

ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

8335 SENATE JUDICIARY

AIR QUALITY PERMIT BILL

ALASKA AIR STATUTES REQUIRED & ESSENTIAL FEATURES

BILL SECTION TITLE

Exclusive Fund for Air Permit Program	Clean Air Protection Fund Special Account
Create Small Business Assistance Program Create Advisory Panel Provide Assistance to Larger Group	Small Business Assistance Program Power to Limit Program Compliance Advisory Panel
Modify Criminal Provisions and Fines	Criminal Penalties for Air Pollution
Construction Permits v. Operating Permits Agency/Operator Emission Limits to Avoid Need for Permit	Classification of Facilities or Sources; Reporting Permits for Construction, Modifications or Operations Responsibilities of Owner and Operator Facilities Requiring Permits Administrative Actions Regarding Permits Emissions Control Permit Program Regulations Air Pollution from Outer Continental Shelf Activities Authority of the Department in Cases of Emergency
General Permits	General Operating Permits
Flexibility for Permit Fee Structure	Permit Administration Fees Emission Fees
Ability to Implement New Federal Rules in Permits Reopening of Permits	Incorporated into other sections
Emission Limits Based on Health Risks or Available Technology	Incorporated into other sections
Local Governments to be Implementing Partners	Local Air Quality Control Program Inadequacy of Local Program State and Federal Aid
Administrative Penalties for Violations Deter EPA Intervention	Not in Bill
Public Involvement in Permits Public Review of Permits Appeal through Adjudication Judicial Review EPA Review Public to Petition EPA	Review of Permit Action Objection by Federal Administration
Retain & Update Existing Statutes	

CAA Deadlines & Sanctions

DEADLINES

11/15/92 Submit Small Business Assistance Plan
Submit SIP Revisions for Non-Attainment Areas

11/15/93 Submit State Operating Permit Program

SANCTIONS

After 11/15/93 EPA may impose any of the following:

See CAAA 90 - Section 502(d)(2)(A)

Prohibition on Federal Highway Funds statewide

Require 2 to 1 offset of emissions for new sources in non-Attainment areas

Withhold any Federal Air Grant Funds

Prohibit expansion of airports in Non-Attainment areas

5/15/95 EPA must impose all of the following:

See CAAA 90 - Section 502(d)(2)(B)

Prohibition on Federal Highway Funds statewide

Require 2 to 1 offset of emissions for new sources in non-attainment areas

Withhold any Federal Air Grant Funds

Prohibit expansion of airports in Non-Attainment areas

11/15/95 EPA must implement Federal Permit Program

See CAAA 90 - Section 502(d)(3)

EPA Operating permits -

Little consideration for Alaska-specific Concerns

Federal program offers less operational flexibility

Federal program has more facility reporting requirements

No General Permits

Will take longer to issue than State permit

EPA collects permit fees -

Collected fees go to Federal government, not Alaska

Federal Permit Fees likely to be higher than State Permit Fees

Federal Permit Fees will not reduce program support from State General Funds

PERMIT FEE DESIGN

- " PERMIT ADMINISTRATION FEE " - \$ / hour

Pay for Direct Services Provided

Low Demand - Low Costs / High Demand - High Costs

Agency Accountability w/ Evident Billings

Fee Rate Projected to be \$ 78 / hour

- " EMISSION FEES " - \$ / emission

Pay for Intangible Benefits of Program

- reconcile fed laws to Alaska situations

- management control for consistency

- rent, utilities, accounting etc.

Policy Directive to Achieve " Equitable Apportionment "

between facility types & sizes

Interim Rate w/ Mandate for Further Research

Fee Rate Projected to be \$ 5 / Ton of Emission

AIR QUALITY LEGISLATIVE WORKING COMMITTEE

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1/28/93

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SUMMARY of the 1990 CLEAN AIR ACT

Prepared
September 16, 1992
by
Alaska Department of Environmental Conservation

On November 15, 1990, President Bush signed into law amendments to the federal Clean Air Act (Act). The revised law initiated sweeping changes in air quality management throughout the nation. The summary below will provide you with some basic information on this complex law.

TITLE I - AIR POLLUTION PREVENTION AND CONTROL

Section 109 of the Act provides for the establishment of National Ambient Air Quality Standards. Primary standards are designed to "...protect public health with an adequate margin of safety." Secondary standards "...protect the public welfare from any known or anticipated adverse effects associated with the presence of such air pollutants in the ambient air." To date, National Ambient Air Quality Standards exist for ozone, carbon monoxide, nitrogen dioxide, sulfur dioxide, particulate matter, and lead.

Section 110 of the Act requires states to submit a plan to EPA "...which provides for implementation, maintenance, and enforcement..." of the ambient air quality standards. This plan is often referred to as the State Implementation Plan (SIP). In Alaska, this information is contained in the State Air Quality Control Plan and the Alaska Air Quality Control Regulations.

Section 111 of the Act provides for the establishment of Standards of Performance for New Stationary Sources (NSPS). These standards establish emission limitations for specific air pollution sources, or categories of sources, based upon the use of feasible technology. Each source category standard is updated every few years to reflect technological advances.

Section 112 of the Act (Title III of the 1990 Amendments) provides for the establishment of National Emissions Standards for Hazardous Air Pollutants (NESHAPS). Prior to 1990, this provision of law regulated specific industrial processes which emitted any of eight hazardous air pollutants. As part of the 1990 Act, 189 hazardous air pollutants were established by Congress. EPA is required to develop a list of categories of stationary sources that emit the listed pollutants. In developing this list, EPA must consider the

quantity of pollution typically emitted and the potential danger to public health. The Act then requires EPA to establish maximum achievable control technology (MACT) emission or work practice standards for these selected source categories over a period of twelve years. EPA is also establishing "area source" categories which will be required to apply generally available control technology (GACT) to reduce emissions. The list of hazardous air pollutants may be revised by EPA. In addition, any person may petition EPA to modify the list of hazardous air pollutants.

Section 113 of the Act gives EPA federal enforcement authority when the provisions of a permit or applicable implementation plan are violated and states fail to adequately initiate enforcement. EPA's authority varies depending upon the violations, but generally includes: issuing orders, assessing administrative penalties, and bringing civil or criminal action.

Part C of Title I maintains the previously established program for the Prevention of Significant Deterioration (PSD). This program is intended to prevent long term degradation of air quality in regions where the air quality is currently good. This will be achieved through a permit program that requires new industry sources to install Best Available Control Technology (BACT) to reduce out of stack emissions and sets a "cap" on ground level pollution increases. A permit can not be issued to a project if it causes a violation of either the National Ambient Air Quality Standards or the air quality increment caps.

Part D of Title I contains the requirements for implementation plans for regions not in attainment with the National Ambient Air Quality Standards. It sets the groundwork to help nonattainment regions reach attainment with the air quality standards. Part D also contains a requirement for the review of new or modified major stationary sources such as power plants and oil refineries. Both pre-construction permits and operating permits are required for major sources located within nonattainment areas. In Alaska, Anchorage and Fairbanks are nonattainment for carbon monoxide, with Eagle River and the Mendenhall Valley of Juneau being nonattainment for airborne particulate matter.

TITLE II - NATIONAL EMISSION STANDARDS ACT

Part A - Motor Vehicle Emission Standards

Section 202 of the Act provides for the establishment of emission standards for automobiles and light duty trucks. The standards become progressively more stringent with the newer model vehicles. In the future, Alaska will be affected by cold weather carbon monoxide standards for new vehicles. Tailpipe standards can only be set by the federal government (California excepted) and can potentially address other mobile sources, including airplanes and ships.

Section 207 of the Act provides for the establishment of an Inspection and Maintenance (I & M) program in carbon monoxide nonattainment areas to assure proper maintenance

of vehicular pollution control equipment. Automobiles, trucks, and vehicles up to 12,000 pounds laden weight in Anchorage and Fairbanks are subject to section 202 and are required to pass an emission inspection every year.

Section 211 of the Act provides for the regulation of fuels. Reformulated fuel programs, such as oxygenated gasoline (Oxy-Fuels) and low sulfur diesel fuel, are intended to reduce tailpipe emissions through more complete combustion of the fuel (oxy-fuel) or by reducing the contaminant pollutant in the fuel (sulfur). The Oxy-Fuels program currently being implemented in Anchorage and Fairbanks should bring these areas into attainment with the national and state ambient air quality standard for carbon monoxide.

Part B provides for the establishment of aircraft emission standards and enforcement. Section 231 provides for: the analysis of the effect of aircraft emissions on air quality, "...the technological feasibility of controlling such emissions"; and . provides for the development of aircraft emission standards.

Part C establishes clean fuel vehicle programs which encourages alternative fuels, such as propane or compressed natural gas, and flexible-fuel and dual-fuel vehicles.

TITLE III - GENERAL

Title III provides for the general administration of the Act, including Emergency Powers (section 303), Citizen Suits (section 304), Judicial Review (section 307), and Economic Impact Analysis and Assessment (sections 312 & 317, respectively).

TITLE IV - ACID DEPOSITION CONTROL

Title IV establishes a program to reduce acid rain deposition. Emission of sulfur dioxide and oxides of nitrogen, mostly from large fossil fuel fired electric utilities, will be controlled during the implementation of a two phase emission reduction program. Title IV does not apply to Alaska, Hawaii, Guam, or Samoa because of the physical distance of these states from the problem areas of New England, Eastern Canada and selected western mountain regions.

TITLE V - PERMITS

Sections 502, 503, & 504 of the Act provide for the establishment of uniform, nationwide air pollution permitting programs directed by the states. All major sources of air pollution will be required to obtain air permits under the new program.

A major source is either: a facility which has the potential to emit 100 tons per year or more of a criteria air pollutant (sulfur dioxide, carbon monoxide, nitrogen oxides, lead, particulate matter or ozone via hydrocarbon emissions); a facility which has the potential

to emit 10 tons per year or more of any hazardous air pollutant, or 25 tons per year or more of any combination of hazardous air pollutants; or a facility for which federal emissions standards exist under the New Source Performance Standards provision of the Act.

States must develop an air pollution permitting program complying with the provisions of Title V, or risk losing jurisdiction of their air quality resources. Alaska is currently in the process of developing an air quality statutory bill. New statutory authority is necessary before compliance with Title V can be achieved.

Section 507 provides for the establishment of a Small Business Stationary Source Technical and Environmental Compliance Assistance Program. The small business assistance program (SBAP) is envisioned to take a pro-active role in helping small businesses understand and comply with the complex provisions of the Act.

TITLE VI - STRATOSPHERIC OZONE PROTECTION

Title VI provides the framework for reducing emissions of ozone depleting chemicals, such as refrigerants, consistent with the Montreal Protocol.

Section 602 of the Act lists Class I and Class II substances. Class I substances include many of the chlorofluorocarbons (CFC's), halons, carbon tetrachloride, and methyl chloroform. Class II substances include many of the hydrochlorofluorocarbons (HCFC's).

Section 604 details the scheduled phase-out of production and consumption of Class I substances, while section 605 details the scheduled phase-out of production and consumption of Class II substances. Section 608 prohibits any person from knowingly venting refrigerants to the atmosphere. It also mandates the regulation of servicing and disposal of refrigeration and air conditioning units. Section 609 provides for regulating the service of automotive air conditioners. Other portions of Title VI require regulation of nonessential uses of products containing Class I substances, and provide for the identification of alternatives to the use of ozone depleting substances.

HB 167 / AIR QUALITY PERMITS

SECTIONAL ANALYSIS

CS HB 167(FIN)

April 21, 1993

Section 1.

POLICY AND PURPOSES - The section describes the intent of the Alaska Legislature for enacting this bill.

Section 2.

AS 46.14.010. EMISSION CONTROL REGULATIONS - Subsection (a) provides authority for the department to establish ambient air quality (public health) standards and emission (out-of-stack) standards.

Subsection (b) identifies a specific subset of standards (standards which go beyond those required by federal law) that may only be adopted following completion of staff investigations, a determination of findings to support the action and completion of independent review of the findings.

Subsection (c) describes the type of findings that must be made prior to considering the adoption of a standard described in (b).

Subsection (d) describes a specific type of finding that must be made when the proposed standard is more stringent than a comparable federal standard.

Subsection (e) requires that certain performance requirements incorporated in permits are to be adopted in regulations. This will assure due process and generally assist in creating a permit program that is overt in having all general requirements published in regulation for the public and the regulated community to be aware of.

Subsection (f) provides for setting facility-wide emission standards in lieu of individual exhaust stack emission standards.

AS 46.14.015. SPECIAL PROCEDURES FOR MORE STRINGENT REGULATIONS - The section describes the details of how the department is to secure independent peer review of its findings prior to proposing adoption of a standard that fits the criteria of AS 46.14.010(b). Peer review is performed by at least three separate parties outside the agency who have particular expertise in the subject matter under review. The department then takes the original findings and the peer review reports to public review prior to considering the adoption of a standard. Peer review services are secured by professional service contracts. Peer review is optional at the request of any potentially affected regulated party for cost containment reasons, because the cost of the permit program (and peer review) must be borne by the permit holders. However, the cost of peer review is not borne directly by the party(s) that may be regulated by the proposed action.

