ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

7931 HOUSE LABOR & COMMERCE

FISCAL NOTE

No. 3
Bill Version: HB 65
(H) Publish Date: 1/15/93

STATE OF ALASKA
1993 LEGISLATIVE SESSION

Revision Date:
Title: An act relating to the improvement of state finances...sec. 67-68
Sponsor:
Requestor:

Dept. Affected: Health and Social Services
BRU: Medial Assistance
Component: Medicaid Non Facility
COMPONENT SERIAL NO. 0229

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY94	FY95	FY96	FY97	FY98	FY99
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	35.4 *	40.2	43.0	48.2	53.2	58.2
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	35.4 *	40.2	43.0	48.2	53.2	58.2
CAPITAL						
REVENUE FUND SOURCE						

FUNDING: (Thousands of Dollars)

1002 Federal Receipts	17.7 *	20.1	21.5	24.1	26.6	29.1
1003 GF Match	17.7 *	20.1	21.5	24.1	26.6	29.1
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	35.4 *	40.2	43.0	48.2	53.2	58.2

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: $0.0

ANALYSIS: (Attach a separate page if necessary)

See attached for more.

*The fiscal impact of this bill has not been considered within the Governor's original FY94 budget. An adjustment may be included as a budget amendment after further consideration.

Prepared by: Kimberly B. Busch, Director
Division: Medical Assistance
Phone: 907-465-3355
Date: 1/13/93

Approved by Commissioner: Theodore A. Mala, MD, MPH
Agency: Department of Health and Social Services
Date: 1/13/93

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Fiscal Note Analysis continuation

An Act relating to the improvement of State financing through reduction of operating costs.

The Division of Family and Youth Services currently pays a direct monthly subsidy to adoptive parents of hard-to-place children. A hard-to-place child is a child who is not likely to be adopted or to obtain a guardian by reason of physical or mental disability, emotional disturbance, recognized high risk of physical or mental disease, age, membership in a sibling group, racial or ethnic factors, or any combination of these.

The monthly subsidy is considered a reimbursement for costs of supporting hard-to-place children. AS 25.23.190 provides for continuation of the subsidy if necessary to assure placement of a hard-to-place child. The subsidy covers many ongoing maintenance costs including, food, shelter, clothing, school supplies, recreation and transportation costs, counseling or other types of therapy, as well as medical costs.

The bill would authorize Alaska to add the Medicaid option to provide medical coverage for state-subsidized adoptive children who are not otherwise eligible for Medicaid. Medicaid would then pay for these children's medical needs eliminating the need for the DFYS payments to cover those medical costs in their subsidies, and accessing federal Medicaid funding available to the state at a 50 percent match rate.

Future subsidy agreements for hard-to-place children will allow for the Medicaid coverage available under the bill. Subsidy agreements already in force, however, do not provide for an offset for the cost of medical care that may be paid under the bill. For this reason the fiscal note only considers the coverage available for future adoptions of hard-to-place children with special medical needs.

The experience under the program shows that the number of new subsidy agreements have begun to lessen. For FY91 new agreements for children with special medical needs totaled 46. After FY92 there have been 14 placements that have special medical needs. The projected number of special needs placements and the associated medical cost is anticipated to show only slight growth in future years.

A December 1992 review of DFYS files established a FY 93 base year average medical cost per child of $2,400. The current medical inflation rate of 5.5% is assumed to continue. These costs for future placement of special medical need children and the federal offset available under the bill are shown in the table on the following page.

Calculation of Medical Costs for New Placements under the Bill and Anticipated Federal Revenue to Offset General Fund Spending.

	New Placements	X	Base Year Medical Cost	X	Medical Inflation Rate	= Total Annual Medical Costs	÷ 2 =	New Federal Revenue & GF Offset
FY 94	14	X	$2,400	X	1.055	= $35,448	÷ 2 =	$17,724
FY 95	16	X	$2,400	X	1.055	= $40,512	÷ 2 =	$20,256
FY 96	17	X	$2,400	X	1.055	= $43,044	÷ 2 =	$21,522
FY 97	19	X	$2,400	X	1.055	= $48,108	÷ 2 =	$24,054
FY 98	21	X	$2,400	X	1.055	= $53,172	÷ 2 =	$26,586
FY 99	23	X	$2,400	X	1.055	= $58,236	÷ 2 =	$29,118

Cross ref: Fiscal note by the Div. of Family and Youth Services

FISCAL NOTE

No. 2
Bill Version: HB 65
(H) Publish Date: 1/15/93

STATE OF ALASKA
1993 LEGISLATIVE SESSION

Revision Date:
Title: An act relating to the improvement of state finances...sec. 66
Sponsor: Rules Committee
Requestor: Governor

Department Affected: Environmental Conservation
BRU: Environmental Quality
Componen Air Quality Management

COMPONENT SERIAL NO. 1428

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	0.0	1,618.0	1,962.2	2,235.4	1,572.8	1,572.8
TRAVEL	0.0	109.0	211.8	229.4	63.5	63.5
CONTRACTUAL	0.0	20.0	20.0	20.0	20.0	20.0
SUPPLIES	0.0	25.5	35.5	45.5	25.5	25.5
EQUIPMENT	0.0	109.5	22.5	20.0	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	1882.0	2252.0	2550.3	1681.8	1681.8
CAPITAL						
REVENUE						
FUND SOURCE: 1005	0.0	3747.1	4117.1	4421.8	3742.6	3742.6

FUNDING:

1002 FEDERAL RECEIPTS						
1003 GF MATCH						
1004 GF						
1005 GF/PROGRAM RECPT	0.0	1882.0	2252.0	2550.3	1681.8	1681.8
1006 GF/MHTIA						
OTHER						
TOTAL	0.0	1882.0	2252.0	2550.3	1681.8	1681.8

POSITIONS:

FULL-TIME	0.0	22.5	27.0	31.0	21.8	21.8
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: $

ANALYSIS: (Attach a separate page if necessary.)

see attachment

Prepared by: Christine Underwood, Administrative Officer — Phone: 465-5010
Division: Administrative Services — Date: 1/13/93

Approved by Commissioner: Janice Adair, Assistant Commissioner
Agency: Deptartment of Environmental Conservation — Date: 1/13/93

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

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NO 2
HB65

ATTACHMENT
DEC Analysis Section 66

Title V of the 1990 Clean Air Act(CAA) requires the US Environmental Protection Agency to develop a uniform, nationwide permitting program for selected sources of air contaminants. Congress also directed each state or local air management authority to develop and manage an approvable permit program under the direction of EPA. The executing regulations, presented in 40 CFR Part 70, establish specific criteria for an EPA-approvable local or state permitting program. This permit program (referred to as Title V permits) will provide an improved administrative framework to maintain healthful air in areas currently meeting federal air quality standards and to improve air quality in areas not meeting federal air quality standards.

The CAA mandates that permit fees cover both the direct and indirect costs of the mandated air quality program. Section 66 contains language necessary to the Department for expanded fee collection authority.

The fiscal note reflects additional operating expenses beginning FY95, which level off by FY99. These increased costs will bring in an estimated $3,747.1 in program receipts in FY95, with the amounts varying until a stabilization point is reached near FY99. It is important to note that the fees collected will not exceed the total operational costs of the expanded air quality program mandated by the Federal CAA.

Based on a Permittee Search Project, between 425 and 450 Alaska sources will be required to obtain a Title V permit. There are currently 175 permitted sources within the State handled by less than 22 staff. Permitting staff will be charged with development and issuance of construction and operating permits. The Compliance Assurance Group is charged with the responsibility of assuring that all permitted sources within the State are in an optimal state of compliance. The Group will perform all facility inspections and reporting activities statewide, and will train inspectors. The Act requires each state to develop a Small Business Assistance Program (SBAP) to help small businesses comply with the complex provisions of the CAA. The primary focus of the SBAP will be to provide technical assistance to non-major sources subject certain provisions of the CAA. The Program Planning and Development Group is slated to review and comment on proposed federal regulations as they may apply to facilities in Alaska, revise Alaska's air quality control regulations as necessary to meet federal requirements, develop procedures to implement Alaska's regulations as well as provide guidance to permit applicants and the public. The Administrative Group will establish and maintain the complex cost recovery and permit fee tracking system. Accounting staff will assess, bill, and collect fees from permitted facilities. The Monitoring/Modeling Group will continue to review the ambient air quality demonstrations of complex permitting activities.

FISCAL NOTE

No. 1
Bill Version HB 65
(H) Publish Date: 1/15/93

STATE OF ALASKA
1993 LEGISLATIVE SESSION

Revision Date:
Title: An act relating to the improvement of state finances... sec. 55
Sponsor: Rules Committee
Requestor: Governor

Department Affected: Environmental Conservation
BRU: see attachment
Component:

COMPONENT SERIAL NO. attached

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	62.3	36.6	36.6	36.6	36.6	36.6
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	2.0	2.0	2.0	2.0	2.0	2.0
SUPPLIES	1.0	0.5	0.5	0.5	0.5	0.5
EQUIPMENT	10.0	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	75.3	39.1	39.1	39.1	39.1	39.1
CAPITAL						
REVENUE FUND SOURCE: 1005		700.0	703.0	704.0	707.0	710.0
FUNDING:						
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	75.3	0.0	0.0	0.0	0.0	0.0
1005 GF/PROGRAM RECPT	0.0	39.1	39.1	39.1	39.1	39.1
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
TOTAL	75.3	39.1	39.1	39.1	39.1	39.1
POSITIONS:						
FULL-TIME	1.5	1.0	1.0	1.0	1.0	1.0
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: $ NONE

ANALYSIS: (Attach a separate page if necessary.)

see attachment

Prepared by: Christine Underwood, Administrative Officer
Phone: 465-5010
Division: Administrative Services
Date: 1/13/93

Approved by Commissioner: Janice Adair, Assistant Commissioner
Agency: Department of Environmental Conservation
Date: 1/13/93

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Projected Revenues/Program Receipts from expanded authority to collect user fees:

Since these proposals would have to be implemented through the adoption of regulations, there would be no program receipts realized until FY95. In future fiscal years, DEC would like to see a funding source shift from general funds to program receipts.

BRU ENVIRONMENTAL HEALTH

Sanitation Component (#650)

Program receipt authority to collect fees for sanitation permits would generate an estimated **11.6** in revenue. The type of facilities affected include: swimming pools, spas, daycare/preschools, public accommodations, campgrounds, hotel/motels, liquor stores, barber/beauty shops, public toilets, showers, laundromats, and compressed air providers.

Palmer Lab Component (#651)

Revenue from pesticide product registration and drinking water lab certification and training is estimated to be **155.0**.

BRU SPILL PREVENTION AND RESPONSE

Program Development Component (#1814)

The Department would be authorized to collect fees from businesses which are required to report information about hazardous substances to the State Emergency Response Commission under SARA Title III [42.USC 11001-11050]. Projected revenues raised through such a fee structure will depend on its design. The final fee structure would be established by regulation after further study. Estimated program receipts start at **5.0** for FY95 and increase to **15.0** in FY99. **Personal services** would need an increase in **FY94** of **25.7** for a **0.5 FTE, Regulations Specialist II** to promulgate the needed regulations under the auspices of the Department's paralegal in the Commissioner's Office.

BRU ENVIRONMENTAL QUALITY

Wastewater and Water Treatment Component (#1426)

Estimated receipt of **37.5** for subdivision plan reviews.

Hazardous Waste Management (#1427)

For the one permit issued, **50.0** is estimated in program receipts. An estimated one or two facility sitings per year would generate approximately **15.0** in revenue.

Water Quality Management Component (#645)

For the 401 permits issued, **30.7** is estimated in program receipts.

Solid Waste Management Component (#1427)

By placing a surcharge on each ton of waste **375.0** in program receipts is expected.

Monitoring and Laboratory Support (#643)

Drinking water certifications would generate **20.2** in program receipts.

OPERATING EXPENDITURES

Commissioner's Office Component (#633)

A **0.5 FTE Regulations Specialist II** (R-16) at a cost of **25.7** for FY94 only, would be needed to develop a fee structure and regulations for the Program Development Component of the SPAR Division. This position would also assist the Division of Environmental Quality in developing their needed regulations. An initial equipment cost of **5.0**, **.5** in supplies, and **1.0** in contractual services are anticipated position support costs.

Administrative Services Component (#635)

A **FTE Accounting Clerk III** (R-10) at an annual cost of **36.6** would be necessary to handle billing procedures and collection of the user fees. This position would begin in FY94 to aide in program development and recordkeeping procedures. An initial equipment cost of **5.0**, **.5** in supplies, and **1.0** in contractual services are anticipated position support costs.

Position Title	No. of Positions	Range / Step	Barg. Unit
Regulations Specialist II	1	16A	GGU

Time Status	Staff Months	Location	Election District
.5FTE	6	Juneau	H:3 S:B

TYPE OF EXPENDITURE		Amount
Salary	18.2	
Benefits	7.5	
Premium Pay		
Other		
Total Personal Services	25.7	25.7
Travel		
Contractual		1.0
Commodities		.5
Equipment		5.0
Other		
Total Cost		32.2
FUNDING SOURCE FOR TOTAL COST		
Federal Receipts 1002		
G.F. Match 1003		
General Fund 1004		32.2
I/A Receipts 1007		
CIP Receipts 1061		
Other		

Justification

This position is needed to develop a fee structure and regulations for the Program Development Component of the SPAR Division. This position would also assist the Division of Environmental Quality in developing their needed regulations. The position would be limited to 6 months during FY94 and would be working under the auspices of the Department's paralegal in the Commissioner's Office.

