	356 DRIVEWAY AK			✓	
9	Helen Lugaillo	Helen Lugaillo	97 Timberland Dr	✓	2		
10	Marie A Bablinskas	MARIE A. BABLINSKAS	P.O. BOX 74043			✓	
11	Dennis P Gallion	DENNIS P. GALLION	2509 LISA ANN DR N.P. AK				✓
12	P. O'Neill	PARNELLIA O'NEILL	231 CRAIG AVE.	✓	I	✓	✓
13	Wonda Brown	WONDA K BROWN	2343 Bd Rd North Pole	✓			
14							
15							
16							
17							
18							

(18)

PETITION

We, the undersigned, are supporters of SB155/HB222, as introduced. These bills revise the Landlord Tenant Act to make the laws apply more equally between landlords and tenants.

#	Signature	Print Name	Address	Landlord	No.Units	Tenant	Other
1	Doyle Gabriel	Doyle Gabriel	1904 Poyer	✓	5		
2	Anita C Gabriel	Anita C Gabriel	2058 Donald Ave #3			✓	
3	Debra Sinclair	DEBRA SINCLAIR	1048 28th #2			✓	
4	Carlin R Alt	CARLIN RALT	1270 Raymond Ave				✓
5	Curtis Chamberlain	Curtis Chamberlain	850 McGrath Rd			✓	
6	Ruth V Long	RUTH V LONG	P.O. Box 1 ESTER				✓
7	Kathleen Seurer	KATHLEEN SEURER	P.O. Box 81147			✓	
8	Jeff A. Cowell	JEFFREY A. COWELL	508 Monroe St. Fbks AK 99701				
9	Thomas Maher	Thomas Maher	P.O. Box 70648 Fbks	✓	15		✓
10	Juanita Helms	JUANITA HELMS	1524 STACIA ST.	✓	7		
11							
12							
13							
14							
15							
16							
17							
18							

PETITION

We, the undersigned, are supporters of SB155/HB222, as introduced. These bills revise the Landlord Tenant Act to make the laws apply more equally between landlords and tenants.

#	Signature	Print Name	Address	Landlord	No.Units	Tenant	Other
1	[illegible]	Don Ward	P.O. 10674 - 99710	✓			
2	Denise Tompkins	Denise Tompkins	Dr 701.14 707			✓	
3	Sharon Mensik	Sharon Mensik	462 Carlton Dr. 99701	✓	1		
4	Zoe Parrish	Zoe Parrish	1117 26th Ave. 99701		44	✓	
5	George K. Shriner	GEORGE-K-SHRINER	913-OCONNER RD 99701				✓
6	Nanessha Navarro	Nanessha Navarro	518 "A" st 99701			✓	
7	Meredith A Coats	Meredith A. Coats	2546 Tal Keetna 99709	✓	20		
8	Myrna Sheets	MYRNA SHEETS	1028 Evergreen St	✓	7		
9							
10							
11							
12							
13							
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15							
16							
17							
18							

20

PETITION

We, the undersigned, are supporters of SB155/HB222, as introduced. These bills revise the Landlord Tenant Act to make the laws apply more equally between landlords and tenants.

#	Signature	Print Name	Address	Landlord	No.Units	Tenant	Other
1	LaHoma Fleshman	LAHOMA FLESHMAN	440 old Rich Hwy	X	62		
2	Virgil A Hardin	VIRGIL A HARDIN	440 OLD RICH HWY		[redacted]	✓	
3	Ed Kincheloe	Ed Kincheloe	440 OLD Rich Hwy			X	
4	John S. Voytilla	John S. Voytilla	440 Old Rich. Hwy			X	
5	Wm Stewart	WM M STEWART	1777 CROSSON ST	✓	450		
6	Bart Wigger	Bart Wigger	440 old Rich			X	
7	Helen Powell	HELEN POWELL	1913 JACK ST	X		X	
8	Mary Weirwe	MARY WEIRWE	579 [illegible]			X	
9	[illegible]	DUANE D PEDERSON	[illegible]				X
10	William T. Ellis	WILLIAM T. ELLIS	440 old Rich Hwy	X		X	
11							
12							
13							
14							
15							
16							
17							
18							

HB

231

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

Bill No. HB 231

Revision Date:
Title: Aggravating/Mitigating Factors: Sex Crimes
Sponsor: Kott
Requestor:

Department Affected: Alaska Court System
BRU: Trial Courts
Components:
COMPONENT SERIAL NO. 768

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						
REVENUE FUND SOURCE:						

FUNDING: (Thousands of Dollars)

1002 FEDERAL RECEIPTS						
1003 GF MATCH						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/PROGRAM RECEIPTS						
1006 GF/MHTIA						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY 93) Impact: None

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

Prepared by: C. S. Christensen III, Staff Counsel CSC Phone: 264-8228
Division: Alaska Court System Date: 04/01/93

Approved by: Arthur H. Snowden, II, Administrative Director BY CSC
Agency: Alaska Court System Date: 04/01/93

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

Alaska State Legislature
House of Representatives

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PHONE (907) 694-7943

DURING SESSION:
STATE CAPITOL
JUNEAU, AK 99811
PHONE (907) 465-3777

Representative Pete Kott

DATE: March 22, 1993

TO: Representative Brian Porter
Chairman
House Judiciary Committee

FROM: Representative Pete Kott

SUBJECT: Request for Hearing
House Bill No. 231

I respectfully request that House Bill 231 be set on for a hearing before the House Judiciary Committee as soon as possible.

House Bill 231 expands the use of other sexual offenses as aggravating factors in sentencing sex offenders. It also establishes a mitigating factor to be used when a prior felony conviction triggers presumptive sentencing and said prior conviction is of a less serious nature than the offense currently before the Court.

House Bill 231 is intended to implement recommendations of the Alaska Sentencing Commission.

In my estimation, the Alaska Sentencing Commission is a possible supporter of House Bill 231.Possible opponents of this bill include the Public Defender Agency and the Office of Public Advocacy.

Please find enclosed herewith the following:
- House Bill 231
- Sponsor Statement
- Fiscal Notes:
  - Department of Law
  - Corrections
- Sectional Analysis

I am not requesting a teleconference concerning this bill.

Thank you in advance for your kind assistance in this matter.

SPONSOR STATEMENT
HOUSE BILL 231

AS 12.55.155(c) establishes a series of aggravating factors relevant to presumptive sentencing. Subsection (18) of this statute addresses aggravating factors to be used in sentencing people convicted of sex crimes. As the law now reads, there is an aggravating factor when a defendant is convicted of of a sex crime against a minor and has engaged in the same or similar conduct against a minor. Also, there is an aggravating factor when the defendant is convicted of sexual assault (or unlawful exploitation of a minor) and previously engaged in sexual assault (or unlawful exploitation of a minor). However, the law does not currently provide an aggravating factor pertaining to a potential situation whereby a defendant is subject to presumptive sentencing for sexual abuse of a minor and he previously committed sexual assault against an adult. Section 1 of this bill corrects this problem.

Pursuant to Section 1, in all cases where a defendant is subject to presumptive sentencing for a sex crime, any other conduct which violates AS11.41.410 through AS11.41.460 constitutes an aggravating factor.

It is the sponsor's intent that only conduct other than the specific act which is the basis for a conviction shall constitute an aggravating factor. That is to say, if event "A" is the basis for a given conviction, then event "A" can not be the basis for aggravating the sentence.

Section 2 establishes a mitigating factor for purposes of presumptive sentencing. This mitigating factor operates when a prior felony conviction triggers the presumptive sentencing provisions and said prior conviction pertains to a less serious class of offenses than the offense before the court.

Section 3 of the bill is simply a housekeeping provision which, in recognition of the changes embodied in Section 1 of this bill, maintains the status quo concerning the types of cases which may be referred to the three judge sentencing panel.

It respectfully is asserted that Sections 1 and 2 of this bill capture the essence of recommendations made by the Alaska Sentencing Commission. Additionally, Section 1 corrects an unfortunate gap now embodied in existing law. For these reasons, House Bill 231 is commended to you for approval.

SECTIONAL ANALYSIS
HOUSE BILL 231

Section 1, which amends AS12.55.155(c)(18)(B) and deletes AS12.55.155(c)(18)(C), expands the scope of other sex crimes as an aggravating factor in the presumptive sentencing of sex offenders. As amended, AS12.55.155(c)(18)(B) establishes an aggravating factor when the defendant is subject to presumptive sentencing for a crime "...specified in AS 11.41.410 - 11.41.460 and the defendant has engaged in conduct prohibited by a provision of AS 11.41.410 - 11.41.460." It may be noted that Section 1 of HB 231 does not require that the conduct utilized as an aggrivating factor be reduced to a conviction. And, it does not require that said conduct have occurred prior to the crime for which the defendant is being sentenced.

Section 2 establishes a mitigating factor which operates when a prior felony conviction triggers presumptive sentencing and the prior felony conviction is in a less serious class than the offense for which the defendant is being sentenced.

Section 3 has the effect of maintaining the status quo concerning the types of cases which may be referred to the three judge panel This amendment was necessitated by the changes contained in Section 1.

Alaska Sentencing Commission

1029 W. Third Avenue, Suite 201, Anchorage, Alaska 99501 (907) 279-2526 FAX (907) 276-5046

March 25, 1993

Representative Pete Kott
Alaska House of Representatives
State Capitol
Juneau, AK 99811

RE: House Bill 231

Dear Representative Kott:

Thank you for sponsoring HB 231, "an act relating to aggravating and mitigating factors at sentencing." This bill enacts recommendations made by the Alaska Sentencing Commission in its 1991 annual report.

