

ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

8330

SENATE JUDICIARY

EVALUATION and TREATMENT

CHARACTERISTICS OF ADULT SEXUAL OFFENDERS. Before any intervention in the behavior of sexual offenders can be undertaken, it is necessary to have an idea of who it is, at least in a general sense, we are dealing with. Vernon Quinsey has recently published a lengthy review of deviance-related literature and presents us with a broadly-based description of who and what sexual offenders are. The reader is referred to that work (In D. Weisstub (Ed.) (in press), *Law and Mental Health: International perspective*. Pergamon, New York.)

To summarize, Quinsey proposes that there are two primary factors in the genesis of a sexual aggressive. One, that there exists a continuum of relative sexual attraction or preference for the deviant focus and, two, that there are a variety of reasons why that focus is chosen. He describes these factors as additive.

Within the framework of these two factors he explores the individual qualities of known sexual offenders. While the paper is principally concerned with child molesters, because of the amount of behavioral crossover seen in this population, (Abel, G. Mittelman, M. Becker, J. Cunningham-Rathner, J. and Lucas, L. *The Characteristics of Men Who Molest Young Children*. World Congress of Behavior Therapy, 1983) I believe that inferences can be made for sex offenders in general. (I'm not sure that Dr. Quinsey would approve of this undocumented inference, but what we are interested in here are generalities upon which to structure an exploratory, evaluation protocol).

In terms of motivation, Quinsey presents a convincing picture of the offender as acting out his deviance as a result of an active, measurable sexual attraction. This attraction is experienced by the offender, prior to and during the behavior, as pleasurable and desirable. In addition, he reports that this attraction has frequently been first recognized by the offenders in their own childhoods (first overt act of sexual deviance at about age 16). As part of this attraction/preference, the offenders are prone to fantasize sexually about their deviant behavior. This, in effect, allows the offender to rehearse the behavior in imagination in the absence of a suitable target/victim.

Sexual offenders also act out their deviance at high rates. In the Able study cited above (1983) the average number of sexual assaults completed, by each offender against children, was 167. The average number of child victims was 76. Their behavior does not show the pattern of decline in frequency with age as found in property offenders. It appears that they do not outgrow their sexually exploitive preferences. Recidivism rates are high and increase in relation to the number of previous sex offenses and with attraction to male (non-incest) child victims.

Even though this population is known because of its deviation, the majority show no other psychopathology.

Their principal diagnoses are paraphilia (. . . an unusual act or fantasy is required or sexual arousal) and one of the forms of character disorder.

In terms of developmental histories, one finds a general high level of dysfunction in the offender's family of origin including physical, emotional and sexual abuse of themselves as well as other family members. The degree of family dysfunction increases as one moves from a community treatment population upward through incarcerated offender populations. One speculates that this is the result of a criminal justice selection process which places the more serious offenders in secure facilities and leaves the less serious in the community.

A preliminary study of sexual offenders in community treatment (Wolf, S. and Conte, J., 1984) found that they had been overtly (hands on) sexually abused as children in 27% of the cases observed. This compares to 53% noted by Quinsey for incarcerated offenders. Community-treated offenders, in that study, however, showed the same kinds of family of origin dysfunction that Quinsey reported in incarcerated offenders.

Their patterns of offending were also very similar. While the community-treated population showed fewer victims and more limited histories, they did show the same patterns of beginning overt sexually aggressive behavior in childhood and adolescence (approximately 75%). They show the same levels of premeditation and planning. The community-treated offenders who have molested male children also show the highest frequency of deviant behavior, number of victims and greatest tendency to reoffend.

Incest offenders, in both groups, show more limited deviant histories in general but more than has been believed. For example, Abel (1983) found that his sample of heterosexual-incest offenders had also molested female children outside their families 44% of the time. His sample showed crossover to a degree that indicates that it is risky to assume that the offender, at discovery, only acts out in the deviance for which he was caught.

In summary, sexual offenders are motivated to act out their deviance as a sexual preference. In simple terms, they like what they do. They are not in any large numbers psychotic or schizophrenic. Once their sexual preference is established they tend to continue to pursue it. They will most often, at the time of discovery, have more than one victim and probably more than one deviant sexual focus. In incest cases, for example, they also molest children outside their homes almost half the time.

From clinical experience, offenders, when caught, will either deny the offense, minimize their responsibility (she made me do it . . . He liked it . . . They do it in Africa all the time . . .) or claim the cure (I've learned my lesson . . . found God . . . sobered up . . .). They also, all other things being equal, tend to return to deviance shortly after they feel safe from criminal justice sanctions. In their histories they will have quit many times, often after each

offense. They will lie extensively about their deviance and will be reluctant to reveal information beyond what is known about them already.

Clinical Note: Offenders, during evaluation, seem to reveal information about their deviance at a set rate. Re-

EVALUATING OFFENDERS. This article will deal with the evaluation of sexual offenders who are admitting to, at least, the behavior for which they have been referred. Evaluating denying offenders will be dealt with in a later issue of the SVQ. For further discussion of this topic see "Developing Your Theoretical Framework," Evaluating Sexual Offenders in Volume 1, Number 1 of the SVQ.

The specialized evaluation of the sexual offender forms the basis for planning a treatment response. It is "specialized" in that it addresses a specific problem and makes recommendations as to treatment and limitations to the freedom of the client. It is specialized in that its foundation is a specific body of data focused on the problem of sexual violence.

Since sexual offenders do not in any significant numbers self-refer for their problems, evaluation will most often occur after discovery and before sentencing. The offender will have been referred by someone in the criminal justice system and the evaluation may be used by the court in sentencing the offender.

Given the above, the client will be resistant to revealing much about himself. He will probably believe that he has cured himself of the referring problem and will "just want to forget about it." What information he will reveal will be distorted and minimized. As such, the client's self-report will be of limited direct use in defining the sexual problem. To compensate for this serious limitation, the specialized evaluation relies on information gathered from a variety of sources outside of the client.

The first step in the evaluation, after deciding to evaluate the offender, is the development of an information access system. Information needed for the evaluation comes from two sources: internal and external. Internal information is that which one derives from the offender directly. This includes self-report, personality assessment instruments, and psychophysiological assessments such as the penile plethysmograph and clinical polygraph. External information is that derived from contacts with discovery materials, witness and victim statements, victim evaluations, contacts with partners, family of origin, friends, pastors etc.

External data sources require signed releases of information from the offender. He must be fully informed as to the purpose of the releases, who will be contacted, what will be discussed and why it is necessary to the evaluation. In most cases this will include the client/offender's attorney. An attorney is used to operating within an adversarial system and will see the evaluator as either for or against his client. The evaluator must communicate that his agenda is to assess the nature of the client's problem, estimate his potential for further harm to others and recommend reasonable treatment alterna-

tion. Again, if the evaluator and the attorney representing the offender cannot come to agreement on the purpose and form of the evaluation, it would be advisable to not proceed further.

NOTE: Citations and references are listed in the RESEARCH section under bibliography.

tives. Again, if the evaluator and the attorney representing the offender cannot come to agreement on the purpose and form of the evaluation, it would be advisable to not proceed further.

Internally derived information begins with the interview of the offender. One is looking to understand the life forces which created the potential, now realized, to make this individual into a sexual offender. One is looking for histories of interfamily abuse; sexual, physical and emotional which provides us with examples of values development in the family and the offender which supports sexually violent behavior.

Since the reality of the sexual deviance is not at question, the evaluation is intended to assess the risk for reoffense of this offender and his amenability for treatment. The more enmeshed in the offender's family background the deviance is (attitudes, values, family history) the more likely deviance will function as part of the offender's lifestyle. The more deviance is a part of the offender's lifestyle, the less likely the offender is willing to give the behavior up. All other factors considered, history of deviance, type of offending, and frequency, are probably the best predictor of treatment failure and reoffense.

One is also looking for the actual beginnings of sexual violence in the offender's life, its frequency over time, periods of no deviance, and periods of behavioral escalation. One is asking, what precipitated the suppression of behavior, what factor preceded or may have precipitated the return to deviance. This information details the offender's pattern of deviant behavior. The structure of this pattern forms the focus of treatment planning and functions as behavioral evidence of approaching reoffense. For example, an exhibitionist client has a history of withdrawing from friends and spouse, becoming argumentative and spending increasing amounts of time driving around alone prior to and during exposing. During treatment these behaviors reappear. It is probable that this client either is, or will be reoffending. These behavioral "warning signs" must be identified and noted in the evaluation's discussion of his deviant pattern.

The next step is to elicit from the offender his version of the presenting deviant behavior. Recognizing that he will give a minimized accounting of what happened, it is useful to hear him out. His report will expose the distortions in his thinking and the style and strength of his defenses. This step is useful in assessing the amenability or the vulnerability of the offender to treatment. The greater the client's distortions of what actually happened, the more a part of his value system the deviance is. The more a part of the offender's value system the deviance is, the less vulnerable he is to treatment messages that the behavior is hurtful to others. The more robust his distortions and defenses, the less amenable he is to treatment.

Personality assessment is the next step in the evaluation process. At the present time there are no dependable "test" profiles which identify sexual offenders 100% of the time. This is due in large measure to the offenders' consistent attempts to make themselves look good. They will attempt to "fake good" on the instruments rendering the results frequently invalid. When valid results are seen, the most frequent profile will express antisocial or asocial value systems, ruminativeness, impulsivity, and low empathy. The utility of personality assessment with this population may be that it measures their willingness to answer questions candidly. The danger of using them is that one finds very (behaviorally defined) dangerous offenders who represent normal looking personality profiles. As such, personality tests are of limited use and cannot be used, alone, to define the level of personality disorder present.

Psychophysiological assessment is the last source of internal data to be considered here. The two instruments most used are the penile plethysmograph and the polygraph. The plethysmograph is used to identify the range of sexual arousal which the offender experiences. (NOTE: an in-depth discussion of the plethysmograph is planned for the next issue of the SVQ.) This data should be used with the same attitude which one approaches personality testing. That is, endorsements of interest in, or attraction to, deviant themes must be accounted for. However, their absence from the test results does not mean that they don't exist, just that they were not measured.

External data collection is the next step in the evaluation. After the first meeting with the offender, the evaluator contacts the referring agency, the offender's attorney and any other individuals involved in the case. Discovery materials are collected and any previous reports are reviewed. The offender's version of the deviant behavior is compared and contrasted with other sources. Differences are explored to assess why they might exist. Are the differences the result of different perceptions, distorted thinking, or dishonesty on the part of the offender or others?

If one has the option, placing the offender in a sex offender treatment group is an excellent way to gather further data. This allows the offender to see others with problems similar to his dealing honestly with their deviance. One expects the amenable client to expand his self disclosure, his defenses to weaken and his distortions in perception of his deviance to change somewhat in the face of confrontations by the group members. If one does not observe these changes in the offender one can summarize that the likelihood of his profiting from treatment is minimal.

Even in cases where you cannot place the offender in group, it is important to see as much of the individual

as possible. The less time you can spend with the offender, the more external data you will need.

The final step in the evaluation is to make recommendations. What you recommend as your treatment plan, even if your recommendation is prison, depends on a number of factors. First, what motivates the client into treatment. Is he voluntary or court-ordered. Is he a present risk to the safety of the community. Can you, as a therapist, reasonably expect the offender to profit from treatment at your agency. (Be careful of your own sense of grandiosity. It is seductive to have referral sources think of you as the "Wizard." Your errors will be borne by the offender's next victim.)

The first consideration, the source of motivation, determines whether specialized treatment will take place. Offenders are unlikely to remain in a treatment setting which makes demands on him or expects that he will work directly on his deviance unless forced to. Without a clear mandate, from the court for example, the offender will find the least intrusive treatment he can. The least intrusive, of course, being no treatment at all.

The next consideration is dangerousness. The best predictor of future behavior is still past behavior. If the offender has a history of sexual abuse and exploitation extending back into his childhood, if his deviance has been constant or highly patterned, you can expect him to continue in that pattern. This means reoffense. Given what you know about the offender, and what you suspect, can external controls be structured around the offender to prevent reoffense opportunity? In that light, does the offender's family see him as a risk and can they be counted on to protect others from his abuse?