Unless regulations are developed and adopted, the Department cannot exercise its program receipt authority and collect user fees.

An initial expenditure for equipment, supplies and contractual services are anticipated position support costs.

Request For New Position

AGENCY Environmental Conservation

BRU Administration

COMPONENT Commissioner's Office

Revised Date:

FY 94

Position Title	No. of Positions	Range / Step	Barg Unit
Accounting Clerk III	1	10	GGU

Time Status	Staff Months	Location	Election District
1 FTE	12	Juneau	H:3 S:B

TYPE OF EXPENDITURE		Amount
Salary	24.7	
Benefits	11.9	
Premium Pay		
Other		
Total Personal Services	36.6	36.6
Travel		
Contractual		1.0
Commodities		.5
Equipment		5.0
Other		
Total Cost		43.1
FUNDING SOURCE FOR TOTAL COST		
Federal Receipts 1002		
G.F. Match 1003		
General Fund 1004		43.1
I/A Receipts 1007		
CIP Receipts 1061		
Other Program receipts		

Justification

An additional staff person is essential for receiving, recording, and depositing fees collected under the expanded user fee program. This position would also issue invoices, track receipts and reports on collections to program staff. During FY94, staff would aide in planning document flow and record keeping system/database.

An initial expenditure for equipment, supplies and contractual services are anticipated position support costs.

Request For New Position

AGENCY Department of Environmental Conservation

BRU Administration
Administrative Services

COMPONENT

Revised Date

FY 94

Office of Public Advocacy Budget Transfer

Letter Report No. 02-88

January 1991
Division of Audit and Management Services

OMB

STAFF PAPERS AND REPORTS

STATE OF ALASKA

OFFICE OF MANAGEMENT AND BUDGET

Office of Public Advocacy Budget Transfer

No compelling evidence exists to indicate that transferring OPA's budget from the Department of Administration to the Court System or any other state agency would be in the best interests of the state or OPA clients. OPA's recurring fiscal shortfalls are not directly related to its organizational position. Other factors are much more significant.

- OPA is under legal mandate to accept a variety of clients per court instruction. Court appointment of OPA is also governed by various laws.
- Indigent defense services across the country, no matter how they are provided or who has authority over them, are underfunded.
- GAL funding is lagging behind exploding case growth, partly because it is a new approach to dealing with a newly recognized problem.

Nor does it appear OPA's budget problems are the result of serious operational shortcomings. Many other agencies providing similar services in a variety of ways face similar difficulties. Past experience indicates that the court system could not provide similar service levels for the same budget. Two fundamental tenets should determine who has authority over OPA: 1) independence to consider each case on its own merits and 2) freedom from conflict of interest. Those points also militate against placing OPA under court jurisdiction.

Since OPA was created partly to reduce costs, which it has done on a per case basis, it seems unlikely that a return to the prior Court System approach, court-appointed counsel, is what the legislature desires. The Court, however, feels this approach will ensure independence and freedom from conflict of interest, but costs per case would likely rise, without any guarantee that present service levels would be maintained.

What are the alternatives? Court systems elsewhere use private non-profit agencies, mostly on the local or county level, to preserve independence and freedom from conflict of interest. OPA already makes extensive use of private contractors (65 percent of its FY 1991 budget). No single entity could assume OPA's services because they are so different and the state so large. Some local organizations would bid to provide services; whether the interest would be sufficient to cover OPA's in-house caseload is unknown.

New Legislation on the Payment of Legal Services and Related Costs Incurred for Indigent Clients

Whether or not the transfer takes place, the Court System will have to provide the procedures to implement the legislation which authorized the payment of legal services and related costs incurred for indigent clients in Chapter 185 SLA 1990. Updates to Rules of Court reflecting the changes presented in this legislation are now before the Supreme Court for their review and action. The proposed changes to the existing Rules of Court are intended to better allow for the recovery of costs of court appointed counsel.

The Court System presently reviews and makes a determination of indigence when requested by the person appearing before the Court. The factors the Court must consider in determining indigence are outlined in AS 18.85.120 and include the person's "income, property owned, outstanding obligations, and the number and ages of dependents." The Alaska Rules of Court provide additional guidance on the issue of indigence: Administrative Rule 10 (Exemption from Payment of Fees - Determination of Indigency), Administrative Rule 12 (Procedure for Counsel

and Guardian Ad Litem Appointments at Public Expense), Appellate Rule 209 (Appeals at Public Expense), and Criminal Rule 39 (Appointment of Counsel). For example, Administrative Rule 12(c)(2) states that "a person is indigent if the person's income does not exceed the maximum annual income level established to determine eligibility for representation by the Alaska Legal Services Corporation."

The legislation proposed by the Court System in the 1990 legislative session addressed their concern that the present statute -- AS 18.85.120(c) -- prohibited the Court from allowing for the recovery of legal costs costs from court appointed defendants. The final version of the bill incorporates the following provisions:

- the court can enter a judgement requiring the person to pay for the costs of their defense upon conviction
- execution of the judgement starts three years after the person's release from jail
- payments can be made under a payment schedule upon a showing of financial hardship.

The Court System in amending the Rules of Court regarding the recovery of costs must balance the development of fair and enforceable procedures to implement the changes made in statute with a person's right to counsel and a fair trial.

Accomplishing the Transfer

If it remains the intent of the legislature to transfer the Office of Public Advocacy functions from the executive branch to the Alaska Court system, this could be accomplished by repealing AS 44.21 and amending that title to state that all functions performed by OPA are transferred to the Alaska Court System. If the Court system accepts the transfer of OPA as it currently operates within the Department of Administration, the transfer can take place effective July 1, 1991 or immediately upon passage of the legislation.

MEMORANDUM

State of Alaska

OFFICE OF THE GOVERNOR
Division of Audit and Management Services
465-3568

January 28, 1990

TO: Honorable Walter Hickel, Governor

FROM: John Lucas, Director

SUBJECT: Office of Public Advocacy budget transfer

The 1990 legislature adopted intent language, reproduced below, in the budget bill requesting study of the transfer of the Office Public Advocacy (OPA).

> It is the intent of the legislature that the governor review and make recommendations to implement the transfer of the Office of Public Advocacy budget to the Court System budget.

This memorandum outlines the full range of options for relocating OPA, not just transfer to the Court System. Using similar agencies elsewhere for examples, we assess whether alternative OPA placement could be expected to alleviate chronic budget shortfalls without affecting service levels. In theory, any of the options reviewed could be managed by the Court System.

Office of Public Advocacy: Structure and Functions

OPA is an agency of the Department of Administration, supervised by the deputy commissioner for services to the public. Headquartered in Anchorage, the agency has staff in Fairbanks and Juneau. The staff consists of civil and criminal attorneys, public guardians, and administrative personnel. The Public Advocate directs OPA and networks of volunteer and contract attorneys and volunteer guardian ad litems which augment staff efforts. AS 44.21.410 assigns OPA three major functions:

- Representing abused and neglected children. Guardian ad litems represent the best interests of children during court proceedings.
- Representing indigent criminal defendants the Public Defender Agency cannot represent because of conflicts of interest.
- Acting as public guardian and conservator for wards of the court.

Prior to 1984, these functions were the responsibility of the Court System, which contracted with private attorneys to provide services. The Court System advocated the creation of OPA in order to rid itself of duties it defined as non-adjudicative in nature. It also claimed that the possibility for conflict of interest existed so long as it controlled the appointment and compensation of attorneys.

Alternatives to the Status Quo

In the body of this memorandum, we review the means by which other states provide the services described above. Because no other state combines any two of these functions under the same roof, we consider each separately.

Public Guardianship

About three-quarters of the states provide public guardianship services. The definition of public guardianship varies substantially. Independent agencies provide services in some states, while in others only a legal framework exists. In general, public guardianship agencies fall into four major types, based on how they are situated within a state's organizational hierarchy.

- A state court office - The latest comprehensive information, dating from 1981, indicates that six states situate their public guardian in the state courts. This was the case in Alaska prior to the 1984 establishment of OPA. A court system's administrator may double as the public guardian. In other cases, the public guardian is a separate position.

- Independent executive branch agency - Perhaps five states have created independent agencies. These may be under the direct control of the governor or supervised by an independent board appointed by the governor and/or other officials from other branches of state government.

- Division of an executive branch agency - The public guardian may be a separate office or part of a larger entity such as that in charge of mental health or aging. Most of the states providing guardianship services in 1981 delivered them through units of their health or social services agencies.

- County or local agency - In this instance public guardianship may be a function of a county probate court or a county or local social services agency. Some portion of funding may originate with the state. Ten states use this method.

Under each of the above forms, some states employed court appointed, or assigned, counsel to act as guardians or conservators. Some notable variations from these themes exist. Several states contract with private non-profit corporations for public guardianship services. One has a system of private fiduciaries that handles the financial and personal affairs of state wards.

How does one evaluate these options? Experts in the field agree on some basic standards. These include the following:

(1) Conflict of interest must be avoided. When the public guardian is part of the state social services agency, conflict is conceivable on more than one front. If an agency is both the petitioner for a finding of incompetence and the guardian, it has the power to control its overall caseload. Limiting or expanding the client base could hinge on factors other than the needs of the client population. When a public guardian is part of a social services agency, overall agency policy may constrain its courses of action. The guardian may not have complete freedom to challenge the quality and extent of services provided by other components of the agency.

When the public guardian is a state court function, the court system could face balancing its own interests, in the form of budgetary restrictions, against the interests of actual and potential clients.

(2) Independence is crucial to the proper functioning of a public guardian. A public guardian free from external control, other than regular court review to ensure that it is performing as intended, may challenge any agency providing services to wards. If states fund guardianship services provided by local governments or private organizations, there must be clear limits on the extent of oversight powers.

(3) Quality of service is largely dependent on the size of an agency. The smaller, the better in the judgment of a ranking national expert. He recommends that agencies serve no more than 500 wards and that the ward to staff ratio be thirty to one. These standards, along with the first two, favor the county or local government model of service provision.

Meaningful national information concerning the comparative cost efficiencies of these administrative options is scarce. We do know that OPA has provided public guardianship services more cost effectively than did the Court System. Reverting to court administration would be likely to reduce cost efficiency, barring radical departure from the means previously employed by the courts to deliver services. The Court System has indicated that it would offer guardianship via assigned counsel, as it did previously, to ensure independence and minimize conflict of interest.

OPA's organizational status seems tailored to the first two assessment criteria. It also partially meets the third standard; as a consequence of Alaska's small population, OPA does serve fewer than 500 wards. The ward to staff ratio is over twice the suggested ratio, however. That is a resource issue and is not directly related to organizational hierarchy.

Indigent Defense

Every state provides legal representation for indigent criminal defendants, as required by a variety of U.S. Supreme Court decisions. The OPA criminal defense section is akin to a public defender's co-defendant or conflict unit. Co-defendant units may be separate entities, like OPA, or be a "shielded" section of the main public defender agency. These units are shielded from the rest of the agency because they represent one client in multiple defendant cases. The defenses of individual clients in a multiple defendant case often conflict and must be separate as a result.

Structure and administration are two separate aspects of the issue at hand. Different jurisdictions combine the common options differently. Many states dispense indigent defense services through a combination of two or more alternatives. The basic structural and administrative types are as follows:

- Statewide public defense agency - About one-third of the states have a public agency staffed with attorneys to defend indigent clients. These are usually executive branch agencies. Independent commissions, with members appointed by the executive, legislature, and judiciary, govern some public defenders. In only two instances do state courts administer a statewide indigent defense agency. Nationally, as the size of a jurisdiction increases, the likelihood that indigent defense will be delivered by a public defender agency increases.

- County/Local public defense agency - Just about half of the states deliver indigent defense services in most counties through county public defender offices, according to a 1986 survey. Most often the county government oversees indigent defense offices, but it is not uncommon for a county court to supervise the office. Independent commissions regulate county public defenders in some cases. Private, non-profit corporations contract with state or local governments to operate county public defender programs, as well.

- Assigned counsel systems - About twenty states provide most indigent defense services through assigned private counsel programs. Assigned counsel systems frequently operate in tandem with public defense agencies to handle overflow or conflict cases. How private bar members are assigned to cases varies widely from state to state. In jurisdictions in which assigned counsel provides indigent defense, it is most common to have counsel appointed by judges. Court administrators or public defender chiefs also appoint counsel.

- Contract counsel system - The most recently adopted means of providing indigent defense is the contract system. As the title suggests, private legal firms contract to provide services. While contract defense is the least common delivery vehicle (just over ten percent of 1986 services), it is also the fastest growing type. Contracts are overseen by public defenders, judges or court administrators, independent commissions, or other public officials.