Section 1 of the bill is similar to the commission's recommendation that the list in AS 12.55.155(c) be expanded by adding an aggravating factor for sex offenders who have committed a prior sex offense. The commission found that repetitive sex offenders present such a high risk to the public that more prison time is necessary than current presumptive sentences would impose. The commission found that sex offenders usually offend multiple times and/or against multiple victims and are rarely caught the first time they offend. They often escape conviction or are allowed to plead to lesser conduct because sex offenses are difficult to prove, especially when the victims are children. With Class B offenses in particular, the commissioners felt that there was a need to impose sentences long enough to allow completion of a two-year sex offender treatment program.

In 1992, the legislature added an aggravator to be applied when the offense is one specified in AS 11.41.410-.425 and .455, and the defendant has previously engaged in conduct covered by one of those sections involving the same or another victim. AS 12.55.155(c)(18)(c). For some reason, defendants convicted of sexual assault and unlawful exploitation of a minor are not covered if their prior conduct includes sexual abuse of a minor, and defendants convicted of sexual abuse of a minor are not covered if their prior conduct includes sexual assault of an adult. HB 231 closes the gap in coverage and is consistent with the recommendations of the Sentencing Commission.

Section 2 of HB 231 adds a mitigating factor when the defendant's prior offense was of a less serious class than the present offense. This mitigating factor was part of the original list adopted by the legislature, but was repealed in 1982. (There is a parallel aggravating factor for when defendant's prior conduct was of a more serious class of offense). The legislature's rationale for eliminating the mitigating factor was that it could reward criminals who in fact were developing an escalating pattern of seriousness in their criminal behavior. However, the commission felt that it should be reinstated, since there are times when it is necessary to remove rigidity from the system.

For example, a person might be convicted of a minor felony, such as theft of a snowmachine or bootlegging, as a young adult. If that person is convicted of first-degree assault ten years later, he or she will serve the same term as an offender with a recent manslaughter conviction. A large number of young adults commit low-level property offenses, and the commission felt that these offenses should not be treated as the equivalent of serious felonies committed by a more mature individual. To answer the concern expressed by the legislature in repealing this mitigating factor originally, the commission recommended that the legislative history reflect that this factor should not be applied if it would reward an escalating pattern of behavior or criminal career. Section 2 is consistent with the commission's recommendations.

Section 3 of HB 231 appears to maintain the status quo of the 1992 amendment which forbid referral of a case to the three-judge panel based on the defendant's potential for rehabilitation if the court finds certain aggravating factors, in this case prior sexual abuse of a minor. The commission took no position on this legislation last year, but your amendment appears to be consistent with last year's amendment.

We would urge the legislature to adopt HB 231. Please feel free to call if we can be of assistance.

Sincerely,

Marcia Vandercook

Marcia Vandercook
Staff Attorney

MV:pjs

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. HB 231

Revision Date: March 18, 1993
Title: "An Act relating to aggravating and mitigating factors at sentencing."
Sponsor: Representative Kott
Requestor: Representative Kott

Department Affected: Department of Law
BRU: Prosecution
Component: All
COMPONENT SERIAL NO. 0085 through 0090

EXPENDITURES/REVENUES:

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE FUND SOURCE:						
FUNDING:						
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-
FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: -0-

ANALYSIS: (Attach a separate page if necessary.)
This bill makes miscellaneous amendments to the aggravating and mitigating factors used at sentencing. These sentencing provisions take place after a defendant has been convicted, and therefore they will not have a fiscal impact for the Department of Law.

Richard L. Pegues

Prepared by: Richard I. Pegues, Director
Phone: 465-3672
Division: Administrative Services Division
Date: March 18, 1993

Richard L. Pegues /FOR

Approved by Commissioner: Charles E. Cole, Attorney General
Agency: Department of Law
Date: March 18, 1993

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Rev 11/92

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. HB 231

Revision Date:
Title: "An Act relating to aggravating and mitigating factors at sentencing."
Sponsor: Rep. Kott
Requestor: House Judiciary

Department Affected: Administration
BRU: Public Defender Agency
Component: Public Defender Agency

COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES:

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE FUND SOURCE:	0	0	0	0	0	0
FUNDING:						
1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0
POSITIONS:						
FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year (FY93) impact: None

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: John Salem, Director
Division: Public Defender Agency
Phone: 279-7541
Date:

Approved by Commissioner: Nancy Bear Usera
Agency: Administration
Date: 3/25/93

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FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. HB 231

Revision Date: _____ Dept. Affected: Administration
Title: "An Act relating to aggravating and mitigating factors at sentencing...." BRU: Office of Public Advocacy
Component: Office of Public Advocacy
Sponsor: Representative Kott
Requestor: House Judiciary COMPONENT SERIAL NO. 43

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE FUND SOURCE:	0	0	0	0	0	0

FUNDING:

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
Other	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS

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

Estimate of current year (FY93) impact: $ None

ANALYSIS: (attach a separate page if necessary.)

Prepared By: Brant McGee, Public Advocate Phone: 274-1684
Division: Office of Public Advocacy Date:

Approved by Commissioner: Nancy Bear Usera Date: 3/25/93
Agency: Department of Administration

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FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO: HB 231

Revision Date:

Dept. Affected: Public Safety

Title: "An act relating to aggravating and mitigating factors at sentencing."

BRU: Alaska State Troopers

Component: Detachments

Sponsor: Representative Kott

Requestor: Representative Kott

COMPONENT SERIAL NO. 799

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

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE FUND SOURCE:	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

Estimate of current year (FY 93) impact: $

ANALYSIS: (Attach a separate page if necessary.)

No fiscal impact is anticipated.

Prepared By: Francis C. Allan

Phone: 269-5691

Division: Alaska State Troopers

Date: 3/19/93

Approved by Commissioner:

Date: 3/25/93

Agency: Richard L. Burton, Dept. of Public Safety

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FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. HB 231

Revision Date:
Title: "An Act relating to aggravating and mitigating factors at sentencing..."
Sponsor: Representative Kott
Requestor: Representative Kott

Dept. Affected: Corrections
BRU: Institutions
Component:
COMPONENT SERIAL NO.

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY94	FY95	FY96	FY97	FY98	FY99
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)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: $ -0-

ANALYSIS: (Attach a separate page if necessary)

Please see attached fiscal note.

Prepared by: Dana LaTour D LaTour
Phone: 465-3454
Division: Commissioner's Office
Date: 3-19-93

Approved by Commissioner: Lloyd G. Rupp L. D LaTour
Date: 3-19-93
Agency: Corrections

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HB 231 adds conditions of aggravation and mitigation to the presumptive sentencing law. In discussing this bill with the Department of Law, it appears that the net effect of these changes on average sentence length will be minimal. Therefore, the impact on prisoner incarceration days should be minimal. The fiscal impact of this bill, if any, would not occur within the next year, since mitigating and aggravating factors effect the length of sentence, but generally would not affect the first year's sentence.

The Department of Corrections supports this bill, since these changes were recommended in the report of the Sentencing Commission.

(7)

Date Referred: March 16, 1993 FURTHER REFERRALS: Finance

Date of Committee Action: 4-2-93

The JUDICIARY Committee considered: HB 231

HOUSE BILL NO. 231 AGGRAVATING/MITIGATING FACTORS:SEX CRIMES

"An Act relating to aggravating and mitigating factors at sentencing."

RECOMMENDATIONS:
be replaced with CSHB231(JUD) [X] the same title [ ] a new title

[ ] have attached amendments(s)

[X] do pass

[ ] do not pass

[ ] no recommendations

[ ] individual recommendations

[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)

[ ] fiscal impact _____

6 [X] zero fiscal note PUBLIC SAFETY, CORRECTIONS COURT, LAW, ADMIN (2)

APPROVES PREVIOUS: (Dept/Date)

[ ] fiscal note(s) _____

[ ] zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
Jeannette James	✓	Gail Phillips		✓	
Peggy Elliott	✓				
Joe Hayes	✓				
John Davidson	✓				
Brian D. Porter	✓				

Brian D. Porter
CHAIRMAN'S SIGNATURE

8-LS0824\J
Luckhaupt
4/2/93

CS FOR HOUSE BILL NO. 231(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVE KOTT

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to aggravating and mitigating factors at sentencing."

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

3 * Section 1. AS 12.55.155(c)(18) is amended to read:

4 (18) the offense was a <u>felony</u> [CRIME]

5 (A) specified in AS 11.41 and was committed against a spouse,
6 a former spouse, or a member of the social unit comprised of those living
7 together in the same dwelling as the defendant; <u>or</u>

8 (B) specified in <u>**AS 11.41.410 - 11.41.455**</u> [AS 11.41.410 -
9 11.41.460 AND WAS COMMITTED AGAINST A MINOR,] and the
10 defendant has engaged in the same or <u>other</u> [SIMILAR] conduct <u>**prohibited**</u>
11 <u>**by a provision of AS 11.41.410 - 11.41.460**</u> involving the same or another
12 victim [WHO WAS A MINOR; OR

13 (C) SPECIFIED IN AS 11.41.410 - 11.41.425 OR 11.41.455,
14 AND THE DEFENDANT HAS PREVIOUSLY ENGAGED IN CONDUCT

1 COVERED BY ONE OF THOSE SECTIONS INVOLVING THE SAME OR
2 ANOTHER VICTIM];
3 * Sec. 2. AS 12.55.155(d) is amended by adding a new subsection to read:
4 (18) a prior felony conviction considered for the purpose of invoking
5 the presumptive terms of this chapter was of a less serious class of offense than the
6 present offense.

HOUSE COMMITTEE REPORT

(7)

Date Referred: March 16, 1993 FURTHER REFERRALS: Finance

Date of Committee Action: 4-2-93

The JUDICIARY Committee considered: HB 231

HOUSE BILL NO. 231 AGGRAVATING/MITIGATING FACTORS:SEX CRIMES

"An Act relating to aggravating and mitigating factors at sentencing."