AS 46.14.020. CLASSIFICATION OF FACILITIES OR SOURCES; REPORTING - This section serves two purposes. First, it enables the language in the bill to be succinct by allowing certain facility types identified in federal law to be classified and listed in regulation rather than statute. Secondly, it enables the department to request information from any generator of air pollution in order to assess whether that activity potentially endangers public health or air resource standards.

AS 46.14.030. STATE AIR QUALITY PLAN - The purpose of this section is to delegate authority from the Governor to the commissioner for actions related to the state plan. The operating permit program will be only incidentally related to the state plan under the new Clean Air Act.

AS 46.14.110. ADDITIONAL CONTAMINANT CONTROL MEASURES - This section brings forward existing law in AS 46.03.160 into the newly created chapter. The statute is the principal authority used now to issue air quality permits. The section is repealed on the date that the federal administrator approves the revised permit program which is described throughout the chapter.

AS 46.14.120. PERMITS FOR CONSTRUCTION, MODIFICATION, OR OPERATION - The section contains the basic authority to require construction and operating permits for subject facilities.

Subsection (b) allows a facility to begin operation even while its application is still pending provided that an application was timely submitted. This is commonly referred to as the "application shield" which will be especially important during program start-up.

Subsection (e) describes under what conditions a source or facility may be exempted from the permit program. Under federal law there is a very small set of sources that may be considered for exemption. This language provides that if the federal administrator exempts a source or facility, the commissioner of ADEC, after "considering the factors used by the administrator shall issue a similar determination unless public health or air quality effects provide a reasonable basis to regulate the source. This reasonable basis standard (term of art established by the courts relating to the integrity of the evidence) exists in other sections of the bill to provide for the potential event that future knowledge may support that additional regulatory action is justifiable and prudent for protecting public health. Additional criteria necessary to support adoption of this type of regulation is delineated in AS 46.14.010 & 46.14.015.

AS 46.14.130. FACILITIES REQUIRING PERMITS - The purpose of this section is to delineate which facilities need either construction permits or operating permits. To keep the text of this section brief, the section calls upon the authority of another section (AS 46.03.020) to enable classification or grouping of facility types that are either unique relative to the need to acquire a permit under state or federal law or must be subject to a specific type of review under federal law as part of the permit review.

In general, whether or not a facility needs a permit is based upon the quantity of air pollution that the facility has the **potential** to emit. Other provisions in the bill (AS 46.14.140) allow the department to recognize the **actual** rate of emissions in determining whether a permit is needed.

AS 46.14.140. EMISSION CONTROL PERMIT PROGRAM REGULATIONS - In this section, authority is established to adopt regulations to implement the permit program. The essential elements of the regulations and permits are listed and certain criteria are set for those regulations. The language "The regulations must be reasonable and adequate, and provide flexibility in the operation of a facility..." is established as a performance criteria for the regulations.

AS 46.14.150. TIME FOR SUBMISSION OF OPERATING PERMIT APPLICATIONS - The section identifies when operating permit applications are due. In most cases the due date is within twelve months after the permit program is first approved by EPA or twelve months after a facility becomes regulated (begins to operate).

AS 46.14.160. COMPLETENESS DETERMINATION - Permit applications are to be reviewed within 60 days after submittal, with the applicant being informed if the application is either complete or incomplete. If no written response is made within the 60 days the application is deemed complete. Subsection (c) allows the department to request additional information after completeness, provided the information is required to evaluate or act on the application. This is the second of three sections required for the application shield.

AS 46.14.170. ADMINISTRATIVE ACTIONS REGARDING PERMITS - The language in this section specifies the timeliness for permit decisions. General permits and temporary operating permits will be issued in shorter time periods than other operating permits.

AS 46.14.180. MONITORING - The section describes that air monitoring required by the department must be associated with compliance assessment for the facility's regulated air emissions.

AS 46.14.190. SINGLE PERMIT - The section specifies that only a single operating permit is required for each facility. However, a facility operator may request that more than one permit be issued to assist in internal management of the air pollution generating equipment at the facility.

AS 46.14.200. REVIEW OF PERMIT ACTION - This section describes that any person or party may obtain an adjudicatory hearing and then a judicial review if that party 1) participated in the public comment process or 2) is otherwise a person who has a private, substantive and legally protected interest under state law.

AS 46.14.210. GENERAL OPERATING PERMITS - Many general or "master" permits will be developed, each tailored to fit a number of individual but similar equipment installations. Once developed, each separate general permit can be issued very quickly. Issuance of general permits is one of the key elements in enabling the revised permit program to be efficient. The individual costs of obtaining a general permit will be comparatively low since the development costs will be shared among all projected users.

AS 46.14.215. TEMPORARY OPERATIONS - This section is to provide flexibility to transportable facilities that relocate based on short term projects. The permit will authorize facility operation at a number of preset locations.

AS 46.14.220. OBJECTION BY FEDERAL ADMINISTRATOR - This language indicates that the Environmental Protection Agency has review authority on each and every operating permit and may stop permit issuance based upon specific legal inadequacies of a drafted permit. This is a mandatory provision if the state is to receive federal approval of the permit program. This feature only applies to operating permits, not construction permits.

AS 46.14.230. DURATION OF OPERATING PERMITS - The language specifies that all operating permits, except temporary operating permits, are to be issued for a fixed term of five years.

AS 46.14.235. FEDERAL TERMINATION, MODIFICATION, OR REVOCATION AND REISSUANCE OF PERMITS - This directs the department to take actions to avoid federal intervention on a permit.

AS 46.14.240. PERMIT ADMINISTRATION FEES - The language is developed on the policy premise that a cost generator is to be a cost bearer. By setting this fee rate on a basis of dollars per hour of agency service provided, accountability for cost control within government and the regulated community will provide a strong motivation for program efficiency. The permit administration fees are to recover the costs incurred by the agency in reviewing, issuing and maintaining the permit. The services listed in the section are the only services for which permit administration fees will be assessed.

Facility owners that qualify for the small business assistance program will receive assistance for some of the services identified in this section under that program at no direct cost to the owner.

AS 46.14.250. EMISSION FEES - In addition to the permit administration fee, each permittee is assessed an annual emission fee based upon the quantity of air contaminants emitted that year. The purpose of the emission fee is to distribute the costs of performing those functions of the permit program that benefit or assist all permit holders, yet are not directly attributable to any single facility. In short, these are the indirect costs of the program and include costs such as rent, utilities, accounting, the small business assistance program and working with EPA to assure that new federal laws are reasonable for Alaska situations.

The initial fee is temporary. ADEC must research factors that will lead to fee equitability and revise the fee prior to third year based upon its research published in a report. Thereafter, the agency must revisit the fee structure at least every three years.

AS 46.14.255. PENALTY AND INTEREST FOR NONPAYMENT - This section allows the department to assess interest for late payment of permit fees based upon the rate of two percentage points above the prime interest rate. Interest begins to accrue 30 days after payment is due.

A penalty may be assessed for nonpayment, but only 45 days after a separate notice is issued indicating that the fee is past due. A maximum penalty is five percent per month up to 25 percent of the total fee due.

AS 46.14.260. CLEAN AIR PROTECTION FUND - This section creates the necessary fund to receive the permit fees. A dedicated fund is required for federal approval of the permit program to assure that the monies are secured for the sole use of the air permit program.

AS 46.14.270. SPECIAL ACCOUNT - An account is established within the general fund to receive civil or criminal penalties, interest and penalties, late fee payments, fines, assessments, damages, interest and attorney fees related to violations of air quality control laws.

AS 46.14.275. TIMELY AND COMPLETE APPLICATION AS SHIELD - The section creates the so called "application shield". The application shield becomes effective for a permit applicant once a complete application has been submitted in a timely manner. The section is the third of three necessary sections to create the application shield and associated issuance mechanism. Application shields are of critical importance during the initial phase of the permit program.

AS 46.14.280. TERMINATION, MODIFICATION, REOPENING, OR REVOCATION AND REISSUANCE OF PERMITS BY THE DEPARTMENT - The section has three subparts; one which describes the conditions under which the department may terminate, modify or revoke and reissue (revoke-reissue is one action) a permit. Other conditions describe the grounds for permit modification or revocation and reissuance, and subsection(c) describes the events under which a permit is reopened to incorporate changes in federal law.

AS 46.14.285. AMENDMENT AND MODIFICATION OF PERMIT UPON REQUEST OF PERMITTEE - The section delineates the various types of permit changes that can be accomplished upon request of a permittee. The language is directly linked to similar changes that are elaborated upon in federal regulations.

AS 46.14.290. PERMIT AS SHIELD - The section provides for a shield from litigation by third parties provided that the permittee complies with the terms of the permit. There are some limitations in federal law regarding activities that can be "shielded". The permit shield is optional, but considered important by the regulated community.

AS 46.14.300. SMALL BUSINESS ASSISTANCE PROGRAM - The small business assistance program is established as required by Section 507 of the Clean Air Act to assist affected small businesses in understanding and complying with the requirements of the Act. This language provides the ability to expand the program to other entities that do not meet the federal definition of a small business, but may need assistance.

The program is funded from revenues generated by emission fees with the exception of that part of the program that assists businesses that do not meet the federal definition of small business.

AS 46.14.310. POWER TO LIMIT SMALL BUSINESS ASSISTANCE PROGRAM - The section allows the department to exclude a business facility or category of facilities from the assistance program if it is determined that they have sufficient technical or financial capabilities to meet the requirements of the Act. This language follows similar federal statute.

AS 46.14.320. COMPLIANCE ADVISORY PANEL - As required by the Act, a seven member panel is selected by the Governor, the Commissioner, and the Legislature. The panel meets at least annually and provides general direction to the small business assistance program while also fulfilling a federal function of reporting on the effectiveness of the assistance program and meeting requirements of other federal laws.

AS 46.14.400. LOCAL AIR QUALITY CONTROL PROGRAMS - This section establishes that local programs are approved by the department through a cooperative agreement which delineates the responsibilities of both agencies. With affirmative agreement of the department, a municipality or local air quality district may establish more stringent requirements than the state if the local agency makes a finding that public health or air quality effects warrant the action. This provision does not apply to mobile source pollution control program of the local agency. Language in subsection (h) precludes local governments from collecting air permit fees.

In a state - local cooperative program, all permit fees would be collected by the state, but financial assistance to support the work performed by the local staff would be provided from the state clean air protection fund after legislative approval.

AS 46.14.410. INADEQUACY OF LOCAL PROGRAMS - This section specifies the process for identifying and rectifying deficiencies in executing the terms of the interagency cooperative agreement.

AS 46.14.500. AIR POLLUTION FROM OUTER CONTINENTAL SHELF ACTIVITIES - This section would provide the ability for the department to regulate mineral and oil & gas extraction activities located between the coast and 25 miles seaward. State authority is normally limited to that area within three miles of the coast. Section 328 of the Clean Air Act provides a mechanism to obtain delegation of federal authority and thereby extend the geographic range of authority for certain activities.

AS 46.14.510. MOTOR VEHICLE POLLUTION - The section brings language currently contained in AS 46.03.190 into the new Chapter 14.

AS 46.14.515. INSPECTION - The language specifies who may enter a facility and what that person may inspect or examine.

AS 46.14.520. CONFIDENTIALITY OF TRADE SECRETS - The language specifies the criteria that information must meet in order to be classified as trade secrets and allow it to be protected from disclosure.

AS 46.14.525. PUBLIC RECORDS - This section specifies that documents associated with the permit program are public records unless specifically protected as trade secrets.

AS 46.14.530. STATE AND FEDERAL AID - The language in this section is the principal authority for local programs to receive air permit funds collected by the state to support the staff and other expenditures of executing a permit program at the local level. The language also allows local programs to receive federal funds without approval of the department. Federal grant funds are expected to diminish as permit programs become self funded to meet the requirements of the Act.

AS 46.14.540. AUTHORITY OF DEPARTMENT IN CASES OF EMERGENCY - This section provides a mechanism for the Commissioner of ADEC to authorize the immediate operation of a source or facility either without a permit or in contravention with the terms of a permit when such actions are deemed necessary in a natural emergency event.

AS 46.14.550. RESPONSIBILITIES OF OWNERS AND OPERATORS - This section delineates that prior to permit issuance both the owner and the operator are responsible for compliance with air quality control requirements. Following permit issuance, only the facility operator is legally responsible.

AS 46.14.560. UNAVOIDABLE MALFUNCTIONS AND EMERGENCIES - This language provides that emissions in excess of allowable out-of-stack standards may not be subject to enforcement as a violation of the permit if the event was caused by an on-site emergency, malfunction or non-routine repair at a facility and the operator has taken certain actions to certify that the event was unavoidable.

Federal law prohibits advanced approval for this type of variance if the emission limit is a standard used to safeguard public health. Consequently, this provision is limited to "technology" based standards which set a performance level for the equipment.

AS 46.14.900. LIMITATIONS - This language brings forward existing law in AS 46.03.245 into the newly created Chapter 14.

AS 46.14.990. DEFINITIONS - Twenty four definition of terms are created for use in this act.

Sections 3 through 10.

Conforms existing statute to new citations created by this act.

Section 11.

Amends existing statute to enable public utilities to adjust their electrical rate structure to recover the costs of permit fees under this chapter as part of the monthly fuel surcharge.