While other states occasionally house public guardian and guardian ad litem services in agencies offering other services, no other state links indigent defence with other unrelated services for disadvantaged citizens in a single agency.

Standards used to assess the aptness of indigent defense administration are similar to those used to evaluate public guardian agencies. The accepted benchmarks include the following:

(1) Public defenders must be independent of outside influence. Indigent defense services should be based on the best interests of clients, free of considerations other than law and ethics. American Bar Association standards state that lawyers representing indigent clients "should be free from political interference and should be subject to judicial supervision only in the same manner and to the same extent as are lawyers in private practice." The National Legal Aid and Defender Association has adopted a similar standard. Another ABA standard asserts that "(s)election of the chief defender and staff by judges should be prohibited." Several studies and court decisions have recommended that indigent defense systems be independent of both the executive and judicial branch.

(2) Conflict of interest must be avoided in indigent defense operations. Court-administered systems face potential conflict because of the judiciary's involvement with the defense function. Court system heads, whether administrators or chief justices, must make budgetary decisions which affect indigent defense. They must determine how much to spend on individual cases and on indigent defense overall. In theory, only the interests of clients should guide these decisions, but the court administrative chief must manage a larger budget affected by specific and general indigent defense needs.

On another level, an individual judge may end up presiding over a case argued by a lawyer appointed by the same judge. The possibility for patronage may exist depending on how lawyers are assigned. If judges determine fee awards, the behavior of both judge and attorneys could be influenced. No court would consider assuming the same roles for the prosecution.

OPA's present niche in the state organizational chart protects it from court intrusion into its operations. The question is whether its position as an agency subordinate to a larger executive branch agency has been or could be a problem. Political interference into OPA activity has never been alleged. OPA certainly has experienced the clash of budget priorities that subunits of larger state entities regularly experience. That could change only if OPA were a completely independent agency.

Information concerning operating costs for indigent defense systems is available both from Alaskan and national sources. Analyses by the Office of Management and Budget and the Court System prior to OPA's creation indicated that OPA could provide legal services at lesser cost than could the Court System. OPA's overall costs per case have proven to be less, according to recent OPA figures. The Court System concurs that OPA's multi-faceted menu of service providers has been more cost effective. Nationwide, lawyers on the public payroll provide the least costly defense and OPA's network of contract and volunteer lawyers also works at below market rates.

1986 statistics show that Alaska had the second highest costs per case for indigent defense at $468, about twice the national average. OPA's cost per case for all adult cases was $476 during FY 1990, well below costs for contract ($671) and court appointed attorneys ($814).

The limited national research comparing case outcomes provides little support for the notion that delivery system types have any perceptible effect on the final outcome of cases. Staff lawyers are usually able to become specialists in criminal defense, adept at procedures and requirements. Cases usually are more quickly resolved with less severe sentences. The same may not be true for assigned counsel, often arbitrarily selected without regard to expertise or assigned too infrequently to develop any expertise. Contracting attorney firms may change regularly, also preventing the development of competence.

OPA has had to request supplemental appropriations annually the past several years. The agency has been underfunded and unable to meet the contract and volunteer attorney billings generated by rising caseloads without supplementals. A March 23, 1990 Ombudsman's report details OPA's problems meeting its obligations to outside attorneys (whether for indigent defense or other services). However, the Court System was also forced to seek supplementals when it was responsible for these functions. In fact it is common for indigent defense programs nationwide to suffer budget shortfalls, no matter what their position on a state's organizational chart. Public defense systems generally are at the bottom of criminal justice budget priority lists.

Guardian Ad Litem

Public recognition of the extent and seriousness of child abuse and neglect spans less than three decades. State responses to the needs of victims have only begun to take shape over the last fifteen years since the federal government established funding eligibility guidelines. These included the requirement that every child facing a court proceeding in an abuse or neglect case be provided a guardian ad litem (GAL). The federal guidelines are not specific as to what constitutes a guardian ad litem, however. While attorneys have been favored, people with other skills and concerns are increasingly being called upon to protect children's interests in court.

Some of the plans adopted across the country are relatively new. Judgments of the effectiveness of various approaches in meeting the best interests of the child have yet, therefore, to converge on a consensus. As do indigent defense and public guardianship services, guardian ad litem services take multiple forms. These can be grouped into a few basic types, but variations on each exist.

- Assigned counsel systems - these GAL systems operate similarly to programs supplying guardianships and indigent defense. Private attorneys are appointed, either on an ad hoc basis or from a panel of interested and/or qualified lawyers. Rarely are training or experience in child abuse or neglect cases required. A few assigned counsel systems (the panel variety) are accorded staff support by court systems. Usually the juvenile court judge on a case makes the appointment. Assigned counsel systems are preponderant, used by over 80 percent of court jurisdictions. Prior to the creation of OPA, court appointed counsel served as GALs in Alaska.

- Court Appointed Special Advocates - CASA organizations are the latest response to the mushrooming growth of child abuse and neglect cases. A CASA is, in essence, a volunteer guardian ad litem. CASAs may be lawyers, social workers, or lay people committed to helping children. CASAs are sometimes appointed in tandem with attorneys as GALs; the appointing judge usually assigns these CASAs specific and limited duties. When appointed sole GAL, a CASA is free to pursue the full range of inquiry and action the CASA believes to be in a child's best interests. A CASA/GAL will have attorneys to provide supervision, consultation and legal representation. CASA entities are used in about 13 percent of court jurisdictions nationally and

their use is increasing. All twelve state sponsored CASA entities, with the exception of OPA, are administered by the courts. A large number of local CASA organizations are private non-profit corporations.

- Independent Agencies - OPA is one of a few independent state agencies providing GAL services. Independence here means that the agency is not associated with state, county, or local courts or social services agencies. Some local government agencies and private non-profit organizations also fit this description. Public defender agencies or legal services offices in some communities serve as GAL providers. Elsewhere staff attorneys or social workers act as GALs or work in conjunction with volunteer GALs. OPA's organization follows the latter model.

Some other administrative structures are of note. A number of law schools operate clinics with third year law students acting as GALs. In some places, legal or social work consultation for GAL entities are provided by contractors. Several Canadian provinces have an Office of Official Guardian which is dedicated to protecting the rights and interests of children. Staff include both lawyers and social workers.

The basic criteria determining GAL agency placement in the government hierarchy are similar to those discussed earlier. GAL duties blur the demarcation between social and legal work, so the need for independence and freedom from conflict of interest reflect a mixture of the concerns felt in public guardianship and indigent defense. So long as institutional safeguards protect against the appearance or actuality of conflict and the erosion of independence, a GAL agency can serve the best interests of children in a variety of settings.

(1) GALs must be independent of the court system and the agency providing children's services. The fundamental purpose of a GAL is to act in the best interests of the child. That position often does not coincide with the interests of the parents, the service agency, or the courts. The GAL must be free, on behalf of the child, to "fight" the bureaucracy or to file motions with the court. Parents and their legal counsel may be fighting criminal charges. The court must remain impartial, and thus cannot advocate for abused and neglected children. Social services agencies usually are the petitioners for the placement of children into one or more agency programs. Their perspective is necessarily circumscribed by this purpose. The independent GAL is not self-interested, constrained, or limited except by the responsibility to be the child's voice in court. The independence of a GAL is fundamental to the ability to link disparate interests and mediate differences.

(2) GALs must not be subject to conflicts of interest. The situation here is quite similar to that described for public guardianship. The interests of children should not be subordinated to transitory policy, fiscal, or other concerns unrelated to a GAL organization's accountability to a higher authority to fulfill its mission. The direct appointment of GAL's by judges, which is the most common procedure nationwide, is a practice identified as inviting conflict or its appearance in the administration of indigent defense, for example.

Locating OPA in the Department of Administration purposefully sets it apart from the Court System and the Department of Health and Social Services. That being said, the great majority of GAL systems in the country are administered by state, county, or local courts. That is not perceived as a problem by most GAL agencies or analysts. The implications for court assigned counsel have been discussed previously. Barring proper distancing of the courts from the GAL providers, the same reservations hold true. The practice of sponsoring private non-profit agencies is one way of lessening the opportunities for conflict and restraints on independence. There is no indication that the Alaska Court System would chose this course on its own volition, rather there is every indication that it would fall back on its previous means of delivery, assigned counsel.

A recent study performed for the federal Administration for Family, Youth and Children assessed the effectiveness of GAL delivery systems. It is by far the most comprehensive probe of the question to date (an expanded version of the same study will be completed in 1991). The typical assigned counsel system was rated the least desirable means of providing GAL services. Assigned counsel had little training or experience in child abuse and neglect proceedings, devoted relatively little time to each case, and relied almost exclusively on the recommendations of social service agencies. Systems relying on CASAs were highly recommended, with staff attorney models also recommended, although less strongly. CASAs developed independent reports more likely to recommend appropriate services, effectively mediated differences between parties to the process, moved cases to a quicker resolution, and stayed with each child until a final outcome was achieved. Much of this is a direct result of two things: (1) the commitment of volunteers to aiding children and (2) the low caseload of individual CASAs. OPA's present GAL program conforms closely to the approach the study rated best.

The cost efficiency issue tilts decisively toward a CASA approach. The simple fact that the bulk of services are supplied by volunteers rather than attorneys suggests substantial cost advantages. In North Carolina, GAL volunteers provided services that would have cost the state over $1,000,000 had non-program attorneys supplied them. The state reimbursed volunteers $20,000 for expenses. The cost of non-program attorneys dropped by two-thirds following the institution of the GAL program. Caseloads and service expanded during the same period. Nationally, a federal study estimated average hourly attorney costs at $42.00 (in-court) and $35.00 (out of court), compared to $5.00 to $10.00 to maintain a CASA volunteer. Another federal report stated that "...an approach which relies on lay volunteers with easy access to...attorneys...offers the most comprehensive representation at minimal cost."

Finally, analyses of the cost of legal services prior to the creation of OPA also examined GAL services. Both OMB and the court system concluded that OPA would be more cost efficient than the courts. Subsequent events confirmed those analyses. The initiation of the OPA volunteer GAL program was a significant cost efficiency. Unless the Court System's current position that it would supply these services principally via assigned counsel changed, there is no reason to believe that OPA's cost efficiencies could be matched by the courts. Retention of the volunteer GAL system by the courts would probably significant reduce any potential cost differential, however.

Summary

No compelling evidence exists to indicate that transferring OPA's budget from the Department of Administration to the Court System or any other agency would be in the best interests of the state or OPA clients. It is unlikely that OPA's recurring fiscal shortfalls are directly related to its organizational position. Three external phenomena probably are much more significant.

- OPA is under legal mandate to accept a variety of clients per court instruction. Court appointment of OPA is also governed by various laws. As long as these laws are in force, neither institution has much latitude to alter the present situation.

- Indigent defense services across the country, no matter how they are provided or who has authority over them, are often underfunded. They are usually the lowest priority in the justice system, despite the fact that need has grown in recent years.

- GAL funding is lagging behind exploding case growth, partly because it is new approach to dealing with a newly recognized problem. The volume of child abuse and neglect cases has been rapidly growing and probably will continue to do so for some time.

OPA's budget problems do not appear to be a function of how it discharges its responsibilities. Many other agencies providing the same services in a variety of ways face budget and service delivery difficulties. Past experience indicates that the court system could not provide similar service levels at the same budget. Two fundamental tenets should determine who has authority over OPA: 1) independence to consider each case on its own merits and 2) freedom from conflict of interest. These also militate against placing OPA under court jurisdiction. In fact, on those points, it is unlikely that relocation of OPA would produce any significant benefits.

The three major OPA services are provided separately in other states. However, breaking up the three OPA functions would eliminate some economies of scale, possibly reducing cost efficiency.

Since OPA was created to reduce costs, which it has done on a per case basis, it seems unlikely that a return to the prior Court System approach, assigned counsel, is what the legislature intends. That, however, is exactly what courts feels are appropriate, according to the system administrator and the chief justice, to ensure independence and freedom from conflict of interest. Unless an alternate approach were mandated, costs would likely rise rather than be controlled, without any guarantee that present service levels would be maintained.

Whatever delivery method were selected, one thing is certain. The Court System would be saddled with functions it had previously worked hard to rid itself of. It would likely have to manage them in a form with which it had no experience and a high degree of discomfort if it sought to maintain the level of services now delivered by OPA.

What are the alternatives? Many court systems have turned to funding private entities, non-profit or otherwise, to preserve independence and ensure freedom from conflict of interest. These have mostly been local or county-wide organizations. OPA already makes extensive use of private contractors (65 percent of its $5.8 million FY 1991 budget is targeted for professional services). The attached FY 1991 and 1992 budget pages (p.17 and p.21) show in some detail how a large and growing portion of OPA's budget has been going to a variety of outside providers since FY 1989. In addition, the budget (page B3/B4) indicates that the portion of the caseload going to private providers is expected to increase from the FY 1990 level of 65 percent. Page C300 shows cost breakdowns by case for staff and outside cases. Under present circumstances, OPA costs per case are less.