RECOMMENDATIONS:
be replaced with CSHB231(JUD) [X] the same title [ ] a new title

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

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)

[ ] fiscal impact _____
6 [X] zero fiscal note PUBLIC SAFETY, CORRECTIONS COURT, LAW, ADMIN (2)

APPROVES PREVIOUS: (Dept/Date)

[ ] fiscal note(s) _____
[ ] zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
Jeannette James	✓	Gail Phillips		✓	
Peggy Foster	✓				
Joseph Hayes	✓				
John Dorsey	✓				
Brian D. Porter	✓				

Brian D. Porter
CHAIRMAN'S SIGNATURE

HB 217 Native Corporation Dividends to Minors
HJR 27 Desecration of U. S. Flag
HB 231 Aggravating/Mitigating Factors/Sex Crimes

Rep. Brian Porter, Chairman

House Judiciary Committee

Date: April 2, 1993
Place: Capitol Room 120

Subject of Meeting: HB 54 Telephone Consumer Protection; HB 212 Sentencing: Aggravating Factors
HB 214 Disclosure of a Minor's Record by Parent

Please Print Name	Representing	Business/Personal Mailing Address	Zip	(H) Phone	(W) Phone	Do you Want to Testify?	Which Subject/ Which Bill?
Randall Hines	DHSS	Box 110630	99811	—	465-3187	(Y) N	HB 217
Marcia McKenzie	CDVSA	Box 111200	99811		465-4356	(Y) N	HB 54
Susan Fowler	Ombudsman	Box 113000	99811		5581	(Y) N	HB 214
Kay Brown	bill sponsor					(Y) N	HB 54
Margot Knuth	Law - Crim	113000			4049	(Y) N	HB 212 HB 231
Janine Reep	Law - Civil	"			3603	To answer Y question N	HB 214
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	

Page __ of __

HB
239

SPONSOR STATEMENT

CSSB-239 (O & G)

BY: SENATOR BERT SHARP

THE OIL AND GAS CS FOR SB239 RECOGNIZES THAT EXISTING STATUTES MANDATES LEVELS OF PROOF OF FINANCIAL RESPONSIBILITY LIABILITY THAT ARE SO UNREALISTIC THAT COVERAGE IS NOT AVAILABLE AND NEVER HAS BEEN.

THIS IS TRUE AS MUCH FOR AS 46.04.040(b) ONSHORE OIL AND GAS EXPLORATION ACTIVITY AS IT IS FOR MOVING REFINED PRODUCTS ALONG THE WATERWAYS OF ALASKA.

SECTION 1 ONLY REDUCES THE MANDATORY LIABILITY LIMITS TO MORE REASONABLY AVAILABLE LEVELS. THE REDUCED LEVELS ARE STILL APPROXIMATELY 10 TIMES HIGHER THAN OTHER OIL PRODUCING STATES.

THE 20 MILLION DOLLAR REQUIREMENT FOR ONSHORE PRODUCTION FACILITIES REMAINS INTACT FOR FACILITIES PRODUCING OVER 10,000 BARRELS OF OIL PER DAY. REQUIREMENTS ARE STAIR STEPPED DOWN FROM OVER 10,000 B/P/D/, TO 5,000 - 10,000, 2,500 - 5,000 AND 2,500 AND UNDER. IT SEEMS TO MAKE SENSE THAT PRODUCERS HANDLING LESS DAILY VOLUMNS WOULD CREATE LESS OF A SPILL POTENTIAL.

THIS BILL PROVIDES FOR REDUCTIONS FOR ONSHORE OIL AND GAS EXPLORATION ACTIVITIES THAT IN NINE OUT OF 10 CASES, NEVER INVOLVE AN EXPOSURE TO ON SITE CRUDE OIL. IF THE ACTIVITY IS SUCCESSFUL, THE SAFETY DEVICES AND THEIR OPERATIONS REQUIRED ARE HIGHLY DEVELOPED AND EFFECTIVE.
THERE HAS NEVER BEEN AN ONSHORE CRUDE SPILL IN ALASKA CAUSED BY AN EXPLORATION RIG.

THIS BILL IS AN ATTEMPT TO OPEN THE DOOR OF OPPORTUNITY A LITTLE BIT. THIS WOULD CREATE A MORE REALISTIC ENVIRONMENT FOR SMALL INDEPENDENT EXPLORATION FIRMS TO OPERATE IN ALASKA.

LET ME POINT OUT THAT AS.46.04.040(b) IS NOT THE ONLY PROOF OF FINANCIAL LIABILITY REQUIRED OF ONSHORE EXPLORATION. IT'S ONLY ONE OF MANY.

THE DIVISION OF OIL AND GAS REQUIRES THE POSTING OF A BOND IN PARAGRAPH 23 OF THEIR LEASE CONTRACT AS WELL AS SATISFY REQUIREMENTS IN 11 AAC 83.160.

THE DIVISION OF OIL AND GAS CAN ALSO REQUIRE SUPPLEMENTAL BONDING IF IT BELIEVES THE NATURE OF THE SURFACE AND ITS USES OR THE DEGREE OF RISK JUSTIFIES AN INCREASED BOND.

THE ALASKA OIL AND GAS CONSERVATION COMMISSION ALSO REQUIRES A LESSEE TO POST A SEPARATE BOND OF AT LEAST $100,000 DOLLARS PRIOR TO ANY DRILLING ACTIVITY.

WITH MANY OF THE MAJOR OIL COMPANIES NOW REDIRECTING THEIR EXPLORATION EFFORTS OVERSEAS, IT WOULD ONLY SEEM PRUDENT TO REMOVE IMPOSSIBLE LIABILITY REQUIREMENTS PRESENTLY REQUIRED WHICH VIRTUALLY SHUTS OUT INDEPENDENT EXPLORATION AND PRODUCERS IN OUR STATE.

I BELIEVE THIS LEGISLATION IS A REASONABLE MOVE TO CORRECT THIS SITUATION.

THIS BILL, ALONG WITH A BALANCED "EXPLORATION LICENSING" BILL, MAY WELL STIMULATE RENEWED EXPLORATION ACTIVITY IN OUR STATE, THEREBY CREATING NOT ONLY NEW JOBS FOR ALASKANS, BUT NEW REVENUE SOURCES TO THE STATE TREASURY.

I ASK FOR YOUR SUPPORT OF THIS BILL.

Prepared by: Senate Oil and Gas Committee Staff
February 22, 1994

SECTIONAL ANALYSIS FOR:
CS SB 239(O&G)

"An Act relating to evidence of financial responsibility provided by persons who conduct oil operations; and providing for an effective date."

****

Section 1.

Subsection (b)(1) The OFFSHORE exploration or production financial responsibility requirement of $50 million is UNAFFECTED by this amendment.

Subsection (b)(2) The amended language clarifies that financial responsibility should be greater for an onshore facility producing more than 10,000 barrels per day of oil, than for an onshore facility producing 2,500 barrels or less per day.

Subsection (b)(3) Limits the financial responsibility for an onshore exploration facility to $1,000,000.

Section 2.

Chapter 102, SLA 1992 gives the Department of Environmental Conservation the authority to waive its requirement that financial responsibility instruments provide for a direct action and appointment of an agent for service of process. The direct action provision is NOT AVAILABLE in marine pollution insurance, and has not been available since about 1989.

Section 6 of Ch. 102, SLA 1992 repealed this temporary law effective June 1, 1994. Rather than grant another two-year exemption, the Committee Substitute repeals the repealer and allows DEC to grant waivers until direct action again becomes available

Section 3.

Makes certain there is no gap between the effective date and the date of the repeal of the former temporary waiver.

Section 4.
Immediate effective date.

SECTIONAL ANALYSIS

CSSB-239 (OIL & GAS)

"An Act relating to evidence of financial responsibility provided by persons who conduct oil operations; and providing for an effective date."

Section 1. (b)(2)(A) Keeps the financial responsibility amount of $20 million if a facility produces over 10,000 barrels of oil per day.

(b)(2)(B) Financial responsibility is $10 million per incident if facility produces over 5,000 barrels of oil per day, but not more than 10,000 barrels per day.

(b)(2)(C) Financial responsibility is $5 million per incident if a facility produces over 2,500 barrels of oil per day, but not more than 5,000 barrels per day.

(b)(2)(D) Financial responsibility is $1 million per incedent if a facility produces 2,500 barrels of oil per day or less.

(b)(3) Reduces the financial responsibility requirement for an onshore exploration facility from $5 million per incident to $1 million per incident.

Section 2. Makes permanent temporary total waiver for non crude transport and storage companies to meet the statutory financial responsibility liability which ranges from $1 million up to $35 million as long as there is no third party insurance available.

Section 3. Makes certain there is no gap in the law for Section 2..

Section 4. Makes this Act effective immediately under AS 01.10.070(c).

(b) A person may not cause or permit the operation of a pipeline or an exploration or production facility in the state unless the person has furnished to the department, and the department has approved, proof of financial ability to respond in damages. Proof of financial responsibility required for a pipeline or an offshore exploration or production facility is $50,000,000 per incident. Proof of financial responsibility required for an onshore production facility is $20,000,000 per incident. Proof of financial responsibility required for an onshore exploration facility is $5,000,000 per incident.

(c) Except as provided in (m) of this section, a person may not operate a tank vessel or an oil barge within the waters of the state, or cause or permit the transfer of oil to or from a tank vessel or an oil barge, unless the person operating the tank vessel or oil barge has furnished to the department, and the department has approved, proof of financial ability to respond in damages. Proof of financial responsibility required under this subsection is

(1) $300, per incident, for each barrel of storage capacity or $100,000,000, whichever is greater, for a tank vessel or barge carrying crude oil;

(2) $100, per incident, for each barrel of storage capacity or $1,000,000, whichever is greater, subject to a maximum of $35,000,000, for a tank vessel or barge carrying noncrude oil.

