

ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

8337 SENATE JUDICIARY

352

100

FISCAL NOTE

Replacement
corrected BRU/camp
4-21-93

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. HB 253

Revision Date: 4/20/93
Title: Fisheries Business Taxes

Dept. Affected: Revenue
BRU: Shared Taxes
Component: Fish Tax

Sponsor: House Finance
Requestor: House Rules

COMPONENT SERIAL NO. 107

Expenditures/Revenues:

(Thousands of Dollars)

	FY94	FY95	FY96	FY97	FY98	FY99
OPERATING						
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS	(1,000.0)	(1,000.0)	(1,000.0)	(1,000.0)	(1,000.0)	(1,000.0)
TOTAL OPERATING	(1,000.0)	(1,000.0)	(1,000.0)	(1,000.0)	(1,000.0)	(1,000.0)

CAPITAL

REVENUE FUND SOURCE:

FUNDING:

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	(1,000.0)	(1,000.0)	(1,000.0)	(1,000.0)	(1,000.0)	(1,000.0)
1005 GF/Program Receipts						
1006 GF/MHTA						
Other						
TOTAL	(1,000.0)	(1,000.0)	(1,000.0)	(1,000.0)	(1,000.0)	(1,000.0)

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

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

ANALYSIS: (Attach a separate page if necessary)

(See Attached)

Prepared by: Larry E. Meyers, Director
 Division: Income and Excise Audit Division
 Approved by Commissioner: Darrel J. Rexwinkel
 Agency: Department of Revenue

Phone: 465-2320
 Date: April 20, 1993
 Date: April 20, 1993

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Analysis

This bill decreases the percentage amount used as the basis for sharing fisheries business taxes to municipalities under AS 43.75 for purposes of defraying the costs to the state of enforcement and administration of the shared tax program. Under this bill, 95% of revenues collected would be subject to sharing rather than the entire amount. Since the state shares 50% of fisheries business tax revenues, municipalities would receive 47.5% ($50\% \times 95\%$) of fisheries business taxes collected within the municipality rather than current 50%. Municipalities would effectively receive 2.5% less revenues.

FY 92 fisheries business taxes are estimated to be \$40 million. Assuming that fisheries business tax revenues maintain the same level through FY 99, the state will withhold an estimated \$1 million ($\$40 \text{ million} \times 2.5\%$) each fiscal year to cover the costs of administering the fisheries business tax program. The estimated total amount shared to municipalities per year would be \$19 million rather than \$20 million.

3-24-92
CPA 2

Distribution of the state's fish tax collected in FY 92 by borough and by city. A total of \$30.1 million was collected, of which \$14.5 was distributed to Alaska's boroughs and cities.

Distribution to Boroughs

Aleutians East	\$1,780,831.67
Anchorage	86,426.06
Bristol Bay	1,403,630.88
Haines	178,612.64
Juneau	32,139.76
Kenai	499,981.74
Ketchikan	242,817.76
Kodiak	1,005,663.88
-Lake & Peninsula	-391,237.54
NW Arctic	2.32
North Star	5.09
Sitka	440,237.54

Distribution to Cities

Akutan	\$588,202.55
Atka	851.25
Bethel	64,549.23
Chignik	145,636.73
Clark's Point	120,817.58
Cordova	334,651.50
-Craig	29,279.50
Dillingham	186,761.89
Emmonak	35,051.16
False Pass	12,788.81
Homer	93,158.41
-Hoonah	53,377.10
Kenai	132,875.73
Ketchikan	215,780.04
King Cove	341,478.44
Kodiak	616,602.39
Larson Bay	55,399.82
Old Harbor	1,121.21
-Pelican	-163,111.01
-Petersburg	-599,514.12
Saint George	116,408.96
Saint Mary's	1,274.58
Saint Paul	1,140,370.45
Sand Point	110,624.56
Seward	153,392.71
Togiak	99,567.78
Unalaska	2,475,196.65
Valdez	249,495.51
Whittier	38,066.16
Wrangell	53,102.42
-Yakutat	-170,979.38
All other cities	6,108,476.56

Extra-Municipal Shared Fish Tax Program
Municipalities within Fisheries Geographic Area

FMA 1: Pribilof Islands Area

St. Paul
St. George

FMA 2: Aleutians Islands Area

Aleutians East Borough
Atka
Unalaska
Akutan

FMA 3: Alaska Peninsula Area

Aleutians East Borough
Lake & Peninsula Borough
False Pass
Cold Bay
King Cove
Sand Point

