

ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

8304 SENATE JUDICIARY

DIVISION OF LEGAL SERVICES

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MEMORANDUM

February 3, 1994

SUBJECT: Sectional Summary of SB 127 (Work Order No. 8-LS(353\E))

TO: Senator Robin Taylor
Attn: Kevin Sullivan

FROM: Jerry Luckhaupt *JLB*
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill - the bill itself is the best statement of its contents.

Section 1 of the bill amends AS 11.41.100(b) to provide that murder in the first degree is a capital offense.

Section 2 of the bill amends AS 12.30.100(b) to provide that a person charged with a capital offense is not eligible for release before trial.

Section 3 of the bill amends AS 12.30.040(b) to provide that a person convicted of a capital felony may not be released on bail either before sentencing or pending appeal.

Section 4 of the bill amends AS 12.47.110(b) to provide that a person that has been found to incompetent to stand trial and has remained incompetent for five years may still be retried if the original charge is a capital felony.

Section 5 of the bill amends AS 12.55.025(i) to exclude capital sentencing proceedings from application of the preponderance of the evidence standard of proof. To impose the death penalty the trier of fact must find the existence of an aggravating factor beyond a reasonable doubt.

Section 6 of the bill amends AS 12.25.125(a) to add the death sentence as a permitted sentence upon conviction of murder in the first degree.

Section 7 of the bill amends AS 12.55.125(f) to provide that a sentence of death may not be suspended under the suspension of execution of sentence statute, AS 12.55.080.

Section 8 of the bill amends AS 12.55.145(a) to provide that a previous conviction for a capital felony may be considered and used by a court, regardless of when the conviction occurred, as a previous conviction when imposing sentence for those offenses for which the legislature has prescribed presumptive terms.

Section 9 of the bill amends AS 12.55.155(f) to clarify that that subsection only applies to the establishment of aggravating and mitigating factors at sentencing for offenses for which the legislature has prescribed presumptive terms.

Section 10 of the bill is the statutory "meat" of the bill. This section adds a new chapter to AS 12 with the following sections:

AS 12.58.010 provides that (a) when a defendant is convicted of a capital felony the court shall commence a separate sentencing proceeding before the same jury that convicted the defendant or, if the jury trial was waived or the defendant pled guilty, the court will impanel a jury for the sentencing; (b) during the sentencing proceeding evidence may be presented as to any aggravating or mitigating factor the court determines to have probative value; (c) after hearing the evidence the jury shall deliberate and issue a recommended sentence with written findings of whether the jury unanimously finds the existence of at least one aggravating factor listed in AS 12.58.030, unanimously determines by a preponderance of the evidence that the aggravating factor or factors outweigh any mitigating factors that the one or more members of the jury may have found to exist by a preponderance of the evidence, and unanimously finds that the defendant should be sentenced to death.

AS 12.58.020 provides procedures for the imposition of sentence by the court. If the jury finds as provided in AS 12.58.010(c) then the court must impose the death penalty but if the jury does not find an aggravating factor, or finds the aggravating factor or factors outweighed by the mitigating factors, or does not recommend that the defendant be sentenced to death, then the court may not impose the death sentence but must impose a term of imprisonment as provided in AS 12.25.125(a). When a sentence of death is imposed under this section it is subject to automatic review by the Alaska Supreme Court under AS 12.58.200.

AS 12.58.030 provides a list of aggravating factors which may be considered by a jury and, if at least one of these factors is found to exist, upon which a death sentence may be based.

AS 12.58.040 provides a list of mitigating factors which must be considered by the jury along with any other mitigating factors that may exist and which must be outweighed by the aggravating factor or factors in order to support a sentence of death.

AS 12.58.100 provides procedures for an automatic, priority review by the Alaska Supreme Court of the judgment of conviction of any capital felony in which the death sentence is imposed.

AS 12.58.110 provides that after review of the conviction and sentence the Alaska Supreme Court shall issue a death warrant and set a date of execution if the court upholds the conviction and sentence.

AS 12.58.200 requires the commissioner of corrections to establish a procedure for the execution of a sentence of death.

AS 12.58.210 requires the commissioner of corrections to specify the time and date of execution after receiving a death warrant from the Alaska Supreme Court.

AS 12.58.220 specifies that the death sentence shall be inflicted by hanging or, at the option of the defendant, by lethal injection within a state correctional facility.

AS 12.58.230 requires the commissioner of corrections to make a return upon the death warrant showing the time and place in which the defendant was executed.

AS 12.58.300 requires the commissioner of corrections to give notice if the commissioner believes the defendant has become incompetent or is pregnant and provides a stay of execution.

AS 12.58.310 provides procedures for determining and reviewing the competency of the defendant.

AS 12.58.320 provides that if the defendant is pregnant the sentence of death shall be stayed during the pregnancy and when the defendant is no longer pregnant that the sentencing court shall notify the Alaska

Supreme Court and the commissioner of corrections and the supreme court will issue a new death warrant.

AS 12.58.900 provides definitions.

Section 11 of the bill amends AS 22.07.020(a) and provides that the court of appeals does not have appellate jurisdiction in a case involving criminal prosecution when the death sentence has been imposed.

Section 12 of the bill amends AS 22.07.020(b) to provide that the court of appeals does not have appellate jurisdiction to review appeals of death sentences.

Section 13 of the bill provides for an advisory vote of the qualified voters at the November 1994 general election on the question of whether capital punishment for murder in the first degree should take effect.

Section 14 of the bill provides that the advisory vote provision (section 13 of the bill) takes effect immediately.

Section 15 of the bill provides a June 1, 1995 effective date for the rest of the bill other than the advisory vote provision. Special effective date provisions require a two-thirds vote of each house to be effective under the constitution.

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94-088.glc

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SB 127

Revision Date: December 21, 1993
 Title: "An Act authorizing capital punishment, classifying murder in the first degree as a capital felony..."
 Sponsor: Senate Judiciary Committee
 Requestor: Governor's Office

Department Affected: Department of Law
 BRU: Prosecution
 Component: Criminal Appeals and Special Prosecution
 COMPONENT SERIAL NO. 0090

EXPENDITURES/REVENUES:

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL		427.5	780.1	1,119.1	1,119.1	1,119.1
TRAVEL		138.5	260.0	379.0	379.0	379.0
CONTRACTUAL		224.2	547.4	804.8	804.8	804.8
SUPPLIES		27.9	40.8	55.2	46.2	46.2
EQUIPMENT		49.5	43.0	43.0		
LAND &						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	867.6	1,671.3	2,401.1	2,349.1	2,349.1

CAPITAL						
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REVENUE						
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FUNDING:

1002 Federal						
1003 GF Match						
1004 GF	-0-	867.6	1,671.3	2,401.1	2,349.1	2,349.1
1005 GF/Program						
1006 GF/MHTIA						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	-0-	7	13	19	19	19
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: -0-

ANALYSIS: (Attach a separate page if necessary.)
 Please see the attached analysis.

Prepared by: Richard I. Pegues, Director
 Division: Administrative Services/Division

Phone: 465-3672
 Date: December 21, 1993

Approved by Commissioner: Charles E. Cole, Attorney General
 Agency: Department of Law

December 21, 1993

PREPARER TO PROV
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FISCAL NOTE
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GVERNOR'S LEGISLATIVE OFFICE
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BILL NO. SB 127

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ANALYSIS CONTINUATION:

SB 127, like its House of Representatives' counterpart HB 162, would authorize capital punishment, classify murder in the first degree as a capital felony, and establish sentencing procedures for capital felonies. Unlike the House version, however, the Senate version does not grant prosecutors the discretion whether to seek the death penalty against a defendant. SB 127 would therefore appear to require the Department of Law to seek a death sentence whenever one of several specified aggravating factors was found to exist and the aggravating factor, or factors, was not outweighed by one or more specified mitigating factors.

However, the Alaska Supreme Court has long held that, under the common law, an Attorney General is empowered to bring any action which he thinks necessary to protect the public interest, and he possesses the corollary power to make any disposition of the state's litigation which he thinks best. Public Defender Agency v. Superior Court, 534 P.2d 947 (Alaska 1975). Consequently, based upon this consideration and the factors more fully explained below, we do not believe that there will be a significant difference in the number of capital felony trials that the department handles under either version of the bill.

The department's criminal division currently has fifteen active murder cases where aggravating factors are present that would justify the death penalty, had the bill already been the law. Likewise, the department's Office of Special Prosecutions and Appeals is currently handling four first degree murder appeals where these factors are also present. However, because the number of murders committed in Alaska varies somewhat from year-to-year, the department believes that the realistic approach is to use assumptions that are as conservative as possible. Therefore, we are projecting that it will be necessary to prosecute six capital offenses each year. During the past five years the number of first degree murders where prosecution has occurred has averaged 25 per year.

Overview

Capital felony trials would be bifurcated, or held in two parts. The first part would determine innocence or guilt; the second part would determine whether aggravating factors exist sufficient to justify the death penalty; whether mitigating factors exist that outweigh the aggravating factors; and whether the defendant should be sentenced to a term of imprisonment or to death. At the current time, there are 10 to 12 first degree murder convictions each year where circumstances may be present that could result in bifurcated trials. In view of the discretion provided to prosecutors; however, the department anticipates that about six bifurcated trials would be required annually if the bill is enacted.

Consequently, the Department of Law estimates that four capital felony convictions, with aggravating factors sufficient to justify a death sentence (and where a sentence of death is imposed) will occur each year. The department also estimates that it will attempt to seek the death penalty

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ANALYSIS CONTINUATION:

in two additional capital felony cases, where it may not be successful. Thus, the department must be prepared to prosecute capital felonies on six occasions each year, and it must also be prepared to handle a multi-year appellate review process that will grow at an accumulating rate of four cases per year. The experience in other states is that capital trials require far more in the way of prosecution and investigative resources than first degree murder cases that do not include the death penalty.

In its several reviews of capital penalty laws, the United States Supreme Court has repeatedly stated, "death is different." Consequently, the Supreme Court has required that states accord capital defendants procedural and substantive protections that go far beyond those required for noncapital defendants. The Court has, in effect, mandated that capital defendants be accorded "super" due process. The federal courts have consistently held that capital cases demand special consideration, both at trial and on appellate review, because of the exceptional and irrevocable nature of the penalty involved.

In order to meet this heightened level of due process, it will be necessary for the state to employ far greater prosecution resources. Many of the thirty-seven states having a death penalty, for instance, provide two defense attorneys to capital defendants to insure that the due process safeguards required by the courts are met. Likewise, the state's prosecution case must also be properly represented. During and prior to the trial phase, crime scene evidence will have to be examined and presented by highly qualified forensic experts. Psychiatric experts will also be required during the trial phase, during sentencing proceedings, and during the appellate review, to rebut and overcome competency and psychiatric defenses to both the substantive-charge and the capital sentence. Recent cost studies of capital trials in other states indicate that expert witness expenses for both the trial and sentencing proceedings cost about \$60,000, on the average. A lesser, but still significant, cost for experts is also required for appellate reviews.

A sentencing proceeding, or the penalty phase of a capital trial, is categorically different in character, procedure, and magnitude from any counterpart in a noncapital trial, and it accounts for a large part of the increase in costs. The heightened due process requirements, and the right to effective assistance of counsel, apply equally to the sentencing phase as they do to the trial phase. At this stage of the proceeding, the defense may be expected to use many of the socio-psychiatric witnesses employed during the trial phase. Additionally, the defense may also use the defendant's family, friends, neighbors, co-workers, school personnel, and social workers as witnesses. The defense's sentencing phase investigations will involve a complete retrospective analysis of every positive aspect of the defendant's life from the day of birth to the date of sentence. The prosecution, on the other hand, must interview each of the defense's witnesses to rebut mitigation evidence, and present its own witnesses to prove its aggravating factors. In a recent California case, 240 persons were investigated and interviewed as potential witnesses and 120 were eventually called as witnesses in a single sentencing proceeding. In view of the foregoing, it

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appears likely that the same level of state resources, needed for the state's most expensive criminal trials, will also be needed for many of the capital murder trials. For example, a fivefold increase in pretrial motion practice, often involving a state's supreme court, has occurred in other states between capital and noncapital first degree murder cases.

Last, post-conviction appellate reviews of death sentences will also require a substantial expenditure of state resources. Initially, challenges to the law itself can be expected to be taken to the Alaska Supreme Court on the basis of both state and federal constitutional due process, equal protection, and cruel and unusual punishment doctrines. Such challenges should be expected during the first two or three years after the provisions of the bill go into effect. Otherwise, the bill provides for a straightforward appeals process to the Alaska Supreme Court, but death sentences will nonetheless result in lengthy and complicated appellate litigation. This is because of the substantial appellate avenues available to capital defendants in the federal court system, primarily on claims of due process, competency, and newly discovered evidence. Typically, these cases move up and down throughout the state and federal court systems, and involve the state superior and supreme courts, the U.S. Supreme Court, and the U.S. Circuit Court of Appeals, and the U.S. District Court. As a result, as has been the experience in every other capital punishment state, it should be expected that many years will pass before a death sentence can be carried out.

Implementation

The Department of Law anticipates that the time from when an offense is committed until a capital felony trial takes place will be between one and two years after the bill takes effect, although up to two trials may begin during the first year. Likewise, the post-conviction appellate review process will not commence until sometime during the second year. For these reasons, the department has developed a multi-year implementation plan for this fiscal note.

During the first year, it will be necessary to add three attorneys, two paraprofessionals, and two legal secretaries to handle capital felony prosecutions. Although only two bifurcated trials may actually get underway during the first year, substantial time will be required preparing for trial. This includes advising police investigators, examining evidence, interviewing witnesses, consulting with psychiatric and forensic experts, and initiating, responding to, and arguing pretrial motions. Also, preparation work on all six capital felonies expected to occur during the first year must begin as soon as possible after an offense is committed.

The "super" due process required by the courts in death penalty cases, and the requirement for a separate sentencing proceeding, will more than triple the work of the department's staff who handle these cases, compared with noncapital first degree murder cases. Extraordinary amounts of attorney and paraprofessional time will be needed to satisfy these minimum, mandatory requirements. As a consequence, capital felony prosecutions could

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not readily be undertaken in any of the department's offices, except for Anchorage and Fairbanks, without providing special prosecution staff on a case-by-case basis. And, even at Anchorage and Fairbanks, the existing staff would have to be substantially augmented each time a capital felony is handled. All of the positions to be added to handle capital trials and post-conviction death sentence appeals would be located in the department's Office of Special Prosecutions and Appeals, in Anchorage.

During the second year, four or more additional capital felonies are expected to go to trial, and six new capital felony offenses will occur. At this point, it will be necessary to add one attorney, one paraprofessional, and one legal secretary to help handle the increasing capital felony trial caseload. It will also be necessary to establish a capital felony appeals staff during the second year, when appeals from the first two trials are expected to begin the appellate review process. Initially, one attorney, one paraprofessional, and one legal secretary will be needed to handle capital felony appeals.

During the third year, the number of bifurcated trials should equal the number of new capital offenses, although some compression and overlapping of the caseload will likely occur. Consequently, it will be necessary to increase the trial staff during the third year, in order to handle the total annual workload, and to insure against speedy trial problems. Post-conviction capital felony appeals will have reached six by year three, and they will continue to increase at the rate of four new cases each year, thereafter. It will, therefore, be necessary to increase the appeals staff in the third year.

It is not possible to accurately predict the eventual annual costs of a capital felony law beyond its first three or four years. There are simply too many unknowns. However, the costs that have been predicted are conservative. The following factors have been considered in arriving at these costs.

1) Capital felony due process and bifurcated trial requirements will more than triple the cost and time spent in prosecuting six first degree murder offenses, at a minimum.

2) The time required for a bifurcated trial will probably vary between two months and six months, although time lines are completely uncertain, and extremes will most likely be the rule. Serious overlapping and scheduling conflicts between investigations, trials, and available staff time will undoubtedly occur.