(d) Except as provided in (k) of this section, it is not a defense to an action brought for violation of (a) — (c) of this section that the person charged believed in good faith that proof of financial ability to respond in damages had been furnished to, and approved by, the department.

(e) Financial responsibility may be demonstrated by (1) self-insurance, (2) insurance, (3) surety, (4) guarantee, (5) letter of credit approved by the department, or (6) other proof of financial responsibility approved by the department, including proof of financial responsibility provided by a group of insureds who have agreed to cover pollution risks of members of the group under terms the department may prescribe. An action brought under AS 46.03.758, 46.03.759, 46.03.760(a) or (e), 46.03.822, or AS 46.04.030(g) may be brought in a state court directly against the insurer, the group, or another person providing evidence of financial responsibility. The applicant, and an insurer, surety, guarantor, person furnishing an approved letter of credit, or other group or person providing proof of financial responsibility approved by the department shall appoint an agent for service of process in the state. For purposes of this subsection, an insurer, other than a group of insureds whose agreement has been approved by the department, must either be authorized by the Department of Commerce and Economic Development to sell insurance in the state or be an unauthorized insurer listed by the Department of Commerce and Economic Development as not disapproved for use in the state.

(f) Acceptance of proof of financial responsibility expires

SB 239 (O&G)
By: Senator Bert Sharp

State Comparrisons of Financial Responsibility for Onshore Exploration:

CALIFORNIA

$1 million dollars requirement only within 30 miles of coastline. No requirement beyond 30 miles of coastline.

COLORADO

$75 dollars permit fee per well. $5,000 dollars per well for P & A (Plugging & Abandonment).

WASHINGTON

The state does not currently require onshore financial responsibility.

TEXAS

There is no financial responsibility required in Texas.

LOUISIANA

Louisiana is currently withholding oil spill regulations.

FLORIDA

No state drilling is allowed on state onshore lands in Florida.

WYOMING

There are no requirements beyond P & A (Plugging and Abandonment).

MONTANA

Montana has P & A (Plugging & Abandonment) requirements only.

MEMORANDUM
DEPARTMENT OF NATURAL RESOURCES

State of Alaska
DIVISION OF OIL AND GAS

TO: Jerry Gallagher
Legislative Liaison

DATE: February 7, 1994

THRU: James E. Eason
Director

FILE NO: Legislation

TELEPHONE: 762-2580

FROM: Kristina M. O'Connor, CPL
DNR Coordinator for Oil Spill
Plans & Regulations

SUBJECT: Bonding Information

In response to your request for information regarding oil and gas bonding requirements, I have excerpted the following from the Final Best Interest Determination for Oil and Gas Lease Sale 78 (Cook Inlet). I have also attached copies of the lease provision and pertinent regulations. In summary, the primary purpose of the DO&G bond is not oil spill cleanup but rehabilitation of abandoned sites, and the bond amounts do not cover the entire cost of rehabilitation.

Paragraph 23 of the lease contract and 11 AAC 83.160 require the oil and gas lessee to post a performance bond with the Division of Oil and Gas (DO&G) before operations can commence on an oil and gas lease. The minimum bond required is $10,000. However, a bond of $100,000 or greater is typically required by DO&G, depending on the type of activity. A statewide bond of $500,000 is also acceptable. Under the lease terms, DO&G can also require a supplemental bond if it believes that the nature of the surface and its uses or the degree of risk justifies the increase. Alaska Oil and Gas Conservation Commission (AOGCC) also requires a lessee to post a separate bond of at least $100,000 prior to any drilling activity. ADEC, in its Oil Discharge Contingency Plan permitting process, requires proof of financial assurance of $50 million for a pipeline or offshore exploration or production facility, $20 million for an onshore production facility, and $5 million for an onshore exploration facility.

The bonds required by DO&G and AOGCC are not intended to provide full coverage for cleanup and rehabilitation expenses resulting from a catastrophic accident or very large-volume oil spill. That cost cannot be determined in advance of a specific event at a specific location. Regardless of the required bond amount, and the bond amounts required by other state agencies, the lessee is still fully liable for the cleanup and rehabilitation of all disturbed areas. The bond required by DO&G is used as a demonstration that the lessee is solvent and in good corporate standing. The bond monies could be used to provide for cleanup or rehabilitation of the lease area but probably would not be adequate for the most catastrophic situations which could be encountered. The lessee remains fully liable for its actions and those of its subcontractors.

Attachments
cc: Steve Schmitz, DO&G Permitting

CHAPTER 102

AN ACT RELATING TO EVIDENCE OF FINANCIAL RESPONSIBILITY PROVIDED BY PERSONS WHO CONDUCT OIL OPERATIONS: AND PROVIDING FOR AN EFFECTIVE DATE.

(CSSB 405(O&G))

Be it enacted by the Legislature of the State of Alaska:

Sec. 1. Permanent law. See Table of Disposition of Acts.

Sec. 2. TEMPORARY LAW APPLICABLE TO NONCRUDE OIL OPERATIONS. Notwithstanding AS 46.04.040, the Department of Environmental Conservation may, with respect to noncrude oil operations, approve proof of financial responsibility by a person, other than the applicant, who does not agree to be subject to a direct action in the state or to appoint an agent for service of process if the applicant

(1) provides proof of financial responsibility in the form and amounts otherwise required under AS 46.04.040;

(2) provides a sworn statement that

(A) is acceptable to the department;

(B) attests that the applicant has diligently attempted to obtain a form of proof of financial responsibility that would provide for a direct action and appointment of an agent for service of process;

(C) describes the steps the applicant has taken to obtain a form of proof of financial responsibility that would provide for a direct action and appointment of an agent for service of process;

(D) states that a form of proof of financial responsibility that would provide for a direct action and appointment of an agent for service of process is unavailable to the applicant;

(3) continues diligent efforts to obtain a form of proof of financial responsibility that would provide for a direct action and appointment of an agent for service of process and provides a sworn statement every six months that is acceptable to the department, containing the information required in (2) of this section.

Sec. 3. RATIFICATION OF PREVIOUS EXEMPTIONS GIVEN BY DEPARTMENT OF ENVIRONMENTAL CONSERVATION TO NONCRUDE OIL OPERATIONS. Notwithstanding AS 46.04.040, the Department of Environmental Conservation may, with respect to noncrude oil operations, approve proof of financial responsibility by a person, other than the applicant, who does not agree to be subject to a direct action in the state or to appoint an agent for service of process if the applicant, before June 1, 1992,

(1) provides proof of financial responsibility in the form and amounts otherwise required under AS 46.04.040;

(2) attests in a statement to the department that the applicant has diligently attempted to obtain a form of proof of financial responsibility that would provide for a direct action and appointment of an agent for service of process and that this form of proof is unavailable to the applicant; and

(3) agrees to continue diligent efforts to obtain a form of proof of financial responsibility that would provide for a direct action and appointment of an agent for service of process.

Sec. 4. Section 3 of this Act is retroactive to June 1, 1991.

Sec. 5. If this Act takes effect after June 1, 1992, sec. 2 of this Act is retroactive to June 1, 1992.

Sec. 6. Section 2 of this Act is repealed June 1, 1994.

Sec. 7. This Act takes effect immediately under AS 01.10.070(c).

Approved: June 20, 1992
Effective June 21, 1992;
section 2 is retroactive to
June 1, 1992, section 3 is
retroactive to June 1, 1991

CHAPTER 111

AN ACT MAKING APPROPRIATIONS TO THE DEPARTMENT OF LAW FOR PAYMENT TO MUNICIPALITIES FOR LOSSES OF FISHERIES TAX REVENUE SUFFERED AS A RESULT OF THE EXXON VALDEZ OIL SPILL; AND PROVIDING FOR AN EFFECTIVE DATE.

(HCS CSSB 240(FIN) am H)

Be it enacted by the Legislature of the State of Alaska:

Section 1. PURPOSE. To provide relief to municipalities whose tax receipts were affected by reduction of payments of the fisheries business tax, it is the purpose of this Act to provide additional refunds payable to municipalities so that the municipalities are compensated for the decrease in the proceeds of the fisheries business tax during fiscal year 1990 caused by the Exxon Valdez oil discharge disaster.

FAX TO 463-5522

Letter of intent to SB 405:

The Department of Environmental Conservation and the Legislative Research Agency, shall research the possibility of group pooling for the purposes of meeting the state's financial responsibility requirements for oil spill pollution coverage for non-crude operators, and shall report back to the Legislature with their findings and recommendations by February 1, 1993.

IGNORE HANDWRITTEN NOTES.
AK

MARY KL LC
prem + left msg.
3/19/93

SIGNED INTO LAW
6/20/92
EFFECTIVE
6/21/92

CS FOR SENATE BILL NO. 405 (O&G)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE SPECIAL COMMITTEE ON OIL AND GAS

Offered: 4/15/92
Referred: Judiciary

Sponsor(s): SENATOR HOFFMAN

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to evidence of financial responsibility provided by persons who conduct
2 oil operations; and providing for an effective date."