FMA 4: Chignik Area

Lake & Peninsula Borough
Chignik

FMA 5: Bristol Bay Area

Aleknagik
Clark's Point
Bristol Bay Borough
Dillingham
Ekwok
Lake & Peninsula Borough
Manokotak
New Smyahok
Newhalen
Nondalton
Pilot Point
Togiak

FMA 6: Lower Kuskokwim Area

Akiak
Armautluak
Bethel
Cheformak
Eek
Goodnews Bay
Kasigluk
Kwethluk
Quinhagak
Mekoryuk
Napakiak
Napaskiak
Newtok

FMA 6 (Continued):

Nighthute
Nunapitchuk
Platinum
Quinhagak
Toksook Bay
Tununak

FMA 7: Upper Kuskokwim Area

Aniak
Chuathbaluk
Lower Kalskag
Mcgrath
Nikolai
Tuluksak
Upper Kalskag

FMA 8: Lower Yukon Area

Alakanuk
Emmonak
Holy Cross
Hooper Bay
Kotlik
Marshall
Mountain Village
Pilot Station
Russian Mission
Scammon Bay
Sheldon's Point
St. Mary's

FMA 9: Middle Yukon Area

Allakaket
Anvik
Bertles
Galena
Grayling
Hughes
Huslia
Kaltag
Koyukuk
Nulato
Ruby
Shageluk

FMA 10: Upper Yukon Area

Eagle
Fairbanks
Fairbanks North Star Borough
Fort Yukon
Nenana
Tanana

Extra-Municipal Shared Fish Tax Program
Municipalities within Fisheries Geographic Area

FMA 11: Norton Sound-Point Clarence

Brevig Mission
Elim
Gambell
Golovin
Koyuk
Nome
Savoonga
Shaktolik
Stebbins
St. Michael
Teller
Unalakleet
Wales
White Mountain

FMA 12: Kotzebue-Northern Area

Ambler
Buckland
Deering
Diomedé
Kiana
Kivalina
Kobuk
Kotzebue
Norvik
Point Hope
Selawik
Shishmaref
Shungnak

FMA 13: Kodiak Area

Kodiak Island Borough
City of Kodiak
Ouzinkie
Port Lions
Larsen Bay
Old Harbor
Akhiok

FMA 14: Cook Inlet Area

Municipality of Anchorage
Kenai Peninsula Borough
City of Kenai
Soldona
Kachemak
Homer
Seldovia
Seward

FMA 15: Prince William Sound Area

Cordova
Valdez
Whittier

FMA 16: Yakutat Area

Yakutat Borough

FMA 17: Northern Southeast Area

Angoon
Haines Borough
Haines
Hoonah
City & Borough of Juneau
Pelican
Skagway
Tenekee Springs