The final factor is the most difficult to assess. Is he internally motivated for treatment? Does his behavior cause him any real pain, guilt or embarrassment? If he experiences little guilt around his deviance, or doesn't think of it as wrong, he is not amenable to treatment in any setting. Your best efforts as a therapist will fail. Even if he is motivated to change out of his discomfort with his deviance, is he so out of control that he is probably reoffending as you read this? Sexual offenders can only be counted on to do what feels the best to them. If they really had any internal motivation to stop or discomfort with deviance, they would have sought treatment prior to being caught or stopped the behavior on their own.

These are the general components of evaluating sexual offenders. It is a different approach than most of mental health. It has most in common with evaluations of other criminal populations. It also shares the risks of that group in that when we, as evaluators and therapists, make errors in our assessment of risk, someone else pays the price for that mistake.

HB

71

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HB 71

Revision Date: _____
 Title: An Act relating to involuntary dissolution of Native
 corporations
 Sponsor: Representative Foster
 Requestor: _____

Department Affected: Commerce and Economic Development
 BRU: Banking, Securities and Corporations
 Component: _____
 COMPONENT SERIAL NO. 1233

Expenditures/Revenues:

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	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

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

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

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

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Willis F. Kirkpatrick, Director
 Division: Banking, Securities and Corporations

Phone: 465-2521
 Date: _____

Approved by Commissioner: Paul Fuhs
 Agency: Commerce and Economic Development

Date: 2/14/93

PREPARER TO PRO'
 For fur:

DR'S LEGISLATIVE OFFICE
 Legislative Office

SPONSOR STATEMENT

HB 71

"An Act relating to the involuntary dissolution of Native corporations; and providing for an effective date."

Representative Foster

This bill would provide a period of time within which ANCSA corporations that have been involuntarily dissolved because of their failure to file a biennial report could be reinstated.

Corporations affected by this bill would be required to pay appropriate fees as they would normally had they not been delinquent, and, in addition, would also pay any penalties allowable under statute before reinstatement.



Alaska State Legislature

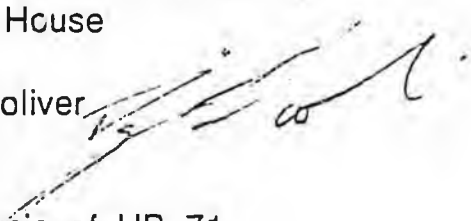
HOUSE OF REPRESENTATIVES

Official Business

State Capitol
Juneau, AK 99801-1182

MEMORANDUM

TO: Representative Ramona L. Barnes
Speaker of the House

FROM: Douglas A. Wooliver
Staff Attorney 

SUBJECT: Sectional Analysis of HB 71

DATE: April 16, 1993

The following is a sectional analysis of HB 71; "An Act relating to the involuntary dissolution of Native corporations; and providing for an effective date."

Section 1 amends AS 10.06.960(i). Title 10 deals with "Corporations and Associations" and chapter 06 deals specifically with the "Alaska Corporations Code." Section 960 is entitled "Corporations organized under Alaska Native Claims Settlement Act."

This amendment updates the reference to the Alaska Native Claims Settlement Act and defines "village corporation" by referencing the federal code.

Section 2 amends AS 10.06.960 by adding 2 new subsections. New subsection (j) allows a village corporation that has been involuntarily dissolved, and has passed the deadline for application for reinstatement, to be reinstated within 1 year of the effective date of this Act. Such reinstatement treats the corporation and its shareholders as if there had never been a dissolution.

New subsection (k) states that if a corporation had been involuntarily dissolved and, before the effective date of this Act, replaced by another corporation of the same name, the replacing corporation assumes all of the rights and responsibilities of the dissolved corporation.

Section 3 clarifies that references in section 2 of this act to "the effective date of this Act" refer to the effective date of this act as established under section 4 and not to the effective date of the Alaska Native Claims Settlement Act.

Section 4 provides for an immediate effective date.

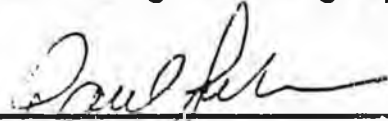
HB 71: "An Act relating to the involuntary dissolution of Native corporations; and providing for an effective date."

The Department of Commerce and Economic Development, Division of Banking, Securities and Corporations, has no objection to the proposed legislation.

The department supports this legislation in recognition that corporate status for Native villages and regions is specifically called for in the terms and conditions of the Alaska Native Claims Settlement Act. The department acknowledges the unique inalienability of the ownership of Native Alaskans as shareholders in Native corporations.

The department concurs that corporations affected by HB 71 should pay the appropriate fees that would have been effective had they not allowed themselves to become delinquent, plus any penalties allowable under AS 10.06.633(e).

The department encourages the involvement of the regional corporations and other Native associations, such as the Alaskan Federation of Natives, in assisting the smaller village corporations in meeting their filing requirements.



Paul Fuhs, Acting Commissioner

Date: 3/7/94

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Law Offices Of
Jerald M. Reichlin

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December 30, 1992

File w/bill

Rep. Richard Foster
State Capitol
Room 611
Juneau, Alaska 99801-1182

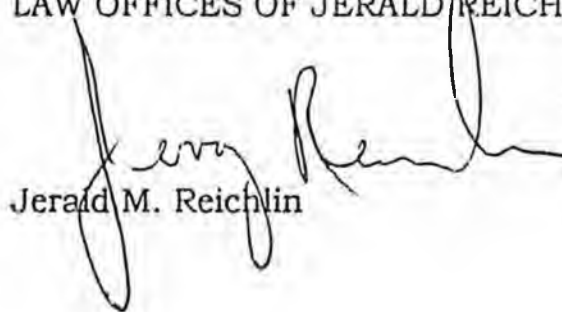
Re: Nunapiglluraq, Inc./Reinstatement of Dissolved ANCSA
Corporations

Dear Rep. Foster:

I am writing on behalf of Nunapiglluraq Corporation of Hamilton regarding the reintroduction of legislation that would provide a "window" for the reinstatement of ANCSA corporations that have been involuntarily dissolved on account of their failure to file a biennial report. You introduced similar legislation in the form of HB435 last year but it failed to gain passage during the press of the legislature's closing hours of business. Nunapiglluraq is requesting that you propose similar legislation in the House this term. Thank you once again for your past and future efforts on behalf of Nunapiglluraq.

Very truly yours,

LAW OFFICES OF JERALD REICHLIN


Jerald M. Reichlin

JMR/kcm

cc: Anna Kamkoff, President
Nunapiglluraq Corp.

Calista Corporation

601 W. 6th Avenue, Suite 200 - Anchorage, AK 99501-2225 • (907) 279-5516 • FACSIMILE (907) 272-5060

Senator Robin L. Taylor, Chairman
Senate Judiciary Committee
Alaska State Legislature
State Capitol (MS 3100)
Juneau, Alaska 99801-1182

March 7, 1994

Dear Mr. Chairman,

The purpose of this letter is to let you know of Calista's concern for HB71, a bill to reinstate involuntarily dissolved ANCSA corporations. This bill will be before your committee on March 9, 1994. We are hopeful that this bill will pass this year and are asking you and your committee to do what it can to help this bill get before the full senate for a vote.

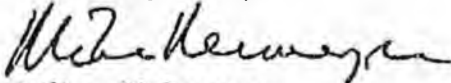
More than a quarter of all ANCSA village corporations are located in the Calista Region. It should come as no surprise that many of the involuntarily dissolved village corporations in Alaska have come from our region. We are concerned now because we have villages that have been dissolved in this manner although they still continue to function as if it were business as usual. Calista has done much over the years to try to help our villages maintain an active status. With so many villages in one region it is not always possible to assist all who need help. We are often not aware of the problems our villages are having until it is too late.

Although these corporations could follow existing state law and incorporate again, we are concerned about the expense to these corporations which have meager funds. This is one of the reasons that they are in the situation they are in now. More important however is the possibility of disrupting the ANCSA benefits that they enjoy as an ANCSA village corporation. This is of paramount concern to Calista since the shareholders of these corporations are also Calista

shareholders. We are concerned that a disruption in the corporate status, repaired by the normal incorporation process, may have legal ramifications to the corporations that go far beyond the corporate reporting requirements of state law. This would be a stiff penalty to pay for failing to maintain their corporate records.

For this reason we ask that you support the passage of this bill. Thankyou for your consideration of our concerns.

Sincerely,



Mike Neimeyer
Senior Vice President, Natural Resources

c.c. Senator Rick Halford
Senator George Jacko
Senator Dave Donley
Senator Suzanne Little

HB

73

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HB 73

Revision Date: <u>January 3, 1994</u>	Dept. Affected: <u>Revenue</u>
Title: <u>State and local taxation as affected by ANCSA</u>	BRU: <u>Revenue Operations</u>
Sponsor: <u>Representative MacLean</u>	Component: <u>Income & Excise Audit</u>
Requestor: <u>Senate Judiciary</u>	COMPONENT SERIAL NO. <u>113</u>

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
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						
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REVENUE FUND SOURCE:	0.0	0.0	0.0	0.0	0.0	0.0
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: \$ 0.0

ANALYSIS: (Attach a separate page if necessary.)

This bill has no effect on the state since there is no state property tax.

Prepared by: <u>Larry E. Meyers, Director</u>	Phone: <u>465-2320</u>
Division: <u>Income and Excise Audit Division</u>	Date: <u>January 3, 1994</u>
Approved by Commissioner: <u>Darrel J. Rexwinkel</u>	Date: <u>January 3, 1994</u>
Agency: <u>Department of Revenue</u>	

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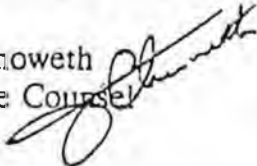
130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

January 20, 1993

SUBJECT: House Bill 73, relating to state and local taxation and other state regulation under the Alaska Native Claims Settlement Act, as amended; and providing for an effective date — sectional analysis (Work Order No. 8-LS0402VA)

TO: Representative Eileen MacLean

FROM: Jack Chenoweth
Legislative Counsel 

This measure, a reintroduction of last session's CSHB 451 (Res), amends various provisions of state law that exempt from certain forms of state and local taxation the property that is exempted from taxation by the Alaska Native Claims Settlement Act. The amendments set out in this bill generally reflect the inclusion of changes made by federal law since passage of the original Alaska Native Claims Settlement Act in December, 1971, and the adoption of the first state law exemptions shortly thereafter.

A principal change in the federal Act was the addition of 43 U.S.C. 1636(d) by the Alaska National Interest Lands Conservation Act of 1980. Sec. 1636(d) broadened the various protections for lands conveyed under the 1971 Act, but did not necessarily replace the federal tax exemption provided in the original Act. Since 43 U.S.C. 1636(d) did not supersede the exemptions and protections provided by the earlier-enacted 43 U.S.C. 1620, I have recommended that, where reference appears in state law only to sec. 1620 that it be followed by a second reference to sec. 1636(d) as well.

Throughout the measure, the words "as amended" are added. The intent is to conform the state tax exemptions to any further changes to the federal Act in the event the federal Act undergoes further revision in this subject matter area.

Bill section 1, an amendment to AS 29.45.030(a), a provision setting out mandatory municipal property tax exemptions, incorporates a reference to 43 U.S.C. 1636(d), as amended, following the existing reference 43 U.S.C. 1620(d) for the reasons noted two paragraphs above.

Bill section 2, also an amendment to the law applicable to municipalities, makes technical corrections. In context, the terms that are being defined appear in 43 U.S.C. 1636(d), not in 43 U.S.C. 1620. The terms defined in the current statute are revised to reflect the language actually used in the federal provision expressed in a manner that is consistent with Alaska's legislative drafting style.