3) Pretrial motion practice will increase dramatically, resulting in additional scheduling problems.

4) Logistics problems will occur at most locations, except Anchorage and Fairbanks, and these problems will become more severe the smaller and more remote the location.

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ANALYSIS CONTINUATION:

5) Witness travel and subsistence will be expensive because of the large number of witnesses that will be required for both the trial and the sentencing phases of capital felony prosecutions, and in many cases this includes out-of-state travel.

6) Staff travel and per diem will likewise be expensive for trials held outside of Anchorage. Extensive staff travel expense will also be necessary, for trials held at all locations, to interview both prosecution and defense witnesses who will appear at sentencing proceedings.

7) One of the most complex murder prosecutions ever held in Alaska was the John Kenneth Peel trial. Because this case involved extraordinary evidence problems, it probably represents costs that are outside the norm. Due to this and other complications, Peel case costs included two grand jury proceedings and two trials. But there can be no question that the state will have to provide a nearly comparable effort if it is to prevail in death penalty cases. By comparison, capital felony trials will be held in two parts, necessitate considerable expert testimony and depositions, involve two separate sets of witnesses, and require extensive staff travel. For this reason, the average prosecution costs of a bifurcated capital felony case has been projected to be \$298,000 or about one-half of the \$597,000 cost for the first Peel trial.

8) The cost for appeals is shown only through the third year; however, this cost will ultimately grow enormously. The average length of time between a death sentence conviction and an execution in the United States is ten years. At some point, the state will have to provide enough resources to respond to the appeals of forty or more capital felony defendants, annually.

9) Consequently, the following per trial expense estimates have been used to calculate the costs of this fiscal note.

Capital Felony Trials

- Witness travel and Subsistence, \$50,000 per case.
- Staff travel and Per Diem, \$7,500 per attorney, \$5,000 per paraprofessional, \$3,000 per secretary, per annum.
- Expert Witness Fees, \$60,000 per case.
- Witness fees paid to others, \$6,000 per case.
- Deposition/court reporter charges, \$20,000 per case.

Death Sentence Appellate Review

- Staff Travel, \$3,500 per attorney, \$2,500 per senior paraprofessional, per annum.

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- Expert Witness Fees, legal scholars for years two and three only, \$30,000, each year. Socio-psychiatric experts, \$25,000, per annum.
- Deposition/court reporter costs, \$20,000 per case.

Fiscal Analysis SB 127

Cost Summary (First Year - FY 96 - Capital Trials)

ANALYSIS CONTINUATION:

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Object	Atty V	Atty IV	Atty IV	Assoc. Atty I	P/A II	Sec I	Sec I	TOTAL
<u>100 - Salaries & Benefits</u>	<u>86.8</u>	<u>81.7</u>	<u>81.7</u>	<u>52.7</u>	<u>51.0</u>	<u>36.8</u>	<u>36.8</u>	<u>427.5</u>
	86.8	81.7	81.7	52.7	51.0	36.8	36.8	427.5
<u>200 - Travel</u>								
Witness Travel & Subsist	20.0	20.0	20.0	20.0	20.0	0.0	0.0	100.0
Staff Travel and Per Diem	<u>7.5</u>	<u>7.5</u>	<u>7.5</u>	<u>5.0</u>	<u>5.0</u>	<u>3.0</u>	<u>3.0</u>	<u>38.5</u>
	27.5	27.5	27.5	25.0	25.0	3.0	3.0	138.5
<u>300 - Contractual</u>								
Communications, Copy,	3.6	3.6	3.6	2.4	2.4	2.4	2.4	20.4
Document Production,	24.0	24.0	24.0	24.0	24.0	0.0	0.0	120.0
Expert Witness	2.4	2.4	2.4	2.4	2.4	0.0	0.0	12.0
Witness Fees	8.0	8.0	8.0	8.0	8.0	0.0	0.0	40.0
Depositions	4.0	4.0	4.0	3.5	3.1	2.1	2.1	22.8
Office Space Leases	0.0	0.0	0.0	0.0	0.0	1.5	1.5	3.0
WP Maintenance	<u>1.2</u>	<u>1.2</u>	<u>1.2</u>	<u>1.2</u>	<u>1.2</u>	<u>0.0</u>	<u>0.0</u>	<u>6.0</u>
Westlaw	43.2	43.2	43.2	41.5	41.1	6.0	6.0	224.2
<u>400 - Supplies</u>								
Office Consumables	1.8	1.8	1.8	1.8	1.8	1.2	1.2	11.4
Law Library	1.2	1.2	1.2	1.2	1.2	0.0	0.0	6.0
New Position Supplies	<u>1.5</u>	<u>1.5</u>	<u>1.5</u>	<u>1.5</u>	<u>1.5</u>	<u>1.5</u>	<u>1.5</u>	<u>10.5</u>
	4.5	4.5	4.5	4.5	4.5	2.7	2.7	27.9
<u>500 - Equipment</u>								
New Position Equipment	2.5	2.5	2.5	2.5	2.5	2.0	2.0	16.5
PC/Word Processing	<u>4.0</u>	<u>4.0</u>	<u>4.0</u>	<u>4.0</u>	<u>4.0</u>	<u>6.5</u>	<u>6.5</u>	<u>33.0</u>
	6.5	6.5	6.5	6.5	6.5	8.5	8.5	49.5
TOTAL	168.5	163.4	163.4	130.2	128.1	57.0	57.0	867.6

Fiscal Analysis SB 127

Cost Summary (Second and Third Years Additions - FY 97 and FY 98 - Capital Trials)

ANALYSIS CONTINUATION

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FISCAL NOTE

Object	Second Year				Third Year			
	Attv V	Assoc Attv I	Legal Sec I	TOTAL	Attv IV	P/A II	Legal Sec I	TOTAL
<u>100</u> - Salaries & Benefits	<u>86.8</u>	<u>52.7</u>	<u>36.8</u>	<u>176.3</u>	<u>81.7</u>	<u>51.0</u>	<u>36.8</u>	<u>169.5</u>
	86.8	52.7	36.8	176.3	81.7	51.0	36.8	169.5
<u>200</u> - Travel								
Witness Travel & Subsist	50.0	50.0	0.0	100.0	50.0	50.0	0.0	100.0
Staff Travel and Per Diem	<u>7.5</u>	<u>5.0</u>	<u>3.0</u>	<u>15.5</u>	<u>7.5</u>	<u>5.0</u>	<u>3.0</u>	<u>15.5</u>
	57.5	55.0	3.0	115.5	57.5	55.0	3.0	115.5
<u>300</u> - Contractual								
Communications, Copy,								
Document Production,	3.6	3.6	2.4	9.6	3.6	3.6	2.4	9.6
Expert Witness	60.0	60.0	0.0	120.0	60.0	60.0	0.0	120.0
Witness Fees	6.0	6.0	0.0	12.0	6.0	6.0	0.0	12.0
Depositions	20.0	20.0	0.0	40.0	20.0	20.0	0.0	40.0
Office Space Leases	4.0	3.5	2.1	9.6	4.0	3.1	2.1	9.2
WP Maintenance	0.0	0.0	1.5	1.5	0.0	0.0	1.5	1.5
Westlaw	<u>1.2</u>	<u>1.2</u>	<u>0.0</u>	<u>2.4</u>	<u>1.2</u>	<u>1.2</u>	<u>0.0</u>	<u>2.4</u>
	94.8	94.3	6.0	195.1	94.8	93.9	6.0	194.7
<u>400</u> - Supplies								
Office Consumables	1.8	1.8	1.2	4.8	1.8	1.8	1.2	4.8
Law Library	1.2	1.2	0.0	2.4	1.2	1.2	0.0	2.4
New Position Supplies	<u>1.5</u>	<u>1.5</u>	<u>1.5</u>	<u>4.5</u>	<u>1.5</u>	<u>1.5</u>	<u>1.5</u>	<u>4.5</u>
	4.5	4.5	2.7	11.7	4.5	4.5	2.7	11.7
<u>500</u> - Equipment								
New Position Equipment	2.5	2.5	2.0	7.0	2.5	2.5	2.0	7.0
PC/Word Processing	<u>4.0</u>	<u>4.0</u>	<u>6.5</u>	<u>14.5</u>	<u>4.0</u>	<u>4.0</u>	<u>6.5</u>	<u>14.5</u>
	6.5	6.5	8.5	21.5	6.5	6.5	8.5	21.5
TOTAL	250.1	213.0	57.0	520.1	245.0	210.9	57.0	512.9

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Fiscal Analysis SB 127

Cost Summary (Second and Third Years Additions - FY 97 and FY 98 - Appellate Review Process)

Object	Second Year				Third Year			
	Atty V	Assoc Atty I	Legal Sec I	TOTAL	Atty IV	P/A II	Legal Sec I	TOTAL
<u>100 - Salaries & Benefits</u>	<u>86.8</u>	<u>52.7</u>	<u>36.8</u>	<u>176.3</u>	<u>81.7</u>	<u>51.0</u>	<u>36.8</u>	<u>169.5</u>
	86.8	52.7	36.8	176.3	81.7	51.0	36.8	169.5
<u>200 - Travel</u>								
Staff Travel & Per Diem	<u>3.5</u>	<u>2.5</u>	<u>0.0</u>	<u>6.0</u>	<u>3.5</u>	<u>0.0</u>	<u>0.0</u>	<u>3.5</u>
	3.5	2.5	0.0	6.0	3.5	0.0	0.0	3.5
<u>300 - Contractual</u>								
Communications, Copy,	22.4	22.4	2.4	47.2	22.4	22.4	2.4	47.2
Document Production,	30.0	25.0	0.0	55.0	0.0	0.0	0.0	0.0
Expert Witness	5.0	5.0	0.0	10.0	0.0	0.0	0.0	0.0
Depositions	4.0	3.5	2.1	9.6	4.0	3.1	2.1	9.2
Office Space Leases	0.0	0.0	1.5	1.5	0.0	0.0	1.5	1.5
WP Maintenance		<u>2.4</u>	<u>0.0</u>	<u>4.8</u>	<u>2.4</u>	<u>2.4</u>	<u>0.0</u>	<u>4.8</u>
Westlaw	<u>6.3</u>	<u>58.3</u>	<u>6.0</u>	<u>128.1</u>	<u>28.8</u>	<u>27.9</u>	<u>6.0</u>	<u>62.7</u>
	6.3	58.3	6.0	128.1	28.8	27.9	6.0	62.7
<u>400 - Supplies</u>								
Office Consumables	1.8	1.8	1.2	4.8	1.8	1.8	1.2	4.8
Law Library	1.2	1.2	0.0	2.4	1.2	1.2	0.0	2.4
New Position Supplies	<u>1.5</u>	<u>1.5</u>	<u>1.5</u>	<u>4.5</u>	<u>1.5</u>	<u>1.5</u>	<u>1.5</u>	<u>4.5</u>
	4.5	4.5	2.7	11.7	4.5	4.5	2.7	11.7
<u>500 - Equipment</u>								
New Position Equipment	2.5	2.5	2.0	7.0	2.5	2.5	2.0	7.0
PC/Word Processing	<u>4.0</u>	<u>4.0</u>	<u>6.5</u>	<u>14.5</u>	<u>4.0</u>	<u>4.0</u>	<u>6.5</u>	<u>14.5</u>
	6.5	6.5	8.5	21.5	6.5	6.5	8.5	21.5
TOTAL	165.1	124.5	54.0	343.6	125.2	89.9	54.0	268.9

ANALYSIS CONTINUATION:

STATE OF ALASKA
1994 LEGISLATIVE SESSION

FISCAL NOTE

BILL NO. SB 127

Fiscal Analysis SB 127
Cumulative Implementation Cost by Year

<u>Costs</u> <u>Object</u>	<u>Prosecution Costs</u>				<u>Appellate Review</u>			
	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4+</u>	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4+</u>
<u>100</u> - Personal Services	427.5	603.8	773.3	773.3	0.0	176.3	345.8	345.8
<u>200</u> - Travel	138.5	254.0	369.5	369.5	0.0	6.0	9.5	9.5
<u>300</u> - Contractual	224.2	419.3	614.0	614.0	0.0	128.1	190.8	190.8
<u>400</u> - Supplies	27.9	29.1	36.3	31.8	0.0	11.7	18.9	14.4
<u>500</u> - Equipment	49.5	21.5	21.5	0.0	0.0	21.5	21.5	0.0
TOTAL	867.6	1,327.7	1,814.6	1,788.6	0.0	343.6	586.5	560.5

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PERSONAL SERVICES EXPENDITURES NEW POSITION DETAIL REPORT

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DEPARTMENT OF LAW

SCENARIO: 3

COMPONENT #: 6501020600 NAME: CRIMINAL APPEALS & SPECIAL PROSECUTIONS BRU NAME: PROSECUTION

PCN	UNAUTH PCN	JOB CLASS TITLE	T S	LOCATION NAME	R B S C U	R&S MOS BUDG	SALARY	PREM PAY	BENES	PER.SERV. COSTS	G. F. AMOUNT
03#020		ATTORNEY V	F	ANCHORAGE	A XE AA 25A	12	65352	0	21470	86822.32	

**** JUSTIFICATION:

This senior level Attorney V position will be needed to oversee and head capital felony prosecutions, during the first year that capital felony law goes into effect. The substantial due process protections accorded to defendants by the U.S. Supreme Court, will require a three-fold increase in the prosecution effort in order to obtain death penalty convictions. Legal expertise at the highest level will be required to handle these prosecutions, allocation to the Attorney V level is therefore recommended. This position will be required in FY 1996.

TRAVEL COSTS	27500.00	
CONTRACTUAL COSTS	43200.00	
SUPPLIES COSTS	4500.00	
EQUIPMENT COSTS	6500.00	
OTHER COSTS	0.00	
TOTAL COSTS	168522.32	86822.32

*** FUNDING DETAIL:

1004 GENERAL FUND RECEIPTS 86822.32

TOTAL FUNDING 86822.32

03#021		ATTORNEY IV	F	ANCHORAGE	A XE AA 24A	12	61008	0	20660	81668.60	
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**** JUSTIFICATION:

This Attorney IV position will be required to handle capital felony trials, during the first year after the law goes into effect. "Super" due process trial consideration and sentencing proceedings are expected to more than triple the time now required for murder trials. First degree murder trials require highly skilled prosecutors and for this reason the department is requesting the full working level prosecutor classification of Attorney IV. This attorney will be needed for the bifurcated capital trials, beginning in FY 1996.

TRAVEL COSTS	27500.00	
CONTRACTUAL COSTS	43200.00	
SUPPLIES COSTS	4500.00	
EQUIPMENT COSTS	6500.00	
OTHER COSTS	0.00	
TOTAL COSTS	163368.60	81668.60

*** FUNDING DETAIL:

1004 GENERAL FUND RECEIPTS 81668.60

TOTAL FUNDING 81668.60

03#022		ATTORNEY IV	F	ANCHORAGE	A XE AA 24A	12	61008	0	20660	81668.60	
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**** JUSTIFICATION:

This Attorney IV position will be required to handle capital felony trials, during the first year after the law goes into effect. "Super" due process trial considerations and sentencing proceedings are expected to more than triple the time now required for murder trials. First degree murder trials require highly skilled prosecutors and for this reason the department is requesting the full working level prosecutor classification of Attorney IV. This attorney will be needed for the bifurcated capital trials, beginning in FY 1996.