Sections 12 through 15.

Conforms existing statute to new citations created by this act.

Section 16.

Accomplishes the federally required civil prosecution penalties by amending existing state law. The language clarifies that the court could also allow civil recovery of damages to persons or property under this chapter.

Sections 17 and 18.

Conforms existing statute to new citations created by this act.

Sections 19 and 20.

These sections accomplish federally required changes which identify actions that are potentially subject to criminal prosecution and the potential penalties if found guilty in such prosecutions.

Sections 21 through 26.

Amends existing statute to conform to provisions and citations in this act.

Section 27.

Repeals existing statutes that are replaced or no longer required.

Section 28.

Repeals the existing statute authority to issue air quality permits, on the day following the day that new permit issuance authority is approved by the federal administrator.

Section 29.

COMPLIANCE ADVISORY PANEL; INITIAL TERMS - The section initiates the advisory panel of the small business assistance program with various term durations so as to accomplished staggered terms for panel members to retain "corporate" memory during periods of reappointments.

Section 30.

REGULATIONS - Regulations may not take effect until the corresponding enabling statutes take effect.

Section 31.

Identifies those provisions of this act that take effect immediately.

Section 32.

Identifies those provisions of this act that take effect the day after the day the federal administrator approves the permit program. Delayed effectiveness is desired to allow the department and the regulated community time to prepare for the new program.

FISCAL NOTE

STATE OF ALASKA

BILL NO. CS HB 167 (FIN)

Revision Date: 19-Apr-93
 Title: Alaska Air Permit Statutes
 Sponsor: Representative Mark Hanley
 Requestor: House Finance Committee

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

COMPONENT SERIAL NO. 1428

EXPENDITURES/REVENUES:

(Thousands of Dollars)

OPERATING	FY 94(Note 1)	FY 95(Note 2)	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	(707.1) 259.7	3,125.2	3,125.2	3,125.2	3,083.1	3,083.1
TRAVEL	(103.4) 48.0	284.6	287.9	291.2	334.2	334.2
CONTRACTUAL	(182.6) 135.1	106.8	495.1	726.5	259.6	259.6
SUPPLIES	(50.5) 0.0	73.7	75.4	77.2	65.8	65.8
EQUIPMENT	(50.7) 0.0	156.8	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	(1094.3) 442.8	3747.1	3983.6	4220.1	3742.7	3742.7

CAPITAL						
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REVENUE						
FUND SOURCE: 1005	(1094.3) 442.8	3747.1	3983.6	4220.1	3742.6	3742.6

FUNDING:

1002 FEDERAL RECEIPTS						
1003 GF MATCH						
1004 GF						
1005 GF/PROGRAM RECPT	(1094.3) 442.8	3747.1	3983.6	4220.1	3742.7	3742.7
1006 GF/MHTIA						
OTHER						
TOTAL	(1094.3) 442.8	3747.1	3983.6	4220.1	3742.7	3742.7

POSITIONS:

FULL-TIME	(Note 3)	4.0	22.4	22.4	22.4	21.7	21.7
PART-TIME							
TEMPORARY							

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

ANALYSIS: (See attachment)

- Note 1: Indicates FY 94 funding authorization required above legislative approved FY 94 operating budget to implement this Act. Values in () indicate permit program cost increases relative to FY 93 budget.
 Note 2: For FY 95 and beyond, federal law requires the permit program be 100% funded by program receipts.
 Note 3: Indicates net increase in positions relative to authorized FY 94 operating budget.

Prepared by: Leonard D. Verrelli, Chief
Environmental Quality, Air Quality Management

Phone: 465-5100

Date: 4/19/93

Approved by Commissioner: Janice Adair, Assistant Commissioner

Agency: Department of Environmental Conservation

Date: 4-19-93

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

**1993 AIR PERMIT BILL FISCAL NOTE
SUPPLEMENTARY EXPLANATION**

Title V of the 1990 Clean Air Act (the Act) requires each state to develop and implement a permit program under the approval and direction of the U.S. Environmental Protection Agency. **Though Alaska currently maintains an air quality permit program, the mandates imposed by the Act are expected to result in a substantially increased workload for ADEC.** The Act also mandated that each state collect fees from permittees necessary to fund the total direct and indirect costs of the permit program.

ADEC performed a comprehensive analysis during the fall of 1992 for the purpose of estimating the staff and budget increases over FY 93 due to implementing an approvable Title V permit program. The findings of this analysis are presented in a document entitled "Proposed Permit Program - Estimated Budget and Staffing," a copy of which is available from the Air Quality Management Section at ADEC. This analysis also provides estimates of fees which will be charged to permittees for the purpose of funding an approvable program. The enclosed spreadsheets on page 4 and 5 reflect the findings of this analysis and document the assumptions used to calculate the entries in the Air Permit Bill's Fiscal Note.

ADEC expects that the number of permitted facilities will increase from the current of 175 to 450. The Act requires that each state permit all facilities within three years of starting a permit program. ADEC plans to distribute the permitting workload equally over the first three years, so that a stable number of permitting engineers are required. In the fourth year of the permit program, the permitting workload will decrease since all existing facilities should be permitted. The inspection workload will increase as more facilities are permitted, and is expected to stabilize in year four when all facilities are permitted. ADEC plans to reassign staff, who no longer will be needed in permitting, to inspection duties. In addition, ADEC plans to contract some inspection work to private consultants. These measures are intended to avoid hiring personnel on a temporary basis; therefore stabilizing the number of personnel employed in the permit program.

The line item entries in the Operating block of the Fiscal Note reflect the total costs of the Title V air permit program for FY 95 and beyond. The budget line item allocations for ADEC's FY 93 permit program are listed at the top of page 4. **ADEC's current permit program employs 21.5 FTE (full-time equivalents) at a total cost of \$1.922 million in FY 93.** The existing program is funded by federal grant, state matching monies and program receipts. **New federal law requires that the permit program be 100 % funded by program receipts managed in a dedicated fund.** Following federal approval of the new program, current federal grant and state matching monies will not be used to support the permit program portion of the entire budget for the air quality management section.

Since the permit program established pursuant to this bill is not expected to be implemented until FY 95, no new costs are to be incurred in FY 94. In FY 95, an additional 22.4 FTE over the FY 93 will be required for implementation of the permit program. The majority of the staff will be involved with permit issuance tasks. This is the only year ADEC expects to hire employees for this permit program.

The following comments apply to the operating line items for FY 95 to FY 99.

- a. Travel costs are estimated from historical records and projections based upon the number of permittees who will be subject to the permit program. Travel cost increase from FY 95 to 98, since both the number of permittees and the number of required inspections increase as ADEC issues permits to facilities which are not currently permitted. Travel costs stabilize in FY 98 when the program enters the continuation phase.
- b. Contractual costs increase from FY 95 to FY 97 because ADEC plans to secure contracts with consultants to perform some of the required facility inspections. Contracting this excess inspection workload will avoid the need to hire state employees on a temporary basis. Inspection contracting may cease in FY 98 when the number of employees involved in permitting will decline and these employees will be shifted to the inspection group.
- c. Supply costs increase from FY 95 to FY 97 due to the increase in costs associated with permitting such as public hearings and advertisement, and supplies needed for the increased number of facilities to be inspected. The costs stabilize in FY 98 as the program enters the continuation phase.
- d. Equipment costs are incurred in FY 95 when ADEC employs the additional staff needed to implement the permit program. Costs are necessary to purchase employee workstations and are figured at \$7000 per employee. No employees are expected to be hired in other fiscal years.

1993 AIR BILL FISCAL NOTE BACK-UP

FY 93 TOTAL PERMIT PROGRAM COSTS

Pers. Services	Travel	Contractual	Supplies	Equipment	FTE
1390.4	130.9	294.3	49.5	57.2	21.5

FY 93 TOTAL 1922.3

FY 95 TOTAL PERMIT PROGRAM COSTS

Group	Pers. Services	Travel	Contractual	Supplies	Equipment	FTE
Per Ton Services	917.0	89.7	31.0	21.3	N/A	12.7
Permits	1558.5	50.0	54.2	29.0	N/A	22.3
Compliance	536.1	124.8	18.2	9.8	N/A	7.5
Monitoring	113.5	20.1	3.4	13.6	N/A	1.4
Totals	3125.2	284.6	106.8	73.7	156.8	43.9

FY 95 TOTAL 3747.1

FY 96 TOTAL PERMIT PROGRAM COSTS

Group	Pers. Services	Travel	Contractual	Supplies	Equipment	FTE
Per Ton Services	917.0	89.7	76.5	21.3	0.0	12.7
Permits	1558.5	50.0	133.9	29.0	0.0	22.3
Compliance	536.1	124.8	276.4	9.8	0.0	7.5
Monitoring	113.5	23.4	8.4	15.3	0.0	1.4
Totals	3125.2	287.9	495.1	75.4	0.0	43.9

FY 96 TOTAL 3983.6

1993 AIR BILL FISCAL NOTE BACK-UP

FY 97 TOTAL PERMIT PROGRAM COSTS

Group	Pers. Services	Travel	Contractual	Supplies	Equipment	FTE
Per Ton Services	917.0	89.7	76.5	21.3	0.0	12.7
Permits	1558.5	50.0	133.9	29.0	0.0	22.3
Compliance	536.1	124.8	507.8	9.8	0.0	7.5
Monitoring	113.5	26.7	8.4	17.1	0.0	1.4
Totals	3125.2	291.2	726.5	77.2	0.0	43.9

FY 97 TOTAL 4220.1

FY 98 TOTAL PERMIT PROGRAM COSTS

Group	Pers. Services	Travel	Contractual	Supplies	Equipment	FTE
Per Ton Services	917.0	89.7	76.5	21.3	0.0	12.7
Permits	931.1	35.0	78.6	13.2	0.0	13.1
Compliance	1121.5	179.5	96.1	12.5	0.0	16.0
Monitoring	113.5	30.0	8.4	18.8	0.0	1.4
Totals	3083.1	334.2	259.6	65.0	0.0	43.2

FY 98 TOTAL 3742.6

FY 99 TOTAL PERMIT PROGRAM COSTS

Group	Pers. Services	Travel	Contractual	Supplies	Equipment	FTE
Per Ton Services	917.0	89.7	76.5	21.3	0.0	12.7
Permits	931.1	35.0	78.6	13.2	0.0	13.1
Compliance	1121.5	179.5	96.1	12.5	0.0	16.0
Monitoring	113.5	30.0	8.4	18.8	0.0	1.4
Totals	3083.1	334.2	259.6	65.8	0.0	43.2

FY 99 TOTAL 3742.6

Position Title Environmental Engineering Associate		No. of Positions 11	Range / Step 18A	Barg. Unit GG
Time Status Full Time	Staff Months 132	Location Various		Election District Various
TYPE OF EXPENDITURE		Amount	Justification	
Salary		\$461.9	<p>The new Clean Air Act of 1990 requires all states to establish a completely new operating permit program which takes into account small sources never permitted before, includes greater public participation in the permit process, and requires the collection of fees to completely offset all costs for the review, issuance, and maintenance of the permit program. The Act also requires states to establish a Small Business Assistance Program which aids small businesses in permit process, provides technical and compliance assistance, and provides information about pollution prevention methods.</p> <p>The Environmental Engineering Associate will assist senior staff to:</p> <ol style="list-style-type: none"> 1. develop revised regulations and procedures, recognizing small business concerns; 2. develop standardized permit applications; 3. identify and assist new permittees; 4. provide assistance and information to permit applicants; 5. review permit applications; 6. prepare draft permits; 7. develop the small business and pollution prevention programs; 8. train regional and district permit liaisons; 9. conduct inspections and compliance certifications; <p>and</p> <ol style="list-style-type: none"> 10. establish a quality control/quality assurance audit program. 	
Benefits		\$181.2		
Premium Pay		\$0.0		
Other	19% Administrative	\$122.2		
Total Personal Services		\$765.3		
Travel	\$ 4,150 / FTE	\$45.8		
Contractual *	\$ 6,000 / FTE	(\$16.0)		
Commodities	\$ 1,500 / FTE	\$16.5		
Equipment	\$ 7,000 / FTE	\$77.0		
Other				
Total Cost		\$888.6		
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts	1002			
G.F. Match	1003			
General Fund	1004			
I-A Receipts	1007			
CIP Receipts	1061			
Other	Program Receipts	\$888.6		
* EPA IPA position shifted from contractual to salary line item				