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

4 * Section 1. AS 46.04.040(e) is amended to read:

5 (e) Financial responsibility may be demonstrated by (1) self-insurance, (2) insurance, (3)
6 surety, (4) guarantee, (5) letter of credit approved by the department, or (6) other proof of
7 financial responsibility approved by the department, including proof of financial responsibility
8 provided by a group of insureds who have agreed to cover pollution risks of members of the
9 group under terms the department may prescribe. An action brought under AS 46.03.758
10 46.03.759, 46.03.760(a) or (e), 46.03.822, or as 46.04.030(g) may be brought in a state cour
11 directly against the insurer, the group, or another person providing evidence of financia
12 responsibility; however, the liability under this section of a third-party insurer is limited t
13 the type of risk assumed and the amount of coverage specified in the proof of financia
14 responsibility furnished to and approved by the department. The applicant, and an insure

1 surety, guarantor, person furnishing an approved letter of credit, or other group or person
2 providing proof of financial responsibility approved by the department shall appoint an agent for
3 service of process in the state. For purposes of this subsection, an insurer, other than a group
4 of insureds whose agreement has been approved by the department, must either be authorized by
5 the Department of Commerce and Economic Development to sell insurance in the state or be an
6 unauthorized insurer listed by the Department of Commerce and Economic Development as not
7 disapproved for use in the state. **In this subsection, "third-party insurer" means a third-party**
8 **insurer, surety, guarantor, person furnishing a letter of credit, or other group or person**
9 **providing proof of financial responsibility on behalf of an applicant under this section;**
10 **"third-party insurer" does not include the applicant.**
11 * Sec. 2. TEMPORARY LAW APPLICABLE TO NONCRUDE OIL OPERATIONS.
12 Notwithstanding AS 46.04.040, the Department of Environmental Conservation may, with respect to
13 noncrude oil operations, approve proof of financial responsibility by a person, other than the applicant,
14 who does not agree to be subject to a direct action in the state or to appoint an agent for service of
15 process if the applicant
16 (1) provides proof of financial responsibility in the form and amounts otherwise required
17 under AS 46.04.040;
18 (2) provides a sworn statement that
19 (A) is acceptable to the department;
20 (B) attests that the applicant has diligently attempted to obtain a form of proof
21 of financial responsibility that would provide for a direct action and appointment of an agent for
22 service of process;
23 (C) describes the steps the applicant has taken to obtain a form of proof of
24 financial responsibility that would provide for a direct action and appointment of an agent for
25 service of process;
26 (D) states that a form of proof of financial responsibility that would provide for
27 a direct action and appointment of an agent for service of process is unavailable to the applicant;
28 (3) continues diligent efforts to obtain a form of proof of financial responsibility that
29 would provide for a direct action and appointment of an agent for service of process and provides a
30 sworn statement every six months that is acceptable to the department, containing the information
31 required in (2) of this section.

1 * Sec. 3. RATIFICATION OF PREVIOUS EXEMPTIONS GIVEN BY DEPARTMENT OF
2 ENVIRONMENTAL CONSERVATION TO NONCRUDE OIL OPERATIONS. Notwithstanding
3 AS 46.04.040, the Department of Environmental Conservation may, with respect to noncrude oil
4 operations, approve proof of financial responsibility by a person, other than the applicant, who does not
5 agree to be subject to a direct action in the state or to appoint an agent for service of process if the
6 applicant, before June 1, 1992,
7 (1) provides proof of financial responsibility in the form and amounts otherwise required
8 under AS 46.04.040;
9 (2) attests in a statement to the department that the applicant has diligently attempted to
10 obtain a form of proof of financial responsibility that would provide for a direct action and appointment
11 of an agent for service of process and that this form of proof is unavailable to the applicant; and
12 (3) agrees to continue diligent efforts to obtain a form of proof of financial responsibility
13 that would provide for a direct action and appointment of an agent for service of process.
14 * Sec. 4. Section 3 of this Act is retroactive to June 1, 1991.
15 * Sec. 5. If this Act takes effect after June 1, 1992, sec. 2 of this Act is retroactive to June 1, 1992.
16 * Sec. 6. Section 2 of this Act is repealed June 1, 1994.
17 * Sec. 7. This Act takes effect immediately under AS 01.10.070(c).

HB

254

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM March 31, 1993

SUBJECT: Open Meetings of Governmental Bodies (2d SS HB 37)

TO: Representative John Davies

FROM: Tamara Brandt Cook
Director TBC

Here is the comparison between 2d SSHB 37 and HB 254 that you requested:

AS 44.62. 310(a)

(1) 2d SSHB 37. The list of public entities subject to the Open Meeting statute in existing law is deleted. The statute applies to governing bodies of entities of the state or of a political subdivision of the state. Both "governing body" and "entity of the state or of a political subdivision of the state" are defined in sec. 5 of this bill. Existing law requires meetings to be open "except as otherwise provided by this section." This bill adds "or another provision of law" because specific statutes elsewhere may require closed meetings in certain cases.

(2) HB 254. The requirement in existing law that agency materials to be considered at a teleconferenced meeting be available at the teleconference locations is deleted. The requirement for roll call votes at a teleconferenced meeting is deleted.

AS 44.62.310(b)

(1) 2d SSHB 37. A technical change is made to this subsection to add the reference to governing body, since that is the term defined and used throughout this bill.

(2) HB 254. No change to this subsection is made.

AS 44.62.310(c)

(1) 2d SSHB 37. No change to this subsection is made.

(2) HB 254. A new subject is added to those permitted to be discussed in executive session: matters covered by the attorney-client privilege.

AS 44.62.310(d)

(1) 2d SSHB 37. No change to this subsection is made.

(2) HB 254. Meetings of a hospital medical staff is deleted from the list of meetings exempted from application of the Open Meetings statute.

AS 44.62.310(e)

(1) 2d SSHB 37. Notice of a meeting must include subjects to be considered. A requirement is added that notice be given at least 72 hours before a meeting, except when other laws or the Uniform Rules establish different requirements in this regard. A shorter notice is permitted if the governing body finds that an emergency exists that justifies the shorter notice period and if the nature of the emergency is described.

(2) HB 254. No change to this subsection is made.

AS 44.62.310(f)

(1) 2d SSHB 37. The existing provision is entirely replaced with new material. If the number of members participating in a discussion of a matter within the jurisdiction of the governing body equals at least a majority of the quorum, the discussion is a meeting subject to the Open Meeting statute. However, if only two members discuss a matter and they are less than a quorum, the discussion is not subject to the Open Meeting statute. Members of a body may not have a series of discussions, if taken together, they circumvent the Open Meeting statute. Unless members attend to circumvent the Open Meeting statute, a gathering at a social function or meeting of an association to which the members belong does not constitute a meeting.

(2) HB 254. Existing law provides that action taken in violation of the Open Meeting statute is void. Under this bill that action is voidable by a court. Parties are to bear their own costs and attorney fees. To the extent that Civil Rule 82 permits the prevailing party to receive partial attorneys fees and costs, this provision will have the effect of amending that court rule if it is approved by two-thirds vote of each house. (See sec. 6 of this bill.)

AS 44.62.310(g)

(1) 2d SSHB 37. This is entirely new material. An action to enforce the Open Meeting statute may be brought within two years after a meeting held in violation of the statute. Individual members of the governing body may not be named in the action. The court is required to hold that an action taken in violation of the statute is void unless the court finds that it is not in the public interest that the action be voided. If the court does find an action void, the governing body is authorized to meet on the matter at another meeting held in compliance with the statute.

(2) HB 254. The question of the status of an action held in violation of the Open Meeting statute is dealt with under subsection (f) in this bill. Subsection (g) is a definition of "meeting" as a gathering of at least a quorum of the members of a body with authority to make joint decisions for the purpose of exercising the powers or duties of the body.

AS 44.62.310(h).

(1) 2d SSHB 37. This is the definition section for this bill.

TBC:lmb:gc
93-098.lmb

HOUSE COMMITTEE REPORT

(7)
Date Referred: March 26, 1993 FURTHER REFERRALS:

Date of Committee Action: 4-3-93

The JUDICIARY Committee considered: HB 254

HOUSE BILL NO. 254 OPEN MEETING ACT

"An Act relating to open meetings of governmental bodies; and amending Rule 82 of the Alaska Rules of Civil Procedure."

RECOMMENDATIONS: [X] the same title
be replaced with CS HB 254 (JUD) [ ] a new title
[ ] have attached amendments(s)
[X] do pass
[ ] do not pass
[ ] no recommendations
[ ] individual recommendations
[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept) APPROVES PREVIOUS: (Dept/Date)

[ ] fiscal impact _____ [ ] fiscal note(s) _____

[X] zero fiscal note LEG. AFFAIRS AGENCY 4-2-93 [ ] zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
Brian Porter	✓	Pete Kott		✓	
Gail Phillips	✓	Cliff Davidson	✓		
Jeannette James	✓	John Davies	✓		
		Joe Hayes		✓	

Brian Porter
CHAIRMAN'S SIGNATURE

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO: HB 254

Revision Date:
Title: "An Act relating to open meetings of governmental bodies; and amending Rule 82 of the...
Sponsor: Representative Al Vezey
Requestor: Representative Al Vezey

Department Affected: Legislative Affairs Agency
BRU: All
Component: All

COMPONENT SERIAL NO:

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE FUND SOURCE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact:

ANALYSIS: (Attach a separate page if necessary)

Zero fiscal impact.

Prepared By: Pamela A. Stoops, Director — Pamela A. Stoops — Phone: 465-3850
Division: Administrative Services — Date: 4/2/93

Approved By: Warren W. Endicott, Executive Director — Warren W. Endicott
Agency: Legislative Affairs Agency — Date: 4/2/93

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

Alaska State Legislature

While in Session:
State Capitol Building
Juneau, Alaska 99801-1182
907-465-3719

Interim:
119 N. Cushman
Suite 211
Fairbanks, Alaska 99701
907-456-5081

Representative Al Vezey

March 27, 1993

From: Al Vezey, Representative AV

To: Brian Porter, Representative
Chairman, Judiciary Committee

Subject: Hearing request HB 254 (Open Meeting Act)

I respectfully request a hearing on HB 254, "An Act relating to open meetings of governmental bodies: and amending Rule 82 of the Alaska Rules of Civil Procedure" before the Judiciary Committee at the earliest convenience of that committee and it's chairman.