Bill section 3 revises AS 43.80.015, the principal provision of state law extending an exemption from state taxes to certain property. Specifically:

- the caption change at page 3, lines 19 and 20, substitutes the full proper name of the federal Act for the Public Law reference;

- deletion of reference to "the original issue" of shares in lines 20 and 21 is a substantive change; all share transactions--not just the original issues--are made non-taxable events;

- in lines 21 and 22, "state" substitutes for "Alaska" and the exact cite for the federal Act is inserted for the older reference; these are technical changes to conform to the state's drafting style;

- the changes made at lines 22 - 24 and 28 - 31 of page 3 replace existing references with the exact federal Act cites;

- the change made by substitution of the phrase on page 4, lines 2 - 4 of the bill conforms state law to the requirement of the federal Act as to how the basis of land received for purposes of equalization (in the event of land trades) is to be computed; it will be computed as the federal Act directs;

- the changes made on page 4, lines 5 - 10 are in the nature of substitutions of accurate cites and references;

- the long addition on lines 12 and 13 and the deletion of the December, 1991, date reflect substantive changes made by 43 U.S.C. 1636(d), a provision that expands and extends the protection from taxation given Native land under the amended federal Act; and

- the changes made to the balance of bill section 3 on page 4 of the bill either substitute accurate federal law cites or make minor stylistic changes.

Bill section 4, adding a new subsection (e) to AS 43.80.015, enumerates the specific federal legislation that have modified the original Alaska Native Claims Settlement Act, and further allows for changes affecting the tax treatment of property that may be made future federal amendments.

Representative Eileen MacLean
January 20, 1993
Page 3

The bill is given an immediate effective date by bill section 6. As with last session's measure, out of an abundance of caution, bill section 5 makes these changes retroactive to December 18, 1991, the 20-year anniversary date of the Alaska Native Claims Settlement Act's taking effect. In the original Act, on that date a number of safeguards initially enacted would have expired. All the safeguards that are of concern for purposes of this legislation have been expanded and extended in the two later federal Acts, especially the addition made by 43 U.S.C. 1636(d).

JC:pl
93-031.plm

HOUSE BILL NO. 73
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE MACLEAN

Introduced: 1/18/93

Referred: Community & Regional Affairs, Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to state and local taxation and other state regulation as affected
2 by the Alaska Native Claims Settlement Act, as amended, and related federal
3 statutes; and providing for an effective date."

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

5 * Section 1. AS 29.45.030(a) is amended to read:

6 (a) The following property is exempt from general taxation:

7 (1) municipal property, including property held by a public corporation
8 of a municipality, or state property, except that

9 (A) a private leasehold, contract, or other interest in the
10 property is taxable to the extent of the interest;

11 (B) notwithstanding any other provision of law, property
12 acquired by an agency, corporation, or other entity of the state through
13 foreclosure or deed in lieu of foreclosure and retained as an investment of a
14 state entity is taxable; this subparagraph does not apply to federal land granted

1 to the University of Alaska under AS 14.40.380 or 14.40.390, or to other land
2 granted to the university by the state to replace land that had been granted
3 under AS 14.40.380 or 14.40.390;

4 (C) an ownership interest of a municipality in real property
5 located outside the municipality acquired after December 31, 1990, is taxable
6 by another municipality; however, a borough may not tax an interest in real
7 property located in the borough and owned by a city in that borough;

8 (2) household furniture and personal effects of members of a
9 household;

10 (3) property used exclusively for nonprofit religious, charitable,
11 cemetery, hospital, or educational purposes;

12 (4) property of a nonbusiness organization composed entirely of persons
13 with 90 days or more of active service in the armed forces of the United States whose
14 conditions of service and separation were other than dishonorable, or the property of
15 an auxiliary of that organization;

16 (5) money on deposit;

17 (6) the real property of certain residents of the state to the extent and
18 subject to the conditions provided in (e) of this section;

19 (7) real property or an interest in real property that is exempt from
20 taxation under 43 U.S.C. 1620(d), as amended, and 43 U.S.C. 1636(d), as amended;

21 (8) property of a political subdivision, agency, corporation, or other
22 entity of the United States to the extent required by federal law; except that a private
23 leasehold, contract, or other interest in the property is taxable to the extent of that
24 interest;

25 (9) natural resources in place including coal, ore bodies, mineral
26 deposits, and other proven and unproven deposits of valuable materials laid down by
27 natural processes, unharvested aquatic plants and animals, and timber.

28 * Sec. 2. AS 29.45.030(m) is amended to read:

29 (m) For the purpose of determining property exempt under (a)(7) of this
30 section, the following definitions apply to terms used in 43 U.S.C. 1636(d), as
31 amended, [43 U.S.C. 1620(d)] unless superseded by applicable federal law:

1 (1) "developed" means that a purposeful modification of land, or an
2 interest in land, [THE PROPERTY] from its original state that effectuates a condition
3 of gainful and productive present use without further substantial modification has been
4 made; surveying, construction of roads, providing utilities or other similar actions
5 normally considered to be component parts of the development process, but that do not
6 create the condition described in this paragraph, do not constitute a developed state
7 within the meaning of this paragraph; developed land, or an interest in developed
8 land [PROPERTY], in order to remove the exemption, must be developed for purposes
9 other than exploration, and be limited to the smallest practicable tract of the tract
10 [PROPERTY] actually used in the developed state;

11 (2) "exploration" means the examination and investigation of
12 undeveloped land to determine the existence of subsurface nonrenewable resources;

13 (3) "leased" ["LEASE"] means that a grant of primary possession
14 entered into for gainful purposes with a determinable fee remaining in the hands of the
15 grantor has been made; with respect to a lease that conveys rights of exploration and
16 development, this exemption shall continue with respect to that portion of the leased
17 tract that is used solely for the purpose of exploration.

18 * Sec. 3. AS 43.80.015 is amended to read:

19 Sec. 43.80.015. TAXATION UNDER ALASKA NATIVE CLAIMS
20 SETTLEMENT ACT, AS AMENDED [P.L. 92-203]. (a) The receipt of [THE
21 ORIGINAL ISSUE OF] shares of stock in a corporation organized under state
22 [ALASKA] law pursuant to 43 U.S.C. 1601 - 1641, as amended, [THE FEDERAL
23 ALASKA NATIVE CLAIMS SETTLEMENT ACT (P.L. 92-203; 85 STAT. 688; 43
24 U.S.C. 1601 ET SEQ.)] by or on behalf of a Native, as defined in 43 U.S.C. 1602(b),
25 or by or on behalf of a descendant of a Native, as defined in 43 U.S.C. 1602(r),
26 [(AS DEFINED IN THE FEDERAL ACT)] is not subject to any form of state or local
27 taxation.

28 (b) The receipt of land or an interest in it under 43 U.S.C. 1601 - 1641, as
29 amended, [THE FEDERAL ACT] or of cash in order to equalize the values of
30 property exchanged under 43 U.S.C. 1621(f), as amended, [SEC. 22(f) OF THAT
31 ACT] or AS 38.50 is not subject to any form of state or local taxation. The basis for

1 computing gain or loss on subsequent sale or other disposition of this land or interest
2 in land for purposes of a state or local tax imposed on or measured by income shall
3 be determined under 43 U.S.C. 1620(c), as amended [IS THE FAIR VALUE OF
4 THE LAND OR INTEREST IN LAND AT THE TIME OF RECEIPT].

5 (c) A real property interest conveyed under 43 U.S.C. 1601 - 1641, as
6 amended, [THE FEDERAL ACT], AS 38.50, or AS 38.95.050, including land
7 received in an exchange under 43 U.S.C. 1621(f), as amended, [SEC. 22(f) OF THE
8 FEDERAL ACT] or AS 38.50, to a Native, as defined in 43 U.S.C. 1602(b),
9 [INDIVIDUAL] or to a Native corporation incorporated under state [ALASKA] law
10 pursuant to 43 U.S.C. 1601 - 1641, as amended [THE FEDERAL ACT], which
11 interest is not developed or leased to third parties, is exempt from state and local real
12 property taxes and local assessments to the extent provided in 43 U.S.C. 1620(d), as
13 amended, and 43 U.S.C. 1636(d), as amended [UNTIL DECEMBER 18, 1991].

14 However, municipal taxes, local real property taxes, or local assessments may, under
15 the laws of the state, be imposed upon leased or developed real property within the
16 jurisdiction of any governmental unit organized under the laws of the state. Easements,
17 rights-of-way, leaseholds, and similar interests in real property may be taxed in
18 accordance with state or local law. All rents, royalties, profits, and other revenues or
19 proceeds derived from property interests are taxable to the same extent as these
20 revenues or proceeds are taxable when received by a non-Native individual or
21 corporation. In 43 U.S.C. 1620(d), as amended, and 43 U.S.C. 1636(d), as amended
22 [SEC. 21(d) OF THE FEDERAL ACT], the exemption of real property interests from
23 local real property taxes includes exemption from local assessments and extends to
24 land received in an exchange under 43 U.S.C. 1621(f), as amended, [SEC. 22(f) OF
25 THE FEDERAL ACT] or AS 38.50.

26 (d) Use of the terms "corporate funds" and "dividends" [,] in 43 U.S.C. 1606(j)
27 and (m), as amended, [SEC. 7(j) AND (m) OF THE FEDERAL ACT,] does not
28 determine whether the money is a dividend, distribution to shareholders, or funds that
29 [WHICH] are property, surplus, or capital of a regional corporation for the purposes
30 of this title, [OR] AS 10.06, or other applicable state law, the provisions of sec. 8, ch.
31 70, SLA 1972 notwithstanding.

*Taxation under
P.L. 92-203*

1 * Sec. 4. AS 43.80.015 is amended by adding a new subsection to read:

2 (e) In this section, reference to 43 U.S.C. 1601 - 1641, as amended, or to any
3 of those sections includes the amendments and additions to any of those sections that
4 are made by

5 (1) P.L. 96-487 (Alaska National Interest Lands Conservation Act);

6 (2) P.L. 100-241 (Alaska Native Claims Settlement Act Amendments
7 of 1987); and

8 (3) amendments to 43 U.S.C. 1601 - 1641 (Alaska Native Claims
9 Settlement Act, as amended) after December 17, 1991.

10 * Sec. 5. The amendments made to AS 29.45.030(a)(7), amended by sec. 1 of this Act,
11 AS 29.45.030(m), amended by sec. 2 of this Act, AS 43.80.015, amended by sec. 3 of this
12 Act, and AS 43.80.015(e), added by sec. 4 of this Act, are retroactive to December 18, 1991.

13 * Sec. 6. This Act takes effect immediately under AS 01.10.070(c).

liquid exemption Municipal tax

Alaska Native Claims Settlement Act



BERING STRAITS NATIVE CORPORATION

DAVID

Hon. Eileen P. MacLean
Representative
State Capitol, Room 507
Juneau, AK 99801-1182

RE: HB 73

Dear Representative MacLean:

Please inform the Senate Judiciary Committee and all members of committees at subsequent hearings that Bering Straits Native Corporation fully supports HB 73.

This bill is very important to the extent that it affords our shareholders the same protection as guaranteed by the Alaska Native Claims Settlement Act, as amended. We agree that passage of this bill will avoid misinterpretation and confusion of Alaska statutes.

Thank you for your continued assistance on these matters.

Sincerely,

Jack Carpenter, President & CEO

LETTERS OF SUPPORT

KONIAG, INC.

• 4300 B Street, Suite 407, Anchorage, AK 99503

(907) 561-2668 • FAX (907) 562-5258 •

February 1, 1994

Eileen P. MacLean
Alaska State Representative
State Capitol
Room 507
Juneau, AK 99801-1182

Dear Representative MacLean:


VIA FAX

I am in receipt of your letter of 28 January, 1994 regarding H.B. 73.

Koniag, Inc. was fully supportive of this legislation in 1993 and we continue to offer that support. We believe that it is crucial to bring the state tax code in line with that called for in the 1991 amendments as it affects Native land.

Sincerely,

KONIAG, INC



Uwe L. Gross
Chief Executive Officer

Post-It™ brand fax transmittal memo 7671		# of pages >
To Eileen Maclean	From Uwe Gross	
Co.	Co.	
Dept.	Phone # 561-2668	
Fax # 463-3241	Fax # 562-5258	



February 1, 1994

Rep. Eileen MacLean
Alaska House of Representatives
State Capitol Building, Room 507
Juneau, AK 99801-1182

Dear Representative MacLean:

The Arctic Slope Regional Corporation (ASRC) has reviewed House Bill 73, introduced by you on January 18, 1993.