FMA 18: Central Southeast Area

City & Borough of Sitka
Port Alexander
Kake
Kupreanof
Petersburg
Wrangell

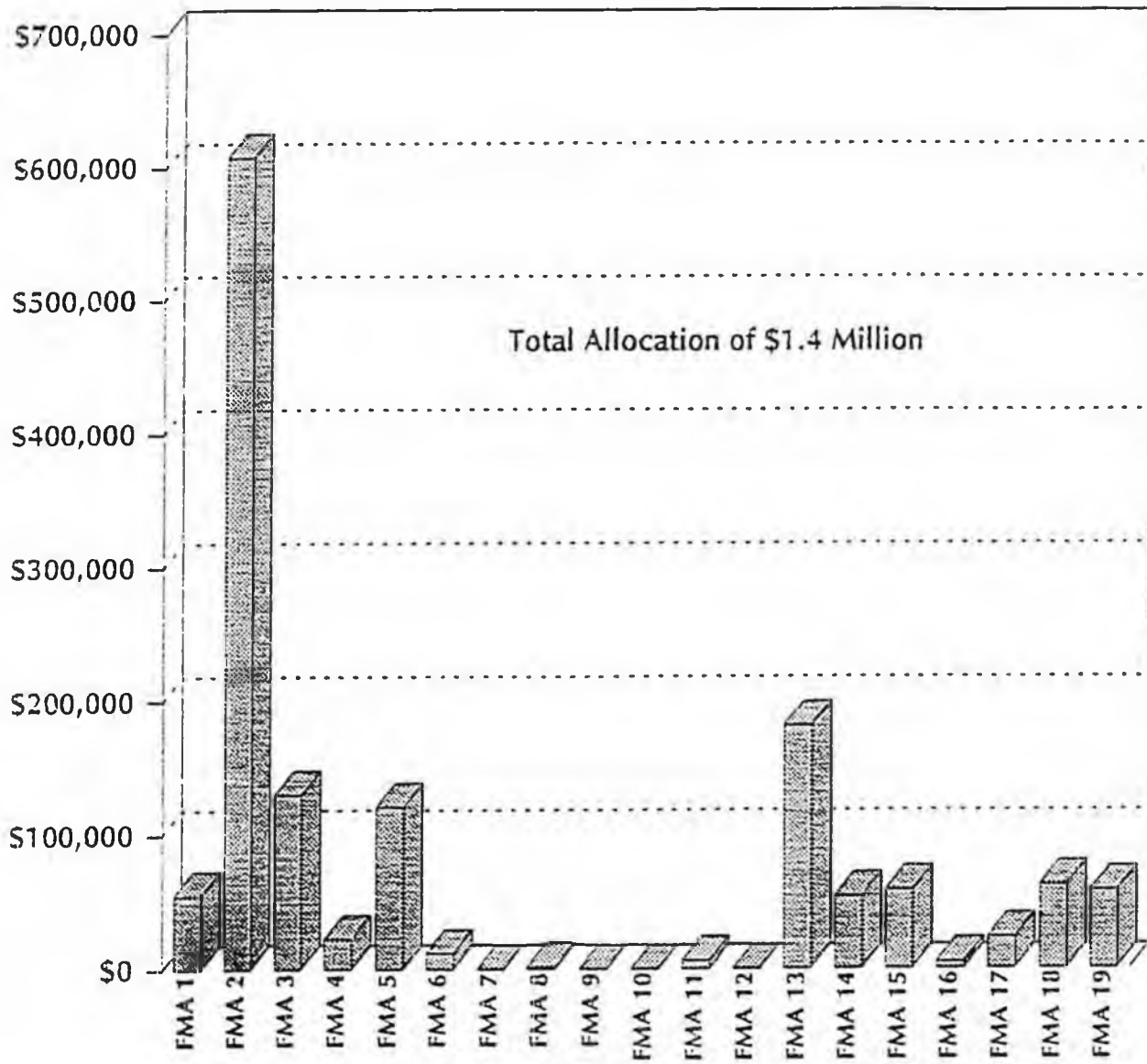
FMA 19: Southern Southeast Area

Coffman Cove
Craig
Hydaburg
Kasaan
Ketchikan Gateway Borough
City of Ketchikan
Klawock
Saxman
Thorne Bay

Extra Territorial Fish Tax Sharing — Projected FMA Allocations
 (Based on Department of Revenue 1992 Fish Tax Returns)
 (Available Funding = \$1.4 million)

Fisheries Management Area	Pounds of Fish Processed	FMA Percentage of Statewide Processing	Estimated FMA Allocation
FMA 1	92,622,520	3.95%	\$55,240
FMA 2	1,019,161,953	43.42%	\$607,822
FMA 3	218,142,517	9.29%	\$130,099
FMA 4	37,970,026	1.62%	\$22,645
FMA 5	202,152,087	8.61%	\$120,562
FMA 6	19,720,655	0.84%	\$11,761
FMA 7	202,086	0.01%	\$121
FMA 8	2,812,669	0.12%	\$1,677
FMA 9	135,454	0.01%	\$81
FMA 10	289,319	0.01%	\$173
FMA 11	10,878,723	0.46%	\$6,488
FMA 12	0	0.00%	\$0
FMA 13	304,572,365	12.97%	\$181,645
FMA 14	90,883,336	3.87%	\$54,202
FMA 15	98,329,053	4.19%	\$58,643
FMA 16	8,303,046	0.35%	\$4,952
FMA 17	39,151,486	1.67%	\$23,350
FMA 18	104,473,295	4.45%	\$62,307
FMA 19	97,640,066	4.16%	\$58,232
FMA Totals	2,347,440,657	100.00%	\$1,400,000

Estimated FMA Allocations



HB

254

8-LS0859M
Cook
3/8/94

SENATE CS FOR CS FOR HOUSE BILL NO. 254(2d JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): HOUSE STATE AFFAIRS COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to open meetings of governmental bodies."