It is likely that a number of local entities would be interested in a proposal to provide OPA's services. Because these services are so different, the state is so large, and most providers are local in scope, it is likely that several contractors would be required to cover the caseload now handled in-house. There do appear to be organizations capable of providing most of the services that now provided by OPA that would be interested in bidding on contracts. What is unknown is whether all of OPA's functions could be efficiently and coherently assumed by the private sector and how long it would take for such a process to be completed. There would still have to be some centralized coordination and evaluation of service provision. Fragmentation of service delivery could mean a loss of the economies of scale the state now realizes by combining services in a single office.

New Legislation on the Payment of Legal Services and Related Costs Incurred for Indigent Clients

Whether or not the transfer takes place, the Court System will have to provide the procedures to implement the legislation which authorized the payment of legal services and related costs incurred for indigent clients in Chapter 185 SLA 1990. Updates to Rules of Court reflecting the changes presented in this legislation are now before the Supreme Court for their review and action. The

proposed changes to the existing Rules of Court are intended to better allow for the recovery of costs of court appointed counsel.

The Court System presently reviews and makes a determination of indigence when requested by the person appearing before the Court. The factors the Court must consider in determining indigence are outlined in AS 18.85.120 and include the person's "income, property owned, outstanding obligations, and the number and ages of dependents." The Alaska Rules of Court provide additional guidance on the issue of indigence: Administrative Rule 10 (Exemption from Payment of Fees - Determination of Indigency), Administrative Rule 12 (Procedure for Counsel and Guardian Ad Litem Appointments at Public Expense), Appellate Rule 209 (Appeals at Public Expense), and Criminal Rule 39 (Appointment of Counsel). For example, Administrative Rule 12(c)(2) states that "a person is indigent if the person's income does not exceed the maximum annual income level established to determine eligibility for representation by the Alaska Legal Services Corporation."

The legislation proposed by the Court System in the 1990 legislative session addressed their concern that the present statute -- AS 18.85.120(c) -- prohibited the Court from allowing for the recovery of legal costs costs from court appointed defendants. The final version of the bill incorporates the following provisions:

- the court can enter a judgement requiring the person to pay for the costs of their defense upon conviction
- execution of the judgement starts three years after the person's release from jail
- payments can be made under a payment schedule upon a showing of financial hardship.

The Court System in amending the Rules of Court regarding the recovery of costs must balance the development of fair and enforceable procedures to implement the changes made in statute with a person's right to counsel and a fair trial.

Accomplishing the Transfer

If it remains the intent of the legislature to transfer the Office of Public Advocacy functions from the executive branch to the Alaska Court system, this could be accomplished by repealing AS 44.21 and amending that title to state that all functions performed by OPA are transferred to the Alaska Court System. If the Court system accepts the transfer of OPA as it currently operates within the Department of Administration, the transfer can take place effective July 1, 1991 or immediately upon passage of the legislation.

Memorandum OFFICE OF MANAGEMENT & BUDGET *Alaska Court System*

JAN 2 3

Arthur H. Snowden, II
Administrative Director

January 22, 1991 AUDIT AND MANAGEMENT SERVICES

To: John L. Lucas, Director
Division of Audit & Management Services
Office of Management & Budget

Subject: Court System Response to Legislative Intent Proposing to Transfer OPA from the Department of Administration to the Court System

A. Analysis

You have asked for the court system's view and comment on the following intent language included within the FY 1991 operating budget for the Department of Administration:

> It is the intent of the legislature that the governor review and make recommendations to implement the transfer of the Office of Public Advocacy budget to the Court System Budget.

The court system opposes any proposal to eliminate the Office of Public Advocacy and to place within the court system responsibility for appointment and compensation for state-funded attorneys, guardians ad litem, public guardians and conservators. Such a proposal will not result in any cost-saving to the State of Alaska and will create inefficiencies and conflicts which will denigrate the functions of state government.

Cost

No cost savings will result if these functions are returned to the court system. The court system estimates that such a transfer will result in increased costs to the state.

The Office of Public Advocacy has been able to minimize case costs by use of an economical combination of staff resources and contract awards. Because of appearance and conflict of interest issues (raised below), the court system would be less able to rely on staff resources and would rely more heavily on contract awards or a conscription system should this responsibility be transferred. Thus, the cost to the state would increase from current levels.

Prior to 1987, the court system was able to conscript private sector attorneys to represent parties in some of these types of cases at very low hourly rates which did not even compensate most attorneys for their overhead expenses. This onerous system was

discontinued in 1987, and the court must now pay market value for attorney services in cases in which attorneys are appointed through conscription. [See DeLisio v. Ak. Superior Court, 740 P.2d 437 (Alaska 1987).] Thus, current costs of the court system's administration of an appointment system would be vastly in excess of pre-1987 years.

One positive result of the OPA-administered contract and staff system has been the provision of a higher quality of legal services by attorneys and others who have been able to develop expertise in the types of cases currently assigned to OPA. This quality improvement translates into cost savings, in that poor representation can be linked with a greater number of case appeals, longer court proceedings (with inexperienced or unprepared counsel), and a greater number of billing hours from attorneys and others who do not bring with them a base level of knowledge and experience in these types of cases. Staff and contract professionals who have the interest and expertise to provide efficient, correct representation will cost the State of Alaska less than representation obtained through a conscription system administered by the courts.

Conflict of interest issues

The court system is the branch of government charged with providing a just and impartial forum for the resolution of disputes. In support of this mandate, the rules of court specifically prohibit any court employee from engaging in the practice of law in any of the courts of this state (Administrative Rule 2). An obvious difficulty is created when one of the interested parties in a court action is represented by an employee of the court system. Even if actual collusion does not occur, parties to proceedings may lose faith in the court's ability to be impartial as a result of the appearance of impropriety created by such a relationship. This problem is exacerbated by the small size of the Alaska Court System, which makes a perception that there is a firm differentiation between functions unlikely.

If the court system administers a system using only contract and conscripted personnel (except for staff administrative personnel to manage the program), costs to the State will increase as discussed above.

Separation of power issues

The Constitution of the State of Alaska creates three separate and distinct branches of government. The court system is devoid of advocacy functions, so that the integrity and impartiality of the system can be carefully preserved and the public's faith in

the ability of the court to resolve disputes fairly is not placed in jeopardy. If OPA functions are placed within the court, this careful separation begins to deteriorate.

For the above reasons, the court system opposes any proposal to transfer responsibility for Office of Public Advocacy functions to the court system.

B. Budget

The attached budget documents reflect the change in the court's FY 92 budget request which would be necessitated by a transfer of OPA functions to the court.

Attachment

Stephanie Cole
for Art Snowden

Alaska Court System
Preliminary Estimate of Operating Budget for Public Advocacy Function
FY 92

Category	Office of Public Advocacy		Changes with Proposed Transfer to Court System		Court System Revised FY 92 Operating Budget	Schedule
	FY 91 Authorized	FY 92 Base	Add	Delete		
Personal Services	1,838.3	1,911.5	72.7	1,664.8	420.7	*aa*
Travel	131.0	131.0	0.0	38.1	92.9	*bb*
Contractual	3,033.7	3,033.7	3,563.3	58.0	6,539.0	*cc*
Supplies	19.8	19.8	0.0	0.0	19.8	*dd*
Equipment	0.0	0.0	0.0	0.0	0.0	*ee*
Other	30.0	30.0	0.0	0.0	30.0	*ff*
Total	5,052.8	5,126.0	3,636.0	1,760.9	7,102.4	

Estimated increased costs from proposed transfer	1,976.4

Schedule aa

Alaska Court System
Preliminary Estimate of Operating Budget for Public Advocacy Function
FY 92

Personal Services							
		Office of Public Advocacy			Changes with Proposed Transfer to Court System		Court System Revised FY 92 Operating Budget
Position		Location	Type	FY 92 Base	Add	Delete	
0	Attorney VI	Anchorage	Admin	107,002			107,002
1	Administrative Assistant III	Anchorage	Admin	59,476			59,476
2	Legal Secretary I	Anchorage	Legal	37,828		37,828	
3	Legal Secretary I	Anchorage	Legal	43,143		43,143	
4	Associate Attorney II	Anchorage	Legal	67,128		67,128	
5	Associate Attorney II	Fairbanks	Legal	83,371		83,371	
6	Attorney IV	Fairbanks	Legal	110,727		110,727	
7	Attorney IV	Anchorage	Legal	88,317		88,317	
8	Attorney V	Anchorage	Legal	94,057		94,057	
9	Attorney III	Anchorage	Legal	75,949		75,949	
10	Attorney III	Anchorage	Legal	83,050		83,050	
11	Attorney IV	Fairbanks	Legal	110,727		110,727	
12	Attorney III	Anchorage	Legal	75,949		75,949	
13	Legal Secretary I	Anchorage	Legal	38,038		38,038	
14	Attorney IV	Fairbanks	Legal	110,726		110,726	
15	Legal Secretary I	Anchorage	Legal	36,777		36,777	
20	Accounting Technician I	Anchorage	Admin	40,816			40,816
21	Chief Public Guardian	Anchorage	Legal	73,175		73,175	
22	Public Guardian	Anchorage	Legal	51,996		51,996	
23	Public Guardian	Anchorage	Legal	60,865		60,865	
25	Public Guardian	Anchorage	Legal	60,865		60,865	
26	Public Guardian	Fairbanks	Legal	61,172		61,172	
27	Public Guardian	Juneau	Legal	60,865		60,865	
30	Associate Attorney II	Anchorage	Legal	61,054		61,054	
31	Clerk Typist III	Fairbanks	Admin	36,180			36,180
32	Accounting Clerk III	Anchorage	Admin	38,732			38,732
33	Clerk Typist III	Anchorage	Admin	33,191			33,191
34	Associate Attorney II	Anchorage	Legal	62,960		62,960	

Schedule aa

Alaska Court System
Preliminary Estimate of Operating Budget for Public Advocacy Function
FY 92

Personal Services							
		Office of Public Advocacy			Changes with Proposed Transfer to Court System		Court System Revised FY 92 Operating Budget
Position		Location	Type	FY 92 Base	Add	Delete	
35	Public Guardian	Anchorage	Legal	51,996		51,996	
36	Attorney III	Anchorage	Legal	78,179		78,179	
37	Associate Attorney II	Anchorage	Legal	62,960		62,960	
38	Accounting Technician II	Anchorage	Admin	48,732			48,732
New	Accounting Clerk III	Anchorage	Admin		38,038		38,038
New	Accounting Clerk III	Anchorage	Admin		38,038		38,038
	Total			2,106,003	76,076	1,741,874	440,205
	Vacancy				3,365	77,043	19,470
	Net Personal Services				72,711	1,664,831	420,735

Notes:

1) Legal staff and legal-support staff eliminated. All legal representation provided by contractual professional services.

2) All administrative staff retained to administer contracts, pay bills, etc.

3) Two accounting positions added for bill paying.

Schedule bb

Alaska Court System
Preliminary Estimate of Operating Budget for Public Advocacy Function
FY 92

Travel

Category		Office of Public Advocacy FY 91 Authorized	Office of Public Advocacy FY 92 Base	Changes with Proposed Transfer to Court System Add	Changes with Proposed Transfer to Court System Delete	Court System Revised FY 92 Operating Budget
72240	Field Transportation	27.9	25.0		25.0	0.0
72270	Administrative Transportation	6.5	20.0			20.0
72390	Non-employee Transportation	61.2	41.0			41.0
72500	Per Diem	35.4	45.0		13.1	31.9
	Total	131.0	131.0	0.0	38.1	92.9

Notes:

1) Field transportation for staff attorneys and public guardians eliminated.

2) Per diem reduced by ratio of field transportation to total transportation.

Schedule cc

Alaska Court System
Preliminary Estimate of Operating Budget for Public Advocacy Function
FY 92

Contractual						
		Office of Public Advocacy		Changes with Proposed Transfer to Court System		Court System Revised FY 92 Operating Budget
Category		FY 91 Authorized	FY 92 Base	Add	Delete	
73100	Professional Services	2,901.7	2,901.7	3,528.2		6,429.9
73253	DP Chargeback	6.0	6.0			6.0
73300	Communications	74.0	74.0		58.0	16.0
73400	Transportation	6.0	6.0			6.0
73500	Advertising, Printing & Binding	20.0	20.0			20.0
73700	Minor Repair and Maintenance	11.0	11.0			11.0
73800	Space Rental			35.1		35.1
73860	Equipment Rental	15.0	15.0			15.0
	Total	3,033.7	3,033.7	3,563.3	58.0	6,539.0

Notes:

1) Additional professional services costs due to conversion from staff legal representation to contractual representation. See Schedule gg.

2) Eliminate current office space. Funding assumed to be in General Services budget. Add rent for 1,300 square feet for administrative staff in Anchorage at $2.25 a square foot. The court system includes space rental costs in its budget.

3) Communications reduced to reflect elimination of staff legal and legal-support positions and increased for new clerical positions.

Schedule dd

Alaska Court System
Preliminary Estimate of Operating Budget for Public Advocacy Function
FY 92

Supplies						
		Office of Public Advocacy		Changes with Proposed Transfer to Court System		Court System Revised FY 92 Operating Budget
Category		FY 91 Authorized	FY 92 Base	Add	Delete	
74220	Office Supplies	19.3	19.3			19.3
74560	Data Processing Supplies	0.5	0.5			0.5
	Total	19.8	19.8	0.0	0.0	19.8

Notes:
1) No change.