AGENCY Environmental Conservation

BRU Environmental Quality

COMPONENT Air Quality Management

FY 95

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Revised Date: 2/1/93

**Request For
New Position**

Position Title Environmental Engineer II		No. of Positions 3	Range / Step 20A	Barg Unit GG
Time Status Full Time	Staff Months 36	Location Various		Election District Various
TYPE OF EXPENDITURE		Amount	Justification	
Salary		\$144.2	<p>The new Clean Air Act of 1990 requires all states to establish a completely new operating permit program which takes into account small sources never permitted before, includes greater public participation in the permit process, and requires the collection of fees to completely offset all costs for the review, issuance, and maintenance of the permit program. The Act also requires states to establish a Small Business Assistance Program which aids small businesses in permit process, provides technical and compliance assistance, and provides information about pollution prevention methods.</p> <p>The Environmental Engineer II will:</p> <ol style="list-style-type: none"> 1. supervise and evaluate the activities of the permitting and compliance assurance staff; 2. develop and implement procedures to accomplish permitting and compliance assurance tasks; 3. review the technical and economic feasibility of methods to maintain the ambient air quality standards; 4. provide statewide technical support to other agencies and the private sector; 5. make presentations on the status of compliance efforts; 6. make recommendations for changes to department policy, procedures and regulations; 7. assure uniform implementation of State and Federal air quality regulations. 	
Benefits		\$54.3		
Premium Pay		\$0.0		
Other 19% Administrative		\$37.7		
Total Personal Services		\$236.2		
Travel \$ 4,000 / FTE		\$12.0		
Contractual \$ 6,000 / FTE		\$18.0		
Commodities \$ 1,500 / FTE		\$4.5		
Equipment \$ 7,000 / FTE		\$21.0		
Other				
Total Cost		\$291.7		
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts	1002			
G.F. Match	1003			
General Fund	1004			
I-A Receipts	1007			
CAF Receipts	1061			
Other Program Receipts		\$291.7		

AGENCY Environmental Conservation

BRU Environmental Quality

COMPONENT Air Quality Management

FY 95

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Revised Date: 2/1/93

**Request For
New Position**

Position Title Environmental Manager I (Small Business Advocate)		No. of Positions 1	Range / Step 20A	Barg. Unit Supervisory
Time Status Full Time	Staff Months 12	Location Anchorage		Election District Anchorage
TYPE OF EXPENDITURE		Amount	Justification The new Clean Air Act of 1990 requires all states to establish a completely new operating permit program which takes into account small sources never permitted before, includes greater public participation in the permit process, and requires the collection of fees to completely offset all costs for the review, issuance, and maintenance of the permit program. The Act also requires states to establish a Small Business Assistance Program which aids small businesses in permit process, provides technical and compliance assistance, and provides information about pollution prevention methods. The Environmental Manager I (Small Business Advocate) will: <ol style="list-style-type: none"> 1. develop revised regulations, recognizing small business concerns; 2. identify and assist small business permittees; 3. develop standardized permit applications; 4. prepare pollution prevention assistance programs; 5. provide assistance and information to permit applicants; 6. supervise the small business program; 7. train regional and district small business liaisons; and <ol style="list-style-type: none"> 8. report to the Small Business Compliance Advisory Panel 	
Salary		\$48.4		
Benefits		\$18.1		
Premium Pay		\$0.0		
Other	10% Administrative	\$12.6		
Total Personal Services		\$79.1		
Travel		\$40.3		
Contractual	\$ 6,000 / FTE	\$6.0		
Commodities	\$ 1,500 / FTE	\$1.5		
Equipment	\$ 7,000 / FTE	\$7.0		
Other	Compliance Advisory Panel Costs	\$25.4		
Total Cost		\$159.3		
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts	1002			
G.F. Match	1003			
General Fund	1004			
I-A Receipts	1007			
CIP Receipts	1051			
Other	Program Receipts	\$159.3		

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BRU Environmental Quality

COMPONENT Air Quality Management

Revised Date: 2/1/93

**Request For
New Position**

Position Title Attorney III		No. of Positions 1	Range / Step 22A	Barg. Unit Partially Exempt
Time Status Full Time	Staff Months 6	Location Juneau		Election District Juneau
TYPE OF EXPENDITURE		Amount	Justification The new Clean Air Act of 1990 requires all states to establish a completely new operating permit program which takes into account small sources never permitted before, includes greater public participation in the permit process, and requires the collection of fees to completely offset all costs for the review, issuance, and maintenance of the permit program. The Act also requires states to establish a Small Business Assistance Program which aids small businesses in permit process, provides technical and compliance assistance, and provides information about pollution prevention methods. The Attorney III will: 1. issue opinions to interpret and apply legislation, regulations or other legal instruments; 2. draft enabling statutory authority; 3. perform comprehensive studies of legal questions where development of all background material is required; 4. advise and assist state agencies in conducting hearings and conferences and in preparing findings of fact, conclusions of law and decisions; 5. provide assistance to program staff on statutory procedures; 6. review State Implementation Plan revisions prior to submission to USEPA, and 7. review regulations prior to submission to Department of Law.	
Salary		\$26.7		
Benefits		\$9.7		
Premium Pay		\$0.0		
Other	19% Administrative	\$6.9		
Total Personal Services		\$43.3		
Travel	\$ 4,000 / FTE	\$2.0		
Contractual	\$ 6,000 / FTE	\$3.0		
Commodities	\$ 1,500 / FTE	\$0.8		
Equipment	\$ 7,000 / FTE	\$3.5		
Other				
Total Cost		\$52.6		
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts	1002			
G. F. Match	1003			
General Fund	1004			
I-A Receipts	1007			
CIP Receipts	1061			
Other	Program Receipts	\$52.6		

AGENCY Environmental Conservation

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COMPONENT Air Quality Management

FY 95

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Revised Date: 2/1/93

**Request For
New Position**

Position Title Analyst Programmer III		No. of Positions 1	Range / Step 17A	Barg Unit GG
Time Status Full Time	Staff Months 11	Location Juneau		Election District Juneau
TYPE OF EXPENDITURE		Amount	Justification	
Salary		\$35.1	<p>The new Clean Air Act of 1990 requires all states to establish a completely new operating permit program which takes into account small sources never permitted before, includes greater public participation in the permit process, and requires the collection of fees to completely offset all costs for the review, issuance, and maintenance of the permit program. The Act also requires states to establish a Small Business Assistance Program which aids small businesses in permit process, provides technical and compliance assistance, and provides information about pollution prevention methods.</p> <p>The Analyst Programmer III will:</p> <ol style="list-style-type: none"> 1. develop and maintain the air permit database system; 2. develop and maintain a permit fee analysis and collection system; 3. perform the duties of the LAN administrator, including routine system backups; 4. write general instructions for using network programs; 5. guide and advise less-informed colleagues on an informal basis in the use of programming languages and data processing techniques; 6. research and respond to complaints regarding the permit application system; and 7. train users in the use and application of user friendly data processing systems. 	
Benefits		\$14.1		
Premium Pay		\$0.0		
Other	19% Administrative	\$9.3		
Total Personal Services		\$58.5		
Travel		\$0.0		
Contractual	\$ 6,000 / FTE	\$5.5		
Commodities	\$ 1,500 / FTE	\$1.4		
Equipment	\$ 7,000 / FTE	\$6.3		
Other				
Total Cost		\$71.7		
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts	1002			
G.F. Match	1003			
General Fund	1004			
I-A Receipts	1007			
CIP Receipts	1061			
Other	Program Receipts	\$71.7		

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BRU Environmental Quality

COMPONENT Air Quality Management

Revised Date: 2/1/93

**Request For
New Position**

Position Title Paralegal Assistant II		No. of Positions 1	Range / Step 16A	Barg Unit GG
Time Status Full Time	Staff Months 11	Location Juneau		Election District Juneau
TYPE OF EXPENDITURE		Amount	Justification The new Clean Air Act of 1990 requires all states to establish a completely new operating permit program which takes into account small sources never permitted before, includes greater public participation in the permit process, and requires the collection of fees to completely offset all costs for the review, issuance, and maintenance of the permit program. The Act also requires states to establish a Small Business Assistance Program which aids small businesses in permit process, provides technical and compliance assistance, and provides information about pollution prevention methods. The Paralegal Assistant II will: 1. assist in drafting enabling statutory authority, 2. assist in developing comprehensive and understandable regulations, 3. draft procedures for public participation in the permit process, 4. prepare draft regulations for pollution prevention; 5. provide assistance to program staff on regulatory procedures; 6. assist in developing the State Implementation Plan; 7. prepare program authority certifications to USEPA; 8. develop enhanced administrative review procedures; and 9. coordinate with established judicial review procedures.	
Salary		\$32.8		
Benefits		\$13.5		
Premium Pay		\$0.0		
Other	19% Administrative	\$9.8		
Total Personal Services		\$55.1		
Travel	\$ 4,000 / FTE	\$3.6		
Contractual	\$ 6,000 / FTE	\$5.5		
Commodities	\$ 1,500 / FTE	\$1.4		
Equipment	\$ 7,000 / FTE	\$6.3		
Other				
Total Cost		\$71.9		
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts	1002			
G.F. Match	1003			
General Fund	1004			
IA Receipts	1007			
CIP Receipts	1061			
Other	Program Receipts	\$71.9		

AGENCY Environmental Conservation

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BRU Environmental Quality

COMPONENT Air Quality Management

Revised Date: 2/1/93

**Request For
New Position**

Position Title Administrative Assistant II		No. of Positions 1	Range / Step 14A	Barg. Unit GG
Time Status Full Time	Staff Months 10	Location Juneau		Election District Juneau
TYPE OF EXPENDITURE		Amount	Justification The new Clean Air Act of 1990 requires all states to establish a completely new operating permit program which takes into account small sources never permitted before, includes greater public participation in the permit process, and requires the collection of fees to completely offset all costs for the review, issuance, and maintenance of the permit program. The Act also requires states to establish a Small Business Assistance Program which aids small businesses in permit process, provides technical and compliance assistance, and provides information about pollution prevention methods. The Administrative Assistant II will: 1. provide assistance and information to permit applicants; 2. issue standardized permit applications; 3. supervise procedures to track permit applications and fees; 4. implement reporting and auditing procedures; 5. supervise and audit permit documentation procedures; 6. assure uniform accounting procedures for permit fees; 7. coordinate program support functions; and 8. provide standardized managerial summaries of program activity.	
Salary		\$25.4		
Benefits		\$11.0		
Premium Pay		\$0.0		
Other	19% Administrative	\$6.9		
Total Personal Services		\$43.3		
Travel		\$0.0		
Contractual	\$ 6,000 / FTE	\$5.0		
Commodities	\$ 1,500 / FTE	\$1.3		
Equipment	\$ 7,000 / FTE	\$5.6		
Other				
Total Cost		\$55.2		
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts	1002			
G.F. Match	1003			
General Fund	1004			
I-A Receipts	1007			
CIP Receipts	1061			
Other	rogram Receipts	\$55.2		

AGENCY Environmental Conservation

FY 95

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BRU Environmental Quality

COMPONENT Air Quality Management

Revised Date: 2/1/93

**Request For
New Position**

Position Title Data Processing Clerk II		No. of Positions 1	Range / Step 09A	Barg. Unit GG
Time Status Full Time	Staff Months 11	Location Juneau		Election District Juneau
TYPE OF EXPENDITURE		Amount	Justification The new Clean Air Act of 1990 requires all states to establish a completely new operating permit program which takes into account small sources never permitted before, includes greater public participation in the permit process, and requires the collection of fees to completely offset all costs for the review, issuance, and maintenance of the permit program. The Act also requires states to establish a Small Business Assistance Program which aids small businesses in permit process, provides technical and compliance assistance, and provides information about pollution prevention methods. The Data Processing Clerk II will: 1. verify document entry sheets for correctness; 2. key enter data via computer terminal; 3. access and provide specified data information; 4. prepare diskettes for data entry; 5. prepare information packets for potential permittees; 6. prepare permit documentation and correspondence; 7. implement reporting and auditing procedures; and 8. develop standardized managerial summaries of fund activity.	
Salary		\$21.0		
Benefits		\$10.3		
Premium Pay		\$0.0		
Other	19% Administrative	\$5.9		
Total Personal Services		\$37.2		
Travel		\$0.0		
Contractual	\$ 6,000 / FTE	\$5.5		
Commodities	\$ 1,500 / FTE	\$1.4		
Equipment	\$ 7,000 / FTE	\$6.3		
Other				
Total Cost		\$50.4		
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts	1002			
G.F. Match	1003			
General Fund	1004			
I-A Receipts	1007			
CIP Receipts	1081			
Other	Program Receipts	\$50.4		

AGENCY Environmental Conservation

BRU Environmental Quality

COMPONENT Air Quality Management

FY 95

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Revised Date: 2/1/93

**Request For
New Position**

Position Title Clerk Typist III		No. of Positions 35	Range / Step 08A	Barg. Unit GG
Time Status Full Time*	Staff Months 41	Location Various		Election District Various
TYPE OF EXPENDITURE		Amount	Justification The new Clean Air Act of 1990 requires all states to establish a completely new operating permit program which takes into account small sources never permitted before, includes greater public participation in the permit process, and requires the collection of fees to completely offset all costs for the review, issuance, and maintenance of the permit program. The Act also requires states to establish a Small Business Assistance Program which aids small businesses in permit process, provides technical and compliance assistance, and provides information about pollution prevention methods. The Clerk Typist III will assist senior staff to: 1. prepare information packets for permittees; 2. provide assistance and information to permit applicants; 3. operate small businesses and pollution prevention hotlines; 4. issue and receive standardized permit applications; 5. develop procedures to track permit applications; 6. prepare permit documentation and correspondence; 7. develop correspondence tracking systems; and 8. develop and maintain application and permit files.	
Salary		\$74.8		
Benefits		\$37.8		
Premium Pay		\$0.0		
Other 19% Administrative		\$21.4		
Total Personal Services		\$134.0		
Travel		\$0.0		
Contractual \$ 6,000 / FTE		\$20.5		
Commodities \$ 1,500 / FTE		\$5.1		
Equipment \$ 7,000 / FTE		\$23.8		
Other				
Total Cost		\$183.4		
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts	1002			
G.F. Match	1003			
General Fund	1004			
I-A Receipts	1007			
CIP Receipts	1061			
Other Program Receipts		\$183.4		
* 3 Full Time 1 Half Time				

AGENCY Environmental Conservation

BRU Environmental Quality

COMPONENT Air Quality Management

FY 95

Page 9 of 9

Revised Date: 2/1/93

**Request For
New Position**

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. CSHB 167 (JUD)

Revision Date: April 15, 1993
Title: "An Act relating to air quality, and the prevention, abatement, and control of air pollution..."
Sponsor: Representative Hanley
Requestor: Governor's Office/OMB

Department Affected: Law
BRU: Legal Services
Component: Operations
COMPONENT SERIAL NO. 0093

EXPENDITURES/REVENUES:

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND &						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	xxxxx	xxxxx	xxxxx	xxxxx	xxxxx	xxxxx

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

REVENUE						
FUND SOURCE:						

FUNDING:

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

POSITIONS:

FULL-TIME	xxxxx	xxxxx	xxxxx	xxxxx	xxxxx	xxxxx
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Please see attached analysis.