TRAVEL COSTS	27500.00	
CONTRACTUAL COSTS	43200.00	
SUPPLIES COSTS	4500.00	
EQUIPMENT COSTS	6500.00	
OTHER COSTS	0.00	
TOTAL COSTS	163368.60	81668.60

*** FUNDING DETAIL:

1004 GENERAL FUND RECEIPTS 81668.60

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PERSONAL SERVICES EXPENDITURES NEW POSITION DETAIL REPORT

PAGE: 5

DEPARTMENT OF LAW

SCENARIO: 3

COMPONENT #: 6501020600 NAME: CRIMINAL APPEALS & SPECIAL PROSECUTIONS BRU NAME: PROSECUTION

PCN	UNAUTH PCN	JOB CLASS TITLE	T S	LOCATION NAME	R P C U	S	R&S BUDG	MOS	SALARY	PREM PAY	BENES	PER.SERV. COSTS	G. F. AMOUNT	

												TOTAL FUNDING	81668.60	
03//023		ASSOC ATTORNEY I		F ANCHORAGE	A XE	AA	17A	12	37872	0	14863	52735.32		
**** JUSTIFICATION:														
This advanced paraprofessional position will be required, during the first year that the capital felony law goes into effect, to handle evidence preparation and assist in legal research that is necessary to try capital cases. The heightened due process protections accorded defendants, in these cases, causes a far more severe burden of proof standard for prosecution. Allocation to the Associate Attorney I paraprofessional level is therefore recommended. This position will be required in FY 1996.												TRAVEL COSTS	25000.00	
												CONTRACTUAL COSTS	41500.00	
												SUPPLIES COSTS	4500.00	
												EQUIPMENT COSTS	6500.00	
												OTHER COSTS	0.00	
												=====		
												TOTAL COSTS	130235.32	52735.32
												**** FUNDING DETAIL:		
												1004 GENERAL FUND RECEIPTS	52735.32	
												=====		
												TOTAL FUNDING	52735.32	
03//024		PARALEGAL ASST II		F ANCHORAGE	A GG	2A	16A	12	36444	0	14558	51002.32		
**** JUSTIFICATION:														
This paralegal assistant position will be needed during the first year after the capital felony law goes into effect to assist the attorneys assigned to prosecuting defendants in capital crimes, where the state is seeking the death penalty. The position will be responsible for witness assistance and coordination, an assist with trial logistics. Allocation to the full working paraprofessional level of Paralegal Assistant II is recommended. This position will be required in FY 1996.												TRAVEL COSTS	25000.00	
												CONTRACTUAL COSTS	41100.00	
												SUPPLIES COSTS	4500.00	
												EQUIPMENT COSTS	6500.00	
												OTHER COSTS	0.00	
												=====		
												TOTAL COSTS	128102.32	51002.32
												**** FUNDING DETAIL:		
												1004 GENERAL FUND RECEIPTS	51002.32	
												=====		
												TOTAL FUNDING	51002.32	
03//025		LEGAL SECRETARY I		F ANCHORAGE	A GG	2A	10A	12	25140	0	11645	36785.28		
**** JUSTIFICATION:														
This is one of two legal secretaries needed to provide office services support for the three attorneys and two paraprofessionals who will be required to handle capital felony trials, during the first year the law goes into effect. The work of the attorneys is expected to generate considerable legal documentation, in the form of motions and briefs, requiring full-time secretarial support. This position will be required in FY 1996.												TRAVEL COSTS	3000.00	
												CONTRACTUAL COSTS	6000.00	
												SUPPLIES COSTS	2700.00	
												EQUIPMENT COSTS	8500.00	
												OTHER COSTS	0.00	
												=====		
												TOTAL COSTS	56985.28	36785.28
												**** FUNDING DETAIL:		
												1004 GENERAL FUND RECEIPTS	36785.28	
												=====		
												TOTAL FUNDING	36785.28	

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PERSONAL SERVICES EXPENDITURES NEW POSITION DETAIL REPORT

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DEPARTMENT OF LAW

SCENARIO: 3

COMPONENT #: 6501020600 NAME: CRIMINAL APPEALS & SPECIAL PROSECUTIONS BRU NAME: PROSECUTION

PCN	UNAUTII PCN	JOB CLASS TITLE	T S	LOCATION NAME	R B S C U	R&S MOS BUDG	SALARY	PREM PAY	BENES	PER.SERV. COSTS	G. F. AMOUNT	
03#026		LEGAL SECRETARY I	F	ANCHORAGE	A GG 2A 10A	12	25140	0	11645	36785.28		
**** JUSTIFICATION:												
This is one of two legal secretaries needed to provide office services support for the three attorneys and two paraprofessionals who will be required to handle capital felony trials, during the first year the law goes into effect. The work of the attorneys is expected to generate considerable legal documentation, in the form of motions and briefs, requiring full-time secretarial support. This position is required in FY 1996.												
										TRAVEL COSTS	3000.00	
										CONTRACTUAL COSTS	6000.00	
										SUPPLIES COSTS	2700.00	
										EQUIPMENT COSTS	8500.00	
										OTHER COSTS	0.00	
										TOTAL COSTS	56985.28	36785.28
*** FUNDING DETAIL:												
										1004 GENERAL FUND RECEIPTS	36785.28	
										TOTAL FUNDING	36785.28	
03#027		ATTORNEY V	F	ANCHORAGE	A XE AA 25A	12	65352	0	21470	86822.32		
**** JUSTIFICATION:												
This senior level Attorney V position will be needed during the second year the capital felony law goes into effect, to handle the growing number of capital trials. During the second year four additional trials should be underway and six additional capital felonies will have been committed. The extraordinary due process standards required of prosecution, in capital cases, necessitate the highest level of legal expertise. Allocation to the Attorney V level is therefore recommended. This position will be required in FY 1997.												
										TRAVEL COSTS	57500.00	
										CONTRACTUAL COSTS	94800.00	
										SUPPLIES COSTS	4500.00	
										EQUIPMENT COSTS	6500.00	
										OTHER COSTS	0.00	
										TOTAL COSTS	250122.32	86822.32
*** FUNDING DETAIL:												
										1004 GENERAL FUND RECEIPTS	86822.32	
										TOTAL FUNDING	86822.32	
03#028		ASSOC ATTORNEY I	F	ANCHORAGE	A XE AA 17A	12	37872	0	14863	52735.32		
**** JUSTIFICATION:												
This advanced paraprofessional position will be required, during the second year the capital felony law is in effect, to handle the growing number of capital trials. Four new trials are expected to commence during the second year, and six new offenses will have been committed. This position will help organize and examine evidence, and assist attorneys with legal research. Allocation to the Associate Attorney I level is therefore recommended. This position is required in FY 1997.												
										TRAVEL COSTS	55000.00	
										CONTRACTUAL COSTS	94300.00	
										SUPPLIES COSTS	4500.00	
										EQUIPMENT COSTS	6500.00	
										OTHER COSTS	0.00	
										TOTAL COSTS	213035.32	52735.32
*** FUNDING DETAIL:												
										1004 GENERAL FUND RECEIPTS	52735.32	
										TOTAL FUNDING	52735.32	

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PERSONAL SERVICES EXPENDITURES NEW POSITION DETAIL REPORT

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DEPARTMENT OF LAW

SCENARIO: 3

COMPONENT #: 6501020600 NAME: CRIMINAL APPEALS & SPECIAL PROSECUTIONS DRU NAME: PROSECUTION

PCN	UNAUTH PCN	JOB CLASS TITLE	T S	LOCATION NAME	R C	B U	S	R&S	MOS BUDG	SALARY	PREM PAY	BENES	PER.SERV. COSTS	G. F. AMOUNT
03//029		LEGAL SECRETARY I	F	ANCHORAGE	A	GG	2A	10A	12	25140	0	11645	36785.28	
<p>**** JUSTIFICATION:</p> <p>This Legal Secretary I position will be required, during the second year the capital felony law is in effect, to handle the growing caseload. Four new capital felony trials are expected to commence, and six new offenses will be committed during the year. Legal documentation for those trials will be intense. Allocation to the Legal Secretary I level is therefore recommended. This position will be needed in FY 1997.</p>														
												TRAVEL COSTS	3000.00	
												CONTRACTUAL COSTS	6000.00	
												SUPPLIES COSTS	2700.00	
												EQUIPMENT COSTS	8500.00	
												OTHER COSTS	0.00	
												TOTAL COSTS	56985.28	36785.28
<p>*** FUNDING DETAIL:</p> <p>1004 GENERAL FUND RECEIPTS</p>													36785.28	
												TOTAL FUNDING	36785.28	
03//030		ATTORNEY V	F	ANCHORAGE	A	XE	AA	25A	12	65352	0	21170	86822.32	
<p>**** JUSTIFICATION:</p> <p>This Attorney V position will be required, during the second year the capital felony law is in effect, to handle the post-conviction appellate review process. It is anticipated that two defendants' convictions will be on appeal during the second year. Up to ten years or more may pass before those appeals are finally resolved. Initially, legal attacks on the law itself will go to the Alaska Supreme Court. If upheld, appeals will go to the federal court system, including the U.S. Supreme Court, the U.S. District Court of Appeals and the U.S. District Court. The highest level of legal expertise will be required to handle these appeals. Allocation to the Attorney V level is therefore recommended. This position will be needed in FY 1997.</p>														
												TRAVEL COSTS	3500.00	
												CONTRACTUAL COSTS	63800.00	
												SUPPLIES COSTS	4500.00	
												EQUIPMENT COSTS	6500.00	
												OTHER COSTS	0.00	
												TOTAL COSTS	165122.32	86822.32
<p>*** FUNDING DETAIL:</p> <p>1004 GENERAL FUND RECEIPTS</p>													86822.32	
												TOTAL FUNDING	86822.32	
03//031		ASSOC ATTORNEY I	F	ANCHORAGE	A	XE	AA	17A	12	37872	0	14863	52735.32	
<p>**** JUSTIFICATION:</p> <p>This Associate Attorney paraprofessional position will be required, during the second year the capital felony law is in effect, to assist handling legal research for post-conviction appellate review process. It is anticipated that two defendants' convictions will be on appeal during the second year. Legal attacks on the law itself will be before the Alaska Supreme Court, as will appeals of the convictions. Further appeals to the federal court system will commence, if the law is upheld. An enormous amount of research will be required. Allocation to the Associate Attorney I level is therefore recommended.</p>														
												TRAVEL COSTS	2500.00	
												CONTRACTUAL COSTS	58300.00	
												SUPPLIES COSTS	4500.00	
												EQUIPMENT COSTS	6500.00	
												OTHER COSTS	0.00	
												TOTAL COSTS	124535.32	52735.32

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PERSONAL SERVICES EXPENDITURES NEW POSITION DETAIL REPORT

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DEPARTMENT OF LAW

SCENARIO: 3

COMPONENT #: 6501020600 NAME: CRIMINAL APPEALS & SPECIAL PROSECUTIONS BRU NAME: PROSECUTION

PCN	UNAUTH PCN	JOB CLASS TITLE	T S	LOCATION NAME	R B S C U	R&S MOS BUDG	SALARY	PREM PAY	BENES	PER.SERV. COSTS	G. F. AMOUNT
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This position will be needed in FY 1997.

*** FUNDING DETAIL:

1004 GENERAL FUND RECEIPTS 52735.32

TOTAL FUNDING 52735.32

03/032		LEGAL SECRETARY I	F	ANCHORAGE	A	GG 2A 10A 12	25140	0	11645	36785.28	
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**** JUSTIFICATION:

This Legal Secretary I position will be required, during the second year the capital felony law is in effect, to handle the post-conviction appellate review process. This process is expected to begin during the second year, when the first two convictions should be on appeal. This process is document intensive and full-spectrum secretarial services will be required. Allocation to the Legal Secretary I level is therefore recommended. This position is needed in FY 1997.

TRAVEL COSTS	0.00	
CONTRACTUAL COSTS	6000.00	
SUPPLIES COSTS	2700.00	
EQUIPMENT COSTS	8500.00	
OTHER COSTS	0.00	
TOTAL COSTS	53985.28	36785.28

*** FUNDING DETAIL:

1004 GENERAL FUND RECEIPTS 36785.28

TOTAL FUNDING 36785.28

03/033		ATTORNEY IV	F	ANCHORAGE	A	XE AA 24A 12	61008	0	20660	81668.60	
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**** JUSTIFICATION:

This Attorney IV position will be required, during the third year the capital felony law is in effect, to handle the growing number of capital felony trials. It is anticipated that six of these trials will be underway in the third year, and six new offenses will have been committed. An enormous amount of attorney time is required to handle these trials because of the heightened due process standards that are mandated for capital prosecutions. These trials require highly skilled prosecutors. Allocation to the full-working level of Attorney IV, is therefore recommended. This position will be needed in FY 1998.

TRAVEL COSTS	57500.00	
CONTRACTUAL COSTS	94800.00	
SUPPLIES COSTS	4500.00	
EQUIPMENT COSTS	6500.00	
OTHER COSTS	0.00	
TOTAL COSTS	244968.60	81668.60

*** FUNDING DETAIL:

1004 GENERAL FUND RECEIPTS 81668.60

TOTAL FUNDING 81668.60

03/034		PARALEGAL ASST II	F	ANCHORAGE	A	GG 2A 16A 12	36444	0	14558	51002.32	
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**** JUSTIFICATION:

This Paralegal Assistant position will be required, during the third year the capital felony law is in effect, to handle the growing number of capital felony trials. It is anticipated that six trials will be underway at this point, and six new offenses will have been committed. This position will assist witnesses and coordinate witness schedules and trial logistics. Allocation to the Paralegal

TRAVEL COSTS	55000.00	
CONTRACTUAL COSTS	93900.00	
SUPPLIES COSTS	4500.00	
EQUIPMENT COSTS	6500.00	
OTHER COSTS	0.00	
TOTAL COSTS	210902.32	51002.32

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PERSONAL SERVICES EXPENDITURES NEW POSITION DETAIL REPORT

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DEPARTMENT OF LAW

SCENARIO: 3

COMPONENT #: 6501020600 NAME: CRIMINAL APPEALS & SPECIAL PROSECUTIONS BRU NAME: PROSECUTION

PCN	UNAUTH PCN	JOB CLASS TITLE	T S	LOCATION NAME	R G	B U	S	R&S MOS BUDG	SALARY	PREM PAY	BENES	PER.SERV. COSTS	G. F. AMOUNT
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Assistant II level is therefore recommended. This position will be required in FY 1998.

*** FUNDING DETAIL:

1004 GENERAL FUND RECEIPTS 51002.32

TOTAL FUNDING 51002.32

03#035		LEGAL SECRETARY I		F ANCHORAGE	A	GG	2A	10A	12	25140	0	11645	36785.28
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**** JUSTIFICATION:

This Legal Secretary position will be required, during the third year the capital felony law is in effect, to handle the growing number of capital felonies. It is anticipated that six capital trials will be underway at this point, and six new offenses will have been committed. The work generated by attorneys will require substantial secretarial assistance. Allocation to the Legal Secretary I level is therefore recommended. This position will be needed in FY 1998.

TRAVEL COSTS 3000.00

CONTRACTUAL COSTS 6000.00

SUPPLIES COSTS 2700.00

EQUIPMENT COSTS 8500.00

OTHER COSTS 0.00

TOTAL COSTS 56985.28 36785.28

*** FUNDING DETAIL:

1004 GENERAL FUND RECEIPTS 36785.28

TOTAL FUNDING 36785.28

03#036		ATTORNEY IV		F ANCHORAGE	A	XE	AA	24A	12	61008	0	20660	81668.60
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**** JUSTIFICATION:

This Attorney IV position will be required, during the third year the capital felony law is in effect, to handle post-conviction appeals. It is anticipated that four new convictions will be on appeal by the third year, bringing the total cases on appeal to six. Capital penalty appeals have an average span of ten years. These appeals are heard in the Alaska Supreme Court, the U.S. District Court, the U.S. Circuit Court of Appeals and the U.S. Supreme Court. These appeals often move up and down, through the systems, as each separate issue is argued. Full-working level legal expertise is necessary to handle this work, and allocation to Attorney IV is therefore recommended. This position will be needed in FY 1998.