Thank you for your favorable consideration of this request.

Alaska State Legislature

While in Session:
State Capitol Building
Juneau, Alaska 99801-1182
907-465-3719

Interim:
119 N. Cushman
Suite 211
Fairbanks, Alaska 99701
907-456-5081

March 29, 1993

Representative Al Vezey

SPONSOR STATEMENT

HB 254 OMA

HB 254 attempts to address problems with the Open Meetings Act caused by recent court decisions. For centuries a quorum of a body has been the parliamentary standard for what constitutes a meeting of a governing body. This bill establishes a quorum of a governing body as the statutory minimum for the definition of a meeting.

As the statutes exist currently, a person could literally call into a meeting where teleconferencing was allowed and then have the subsequent action of the body voided because materials were not present at the teleconference location. HB 254 reduces this overly burdensome requirement on teleconferencing by eliminating the requirements of having documents under discussion provided at all participating teleconferencing sites. This proposed change would actually reduce grounds for litigation and would encourage public agencies to teleconference their meetings.

The bill further proposed to eliminate a redundant requirement for voting when teleconferencing a meeting. This deletion reduces grounds for filing frivolous lawsuits and removes redundant requirements on how votes are taken.

In addition, this bill changes the requirement that the action of a body be voided if a violation of the open meetings act is found to have occurred. The term "shall be voided" is changed to "is voidable". In addition, in order to discourage frivolous lawsuits, this bill goes on to amend the Rules of Court by mandating that in lawsuits regarding the OMA, that both parties shall bear their own costs and fees.

Three words are deleted from (d) 5 which pertains to personnel matters and are deletion from the exemption lists of the OMA.

Section 44.62.310 (d) 5 is deleted, removing exemptions for meetings of a governing body or any committee of a hospital solely to act upon matters of professional qualification, privileges or discipline.

I urge your support of this proposed and much needed legislation.

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
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Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM April 1, 1993

SUBJECT: Open Meetings of Governmental Bodies (HB 254)

TO: Representative Vezey
Chair, House State Affairs Committee

FROM: Tamara Brandt Cook
Director TBC

Here is the sectional summary you requested.

Sec. 1. Two requirements in existing law are deleted: (1) that materials to be considered at a meeting be made available at teleconference locations; and (2) that a vote at a teleconferenced meeting be by roll call.

Sec. 2. Adds to the list of subjects that may be discussed in executive session matters covered by the attorney-client privilege.

Sec. 3. The category of meetings of a hospital medical staff is deleted from the list of gatherings the Open Meeting statute does not apply to.

Sec. 4. Under the existing statute action taken contrary to the Open Meeting requirements is void. In this bill the action is voidable by a court. In a court proceeding to enforce this section all parties bear their own costs and attorney fees.

Sec. 5. A definition of "meeting" is added for purposes of the Open Meeting statute. A gathering of two or more members of a body, but at least a quorum, constitutes a meeting.

Sec. 6. Because Civil Rule 82 provides for partial attorney fees and court costs to the prevailing party in most litigation, sec. 4 of this bill will amend that court rule if it is approved by art. IV, sec. 15.

TBC:pl
93-267.plm

ALASKA MUNICIPAL LEAGUE

217 Second Street, Suite 200 ▪ Juneau, Alaska 99801 ▪ Tel (907)586-1325, Fax (907)463-5480

March 11, 1993

TO: Representative Al Vezey, Chair
House State Affairs Committee

FROM: Kent Swisher, Executive Director

RE: Proposed bill to amend Open Meetings Act

Thank you for taking an interest in the Alaska Municipal League's desire to clarify provisions of the Open Meetings Act (OMA). As you and I have discussed, this is one of the League's legislative priorities for the 1993 session, and I appreciate your involvement. I am sorry I could not get back to you sooner, but I have just returned from a meeting of the National League of Cities in Washington, D.C.

Your proposed amendments to AS 44.62.310 address some, but not all, of AML's concerns with the current Open Meetings Act. As I read it, your proposal would address the following issues of concern to AML:

- Specifying that discussion among less than a quorum is not a meeting
- Providing that the court may decide whether an action taken in violation of the Open Meetings Act should be declared void or whether another remedy would be more appropriate
- Authorizing a governing body to instruct its attorney in executive session

While these are major positive steps, we are concerned that the proposal does not appear to address the following issues, which are also important to local government:

- Imposing reasonable time limits for claiming an OMA violation
- Providing that Open Meeting Act suits may be brought against the public body, but not the individual official
- Providing that officials may meet with other government officials or agencies as a group
- Authorizing meetings without prior public notice in cases of property- or life-threatening emergencies
- Providing that any number of officials from a public body may attend meetings and conferences without violating the OMA
- Clarifying that the OMA does not apply to administrative staff

I hope that this information is of help to you. I look forward to working and other members of the State Affairs Committee on this issue and to crafting a solution to the problems facing Alaska's public officials as they attempt to follow the provisions of the Open Meetings Act.

Thank you again for your positive interest in this matter.

LEG93:vezeyoma.311

Introduced by: Council Member Cleworth
Date: May 20, 1991

RESOLUTION NO. 3261, As Amended

A RESOLUTION URGING THE ALASKA STATE LEGISLATURE TO ENACT AN EXEMPTION BY POPULAR ELECTION PROVISION TO THE STATE PUBLIC EMPLOYMENT RELATIONS ACT.

WHEREAS, by resolution the City of Fairbanks exercised its exemption following the adoption of PERA, but in 1984 waived the exemption by ordinance, thus becoming the first major municipality in Alaska to fall under PERA's jurisdiction; and

WHEREAS, among its many provisions PERA provides for mandatory binding arbitration concerning wages, hours and terms and conditions of employment for Class I public employees; and

WHEREAS, binding arbitration divests a local governing body of its publicly entrusted spending power and delegates the same to an individual not elected by the people and with no fiduciary duty of loyalty and responsibility to local citizens; and

WHEREAS, this divestiture effectively removes the voice of the people over how their tax dollars are to be spent in the public domain; and

WHEREAS, the cost of local government must be controlled by those who pay for it; and

WHEREAS, an exemption by popular election amendment to PERA can restore to local citizens their constitutional entitlement of maximum local self government and the assurance that all local government powers will remain vested in those charged with the public trust.

3261

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAIRBANKS, ALASKA, that the Alaska State Legislature be and hereby is urged to enact a bill providing for clarification of the municipal exemption and address a popular election provision to the state Public Employment Relations Act (PERA). A municipal exemption by popular election provision should include, but not be necessarily limited to, express statutory language to provide for a popular election to determine whether municipalities under the jurisdiction of PERA shall remain subject to its provisions. Copies of this resolution shall be forwarded by the city clerk to all legislators and the governor.

PASSED AND APPROVED this 20th day of May, 1991.

WAYNE S. NELSON, Mayor

ATTEST:

TONI W. NIGRO, City Clerk

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM April 1, 1993

SUBJECT: Notice of a Committee Hearing on a Bill (Uniform Rule 23)

TO: Representative John Davies

FROM: Tamara Brandt Cook
Director TBC

Mr. Kurt Parkan explained that notice of a hearing on HB 254 was given in the following manner: on Monday during the floor session the committee chair gave notice of a meeting on the bill to be held this Saturday. That announcement appears in the House Journal, but no notice of the meeting was published during the week before the meeting. The meeting scheduled for Saturday will be the first hearing on this bill. Mr. Parkan asked whether this procedure complies with the notice requirements of the Uniform Rules. In my opinion, it does not.

Uniform Rule 23 applies to hearings on bills by standing, special and joint committees during the session. Subsection (a) of that rule contains two entirely distinct requirements: (1) the "preceding Thursday" requirement ("Written notice of the time, place and subject matter of all meetings of standing, special, and joint committees during a week shall be provided by the person who chairs the committee to the chief clerk or secretary by 4:00 p.m. on the preceding Thursday."); (2) the "five-day" notice requirement ("The person who chairs the committee to which a bill or resolution is first referred shall provide to the chief clerk or secretary written notice of the time and place of the first public hearing on the bill or resolution at least five days before the hearing.")

Under the facts described, and assuming that written notice was delivered to the clerk along with the announcement of the meeting on Monday, the "five-day" notice requirement has been satisfied with respect to the meeting on this bill to be held on Saturday. However, the "preceding Thursday" publication requirement has not been satisfied because HB 254 was not included as a subject to be taken up during a meeting the following week.

Uniform Rule 23(b) permits a "change in the time, place, or subject matter of a meeting" by setting out requirements for notice of the change. Legislative committees

have been far from consistent in applying Rule 23(b), so there is no clear precedent on the types of scheduling "changes" permitted under that subsection. However, adding, as a change in the subject of a meeting, a hearing on a bill that has never been scheduled at all under subsection (a) strikes me as circumventing the requirements of that subsection. For this reason, I do not believe that the notice described for HB 254 can properly be considered a change authorized under Rule 23(b).

The "preceding Thursday" publication rule has been treated in the past by the House as a minimum notice requirement and the House has chosen to set a more stringent "preceding Wednesday" rule for committee meeting its committees. I understand that Wednesday has been established as the deadline for notices this year also. This fact ought not to otherwise alter application of Rule 23(a).

You have also asked about waiving the requirements of Rule 23(a). Note that the "five-day" notice requirement for committees of first referral may be waived if the motion is concurred in by majority vote of the full membership of the house. The Senate has for many years permitted waiver of the "preceding Thursday" publication requirement as well, but the House has concluded that the waiver provision applies only to the "five-day" notice and not to the "preceding Thursday" notice. I agree with the past practice of the House in this regard, but, because the two bodies have interpreted the rule differently, the question of waiving the "preceding Thursday" notice could appropriately be decided by the presiding officer. It is clear, however, that waiver must be accomplished pursuant to motion concurred in by the House.