Prepared by: Richard I. Peques, Director
Division: Administrative Services Division
Approved by Commissioner: Charles E. Cole, Attorney General
Agency: Department of Law

Phone: 465-3672
Date: April 15, 1993
Date: April 15, 1993

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FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. CSHB 167 (TUD)

ANALYSIS: (continued)

This bill amends AS 46 by adding a new chapter that would establish a comprehensive state regulatory program to prevent, abate, control, and identify air pollution that complies with the Clean Air Act. The bill makes numerous changes in state law, which are designed to allow the state to continue to have primary management of air quality in the state and to retain federal approval of the state's air quality control program. The bill would provide authority to the Department of Environmental Conservation to regulate emissions or contaminants not currently regulated in federal law, and the bill would provide specific authority to require a permit for a facility or source not regulated in federal law.

The Department of Law is concerned about provisions in Section 2 that set the standards for the adoption of emission control regulations, in proposed AS 46.14.010 and AS 46.14.015, which could cause a significant undetermined cost for our department. Specifically, the bill requires that before adopting air quality control regulations, the Department of Environmental Conservation shall demonstrate that the proposed standard or emission limitation is technologically and economically feasible. This requires that the Department of Environmental Conservation provide written findings that regulations proposed to be adopted are necessary to protect human health and the environment and that the proposed standard or emission limitation meets the feasibility requirement. Normally, state regulations are adopted based on the standard set forth in AS 44.62.030, which requires that a regulation be consistent with a statute and reasonably necessary to carry out the purposes of the statute.

Because of the bill's higher standard for the adoption of regulations, the department believes that considerable attorney time will be required to help the Department of Environmental Conservation develop the facts and findings that will be necessary each time a regulation is adopted. Furthermore, because regulations adopted under this higher standard can be site and emission specific to a particular permit, there is a high potential for litigation challenging regulations and permits adopted under the new standards. Consequently, the Department of Law's cost for defending air quality regulations adopted in accordance with these provisions could be equally high. At this time, we cannot accurately predict what these costs will be without knowing the specifics of regulations that may be adopted under the bill. However, there could be a significant additional cost for the Department of Law in the future.

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. WORK DRAFT - CSHB 167 (FIN)

Revision Date: April 19, 1993
Title: "An Act relating to air quality, and the prevention, abatement, and control of air pollution..."
Sponsor: Representative Hanley
Requestor: Governor's Office/OMB

Department Affected: Law
BRU: Legal Services
Component: Operations
COMPONENT SERIAL NO. 0093

EXPENDITURES/REVENUES:

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND &						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	xxxxx	xxxxx	xxxxx	xxxxx	xxxxx	xxxxx

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

REVENUE FUND SOURCE:						
----------------------	--	--	--	--	--	--

FUNDING:

1002 Federal						
1003 GF Match						
1004 GF						
1005 GF/Program						
1006 GF/MHTIA						
C THER						
TOTAL	xxxxx	xxxxx	xxxxx	xxxxx	xxxxx	xxxxx

POSITIONS:

FULL-TIME	xxxxx	xxxxx	xxxxx	xxxxx	xxxxx	xxxxx
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Please see attached analysis.

Prepared by: Richard I. Peques, Director Phone: 465-3672
Division: Administrative Services Division Date: April 19, 1993

Approved by Commissioner: Charles E. Cole, Attorney General
Agency: Department of Law Date: April 19, 1993

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FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. WORK DRAFT - CSHB 167 (FIN)

ANALYSIS: (continued)

The work draft version for CSHB 167 (FIN) lowers the regulations adoption standard that would have required that the Department of Environmental Conservation demonstrate that air quality emission limitations be economically feasible. The bill now requires that the DEC provide a written analysis of the economic feasibility of proposed emission standards. This version of the bill does require that the DEC prepare written findings that meteorological conditions or source characteristics reasonably require the adoption of an air quality or emission standard to protect human health and welfare or the environment. Written findings would also be required to show that the proposed standard or emission limitation is technologically feasible. Because the bill still sets a higher standard for the adoption of air quality or emission regulations than is required for the adoption of other state regulations, we still anticipate challenges to these regulations. However, the potential for challenges will be lessened because the requirement that the DEC demonstrate that proposed regulations are economically feasible has been dropped. Consequently, the bill will still have a fiscal impact (although probably reduced) for the Department of Law.

HOUSE COMMITTEE REPORT

4/7

(7)

Date Referred: February 19, 1993

FURTHER REFERRALS:

Finance

Date of Committee Action: 4-6-93

HB 167

The JUDICIARY Committee considered:
HOUSE BILL NO. 167

AIR QUALITY CONTROL PROGRAM

"An Act relating to air quality control and the prevention, abatement, and control of air pollution; relating to civil and criminal penalties, damages, and other remedies for air quality control violations; clarifying the definition of 'hazardous substance' to include releases and threatened releases to the atmosphere; amending the lien provisions relating to the oil and hazardous substance release response fund; relating to inspection and enforcement powers of the Department of Environmental Conservation; and providing for an effective date."

RECOMMENDATIONS:

be replaced with CS HB 167 (JUD) the same title a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____

APPROVES PREVIOUS: (Dept/Date) _____

fiscal impact DEC

fiscal note(s) _____

zero fiscal note _____

zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Pete Post</i> <small>Kott</small>	2	<i>Green</i>			✓
<i>Gail Phillips</i> <small>Phillips</small>	✓	<i>Davidson</i>			✓
<i>Janette James</i> <small>James</small>	✓	<i>Davidson</i>			✓
<i>Brian Porter</i> <small>Porter</small>	✓				

Brian Porter Porter
CHAIRMAN'S SIGNATURE

HOUSE COMMITTEE REPORT

(11)

Date Referred: April 7, 1993

FURTHER REFERRALS:

Date of Committee Action: 4/20/93

The FINANCE Committee considered:
HOUSE BILL NO. 167

HB 167

AIR QUALITY CONTROL PROGRAM

"An Act relating to air quality control and the prevention, abatement, and control of air pollution; relating to civil and criminal penalties, damages, and other remedies for air quality control violations; clarifying the definition of 'hazardous substance' to include releases and threatened releases to the atmosphere; amending the lien provisions relating to the oil and hazardous substance release response fund; relating to inspection and enforcement powers of the Department of Environmental Conservation; and providing for an effective date."

RECOMMENDATIONS:

be replaced with CSHB 167 (FIN) the same title a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal impact DE, LAW

fiscal note(s) _____

zero fiscal note _____

zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
Eileen P. Maclean					
Bruce Larson	X	Bruce Hoffman			
Terry Martin	X	Mike Navarre			
Scott Parnell	X	Kay Brown			
Mark Stanley	X				
James Grussendorf	X				
Richard Foster	X				

Eileen P. Maclean
CHAIRMAN'S SIGNATURE

HB

170

FISCAL NOTE

No. 1

Bill Version: HB 170

(H) Publish Date: 3/31/93

STATE OF ALASKA 1993 LEGISLATIVE SESSION

Revision Date: _____ Dept. Affected: Commerce & Economic Development
 Title: An Act extending the termination date BRU: Occupational Licensing
of the Board of Marine Pilots. Component: Operations
 Sponsor: Reps. Sanders and Grussendorf
 Requestor: House Labor & Commerce COMPONENT SERIAL NO. 1844

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	.01	.01	.01	.01	.01	.01
CAPITAL						
REVENUE FUND SOURCE:	.01	.01	.01	.01	.01	.01

FUNDING:

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	.01	.01	.01	.01	.01	.01

POSITIONS:

FULL-TIME	01	01	01	01	01	01
PART-TIME	01	01	01	01	01	01
TEMPORARY	01	01	01	01	01	01

Estimate of current year (FY 93) impact: \$ None

ANALYSIS: (Attach a separate page if necessary)

The bill extends the termination date of the Board of Marine Pilots to June 30, 1998. Funding for the Board of Marine Pilots is included in the FY 94 operating budget; therefore, new funds are not required.

Average Annual Costs: \$125.0

Average Annual Revenue: 172.7

Prepared by: Jennifer Strickler, Administrative Officer
 Division: Occupational Licensing

Phone: 465-2144

Date: 3/22/93

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

Date: 3-22-93

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COMMITTEE COPY

FISCAL NOTE

Page 1 of 1



Representative Jerry Sanders

District 19

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

S P O N S O R S T A T E M E N T

HOUSE BILL 170

The purpose of House Bill 170 is simply to extend the Board of Marine Pilots from when it is currently due to sunset, June 30, 1994, to June 30, 1998.

The Board of Marine Pilots was created under Chapter 62 of the Alaska Statutes for the purpose of protecting the state's interests in its life, property, and environment, and in the efficient flow of waterborne commerce. Membership consists of two licensed marine pilots, two vessel agents or managers, two public members, and the commissioner. The Board of Marine Pilots establishes qualifications of and the required training for pilots, provides for the examination of the pilots, and the issuance of original and renewal licenses to qualified persons.

We need to extend the Board of Marine Pilots, because of the competitive nature of shipping, the need to set tariffs, and the almost constant flow of state statutes and regulations which must be implemented in the interest of safety and commerce.

Therefore, I urge your support of House Bill 170.

Representative Jerry Sanders

District 19

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

S P O N S O R S T A T E M E N T

HOUSE BILL 170

The purpose of House Bill 170 is simply to extend the Board of Marine Pilots from when it is currently due to sunset, June 30, 1994, to June 30, 1998.

The Board of Marine Pilots was created under Chapter 62 of the Alaska Statutes for the purpose of protecting the state's interests in its life, property, and environment, and in the efficient flow of waterborne commerce. Membership consists of two licensed marine pilots, two vessel agents or managers, two public members, and the commissioner. The Board of Marine Pilots establishes qualifications of and the required training for pilots, provides for the examination of the pilots, and the issuance of original and renewal licenses to qualified persons.

We need to extend the Board of Marine Pilots, because of the competitive nature of shipping, the need to set tariffs, and the almost constant flow of state statutes and regulations which must be implemented in the interest of safety and commerce. Therefore, I urge your support of House Bill 170.

BOARD: MARINE PILOTS, BOARD OF

BOARD IDENTIFICATION NUMBER: 59

TITLE: Board of Marine Pilots

DEPT: Department of Commerce and Economic Development

AUTHORITY: AS 08.62.010

STATUS: June 30, 1994

REQUIREMENTS: LEGISLATIVE CONFIRMATION

PROHIBITIONS: A member who has served all or part of 2 successive terms may not be reappointed unless 4 years have elapsed.

TERM: 4 years

DESCRIPTION: 7 members - 6 appointed by Governor: 2 licensed pilots actively engaged in piloting vessels (subject to statute), 2 agents or managers of vessels, and 2 public members, plus the Commissioner or his designee of the Dept. of Commerce and Economic Development; not more than one pilot and one agent shall be from any one judicial district; must be Alaska residents.

SPECIAL FACTS: The Governor may designate the chair of the board. Board members serve at the pleasure of the Governor.
*(AS 08.62.020, AS 08.01.020)

FUNCTION: To prevent the loss of lives and property and to protect the marine environment of the state by offering jurisdiction over pilotage and licensing of marine pilots.

COMPENSATION: Standard travel/per diem.

MEETINGS: At least 3 regularly scheduled meetings each year; special meetings at the call of the chair or at the request of a majority of the members of the board.