TRAVEL COSTS 3500.00

CONTRACTUAL COSTS 28800.00

SUPPLIES COSTS 4500.00

EQUIPMENT COSTS 6500.00

OTHER COSTS 0.00

TOTAL COSTS 124968.60 81668.60

*** FUNDING DETAIL:

1004 GENERAL FUND RECEIPTS 81668.60

TOTAL FUNDING 81668.60

DEPARTMENT OF LAW

SCENARIO: 3

COMPONENT #: 6501020600 NAME: CRIMINAL APPEALS & SPECIAL PROSECUTIONS BRU NAME: PROSECUTION

PCN	UNAUTH PCN	JOB CLASS TITLE	T S	LOCATION NAME	R B S C U	P&S MOS BUDG	SALARY	PREM PAY	BENES	PER.SERV. COSTS	G. F. AMOUNT
03#037		PARALEGAL ASST II	F	ANCHORAGE	A GG 2A 16A	12	36444	0	14558	51002.32	

**** JUSTIFICATION:

This Paralegal Assistant II position will be required, during the third year of the capital felony law, to assist the preparation of appellate documentation and research. Four new appeals are expected in the third year, bringing the total to be handled to six. These appeals have an average time span of ten years.

Enormous amounts of time must be spent researching the law, examining trial records, and preparing legal arguments and briefs. A substantial documents and research effort will be required. Allocation to the Paralegal Assistant II level is therefore recommended. This position will be needed in FY 1998.

TRAVEL COSTS	0.00	
CONTRACTUAL COSTS	27900.00	
SUPPLIES COSTS	4500.00	
EQUIPMENT COSTS	6500.00	
OTHER COSTS	0.00	
TOTAL COSTS	89902.32	51002.32

*** FUNDING DETAIL:

1004 GENERAL FUND RECEIPTS	51002.32
TOTAL FUNDING	51002.32

03#038		LEGAL SECRETARY I	F	ANCHORAGE	A GG 2A 10A	12	25140	0	11645	36785.28	
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**** JUSTIFICATION:

This Legal Secretary I will be required, during the third year the capital felony law is in effect, to handle the growing number of post-conviction appellate reviews. It is anticipated that a total of six reviews will be underway at this time, and this number will grow by four reviews, each year, thereafter. Each review lasts about ten years and involves numerous courts, and many court proceedings. Substantial secretarial assistance will be needed to handle this work. Allocation to the Legal Secretary I level is therefore recommended. This position will be needed in FY 1998.

TRAVEL COSTS	0.00	
CONTRACTUAL COSTS	6000.00	
SUPPLIES COSTS	2700.00	
EQUIPMENT COSTS	8500.00	
OTHER COSTS	0.00	
TOTAL COSTS	53985.28	36785.28

*** FUNDING DETAIL:

1004 GENERAL FUND RECEIPTS	36785.28
TOTAL FUNDING	36785.28

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PERSONAL SERVICES EXPENDITURES NEW POSITION DETAIL REPORT

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DEPARTMENT OF LAW

SCENARIO: 3

COMPONENT #: 6501020600 NAME: CRIMINAL APPEALS & SPECIAL PROSECUTIONS BRU NAME: PROSECUTION

==== COMPONENT TOTALS:

FULL TIME NEW POSITIONS	19	TOTAL PERSONAL SERVICES	1119065.96
PART TIME/SEASONAL NEW POSITIONS	0		
NON PERMANENT NEW POSITIONS	0	TOTAL COSTS INC. ASSOC COSTS	2513065.96
OTHER.....	0		

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NUMBER OF NEW POSITIONS IN COMPONENT: 19

FUNDING DATA: G.F. & G.F. MATCH:	1119065.96
OTHER FUNDS:	0.00
	=====
TOTAL FUNDING:	1119065.96

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SB 127

Revision Date: _____
Title: An Act authorizing capital punishment,
classifying murder . . .
Sponsor: Senate Judiciary
Requestor: Senate Judiciary

Department Affected: Administration
BRU: Office of Public Advocacy
Component: Office of Public Advocacy
COMPONENT SERIAL NO. 43

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES	0	277.3	456.3	541.8	718.7	804.2
TRAVEL	0	35.0	72.1	74.3	76.5	78.8
CONTRACTUAL	0	533.6	649.4	814.0	931.6	1064.9
SUPPLIES	0	4.1	7.2	8.2	11.3	12.4
EQUIPMENT	0	18.8	15.0	3.7	15.0	3.7
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	868.8	1,200.0	1,442.0	1,753.1	1,964.0

CAPITAL EXPENDITURES	0	0	0	0	0	0
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CHANGE IN REVENUES ()	0	0	0	0	0	0
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FUNDING SOURCE: (Thousands of Dollars)

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	868.8	1200.0	1442.0	1753.1	1964.0
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	868.8	1,200.0	1,442.0	1,753.1	1,964.0

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

POSITIONS:

FULL-TIME	0	4	7	8	11	12
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary.)
See Attached.

Prepared by: Brant McGee, Public Advocate
Division: Office of Public Advocacy

Phone: 274-1684
Date: _____

Approved by Commissioner: Nancy Bear Usua
Agency: Department of Administration

Date: 1/7/94

PREPARER TO F
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FISCAL NOTE
ADMIN. PUBLIC ADVOCACY

GOVERNOR'S LEGISLATIVE OFFICE
Legislative Office

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SB 127

ANALYSIS (continued)

Passage of death penalty legislation would have a dramatic fiscal impact on the Office of Public Advocacy (OPA). The Office of Public Advocacy as a purely reactive agency, must provide legal representation when appointed by the court. OPA is responsible for providing representation to indigent criminal defendants in cases where the Alaska Public Defender Agency has a conflict of interest.

The Department of Law has estimated it would seek the death penalty in approximately six cases annually. Therefore OPA anticipates it would be responsible for two capital cases in FY 96 and two more in each of the following years. Because almost no one in Alaska could afford the cost of defending a capital case, it is assumed the Public Defender Agency and the OPA would represent all capital defendants.

The agency would assign at least two experienced attorneys to each capital case in accordance with the policy--and legal requirement--of most states in which the death penalty has become law. Each case will necessitate an exhaustive pre-trial investigation, contracts with numerous expert witnesses, and extensive litigation of legal issues during pre-trial proceedings, trial and the many appellate stages.

The New York Defender Association has estimated expert witness fees as \$60,000 per case. Further, travel costs would be extraordinarily high because this Anchorage-based death penalty team must provide statewide representation.

It is anticipated that OPA would have to contract for representation of at least one death penalty case per year. Such a case would arise where OPA has a conflict of interest. The New York Defender Association has estimated the cost of defense services in each case to be \$350,000 in 1988. The cost in Alaska would probably be significantly higher.

Death penalty cases will accumulate in the agency each year. It is highly likely that each case that comes into the office will remain its responsibility for at least 8-10 years.

In FY 97, the first year in which actual death penalty trials will probably occur, OPA costs rise because of the addition of an appellate attorney, and support personnel including an associate attorney (nonlawyer) position, a paralegal, and a legal secretary. In FY 98, an additional trial attorney position would be needed to support the initial two-trial positions created in FY 96.

In FY 99, the death penalty defense staff would need to be enlarged by at least one attorney, to supplement the efforts of the appellate lawyer added in FY 97, together with an additional paralegal and legal secretary. In FY 00, the defense would be enlarged by an additional trial attorney position whose workload hopefully would be absorbed by the existing support staff.

OPA assumes that it will have only one or less conflict case per year. For this reason, the accumulating appellate costs are conservatively estimated as an additional \$100.0 per year.

Finally, even though OPA assumes the addition of only two cases per year, the costs associated with the accumulation of cases can be expected to more than double at least every three years. There is little doubt that, within ten years of the adoption of the death penalty in Alaska, OPA costs for the defense of these relatively few cases would surpass its FY 94 budget of \$6,468 for nearly 10,000 cases.

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SB 127

FISCAL ANALYSIS--FY 96

Personal Services

Anchorage

Attorney V Salary and Benefits + 3%	\$ 90.9
Attorney IV Salary and Benefits + 3%	85.5
Associate Attorney II Salary and Benefits + 3%	62.9
Legal Secretary I Salary and Benefits + 3%	<u>28.0</u>

Subtotal Personal Services \$277.3

Travel

Necessary travel for court hearings, investigation, expert witnesses, etc. 35.0

Contractual

Additional office space for four positions in Anchorage.	13.4
Expert witness fees based on two cases per year at \$61,800 per case.	123.6
Contract representation for one case per year where OPA has a conflict of interest at \$385,000 per case + 3%.	<u>396.6</u>

Subtotal Contractual \$533.6

Supplies

Stationary, library and office supplies for four new positions at \$1,000 per position + 3%.	4.1
--	-----

Equipment

Office furniture and equipment for three professional positions at \$3,635 each and one legal secretary at \$7,369 + 3%.	<u>18.8</u>
--	-------------

Total FY 96 \$868.8

FISCAL NOTE

**STATE OF ALASKA
1994 LEGISLATIVE SESSION**

BILL NO. SB 127

FISCAL ANALYSIS--FY 97

Personal Services

Anchorage

Salary and Benefits for 4 current positions	\$ 277.3
Attorney IV Salary and Benefits + 3%	85.5
Paralegal Assistant II Salary and Benefits + 3%	53.4
Legal Secretary II Salary and Benefits + 3%	<u>40.1</u>
Subtotal Personal Services	\$ 456.3

Travel

Necessary travel for court hearings, investigation, expert witnesses, etc.	72.1
--	------

Contractual

Office space for four current positions and three new positions.	22.5
Expert witness fees based on two cases per year at \$61,800 per case + 3%.	127.3
Contract representation for one case where OPA has a conflict of interest.	<u>499.6</u>
Subtotal Contractual Services	\$ 649.4

Supplies

Stationary, library and office supplies for seven positions.	7.2
--	-----

Equipment

Office furniture and equipment for two professional positions and one legal secretary.	<u>15.0</u>
--	-------------

Total FY 97	\$1,196.7
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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SB 127

FISCAL ANALYSIS--FY 98

Personal Services

Anchorage

Salary and Benefits for 7 current positions

\$ 456.3

Attorney IV

Salary and Benefits + 3%

85.5

Subtotal Personal Services

\$ 541.8

Travel

Necessary travel for court hearings, investigation, expert witnesses, etc.

74.3

Contractual

Office space for seven current positions and one new position in Anchorage.

25.2

Expert witness fees based on three cases per year.

185.4

Contract representation for one case where OPA has a conflict of interest
and appeal work on previous cases.

602.6

Subtotal Contractual Services

\$ 814.0

Supplies

Stationary, library and office supplies for eight positions.

8.2

Equipment

Office furniture and equipment for one new professional position.

3.7

Total FY 98

\$1,442.0

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SB 127

FISCAL ANALYSIS--FY 99

Personal Services

Anchorage

Salary and Benefits for 8 current positions \$ 541.8

Attorney IV
Salary and Benefits + 3% 85.5

Paralegal Assistant II
Salary and Benefits + 3% 53.4

Legal Secretary I
Salary and Benefits + 3% 38.0

Subtotal Personal Services \$ 718.7

Travel

Necessary travel for court hearings, investigation, expert witnesses, etc. 76.5

Contractual

Office space for eight current position and three new positions. 35.0

Expert witness fees based on three cases per year. 191.0

Contract representation for one case where OPA has a conflict of interest
and appeal work on previous cases. 705.6

Subtotal Contractual Services \$ 931.6

Supplies

Stationary, library and office supplies for eleven positions. 11.3

Equipment

Office furniture and equipment for two new professional positions and
one new clerical position. 15.0

Total FY 99 \$1,753.1

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SB 127

FISCAL ANALYSIS--FY 00

Personal Services

Anchorage

Salary and Benefits for 11 current positions \$ 718.7

Attorney IV

Salary and Benefits + 3% 85.5

Subtotal Personal Services \$ 804.2

Travel

Necessary travel for court hearings, investigation, expert witnesses, etc. 78.8

Contractual

Office space for eleven current positions and one new position. 38.4

Expert witness fees based on three cases per year. 196.7

Contract representation for one case where OPA has a conflict of interest
and appeal work on previous cases. 829.8

Subtotal Contractual Services \$1,064.9

Supplies

Stationary, library and office supplies for twelve positions. 12.4

Equipment

Office furniture and equipment for one new professional position. 3.7

Total FY 00 \$1,964.0

Position Title Attorney V		No. of Positions 1	Range / Step 25/A	Barg. Unit PX	
Time Status PFT	Staff Months 12	Location EBA-Anchorage		Election District 8	
TYPE OF EXPENDITURE		AMOUNT			
Salary	67.3	Justification This position would be the lead attorney of the death penalty team consisting of an additional lawyer, an associate attorney and a legal secretary. The position is required to supplement the current attorney staff which falls short of LEAA national caseload standards. This position would be responsible for supervising the attorney and associate attorney, the preparation of all pretrial and trial motions, and the filing of appeals in State and federal court. The requirement of extensive court hearings and a lengthy trial in each case will necessitate that this position be assigned exclusively to death penalty cases.			
Benefits	23.6				
Premium Pay					
Other					
Total Personal Services	90.9				90.9
Travel					
Contractual					
Commodities					
Equipment					
Other					
Total Cost		90.9			
FUNDING SOURCE FOR TOTAL COST					
Federal Receipts	1002				
G.F. Match	1003				
General Fund	1004	90.9			
I-A Receipts	1007				
CIP Receipts	1061				
Other					

8/leg94/13/35009c.kp/1

Request For New Position

AGENCY ADMINISTRATION
BRU OFFICE OF PUBLIC ADVOCACY
COMPONENT OFFICE OF PUBLIC ADVOCACY

FY 95

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Revised Date: _____

Position Title Attorney IV		No. of Positions 1	Range / Step 24/A	Barg. Unit PX
Time Status PFT	Staff Months 12	Location EBA-Anchorage		Election District 8
TYPE OF EXPENDITURE		AMOUNT		Justification This position will act as co-counsel to the Attorney V position in all death penalty cases. As part of the death penalty team, this position will prepare motions, interview witnesses, write appellate briefs and assist the lead attorney in conducting the guilt and penalty phases of all death penalty cases. Two attorneys are required for each case in order to share the enormous workload and to assure effective representation of the accused.
Salary	62.8			
Benefits	22.7			
Premium Pay				
Other				
Total Personal Services	85.5	85.5		
Travel				
Contractual				
Commodities				
Equipment				
Other				
Total Cost		85.5		
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts	1002			
G.F. Match	1003			
General Fund	1004	85.5		
I-A Receipts	1007			
CIP Receipts	1061			
Other				

8/leg94/13/35009x1.kp/9

Request For New Position

AGENCY ADMINISTRATION
BRU OFFICE OF PUBLIC ADVOCACY
COMPONENT OFFICE OF PUBLIC ADVOCACY

FY 95

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Revised Date: _____

Position Title Associate Attorney II		No. of Positions 1	Range / Step 19/A	Barg. Unit PX
Time Status PFT	Staff Months 12	Location EBA-Anchorage		Election District 8
TYPE OF EXPENDITURE		AMOUNT		
Salary		45.0		
Benefits		17.9		
Premium Pay				
Other				
Total Personal Services		62.9	62.9	
Travel				
Contractual				
Commodities				
Equipment				
Other				
Total Cost			62.9	
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts	1002			
G.F. Match	1003			
General Fund	1004		62.9	
I-A Receipts	1007			
CIP Receipts	1061			
Other				
Justification				
This position will perform all investigative duties in death penalty cases. Extensive experience in all areas of criminal investigation will be required to assure that defendants facing execution receive a thorough and effective investigation. This position will interview witnesses, examine the crime scene and all physical evidence, arrange transportation, serve subpoenas, follow-up and review the prosecution investigation and coordinate witness testimony.				
The Office of Public Advocacy contracts out investigation work. It is anticipated that this position will work full-time on death penalty cases.				