Alaska Court System
Preliminary Estimate of Operating Budget for Public Advocacy Function
FY 92

Equipment						
		Office of Public Advocacy		Changes with Proposed Transfer to Court System		Court System Revised FY 92 Operating Budget
Category		FY 91 Authorized	FY 92 Base	Add	Delete	
78050	Office Furniture	0.0	0.0			0.0

Notes:
1) No change.

2) Furniture from deleted positions used for new clerical staff. Remaining furniture surplused.

Schedule ff

Alaska Court System
Preliminary Estimate of Operating Budget for Public Advocacy Function
FY 92

Grants						
		Office of Public Advocacy		Changes with Proposed Transfer to Court System		Court System Revised FY 92 Operating Budget
Category		FY 91 Authorized	FY 92 Base	Add	Delete	
77440	Grants to Other Agencies	30.0	30.0			30.0

Notes:
1) No change.

Schedule gg

Alaska Court System
Preliminary Estimate of Operating Budget for Public Advocacy Function
FY 92

Caseload Costs

Category	Class	FY 90 Avg. Cost	Percent Billed in FY 90	Projected FY 92 Cases	Case Category Percentage	OPA Total Case Costs FY 92	Projected Cost of Existing Contractual Services	Conversion of Staff Representation to Contractual Representation
OPA Adult	Normal	$476.89	10.0%	1,288		61,423		
OPA Child	Normal	149.57	3.2%	1,473		7,050		
Contract Adult	Normal	670.79	73.0%	3,174	58.91%	1,554,234	1,554,234	371,547
Contract Child	Normal	450.54	81.0%	1,101	48.50%	401,796	401,796	260,713
Flat Fee Cases	Normal	438.61	100.0%	896		392,995	392,995	
No Contract Adult	Normal	814.00	77.1%	2,214	41.09%	1,389,493	1,389,493	332,147
No Contract Child	Normal	585.50	64.4%	1,169	51.50%	440,785	440,785	286,037
OPA Adult	Extraordinary	8,588.19	100.0%	11		94,470		
OPA Child	Extraordinary	2,259.43	100.0%	2		4,519		
Contract Adult	Extraordinary	17,497.17	100.0%	3	30.00%	52,492	52,492	57,741
Contract Child	Extraordinary	0.00	100.0%	0	0.00%	0	0	0
No Contract Adult	Extraordinary	23,334.00	100.0%	7	70.00%	163,338	163,338	179,672
No Contract Child	Extraordinary	15,633.00	100.0%	1	100.00%	15,633	15,633	31,266
Total						4,578,228	4,410,766	1,519,123
FY 92 Base							2,901,720	
Estimated Additional Costs for Existing Contract Attorneys							1,509,046	1,509,046
Estimated Additional Professional Services Costs for Public Guardian Cases								500,000
Estimated Total Additional Professional Services Costs for Court System								3,528,169

Notes:

1) Estimated case costs equal Percent Billed in FY 90 times Projected FY 92 Cases times FY 90 Average Cost times Case Category Percentage, as applicable.

2) Contractual cost of representation in public guardian cases estimated by court system.

3) Caseload information obtained from OPA FY 92 Operating Budget Request, Form C300, page 2.

DIVISION OF LEGAL SERVICES

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MEMORANDUM January 28, 1993

SUBJECT: House Bill 65 - Relating to the Improvement of State Finances (Work Order No. 8-GH1020\A)

TO: Representative Bill Hudson
Chair, House Labor & Commerce Committee

FROM: David R. Dierdorff
Revisor of Statutes

Linda Giguere of your staff has asked for a review of potential legal issues related to the governor's "state finance improvement" bill, HB 65.

To understand my review, it is helpful to set out the state of the law with respect to the title of bills and the single-subject rule. The law in Alaska flows from article II, section 13, of the state constitution, which provides, in part:

> Every bill shall be confined to one subject * * *. The subject of each bill shall be expressed in the title. * * *

With respect to the single-subject rule, the courts have given the requirement a liberal interpretation, adopting, in Gellert v. State, 522 P.2d 1120 (Alaska 1974), the position stated by the Minnesota Supreme Court in 1891:

> All that is necessary is that [the] act should embrace some one general subject; and by this is meant, merely, that all matters treated of should fall under some one general idea, be so connected with or related to each other, either logically or in popular understanding, as to be parts of, or germane to, one general subject.

Id., at 1123, quoting Johnson v. Harrison, 50 N.W. 923, 924 (Minn. 1891). Five years after Gellert, the court stated that the test

> . . . requires no more than that the various provisions of [a] single legislative enactment fairly relate to the same subject, or have a natural connection therewith.

Short v. State, 600 P.2d 20, 24 (Alaska 1979).

In construing the single-subject rule, the court will "disregard mere verbal inaccuracies" and "resolve doubts in favor of validity"; "in order to warrant the setting aside of enactments for failure to comply, the violation must be substantial and plain." Suber v. Alaska State Bond Committee, 414 P.2d 546, 557 (Alaska 1966). The rule should be "construed with considerable breadth. Otherwise statutes might be restricted unduly in scope and permissible subject matter, thereby multiplying and complicating the number of necessary enactment(s) and their interrelationships." Gellert, at 1122.

Using this broad construction of the rule, the court has approved such single-subjects as "water resources" in Gellert; "state taxation" in North Slope Borough v. Sohio Petroleum Corp., 585 P.2d 534 (Alaska 1978); "land" in State v. First Nat'l. Bank of Anchorage, 660 P.2d 406 (Alaska 1982); and "transportation" in Yute Air Alaska, Inc. v. McAlpine, 698 P.2d 1173 (Alaska 1985). The Alaska Court of Appeals has approved the single-subjects "liquor regulation" in Van Brunt v. State, 646 P.2d 872 (Ak. App. 1982); and "criminal law" in Galbraith v. State, 693 P.2d 880 (Ak. App. 1985). In fact, the Alaska Supreme Court and the Alaska Court of Appeals have never found that an Alaska statute violated the single-subject rule. This is consistent with the record of other states that have substantially the same rule. Only clear violations of the single subject requirement have been found unconstitutional. (State ex rel Hinkle v. Franklin County Board of Elections, 580 N.E.2d 767 (Ohio 1991) finding a violation of the single subject requirement where a bill on a local option for allowing the sale of alcoholic beverages was added to a bill concerning elected judicial offices)

In recent years, however, the Alaska Supreme Court has begun to reevaluate its broad interpretation of the single-subject rule. In First Nat'l. Bank of Anchorage, the court expressed reservations about prior cases, but was unwilling in that case to overturn past precedents. In Yute Air Alaska, Inc., the court again expressed concern with the broad interpretation of the rule, but gave three reasons why it was not ready to reject its past approach: (1) "it is not at all clear that there are workable stricter standards"; (2) the legislation in that case was the result of a voter initiative and the sponsors of the initiative had relied on the court's precedents in preparing it; and (3) because the sponsors were not experts at drafting the court was reluctant to invalidate a worthy or popular cause merely because of doubtful legality.

In his dissent in Yute Air Alaska, Inc., Justice Moore blasted the majority's "test" as meaningless. "This court has mistakenly continued to give the rule such an extremely liberal interpretation that the rule has become a farce," he said. Id. at 1182. Moore suggested a new test: "An act or initiative should embrace one subject. By this we mean that all matters treated should be logically connected." This, he said, means that various provisions of legislation will pass muster if they are inextricably intertwined, if they have an effect on one another, or if they are reasonably interdependent. Moore urged that "[e]nactments should be presented clearly and candidly," and that the court should "use a plainer standard and be more willing to look closely at the logic of an asserted connection and the reasonable interdepen-

dence of separate provisions. . . . to discourage logrolling and . . . duplicity." Id. at 1186.

In HB 65, the stated subject, as expressed in the title, is "the improvement of state finances." The title goes on to state the two means used to achieve that improvement, through "reduction of operating costs" and "establishment of certain fees." Assuming that "the improvement of state finances" is an appropriately described "subject" for a bill,[1] it is necessary to review each provision of the bill to determine whether it fits within that title and whether the bill in fact encompasses more than one subject. Consequently, I will summarize the provisions to make that determination. In the summary I will also note any other problems I see with particular provisions.

Sections 1 - 31 convert all annual liquor licenses under AS 04 to biennial licenses, which, under sec. 72, would be staggered so that one-half expired each year.

Section 32, although stated in the governor's transmittal letter to be a part of the annual/biennial conversion, in fact changes the current six-month license to either a twelve-month license or two, noncontiguous six-month licenses, depending upon how the language is read. I fail to see how this improves state finance by reducing costs of operation. Also, it arguably changes the law relating to the six-month license. This provision is probably not described in the bill title.

Sections 33 and 34, together with sec. 70's repeal of AS 13.26.410(b), change the entity that determines whether the cost of providing public guardian services is charged against the income or estate of the ward or protected person, or absorbed by the state. Under current law, the entity making that determination is the supervising court under the guidance of criteria set out in AS 13.26.410(b).[2] Under

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[1] I have grave doubts as to whether the phrase "improvement of state finances" is a legally sufficient description of the subject of a bill. Determining whether a particular provision is within the scope of this title would be a subjective judgment. One person's improvement of state finances might very well be another person's degradation of those finances. When evaluating the title of a bill it is important to keep in mind two things: first, does the title give reasonable notice of the bill's content; second, would the title deter logrolling (see Justice Moore's dissent in Yute Air Alaska, Inc.).

[2] AS 13.26.410(b) provides:

> (b) The court shall determine the ability of the ward or protected person to pay for administrative costs of a public guardian or costs incurred in the appointment procedure by determining the financial ability of the ward or protected person to pay a private guardian or conservator, considering the nature, extent, and liquidity of assets of the ward or protected person, the disposable net income of the ward or protected person, the nature of the guardianship or conservatorship, the type, duration and complexity of the services required, and any other foreseeable expenses.

the bill, the Department of Administration would establish a schedule of fees[3/] to cover the costs, and "shall" collect those fees unless it finds that collection is not "economically feasible or in the public interest." Those criteria, while arguably a terse restatement of those in current AS 13.26.410(b), seem quite different. And while the change from a court determination to an administrative determination may "reduce the cost of operations," it may also increase the likelihood that wards and their estates pay the remaining costs. Finally, under Probate Rule 16(d), compensation for guardianship services may not be paid without written order of the court. These bill sections have the effect of amending that rule and the title does not give notice of that fact.

Section 35, which is related to secs. 33 and 34, enacts a new subsection dealing with the accounting and disposition of fees collected from wards and protected persons. The first sentence is redundant to AS 37.05.142 (enacted in 1990) and should be deleted. The language of the second sentence suggests that the program receipts from public guardianship activities of the Office of Public Advocacy would be appropriated to cover to all activities of the office, not just those related to public guardianships.[4/] If that is the case, the sentence should be rewritten to read "The annual estimated balance in the account maintained under AS 37.05.142 may be used by the legislature to make appropriations to the Department of Administration to carry out the purposes of AS 44.21.400 - 44.21.410 (Office of Public Advocacy)." If it is not intended that the money be used to cover more than the activity for which the fees are charged, the sentence is redundant to AS 37.05.144 and bill sec. 35 should be deleted.

Sections 36 - 43 require that a one percent loan guarantee fee be added to student loans. Provision is made for the use of those fees to offset certain losses.

Section 44 gives fee-setting authority to the Department of Labor for boiler and pressure vessel inspector examinations and applications for inspector commissions.

Sections 45 and 46 eliminate statutory licensing periods and fees for plumbers' and electricians' certificates of fitness and substitute periods and fees to be established by regulation.

[3/] The fee schedule "may be based upon the ability of the ward or protected person to pay for guardian services." In this respect, it is similar to the criteria used by the courts under current AS 13.26.410(b). However, the courts make the determination on a case by case basis. The governor's bill contemplates the adoption of a fee schedule by regulation that, presumably, can be applied on a case by case basis. It occurs to me that a schedule that complies with the new statute would either be hopelessly complex or impermissibly broad and vague.

[4/] Given the fact that the fees could not exceed the costs, it seems unlikely that there would be sufficient program receipts to finance anything other than a portion of the public guardianship activities of the office.

Section 47 authorizes the Alaska Police Standards Council to set fees by regulation for certification applications.

Section 48 increases the statutorily set fee for employment agency permits. This is not within the title of the bill, because the title describes only the "establishment" of fees, not the increase of existing fees.

Section 49 deletes the authority of a court to appoint the Office of Public Advocacy to represent minors in certain child custody proceedings, as well as the duty to make that appointment if the parties are indigent. The governor's transmittal letter suggests that the court system has employees who perform essentially the same function. If that is the case, one would assume that OPA would not be appointed by the court unless the child needed service that only an attorney could provide. It is questionable whether this bill section really "improves" state finances by reducing operating costs. Under the law as amended by the bill, the court would still have to provide representation in certain indigency cases and the costs would have to be borne by the court system. The only savings would be to the executive branch.

Section 50 is clearly outside the title of the bill insofar as it provides for a new service, the selling of vehicle registration lists.