*FOR FURTHER INFORMATION CONTACT: Marine Pilot Coordinator,
Division of Occupational Licensing, Dept. of Commerce and
Economic Development, P.O. Box 110806, Juneau, AK 99811-0806
PHONE: 465-2548

(Revised 12/15/92)

SENATE COMMITTEE REPORT

DATE: 4/22/93

FURTHER:

DATE TURNED INTO OFFICE: _____

JUDICIARY Committee considered HOUSE BILL NO. 170

"An Act extending the termination date of the Board of Marine Pilots."

and recommends:

- replace with _____ CS _____ (_____)
- or adopt previous _____ CS _____ (_____)
- attaches amendment(s)

- same title
- new title
- technical title change (HB only)

adopts _____ Letter of Intent

further referral to the _____

do pass

do not pass

no recommendation

individual recommendations

NEW FISCAL NOTES

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTES

Department	Date	Zero	Fiscal

Appropriation No Fiscal Note

DO PASS:

Robin L. Taylor
Suzanne K. Little 1.29.94
Rich Halford

OTHER RECOMMENDATIONS:

Chair: Signature and Recommendation

SENATE COMMITTEE REPORT

DATE: 4/16/93

FURTHER: JUDICIARY

DATE TURNED INTO OFFICE: 4/22/93

L&C Committee considered HOUSE BILL NO. 170

"An Act extending the termination date of the Board of Marine Pilots"

and a majority of the committee recommends do pass

[Signature]
and a majority of the committee recommends do pass

and recommends:

replace with _____ CS _____ ()

or adopt previous _____ CS _____ ()

attaches amendment(s)

same title
 new title
 technical title change (HB only)

adopts _____ Letter of Intent

further referral to the _____

do pass

do not pass

no recommendation

individual recommendations

PHF/ot

NEW FISCAL NOTES

Department	Date	Zero	Fiscal
DCED	3/3/93		

PREVIOUS FISCAL NOTES

Department	Date	Zero	Fiscal
DCED	3/22	<input checked="" type="checkbox"/>	

Appropriation No Fiscal Note

DO PASS:

Alvin Thain
J. E. Sals

OTHER RECOMMENDATIONS:

(2) Best King N.R.

Tui Kelly - Do Pass

Chair: Signature and Recommendation

HB

181

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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

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

MEMORANDUM

March 30, 1993

SUBJECT: Sectional Summary of HB 181 am. (Work Order No 8-LS-0714\A)

TO: Representative Brian Porter
Attn: Gayle Horetski

FROM: Jerry Luckhaupt *JL*
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 provides a finding.

Section 2 of the bill amends AS 22.07.020(d) to provide the state with the right to appeal to the court of appeals in criminal cases and as long as the appeal does not violate double jeopardy principles.

Section 3 of the bill amends AS 22.10.020(e) to provide the state with the right to appeal a criminal case from the district court to the superior court as long as the appeal does not offend double jeopardy principles.

Section 4 of the bill amends AS 22.10.020(f) to clarify the existing right of the state to appeal a sentence to the superior court that the state believes is too lenient.

Section 5 of the bill amends AS 22.15.240(b) to give the state the right to appeal in a criminal case from the district court to the superior court as long as the appeal does not offend double jeopardy principles.

Section 6 of the bill repeals Alaska Rule of Appellate Procedure 202(c) which restricts the state's right to appeal in criminal cases.

Section 7 of the bill provides an immediate effective date.

GPL:pl
93-257.plm

SECTIONAL ANALYSIS

Alaska State Legislature



House of Representatives House Judiciary Committee

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

SPONSOR STATEMENT

HB 181, An Act relating to the State's Right to Appeal in a Criminal Case

HB 181 would expand the circumstances under which the State could appeal from an adverse decision in a criminal case. State law would be amended to allow state prosecutors the same rights to appeal that federal prosecutors now have.

Our criminal justice system is not perfect. Like all human beings, judges sometimes make mistakes. If an erroneous decision is made in favor of the state, the defendant may appeal and seek reversal of that decision. That is entirely appropriate; basic justice requires no less. But if a judge makes a mistake in favor of a defendant, under present law the state may not be able to obtain appellate review of the erroneous decision. The state could file a "petition for review" with the Court of Appeals under Appellate Rule 402, but certain conditions must be met, and the appellate court may deny discretionary review.

Under the Fifth Amendment to the United States Constitution and Article I, Section 9 of the Constitution of the State of Alaska, a defendant may not "be put in jeopardy twice for the same offense". Nothing in HB 181 affects that constitutional guarantee. But neither the state nor the federal constitution requires that erroneous legal decisions stand uncorrected. HB 181 changes present state law to allow the state to appeal in circumstances where an error has been made, so long as the appeal would not violate the constitutional prohibitions against double jeopardy.

A handwritten signature in cursive script that reads "Brian D. Porter".

Representative Brian Porter
Chairman, House Judiciary Committee

SPONSOR STATEMENT

APPELLATE COMMITTEE REPORT

DATE: 3/29/93

FURTHER:

DATE TURNED INTO OFFICE: 21 April 1993

JUDICIARY Committee considered HOUSE BILL NO. 181 am

"An Act relating to the state's right to appeal in criminal cases; relating to sentence appeals; amending Rule 202 of the Alaska Rules of Appellate Procedure; and providing for an effective date."

and recommends:

- replace with _____ CS _____ ()
- or adopt previous _____ CS _____ ()
- attaches amendment(s)

- same title
- new title
- technical title change (HB only)

adopts _____ Letter of Intent

further referral to the _____

do pass

do not pass

no recommendation

individual recommendations

NEW FISCAL NOTES

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTES

Department	Date	Zero	Fiscal
LAW	3-5-93	✓	
ADMINISTRATION	3-4-93	✓	
ADMINISTRATION	3-4-93	✓	

Appropriation No Fiscal Note

DO PASS:

Diana G. Wiley

Rich Halford

OTHER RECOMMENDATIONS:

Suzanne Little No Rec

Robin H. Taylor
 Chair: Signature and Recommendation

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION

WALTER J. HICKEL, GOVERNOR

REPLY TO:

CRIMINAL DIVISION CENTRAL OFFICE
P.O. BOX KC
JUNEAU, ALASKA 99811-0310
PHONE: (907) 485-3428

OFFICE OF SPECIAL PROSECUTIONS
AND APPEALS
1031 WEST 4TH AVENUE, SUITE 318
ANCHORAGE, ALASKA 99501-5893
PHONE: (907) 279-7424

March 5, 1993

Representative Brian Porter
Chairman, House Judiciary Committee
House of Representatives
State Capitol
Juneau, AK 99801-1182

Ref: House Bill No. 181

Dear Representative Porter:

This letter is in response to Gayle Horetski's request for information regarding how House Bill No. 181, which broadens the state's right to appeal, would affect the Criminal Division of the Department of Law. The bill would eliminate the need to file petitions for discretionary review of adverse dispositive rulings by trial courts, thereby reducing the workload of the appellate office of the Department of Law's Criminal Division.

The Office of Special Prosecutions and Appeals (OSPA) represents the State of Alaska in all felony merit appeals, in all criminal cases in the Alaska supreme court, and in all federal actions challenging state convictions. Under existing law, the state's right to appeal in most cases is limited by the court of appeals' discretion. OSPA must file petitions for review, seeking discretionary appellate review of adverse dispositive rulings by the trial court. For example, the state cannot currently appeal a trial court's dismissal of charges based upon an alleged violation of the defendant's right to a speedy trial; it must file a petition for review. Though in practice the court of appeals nearly always decides to grant the state's petitions in these cases, OSPA must nevertheless devote a significant amount of time to draft the petition.

HB 181 - 2
3/5/93

Under existing law, the state has thirty days from the certification of the record or the filing of the appellant's brief to file its brief, but only ten days from the adverse ruling to file a petition for review. This ten-day time frame for filing a petition for review puts a strain on OSPA. Because the appellate attorney is new to the case, he must review the trial court pleadings and listen to cassette tapes of all relevant hearings. The attorney must then research the law because the petition must contain a "[d]iscussion of the reasons why the decision below is alleged to be erroneous." Appellate Rule 403(b)(1)(d). This is often as time consuming as filing a brief on direct appeal, and usually takes several days. If the petition is granted, the case proceeds as if an appeal had been filed: the parties designate a record, the clerk prepares the record, and the parties file briefs.

Under House Bill No. 181, the state would be permitted to appeal adverse decisions as a matter of right. A state attorney could initiate an appeal by filing a notice of appeal, a statement of points on appeal, and a designation of record. Preparation of these documents ordinarily would occupy at most a few hours. Once the record is certified, the state would have thirty days to file a brief.

At the current time, OSPA has seven appellate attorneys, two trial attorneys and a supervising attorney. Thirty-seven briefs and other responsive pleadings are due within the next thirty days. Two of the cases in the office (involving three defendants) have extremely long trials, requiring the assigned attorneys to read between 3000 and 5400 pages of transcripts and several hundred pages of pleadings filed in the trial court. In addition, there are five arguments scheduled before the state and federal courts in the next five weeks. It would be difficult today for an appellate attorney to drop everything and devote the necessary time to filing a petition for review. An appellate attorney can more easily juggle an appeal into his caseload than he can a petition for review.

HB 181 - 3
3/5/93

I strongly urge you to support the passage of the bill for it will greatly assist OSPA in providing effective representation in all appellate proceedings.

Yours truly,

CHARLES E. COLE
ATTORNEY GENERAL

By: *Cynthia M. Hora*
Cynthia M. Hora
Assistant Attorney General

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. HB 181

Revision Date: March 5, 1993
Title: "An Act relating to the state's right to appeal in criminal cases..."
Sponsor: House Judiciary Committee
Requestor: House Judiciary Committee

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

EXPENDITURES/REVENUES:

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

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

REVENUE FUND SOURCE:						
----------------------	--	--	--	--	--	--

FUNDING:

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

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

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

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

Richard I. Peques

Prepared by: Richard I. Peques, Director
Division: Administrative Services Division

Phone: 465-3672
Date: March 5, 1993

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

Date: March 5, 1993

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FISCAL NOTES:
ALL ZERO

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. HB 181

ANALYSIS (Continued):

This bill amends AS 22.07, AS 22.10, AS 22.15, and repeals Rule 202(c), Alaska Rules of Appellate Procedure, to provide that the state's right appeal in criminal cases is limited by the prohibition against double jeopardy contained in the United States Constitution and the Alaska Constitution. Existing law limits this right except to test the sufficiency of the indictment or information or to appeal a sentence on the ground it is too lenient. The effect of granting broadened appeals rights to the state will be to permit it to test evidentiary rulings that are adverse to the state's case at the outset. Currently, the state's only opportunity to test evidentiary rulings is when a defendant appeals a ruling adverse to the defense and the state gets to respond.

Although there will be some incremental cost when the state elects to affirmatively bring an evidentiary appeal, it will certainly be more efficient than the current system where we must wait for a defense appeal before evidence issues are finally resolved.

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

Bill No. HB 181

Revision Date: _____ Department Affected: Alaska Court System
 Title: An Act relating to the state's right to BRU: Trial Courts
appeal in criminal cases Components: _____
 Sponsor: House Judiciary
 Requestor: House Judiciary COMPONENT SERIAL NO. 768

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

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

REVENUE						
FUND SOURCE:						

FUNDING: (Thousands of Dollars)

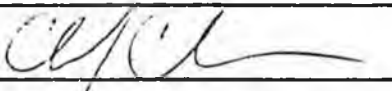
1002 FEDERAL RECEIPTS						
1003 GF MATCH						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/PROGRAM RECEIPTS						
1006 GF/MHTIA						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY 93) impact: None

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

Prepared by: C. S. Christensen III, Staff Counsel  Phone: 264-8228
 Division: Alaska Court System Date: 03/15/93

Approved by: Arthur H. Snowden, II, Administrative Director  Date: 03/15/93
 Agency: Alaska Court System

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

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. HB 181

Revision Date: _____ Dept. Affected: Administration
 Title: "An Act relating to the state's right to appeal in criminal cases . . ." BRU: Office of Public Advocacy
 Component: Office of Public Advocacy
 Sponsor: House Judiciary Committee
 Requestor: House Judiciary COMPONENT SERIAL NO. 43

Expenditures/Revenues: (Thousands of Dollars)

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

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:	0	0	0	0	0	0
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FUNDING:

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

POSITIONS

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

Estimate of current year (FY93) impact: \$ none

ANALYSIS: (attach a separate page if necessary.)

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

Approved by Commissioner: Nancy Bear Usura Date: 3/4/93
 Agency: Department of Administration

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FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO HB 181

Revision Date: _____ Dept. Affected: Administration
 Title: "An Act relating to the State's right to appeal in criminal cases . . ." BRJ: Public Defender Agency
 Component: Public Defender Agency
 Sponsor: House Judiciary
 Requestor: House Judiciary COMPONENT SERIAL NO. 1631

Expenditures/Revenues: (Thousands of Dollars)

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

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:	0	0	0	0	0	0
-----------------------------	---	---	---	---	---	---

FUNDING:

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

POSITIONS

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

Estimate of current year (FY93) impact: \$ None

ANALYSIS: (attach a separate page if necessary.)