TBC:lmb:gc
93-100.lmb

Alaska State Legislature

House of Representatives

House Judiciary Committee

State Capitol, Room 120
Juneau, Alaska 99801-1182
(907) 465-4990

To: Tim Benintendi
House Rules Committee

From: Gayle Horetski
House Judiciary Committee

Re: HB 212 and HB 254

Date: March 29, 1993

This is to confirm our phone conversation this morning, in which I informed you that Committee Chairman Brian Porter directed me on Saturday, March 27, to add two bills--HB 212 and HB 254--to the House Judiciary Committee's schedule for this week. I revised the committee schedule, delivered a copy to the Clerk's office, posted the revised schedule, and made copies available for the public to take from a folder at the committee room entrance, all on March 27th. In addition, Representative Porter will be announcing the revision to the schedule during the session on the House floor this morning.

Please let me know if you need any additional information.

HOMER NEWS

3482 LANDINGS STREET HOMER, ALASKA 99603-7948 (907)235-77

Fri., April 2, 1993

Rep. Gail Phillips
Capitol, Room 216
State Capitol
Juneau AK 99801-1182

FAX: 465-3472

Dear Gail:

Gail, here's the summary I promised to fax after our conversation this afternoon.
I'm a member of the board of directors of the Alaska Newspaper Association and I'm sending this message as the request of Tena Williams, of the Ketchikan Daily News, who is the board president. She is out of town.
Tomorrow, April 3, the House Judiciary Committee is discussing proposed amendments to the open-meetings act in House Bill 254. Another bill, House Bill 37, also proposes amendments to the act and these comments address that bill too.

Here's some of ANA's positions on proposed amendments:

1. ANA recognizes that a prohibition against two elected officials of the same body having any conversation outside of a legally announced, public meeting or executive session can make an innocuous conversation illegal.
If an amendment can be written to allow such a coming together but to still prohibit a subversion of the public process, ANA doesn't object. That prohibition should strictly prohibit any serial meetings.
Language also should be clear that a meeting of more than two members of the same body outside a public meeting or executive sessions is strictly illegal -- that is, ANA objects to making legal the meeting of less than a quorum but more than two.

2. Some of the language in the proposed amendments concerns ANA as well. Among them is the prospect of doing away with roll call votes during teleconferences. It's tough to have any understanding of who voted how when you're listening over the air. Keep the mandatory

roll call votes.
Also, during teleconferences, having the same materials available to constituents in Homer or Kenai or wherever is very important to the ability of Alaska citizens to understand the proceedings. Make sure those materials remain available.

These are among ANA concerns. I'd be happy to discuss any questions you have. I'm at 235-7767 when at work and 235-2478 at home. Please call me if you have any comments or questions.
Tena Williams is available at 225-3157 and I believe she'll be back in town next week.
Thank you for your consideration.

Sincerely,

Mark Turner
Editor

8-LS0859\J.9
Cook
4/2/93

AMENDMENT

OFFERED IN THE HOUSE BY REPRESENTATIVE NORDLUND

TO: HB 254

Page 1, lines 1 and 2:

Delete "; and amending Rule 82 of the Alaska Rules of Civil Procedure"

Page 2, lines 27 - 30:

Delete all material and insert:

"* **Sec. 4.** AS 44.62.310(f) is repealed and reenacted to read:

(f) An action to enforce this section may be brought in the superior court against a public entity within two years after the first day of a meeting held in violation of this section. Individual members of a governing body may not be named in an action to enforce this section in court, although a knowing violation may constitute grounds for recall or for filing an ethics complaint under other law. The court shall hold that an action taken by the governing body on a matter discussed at a meeting held in violation of this section is void unless the court finds that it is not in the public interest that the action be voided. If the court finds that an action is void, the governing body may discuss and act on the matter at another meeting held in compliance with this section."

Page 3, lines 5 - 8:

Delete all material.

3

8-LS0859\J.7
Cook
4/2/93

AMENDMENT

OFFERED IN THE HOUSE BY REPRESENTATIVE NORDLUND

TO: HB 254

Page 2, after line 26:

Insert a new bill section to read:

"* Sec. 4. AS 44.62.310(e) is amended to read:

(e) Reasonable public notice shall be given for all meetings required to be open under this section. The notice must include the date, time, subjects to be considered, and place of the meeting and, if the meeting is by teleconference, the location of any teleconferencing facilities that will be used. In addition to the publication required by AS 44.62.175(a) in the Alaska Administrative Journal, the notice may be given by using a combination of print and broadcast media. Except as provided in other laws or in the Uniform Rules of the Alaska State Legislature, notice shall be given at least 72 hours before the meeting, except that a shorter notice period may be provided if, upon convening, the governing body adopts a finding that an emergency exists that justifies the shorter notice period. The finding must describe the nature of the emergency."

Renumber the following bill sections accordingly.

[illegible] state reasonable notice.

4

8-LS0859\J.6
Cook
4/2/93

AMENDMENT

OFFERED IN THE HOUSE BY REPRESENTATIVE NORDLUND

TO: HB 254

Page 2, lines 5 - 6:

Delete "[THE VOTE AT A MEETING HELD BY TELECONFERENCE SHALL BE TAKEN BY ROLL CALL.]"

Insert "The vote at a meeting held by teleconference shall be taken by roll call."

or by unanimous consent.

8-LS0859\J.5 ✓
Cook
4/2/93

AMENDMENT

OFFERED IN THE HOUSE BY REPRESENTATIVE NORDLUND

TO: HB 254

Page 2, lines 1 - 3:

Delete "[AGENCY MATERIALS THAT ARE TO BE CONSIDERED AT THE MEETING SHALL BE MADE AVAILABLE AT TELECONFERENCE LOCATIONS.]"

Insert "**Materials** [AGENCY MATERIALS] that are to be considered at the meeting ~~shall~~ may be made available at teleconference locations."

8-LS0859\J.8
Cook
4/2/93

#6

AMENDMENT

OFFERED IN THE HOUSE BY REPRESENTATIVE NORDLUND

TO: HB 254

Page 2, line 31:

Delete "a new subsection"

Insert "new subsections"

Page 3, before line 1:

Insert a new subsection to read:

#7 "(g) If members of a governing body discuss, at a gathering or by other means, a matter within the jurisdiction of the governing body, and if the number of members participating in the discussion equals at least a majority of the quorum of the governing body, the discussion constitutes a meeting subject to this section. Notwithstanding the foregoing, if two members discuss, at a gathering or by other means, a matter within the jurisdiction of the governing body, and if two members are less than a quorum of the governing body, the discussion does not constitute a meeting subject to this section. [However, the members may not engage in a series of discussions under this subsection if, taken together, the discussions circumvent the requirements of this section.] #6 Attendance of members of a governing body at a social function or gathering of a national, regional, or state association to which the members belong or to which the public entity belongs does not constitute a meeting under this section unless members attend for the purpose of circumventing this section."

#8

Reletter the following subsection accordingly.

6

AMENDMENT

OFFERED IN THE HOUSE BY REPRESENTATIVE NORDLUND

TO: HB 254

Page 3, lines 3 - 4:

Delete "quorum of the membership"

Insert new paragraphs to read:

"(1) quorum for a governing body composed of no more than five members; or

(2) majority of a quorum for a governing body composed of more than five members"

HB

277

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSHB277 (STA)

Revision Date:
Title: Public employers defending and indemnifying public employees....within the scope of employment
Sponsor: Porter
Requestor: (H) Jud

Department Affected: Administration
BRU: Personnel/OEEO
Component: Personnel/OEEO
COMPONENT SERIAL NO. 56

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND &						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL EXPENDITURES	0	0	0	0	0	0
CHANGE IN REVENUES	0	0	0	0	0	0

FUNDING SOURCE: (Thousands of Dollars)

1002 Federal						
1003 GF Match						
1004 GF						
1005 GF/Program						
1006 GF/MHTIA						
OTHER						
TOTAL	0	0	0	0	0	0

Estimate of any current year (FY 94) cost: $ 0

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Kevin O. Fitchie, Director
Division: Personnel/OEEO
Phone: 465-4429
Date:

Approved by Commissioner: Nancy Bear Usera
Agency: Department of Administration
Date: 1/28/94

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DEPARTMENT OF ADMINISTRATION FISCAL NOTE

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BIL. NO. CSHB 277 (STA)

Revision Date:
Title: "Public employees defending and indemnifying public employees . . . within scope of employment. . . ."
Sponsor: Porter
Requestor: (H) Jud

Department Affected: Administration
BRU: Risk Management
Component: Risk Management
COMPONENT SERIAL NO. 71

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL EXPENDITURES	0	0	0	0	0	0
CHANGE IN REVENUES ( )	0	0	0	0	0	0

FUNDING SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
OTHER						
TOTAL	0	0	0	0	0	0

Estimate of any current year (FY 94) cost: $ 0

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)
The Division of Risk Management, as a matter of policy, already practices the defense and indemnity provisions now being committed to statute.

Prepared by: Brad Thompson, Director
Division: Risk Management
Phone: 465-2180
Date:

Approved by Commissioner: Nancy Bear Usera
Agency: Department of Administration
Date: 1/28/94

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HB 277

Revision Date:
Title: "Public employees defending and indemnifying public employees . . . within scope of employment..."
Sponsor: Porter
Requestor: (H) STA

Dept. Affected: Administration
BRU: Risk Management
Component: Risk Management
COMPONENT SERIAL NO. 71

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ( )	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTIA	0.0	0.0	0.0	0.0	0.0	0.0
Other	0.0	0.0	0.0	0.0	0.0	0.0
Total	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of current year (FY94) cost: zero

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

The Division of Risk Management, as a matter of policy, already practices the defense and indemnity provisions now being committed to statute.