Section 51 is not described in the title. Although it does establish a fee, it does so by providing a new service, making certain custom motor vehicle license plates available for that fee.

Section 52 changes the standard under which free license plates are issued to handicapped or disabled persons. This section neither establishes a fee nor necessarily reduces the cost of state government. It would increase revenue, because it is likely that fewer people would qualify for free plates, but it is not certain that administrative costs would stay the same or be reduced under this provision. In fact, it is quite possible that they would increase, at least during the first year or two after enactment.

Section 53 does not establish a fee or reduce costs -- the stated intent is to increase revenue through additional sales of dealer plates by clarifying that each car entitled to display dealer plates must display two. This substantive clarification is not described in the title. This bill section and several that follow fit under the title only insofar as increasing government revenue can be said to reduce the cost of state government.

Sections 54 and 58, together with sec. 70's repeal of AS 28.10.011(12), have the stated purpose of making it clear that mobile homes are not considered vehicles for purposes of the motor vehicle laws, thereby eliminating the need for registration and motor vehicle titles. Assuming that the fees charged for registration and titling do not cover the costs, eliminating this function would reduce the cost of operating the Department of Public Safety. However, there are references to "house trailers" in the

motor vehicle laws, including a provision for a registration fee and a provision relating to false representations that a trailer is new. Neither "house trailer" nor "mobile home" are defined. I assume that the bill is addressing what is commonly called a "manufactured home" that is moved from site to site on wheels, as opposed to a recreational trailer that may be used as a home but is ordinarily not permanently affixed to a site. Would a person engaged in towing a manufactured home from one site to another need some form of trip permit or other license for the mobile home being towed? When does a house trailer become a mobile home? It appears that further amendments and clarification would be desirable if the goal is to clarify the law.

Section 55 amends the law granting senior citizens free registration of one vehicle a year to clarify that the free registration may be claimed only once a year. The current law is ambiguous. Whether this substantive clarification fits within the title of the bill is questionable.

Section 56 increases the registration fee for motor vehicles by $10 when the registration is not conducted by mail. The fee may be waived for good cause under regulations to be adopted.

Section 57 amends AS 28.10.421(c) to provide that any vehicle registered under a company or business name must pay the commercial registration fee, even if the vehicle is not used for commercial purposes. It is questionable whether this provision fits within the title.

Section 59 adds money received for administering group insurance programs to the list of program receipts that are not general fund program receipts. The governor's transmittal letter incorrectly describes this provision as exempting the monies from the definition of program receipts. The list in AS 37.05.146(4) is not a list of exemptions, it is a list of program receipts that are not considered to be general fund program receipts. It is important to understand that distinction, because it may have an effect on the justification for the bill section. The receipts will still have to be accounted for.

Sections 60 and 61 relate to the deposit of insurance claim settlements and other loss recoveries into the catastrophe reserve account. These provisions are stated to be required to facilitate compliance with federal requirements and it is said they will result in cost savings.

Section 62 authorizes the Department of Natural Resources to accept cash and other donations to support the state's parks and recreation facilities. It reduces the cost that must be paid from other revenue sources, but it does not necessarily reduce the expenditures (cost) of state government. In fact, it could just as easily increase expenditures.

Sections 63 and 71 increase the purposes for which the Department of Natural Resources may charge and collect fees.

Sections 64 and 69 eliminate the duty of the Office of Public Advocacy to provide legal representation in several types of cases involving minors. While this presumably reduces the cost of state government by eliminating services (assuming that all the services eliminated are discretionary), I question whether the title gives adequate notice of this type of change.

Sections 65 and 66 grant new fee-setting authority to the Department of Environmental Conservation.

Section 67 adds a new category of persons to the state's optional list of those eligible for federal Medicaid coverage. Assuming that this change did not change the caseload, it would reduce the state's cost to the extent of federal reimbursement. However, if this change results in an increased caseload, it saves money only until that caseload doubles, at which time it begins to cost the state money. I mention this only to point out the basic difficulty with the bill's current title: it is too broad and too subjective.

Section 68 adds the same new category to the list setting the order of priority for the various groups eligible for optional Medicaid coverage. By making the new category the last to be eliminated in the event of a shortfall of appropriations, this bill provision affects every otner category in the list. This fact is not noticed in the bill's title, and this bill section neither reduces the cost of state government nor establishes a fee.

Section 70 contains the repealers, two of which have been mentioned above. Of the remaining, the repeal of AS 28.10.181(k)[5/] and the related repeal of AS 28.22.-011(a)(3),[6/] relating to the registration of occasionally used vehicles, raises a couple

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[5/] AS 28.10.181(k) provides:

> (k) Occasional users of highways. The department may issue a license to the owner of a vehicle that is only occasionally used on a highway. The applicant must show to the satisfaction of the department that the vehicle to be licensed under this subsection will travel upon state highways less than five per cent of its total hours of operation. The department may not issue more than two licenses under this subsection to a single person.

[6/] AS 28.22.011(a) provides:

> (a) The operator or owner of a motor vehicle subject to registration under AS 28.10.011 when driven on a highway, vehicular way or area, or on other public property in the state, shall be insured under a motor vehicle liability policy that complies with this chapter or a certificate of self-insurance that complies with AS 28.20.400 unless

(continued...)

of questions. First, does this mean that owners of these vehicles will have to register their vehicles under AS 28.10.011 and insure those vehicles under AS 28.22? I assume that it does, and these substantive changes go beyond the scope of the title of the bill. Second, if not, would they then have to obtain trip permits or the equivalent for their occasionally use of the highways? If so, where are the cost savings to the department? The other repeal in sec. 70, that of AS 37.05.210(1),[7] is not justified by the governor's transmittal, which states that

> [the section] is repealed to remove the statutory requirement for the Department of Administration to make monthly and annual reports on the financial condition and transactions of funds in the state accounting system. The department currently prepares these reports by computer on a more frequent basis. (Emphasis added)

If the reports are already prepared, and on a more frequent basis, I fail to see how repealing the provision would save money unless the reports described in the governor's transmittal would no longer be prepared.

Sections 71 - 77 contain transitional provisions and the effective dates.

ANALYSIS

Sections not described in the title. As has been noted, many provisions of this bill are either clearly or arguably not adequately described in the title. Those sections

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[6](...continued)

(1) the motor vehicle is being driven or moved on a highway, vehicular way, or a public parking place in the state that is not connected by a land highway or vehicular way to

(A) the land-connected state highway system, or

(B) a highway or vehicular way with an average daily traffic volume greater than 499; and

(2) the operator has not been cited within the preceding five years for a traffic law violation with a demerit point value of six or more on the point schedule determined under regulations adopted by the department under AS 28.15.221; or

(3) the motor vehicle is registered under AS 28.10.181(k).

[7] AS 37.05.210 provides:

> **Sec. 37.05.210. Fiscal reporting and statistics.** The Department of Administration shall
>
> (1) at least once each month and annually, prepare reports as of the close of the preceding month or fiscal year showing the financial condition of each fund as of the close of the respective period and the transactions of each fund for those periods;
>
> (2) file with the governor and with the legislative auditor before October 16 a report of the financial transactions of the preceding fiscal year and of the financial condition of the state as of the end of that year, with comments and supplementary data which it considers necessary; this report shall be printed for the information of the legislature and the public;
>
> (3) compile statistics necessary for the budget and other statistics required by the governor.

are: 32, 33, 34, 48, 49, 50, 51, 52, 53, 55, 57, 59, 62, 64, 68, and 70. Assuming that the bill covers a proper single subject, the cure for this problem is to redraft the title.

Reasonable notice. I have previously noted my concern that the stated single subject, "improvement of state finances," is too vague, too subjective, and overly broad. Presumably, a new tax could be placed in this bill because a new tax would clearly improve state finances. But it is highly unlikely that the court would allow that bill to stand, because "improvement of state finances" does not give reasonable notice of the enactment of a new tax. In any event, I have noted above the sections that are not described in the title, and the failure of the bill to note the change in the Rules of Court effected by secs. 33 and 34.

The single-subject rule. The fact that many of the bill's provisions appear to be outside the scope of the title suggests that the bill deals with more than one subject. In prior sessions, we have considered omnibus bills dealing with the state's financial administration that covered a wide range of government services, but had a common thread. Perhaps the broadest title we have reviewed in recent years was that of CSHB 596(FIN), a subsequent version of which became ch. 2, FSSLA 1992. That bill dealt with the "* * * powers, duties, and operations of certain state agencies * * *." In an effort to meet, at least in part, the objections of Justice Moore's dissent in Yute Air Alaska, Inc., the title was expanded to provide notice of the specific contents. Even so, by the time that bill had passed both houses, two other bills had been rolled into it and it was our opinion that the final version was vulnerable to attack, primarily on the basis that it was a classic example of logrolling.

In analyzing a bill for single-subject problems, we go behind the title and look at the actual contents for a common thread, that one general idea that connects the various parts logically or in popular understanding. The single subject does not need to be as narrow as, for example, "liquor licenses," but it must not be so broad that the bill becomes a vehicle for logrolling and fails to give the public reasonable notice. In HB 65, a number of narrow subjects are covered. The governor has identified a common thread, improving state finance. However, as has been pointed out, that commonality is probably overly broad. Consequently, one must look for some other single subject to validate the bill.

The component parts of HB 65 deal with: liquor license duration and renewal, duties of and fees charged by the Office of Public Advocacy, student loan fees, Department of Labor fees and licensing periods, police standards fees, motor vehicle registration and insurance, program receipts accounting, risk management administration, receipt of donations by a department, charging of fees by the Department of Natural Resources and the Department of Environmental Conservation, coverage of persons under Medicaid, and fiscal reporting. Like HB 596 of the Seventeenth Legislature, those components all deal with the powers, duties, and operations of state agencies. Consequently, it may be possible to draft a title that would meet the objections relating to reasonable notice and cover the sections that are not covered by the title as introduced.

Finally, because these omnibus bills are so vulnerable to logrolling and subsequent legal attack, it would be preferable to split HB 65 into at least four bills: one dealing with licensing, fees, and financial administration; one dealing with the Office of Public Advocacy; one with motor vehicles; and one with Medicaid. The risk in keeping HB 65 together is that it would accomplish nothing to pass a law that was vulnerable to legal challenge, no matter how salutary the contents.

If I can be of further assistance, please advise.

DRD:gc
93-078.glc

WALTER J. HICKEL, GOVERNOR

OFFICE OF THE GOVERNOR

OFFICE OF MANAGEMENT AND BUDGET

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January 26, 1993

The Honorable Bill Hudson
Chair
House Labor and Commerce Committee
State Capitol
Juneau, Alaska 99811

Dear Representative Hudson:

House Bill 65, the "omnibus" legislation relating to the state's operating budget, has been referred to your committee for consideration. On behalf of the Governor, I would appreciate your scheduling it for the committee's consideration at your earliest convenience.

As explained in the Governor's transmittal letter, the legislation makes a number of changes to state law which will impact the state's operating budget. These changes involve both sides of the ledger -- reductions in general fund expenditures as well as increases in state revenues. These changes are more specifically described in the "fiscal" sectional analysis which accompanied the legislation at the time of its introduction.

Your assistance in scheduling the bill will be appreciated. Should you have any questions, or need additional information, please contact Cheryl Frasca at OMB's Division of Budget Review. Her direct number is 465-4681.

Thank you.

Sincerely,

J. Shelby Stastny
Director

cc: Kris Lethin, Office of the Governor
Cheryl Frasca, Office of Management and Budget

Proposed Amendment to HB 65
By Representative Brian Porter

Page 14, lines 5-9 are amended as follows:

(7) charge and collect reasonable fees, established by the council by regulation, for processing applications for basic certification of police, probation, parole, and correctional officers under 13 AAC 85.040 and 230 [, EXCEPT THAT NO FEES MAY BE CHARGED FOR AN APPLICATION FROM A PERSON EMPLOYED BY THE STATE IN A POSITION THAT REQUIRES CERTIFICATION ISSUED BY THE COUNCIL].

Library

Section 44:

Section 44 would allow the department to adopt regulations establishing fees for administering special inspector examinations and processing applications for special boiler and pressure vessel inspector commissions.

The department currently performs these functions without charge.

Regulations establishing a $25 application and examination fee is anticipated. This would generate approximately $0.4 annually in receipts to the general fund.

Section 45:

Section 45 would **shift** set time periods for certificates of fitness for plumbers and electricians from a one- or three-year certificate to two-year certificates. **The department would have the authority to phase in the one and three year certificates to two year certificates over an expected four year period.**

This bill would have no fiscal impact other than stabilizing revenues to the department.

Section 46:

Section 46 would **establish** fees for an application/examination and for duplicate certificates of fitness for electricians and plumbers. Section 46 would also **increase fees** for certificates of fitness and for renewals of certificates.

No application / examination fee is currently charged; a $50 **application/examination fee** would generate approximately $23.8 annually in program receipts. This fee reflects the cost of providing these services.

A fee is not currently charged for duplicate certificates; a $25 **fee for duplicate certificates of fitness** would generate approximately $2.4 annually in program receipts. The $25 fee reflects the cost of providing the duplicate certificate.