We have concluded that the Bill, as currently written, operates in a narrow and technical manner to bring State Tax Statutes into conformance with the provisions of amendments to ANCSA and ANILCA. ASRC staff have been in contact with Mr. David Harding of your office and he has confirmed that our understanding of the Bill is correct. As such, ASRC supports the bill as written. However, if other provisions are being considered or amendments to the Bill are anticipated, ASRC wishes to be apprised of that and requests further opportunity to comment. We have no particular amendments we would offer at this time.

Sincerely,

A handwritten signature in cursive script that reads 'Conrad Bagne'.

Conrad N. Bagne, House Counsel and
Chief Administrative Officer

CNB/ngk



Alaska Federation of Natives, Inc

January 27, 1993

Representative Eileen MacLean
Alaska State Legislature
Capitol Office Building
Juneau, Alaska 99811

Dear Representative MacLean:

The Alaska Federation of Natives has reviewed House Bill 73 as introduced on January 18, 1993. This letter is intended to convey the Federation's support for the bill as introduced.

With the exception of two language changes, HB 73 is identical to CSHB (Resources) introduced in the Second Session of the 17th Alaska Legislature.

Amendments to AS 43.90.015, as HB 73 proposes, will prevent inconsistencies with AS 29.45.030 (m) and bring AS 43.90.015 into conformity with the Alaska Native Claims Settlement Act (ANCSA), as amended.

ANCSA provisions are controlling in this matter and thus amending Alaska statutes via HB 73 will serve to limit the potential for future conflict and litigation expenses.

I view HB 73 simply as an effort to conform state law with federal law.

Thank you for your interest in this matter.

Sincerely,

Julie E. Kitka
President

Land Protection

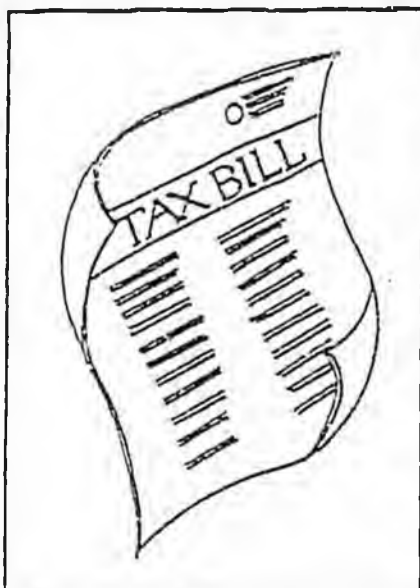
The land protections described in this section are probably the most significant gains for Alaska Natives contained in the "1991" law.

The "1991" law provides that all "undeveloped" land owned by village, urban and regional corporations automatically have the following protections:

1. The land cannot be taxed.
2. The land cannot be taken by trespassers who otherwise might acquire rights to the land through adverse possession (also known as trespassers or squatters' rights).
3. The land cannot be taken by creditors to pay a debt owed by the corporation.
4. The land cannot be lost if the corporation files bankruptcy.
5. The land cannot be lost even if the corporation is involuntarily dissolved.

Because these land protections are so important, they are now automatic. The corporation's board of directors does not need to take action, unless an activity creating "development" has already occurred. Shareholders do not need to vote in order to protect the corporation's undeveloped land.

LAND AUTOMATICALLY PROTECTED FROM



Taxes on undeveloped land



Bad debts



Adverse possession

Loss of Land Protections

Members of a Native corporation board of directors must understand that actions they take could result in the loss of these land protections. Land protections can be lost in three ways:

1. Leased: If the board of directors leases the land, the protections are lost. Even though the leased land is not "developed," it can be taxed, taken by adverse possession or sold by creditors or a bankruptcy judge to pay the corporation's debts.

Exception: If the purpose of the lease is to allow oil, gas or mineral exploration, then the land protections continue to apply.

2. Pledged: Protections can be lost if the board of directors mortgages or pledges the land as security in a commercial transaction, such as a bank loan. If the land is

pledged, it can be taxed and it can be sold by creditors or a bankruptcy judge to pay the corporation's debts.

3. Developed: If the board of directors develops the land, it loses the automatic protections. The land can be taxed, taken by adverse possession, or, if the corporation gets into trouble, the land can be seized and sold by creditors or a bankruptcy judge to pay the corporation's debts.

WAYS TO LOSE LAND PROTECTIONS



Leased



Pledged



Developed

Native corporations should be very cautious about pledging their undeveloped land to a bank or anyone else.

Definition of "Developed" Land

The "1991" law defines "developed" as *"a purposeful modification of land from its original state that effectuates a condition of gainful and productive present use without further substantial modification."*

Because this definition is complicated, it is important that a board of directors be very cautious when it makes decisions about using the corporation's land. If there is any question that a board action or decision might result in losing land protections, the board should seek advice from an attorney before a final decision is made.

Some things can be done on the land without losing the protections. In some circumstances, land can be surveyed, and roads, electricity lines and sewers can be built. Whether such actions are "safe" can only be determined on a case by case basis.

Finally, land is automatically considered to be "developed" if it is subdivided, even if no changes are made to the land. For that reason, the corporation should never subdivide any of its land without careful study of the impacts on the status of its land.

To protect important subsistence uses, the law says that hunting and fishing on village and regional corporation land do not make the land "developed." For that reason, fish camps, trapping cabins and other structures may be built and used on the land if they are needed for subsistence hunting, fishing or gathering. The corporation may also charge a fee to hunters, fishermen and guides without losing the protections of "undeveloped" land.

Regaining Land Protections

Even if land is mortgaged, leased or "developed," the protections automatically resume when the mortgage or lease expires or the development ends. For example, if a village corporation leases some of its land for five years, during the years it is leased, the land can be taxed or sold to pay the corporation's debts. However, when the five years are over and the lease expires, the land is again automatically protected from taxation and creditors.

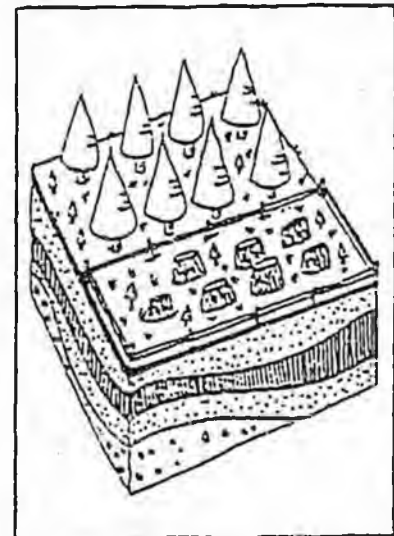
Example: A corporation runs a gold-mining operation on otherwise undeveloped land. During the years that the mining takes place, the land can be taxed or taken to pay a debt. But if the corporation closes down the mining operation, and restores the land to its original condition, the land then qualifies as "undeveloped" and gains back the protection lost when the venture began.

If a corporation has already subdivided land, it can be returned to "undeveloped" status if the land is resubdivided back to its original state. The resubdivision must be approved by whichever platting authority has jurisdiction. In these cases, the protections do apply to land that was previously subdivided.

Timber Development

The "1991" law makes an important change on how protections apply to timber development. For example, if a village corporation cuts timber on its land, only the approximate area where timber is actually cut can be taxed. Under the old law, a larger area of land would lose the protections and thus become vulnerable to taxes and loss by other means. Now, protections are lost only on the parcel of land where timber cutting and development are actually occurring and only during the period of harvest.

Timber lands can also regain land protection. During the years a village corporation cuts timber for commercial sale, the land is considered "developed," and thus can be taxed, if the corporation is in a taxing jurisdiction, or taken to pay creditors. When the commercial harvest ends, though, the land is no longer considered to be "developed" and the land is automatically protected.



*Only area where
timber is cut
loses protection*

Tax Recapture on Subdivided Land

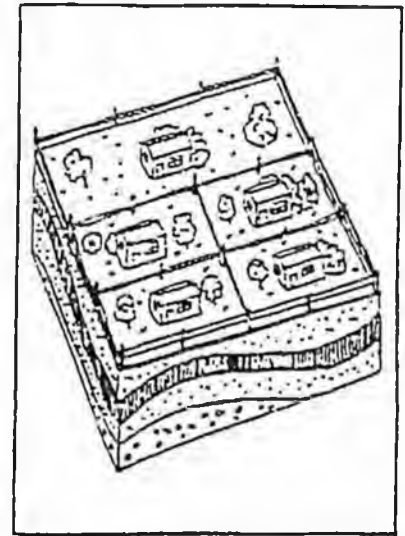
If a Native corporation is in a taxing jurisdiction and its land is subdivided, the corporation must pay the amount of taxes that would have been

levied during the 50 months before the subdivision plat is recorded. The back taxes must be paid in semi-annual installments. The entire amount must be paid off within 50 months of the date the plat is recorded.

Before the final plat is approved, the government with tax jurisdiction must notify the corporation of the taxes it will owe.

Example: Corporation Z decides to subdivide 50 acres on a scenic river site. Until now, the land has been "undeveloped" and exempt from property taxes. On September 1, 1990, the subdivision plat is recorded. The corporation must pay an amount equal to property taxes it would have paid on that 50 acres from March 1, 1988 to September 1, 1990. The total tax bill on the 50 acres is \$10,000. Corporation Z must make its first \$2,000 payment March 1, 1991. The total bill must be paid off by March 1, 1993.

TAX RECAPTURE



Tax recapture applies only if the land being subdivided is within the boundaries of a taxing jurisdiction, such as a borough or municipality with the power to tax.

Subdivided land

Summary

One of the most important changes made by the "1991" law is that Land Bank protections are now automatic. No board action is required because the land protections automatically apply to all undeveloped ANCSA lands. Native land, so long as it remains undeveloped, is protected from property taxes, from squatters, from being taken to pay a bad debt and from bankruptcy.

Before, corporations had to apply to the federal government to get these protections. Now, they're automatic; nothing else is required. A corporation loses these protections if its land is pledged, leased, developed or subdivided. Native corporation board members must recognize the types of actions that may result in losing land protections.

Board members may want to review the status of their lands in light of the definition of "developed," to determine whether any of the corporation's land does not qualify for automatic protections.

Even if the land protections are lost, they can be regained if the lease ends or development activity stops.

HB

78

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HB 78

Revision Date: January 28, 1994
Title: "An Act relating to testimony of children in certain criminal proceedings..."
Sponsor: Representative MacLean
Requestor: Representative MacLean

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

EXPENDITURES/REVENUES:

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

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

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

FUNDING:

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

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
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. Peques, Director
Division: Administrative Services Division

Phone: 465-3672

Date: January 28, 1994

Approved by Commissioner: Bruce M. Botelho, Attorney General

Agency: Department of Law

Date: January 28, 1994

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. H 78

ANALYSIS CONTINUATION:

AS 12.45.046(a) currently provides that in a prosecution of a violent crime, including sexual assault, committed against or witnessed by a child under the age of 13, the court may order that the testimony of the child be taken by closed circuit television or through one-way mirrors, if the court determines that the testimony by the child victim or witness under normal court procedures would result in the child's inability to effectively communicate. This bill would raise the age limit to child victims or witnesses for whom these procedures could be extended to children under the age of 16.

There will not be a fiscal impact for the Department of Law because facilities and procedures are already in place to allow this type of testimony.

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO: HB 78

Revision Date: _____ Dept. Affected: Public Safety
 Title: "An act relating to the testimony
of children in certain criminal proceedings" BRU: Alaska State Troopers
 Sponsor: Representative MacLean Component: Detachments
 Requestor: S. JUD 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-
CAPITAL EXPENDITURES	-0-	-0-	-0-	-0-	-0-	-0-
CHANGE IN REVENUES ()	-0-	-0-	-0-	-0-	-0-	-0-
<small>Revenue Code</small>						

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-

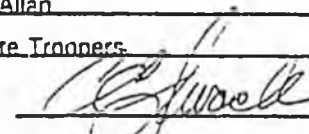
Estimate of current year (FY 94) impact: \$ _____

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.)