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

3 * Section 1. AS 44.62.310(a) is amended to read:

4 (a) All meetings of a governmental [LEGISLATIVE] body of a public entity
5 [, OF A BOARD OF REGENTS, OR OF AN ADMINISTRATIVE BODY, BOARD,
6 COMMISSION, COMMITTEE, SUBCOMMITTEE, AUTHORITY, COUNCIL,
7 AGENCY, OR OTHER ORGANIZATION, INCLUDING SUBORDINATE UNITS
8 OF THE ABOVE GROUPS, OF THE STATE OR ANY OF ITS POLITICAL
9 SUBDIVISIONS, INCLUDING BUT NOT LIMITED TO MUNICIPALITIES,
10 BOROUGHES, SCHOOL BOARDS, AND ALL OTHER BOARDS, AGENCIES,
11 ASSEMBLIES, COUNCILS, DEPARTMENTS, DIVISIONS, BUREAUS,
12 COMMISSIONS, OR ORGANIZATIONS, ADVISORY OR OTHERWISE,] of the
13 state [OR LOCAL GOVERNMENT SUPPORTED IN WHOLE OR IN PART BY
14 PUBLIC MONEY OR AUTHORIZED TO SPEND PUBLIC MONEY,] are open to

1 the public except as otherwise provided by this section or another provision of law.
2 Except for meetings of a house of the legislature, attendance and participation at
3 meetings by members of the public or by members of a governmental body may be
4 by teleconferencing. Agency materials that are to be considered at the meeting shall
5 be made available at teleconference locations if practicable. Except when voice votes
6 are authorized, the vote shall be conducted in such a manner that the public may know
7 the vote of each person entitled to vote. The vote at a meeting held by teleconference
8 shall be taken by roll call. This section does not apply to any votes required to be
9 taken to organize a governmental [PUBLIC] body described in this subsection.

10 * Sec. 2. AS 44.62.310(b) is amended to read:

11 (b) If permitted [EXCEPTED] subjects are to be discussed at a meeting in
12 executive session, the meeting must first be convened as a public meeting and the
13 question of holding an executive session to discuss matters that are listed [COME
14 WITHIN THE EXCEPTIONS CONTAINED] in (c) of this section shall be determined
15 by a majority vote of the governmental body. The motion to convene in executive
16 session must describe the purpose of the proposed executive session with enough
17 detail to define the subject without defeating the purpose of addressing the matter
18 in private. Subjects may not be considered at the executive session except those
19 mentioned in the motion calling for the executive session unless auxiliary to the main
20 question. Action may not be taken at an [THE] executive session, except to give
21 direction to an attorney or labor negotiator regarding the handling of a specific
22 legal matter or pending labor negotiations.

23 * Sec. 3. AS 44.62.310(c) is amended to read:

24 (c) The following [EXCEPTED] subjects may be considered [DISCUSSED]
25 in an executive session:

26 (1) matters, the immediate knowledge of which would clearly have an
27 adverse effect upon the finances of the public entity [GOVERNMENT UNIT];

28 (2) subjects that tend to prejudice the reputation and character of any
29 person, provided the person may request a public discussion;

30 (3) matters which by law, municipal charter, or ordinance are required
31 to be confidential;

1 (4) matters involving consideration of government records that are
2 not subject to public disclosure.

3 * Sec. 4. AS 44.62.310(d) is amended to read:

4 (d) This section does not apply to

5 (1) a governmental body performing a judicial or quasi-judicial
6 function [BODIES] when holding a meeting solely to make a decision in an
7 adjudicatory proceeding;

8 (2) juries;

9 (3) parole or pardon boards;

10 (4) meetings of a hospital medical staff; [OR]

11 (5) meetings of the governmental [GOVERNING] body or any
12 committee of a hospital when holding a meeting solely to act upon matters of
13 professional qualifications, privileges or discipline;

14 (6) staff meetings or other gatherings of the executive,
15 administrative, or other employees of a public entity held for any reason,
16 including meetings of an employee group established by policy of the governing
17 body or held while acting in an advisory capacity to the governmental body;

18 (7) meetings held for the purpose of participating in or attending
19 a gathering of a national, state, or regional organization of which the public
20 entity, governmental body, or member of the governmental body is a member; or

21 (8) meetings held for the purpose of meeting with an elected official
22 or representative of an elected official. if the elected official is not a member of
23 the governmental body or an official of the public entity the governmental body
24 represents.