Currently, $40 is charged for a one year certificate and $75 is charged for a three year certificate. A $160, two-year **certificate of fitness fee**--with an $80, one-year certificate of fitness issued for a three year period until the current three-year certificates are phased out--are proposed. These fee changes are expected to generate $93.5 annually. The revenue associated with this change is included in the department's operating budget submittal as program receipts. Two points are relevant: 1) the general fund gains $93.5 and 2) the fiscal note does not reflect the receipt of the revenue because it is in the operating budget.

Section 48:

Section 48 of this bill raises the fee for an employment agency license from $10 to $100 **and establishes the license as a biennial license.** This fee has not been increased since 1953. This increase reflects the costs of review performed by the department for these operating permits.

The eight licensed employment agencies operating in the state will pay a total of an additional $0.7 **biennially** for licensing. The department will continue to absorb the cost of reviewing and issuing these permits and the $0.7 additional revenue collected will be deposited into the general fund.

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M E M O R A N D U M February 23, 1993

SUBJECT: Sectional Summary of CSHB 65(L&C) (Work Order No. 8-GH1020\E)

TO: Representative Bill Hudson
Chair, House Labor & Commerce Committee

FROM: David R. Dierdorff
Revisor of Statutes

You have requested a sectional summary of the above-described bill.

This summary will serve primarily as a guide to the identical provisions of the bill as introduced by the governor, so that you may use it to find the governor's description of the purpose of each provision in his transmittal letter and to find my January 28 comments on the bill as introduced. I will describe any differences between the provisions of this draft and HB 65.

Sections 1 - 32. These sections correspond to secs. 1 - 32 of the governor's bill and relate to the duration of licenses issued by the Alcoholic Beverage Control Board.

Secs. 33 - 35. These sections correspond to secs. 33 - 35 of the governor's bill. Section 35 has been redrafted to conform to the preferred style of provisions related to program receipts. As drafted, the expressed intent of the legislature would be to make public guardian service fees available for all activities of the office of public advocacy rather than just activities related to public guardianships. See page 4 of my January 28 memo.

Secs. 36 - 43. These sections correspond to secs. 36 - 43 of the governor's bill and relate to the loan guarantee fee to be charged against various scholarship loans. In secs. 38 and 40, the phrase "subject to appropriation" should be added to qualify the transfer by the commission to the various accounts. Otherwise, these provisions violate the prohibition against dedicated funds.

Secs. 44 - 48. These sections are identical, except for minor stylistic changes, to secs. 44 - 48 of the governor's bill. They relate to certain activities of the Department of Labor.

Sec. 49. This section was sec. 59 in the governor's bill. Please refer to my comments on page 6 of my January 28 memo.

Secs. 50 - 51. These sections are identical to secs. 60 and 61 of the governor's bill and relate to risk management administration.

Secs. 52, 53, and 57. These sections correspond to secs. 62, 63, and 71 of the governor's bill and relate to the Department of Natural Resources.

Secs. 54 - 55. These sections, relating to the Department of Environmental Conservation, correspond with secs. 65 and 66 in the governor's bill and are identical except for minor stylistic changes.

Sec. 56. The repealers are the relevant ones found in sec. 70 of the governor's bill.

Secs. 58 - 59. Identical to the transition provisions of secs. 72 - 73 of the governor's bill.

Sec. 60. This section is not in the governor's bill. It describes the effect of sec. 33 on the Alaska Rules of Probate Procedure.

Secs. 61 - 64. The effective date provisions.

If I may be of further assistance, please advise.

DRD:pl
93-121.plm

Official Business

COMMITTEE:
HOUSE LABOR AND COMMERCE COMMITTEE

DATE: 2/23/93

SIGN-IN

Subject of meeting:
HB 65

NAME	ADDRESS	PHONE	REPRESENTING	DO YOU WANT TO TESTIFY?
Donald G. Studen CSP	PO Box 21149, Juneau	6003	DOL - S+S	Yes

HB

92

HOUSE COMMITTEE REPORT

2/3

(7)

Date Referred: February 1, 1993 FURTHER REFERRALS: Judiciary

Date of Committee Action: 2/03/93

The LABOR AND COMMERCE Committee considered: SSHB 92

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 92 REGULATION OF NOTARIES PUBLIC

"An Act relating to notaries; and providing for an effective date."

RECOMMENDATIONS: CSSSHB 92 (L+C) be replaced with Committee Substitute for HB 92 (L+C)

[X] the same title
[ ] a new title

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

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)

[ ] fiscal impact _____

[X] zero fiscal note Lt. Governor's Office

APPROVES PREVIOUS: (Dept/Date)

[ ] fiscal note(s) _____

[ ] zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
Bill Hudson	✓	Brian D. Porter		✓	
		R. Williams		✓	
		Green		✓	

Bill Hudson
CHAIRMAN'S SIGNATURE

JOHN B. COGHILL
LIEUTENANT GOVERNOR

STATE OF ALASKA
P. O. Box 110015
JUNEAU, ALASKA 99811-0015
(907) 465-3520

House Bill 92
Position Paper

"An Act relating to notaries; and providing for an effective date."

A notary is a ministerial official appointed by the State to serve the public as an impartial witness, with specific duties prescribed by law.

Alaskan notaries are faced with a number of urgent problems. Currently, notaries are not required to keep a record of completed notarial acts. Requiring notaries to maintain a journal is important for two reasons; it would help in deterring fraud, and protects the notary against potential lawsuits. This legislation would require notaries to record specific information regarding the completed notarial act in a permanently bound journal.

The notary office receives a number of inquiries each week regarding documents that have been notarized with illegible seal impressions. This legislation would require that all notaries commissioned after July 1, use a rubber inking stamp instead of an embossed seal. This would practically eliminate the dilemma of illegible seal impressions. This particular clause would also add to the efficiency of government by eliminating the smudging process on documents that have to be recorded.

HB 92 also offers specific guidelines in disqualifications, impartiality and the unauthorized practice of law. The basic duty of a notary is to serve the public as an impartial witness. Current notary statutes do not offer the notary guidelines on what would be considered impartial or a disqualifying interest. These specific guidelines would help notaries in understanding their duties as a ministerial official of the State.

The notary administrator receives a number of calls from notaries inquiring about the type of notarial certificate to use when completing a notarization. A notarial certificate states the particulars of a notarization and appears at the end of a signed document. It is not within the function of a notary to decide on this certificate. Unfortunately, the public has a way of putting this burden on the notary. This legislation would require the document to be completed with a notarial certificate when presented to the notary for notarization, thus eliminating the potential for the unauthorized practice of law.

The notary statutes have not been updated, with the exception of the fee increase, since they were written in 1961. House Bill 92 offers improvements to the statutes which are designed to protect the notary.

For more information regarding HB 92 please contact Patty Trott, Notary Administrator, extension 3509.

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. HB 92

Revision Date:

Title: "An Act relating to notaries;..."

Sponsor: Representative Therriault

Requestor:

Department Affected: Office of the Governor

BRU: Executive Operations

Component: Lt. Governor

COMPONENT SERIAL NO. 0011

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 Fedoral 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

Estimato of current year (FY93) impact: 0

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

Prepared by: Patricia Trott, Notary Commissions Administrator
Phone: 465-3520
Division: Office of the Lt. Governor
Date: 1/28/93

Approved by Commissioner: John B. Cothill, Lieutenant Governor
Agency: Office of the Lt. Governor
Date: 1/28/93

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Rev 11/92

Sectional Analysis
House Bill 92

Section 1. Requires the notary to include the date of notarization, the city and state where the notarization was performed. In reference to the notary's seal, this section would replace the words "print or emboss" with the word "place" to comply with Section 9.

Section 2. Requires information supplied in Section 1 for verifications.

Section 3. Requires information supplied in Section 1 for acknowledgements.

Section 4. Adds a new subsection preventing persons who have been convicted of a crime involving dishonesty from applying for a notary commission for five years after the conviction.

Section 5. (2) Referencing taking acknowledgments, this section deletes [The certificate shall be signed by the notary in the notary's own handwriting]. This section is no longer needed because of the enactment of section 1.
(4) Requires the notary to keep a journal under AS 44.50.095 which is referenced in section 10. Deletes [A deposition, affidavit, oath, or affirmation shall be signed by the notary in the notary's own handwriting, and the notary shall endorse after the signature the date of expiration of the notary's commission.]

Section 6. Requires a notary to sign the notarial act and the notary must also insert the information required by AS 09.63.030(c), regarding the expiration date and placement of the notary stamp on the document.

Section 7. Adds a new section to 44.50 defining what would prohibit a notary from performing a notarial act. The notary would be disqualified if the notary is (1) a signer of or named in the document (2) will receive directly from a transaction connected with the notarial act a commission, fee, advantage, right, title, interest, cash, property, or other consideration exceeding in value the normal fee charged by the notary (3) is related to the person whose signature is to be notarized as a spouse, sibling, or lineal ascendant or descendant to the second degree of kindred.

Section 8. Adds a section defining impartiality, and requires a notary to perform notarial acts in lawful transactions, unless the notary has stated a reason for refusal.

Prohibits a notary from knowingly executing a false certificate, and from endorsing or promoting a product, service, contest, or other offering if the notary's title or seal is used in the endorsement or promotional statement.

Prohibits the notary from selecting or assisting another person in drafting, completing, selecting or understanding a document or transaction requiring a

notarial act, but does not prohibit a notary who is qualified in, and, if required, licensed to practice, a particular profession from giving advice relating to matters in that professional field.

Prohibits the notary from making representations to have powers, qualifications, rights, or privileges that the office of notary does not have.

Section 9. Repeals AS 44.50.080(b) and reenacted to require a notary to use a rubber inking stamp rather than a seal press. The stamp must also contain the notary's name and the words "Notary Public" and "State of Alaska" as set forth in section (a) of this chapter.

Section 10. Amends 44.50 by adding a section requiring notary publics to (a) maintain and preserve a chronological, permanently bound journal of notarial acts performed by the notary. (b) at the time of the notarial act the notary must record at least the following information:

(1) the notary would have to record the date of notarial act;

(2) the type of notarial act;

(3) a description or proceeding of the document;

(4) the name, address and signature of each person for whom a notarial act is performed;

(5) a description of the evidence used to identify each person for whom a notarial act is performed;

(6) the fee if the notary charges the constituent;

(c) the notary shall also record the circumstances of refusal for performing a notarial act in the journal.

(d) the journal is an official record that is available at reasonable times and in the notary's presence for people to look at and it may be reproduced for which the notary may charge.

(e) the journal will be kept by the notary and prohibits others from using the same journal.

Section 11. Amends AS 44.50.100 with language in regards to the seal and journal. This also specifies that a **copy** of the journal will be returned to the Lt. Governor's Office upon the death or resignation of a notary's commission.

Section 12. In the application of the Administrative Procedures Act this section would delete [To revocation of notary commission] from AS 44.50110 and adds "and in the adoption of regulations under this chapter."

Section 13. Amends 44.50 by adding a new section (44.50.185) giving the lieutenant governor the authority to adopt regulations to carry out the purposes of AS 44.50. Requires the lieutenant governor to produce, and distribute a handbook with a summary of the provisions of AS 44.50 and any adopted regulations.

Section 14. Defines notary as notary public.

Section 15. Allows for a transition period for these changes to go into effect.

Section 16. The Act takes effect on July 1, 1993.

REPRESENTATIVE
GENE THERRIAULT
P O Box 55326
North Pole, Alaska 99705
(907) 488-0862

House District 33

Alaska State Legislature

While in Juneau
State Capitol
Juneau, Alaska
99801-1182
(907) 465-4797

House Of Representatives

Sponsor Statement

House Bill 92 deals with three important notary issues. First, it would require that all notaries maintain a current journal. Keeping a journal is not only a prudent, businesslike practice, but protects the public by providing valuable documentary evidence of a notarization should memory fail or an original document become altered or misplaced. A journal also may preclude a baseless lawsuit by showing that a Notary did use reasonable care or that a transaction did occur as recorded.

Secondly, HB 92 would mandate notaries use a rubber inking stamp instead of the more familiar embossed seal. AS 44.50.080 mandates that notaries us a seal "which legibly reproduces under photographic methods..." Unfortunately, many of the embossed seals that are used today can not be legibly reproduced when the document is copied or faxed. The use of a rubber inking stamp would almost eliminate the problem of illegible seal impressions.

The basic duty of a notary is to serve the public as an impartial witness. Current notary statutes do not offer the notary guidelines on their role as an appointed ministerial official of the State of Alaska. This legislation will give Alaskan notaries specific guidelines on impartiality, disqualifying interests, and the unauthorized practice of law.

February 1, 1993

FEB 2 1993

Representative Thierriault
Alaska State Legislature
State Capitol Building
Juneau, AK 99901

RE: House Bill No. 92
An act relating to Notaries

Dear Representative Thierriault:

I am both a private Notary and a Notary for the State of Alaska. The requirements under this bill, should this legislation pass, would be so onerous that I would no longer wish to serve in this capacity.