No significant fiscal impact on the Alaska State Troopers is anticipated.

Prepared By: Francis C. Allan Phone: 269-5691
 Division: Alaska State Troopers Date: 2/1/94
 Approved by Commissioner:  Date: 2/1/94
 Agency: Richard L. Burton, Dept. of Public Safety

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HB 78

Revision Date: _____ Dept. Affected: Administration
 Title: An Act relating to the testimony of children in BRU: Public Defender Agency
certain criminal proceedings Component: Public Defender Agency
 Sponsor: Representatives MacLean and Toohey
 Recuestor: (S) Jud COMPONENT SERIAL NO. 1631

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
------------------------	-----	-----	-----	-----	-----	-----

FUND SOURCE

(Thousands of Dollars)

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

Estimate of current year (FY94) cost: none

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

Prepared by: John Salemi, Director
 Division: Public Defender Agency
 Approved by Commissioner: Nancy Bear Usual
 Agency: Administration

Phone: 264-4400
 Date: _____
 Date: 1/28/94

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(Rev. 10/93) 1/2/94

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HB 78

Revision Date: _____ Dept. Affected: Administration
 Title: "An Act relating to the testimony of children in BRU: Office of Public Advocacy
certain criminal proceedings" Component: Office of Public Advocacy
 Sponsor: Representatives MacLean and Toonev
 Requestor: (S) Jud COMPONENT SERIAL NO. 43

Expenditures/Revenues

(Thousands of Dollars)

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

FUND SOURCE

(Thousands of Dollars)

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

Estimate of current year (FY94) cost: none

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)

See attached.

Prepared by: Brant McGee, Public Advocate
 Division: Office of Public Advocacy
 Approved by Commissioner: Nancy Bear Usual
 Agency: Administration

Phone: 274-1684
 Date: _____
 Date: 1/28/94

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FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO.: HB 78

ANALYSIS: (continued)

The Office of Public Advocacy will receive 15 to 25 additional guardian ad litem appointments annually if this bill is passed. However, this type of witness representation is now relatively routine and straightforward for older children and only rarely requires substantial staff or contractor resources.

SPONSOR STATEMENT

HB 78

Representative Eileen P. MacLean

Under current law, in a criminal proceeding involving a child victim or witness, at the request of the court or guardian ad litem, the court can order the testimony of the child be taken by closed circuit television or through one-way mirrors if it determines that the child's testimony under normal procedures would result in the child's inability to effectively communicate. This bill would allow the court to extend those privileges to children under the age of 16, up from the current age limit of 13.

The constitution asserts the right of a defendant to a face-to-face confrontation with an accuser. However, the U.S. Supreme Court has ruled that the right of a criminal defendant to confront his accuser is not absolute. In certain situations, the right of confrontation can be limited if the court makes a specific finding that such a limitation is necessary. The Supreme Court has approved procedures like current AS 12.45.046 as long as the decision to employ the procedure is made on a case-specific finding of necessity. This finding must determine that requiring a child to testify in the courtroom in the presence of the defendant will result in severe emotional distress to the child.

The attached memorandum from the Legal Services Division examines other states' procedural provisions limiting the confrontation clause. There is no single age limit that serves as a benchmark for special treatment. The range is from ages 10 to 16, with the latter being the upper limit that states have set for use of special proceedings to take testimony by videotape or one-way mirrors.

Section 2 makes the bill retroactive and applicable to criminal offenses occurring before the effective date of the bill. This will make the age limit enacted in HB 78 applicable to offenses that occur before the effective date of the bill but which are prosecuted after the effective date.

Maniilaq Association

P.O. Box 256
Kotzebue, Alaska 99752
(907) 442-3311

February 5, 1993

Representative Eileen MacLean
Alaska State Legislature
State Capitol, Room 507
Juneau, Alaska 99801-1182

Dear Eileen,

I was so happy to hear that you introduced HB78 relating to the testimony of children in certain criminal procedures. Increasing the age from 13 to 16 for a child to not have to be in a court room in person as a victim or witness is very compassionate. I also believe that it makes sense for effective prosecution of cases involving children. I know how anxious I have been in court as an adult witness(!) and have seen children who either couldn't talk or who gave incorrect information just because of "nerves".

I fully support this change of the age limit and hope that others do, too. Taikuu!

Sincerely,



Susan L. Adams
Deputy Administrator
Social & Regional Services

cc: Senator Al Adams

EILE/MAC/TXTIVA

Chukchi Campus
UNIVERSITY OF ALASKA FAIRBANKS

P.O. Box 297 • Kotzebue, Alaska 99752 • (907) 442-3400

25 January, 1993

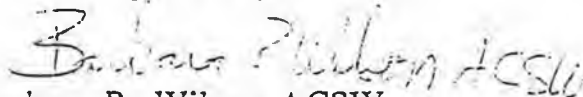
Representative Eileen MacLean
State Capitol
Juneau, AK 99801

Dear Rep. MacLean:

I am writing in support of HB 78. I have worked, as a therapist, with numerous adolescent victims of abuse and adults abused as children, who expressed that the disclosure and prosecution of the abuse was more traumatic than the actual abuse itself.

I applaud the State of Alaska's efforts to protect in a healthy manner the physical, emotional, and spiritual rights of our children.

Respectfully:



Barbara R. Wilson ACSW
Asst. Prof. of Social Work
University of Alaska Fairbanks
Chukchi College

DIVISION OF LEGAL SERVICES

**LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

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


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

MEMORANDUM

February 8, 1993

SUBJECT: Sectional Summary of HB 78 (Work Order No. 8-LS0133\A)

TO: Representative Eileen MacLean
Attn: Rena

FROM: Jerry Luckhaupt 
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 12.45.046(a) by providing that if a child victim or witness, in a criminal proceeding, is under the age of 16, the court may order the testimony of the child be taken by closed circuit television or by way of one-way mirrors. The current age limit is 13 years of age or younger.

Section 2 of the bill provides that the amendment in section 1 of the bill is retroactive and applies to criminal prosecutions, that occur after the effective date of the act, of criminal offenses that occurred prior to the effective date of the act.

Section 3 of the bill provides an effective date.

GPL:lmb
93-036.lmb

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3807 or 465-3450
(907) 465-2029
Mail Stop 3101

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

MEMORANDUM

January 20, 1993

SUBJECT: Draft bill to amend the procedures applicable to obtaining the testimony of children in certain criminal proceedings (Work Order No. 18-LS0133A)

TO: Representative Eileen MacLean
ATTN: Rena Bukovich

FROM: Jerry Luckhaupt *JLB*
Legislative Counsel

State law authorizes trial courts to protect children appearing as witnesses in criminal proceedings by allowing their testimony to be taken out of the presence of the defendant, using closed circuit television or one-way mirrors. AS 12.45.046. ^{1/} The statute sets the maximum age of a child-witness or child-victim to whom these procedures may be applied at 13. The attached bill draft would increase the maximum age to 16.

The constitutional provision that bears upon the consideration of this statute is the so-called "confrontation clause," the Sixth Amendment to the United States Constitution ^{2/} and its counterpart, article I, section 11 of the Alaska Constitution. ^{3/}

^{1/} Such a procedure was found to be constitutional by the United States Supreme Court in Maryland v. Craig, 497 U.S. 836, 110 S.Ct. 3157, 111 L.Ed.2d 666 (1990), as long as the decision to employ the procedure is made on "a case-specific finding of necessity" that requiring the child to testify in the courtroom in the presence of the defendant would result in the child suffering severe emotional distress such that the child could not reasonably communicate. See also Cov v. Iowa, 487 U.S. 1012, 108 S.Ct. 2798, 101 L.Ed.2d 857 (1988).

^{2/} The provision reads, in relevant part:

In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him

^{3/} The confrontation clause of the state constitution reads:

In all criminal prosecutions, the accused . . . is entitled . . . to be confronted with the witnesses against him:

At least half the states have similar procedural provisions applicable to child victims or witnesses of crimes similar to those covered by the Alaska statute. ²¹ My review of the applicable statutes indicates that there is no single maximum age that serves as a benchmark. The range generally is from ages 10 (Minnesota) to 16 (five states: Alabama, Florida, Mississippi, Hawaii, and New Jersey). In one state, Pennsylvania, a statute sets the maximum age at 17 but its use for children age 16 or 17 would only occur under exceptional circumstances.

The Pennsylvania statute ²² in question is interesting. Under it, a videotaped deposition may be taken of a child victim or witness if the child has not reached the age of 18. The statute then establishes rebuttable presumptions for the taking and use of videotaped testimony of child victims and witnesses who are between 14 and 18:

In the case of an individual from 14 to 15 years of age, there shall be a rebuttable presumption that the individual will benefit from the use of procedures in section 5984 (relating to videotaped depositions) and 5985 (relating to testimony by closed circuit television). In the case of an individual from 16 to 17 years of age, there shall be a rebuttable presumption that the individual will not benefit from [these] procedures.

In other words, while Pennsylvania allows the use of videotaped or closed-circuit television for evidentiary purposes of children up to age 18—and is apparently the only state to do so—the presumption changes as to the ability to use these techniques for children who are older, 16 or 17. ²³

From my research, age 16 ²⁴ seems to have become the upper limit that the states have set for use of special proceedings to take testimony through videotaped testimony or using one-way mirrors. But as the Pennsylvania statute shows, age 16 is not necessarily an absolute maximum limitation, and I haven't found a decision in

²¹ In addition, roughly two-thirds of the states also authorize the use of a child's videotaped testimony.

²² Pa. Cons. Stat. Ann. title 42 § 5984.

²³ A Pennsylvania trial court has apparently found the Pennsylvania statute unconstitutional insofar as it requires only a "good cause" showing to permit a child to testify outside the presence of a defendant. Instead, the court imposes a requirement of a particularized finding by the trial court that the child witness was in need of special protection. It does not appear that the child's age was a factor in the decision.

²⁴ In the only jurisdiction that I was able to find where the use of the special evidentiary methods may be applied to persons older than 16, Pennsylvania, the deposition or testimony of a child 16 or 17 may be videotaped only if the proponent of taping--the state--satisfies the rebuttable presumption that the individual will not benefit from the use of the special procedure.

which the courts have set aside a child victim or child witness protection statute due solely to the legislature's choice of a maximum age to which the protection statute may apply. Apparently the courts are willing to leave to the legislature the final decision as to the maximum age level for which these special procedures for the taking of testimony from witnesses may apply.

The courts are, of course, vigorous in assuring that the special procedures are made available, if they are used at all, only in circumstances in which specific evidence and an express finding are entered in the record that the child's personal appearance as a witness would significantly impair the substance of the child's testimony. Blume v. State, 797 P.2d 664, 674 (Ak. App. 1990).

My guess is that you could extend the ceiling under Alaska law from 13 to 16 without raising any real question as to whether the change in age alone would present a problem of constitutional magnitude. Since it is not the child's age but rather the impairment of the child's ability to communicate testimony that is the essence of the exceptional treatment, you might be able to raise the ceiling to 18. However, regardless of what age the ceiling is raised to, the test that the court must follow is the one enunciated in Blume, namely that the court summarize in the record both specific evidence and an express finding that the child's personal appearance as a witness would significantly impair the substance of the child's testimony. For children who have passed their 16th birthday, that would seem to be a tough requirement. Even with this statutory change, most older children should have to expect to confront the criminal defendants in open court.

In any event, in conjunction with the attached draft, you should consider for inclusion in the bill draft findings that set out the reasons why you believe the change should be made.