19/LEG94/13/35006A.WP

Request For New Position

AGENCY ADMINISTRATION
 BRU OFFICE OF PUBLIC ADVOCACY
 COMPONENT OFFICE OF PUBLIC ADVOCACY

FY 95

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 Revised Date: _____

Position Title Legal Secretary I		No. of Positions 1	Range / Step 10/A	Barg. Unit G
Time Status PFT	Staff Months 12	Location EBA-Anchorage		Election District 8
TYPE OF EXPENDITURE		AMOUNT		
Salary	25.5	Justification The Anchorage office of Office of Public Advocacy (OPA) is presently staffed with three legal secretaries who provide clerical support to 12 professional positions. The addition of two attorneys and one associate attorney will increase the Anchorage clerical workload dramatically. The complex issues involved in death penalty cases and the length of each case through sentencing and appeal necessitates the addition of a legal secretary to handle the increased workload.		
Benefits	12.5			
Premium Pay				
Other				
Total Personal Services	38.0			
Travel				
Contractual				
Commodities				
Equipment				
Other				
Total Cost	38.0			
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts	1002			
G.F. Match	1003			
General Fund	1004	38.0		
I-A Receipts	1007			
CIP Receipts	1061			
Other				

19/LEG94/13/35006B.WP

Request For New Position

AGENCY ADMINISTRATION
BRU OFFICE OF PUBLIC ADVOCACY
COMPONENT OFFICE OF PUBLIC ADVOCACY

FY 95

Page 11 of 19
Revised Date: _____

Position Title Attorney IV		No. of Positions 1	Range / Step 24/A	Barg. Unit PX
Time Status PFT	Staff Months 12	Location EBA-Anchorage		Election District 8
TYPE OF EXPENDITURE		AMOUNT		
Salary	62.8	Justification This position will act as appellate attorney exclusively for death penalty appeals. As part of the death penalty team, this position will review all transcripts, testimony and evidence presented during trial and sentencing. This attorney will be responsible for formulating and researching appeal points, briefing and arguing appeals on death penalty cases in both State and federal courts.		
Benefits	22.7			
Premium Pay				
Other				
Total Personal Services	85.5			
Travel				
Contractual				
Commodities				
Equipment				
Other				
Total Cost	85.5			
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts	1002			
G.F. Match	1003			
General Fund	1004	85.5		
I-A Receipts	1007			
CIP Receipts	1061			
Other				

19/LEG94/13/35006C.WP

Request For New Position

AGENCY ADMINISTRATION
BRU OFFICE OF PUBLIC ADVOCACY
COMPONENT OFFICE OF PUBLIC ADVOCACY

FY 95

Page 12 of 19
Revised Date: _____

Position Title Paralegal Assistant II		No. of Positions 1	Range / Step 16/A	Barg. Unit G	
Time Status PFT	Staff Months 12	Location EBA Anchorage		Election District 8	
TYPE OF EXPENDITURE		AMOUNT			
Salary	37.5	Justification This paralegal assistant position will be assigned exclusively to the death penalty team. This position will be responsible for assisting the appellate attorney in research, writing and coordinating death penalty appeals in both State and federal courts.			
Benefits	15.9				
Premium Pay					
Other					
Total Personal Services	53.4				53.4
Travel					
Contractual					
Commodities					
Equipment					
Other					
Total Cost		53.4			
FUNDING SOURCE FOR TOTAL COST					
Federal Receipts	1002				
G.F. Match	1003				
General Fund	1004	53.4			
I-A Receipts	1007				
CIP Receipts	1061				
Other					

2/LEG94/13/35007.wp

Request For New Position

AGENCY ADMINISTRATION
BRIJ OFFICE OF PUBLIC ADVOCACY
COMPONENT OFFICE OF PUBLIC ADVOCACY

FY 95

Page 13 of 19
Revised Date: _____

Position Title Legal Secretary II		No. of Positions 1	Range / Step 11/A	Barg. Unit G
Time Status PFT	Staff Months 12	Location EBA-Anchorage		Election District 8
TYPE OF EXPENDITURE		AMOUNT		
Salary		27.2		
Benefits		12.9		
Premium Pay				
Other				
Total Personal Services		40.1	40.1	
Travel				
Contractual				
Commodities				
Equipment				
Other				
Total Cost			40.1	
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts	1002			
G.F. Match	1003			
General Fund	1004		40.1	
I-A Receipts	1007			
CIP Receipts	1061			
Other				
Justification The addition of an appeal attorney and paralegal assistant to the death penalty team necessitates the addition of a legal secretary. This Legal Secretary II position will directly supervise the Legal Secretary I in addition to providing clerical support to the five professional positions working on death penalty cases.				

2. FY91/13/35007a.wvp

Request For New Position

AGENCY ADMINISTRATION
 BRU OFFICE OF PUBLIC ADVOCACY
 COMPONENT OFFICE OF PUBLIC ADVOCACY

FY 95

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 Revised Date: _____

Position Title Attorney IV		No. of Positions 1	Range / Step 24/A	Barg. Unit PX	
Time Status PFT	Staff Months 12	Location EBA-Anchorage		Election District 8	
TYPE OF EXPENDITURE		AMOUNT			
Salary	62.8	Justification The accumulation of pending trials for death penalty cases and new cases filed necessitates the addition of another trial lawyer to the death penalty team. This position will act as co-counsel to the other two attorneys assigned death penalty cases. This position will prepare motions, interview witnesses, and assist the lead attorney in conducting the guilt and penalty phases of death penalty cases.			
Benefits	22.7				
Premium Pay					
Other					
Total Personal Services	85.5				85.5
Travel					
Contractual					
Commodities					
Equipment					
Other					
Total Cost		85.5			
FUNDING SOURCE FOR TOTAL COST					
Federal Receipts	1002				
G.F. Match	1003				
General Fund	1004	85.5			
I-A Receipts	1007				
CIP Receipts	1061				
Other					

2/FY94/13/35007b.wp

Request For New Position

AGENCY ADMINISTRATION

BRU OFFICE OF PUBLIC ADVOCACY

COMPONENT OFFICE OF PUBLIC ADVOCACY

FY 95

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Revised Date: _____

Position Title Attorney IV		No. of Positions 1	Range / Step 24/A	Barg. Unit PX	
Time Status PFT	Staff Months 12	Location EBA-Anchorage		Election District 8	
TYPE OF EXPENDITURE		AMOUNT			
Salary	62.8	Justification The accumulation of pending trials for death penalty cases and new cases filed necessitates the addition of another trial lawyer to the death penalty team. This position will act as co-counsel to the other two attorneys assigned death penalty cases. This position will prepare motions, interview witnesses, and assist the lead attorney in conducting the guilt and penalty phases of death penalty cases.			
Benefits	22.7				
Premium Pay					
Other					
Total Personal Services	85.5				85.5
Travel					
Contractual					
Commodities					
Equipment					
Other					
Total Cost		85.5			
FUNDING SOURCE FOR TOTAL COST					
Federal Receipts	1002				
G.F. Match	1003				
General Fund	1004	85.5			
I-A Receipts	1007				
CIP Receipts	1061				
Other					

2/LEG94/13/35007c.wp

Request For New Position

AGENCY ADMINISTRATION
 BRU OFFICE OF PUBLIC ADVOCACY
 COMPONENT OFFICE OF PUBLIC ADVOCACY

FY 95

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 Revised Date: _____

Position Title Paralegal Assistant II		No. of Positions 1	Range / Step 16/A	Barg. Unit G
Time Status PFT	Staff Months 12	Location EBA-Anchorage		Election District 8
TYPE OF EXPENDITURE		AMOUNT		
Salary		37.5		
Benefits		15.9		
Premium Pay				
Other				
Total Personal Services		53.4	53.4	
Travel				
Contractual				
Commodities				
Equipment				
Other				
Total Cost			53.4	
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts	1002			
G.F. Match	1003			
General Fund	1004		53.4	
I-A Receipts	1007			
CIP Receipts	1061			
Other				
Justification The addition of a trial attorney in FY 98 and an appeal attorney in FY 99 necessitates the addition of another paralegal assistant position. This position would be responsible for assisting both the trial attorneys and appeal attorneys in research and writing legal motions and briefs in death penalty cases. In addition, this position may also handle witness coordination for death penalty trials and sentencing.				

I/Leg94/13/35008a.kp

Request For New Position

AGENCY ADMINISTRATION
 BRU OFFICE OF PUBLIC ADVOCACY
 COMPONENT OFFICE OF PUBLIC ADVOCACY

FY 95

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 Revised Date: _____

Position Title Legal Secretary I		No. of Positions 1	Range / Step 10/A	Barg. Unit G
Time Status PFT	Staff Months 12	Location EBA-Anchorage		Election District 8
TYPE OF EXPENDITURE		AMOUNT		
Salary		25.5		
Benefits		12.5		
Premium Pay				
Other				
Total Personal Services		38.0	38.0	
Travel				
Contractual				
Commodities				
Equipment				
Other				
Total Cost				
FUNDING SOURCE FOR TOTAL COST			38.0	
Federal Receipts	1002			
G.F. Match	1003			
General Fund	1004		38.0	
I-A Receipts	1007			
CIP Receipts	1061			
Other				
Justification The addition of a trial attorney in FY 98 and an appeal attorney and paralegal assistant in FY 99 necessitates the addition of another legal secretary to handle the clerical workload of these professional positions. The death penalty team now consists of eight professional positions working exclusively on death penalty cases. The complex nature of these cases and length through the appeal process in both State and federal court warrants the addition of another clerical position.				

I/Leg94/13/35008b.kp

**Request For
New Position**

AGENCY ADMINISTRATION
 BRU OFFICE OF PUBLIC ADVOCACY
 COMPONENT OFFICE OF PUBLIC ADVOCACY

FY 95

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 Revised Date: _____

Position Title Attorney IV		No. of Positions 1	Range / Step 21/A	Barg. Unit PX
Time Status PFT	Staff Months 12	Location EBA-Anchorage		Election District 8
TYPE OF EXPENDITURE		AMOUNT		
Salary		62.8		
Benefits		22.7		
Premium Pay				
Other				
Total Personal Services		85.5	85.5	
Travel				
Contractual				
Commodities				
Equipment				
Other				
Total Cost			85.5	
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts	1002			
C.F. Match	1003			
General Fund	1004		85.5	
I-A Receipts	1007			
CIP Receipts	1061			
Other				
Justification The accumulation of pending trials for death penalty cases and new cases filed necessitates the addition of another trial lawyer to the death penalty team. This position will act as co-counsel to the other two attorneys assigned death penalty cases. This position will prepare motions, interview witnesses, and assist the lead attorney in conducting the guilt and penalty phases of death penalty cases.				

1/Leg94/13/35008c.kp

Request For New Position

AGENCY ADMINISTRATION
 BRU OFFICE OF PUBLIC ADVOCACY
 COMPONENT OFFICE OF PUBLIC ADVOCACY

FY 95

Page 19 of 19
 Revised Date: _____

A Summary of Arguments
Against Instituting a Death Penalty

compiled

by

Justice Center
University of Alaska, Anchorage

February 1986

JC 8631.01

DEATH PENALTY
OPPOSITION ARGUMENTS

There is extensive literature related to the death penalty. Public opinion over a period of time on the issue seems to be somewhat volatile having fluctuated back and forth over the past fifty years between a majority opposed to use of the death penalty and a majority in favor of it. A 1981 national poll by ABC News - Washington Post (ABC News, 6-8-81) provides the following explanations which are given as a basis for their positions by the opponents and supporters of the use of capital punishment.

1. Why do you favor the death penalty?

- | | |
|---|-----|
| ° Revenge - eye for eye | 42% |
| ° It deters crime | 35% |
| ° Prison does not rehabilitate -- murderer
may get out and do it again | 22% |
| ° Criminals get off too much | 9% |
| ° Other | 11% |
| ° Don't know | 4% |

2. Why don't you favor the death penalty?

- | | |
|---|-----|
| ° Taking another life won't solve anything | 38% |
| ° Moral-religious reasons | 33% |
| ° Legal system is not equitable | 11% |
| ° Life in prison with no parole is more effective | 10% |
| ° Death penalty not a deterrent to murders | 10% |
| ° People can be rehabilitated | 8% |
| ° Other | 25% |
| ° Don't know | 2% |

The arguments frequently used to oppose the death penalty include:

- ° Capital punishment is wasteful of public funds and resources. It requires a disproportionate expenditure of time and energy

by courts, prosecutors, defense attorneys, juries, courtrooms, correctional personnel and institutions. Special detention facilities are required for those facing a death penalty charge; unique security and surveillance methods require additional correctional staff; special facilities, equipment and correctional personnel are needed to perform executions.

Prisoners sentenced to death are encouraged to and facilitated in exhausting every imaginable avenue of relief and the state must foot both the appellant actions and the government's response. Procedural, substantive, and sentence appeals are made in state courts; habeas corpus petitions are filed in federal courts, multiple appeals are made for U. S. Supreme Court review, more post conviction requests for review are filed in state and federal courts, and various requests are made for sentence commutation. Such actions are far more extensive than for a person sentenced to life and those accused of murder are accorded especially conscientious, time consuming scrutiny by all involved. Consequently, based on research elsewhere, the costs per execution exceed the costs of maintaining a convicted person in an institution for life.

Since those facing execution automatically receive higher priority handling by prosecutors, courts and corrections, other work by these agencies is postponed. The prosecution of other laws will suffer and the civil matters in courts are delayed. Hence the death sentence unduly burdens the criminal justice system.

- ° Capital punishment may actually stimulate intentional murder because it provides incentives for (1) deranged publicity seekers such as John Hinckley or terrorists who seek wide public attention, (2) suicidally-inclined persons who will commit murder in an effort to obtain state assistance with self-destruction, and (3) happenstance murderers who will be tempted to eliminate police officers and witnesses who can bring about their arrests and subsequent convictions and executions.
- ° Imprisonment for life is as effective as the death penalty in deterring capital crimes. The theory that the death penalty is more effective is founded on wish, not fact. The country's best researchers have failed to find substantive evidence of a deterrence advantage for capital punishment. The one researcher, an economist, who has claimed to have found evidence of a minor deterrent resulting from capital punishment, has been discredited by major flaws in his research design and statistical methods. One possible reason the death penalty is not an effective deterrent may lie with the necessary procedural safeguards and inherent discrepancies in conviction and sentencing processes. Under the American system of justice, death sentences cannot be consistently and promptly employed. It is not uncommon for two accomplices in a capital offense to receive different sentences if they are tried separately. In Texas recently a

murderer who actually committed the homicide received a life sentence while his accomplice who personally killed no one was executed. Consequently, only a small proportion of all murderers is sentenced to death and even fewer executed.