Prepared By: John Salemi, Public Defender Phone: 279-7541
 Division: Public Defender Agency Date: _____

Approved by Commissioner: Nancy Bear Usura *NBCU* Date: 3/4/93
 Agency: Department of Administration

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HB

187

FISCAL NOTE

No. 6
 Bill Version: CSHB 187 (FIN)
 (H) Publish Date: 4/26/93

STATE OF ALASKA
 1993 LEGISLATIVE SESSION

Revision Date: _____ Department Affected: Alaska Court System
 Title: An Act authorizing interception of BRU: Trial Courts
private communications... Components: _____
 Sponsor: House Rules at request of the Governor
 Requestor: _____ COMPONENT, SERIAL NO. 768

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES						
TRAVEL	2.5					
CONTRACTUAL						
SUPPLIES	2.5					
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
TOTAL OPERATING	5.0	0.0	0.0	0.0	0.0	0.0

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

REVENUE						
FUND SOURCE:						

FUNDING: (Thousands of Dollars)

1002 FEDERAL RECEIPTS						
1003 GF MATCH						
1004 GF	5.0	0.0	0.0	0.0	0.0	0.0
1005 GF/PROGRAM RECEIPTS						
1006 GF/MHTIA						
OTHER						
TOTAL	5.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY 93) impact: None

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

Prepared by: C. S. Christensen III, Staff Counsel *CS* Phone: 264-8228
 Division: Alaska Court System Date: 04/22/93

Approved by: Arthur H. Snowden, II, Administrative Director *AS* *CS* Date: 04/22/93
 Agency: Alaska Court System

COMMITTEE COPY Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Alaska Court System
Fiscal Analysis
HB 187

Travel (one-time cost)

This legislation will require the expedited development of a series of up to fifteen new forms for use in the superior courts. The court system will convene a special meeting of the standing Forms Committee to develop procedures and forms required by this legislation. It is anticipated that the Forms Committee will need one meeting of three days to complete the tasks. The travel cost of this fiscal note is comprised of transportation and per diem costs for Forms Committee members stationed outside of Anchorage.

\$2,500

Commodities (one-time cost)

Printing forms and instructional materials and distribution to superior courts

2,500

Total estimated cost

\$5,000

FISCAL NOTE

No. 5

Bill Version: HB 187

(H) Publish Date: 4/2/93

STATE OF ALASKA
1993 LEGISLATIVE SESSION

Revision _____ Dept. Affected: Public Safety
 Title: "An act authorizing the interception of private communications." BRU: Alaska State Troopers
 Sponsor: House Rules Component: Criminal Investigations Bureau
 Requestor: House Labor & Commerce COMPONENT SERIAL NO. 830

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

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	75.6	75.6	75.6	75.6	75.6	75.6
TRAVEL	4.2	4.2	4.2	4.2	4.2	4.2
CONTRACTUAL	12.0	12.0	12.0	12.0	12.0	12.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	20.2	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	112.0	91.8	91.8	91.8	91.8	91.8

CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
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REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	112.0	91.8	91.8	91.8	91.8	91.8
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	112.0	91.8	91.8	91.8	91.8	91.8

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY 93) impact: \$ _____

ANALYSIS: (Attach a separate page if necessary.)

See attached analysis.

Prepared By: Francis C. Allan Phone: 269-5691
 Division: Alaska State Troopers Date: 3/17/93
 Approved by Commissioner: *[Signature]* Date: 3/25/93
 Agency: Richard J. Burton, Dept. of Public Safety

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The court authorized interception of private communications by law enforcement officers to investigate serious crimes such as murder, kidnapping, and specified drug offenses is an effective tool for law enforcement, however, it has proven to be extremely labor intensive. The following impact is based primarily upon discussions with federal and state law enforcement officials that have utilized wiretap provisions in their jurisdictions.

It is anticipated that warrants will be obtained to authorize monitoring for periods of approximately 10 to 14 days even though warrants could be obtained to extend the monitoring for longer periods. This monitoring can be complicated by the fact that some conversations monitored may involve non-English speaking participants which will necessitate the need for bi-lingual interpreters and transcribers to augment the investigators on a 24-hour a day basis. If monitoring for example, involves more than one phone line or location, then additional monitoring teams will have to be established, further increasing the costs for personnel, professional and contractual services.

The following is a summary of the estimated costs based upon three wiretaps being utilized each year. This estimate only includes those additional costs that may be incurred to train, equip, implement, monitor, record and document the wiretap in accordance with statutory requirements that may be incurred during a criminal investigation.

Personal Services

Additional overtime for existing personnel:

A) Investigators

(Calculated at Range 77 Step K):

24 hrs x \$54 per x 15 days x 3 cases = \$58.3

B) Clerical support

(Calculated at Range 8 Step D):

16 hrs X \$24 per x 15 days x 3 cases = 17.3

Personal Services Subtotal \$75.6

Travel

Training courses covering wiretapping
equipment, laws & regulations - 6 x
Investigators (2 per shift / 6 per day),
7 days, travel & per diem 4.2

Contractual

A) Utilities

Call Line Identification

\$181 x 3 cases = \$543 .5

Pen Register / Monitoring Unit

\$224 x 3 cases = \$672 .7

B) Translator / interpreter

24 hrs x \$30 per x 15 days x 1 case = 10.8

Contractual Subtotal 12.0

Equipment

Monitoring unit x 2 = 20.2

Total \$112.0

FISCAL NOTE

No. 4
 Bill Version: HB 187
 (H) Publish Date: 3/1/93

STATE OF ALASKA
 1993 LEGISLATIVE SESSION

Revision Date: February 16, 1993
 Title: "...authorizing the interception of private communications related...to criminal offenses..."
 Sponsor: Rules Committee/Reg. of the Governor
 Requestor: Governor's Office/OMB

Department Affected: Department of Law
 BRU: Prosecution
 Component: All

COMPONENT SERIAL NO. 0085 through 0090

EXPENDITURES/REVENUES:

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

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

REVENUE FUND SOURCE:						
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FUNDING:

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

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

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

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

Richard I. Peques

Prepared by: Richard I. Peques, Director
 Division: Administrative Services Division

Phone: 465-3672
 Date: February 16, 1993

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

Date: February 16, 1993

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FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. 187
NO. 4
PS 2/2

ANALYSIS (Continued):

This bill would authorize the interception of private communications by state law enforcement officers to investigate the serious crimes of murder, kidnapping, and specified drug offenses. Federal law allows states to enact wiretapping laws only if, like this bill, they are at least as restrictive and protective of private communications as federal law.

These protections include allowing only the attorney general or a person designated in writing or by law to act for the attorney general to apply to the court for an order to authorize the wiretapping; limiting the authorization to investigations for only the very serious crimes of murder, kidnapping, or unclassified felony drug offenses; limiting the time period for which the wiretap is authorized; requiring a showing to the court that normal investigative procedures have failed to succeed or are too dangerous to employ; requiring that there be probable cause to believe that the wiretap will secure the evidence being sought; and requiring stringent records keeping and security procedures of law enforcement agencies in the conduct of a wiretapping operation.

Additionally, the bill requires that careful reports about each interception made during the year must be prepared by the attorney general and filed with the federal government. All tapes or other recordings must be transferred to the court, where they are to be kept under seal. Furthermore, notice of the interception must be given by the court in almost all circumstances following the interception. Any evidence derived from an unlawful interception will be suppressed. Finally, the bill increases the criminal penalty for eavesdropping or unauthorized interception, publication, or use of private communications to a class A misdemeanor. These substantial safeguards have been carefully tailored to insure that state constitutional protections, such as Alaska's right of privacy, have been met.

Under the bill, the Department of Law's involvement will include applying for court orders to permit the interception of private communications and the preparation and filing the annual report about interceptions. We do not anticipate that there will be a large number of interceptions, because of the limited circumstance under which they may or could be undertaken. Therefore, we do not believe that the bill will have a fiscal impact for the Department of Law.

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

No. 2
Bill Version: HB 187
(H) Publish Date: 3/1/93

Revision Date: _____
Title: "An Act relating to wiretapping for criminal investigations or murder, kidnapping and serious drug offenses . . ."
Sponsor: Rules Committee
Requestor: Governor

Department Affected: Administration
BRU: Public Defender Agency
Component: Public Defender Agency
COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES:

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

CAPITAL
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REVENUE FUND SOURCE:
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FUNDING:

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 (FY93) impact: _____

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

Prepared by: John Salemi, Public Defender
Division: Public Defender Agency

Phone: 279-7541
Date: _____

Approved by Commissioner: Nancy Bear Usura
Agency: Administration

Date: 2/10/93

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FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. 187

NO. 2

pg 2 of 2

ANALYSIS: (continued)

This wiretapping bill is limited to certain types of offenses (murder, kidnapping and serious drug offenses). While it is unlikely that authorized wiretapping would be regularly used in kidnapping or murder cases, the pool of serious drug offenses presents a separate matter. As public counsel in criminal cases the Public Defender Agency would be required to review all applications for wiretapping authorization, would necessarily prepare challenges to said applications, and would ultimately defend the cases. In the context of defense preparation significant time might have to be spent reviewing the contents of the "wired" conversations. There is no question that the passage of this bill will increase the work of the Public Defender Agency. To what extent there is an increase would be highly speculative.

FISCAL NOTE

No. 1
 Bill Version: HB 187
 (H) Publish Date: 3/1/93

STATE OF ALASKA
 1993 LEGISLATIVE SESSION

Revision Date: _____
 Title: An Act authorizing the interception of private communications. . .
 Sponsor: Governor
 Requestor: Rules Committee

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

EXPENDITURES/REVENUES:

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

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:	0	0	0	0	0	0
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FUNDING:

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

POSITIONS:

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

Estimate of current year (FY93) impact: None

ANALYSIS: (Attach a separate page if necessary.)

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

Phone: 274-1684
 Date: _____

Approved by Commissioner: Nancy Bear Usera
 Agency: Administration

Date: 2/10/93

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HB

195

Youth court could help

We're intrigued by an idea that could help more of Alaska's young people decide to go straight instead of falling into a life of crime.

Already in place in Anchorage, youth courts in which first-time young offenders are tried and judged by other teens could be set up in other Alaska communities under legislation under consideration by Rep. Joe Sitton, D-Fairbanks.

Sitton's proposal, which has not been introduced yet, would provide \$5,000 state grants to communities that want to set up a youth court to handle first-time misdemeanor crimes committed by young people ages 12-18.

The Anchorage Youth Court has been operating since 1989. The American Bar Association recently gave the program its top awards for outstanding partnership programs and outstanding public education programs.

Under the program, volunteer attorneys train teen prosecutors, defense attorneys, judges, clerks, bailiffs and jurors in grades seven through 12. They represent and judge their peers in actual criminal cases of first-time offenders referred from Anchorage's juvenile court intake.

Youths prosecuted in these courts have a significantly lower rate of recidivism than defendants who participate in the traditional juvenile justice system, according to the bar association.

Youths serving on the court gain an awareness of their legal responsibilities to society in a way unmatched in an classroom setting.

If youth courts could be set up in other Alaska communities, Rep. Sitton believes law-breaking would lose some of the glamor it now has among some groups of young people who apply peer pressure in negative ways. Students would be more likely to take their actions seriously if they are being judged in a court of their peers, he believes.

We think the idea has merit, and encourage lawmakers to give it serious consideration.

2/20/89 J. J. J.

JOURNAL of LAW

Section B

1993

Section B to THE ALASKA JOURNAL OF COMMERCE

Justice zebue

forced the court to expensive and time-consuming change of venue. She said.

er editor Desiree they wrote the story original. She said they for routine news covered by the public's know, and her readers expect more of the

say the town's judiciary and newspaper impasse that could die in the future. The conflict started when a Kotzebue store was charged with six sexual assault of the charges reflected acts of sexual assault of 15-year-olds, two allegations of sexual assault of 15 and two allegations.

Continued on Page 4B

Port King Inn

ing crime is to in-sentence. But the prisons are not a punishment. In sentencing, if increases recidi-



Photo by Naomi W. Klouda

Attorney Donna Willard, who will accept the award in Boston for the Youth Court, celebrates with Jesse Kehl, Youth Court Chief Justice; Mina Kumar, Youth Court Mediator; Bryan Clark, Youth Bar President; and attorney volunteers Blythe Marston and Jon Ealy.

Anchorage Youth Court wins national ABA award

By Naomi Warren Klouda
For the Journal of Commerce

Anchorage Youth Court has won the 1993 American Bar Association/Information America Public Education Project award for working in partnership with the justice system to produce a program involving teen lawyers, judges and defendants.

Donna Willard, local attorney and ABA board governor for the district which

includes Alaska, will accept the award on behalf of the teen winners Feb. 5 in Boston at the National Conference of Bar Presidents luncheon. Some 188 teens, ranging from 7th to 12th graders are recipients of the award, which came with a \$5,000 cash grant as well as the Outstanding Partnership Award.

After finishing a 10-week law class, the students worked in actual courtroom settings with juvenile first-offenders arrested for misdemeanor and some felony

crimes. Youth clients were represented and prosecuted by teenage lawyers - and sentenced by teenage judges. No adults are allowed to speak in the court, though teen attorneys can consult adult counsel present in the courtroom. Teen jurors were called in to decide some cases.

Sharon Leon, executive director of the four-year-old Youth Court, says the Anchorage program was

law firm of

**HOW & SHARROCK
AL CORPORATION**

announce that

Daughner, Esq.

member of the firm,

Ball, Esq.

White & McAuliffe,
member of the firm.

500
99501

4633
536

...the loan is paid back). This theory was used in many of our eastern states.

b. *Lien Theory*: Under the "lien" theory, the owner/mortgagor keeps both legal title and possession, and only gives the mortgagee a lien on the land which can be foreclosed upon in the event of a default under the loan. The lien theory is used in most western states, and is used today in Alaska.

the mortgagor may have built up a substantial investment in the pay-off of the loan. The law changed in order to protect those who had paid a sizeable amount of the installment debt before the default occurred, usually by giving the mortgagor either a "right to cure" the default, or a "right to redeem" the property.