JPL:pi
93-030.p1m

Attachment

HB

79

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SCS CSHB 79 (HES)

Revision Date: _____
Title: 'An Act relating to recovery from a parent or legal guardian. . . .'
Sponsor: Representatives Bunde, Toohey
Requestor: (S) JUD

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

EXPENDITURES/REVENUES:

(Thousands of Dollars)

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

CAPITAL EXPENDITURES	0	0	0	0	0	0
----------------------	---	---	---	---	---	---

CHANGE IN REVENUES ()	0	0	0	0	0	0
------------------------	---	---	---	---	---	---

FUNDING SOURCE:

(Thousands of Dollars)

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

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Brad Thompson, Director
Division: Risk Management

Phone: 465-2180
Date: _____

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

Date: 2/2/94

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SCSHB79 (HES)

Revision Date: 02/07/94 Dept. Affected: Health and Social Services
 Title: An Act Relating to Recovery From a Parent BRU: Purchased Services
or Legal Guardian of Damages by Minor Component: Foster Care
 Sponsor: Representative(s) Bunde, Toohy et al
 Requestor: Senate (JUD) COMPONENT SERIAL NO. 0252

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
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 EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGES IN REVENUES						
----------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

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

POSITIONS:

FULL - TIME						
PART - TIME						
TEMPORARY						

Estimate of current year (FY94) impact: 0.0

ANALYSIS: (Attach a separate page if necessary)

There would be no program or fiscal impact for the Department if this bill were to become law.

Prepared by: Deborah R. Wing, Director *Deborah R. Wing* Phone: 465-3191
 Division: Division of Family & Youth Services Date: 02/07/94

Approved by Commissioner: Margaret R. Lowe, M.Ed., Ed.S. *Jay Lewis* Date: 2-8-94
 Agency: Department of Health & Social Services

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SCS CSHB 79 (HES)

Revision Date: _____
 Title: 'An Act relating to recovery from a parent or
legal guardian. . . .'
 Sponsor: Representatives Bunde, Toohey
 Requestor: (S) JUD

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

CAPITAL EXPENDITURES	0	0	0	0	0	0
----------------------	---	---	---	---	---	---

CHANGE IN REVENUES ()	0	0	0	0	0	0
------------------------	---	---	---	---	---	---

FUNDING SOURCE: (Thousands of Dollars)

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

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Brad Thompson, Director
 Division: Risk Management

Phone: 465-2180
 Date: _____

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

Date: 2/2/94

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SCSCSHB 79 (HES)

Revision Date: February 7, 1994
Title: "...relating to recovery from a parent or legal guardian...destruction of property by a minor."
Sponsor: Representative Bunde
Requestor: Representative Bunde

Department Affected: Department of Law
BRU: Legal Services
Component: Operations
COMPONENT SERIAL NO. OC93

EXPENDITURES/REVENUES:

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

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

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

FUNDING

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

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
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. Peques, Director Phone: 465-3672
Division: Administrative Services Division Date: February 7, 1994
Approved by Commissioner: Bruce M. Botelho, Attorney General
Agency: Department of Law Date: February 7, 1994

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SCSCSHB 79 (HES)

ANALYSIS CONTINUATION:

The Senate HES Committee Substitute for HB 79 amends AS 34.50 to provide that a person, municipal corporation, association, village, school district, or religious or charitable organization may recover damages in an amount not to exceed \$25,000, plus costs, interest and attorney fees, from either parent or both parents or the legal guardian or person having legal custody of an unemancipated minor under the age of 18 years, who maliciously or willfully destroys real or personal property belonging to the above parties seeking recovery. Currently, the maximum amount that may be recovered is \$2,000. However, the bill also provides that a parent, legal guardian, or person having the legal custody of an unemancipated minor under the age of 18 years who is a runaway minor would not be liable under the foregoing provision if the person having legal custody of the minor makes a report to a law enforcement agency, as authorized by AS 47.10.141(2), that the minor has run away or is missing. This bill deals with the recovery remedies of parties other than the state and, consequently, there will not be a fiscal impact for the Department of Law.



Sponsor Summary
SCSCSHB79

HB 79 amends AS 34.50.020 (a) by increasing the amount of money that is recoverable from parents or legal guardians by a person who has experienced wilful or malicious destruction of property by a minor. AS. 34.50.020 has been in existence since 1957 and almost every state in the nation has a similar statute. However, the recoverable amounts vary from state to state, averaging \$10,000 - \$15,000.

HB 79 originally called for an increase in the recoverable amount from \$2000 to \$50,000, which is the maximum allowed in district court. Through the committee process the recoverable amount has changed several times and is now at \$25,000. I believe this amount accurately reflects today's cost of living and potential costs of damages.

I urge the committee to support HB 79. This legislation will ensure adequate recovery for those victimized by wilful or malicious destruction of property by juveniles.

DIVISION OF LEGAL SERVICES

**LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

(907) 465-3867 or 465-2450
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Juneau, Alaska 99801-2105

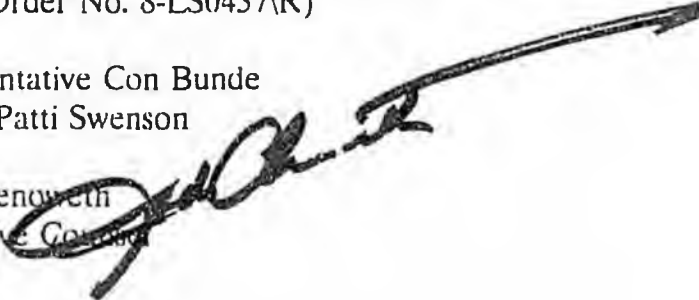
MEMORANDUM

February 8, 1994

SUBJECT: SCS CSHB 79 (HES) -- sectional analysis
(Work Order No. 8-LS0437R)

TO: Representative Con Bunde
ATTN: Patti Swenson

FROM: Jack Chenoweth
Legislative Counsel



The measure relates to the ability of the victim of an offense involving damage to property caused by a minor to recover for the damaged property.

Bill section 1, amending AS 34.50.020(a), would raise from \$2,000 to \$25,000 the amount of damages that the owner of real or personal property may recover in a civil action from the parent, parents, legal guardian, or person having the legal custody of an unemancipated minor when the minor has maliciously or wilfully destroyed the property.

Bill section 2, adding a new subsection, subsection (c), to AS 34.50.020, would preclude liability for the payment of property damage by the parent, parents, legal guardian, or person having the legal custody of the minor if the damage occurred while the minor was a runaway or was missing. The provision supplies a definition for the term "runaway minor."

JBC:pl
94-111.plm

Amounts Parents or Legal Guardians are Liable

New Jersey -	(unlimited)- recover the amount of damages
California-	\$25,000
Kentucky-	\$10,000
Nevada-	\$10,000
Washington -	\$5000
New Mexico-	\$4000
Montana -	\$2500
Wyoming -	\$2000
Utah -	\$1000
Alabama-	\$500

CALIFORNIA LEGISLATURE—1993-04 REGULAR SESSION

ASSEMBLY BILL**No. 308**

Introduced by Assembly Members Andal, Agular,
Ferguson, Hoge, Richter, and Woodruff
(Coauthors: Senators Kopp and Russell)

February 3, 1993

An act to amend Section 1714.1 of the Civil Code, relating to liability.

LEGISLATIVE COUNSEL'S DIGEST

AB 308, as introduced, Andal. Liability: parents.

Existing law provides that the parent or guardian of a minor shall be liable for any act of willful misconduct on the part of that minor which results in injury or death to another person, or which results in injury to the property of another, as specified. Existing law provides that the parent or guardian shall be jointly and severally liable for up to \$10,000 for each tort of the minor.

This bill would increase the maximum liability of the parent or guardian to \$25,000. In addition, the bill would provide that this amount shall be adjusted annually by the Judicial Council to reflect increases in the cost of living, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1714.1 of the Civil Code is
- 2 amended to read:
- 3 1714.1. (a) Any act of willful misconduct of a minor
- 4 which results in injury or death to another person or in
- 5 any injury to the property of another shall be imputed to
- 6 the parent or guardian having custody and control of the

99 100

AB 308

- 2 -

1 minor for all purposes of civil damages, and the parent or
2 guardian having custody and control shall be jointly and
3 severally liable with the minor for any damages resulting
4 from the willful misconduct.

5 *The Subject to the provisions of subdivision (c), the*
6 *joint and several liability of the parent or guardian having*
7 *custody and control of a minor under this subdivision*
8 *shall not exceed ~~ten~~ twenty-five thousand dollars*
9 *~~(\$10,000)~~ (\$25,000) for each tort of the minor, and in the*
10 *case of injury to a person, imputed liability shall be*
11 *further limited to medical, dental and hospital expenses*
12 *incurred by the injured person, not to exceed ~~ten~~*
13 *twenty-five thousand dollars ~~(\$10,000)~~ (\$25,000). The*
14 *liability imposed by this section is in addition to any*
15 *liability now imposed by law.*

16 (b) Any act of willful misconduct of a minor which
17 results in the defacement of property of another with
18 paint or a similar substance shall be imputed to the parent
19 or guardian having custody and control of the minor for
20 all purposes of civil damages, including court costs, and
21 attorney's fees, to the prevailing party, and the parent or
22 guardian having custody and control shall be jointly and
23 severally liable with the minor for any damages resulting
24 from the willful misconduct, not to exceed ~~ten~~
25 *twenty-five thousand dollars ~~(\$10,000)~~ (\$25,000), except*
26 *as provided in subdivision (c), for each tort of the minor.*

27 (c) *The amounts listed in subdivisions (a) and (b)*
28 *shall be adjusted annually by the Judicial Council to*
29 *reflect any increases in the cost of living in California, as*
30 *indicated by the annual average of the California*
31 *Consumer Price Index. On or before July 1, 1993, and on*
32 *or before July 1 of each year thereafter, the Judicial*
33 *Council shall compute and publish the amounts listed in*
34 *subdivisions (a) and (b), as adjusted according to this*
35 *subdivision.*

O

LIST OF TITLES

58. Waters and Water Supply.
59. Claims Against Public Enti-
ties.
Public Appendix A. Emergency and
Temporary Acts.
Acts Saved from Repeal.
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NEW JERSEY STATUTES ANNOTATED

Title 18A
EDUCATION
18A:20 to 18A:54D

ST. PAUL, MINN.
WEST PUBLISHING CO.

18A:37-2

Note 5

EDUCATION

5. Due process

Statutes relating to suspension of pupils from school must be construed to require public school officials to afford students facing disciplinary action involving possible imposition of serious sanctions, such as suspension or expulsion, the procedural due process guaranteed by Fourteenth Amendment. *R.R. v. Board of Ed. of Shore Regional High School Dist.*, 109 N.J.Super. 337, 263 A.2d 180 (Ch. 1970).

Where public school officials have reasonable cause to believe that a student, by virtue of activities after school hours and off school property, presents a danger to himself, to others or to school property, they may temporarily suspend

the student for a short period of time pending a full hearing which will afford such student procedural due process, but they must, however, under ordinary circumstances afford the student a preliminary hearing. *Id.*

Due process procedural requirements for a pupil facing an expulsion or long term suspension by the board requires school authorities to give the pupil written notice of the charge, a list of witnesses to be called in support of the charge, and to advise the pupil of rights to cross-examination, to counsel, and to enter their own defense. *G. F. v. Board of Education, Washington Township*, 1 N.J. A.R. 55 (1979).

18A:37-2.1. Assaults by pupil upon teacher, administrator, board member or employee of board of education; suspension; expulsion proceedings

Any pupil who commits an assault, as defined pursuant to N.J.S. 2C:12-1, upon a teacher, administrator, board member or other employee of a board of education, acting in the performance of his duties and in a situation where his authority to so act is apparent, or as a result of the victim's relationship to an institution of public education of this State, shall be immediately suspended from school consistent with procedural due process pending expulsion proceedings before the local board of education. Said proceedings shall take place no later than 21 calendar days following the day on which the pupil is suspended.

L.1979, c. 189, § 2, eff. Sept. 11, 1979.

Historical Note

Title of Act:

An Act concerning education, amending N.J.S. 18A:37-2 and supplementing

chapter 37 of Title 18A of the New Jersey Statutes. L.1979, c. 189.

Library References

Schools ⇨ 177.
WESTLAW Topic No. 345.

C.J.S. Schools and School Districts
§§ 503 to 505.