- ° Most homicides are the result of impulsive acts committed by people who either cannot or do not care about the consequences to themselves. In fact, research supports a conclusion that the same circumstances which precede the commission of suicide also surround many homicides. Those who actually plan homicides expect to, and usually do, escape detection. It is difficult to imagine how people in either of these groups will be deterred any more by threat of death than by threat of life in prison.
- ° Juries are often more reluctant to arrive at a guilty verdict in a case involving the death penalty than in a case in which the maximum penalty is life in prison.
- ° Despite its safeguards the criminal justice system regularly makes mistakes. On occasion, such as with Johnny Ross, the Louisiana 16-year-old who was awaiting execution in the early 1980s when a private investigator found his blood type did not match that of the murderer, some innocent people who are sentenced to death are released before execution; however, frequently they are not. One study has purported to document 75 instances in America since the turn of the century when innocent people have been executed.
- ° The death penalty tends to be an instrument of totalitarian, despotic governments rather than democratic societies. The trend among the most respected countries in the free world has been toward the abolition of capital punishment. Some claim that imposition of the death penalty is inconsistent with the fundamental values of American democracy, and the state should not arrogate unto itself the power to ceremoniously, with premeditation, kill a citizen in the names of all other citizens.
- ° Capital punishment is an unnecessary penalty. It is a barbaric relic of more primitive days when slavery, branding and mutilation were commonplace. It receives its greatest support from the uneducated. Alternative, less cruel penalties which effectively satisfy the legitimate goals and needs of the society are available in place of the death penalty.
- ° The worst and most dangerous criminals are rarely the ones executed. The death penalty is applied discriminately at best and randomly at worst. It is imposed almost exclusively on racial minorities, the poor and the uneducated. Those who receive it normally have had long histories of being abused children, having mental disorders, and having been socially rejected and economically deprived. The socially connected and economically well-heeled are almost never awarded a death penalty. Despite the frequently discussed instances of

planned mob murders, no members of organized crime have been executed and none are on death row. No one has ever been charged or prosecuted for the planned murder of Neil MacKay's former spouse. If Alaska had the death penalty and if Mr. MacKay were responsible for the death of his former brother-in-law as charged, the probability of his receiving the death penalty is very low because he is not likely to be convicted. In fact, few of those who have been responsible for killings in Alaska would be subject to the death penalty because they cannot be identified and charged or because of barriers such as the mental state of the offender.

- ° The death penalty denies due process in that it forever deprives the executed person of the benefits of new evidence or a new law that might affect a conviction. It is impossible, given the arbitrariness of the criminal justice processes and the criminal procedure where death is a possible penalty, to repair moral and constitutional defects in death penalty laws by shifting between mandatory and discretionary sentences and unfettered and guided judicial discretion. Some accused will still be deprived of their lives as a result of denial of equal protection of the law and unequal provision of due process.
- ° Executions by government give citizens the unmistakable message that human life is not sacred and that violence is legitimate when it is thought justified by pragmatic concerns. The beer parties and cheering crowds organized to celebrate at the time of executions in Texas, Florida and other states where executions have occurred in recent years document the consequence of this message. Some people are not only accepting the legitimacy of the intentional taking of human life, killing, they consider executions to be occasions for enjoyable merrymaking.
- ° Attention focused on the death penalty detracts from a concern with the causes of interpersonal violence and reduces the efforts of society to control it. Enactment of a death penalty gives the populace and legislators a sense of security in the belief that the problems of violent crime have been effectively addressed. This false security diverts attention away from efforts to identify the fundamental causes of crime and to prevent violent crime. Society will consequently suffer the burdens of violence longer.
- ° The social value of those who have been convicted of murder is lost. For example, the Bird Man of Alcatraz was a convicted Alaskan. If he had been executed rather than sentenced to life his contributions to ornithology would not have been made.

In addition to the preceding, the existence of the death penalty does not result in a reduction in fear of crime among citizens in jurisdictions where it is a legal punishment. In fact, it appears citizen fear of crime is heightened in areas

where executions occur with some regularity. Consequently, one can anticipate that once a death penalty is enacted, public anxiety about violent crime will increase and there will be greater public pressure to widen the range of criminal deviancy for which the punishment will be the death penalty. Such a pattern can be found throughout history.

DITTMAN RESEARCH CORPORATION

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FAX COVER SHEET

DATE: February 23, 1994

TO: (NAME) Representative Jerry Sanders
(COMPANY)
(ADDRESS)
(PHONE #)
(FAX #) 465-3476

FROM: (NAME) David L. Dittman
(OPERATOR)

TOTAL PAGES TO FOLLOW COVER SHEET: 0

COMMENTS:

Rep. Sanders,

Here are the results for the "Death Penalty" question. The sample size was n=259, in Anchorage. A page of statistics will be available later this week that will show the demographic break-outs on the question. Please call if you have any further questions. Mr. Dittman will be available after 2:00 pm today.

Do you support or oppose the State of Alaska having the option of applying the death penalty for criminals convicted of first degree murder?

Support	73%
Oppose	18%
Unsure	9%



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

S P O N S O R S T A T E M E N T House bill 162

Because of what I was hearing, from my constituents and other Alaskans, I made it a priority to introduce legislation which would reinstate the death penalty in Alaska. Based on polls taken last year, over 75% of Alaskans polled favor capital punishment in cases of first degree murder. Nationally, the number is even higher -- 87% of the people say there should be a death penalty, according to one recently published study. And when it comes down to it, in the eyes of the people, it isn't about cost-effectiveness. It isn't about over-crowded prisons. It isn't even about revenge. It's about justice. It's about making it impossible for the Gustafsons of this world to mail bombs from prison, continuing to murder, with nothing to lose.

When society feels there is no justice, vigilantism will fast become the order of the day. There are some acts so heinous, the only way to deal with them, and maintain the people's faith in the integrity of the system they entrust to protect them, is for society to rid itself of those who choose to commit such acts. I emphasize the word choose. In the legislation I've introduced, House Bill 162, we're talking about only one crime as being so particularly heinous as to warrant death as punishment. That crime is murder in the first degree, with the presence of statutory aggravating factors not outweighed by any mitigating factors.

House Bill 162 provides the defendant, in capital cases, with the "SUPER DUE PROCESS" our United States Supreme Court has held must be allowed such defendants. House Bill 162 has built in protections to ensure the defendant every last chance for a fair, thorough review of his or her case. I only wish we could come up with a law which would guarantee the same procedural protections for murder victims before they are murdered. Then, nobody would have to die.

We owe it to both potential victims, and potential murderers, to have a death penalty in Alaska. Without one, we are creating not only murder victims, but murderer victims -- people who may not have premeditatedly killed had they been raised understanding the consequence of their actions would be their own death.



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

November 22, 1993

In the interest of providing Alaskans with accurate information, and as the sponsor of House Bill 162, which seeks reinstatement of the death penalty in Alaska, I am compelled to address inaccuracies in the Anchorage Daily News' November 16 Compass piece, "Bill based on false assumptions about death penalty", by Kathy Kainer.

First, the author refers to myself and Representative Harley Olberg as the ones who "introduced" House Bill 162. In fact, we are sponsor and cosponsor, respectively; additional cosponsors of HB 162 are Representatives Con Bunde, Jeanette James, Pete Kott, and Al Vezey. In addition, the Senate Judiciary Committee is also sponsoring legislation seeking reinstatement of the death penalty, through Senate Bill 127. The primary difference between the two bills is that the House version calls for prosecutorial discretion, and the Senate version (currently) does not; because both bills are in their first committees of referral, these and other elements may be amended before reaching the floor. This is a critical period for citizen input; the final version of the bill should be crafted to reflect, as closely as possible, the will of the people and the mandates of both the Alaska and federal constitutions.

Next, Ms. Kainer suggests that because there are no conclusive studies regarding the deterrent value of capital punishment, we shouldn't have it available as a criminal sentence. The implications of this attitude are distressing; the lack of conclusive evidence goes in both directions -- in other words, there are no conclusive studies indicating capital punishment is not a deterrent. As legislators, should we err on the side which is in direct opposition to what our constituents are saying they want? Or should we, in the absence of statistics either way, honor the wishes of those we have pledged to serve? If only one Alaskan's life is saved because a potential murderer decides his or her own life is too precious to place at risk, the law is worth having on the books. Anyone doubting that murderers would ever consider the possible sentence while calculating their crimes should read the transcript from Andy Nelson's murder trial, which I have available at my office. Incidentally, it is my personal opinion that, for optimal deterrent value, executions should be mandatorily televised -- the solemnity of the occasion will be brought into the psyche of the citizenry much more effectively than simply reading about it in the paper or hearing about it on the radio or television news. Potential jurors would

also be reminded that death is a sentence to be recommended only under the most special of circumstances.

Ms. Kaine goes on to say that HB 162 "claims that capital punishment allows society to most severely condemn the premeditative taking of human life. In other words, we are going to teach that it is wrong to kill by killing the killers. I hope our legislators can see the fallacy in this sort of logic." The flawed logic lies with Ms. Kaine's incomplete digestion and woefully distorted regurgitation of the words found in sub 2 of Section 1 of the bill : "[the legislature finds that imposition of the death penalty for the crime of murder in the first degree] is consistent with the criminal sentencing goal of community condemnation in that, by its use, the state affirms society's norms and condemns most severely the premeditative taking of human life or the taking of life under circumstances manifesting extreme indifference to its value." How Ms. Kaine interprets the above words to mean simply that "we are going to teach that it is wrong to kill by killing the killers" is beyond me. At present, murder is grossly violative of society's norms. If the legislature works as it should, when the day comes that murder is considered, by the majority of citizens, to be a less serious crime (perhaps because of overpopulation?), you will see a consequent reduction of the severity of possible sentences. At least in the eyes of most Alaskans, premeditated murder is still viewed as a heinous enough act to justify, in certain circumstances, a sentence of death. Let's not simplify, underestimate, or disregard the importance of the collective norms of society (including, but not limited to, members of Amnesty International) -- for it is these norms which legislators must consider in enacting laws, and which ultimately define the parameters of our social interaction.

In the next paragraph, Ms. Kainer lists countries which do not have capital punishment, apparently in an attempt to persuade the readers that Alaska should join these countries. In the first paragraph, however, she accuses political leaders of "jumping on the death penalty bandwagon." Which "bandwagon" is preferable -- the "international bandwagon" banning capital punishment, or the "Alaska bandwagon" seeking reinstatement of the death penalty at the request of a majority of the constituency? While I find statistics from other countries interesting, as an elected representative, ultimately I consider two things: What my constituents want, and the confines of the Alaska and federal constitutions -- not the social policies or purposes of punishment in Nicaragua or Romania (two of the countries Ms. Kainer cited as examples we should follow). In addition, Ms. Kainer's implication that capital punishment is acceptable for "exceptional circumstances. . . such as treason", strikes me as inconsistent, and a sadly shortsighted minimization of the profound "exceptionalness" of premeditated murder.

Ms. Kainer goes on to claim that the death penalty punishes the "poor, minority, mentally retarded and uneducated members of society." She cites no statistics to back this up; Amnesty International tends, however to use Professor Michael Radelet's In Spite of Innocence: Erroneous Convictions in Capital Cases,

(Northeastern University Press, 1992) as a tome in decrying the arbitrariness of sentences of death. I have read the book; obviously a good deal of research went into putting it together, but most of the cases cited were from about 1900 to 1930. Many of the protections we take for granted -- indeed, we consider them rights -- were nonexistent when most of those cases were heard. The Miranda rule, Furnam v Georgia, not to mention other rules of evidence and procedure, have brought us a long way from the gross past miscarriages of justice. Furthermore, a 1989 study cited by the Anchorage Daily News (June 19, 1989 "Death Penalty: U.S. system produces an agonizing legal limbo") is in direct contradiction to Ms. Kainer's assertions of adverse impact upon minorities. The study, provided by the NAACP Legal Defense and Educational Fund, Inc., reported that, since capital punishment was reinstated in 1976, 52% of prisoners on death row have been white; and 56% of those executed have been white.

Ms. Kainer's comment that a prosecutor "decides to go after the death penalty based on whether or not he thinks he can get a conviction" further reflects her misunderstanding of the process, and of the bills. The imposition of the death penalty is independent of the first degree murder conviction. With both the House and Senate bills -- (though more so with the House Bill, which provides prosecutorial discretion, so that cases not containing the requisite aggravating factors are eliminated from consideration for the death penalty from the onset) -- there are specific statutory aggravating factors, one of which the sentencing jury must unanimously find to exist, beyond a reasonable doubt, before the death penalty can realistically become a possible sentence. In addition, the jury must unanimously find that the aggravating factors are not outweighed by mitigating factors. Last, the jury must unanimously recommend death, and may decline from doing so even if the first two conditions are met. The jury's decision, if it does not recommend death, is final (if it does recommend death, on the other hand, it is light years away from being final, thanks to the "Super Due Process" mandated by our United States Supreme Court). Ms. Kainer's assumption that "powerful relatives" or "political influence" or "money" would influence jurors represents an underestimation of the integrity of the average Alaskan.

I can well understand the Ms. Kainer's desire, as a member of Amnesty International, to place HB 162, and those legislators willing to act upon the wishes of their constituencies by sponsoring such a bill, in the least favorable light possible. But by the same token, I would hope she could understand my commitment, as an elected representative of Alaskans both in District 19 and statewide, to do all I can to advance the collective desires of those I am honor bound to represent. Perhaps such mutual empathy is too much to expect; I can accept that. What I cannot allow to pass without comment, however, is her apparent unwillingness or inability to actually read the text of the bill, resulting in the perpetuation of the types of assumptions (false ones, that is) which Ms. Kainer herself decries in her closing paragraph.

Jerry Sander

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SB 127

Revision Date: 11/15/93 Dept. Affected: Corrections
 Title: An Act authorizing capital BRU: Statewide Operations
punishment... Component: Institutions
 Sponsor: Senator Taylor
 Requestor: Senate Judiciary COMPONENT SERIAL NO. _____

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	50.0	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	50.0	0	0	0	0

CAPITAL EXPENDITURES	0	300.0	0	0	0	0
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CHANGE IN REVENUES ()	0	0	0	0	0	0
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FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts	0	350.0	0	0	0	0
1006 GF/MHTIA						
Other						
TOTAL	0	350.0	0	0	0	0

Estimate of any current year (FY94) cost: \$ 0

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

Please see the attached fiscal analysis.

Prepared by: Diane Schenker, Special Assistant
 Division: Commissioner's Office
 Approved by Commissioner: [Signature]
 Agency: Department of

Phone: 561-4426
 Date: 11/15/93
 Date: 11/15/93

PREPARED BY
For

FISCAL NOTE
DEPT OF CORRECTIONS

IMDR'S LEGISLATIVE OFFICE
Legislative Office

FY95-00 Expenses:

It is assumed that offenders who would be sentenced to death under this bill would, under present law, be incarcerated for the rest of their lives. Since the department is currently operating over its emergency capacity, there is presently no room for such offenders, whether sentenced to death or life imprisonment. Incarceration of the most serious types of offenders will likely require construction of an additional maximum housing unit. It is assumed that such a unit would be constructed at Spring Creek Correctional Center. The costs of construction and operating expenses are not reflected on the fiscal note because both will be necessary with or without the bill.

The bill provides that the commissioner shall establish a procedure for the execution of a death sentence. The department will contract with a consultant to draft regulations and department policies and procedures for carrying out executions. Current regulations and policies and procedures governing classification of inmates will require revision since they are based upon an inmate's release date.

* The bill further provides for the election by the offender of either death by lethal injection or by hanging. The Spring Creek facility is already equipped with an infirmary area, part of which could be utilized to administer a lethal injection. However, a separate area would have to be constructed to contain the gallows required by the bill. The cost is estimated at \$300 per square foot, for a 25' X 20' room (\$150,000), with additional money for planning and research, gallows, special plumbing, and a partitioned observation area (\$150,000). It is assumed that such an area could not be used for any other activities or purposes. If the provision authorizing death by hanging were eliminated from the bill, the capital expense for planning and constructing the gallows and gallows room would be eliminated and FY96 capital expense reduced to \$0.

Long-term expenses not reflected on page 1 of the fiscal note:

Executions would be expected to begin in FY2006. The cost of supplies for lethal injection is unknown at this time and will be provided upon request after contacting other states using this method. Executioners for lethal injection are generally Physicians Assistants and generally charge approximately \$200 plus travel, room, and board. A physician must certify the death. Contractual expenses are estimated at roughly \$1,000 to \$1,500 per execution based upon current prices.

The cost for an executioner to conduct death by hanging is expected to be higher because fewer Physicians Assistants are willing to perform the act. Additional contractual expenses for hanging will include hiring persons to clean up the execution area and/or to provide counseling for any staff involved in the process. Contractual expenses for execution by hanging are estimated at roughly \$5,000 per execution based upon current prices.