Prepared by: Brad Thompson, Director
Phone: 465-2180
Division: Risk Management
Date:

Approved by Commissioner: Nancy Bear Usera
Date: 1/13/94
Agency: Administration

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HB 277

Revision Date:
Title: "Public employees defending and indemnifying public employees . . . within scope of employment..."
Sponsor: Porter
Requestor: (H) STA

Dept. Affected: Administration
BRU: Personnel/OEEO
Component: Personnel/OEEO
COMPONENT SERIAL NO. 56

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ( )	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTIA	0.0	0.0	0.0	0.0	0.0	0.0
Other	0.0	0.0	0.0	0.0	0.0	0.0
Total	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of current year (FY94) cost: zero

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Kevin C. Ritchie, Director
Phone. 465-4430
Division: Personnel/OEEO
Date:

Approved by Commissioner: Nancy Bear Usera
Date: 1/13/94
Agency: Administration

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Cramer
2/8/94

CS FOR HOUSE BILL NO. 277(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVE PORTER

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to public employers defending and indemnifying public employees
2 and former public employees with respect to claims arising out of conduct that
3 is within the scope of employment."

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

5 * Section 1. AS 39 is amended by adding a new chapter to read:
6 CHAPTER 55. DEFENSE AND INDEMNIFICATION OF
7 PUBLIC EMPLOYEES.
8 Sec. 39.55.010. PUBLIC EMPLOYER'S DUTY TO PROVIDE DEFENSE.
9 (a) Except as otherwise provided in this chapter, a public employer shall provide legal
10 defense of civil claims against, and pay settlements and judgments including attorney
11 fees and costs entered against, a public employee when the claims, settlements, or
12 judgments are based on acts or omissions that occurred during the course and within
13 the scope of the employee's employment with the public employer.
14 (b) A public employer does not have an obligation to defend or indemnify if

the

(1) acts or omissions at issue were a result of gross negligence or intentional or wilful misconduct on the part of the employee; however, a public employer may not, based solely on an allegation of gross negligence or intentional or wilful misconduct made by a party other than the public employer, withhold legal defense in a civil action;

(2) claim or action involves a disciplinary, administrative, or criminal matter brought against the employee or is an appeal from a disciplinary, administrative, or criminal action;

(3) civil claim or action is based on conduct for which the employee has been convicted of a criminal offense or terminated from employment by the public employer; or

(4) public employee settled or compromised the claim or action before requesting the public employer to provide legal defense or indemnification or while a request for defense was pending.

(c) This chapter does not apply if a collective bargaining agreement that covers the employee includes a provision for defense and indemnification, in which case the terms of the collective bargaining agreement apply.

(d) A public employer does not have an obligation to pay an award for punitive damages against an employee.

(e) A public employer may adopt an internal policy or enter into an agreement with an employee that requires the employer to defend or indemnify the employee or pay punitive damages in circumstances in which the employer would not otherwise have an obligation to do so.

(f) Defense or indemnification provided to a public employee under this chapter does not constitute a waiver, limitation, or expansion of sovereign immunity or of other immunity.

(g) A public employer that is obligated to provide legal defense under this chapter shall, through its designated legal counsel, provide legal services to the employee. The public employer has the right to determine which attorney shall represent the employee.

1 (h) This chapter applies to a former employee to the same extent as a current
2 employee.
3 Sec. 39.55.020. EMPLOYEE'S DUTIES WHEN REQUESTING DEFENSE
4 AND INDEMNIFICATION. (a) A public employer's obligation to defend and
5 indemnify an employee under this chapter arises only if
6 (1) the employee notifies the public employer in writing, in the manner
7 required by the employer, within 10 days after receipt of a claim, demand, or suit,
8 unless there is good cause for the employee's failure to provide timely or proper notice
9 and the employer has not been materially prejudiced; and
10 (2) the employee makes a good faith effort to cooperate in the defense
11 and resolution of the claim or action.
12 (b) An employee for whom a public employer has provided legal defense
13 under this chapter or who has a request for the provision of legal defense pending may
14 not settle the claim brought against the employee unless the public employer approves
15 the settlement.
16 (c) An employer who has provided legal defense and indemnification may
17 settle a claim or action without the consent of the employee so long as the settlement
18 resolves all the outstanding claims against the employee.
19 Sec. 39.55.030. EMPLOYEE'S RIGHTS WHEN EMPLOYER REFUSES TO
20 PROVIDE LEGAL DEFENSE. (a) If a public employer refuses to provide legal
21 defense for an employee, the employer shall provide the employee with written notice
22 of this decision. The notice must include a copy of this chapter.
23 (b) An employee whose employer refuses to provide legal defense under this
24 chapter may file an action for declaratory relief in superior court if the employee wants
25 the employer to provide legal defense. The employee must file the action for
26 declaratory relief within 30 days after the employee received a written notice of refusal
27 to defend from the employer.
28 (c) If an employee who has been denied legal defense settles the claim or
29 action without filing a declaratory relief action under (b) of this section, the employee
30 waives any right to defense or indemnification. If the employee files a declaratory
31 relief action under (b) of this section, the employee may settle the claim for a

reasonable amount without the employer's consent.

(d) If an employee prevails in a declaratory relief action against the employer, the employee may bring an action for indemnification no later than one year after the final judgment in the declaratory relief action or final judgment or dismissal of the underlying action, whichever is later.

Sec. 39.55.040. DEFENSE WITH RESERVATION OF RIGHTS; DENIAL OF INDEMNIFICATION; EMPLOYEE LIABILITY FOR EXPENSES. (a) A public employer may undertake the defense of an employee under this chapter while contesting the obligation to indemnify the employee, either partially or fully. A public employer that offers a defense with a reservation of rights to an employee, may provide legal defense and place limitations on its agreement to indemnify an employee pending the outcome of the case.

(b) If an employer denies indemnification or offers a defense with a reservation of rights to an employee, the employer shall provide written notice to the employee. The notice must include the reason for the denial or reservation of rights and a copy of this chapter.

(c) If a final judgment is entered against an employee in a claim or action in which the employer provided a legal defense and the employer agrees to only partially indemnify the employee or denies indemnification entirely, the employee may bring an action for indemnification against the employer not later than one year after the entry of the final judgment against the employee.

(d) A public employer who has defended an employee may bring an action against the employee for expenses incurred in the defense if the trier of fact found that the employee's conduct was not within the course or scope of employment. The action for expenses under this subsection must be brought not later than one year after the execution of a written agreement settling the underlying claim or action or entry of final judgment in the action.

Sec. 39.55.100. DEFINITIONS. In this chapter,

(1) "employee" or "public employee" means a person who performs a service for wages or other remuneration under a direct contract of hire, written or oral, express or implied, for a public employer and includes a member of a board or

1 commission established by the employer; "employee" or "public employee" does not
2 include an independent contractor;
3 (2) "employer" or "public employer" means the state, a public or
4 quasi public corporation or authority established by state law, and a political
5 subdivision of the state including a municipality and a public or quasi-public
6 corporation established by a municipality; however, "employer" or "public employer"
7 does not include the University of Alaska, a municipal school district, or a rural
8 educational attendance area;
9 (3) "settlement" means the execution of a written agreement settling the
10 claim or action that gave rise to the employer's obligation to defend or indemnify the
11 public employee.

HOUSE COMMITTEE REPORT

(7)

Date Referred: January 26, 1994 FURTHER REFERRALS: Finance

Date of Committee Action: 2-9-94

The JUDICIARY Committee considered: HB 277

HOUSE BILL NO. 277 INDEMNIFICATION OF PUBLIC EMPLOYEES

"An Act relating to public employers defending and indemnifying public employees with respect to claims arising out of conduct that is within the scope of employment."

RECOMMENDATIONS: be replaced with CS HB277 (JWD) [X] the same title [ ] a new title

[ ] have attached amendments(s)

[X] do pass

[ ] do not pass

[ ] no recommendations

[ ] individual recommendations

[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept) APPROVES PREVIOUS: (Dept/Date)

[ ] fiscal impact _____ [ ] fiscal note(s) _____

(3) [X] zero fiscal note Admin - Risk Mngmt, Admin - Personnel, Admin Ccro [ ] zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
Pete Pott	✓	Rep Davidson		✓	
Jeannette James	✓	Jim Nordlund		✓	
Brian D Porter	✓				
Gail Phillips	✓				
Peggy Brown	✓				

Brian D Porter

CHAIRMAN'S SIGNATURE

Alaska State Legislature

Representative Brian S. Porter

CHAIRMAN
HOUSE JUDICIARY COMMITTEE

MEMBER
HOUSE LABOR & COMMERCE COMMITTEE
SELECT COMMITTEE ON LEGISLATIVE ETHICS

MEMBER
FINANCE SUBCOMMITTEES
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DISTRICT 20

SPONSOR STATEMENT

HB 277 requires the state and municipalities to indemnify public employees who are sued for acts or omissions occurring during the performance and within the scope of the employee's job. The statute would **NOT** require employers to indemnify an employee for acts of intentional or willful misconduct or to pay an award of punitive damages.

The bill is based on the current state policy for defense and indemnification of state employees. A copy of this policy is attached, along with a memorandum from the Attorney General's Office explaining the policy reasons why indemnification of public employees is a good idea. In addition to enumerating the benefits to the employer of indemnification, the Department of Law explanation points out the "widely felt" belief "that where an employee acting in good faith injures a person within the performance and scope of employment, the employer should indemnify the employee." This bill will codify this policy and extend it to borough, municipal and city employees.

HB 277 is currently supported by the Alaska Peace Officers Association and The Association of Chiefs of Police.