18A:37-3. Liability of parents or guardian of minor for damage to property

The parents or guardian of any minor who shall injure any public or nonpublic school property shall be liable for damages for the amount of injury to be collected by the board of education of the

Legislative Reference Library
P.O. Box Y

EDUCATION

CONDUCT OF SCHOOLS

18A:37-3

for a short period of time
will hearing which will afford
t procedural due process, but
however, under ordinary cir-
afford the student a prelimi-
g. Id.

ess procedural requirements
facing an expulsion or long-
sion by the board requires
ortunities to give the pupil writ-
of the charge, a list of witness-
led in support of the charge,
e the pupil of rights to cross-
i, to counsel, and to enter
fense. *G. F. v. Board of*
Washington Township, 1 N.J.
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acher, administrator,
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sion proceedings

ned pursuant to N.J.S.
ard member or other
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Title 18A of the New Jersey
979, c. 189.

ools and School Districts
, 505.

of minor for damage

hall injure any public
for damages for the
d of education of the

district or the owner of the premises in any court of competent jurisdiction, together with costs of suit.

L.1967, c. 271, § 18A:37-3, eff. Jan. 11, 1968. Amended by L.1983, c. 302, § 1, eff. Aug. 11, 1983.

Assembly Education Committee Statement

Assembly, No. 593—L.1983, c. 302

BACKGROUND:

In a recent New Jersey Supreme Court opinion, *Piscataway Township Board of Education v. Caffiero*, 86 N.J. 308 (1981), the court determined that the statute that extends liability to parents and guardians of pupils who vandalize school property, N.J.S. 18A:37-3, does not apply to pupils in nonpublic schools. Assembly Bill No. 593 proposes to amend 18A:37-3 to extend parental and guardian liability to parents and guardians of any person who destroys either public or nonpublic school property. According to the court:

"... although its language does not limit the statute strictly to the parents of public school pupils, it is clear from the position of N.J.S.A. 18A:37-3 among other statutory sections concerning public school children that the word 'pupil' has that limited meaning. The statute is not applicable to parents generally for damages caused by their children whether attending a public school or not."

Assembly Bill No. 593 proposes to amend the statute by replacing the word "pupil" with the word "minor" so that liability extends to the parent or guardian of the person committing the damage regardless of whether the person is attending school and regardless of whether it is a public or nonpublic school that is damaged.

LEGISLATIVE INTENT:

In the Supreme Court decision, *Piscataway Township Board of Education v. Caffiero*, the court interpreted N.J.S. 18A:37-3 to apply only to damages resulting from the "willful and malicious acts" of students. The Assembly Education Committee agrees with the court's interpretation and finds it consistent with its own purpose and intent.

Historical Note

Source: R.S. 18:14-51. nonpublic" preceding "school property";
Prior Laws: L.1903 (2d Sp.Sess.), c. 1, and inserted "or the owner of the prem-
§ 120, p. 46 (C.S. p. 4766, § 120). ises" following "district".
The 1983 amendment substituted "mi-
nor" for "pupil"; inserted "public or

Cross References

Liability of parent or guardian for wilful destruction of property by minor, see § 2A:53A-15.

Inconvenience the thieves

The Feb. 5 Daily News article titled "Rare snowmachine stolen from racer's Hillside home" further convinces me that Anchorage is turning into a cesspool of crime. Being a victim of snowmachine thefts myself, I have to sympathize with Bill Long's recent mishap.

It is a great inconvenience to be a victim of such a crime. I experienced increased insurance premiums, a minimum waiting recovery period of 30 days before my insurance company would satisfy my claim, and the hassle of spending time and money searching for my stolen snowmachine.

In order to minimize the chance of another stolen snowmachine, I have taken several precautions that are also inconvenient but necessary. These precautions include storing my snowmachines and trailer in the garage (leaving my car outside), removing original decals and replacing them with pinstriping to make the machine easier to identify, and locking my trailer tongue with a padlock.

It is my understanding that most snowmachine thefts are committed by juveniles. Alaska law states that juveniles of 18 years or younger convicted of committing such a crime are subject only to restitution of a maximum of \$2,000, which usually fails to cover replacement costs. I say let's start making it inconvenient for the thieves instead of the victims by creating laws that can be used as a deterrent instead of an invitation for crime. Raising the penalty to the actual cost of the property stolen and making the parents monetarily responsible for crimes of their children would be a step in the right direction.

ADN 2/15/93 - William P. Clary

Pranksters purloin holiday decorations

ANCHORAGE DAILY NEWS
By DONNA FREEDMAN
Daily News reporter
12/17/92

More than two dozen Anchorage teen-agers took part in what police called a holiday season scavenger hunt early Wednesday, vandalizing several homes around Dimond High School before they were caught in the school parking lot.

Police found 25 juveniles at the school piling up plastic Nativity scenes, snowmen, Santa Clauses and other Christmas ornaments

lifted from area yards. City street signs, advertising banners and construction barricades were also among the stolen decorations. Other youths involved in the hunt got away, police said.

The holiday pilfering came just two days after local furniture dealer Jim Lowe was convicted of manslaughter in the shooting death of another teen involved in a scavenger hunt in May. The youth was with a group trying to steal an

advertising balloon from the roof of Lowe's downtown store.

Police did not identify the youths caught in Wednesday's scavenger hunt.

"It was reported as a theft in progress, but once the officers got out there and found cars running all over the place, it was clearly a scavenger hunt," said police spokeswoman JoAnn Brandlen. "The officers described it as a scavenger hunt, and they got the

students to say as much."

Dimond High principal Gail Opalinski disagreed, calling the event an early senior prank. She said she had talked with some students who were believed to have been involved.

"They decided they were going to decorate the high school with Christmas decorations," Opalinski said. "I would imagine some of

Please see Page B-3, PRANK

PRANK: Teen-agers steal decorations during a holiday scav

Continued from Page B-1

them picked up street signs while they were at it."

She stressed that the hunt was not sanctioned or approved by the school district.

"We very much regret it," she said. "We're concerned about the safety of the kids, and about the property damage done. Kids this age don't always use their best judgment."

It isn't known how many homes were hit, since not all of the decorations had been claimed by late Wednesday afternoon.

For David and Carol Jensen, this was the second time their home on Greenhill Way had been vandalized this holiday season.

The Jensen yard is famous in the neighborhood for its elaborate decorations, which include a trio of penguins warming themselves by a

campfire, several snowmen and Santa Clauses, a small wooden Santa's Workshop filled with toy animals, thousands of lights, and signs with rhymes like the old Burma Shave ads.

David Jensen said a large toy soldier was stolen from the yard last week. After that, they tied all their decorations together with steel cable and installed motion detectors around the displays.

Those detectors woke them early Wednesday. The couple turned on the lights and saw teens piling into a pickup truck.

The Jensens found two plastic Santa Clauses and a homemade wooden sleigh, with electric lights, missing. They later retrieved them at Dimond High.

The youths had apparently tried to take the penguins and some gingerbread men, but "they were wired in so

well they couldn't have done it without taking a tree along with them," David Jensen said.

The vandals also destroyed strings of lights, extension cords and two hand made wooden moose. Jensen said it will cost about \$350 to fix or replace the damaged decorations.

Another Dimond area resident, Arthur Anderson, was luckier. He found a plastic candy cane and snowman

scavenger hunt

stolen from his yard at the high school.

The theft was an inconvenience. But what chilled Anderson was that police told him it was part of a scavenger hunt.

"The Jim Lowe case just got decided. Evidently these kids aren't familiar with what's happening around town," Anderson said. "They're setting themselves up for another incident like that."

NEWS CLIPPING

HB

90

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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MEMORANDUM

March 11, 1993

SUBJECT: SCS HB 90(JUD), 1993 Revisor's Bill (Work Order No. 8-LS0233\E)

TO: Senator Robin Taylor, Chair
Senate Judiciary Committee

FROM: David R. Dierdorff 
Revisor of Statutes

The 1993 revisor's bill was prepared under AS 01.05.036, which provides, in part, that the revisor of statutes

* * * shall prepare for submission to the legislature legislation for the correction or removal of the deficiencies, conflicts, or obsolete provisions, or to otherwise improve the form or substance of * * * the statute law of this state.

To assist in understanding the bill, I have summarized the contents by listing sections that have similar purposes or effects.

Sections that delete, repeal, or update obsolete provisions: Sections 4, 8 - 11, and 19 - 21 delete, update, or repeal provisions that have become obsolete either through other legislative action or the passage of time.

Sections that correct errors or oversights: Sections 1 - 3, 5 - 7, 12, 13, 17, and 18 correct errors or oversights that can not be corrected editorially.

Sections that improve the form or substance of the law: Sections 14 - 16 propose amendments to improve the form or substance of the statute law of Alaska.

SECTIONAL ANALYSIS

Section 1. When AS 14.25.050(a) was amended in 1990 to change the contribution percentage for the Teachers Retirement System, AS 14.20.345(d) should have been similarly amended. The amendment proposed in sec. 1 of the bill simply ties the

Secs. 14 and 15. These sections simply restate the provisions to place them in proper form and make them more readable. There are no changes in the wording other than for clarification or as required by the new style. The amendments have been reviewed and approved by the Department of Law.

Sec. 16. This section proposes a clarification in the new legislative ethics law, at the request of Representative Finkelstein's office. Because public members of the ethics committee are included within the definition of the term "legislative employees," they would be required to report close economic associations with their supervisors. However, it is clear that the legislature was interested only in relationships between true legislative employees and their supervisors, not the relationships between private sector individuals and their supervisors.

Secs. 17 and 22. Under the terms of ch. 60, SLA 1989, which established the state employees incentive award program, the program (set out in AS 39.51) is repealed July 1, 1993. The amendment to AS 39.35.680(8) proposed in sec. 17 deletes a reference to the program that will be obsolete if AS 39.51 is in fact repealed. Under sec. 22, sec. 17 will take effect only if the repeal takes place. In other words, if this legislature extends the program, sec. 17 will not take effect. We have been aware of the possible need for this technical amendment since 1989, when ch. 60 was signed into law.

Sec. 18. This section proposes a correction in the legal description for the Alexander Creek State Recreation River. The error was discovered by the Department of Natural Resources during plat plotting in connection with the management of the area. Full documentation and a map are in my files and I will make copies available upon request.

Sec. 21. Repeals provisions that are obsolete. Those provisions and the reasons for their obsolescence are:

AS 08.03.010(c)(12) - the Board of Electrical Examiners sunsetted in 1991;

AS 08.64.380(5) - this definition should have been repealed in ch. 130, SLA 1992, but was overlooked;

AS 10.06.960(d) - addresses a provision that was not incorporated in the final version of the revised corporation code;

AS 18.07.011, 18.07.111(7) and (10), AS 18.08.090(11), and AS 47.30.475(e)(4) - all relate to the obsolete Statewide Health Coordinating Council or health systems agencies;

AS 39.25.120(c)(20); AS 44.41.100 - 44.41.130; AS 44.66.010(a)(13) - the statutes were rendered obsolete when the fire commission sunsetted in 1990.

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

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MEMORANDUM

March 11, 1993

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TO: Senator Robin Taylor, Chair
Senate Judiciary Committee

FROM: David R. Dierdorff 
Revisor of Statutes

The 1993 revisor's bill was prepared under AS 01.05.036, which provides, in part, that the revisor of statutes

* * * shall prepare for submission to the legislature legislation for the correction or removal of the deficiencies, conflicts, or obsolete provisions, or to otherwise improve the form or substance of * * * the statute law of this state.

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Sections that correct errors or oversights: Sections 1 - 3, 5 - 7, 12, 13, 17, and 18 correct errors or oversights that can not be corrected editorially.

Sections that improve the form or substance of the law: Sections 14 - 16 propose amendments to improve the form or substance of the statute law of Alaska.

SECTIONAL ANALYSIS

Section 1. When AS 14.25.050(a) was amended in 1990 to change the contribution percentage for the Teachers Retirement System, AS 14.20.345(d) should have been similarly amended. The amendment proposed in sec. 1 of the bill simply ties the

Senator Robin Taylor

March 11, 1993

Page 2

percentage contribution required during leaves of absence to the percentage required under AS 14.25.050. This will eliminate the need for further amendments if the percentage changes in the future. This error was discovered by the drafting attorney.

Sec. 2. This section corrects a drafting error in ch. 74, SLA 1991, by substituting "judicial districts" for "major election districts." Obviously, there are no "major" election districts, at least not by objective measurement! The error was brought to our attention by an assistant attorney general.