Long-term savings not reflected on page 1 of the fiscal note: Accepting the estimates from the Department of Law that four offenders per year would be sentenced to death, and that execution would be delayed for 10 years due to appeals, approximately 40 offenders would be on "death row" by the time executions began. The number would remain static if four were added and four executed every year thereafter.

Assuming that the department constructed a 40-cell unit to accommodate the 40 offenders sentenced to either death under this bill, or "life" under current law, the unit would be filled in 10 years. Without the passage of this bill, the department would have to construct another such unit in FY2006 to house the next 40 offenders sentenced to 99+ year terms. The average cost of construction for a maximum security bed is \$160,000, so a total cost avoidance of 40 additional beds would be \$6,400,000.

The average age of Alaskan male inmates sentenced for Murder in the First Degree is 31 years. According to the Statistical Abstract of the United States (Department of Commerce), the average life expectancy for an American male by the year 2000 is expected to be 73.5 years. Without the death penalty, each offender sentenced to 99 years would need to be incarcerated for 42.5 years. Subtracting the 10 years the inmate would have been incarcerated pending appeals, the department would save 32.5 years of incarceration costs per inmate. The estimated operating cost for each Spring Creek bed is \$106 per day, or \$38,690 per year. The total expected cost avoidance attributable to the death penalty would be $\$38,690 \times 32.5$ years = \$1,257,425 over the expected life of each inmate. The total estimated cost avoidance for the first 40 offenders sentenced to death instead of lifelong incarceration would be \$50,297,000.

Alternatively, during the five year period between FY06 and FY10, the following costs would be avoided:

FY06 =	\$6,400,000 for construction of 40 additional maximum beds
	\$ 154,760 for 4 additional inmates (\$38,690 per year per inmate)
FY07-	\$ 309,520 for 8 additional inmates
FY08=	\$ 464,280 for 12 additional inmates
FY09-	\$ 619,040 for 16 additional inmates
FY10=	\$ 773,800 for 20 additional inmates
TOTAL=	<u>\$8,721,400</u> capital/operating cost avoidance between FY06-10.

Impact on Local Governments:

Assuming Spring Creek Correctional Center would be selected as the site for death row, the City of Seward would experience a large influx of death penalty opponents, media, and other interested parties on the occasion of each execution.

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO: SB 127

Revision Date: _____ Dept. Affected: Public Safety
 Title: "An act authorizing capital punishment
classifying murder one as a capital felony" BRU: Alaska State Troopers
 Component: Detachments
 Sponsor: Senate Judiciary
 Requestor: Senate Judiciary COMPONENT SERIAL NO. 799

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

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
REVENUE FUND SOURCE:						

FUNDING: (Thousands of Dollars)

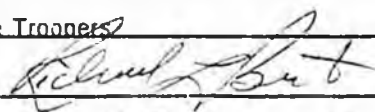
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of current year (FY 94) impact: \$ 0.00 _____

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)
 No fiscal impact upon the Alaska State Troopers is anticipated.

Prepared By: Francis C. Allan Phone: 269-5691
 Division: Alaska State Troopers Date: 01/10/94
 Approved by Commissioner:  Date: 01/10/94
 Agency: _____

PREPARER TO PRO
For fur

FISCAL NOTE
DEPT OF PUBLIC SAFETY

GOVERNOR'S LEGISLATIVE OFFICE
Governor's Legislative Office

BILL NO: SB 127

DATE: March 17, 1993

TITLE: "An Act authorizing capital punishment. . ."

CONTACT: C.E. Swackhammer
Deputy Commissioner
465-4322

Section one amends AS 11.41.100, Murder in the First Degree, paragraph (b), to make murder in the first degree a capital felony from its current status as an unclassified felony.

Sections two, three and four amend AS 12.30.020, Release Before Trial, paragraph (a); AS 12.30.040, Release After Conviction, paragraph (b); and AS 12.47.110, Commitment on Finding of Incompetency, paragraph (b), respectively, by adding "Capital Felony" to each section.

Section five amends AS 12.55.025, Sentencing Procedures, paragraph (i), which states that the preponderance of the evidence standard of proof applies to sentencing proceedings, except as provided in listed AS 12 statutes, and adds as an additional exception, cases where the determination of death should be imposed.

Section six amends AS 12.55.125, Sentence of Imprisonment for Felonies, paragraph (a), by adding language which includes the addition of the death penalty and provides for sentencing for murder in the first degree when the death sentence is not imposed.

Section seven amends AS 12.55.125, paragraph (f), by prohibiting the suspension of the sentence of death.

Section eight amends AS 12.55.145, Prior Convictions, paragraph (a), by adding capital felony to those felonies which must be considered as prior convictions in imposing sentence.

Section nine amends AS 12.55.155, Factors in Aggravation and Mitigation, paragraph (f), by adding a minor language addition "Under this section, if" to the first paragraph of this section.

Section ten amends AS 12 to add a new chapter, Chapter 58, Capital Punishment.

Article one addresses Imposition of Sentences page 5, page 6 and page 7, lines 1-17.

Article two addresses Sentence Review, page 7 lines 18-31, and page 8 lines 1-19.

Article three addresses Administration of the Death Penalty, page 8 lines 20-31 and page 9, lines 1-6.

Article four addresses Stay of Execution, page 9 lines 7-31 and page 10 lines 1-9.

Article five addresses General Provisions, page 10 line 10-13.

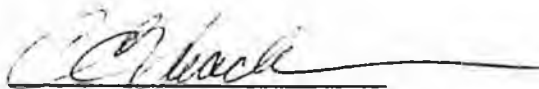
Section 11 amends AS 22.07.020, Jurisdiction, paragraph (a), by excluding from the appellant jurisdiction of the court of appeals, prosecution for capital felony for which the death sentence is imposed.

Section 12 amends AS 22.07.020, paragraph (b), by prohibiting the court of appeals from hearing an appeal of a death sentence.

Section 13 provides for a question to be advisory to the legislature on whether capital punishment for murder in the first degree should go into effect June 1, 1995, to be placed on the general election ballot in November of 1994.

Section 14 and Section 15 provide for date of effect.

This legislation will not impact the degree, intensity or quality of the investigations performed by the Department of Public Safety, and will not impact the Department of Public Safety fiscally.

A handwritten signature in cursive script, appearing to read "R. L. Burton", written over a horizontal line.

Richard L. Burton
Commissioner

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SB 127

Revision Date: _____
Title: Amendment to the Constitution RE:
Capital punishment for murder.
Sponsor: Senate Judiciary
Requestor: _____

Department Affected: Office of the Governor
BRU: Division of Elections
Component: General and Primary Elections
COMPONENT SERIAL NO. 22

EXPENDITURES/REVENUES:

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	2.2*	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND &	0	0	0	0	0	0
GRANTS,	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL	2.2*	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE						
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FUNDING:

1002 Federal	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	2.2*	0	0	0	0	0
1005 GF/Program	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	2.2*	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
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Estimate of current year (FY94) impact: 0

ANALYSIS: (Attach a separate page if necessary.)*This figure covers cost of inclusion of information about this issue in the Official Elections Pamphlet as required by AS 15.58, and programming for DataVote counting of votes cast on the measure. However, only 4 measures can be printed on a single ballot card. Should this measure require printing an additional ballot card, the fiscal impact would be 53.4.

Prepared by: Joseph L. Swanson, Director
Division: Division of Elections

Phone: 465-4611

Date: 2/3/94

Approved by Commissioner: Lt. Governor John B. Coghill

Agency: Office of the Lt. Governor

Date: 2/5/94

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Rev 12/93

Page 1 of 1

SB

133



*Department of Transportation
and Public Facilities*

POSITION PAPER

BILL NO: SCR 2

APPROVED:

W. J. Gentan

TITLE: Federal-Aid Hy Funding/Drug
Enforcement

DATE: March 1, 1993

This bill fulfills an urgent federal mandate, that, if ignored, will result in the loss of millions of dollars in federal highway funding. It is based on Public Law 101-516, Nov. 5, 1990, which directs each state to enact a law which requires the revocation of driving privileges of those persons convicted of any type of drug offense, or alternatively, the state must indicate formal opposition to such a law in a manner defined below.

In responding to this federal mandate (some would say blackmail) the state has three options. First, on or before April 1, 1993 the state may enact legislation requiring the revocation of a person's driving privileges upon conviction for a drug offense. Enactment must be accompanied by enforcement, provided there have been circumstances calling for the law's penalties to be imposed. That is the intent of this bill.

Alternatively, on or before April 1, 1993, if the Governor and both houses of the Legislature indicate by certification and resolutions respectively, that they are opposed to the enactment or enforcement of such a law, then the fiscal sanctions will not be imposed on the state. Several other states have selected this option, in most instances as a symbolic act against federal intrusion into states' sovereignty.

Finally, in the absence of the state taking positive, timely action to either enact and enforce the mandatory license revocation law, or indicating formal opposition, a 5% withholding of highway federal-aid funds will begin in Federal Fiscal Year 1994. The penalty would remain the same in FFY '95. Further, funds withheld in these two years would be returned to the state if prior to September 30, 1995 the state achieves compliance with the federal act.

In subsequent federal fiscal years, the penalty rises to 10% and there is no further restoration provision for withheld funding. The approximate magnitude of these penalties is significant, and would be on the order of \$9.6 million in FFYs '95 & '96, and \$19.2 million thereafter. I would therefore urge favorable action on either approach to comply with Public Law 101-516.

For Further Information contact Katy McHugh at 465-3900.

required to send a letter each year, the legislature is not required to pass a resolution. Certification takes place through the normal federal apportionment process in October.

The legislature must act on resolution or bill by April 1, 1993, (by federal regulation to allow time for certification). Many states have opted for the resolution as they resent the federal governments intervention in this issue, or philosophically disagree with driver licensing penalties for any drug conviction. We know of 16 states that have passed the bill, sixteen federal agencies participate in the certification process, and of those that have passed legislation, only 3 have been certified.

5% of ISTEAs if \$212 million total available = \$10.6 million
10% of ISTEAs if \$212 million total available = \$21.2 million



STATE OF MAINE
OFFICE OF THE GOVERNOR
AUGUSTA, MAINE
04333

JOHN R. McKERMAN, JR.
GOVERNOR



August 13, 1991

Samuel I. Skinner, Secretary
U. S. Department of Transportation
400 Seventh Street, S.W.
Washington, D.C. 20590

Dear Mr. Secretary:

I write to you regarding P.L. 101-516 of the FY '91 U.S. DOT Appropriations Act. This section of law concerns revocation or suspension of the driver licenses for individuals convicted of drug offenses. I am opposed to the enactment or enforcement in the State of Maine of such a law described in sub-paragraph (A) of the above cited Section 333.

Further, I take this opportunity to submit this written certification that the 1st Regular Session of the 115th Maine Legislature recently adopted a resolution opposing the same sub-paragraph (A) of Section 333. I have attached a true copy of that resolution which was passed on June 4, 1991 by the 115th Legislature. The session adjourned on July 18, 1991.

I believe that the State of Maine is now in compliance with P.L. 101-516, Section 333. Thank you for your attention to this matter.

Sincerely,

John R. McKernan, Jr.
Governor

JRM/lba

cc: Dana P. Connors, MDOT
William D. Richardson, FEWA



STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND NINETY-ONE

JOINT RESOLUTION EXPRESSING THE LEGISLATURE'S OPPOSITION
TO FEDERAL LEGISLATION REQUIRING SUSPENSION OF
LICENSES FOR INDIVIDUALS CONVICTED OF VIOLATIONS OF
THE FEDERAL CONTROLLED SUBSTANCES ACT

WHEREAS, the Federal Government has enacted legislation to withhold federal aid to highways in this State unless the Legislature and the Governor consider and act upon state legislation related to the suspension or revocation of the driver's license of any person convicted of drug offenses; and

WHEREAS, the Joint Standing Committee on Legal Affairs has considered proposed legislation consistent with the federal requirement and has voted to recommend that the legislation ought not to pass; and

WHEREAS, the reasons for the negative recommendation include a belief that the granting or withholding of driving privileges is and always has been a prerogative of the states to decide for themselves, not the Federal Government; and

WHEREAS, the federal law provides that a state may avoid loss of federal highway funds "if the legislature enacts a resolution expressing its opposition to such legislation and the governor conveys the governor's disapproval and the legislature's resolution to the United States Secretary of Transportation; now, therefore, be it

RESOLVED: That We, the Members of the One Hundred and Fifteenth Legislature, now assembled in the First Regular Session, express our opposition to the enactment of legislation required by the Federal Government to revoke or suspend the drivers' licenses of individuals convicted of violations of the Controlled Substances Act or any drug offense or to delay the issuance or reinstatement of a driver's license for a person so convicted; and be it further

7
SEP 29 '92 23:55PM

P.5

RESOLVED: That suitable copies of this resolution, duly authenticated by the Secretary of State, be transmitted to the Honorable John R. McKernan, Jr., Governor, for conveyance to the United States Secretary of Transportation.

830732

HOUSE OF REPRESENTATIVES
READ AND ADOPTED

JUN 5 1991
IN CONCURRENCE

Edwin R. ...
CLERK

IN SENATE CHAMBER
READ AND ADOPTED

JUN 4 1991

J. J. O'BRIEN
SECRETARY

SENT ESTIN FOR CONCURRENCE

9503W-LR2723(1)

ORIGINAL SIGNED BY
PRESIDENT AND SPEAKER, 901
SIGNED BY GOVERNOR 901
DATE: 2-21-91
CHAPTER NO: None

ORIGINAL SENATE
JOINT RESOLUTION
NO. 0021

ENROLLED JOINT RESOLUTION NO. 5, SENATE
FIFTY-FIRST LEGISLATURE OF THE STATE OF WYOMING
1991 GENERAL SESSION

A JOINT RESOLUTION requesting Congress to allow each state the right to determine and impose appropriate sanctions upon the driving privileges of drug offenders within state boundaries.

WHEREAS, Congress has imposed sanctions upon the several states through the withholding of apportioned federal aid highway funds in an attempt to strengthen and encourage state efforts in preventing drug abuse through penalizing drug offenders; and

WHEREAS, while drug abuse remains to be a paramount and priority national problem, the imposition of federal highway fund sanctions upon states does not appropriately address or respond to the problem; and

WHEREAS, state officials are eminently more qualified to regulate and control the privilege of operating motor vehicles on roadways within their respective state jurisdictions.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE LEGISLATURE OF THE STATE OF WYOMING:

Section 1. That the legislature opposes enactment or enforcement in this state of a federally mandated law relating to revocation, suspension, issuance or reinstatement of driver's licenses to convicted drug offenders as described in 23 U.S.C. 104(a)(3)(A).

Section 2. That Congress repeal 23 U.S.C. 104(a)(2) and (3) and allow states the right to determine and impose appropriate sanctions upon driving privileges of drug offenders within state boundaries.

Section 3. That this resolution is intended to satisfy the requirement under 23 U.S.C. 104(a)(3)(B)(ii) which will protect

ORIGINAL SENATE
JOINT RESOLUTION
NO. CO21

ENROLLED JOINT RESOLUTION NO. 5, SENATE
FIFTY-FIRST LEGISLATURE OF THE STATE OF WYOMING
1991 GENERAL SESSION

the state of Wyoming from the loss of federal highway funds
under 23 U.S.C. 104(a)(3).

Section 4. That the Secretary of State of Wyoming transmit
copies of this resolution to the President of the United States,
to the President of the Senate and the Speaker of the House of
Representatives of the United States Congress, to the United
States Secretary of Transportation and to the Wyoming Congres-
sional Delegation.