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Youth Court effective deterrent for first-time offenders

Continued from Page 1B

judged as unique in that it is the only one which gives teens "such a tremendous responsibility."

"It's also the most complete program — we even have a Youth Court Bar Association," Leon said.

Leon directs the program and is aided by a volunteer administrative board composed of attorneys, judges, police officers, businessmen, mediators and juvenile intake officers.

Peer advising and sentencing techniques seem to be working, Leon said. Out of a total of 69 cases involving first-time offenders, only four were arrested for a second time.

"Juvenile intake officers are pretty happy about that because the recidivism rate is usually 50 percent. All

the offenders are ordered to write an essay as part of their sentence reflecting on what they had done," Leon said.

"All of them said they never want to see the inside of a courthouse again."

Some of them do, however. But the

"All of them said they never want to see the inside of a courthouse again."

next time they appear in court it is as youth court judges, lawyers, prosecutors or jurors as other offenders are brought into Youth Court.

On Jan. 25, 1993, another 119 young people were inducted into Anchorage Youth Court, joining the 188 already on the roster.

THE ALASKA JOURNAL OF COMMERCE

We Mean Business

ANCHORAGE YOUTH COURT:
TRIAL BY PEERS

I. PROJECT DESCRIPTION

The Anchorage Youth Court ("AYC") is a court in which the roles of attorneys, judges, bailiffs, clerks and jurors are filled by young people between the ages of twelve and eighteen. Defendant youths are afforded a chance via trial by their peers to resolve legal problems without receiving a criminal record. Simultaneously, the community benefits by receiving valuable work service as partial redress for the wrongs committed. Attorneys also have the opportunity to provide a service to their community. Most importantly, however, young people and adults work together through youth court to resolve conflict.

II. PLANNING

A. Needs Assessment

Often the juvenile justice system does not work for first time offenders. Two problems arise. First, due to the lack of resources, first time offenders are rarely punished. Juveniles become aware that the justice system will not follow through if an offense is committed. The result is a high recidivism rate. By the time the justice system takes action, many youthful offenders have established a lawbreaking behavior pattern.

Second, many juvenile defendants who maintain they are innocent cannot afford to hire legal counsel. They thus feel compelled to admit guilt to crimes they have not committed. They pay restitution as a cheaper alternative to hiring a lawyer.

A youth court can provide a solution to both problems. Attorneys, parents, school officials and students can join together to implement a court that will promptly respond to juvenile legal problems.

B. Determining Specific Objectives and Program Design

1. Decisions to be Made
 - a. Options - Objectives

The objectives of a youth court are four fold. First, a youth court provides a municipal wide alternative court where teenagers can be represented, prosecuted, and tried by a jury of their peers without incurring a record. Second, youth gain an awareness and respect for their legal responsibilities to society and are afforded the opportunity to play a positive role in the administration of justice. Third, a youth court reduces the volume of cases burdening a judicial system. Finally, attorneys are able to provide a service to the public by instructing youth about substantive and procedural criminal law.

- b. Options - Program Design

The AYC allows young people complete judicial authority. Young people are attorneys, judges, bailiffs, clerks, and jurors. Trials take place in the state courthouse. Defendants are referred by a referring authority, which for AYC is Alaska's Juvenile Intake Office. Once a defendant is referred to AYC, the defendant is arraigned. If he pleads guilty, he is tried by a jury or panel of judges. AYC confirms with the community service placement office that each defendant who is sentenced serves his sentence. If the defendant refuses to comply with the AYC process, AYC can return the case to Juvenile Intake for disposition. At completion of the case, the AYC closes the file and returns it to the referring authority. A criminal record is not accrued upon a finding of guilt.

2. Decision Making Process

AYC began with an ad hoc group of concerned attorneys, students, teachers, juvenile authorities and

**ANCHORAGE
YOUTH COURT
OVERVIEW**

B. Revenue Availability

The first source of information about funding should be the local bar association. There are several funds set up for the specific purpose of starting and operating law related education programs.

The second source of information is the local library. Most libraries have a resource section which provides information about private foundations that donate money to legal programs. Some cities also have foundation centers. These centers are clearing houses for information about corporate and private foundations.

Another form of funding is self-generating. Fund raisers, seminars, and requests for donations can generate funds. An especially good private source of funds is private law firms. It is possible to run a youth court entirely on donations. The only items needed for a youth court are time, office space and operating expenses. These can all be donated. Private law firms in Anchorage have donated hundreds of hours of time to AYC. They have also donated office space and copying. Further, The Alaska State Court System has donated the use of their courtrooms for AYC hearings and trials. Similarly, the local library has donated the use of its theater for meetings.

Even though personnel and funding are the usual stumbling blocks associated with establishing and operating a youth court, the essential element is dedicated individuals who are committed to a youth court. Although a great deal of funding is not necessary for starting a program, individuals who are dedicated to starting a youth court are essential.

C. Evaluation Design

It is important to evaluate the youth court periodically. Regular evaluations allow for the youth court to be revised as needed. A timetable should be set up for evaluation. Items to be evaluated include: the status of pending cases, available personnel and available resources.

Statistics should also be kept throughout the tenure of the court. Some statistics that should be kept are: number of inquiries about the youth court, number of students who register to take the youth court training course, number of students who pass the youth court bar examination, number of cases referred to the youth court, the number of cases returned to the referring authority, the number of cases in which defendants have been found not guilty or guilty, and the sentences served by defendants found guilty.

Finally, the year's goals should be reviewed and compared with the status of the program. If any disparity exists, the youth court goals and methods should be re-examined for possible change.

III. IMPLEMENTATION

A. Timetable

To establish a youth court, a timetable of at least six months is advisable before trials commence. Six months allows sufficient time to organize volunteers and arrange for courtrooms, community support, community work service, and cooperation of schools, court system, attorneys, and police officers. The following provides a loose outline of the chronology of events:

1. Formalize the proposed youth court by preparing a youth court constitution. This constitution should outline the responsibilities of each organization and the procedure and roles of student members. The constitution should be reviewed and adopted by students.
2. Formalize the proposed youth court by preparing a youth court constitution. This constitution should outline the responsibilities of each organization and the procedure and roles of student members. The constitution should be reviewed and adopted by students.
3. Establish a curriculum and bar exam for new members of the youth court bar association.
4. Begin to enroll students in the bar review course.
5. When at least ten to twenty students have enrolled, set the date classes are to begin.

The AYC uses two types of publicity; one is intended to gain the participation of AYC students and the other is intended to gain community support for AYC. AYC has waged a successful public relations campaign on both fronts. Stories have appeared in the "Anchorage Daily News", the "Anchorage Times", Alaska Bar Association publications, and the "ABA/MLD Affiliate". The AYC Coordinator has appeared before numerous public and private organizations, corporations and schools. The Anchorage community is extremely supportive and interested in the program. Speaking opportunities are easily available. A youth court should ensure that its coordinator is willing to submit press releases and speak publicly as opportunities arise.

The student members should also participate in the campaign. Each fall AYC students ensure that other students in the Anchorage community are aware of the AYC program by writing newspaper articles notifying students of the AYC bar review registration. Students deliver similar notices to local radio stations, T.V. stations and schools.

E. Day to Day Operations

The AYC organization operates as follows: After a preliminary investigation, a referring authority, usually juvenile intake, refers the case to AYC. The referring authority meets with the defendant and his or her custodial parent or guardian to explain the purposes of AYC, and its procedures including sentencing. After the opportunity to confer with counsel, the defendant is given the choice of proceeding to AYC or being handled through regular juvenile intake channels which may include a formal court hearing and a criminal record. If the defendant and his or her parent or guardian agrees to proceed with AYC, they will sign a voluntary agreement with the understanding that their case will be held open for 90 days to complete the youth court process. This voluntary agreement states that failure to comply with AYC and other established conditions, once agreed to, may result in having the case handled in a formal court proceeding.

The AYC Coordinator receives a copy of the defendant's signed voluntary agreement to participate in AYC, available arrest reports and other related documents. If the case is not accepted by AYC, the case is returned to the referring authority together with all documents relating to the case. If the case is accepted, proceedings in AYC are conducted in substantial conformity with the rules and statutes governing normal adult criminal proceedings. The rules and statutes are applied and modified as necessary to promote the prompt and just resolution of cases and legal education. At all times, AYC proceedings are conducted to ensure confidentiality.

The chief judge or his appointee presides over all courtroom proceedings of the AYC with the assistance of two associate judges. If the defendant pleads guilty or is found guilty at trial, the judges determine an appropriate sentence at a sentencing hearing to be held within five days of the verdict or plea. Sentencing is in accordance with the informal sentencing guidelines established by the referring authority.

If the defendant chooses to exercise his right to appeal, he must submit a written statement including reasons for appeal to the chief judge within three days following the sentencing hearing. If the defendant does not submit a written appeal within this time frame, his right to appeal is waived. Upon receipt of the appeal, the chief judge appoints a three member appeals panel. If the appeals panel finds for the defendant on any point of appeal, the case is remanded accordingly. The Coordinator oversees the defendant's compliance with AYC sentencing orders and provides status reports to the referring authority as required.

Once a year, the AYC recruits new members. In order to become a member of AYC, young people complete a legal training course whereby they learn basic legal principals and practices. The course covers such topics as constitutional law, criminal law, criminal procedure, evidence, trial advocacy, and ethics. After having completed the course, students take a bar examination. Once students pass the bar examination, they become AYC Bar Association members. They are then qualified to serve on the court as bailiffs, clerks, attorneys, and judges. They will also be able to participate in AYC Bar Association meetings through which they continue their legal education. At the meetings members participate in activities designed to give broader perspective of the justice system, such as workshops, mock trials, speakers, and movies about the judicial system. The initial and ongoing training require regular attention by the Coordinator.

IV. EVALUATION

As a result of AYC, Anchorage youth have gained an awareness and respect for their legal responsibilities to society. They are afforded the opportunity to play a positive role in administration of justice. The volume of cases



Anchorage Youth Court
 P.O. Box 102735
 Anchorage, Alaska 99510
 Phone: (907) 274-5986 • Fax: (907) 272-0491

**REGISTRATION MATERIALS PAID FOR THROUGH A GRANT FROM
 J.C. PENNEY CO. INC**

**AYC CLASS SCHEDULE
 FALL 1992**

Sat. 9/12	2 - 4 P.M.	Open House, registration	AYC Office
Thu. 9/17	7 - 8:30	Class registration	West High Cafeteria
Mon 9/14	5 - 7:00	Vol. teacher preparation meeting	Hughes Thorsness

CLASSES:

(Classes will meet once a week on the same day, in the same location for two hours)

09/21 - 09/26	Wk 1	Courts and Jurisdiction
09/28 - 10/02	Wk 2	Substantive Criminal Law
10/05 - 10/10	Wk 3	Criminal Procedure and Constitutional law
10/12 - 10/17	Wk 4	Evidence
10/19 - 10/23	Wk 5	Real and Demonstrative Evidence
10/26 - 10/30	Wk 6	Trial Advocacy (Mock Trial Preparation)
11/02 - 11/07	Wk 7	Trial Advocacy (Mock Trial Preparation)
11/09 - 11/14	Wk 8	Mock Trial
11/16 - 11/21	Wk 9	Bar Review
11/23 - 11/27	Wk 10	No Class -- Thanksgiving week

AYC Bar Exam:

A.M. 12/05	Bar Exam	West High Cafeteria
P.M. 12/06	Make-up Bar Exam -- By arrangement only	
12/07 - 12/12	Review corrected exam in regular classroom with students	
12/14	Exams returned to AYC office	
A.M. 01/09	Review/exam retake -- By arrangement only	
P.M. 01/24	Swearing in/reception -- attendance mandatory to become an AYC attorney	

**ANCHORAGE YOUTH COURT
 CLASS SCHEDULE
 FORMS**



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Anchorage, Alaska 99510

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**AYC LAW CLASS
STUDENT REGISTRATION FORM**

- Please complete this form, then present it to the AYC student registrar.
- Wait until the registrar has transferred this information to the master sheet.
- The registrar will give you the Class Information Letter and Assent Form.
- If your parent/guardian is here, have her/him sign the Assent Form and present it to the registrar.
- If your parent/guardian is not here, be sure to bring the signed Assent Form to your **FIRST CLASS.**

STUDENT NAME: _____

BIRTH DATE (MONTH/DAY/YEAR): _____

ADDRESS: _____ (ZIP) _____

MAILING ADDRESS, IF DIFFERENT: _____ (ZIP) _____

PHONE: _____

SCHOOL: _____ GRADE: _____

PARENT/GUARDIAN NAME: _____

PLACE OF EMPLOYMENT: _____

WORK TELEPHONE: _____

PARENT/GUARDIAN NAME: _____

PLACE OF EMPLOYMENT: _____

WORK TELEPHONE: _____

PLACE AN "X" IN THE SPACE OF YOUR CHOICE BELOW:

Please do () do not () include my name, address and phone number on the AYC membership list that is available to all members.