Secs. 3 and 5. These sections correct internal references that should have been changed when AS 16.05.720 was repealed and AS 16.05.722 and 16.05.723 were added by ch. 46, SLA 1988. The oversight was discovered by our office.

Sec. 4. This section deletes an obsolete reference to the commissioner of fish and game's power to revoke a vessel license. That power was repealed in 1977, when license issuance was transferred to the limited entry commission. The proposed amendment updates the style and substitutes a general statement for the obsolete reference. The need for the amendment was discovered by our office.

Secs. 6 and 7. These sections correct two oversights in the legal description of the Kachemak Bay Critical Habitat Area. The Department of Fish and Game and the Department of Law requested the corrections. The changes comply with the legislative intent, expressed in the 1974 Senate Resources Committee letter of intent, that the critical habitat area include "all tide and submerged lands of Kachemak Bay east of a line from Anchor Point to Point Pogibshi." 1974 Senate Journal 1009. The amendment in sec. 6 accomplishes this by excluding Port Graham, which is south and, in part, west of Point Pogibshi and not a part of Kachemak Bay. In sec. 7, the change adds the southeastern end (the head) of Tulka Bay. I have maps and further backup in my files and can make copies available upon request.

Secs. 8, 9, 19, and 20. These sections, together with several repeals in sec. 21, delete obsolete references to the Statewide Health Coordinating Council and health systems agencies. These agencies were required under former federal law, but are no longer required or in existence. The amendments have been reviewed and approved by the affected departments (Revenue, Health & Social Services, and Law).

Secs. 10 and 11. These bill sections update a reference to federal law. The need for this change was discovered during our routine editorial work.

Secs. 12 and 13. Both bill sections correct references to publications that contain safety standards. The publications were incorrectly described in ch. 37, SLA 1992. The Department of Labor and the Department of Law requested the corrections.

Secs. 14 and 15. These sections simply restate the provisions to place them in proper form and make them more readable. There are no changes in the wording other than for clarification or as required by the new style. The amendments have been reviewed and approved by the Department of Law.

Sec. 16. This section proposes a clarification in the new legislative ethics law, at the request of Representative Finkelstein's office. Because public members of the ethics committee are included within the definition of the term "legislative employees," they would be required to report close economic associations with their supervisors. However, it is clear that the legislature was interested only in relationships between true legislative employees and their supervisors, not the relationships between private sector individuals and their supervisors.

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AS 08.64.380(5) - this definition should have been repealed in ch. 130, SLA 1992, but was overlooked;

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AS 39.25.120(c)(20); AS 44.41.100 - 44.41.130; AS 44.66.010(a)(13) - the statutes were rendered obsolete when the fire commission sunsetted in 1990.

Senator Robin Taylor
March 11, 1993
Page 4

The text of all provisions proposed for repeal is set out in the appendix.

Sec. 23. Gives the bill, except for sec. 17, an immediate effective date.

DRD:gc:mi
93-223.glc

cc: Deborah Behr
Department of Law

APPENDIX - TEXT OF REPEALED PROVISIONS

AS 08.03.010(c)(12):

(12) Board of Electrical Examiners (AS 08.40.011) - June 30, 1991;

AS 08.64.380(5):

(5) "practice of lay midwifery" has the meaning given in AS 18.05.070;

AS 10.06.960(d):

(d) A director or officer of a corporation organized under the act is not personally liable to the contract creditors specified in AS 10.06.490 except as otherwise provided by law.

AS 18.07.011:

Sec. 18.07.011. Statewide Health Coordinating Council. There is created the Statewide Health Coordinating Council. The council shall be organized in the manner described by 42 U.S.C. 300m-3(b), 42 U.S.C. 2689t-(a)(1)(A), and AS 47.30.605(a). The council shall perform the functions listed in 42 U.S.C. 300m-3(c).

AS 18.07.111(7):

(7) "council" means the Statewide Health Coordinating Council organized and operated in accordance with 42 U.S.C. 300m-3;

AS 18.07.111(10):

(10) "health systems agency" means an entity organized and operated in accordance with 42 U.S.C. 300m(b), engaging in health planning and development functions in a specified health service area of the state;

AS 18.08.090(11):

(11) "Statewide Health Coordinating Council" means the council created under AS 18.07.011.

AS 39.25.120(c)(20):

(20) employees of the Alaska State Fire Commission;

AS 44.41.100 - 130:

Sec. 44.41.100. FIRE COMMISSION. The Alaska State Fire Commission is established in the Department of Public Safety.

Sec. 44.41.110. MEMBERSHIP. (a) The governor shall appoint the members of the commission without regard to political affiliation to serve for terms of four years. Members must have an understanding of basic fire protection principles. A member may serve no more than two consecutive full terms. Membership must include a

- (1) member of the Alaska Fire Chief's Association;
- (2) member of the Alaska State Firefighters Association;
- (3) member of the Alaska Municipal League;
- (4) representative of the field of education;
- (5) representative of the Alaska Federation of Natives;
- (6) representative of the insurance industry;
- (7) representative of the construction industry;
- (8) representative of the oil industry; and
- (9) representative of the transportation industry.

(b) The attorney general and the commissioners of public safety, labor, community and regional affairs, and natural resources or their designated representatives are nonvoting members of the committee.

(c) A vacancy on the commission shall be filled from the appropriate source. The appointee shall serve for the unexpired portion of the term.

(d) Members serve without compensation but are entitled to travel and per diem authorized for members of boards and commissions under AS 39.20.180.

Sec. 44.41.120. PROCEDURES; STAFF. (a) A quorum consists of five members and must include either the chair or the vice-chair of the commission.

(b) The membership shall elect a chair and a vice-chair to serve for terms of one year. The chair may appoint standing and special committees and subcommittees.

(c) The chair, the governor, or three members of the commission may call a special meeting.

(d) The commission may hire staff as necessary. Employees of the commission are in the partially exempt service under AS 39.25.120.

Sec. 44.41.130. POWERS AND DUTIES. (a) The commission shall

(1) develop and adopt a state master plan for fire prevention, control, education, and training, and provide direction and coordination for state fire-related programs;

(2) establish policy and operational guidelines for state agencies with fire protection responsibilities and make recommendations to private industry, local governments, and federal agencies having fire protection programs;

(3) adopt procedural regulations reasonably necessary to carry out the duties imposed by AS 44.41.100 - 44.41.130;

(4) make recommendations for local, federal, and private fire-related programs; and

(5) report on commission activities when requested by the governor or the legislature.

(b) The commission may

(1) conduct research, hold public hearings, and study related issues in order to make recommendations for the improvement of fire prevention and control in the state;

(2) accept unrestricted gifts, bequests, devises, grants, matching funds and other consideration for use in promoting the commission's work.

AS 44.66.010(a)(13):

(a) Boards and commissions listed in this subsection expire on the date set out after each:

* * *

(13) Alaska State Fire Commission - June 30, 1990;

AS 47.30.475(e)(4):

(e) A grant may not be awarded under this section unless the application includes a plan that provides for

* * *

(4) coordination with the goals and objectives of the health systems plan developed by the health systems agencies under 42 U.S.C. 3001(2)(b)(2).

DRD:gc
93-224.glc

**DIVISION OF LEGAL SERVICES
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MEMORANDUM

March 4, 1993

SUBJECT: Enclosed Amendment for HB 90 (Work Order No. 8-LS-0233\A.2)

TO: Senator Robin Taylor, Chair
Senate Judiciary Committee

FROM: David R. Dierdorff 
Revisor of Statutes

Enclosed is a second amendment (which I hope will be the last) for HB 90, the 1993 revisor's bill. The two sections simply place existing law in proper form, which should make the provisions much more readable for users. For some reason, the table in paragraph (f)(3) of AS 21.18.110 was "continued" in the two subsequent paragraphs, which is contrary to our drafting standards and confusing to the user, particularly in the database. No substantive changes have been made. A copy of current law as it appears in the Alaska Statutes is enclosed for comparison purposes.

DRD:gc
93-195.glc

Enclosure

cc: Deborah Behr, Department of Law

calendar year statutory valuation interest rate shall be determined for 1980 using the reference interest rate defined for 1979 and shall be determined for each following calendar year regardless of the operative date under AS 21.45.300(w).

(f) The weighting factors referred to in (c) of this section are as follows:

(1) Weighting factors for Life Insurance:

Guarantee Duration: Years	Weighting Factors
10 or less	.50
more than 10, but not more than 20;	.45
more than 20;	.35

for life insurance, the guarantee duration is the maximum number of years the life insurance can remain in force on a basis guarantee in the policy or under an option to convert to a plan of life insurance with a premium rate or nonforfeiture value or both which are guaranteed in the original policy;

(2) notwithstanding (3) of this subsection the weighting factor for a single premium immediate annuity and for an annuity benefit involving in life contingency arising from another annuity with a cash settlement option and a guaranteed interest contract with a cash settlement option — .80;

(3) for annuities and guaranteed interest contracts valued on an issue year basis:

Guarantee Duration: Years	Weighting Factor for Plan Type		
	A	B	C
5 or less;	.80	.60	.50
more than 5, but not more than 10;	.75	.60	.50
more than 10, but not more than 20;	.65	.50	.45
more than 20;	.45	.35	.35

(4) for annuities and guaranteed interest contracts valued on a change in fund basis, the factors shown in (3) of this subsection increased by;

.15 .25 .05

(5) for annuities and guaranteed interest contracts valued on an issue year basis, other than those with no cash settle-

Guarantee
Duration:
Years

Weighting Factor
for Plan Type

A	B	C
---	---	---

ment options, which do not guarantee interest on considerations received more than one year after issue or purchase and for annuities and guaranteed interest contracts valued on a change in fund basis which do not guarantee interest rates on considerations received more than 12 months beyond the valuation date, the factors shown in (3) of this subsection or derived in (4) of this subsection increased by;

.05	.05	.05
-----	-----	-----

(g) The guarantee duration for other annuities with cash settlement options and guaranteed interest contracts with cash settlement options is the number of years for which the contract guarantees interest rates in excess of the calendar year statutory valuation interest rate for life insurance policies with guarantee duration in excess of 20 years. For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the guarantee duration is the number of years from the date of issue or date of purchase to the date annuity benefits are scheduled to commence.

(h) In this subsection plan type is defined as follows:

(1) plan type A: at any time policyholder may withdraw funds only

(A) with an adjustment to reflect a change in interest rates or asset values since receipt of the funds by the insurer;

(B) without such adjustment but in installments over five years or more;

(C) as an immediate life annuity; or

(D) no withdrawal permitted;

(2) plan type B: before expiration of the interest rate guarantee, policyholder may withdraw funds only

(A) with adjustment to reflect a change in interest rates or asset values since receipt of the funds by the insurer;

(B) without adjustment but in installments over five years or more;

or
(C) no withdrawal permitted; at the end of interest rate guarantee, funds may be withdrawn without adjustment in a single sum or installments over less than five years;

A M E N D M E N T

OFFERED IN THE SENATE JUDICIARY COMMITTEE

TO: HB 90

Page 4, after line 1, insert new bill sections to read:

"* **Sec. 12.** AS 21.18.110(f)(4) is repealed and reenacted to read:

(4) for annuities and guaranteed interest contracts valued on a change in fund basis, the weighting factors shown in (3) of this subsection are increased by .15 for plan type A, .25 for plan type B, and .05 for plan type C;

* **Sec. 13.** AS 21.18.110(f)(5) is repealed and reenacted to read:

(5) for annuities and guaranteed interest contracts valued on an issue year basis, other than those with no cash settlement options, which do not guarantee interest on considerations received more than one year after issue or purchase and for annuities and guaranteed interest contracts valued on a change in fund basis which do not guarantee interest rates on considerations received more than 12 months beyond the valuation date, the factors shown in (3) of this subsection or derived in (4) of this subsection are increased by .05."

Renumber following bill sections accordingly.

Page 5, line 13:

Delete "13"

Insert "15"

Page 5, line 14:

Delete "13"

Insert "15"

Page 5, line 15:

Delete "16"

Insert "18"