The bill provides that the Notary seal must be on a stamp and be printed in black ink. The liability for notarizing a document lies soley upon me. My bond is for the protection of those involved in the transaction, not for any liability I may incur. I have always used an embossed seal rather than a stamp because the embossed seal cannot be tampered with. With copier technology as advanced and readily available as it is today, a stamped seal, especially one required to be in black ink, can be easily duplicated, lending itself to fraud. An embossed seal cannot be easily forged but can still be seen on copies by simply running a pencil over the seal. I feel the liability protection afforded the Notary is worth the second or two it takes to do this.

A journal of notary actions has always been suggested and when I notorize private documents under my private bond, I generally do keep enough information so I can recall the action. However, in my capacity as a notary for the State, the sheer volume of notarizing I do makes the journal requirement impractical at best. I often receive upwards of seventy Child Support Enforcement Orders at one time to be notarized within a very short period of time. Just completing the certification and the seal takes a considerable amount of time. Completing a journal as required under this bill for each action would increase the time twofold if not more.

I also object to the requirement that in the event I choose not to renew my notary bond, the state would require me to deliver my notary seal to the office of the lieutenant governor. The seal is my personal property that I have had to pay for from my own pocket. In my case, the embosser costs over $100.00. I would like to know by what authority the State can seek to remove my personal property from me. If the seal was provided by the state, I could see where this provision would be reasonable, but not when the Notary must pay for it themselves.

Notaries perform their duties usually for no remuneration but as a service to customers. I have personal knowledge of two persons who have not renewed their commission

simply because the lieutenant governor's office is now requiring a test be taken. I will not renew my personal Notary commission when it expires this month because of the increased cost of the bond and because of the increased liability involved. The point I am trying to make is a Notary gets very little in return anymore for the trouble involved in obtaining the commission and the personal liability involved. If you pass this legislation, I feel more people will choose not to become Notaries or not renew their commission because of the increased work involved. I know I will be one of them.

Sincerely,

Kathy Lea

Kathy Lea
4407 Portage Blvd
Juneau, AK 99801

HB

96

HOUSE COMMITTEE REPORT

(7)

Date Referred: January 29, 1993 FURTHER REFERRALS: Finance

Date of Committee Action: 3/25/93

The LABOR AND COMMERCE Committee considered: HB 96

HOUSE BILL NO. 96 EXTEND ALCOHOL BEVERAGE CONTROL BOARD

"An Act extending the termination date of the Alcoholic Beverage Control Board."

RECOMMENDATIONS: [ ] the same title
be replaced with _____ [ ] 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 Revenue [ ] zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
	✓				
	✓				
	✓				
	✓				
	✓				

Bill Hudson
CHAIRMAN'S SIGNATURE

Representative Jerry Sanders

District 19

Vice Chair, Rules Committee
Vice Chair, Community & Regional Affairs Committee
House State Affairs Committee
Special Committee on Oil & Gas
Legislative Council
International Trade & Tourism

SPONSOR STATEMENT

The purpose of House Bill 96 is to extend the Alcoholic Beverage Control Board (ABCB) from June 30, 1994 -- when it currently sunsets -- to June 30, 1998.

The Alcoholic Beverage Control Board was established in 1959, by Title 4 of the Alaska Statutes, to control the manufacture, barter, possession, and sale of alcoholic beverages in the state, in order to protect the public's health, safety, and welfare. This is carried out through active investigation of complaints and revocation or suspension of licenses when appropriate.

These functions are certainly no less important to the health, safety, and well being of Alaska's citizens today than in 1959; therefore, the Alcoholic Beverage Control Board should be extended.

At present, another piece of legislation, House Bill 110, currently being held in House State Affairs, also proposes extending the sunset of the ABCB, although to June 30, 2001. However, House Bill 110 also proposes extending the sunset dates of 37 other boards and commissions. The concern with such broad legislation is that it virtually eliminates the opportunity for legislative scrutiny of each and every board and commission named, and proposes that in one fell swoop we extend sunsets without benefit of testimony from the individual boards and commissions seeking continued funding -- in essence, it asks that we trust "all is well" with the myriad boards and commissions, and forgo legislative oversight. While efficiency is a commmendable motive, legislative oversight must not be sacrificed in its name.

In contrast, House Bill 96 focuses solely on the ABCB, thus allowing the legislature to perform its oversight duty in the most informed manner. I urge your support.

State Capitol • Room 13 • Juneau, Alaska 99801-1182 • (907) 465-4945

HB

101

HOUSE COMMITTEE REPORT

2/15

(7)

Date Referred: January 29, 1993 FURTHER REFERRALS: Finance

Date of Committee Action: 2/11/93

The LABOR AND COMMERCE Committee considered: HB 101

HOUSE BILL NO. 101 NATIONAL ELECTRICAL CODE

"An Act relating to the adoption of the National Electrical Code and the National Electrical Safety Code."

RECOMMENDATIONS: [ ] the same title
be replaced with _____ [ ] 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 Labor [ ] zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
Brian D Porter Porter	✓				
Green	✓				
Williams	✓				
Melder	✓				
Hudson	✓				

Hudson
CHAIRMAN'S SIGNATURE

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO : HB 101

Revision Date:
Title: Adopting National Electrical Code
Sponsor: House Labor & Commerce
Requestor: House Labor & Commerce

Department Affected: Labor
BRU: Labor Standards & Safety
Component: Mechanical Inspection

COMPONENT SERIAL NO. 346

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						
MISCELLANEOUS						
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						
1005 GF/Program Receipt						
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 (FY93) impact: $ None

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Donald Study, CSP, Director — Phone : 465-6003
Division: Labor Standards & Safety — Date : 2/3/93

Approved by Commissioner: Charles W. Mahlen
Agency: Department of Labor — Date: 2/3/93

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HOUSE LABOR AND COMMERCE COMMITTEE

ALASKA STATE LEGISLATURE

STATE CAPITOL. JUNEAU. AK 99801-1182
(907) 465-4954

SPONSOR STATEMENT
HOUSE BILL 101
NATIONAL ELECTRICAL CODE

House Bill 101 was requested by the International Brotherhood of Electrical Workers to assure the state's adoption of the minimum electrical safety standards for the state as set by the American National Standards Institute.

The National Electrical Code and the National Electrical Safety Code are reviewed by the American National Standards Institute every three years. These codes constitute the minimum electrical safety standards for the state and are adopted through revising AS 18.60.580. House Bill 101 will eliminate the need for new legislation every three years, a costly and time-consuming exercise, by allowing the Department of Labor to adopt, by regulation, the most recent codes to constitute the minimum electrical safety standards of the state. This bill also provides for the 1993 published edition of the National Electrical Safety Code and the National Electrical Code to constitute the minimum electrical safety standards for Alaska until such time as the Department of Labor can adopt these by regulation.

In addition to the I.B.E.W., House Bill 101 has the support of the Department of Labor and carries a zero fiscal note.

HB

102

HOUSE COMMITTEE REPORT

2/19

(7)

Date Referred: January 29, 1993 FURTHER REFERRALS: Finance

Date of Committee Action: 2/18/93

The LABOR AND COMMERCE Committee considered: HB 102

HOUSE BILL NO. 102 PANEL MEMBERS ON AK LABOR REL. AGENCY

"An Act relating to the Alaska Labor Relations Agency; and providing for an effective date."

RECOMMENDATIONS: [ ] the same title
be replaced with _____ [ ] 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)

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

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

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
Brian S. Porter		Porter		✓	
Joe Sitton Sitton	✓	Joseph P. Green Green		✓	
Jim Williams Williams	✓				
Bill Hudson Hudson	✓				

Bill Hudson Hudson
CHAIRMAN'S SIGNATURE

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO : HB 102

Revision Date:
Title: Panel Members on Ak. Labor Rel. Agency
Sponsor: House Labor & Commerce
Requestor: House Labor & Commerce

Department Affected: Labor
BRU: Commissioner's Office
Component: Alaska Labor Relations Agency
COMPONENT SERIAL NO. 1200

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES						
TRAVEL	12.8	12.8	12.8	12.8	12.8	12.8
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	12.8	12.8	12.8	12.8	12.8	12.8
CAPITAL						
REVENUE FUND SOURCE:						

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	12.8	12.8	12.8	12.8	12.8	12.8
1005 GF/Program Receipt						
1006 GF/MHTIA						
Other						
TOTAL	12.8	12.8	12.8	12.8	12.8	12.8

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: $ None

ANALYSIS: (Attach a separate page if necessary)

(see attached)

Prepared by: Jan DeYoung, Hearing Examiner
Phone : 269-4895
Division: Alaska Labor Relations Agency
Date : 2/2/93

Approved by Commissioner: Charles W. Mahlen
Agency: Department of Labor
Date: 2/2/93

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Fiscal Note Analysis for
Panel Members on Ak. Labor Rel. Agency

This bill would expand the membership of the Alaska Labor Relations Agency Board and would provide an honorarium for board members.

The increase in board size from three to six members is necessitated by the workload of the agency. At the current rate the board members will be meeting 40 or more days per year. This is a heavy workload. As a result the agency has had difficulty obtaining a quorum (two members present) and on several occasions the agency has had to reschedule hearings. Rescheduling is an inconvenience and costly to the parties involved, particularly when counsel has been retained or the representative has had to travel. Expanding the board will expedite the hearings of the agency and avoid rescheduling meetings.

The honorarium would be $100.00 per day per board member for each day spent in meetings or on authorized official business related to board duties. This payment would compensate members for time away from their regular employment and reimburse them for expenses incurred to attend a board meeting.

The department has used board activity for calendar year 1992 to estimate the cost of providing this honorarium. The computations are as follows:

No. of Meetings	No. of Hearings	No. of Members	Member Days
8		6	48
	25	3	75
5		1	5
		Total Days	128
		Honorarium	x $100
		Estimated Cost	**$12,800**

Open Meeting Act meetings would require the attendance of all members (or a quorum of four) and administrative hearings would require the attendance of a three member panel (or a quorum of two). Single member meetings are usually between the chair and the agency's administrator but could also involve a member's attendance at conference.

An effective date of July 1, 1993 is assumed.

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF LABOR

OFFICE OF THE COMMISSIONER

P.O. BOX 21149
JUNEAU, ALASKA 99802-1149
PHONE: (907) 465-2700

FAX: (907) 465-2784

February 8, 1993

The Honorable Bill Hudson
Chair, Labor & Commerce Committee
State House of Representatives
State Capitol, Room 108
Juneau, AK 99801-1182

Dear Representative Hudson:

House Bill No. 102, relating to expanding the membership of the Alaska Labor Relations Agency Board and to providing an honorarium for board members, was introduced and referred to the House Labor and Commerce Committee on January 29, 1993. I am requesting that the bill be scheduled for a hearing.

The legislation would expand the membership of the board from three members to six members. Continuing with the current workload, the board members would be sitting 40 or more days per year. This is a heavy workload and the Alaska Labor Relations Agency has had difficulty obtaining a quorum. Expanding the board will expedite the agency's administrative hearings.

The bill would also provide compensation of $100 per day per board member for each day spent in meetings or on authorized official business related to board duties. A fiscal note for 12.8 thousand dollars has been submitted to reflect anticipated expenditures.

If you would like additional information concerning this legislation, please do not hesitate to contact my Special Assistant, Arbe Williams. Thank you for your consideration of my request to schedule House Bill No. 102 for a hearing before the House Labor and Commerce Committee.

Sincerely,

John A. Abshire

Charles W. Mahlen
Commissioner

07-G9LH

BILL NO: HOUSE BILL NO. 102 **DATE:** February 8, 1993

TITLE: Panel Members on Alaska Labor Relations Agency **CONTACT:** Arbe Williams 465-2700

House Bill No. 102, proposes to expand the membership of the Alaska Labor Relations Agency. The bill would also provide compensation of $100 per day per board member for each day spent in meetings or on authorized official business related to board duties.

The bill would expand the membership of the board from three members to six members. Two members would have a management background, two members would have a labor background and two members would be from the general public. The governor would designate a chair from the public members of the board.

Continuing with the current workload, the three current board members would be sitting 40 or more days per year. This is a heavy workload and the Alaska Labor Relations Agency has had difficulty obtaining a quorum. Expanding the board will expedite the agency's administrative hearings.

The bill would also provide a payment of $100 per day to compensate board members for each day spent in meetings or on authorized official business related to board duties. A fiscal note for 12.8 thousand dollars has been submitted to reflect anticipated expenditures.

The Department of Labor supports House Bill No. 102.

John A. Lidstrie

Charles W. Mahlen
Commissioner

Date: 2/8/93

POSITION PAPER/Department of Labor

WALTER J. HICKEL
GOVERNOR

P. O. Box 110001
Juneau, Alaska 99811-0001
(907) 465-3500

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

June 8, 1993

The Honorable Bill Hudson
Alaska State Representative
Chair, House Labor and Commerce
State Capitol
Juneau, AK 99801-1182

Dear Bill,

I am pleased to inform you that the legislation sponsored by the House Labor and Commerce Committee, House Bill No. 102, relating to the Alaska Labor Relations Agency, was signed into law on June 1, 1993. The chapter reference is Chapter 43, SLA 1993, and the effective date is July 1, 1993.

With best regards.

Sincerely,

Walter J. Hickel
Governor