(END)

Speaker of the House

President of the Senate

Governor

TIME APPROVED: _____

DATE APPROVED: _____

(ORIGINAL SIGNED BY
PRESIDENT AND SPEAK. 2)

SIGNED BY GOVERNOR

DATE: 2-21-91

CHAPTER NO: None



STATE OF UTAH
OFFICE OF THE GOVERNOR
SALT LAKE CITY
84114

NORMAN H. BANGERTER
GOVERNOR

March 16, 1992

Mr. Andrew H. Card
Secretary of Transportation
U.S. Department of Transportation
400 7th Street, S.W.
Washington, D.C. 20590

Dear Secretary Card:

Section 333 of the FY-1991 U.S. Department of Transportation Appropriations Act (Public Law 101-516, Sec. 333) requires withholding of certain Federal-aid Highway Funds if certain legislation is not passed by individual states. However, this same act provides for exclusion from the penalties if the State Legislature and Governor certify that they oppose enactment of the specified legislation.

This letter is to inform you that the Utah State Legislature considered legislation which would have required the revocation or suspension of a person's driver's license if convicted on any drug-related offense. The legislation was not passed by either house. The Legislature passed a resolution, in which I concurred, which outlined our opposition to the suggested legislation. A copy is enclosed for your inspection and record.

I would like to point out that our failure to enact the legislation suggested by Congress does not indicate any laxness on our part in fighting drug and alcohol use and their impacts on traffic safety. Utah has some of the most stringent DUI laws in the country and very aggressive enforcement of them. We also have a law which revokes or suspends the driver's license of juveniles convicted of any drug-related offense. We feel that our current laws provide for sufficient deterrence of drug abuse.

Sincerely,

Norman H. Bangarter
Governor

NHB/ehf

Enclosure

cc: Don Steinke, Federal Highway Administration
Doug Bodrero, Department of Public Safety

RESOLUTION TO THE SECRETARY OF TRANSPORTATION
ON REVOCATION OF DRIVER LICENSES

1992

GENERAL SESSION

Enrolled Copy

S. C. R. No. 7

By Dix E. McMullin

A CONCURRENT RESOLUTION OF THE LEGISLATURE AND THE GOVERNOR EXPRESSING
OPPOSITION TO A FEDERAL REQUIREMENT FOR THE STATE TO PASS A LAW
REQUIRING REVOCATION OR SUSPENSION OF A PERSON'S DRIVER LICENSE FOR
ANY DRUG-RELATED OFFENSE.

Be it resolved by the Legislature of the state of Utah, the Governor
concurring therein:

WHEREAS Section 333 of the Fiscal Year 1991 United States Department
of Transportation Appropriation Act entitled "Revocation or Suspension of
the Driver's License of Individuals Convicted of Drug Offenses" requires
states to enact legislation requiring the revocation or suspension of an
individual's driver license upon conviction of any drug-related offense;

WHEREAS Section 333 requires withholding 5% of certain federal-aid
highway funds in Fiscal Year 1994 and 1995 and 10% in subsequent years
from states that fail to enact legislation;

WHEREAS Section 333 provides the following procedure to avoid the
sanctions without enacting the legislation:

"(3) The Governor of the State --

(i) submits to the Secretary no earlier than the adjournment sine
die of the first regularly scheduled session of the state's legislature
which begins after the date of enactment of this section a written
certification stating that he is opposed to the enactment or enforcement

S. C. R. No. 7

in his state of a law described in subparagraph (A) relating to revocation, suspension, issuance, or reinstatement of driver's licenses to convicted drug offenders; and

(ii) submits to the Secretary a written certification that the legislature (including both Houses where applicable) has adopted a resolution expressing its opposition to a law described in clause (i)";

WHEREAS S.B. 102, "Suspension of Driver License", providing for the revocation or suspension of an individual's driver license upon conviction of any drug-related offense, has been introduced during the 1992 General Session of the Legislature and has failed to pass;

WHEREAS the Federal government should not dictate policy or legislation of this kind for the state; and

WHEREAS the Tenth Amendment to the Constitution of the United States provides that: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people";

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah, the governor concurring therein, certify opposition to the enactment or enforcement in this state of a law requiring the revocation or suspension of an individual's driver license upon conviction of any drug-related offense.

BE IT FURTHER RESOLVED that this resolution be prepared and delivered to the governor of the state of Utah and that the governor submit to the United States Secretary of Transportation;

S. C. 2. No. 7

(1) a written certification that he is opposed to the enactment or enforcement of a law related to revocation of a person's driver license for any drug-related offense; and

(2) a written certification that the legislature has adopted this resolution.

BE IT FURTHER RESOLVED that a copy of this resolution be prepared and delivered to the United States Secretary of Transportation.

SEC. 330. (a) **AUXILIARY FLIGHT SERVICE STATION PROGRAM.**—The Administrator of the Federal Aviation Administration shall develop and implement a system of manned auxiliary flight service stations. The auxiliary flight service stations shall supplement the services of the planned consolidation to 61 automated flight service stations under the flight service station modernization program. Auxiliary flight service stations shall be located in areas of unique weather or operational conditions which are critical to the safety of flight. Not later than 180 days after the date of enactment of this Act, the Administrator of the Federal Aviation Administration shall report to Congress with the plan and schedule for implementation of this section.

(b) **NATIONAL WEATHER GRAPHIC SYSTEM.**—None of the funds made available in this Act may be used by the Federal Aviation Administration for a new National Weather Graphics System.

SEC. 331. **NATIONAL 55 MPH SPEED LIMIT ENFORCEMENT PENALTIES.**—Notwithstanding sections 141(a) and 154 of title 23, United States Code, none of the funds in this or any previous or subsequent Act shall be used for the purpose of reducing or reserving any portion of a State's apportionment of Federal-aid highway funds as required by section 154(f) of title 23, United States Code, for reason of noncompliance with the criteria of that subsection during fiscal year 1989. The Secretary shall promptly restore any apportionments which, prior to enactment of this Act, were reduced or reserved from obligation for reason of noncompliance under section 154(f) during said fiscal year.

SEC. 332. Unless specifically provided in this Act, none of the funds in this Act shall be available to initiate multiyear contracts for a program which meets the criteria of a Level I or Level II major system acquisition as defined by Department of Transportation Order 4200.14 if the total value of procurement end items in the contract, including options, exceeds \$100,000,000: *Provided*, That for the purposes of this section, a multiyear contract is defined as one which provides for more than one year's requirements of systems, subsystems, or components within a single contract: *Provided further*, That none of the funds in this Act shall be available to initiate contracts for major systems acquisition which include procurement options where funding for those options is scheduled to be provided prior to delivery to the Federal Government of at least fifty per centum of all units previously ordered under that contract.

SEC. 333. For each fiscal year the Secretary of Transportation shall withhold five per centum of the amount required to be apportioned to any State under each of paragraphs (1), (2), (5), and (6) of section 104(b) on the first day of each fiscal year which begins after the second full calendar year following the date of enactment of this section if the State does not meet the requirements of paragraph (3) on such date.

Subsections (a)(2), (a)(3), (b), and (c) of section 104 of title 23, United States Code, are amended as follows:

"(2) The Secretary shall withhold 10 per centum (including any amounts withheld under paragraph (1)) of the amount required to be apportioned to any State under each of paragraphs (1), (2), (5), and (6) of section 104(b) on the first day of each fiscal year which begins after the fourth full calendar year following the date of enactment of this section if the State does not meet the requirements of paragraph (3) on the first day of such fiscal year.

"(3) A State meets the requirements of this paragraph if—

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ON PROGRAM.—The
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 ragraph if—

"(A) the State has enacted and is enforcing a law that re-
 quires in all circumstances, or requires in the absence of
 compelling circumstances warranting an exception—

"(i) the revocation, or suspension for at least 6 months, of
 the driver's license of any individual who is convicted, after
 the enactment of such law of—

"(I) any violation of the Controlled Substances Act, or
 "(II) any drug offense, and—

"(ii) a delay in the issuance or reinstatement of a driver's
 license to such an individual for at least 6 months after the
 individual applies for the issuance or reinstatement of a
 driver's license if the individual does not have a driver's
 license, or the driver's license of the individual is sus-
 pended, at the time the individual is so convicted, or—

"(B) The Governor of the State—

"(i) submits to the Secretary no earlier than the adjourn-
 ment sine die of the first regularly scheduled session of the
 State's legislature which begins after the date of enactment
 of this section a written certification stating that he is
 opposed to the enactment or enforcement in his State of a
 law described in subparagraph (A) relating to the revoca-
 tion, suspension, issuance, or reinstatement of driver's li-
 censes to convicted drug offenders; and

"(ii) submits to the Secretary a written certification that
 the legislature (including both Houses where applicable)
 has adopted a resolution expressing its opposition to a law
 described in clause (i).

"(b)(1)(A) Any funds withheld under subsection (a) from appor-
 tionment to any State on or before September 30, 1996, shall remain
 available for apportionment to such State as follows:

"(i) If such funds would have been apportioned under section
 104(b)(5)(A) but for this section, such funds shall remain avail-
 able until the end of the fiscal year for which such funds are
 authorized to be appropriated.

"(ii) If such funds would have been apportioned under section
 104(b)(5)(B) but for this section, such funds shall remain avail-
 able until the end of the second fiscal year following the fiscal
 year for which such funds are authorized to be appropriated.

"(iii) If such funds would have been apportioned under para-
 graph (1), (2), or (6) of section 104(b) but for this section, such
 funds shall remain available until the end of the third fiscal
 year following the fiscal year for which such funds are au-
 thorized to be appropriated.

"(B) No funds withheld under this section from apportionment to
 any State after September 30, 1995, shall be available for appor-
 tionment to such State.

"(2) If, before the last day of the period for which funds withheld
 under subsection (a) from apportionment are to remain available for
 apportionment to a State under paragraph (1), the State meets the
 requirements of subsection (a)(3), the Secretary shall, on the first
 day on which the State meets the requirements of subsection (a)(3),
 apportion to the State the funds withheld under subsection (a) that
 remain available for apportionment to the State.

"(3) Any funds apportioned pursuant to paragraph (2) shall
 remain available for expenditure as follows:

"(A) Funds originally apportioned under section 104(b)(5)(A)
 shall remain available until the end of the fiscal year succeed-

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ing the fiscal year in which such funds are apportioned under paragraph (2).

"(B) Funds originally apportioned under paragraph (1), (2), (5)(B), or (6) of section 104(b) shall remain available until the end of the third fiscal year succeeding the fiscal year in which such funds are so apportioned.

Sums not obligated at the end of such period shall lapse or, in the case of funds apportioned under section 104(b)(5), shall lapse and be made available by the Secretary for projects in accordance with section 118(b).

"(4) If, at the end of the period for which funds withheld under subsection (a) from apportionment are available for apportionment to a State under paragraph (1), the State does not meet the requirements of subsection (a)(3), such funds shall lapse or, in the case of funds withheld from apportionment under section 104(b)(5), such funds shall lapse and be made available by the Secretary for projects in accordance with section 118(b).

"(c) For purposes of this section—

"(1) The term 'driver's license' means a license issued by a State to any individual that authorizes the individual to operate a motor vehicle on highways.

"(2) The term 'drug offense' means any criminal offense which proscribes—

(A) the possession, distribution, manufacture, cultivation, sale, transfer, or the attempt or conspiracy to possess, distribute, manufacture, cultivate, sell, or transfer any substance the possession of which is prohibited under the Controlled Substances Act, or

(B) the operation of a motor vehicle under the influence of such a substance.

"(3) The term 'convicted' includes adjudicated under juvenile proceedings."

(b) The table of contents for chapter 1 of title 23, United States Code, is amended by adding at the end thereof the following new item:

"159. Revocation or suspension of the driver's license of individuals convicted of drug offenses."

Sec. 334. Unobligated funds authorized to be appropriated by section 131(d)(2) of the Highway Improvement Act of 1982, Public Law 97-424, shall be available for obligation for the project described in section 149(a)(88) of the Federal-Aid Highway Act of 1987, Public Law 100-17, in the same manner and to the same extent provided in section 131(d)(3) of the Highway Improvement Act of 1982.

Sec. 335. Notwithstanding section 127 of title 23, United States Code, the State of Wyoming may permit the use of the National System of Interstate and Defense Highways located in Wyoming by vehicles in excess of 80,000 pounds gross weight, but meeting axle and bridge formula specifications in section 127 of title 23, United States Code: ~~Provided~~, That this section shall remain in effect until December 31, 1991.

Sec. 336. 23 U.S.C. 410(e)(1)(C) is hereby amended by striking the words "within the time period specified in subparagraph (F)"; 23 U.S.C. 410(e)(2) is hereby amended by adding the words "a significant portion of:" after the word "which", the first time it appears,

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apportioned under paragraph (1), (2), and until the end of the year in which such

shall lapse or, in the event it shall lapse and be reauthorized in accordance with

is withheld under or apportionment shall meet the requirements, or, in the case of section 104(b)(5), such amount for projects

license issued by a State to an individual to operate

in connection with a criminal offense

manufacture, cultivation, or possession of a controlled substance, or the transfer of any such substance prohibited under the

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committed under juvenile

of section 23, United States Code, the following new

individuals convicted of

of an act appropriated by section 23 of the Act of 1982, Public Law 97-424, Highway Act of 1982, or the same extent of the Highway Act of 1982

of section 23, United States Code, the following new text in the National Highway Act of 1982, but meeting the requirements of title 23, United States Code, shall remain in effect until

deleted by striking the text of paragraph (F)"; (2) the words "a significant amount" shall be inserted at the time it appears

and by striking the words "convicted of" and inserting in lieu thereof the words "apprehended and fined for".

Sec. 337. Within 180 days of the effective date of this Act, the Federal Aviation Administration shall undertake and complete a study on the classification of air traffic controllers at level IV limited radar approach facilities which includes airspace complexity as a factor in determining grade classification. The results of this study, along with an implementation plan, shall be provided to the House and Senate Committees on Appropriations.

Sec. 338. Notwithstanding any provision of the Urban Mass Transportation Act of 1964, as amended, the Urban Mass Transportation Administration shall not withhold fiscal year 1989, 1990 or 1991 funds for any section 3 and section 9 operating and capital assistance grants for the City of Phoenix, Arizona, based on the inclusion of a "preference in hiring" provision in the employee protective arrangements developed pursuant to 49 U.S.C. 1609(c).

Sec. 339. Notwithstanding subsection (d) of section 402 of the Surface Transportation Assistance Act of 1982 (Public Law 97-424, 96 Stat. 2155, 2156) for States which have received only a development grant for fiscal year 1989 under such section 402 and which have participated in the Commercial Motor Carrier Safety Inspection and Weighing Demonstration Program, the Secretary shall only approve a plan under such section 402 for fiscal year 1991 which provides that the aggregate expenditure of funds of the State and political subdivisions thereof, exclusive of Federal funds, for commercial motor vehicle safety programs will be maintained at a level which does not fall below the average level of such expenditure for the last two full fiscal years preceding fiscal year 1990.

Sec. 340. (a)(1) None of the funds appropriated by this Act may be obligated or expended to enter into any contract for the construction, alteration, or repair of any public building or public work in the United States or any territory or possession of the United States with any contractor or subcontractor of a foreign country, or any supplier of products of a foreign country, during any period in which such foreign country is listed by the United States Trade Representative under subsection (c) of this section.

(2) The President or the head of a Federal agency administering the funds for the construction, alteration, or repair may waive the restrictions of paragraph (1) of this subsection with respect to an individual contract if the President or the head of such agency determines that such action is necessary for the public interest. The authority of the President or the head of a Federal agency under this paragraph may not be delegated. The President or the head of a Federal agency waiving such restrictions shall, within 10 days, publish a notice thereof in the Federal Register describing in detail the contract involved and the reason for granting the waiver.

(b)(1) Not later than 30 days after the date of enactment of this Act, the United States Trade Representative shall make a determination with respect to each foreign country of whether such foreign country—

(A) denies fair and equitable market opportunities for products and services of the United States in procurement, or

(B) denies fair and equitable market opportunities for products and services of the United States in bidding,

for construction projects that cost more than \$500,000 and are funded (in whole or in part) by the government of such foreign