25 * Sec. 5. AS 44.62.310(e) is amended to read:

26 (e) Reasonable public notice shall be given for all meetings required to be
27 open under this section. The notice must include the date, time, and place of the
28 meeting and, if the meeting is by teleconference, the location of any teleconferencing
29 facilities that will be used. Subject [IN ADDITION] to the publication required by
30 AS 44.62.175(a) in the Alaska Administrative Journal, the notice may be given in any
31 reasonable manner [BY USING A COMBINATION OF PRINT AND BROADCAST

1 MEDIA].

2 * **Sec. 6.** AS 44.62.310(f) is repealed and reenacted to read:

3 (f) Action taken contrary to this section is voidable. A lawsuit to void an
4 action taken in violation of this section must be filed in superior court within 180 days
5 after the date of the action. A member of a governmental body may not be named in
6 an action to enforce this section in either the member's official capacity or personal
7 capacity. If the court finds that an action is void, the governmental body may discuss
8 and act on the matter at another meeting held in compliance with this section. A court
9 may hold that an action taken at a meeting held in violation of this section is void only
10 if the court finds that, considering all of the circumstances, the public interest in
11 compliance with this section outweighs the harm that would be caused to the public
12 interest and to the public entity by voiding the action. In making this determination,
13 the court shall consider at least the following:

14 (1) the expense that may be incurred by the public entity, other
15 governmental bodies, and individuals if the action is voided;

16 (2) the disruption that may be caused to the affairs of the public entity,
17 other governmental bodies, and individuals if the action is voided;

18 (3) the degree to which the public entity, other governmental bodies,
19 and individuals may be exposed to additional litigation if the action is voided;

20 (4) the extent to which the governing body, in meetings held in
21 compliance with this section, has previously considered the subject;

22 (5) the amount of time that has passed since the action was taken;

23 (6) the degree to which the public entity, other governmental bodies,
24 or individuals have come to rely on the action.

25 * **Sec. 7.** AS 44.62.310 is amended by adding a new subsection to read:

26 (g) In this section,

27 (1) "governmental body" means a legislature, assembly, council, board,
28 commission, committee, or other similar body with the authority to (A) establish
29 policies or make decisions for a public entity; or (B) make recommendations directly
30 to another governmental body authorized to take action on the matter that is the subject
31 of the recommendations; "governmental body" includes the members of a

1 subcommittee or other subordinate unit of a governmental body if the subordinate unit
2 consists of two or more members;

3 (2) "meeting" means a prearranged gathering of a governmental body
4 held for the purpose of considering a matter upon which the governmental body is
5 empowered to act when more than three members or a majority of the members,
6 whichever is less, are present;

7 (3) "public entity" means an entity of the state or of a political
8 subdivision of the state including an agency, the legislature, a board or commission,
9 the University of Alaska, a public authority or corporation, a municipality, a school
10 district, and other governmental units of the state or a political subdivision of the state;
11 it does not include the court system.

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

MEMORANDUM

March 10, 1994

SUBJECT: Open meetings of governmental bodies (SCS CSHB 254(2d JUD))

TO: Senator Robin Taylor, Chair
Senate Judiciary Committee

FROM: Tamara Brandt Cook *TBC*
Director

Here is the sectional summary you requested. This summary only discusses aspects of this draft that constitute significant changes to the existing statute that deals with open meetings.

Sec. 1. Meetings of a governmental body of a public entity are required to be open to the public except as provided in other law. Agency material to be considered are to be made available at teleconference locations if practicable.

Sec. 2. A motion to convene in executive session must describe the purpose of the proposed executive session. Action may not be taken, except to give direction to an attorney or labor negotiator regarding the handling of a specific legal matter or pending labor negotiations.

Sec. 3. Added to the list of subjects that may be considered in executive session is a matter involving consideration of governmental records that are not subject to public disclosure.

Sec. 4. The exemption from the open meeting requirement that currently applies to judicial or quasi-judicial bodies is expanded to apply to a governmental body performing a judicial or quasi-judicial function. The following are added to the list of exemptions: staff meetings, meetings held for the purpose of participating in gatherings of certain organizations, meetings held for the purpose of meeting with an elected official or the official's representatives.

Sec. 5. Public notice of a meeting may be given in any reasonable manner.

Senator Robin Taylor, Chair
March 10, 1994
Page 2

Sec. 6. Action taken contrary to requirements of the open meeting statute is voidable. A lawsuit to challenge the action on this basis must be filed within 180 days after the date of the action. A member of the body may not be named in an action to enforce the open meeting statute. A court may hold an action void only if the court finds that the public interest in compliance with the open meeting requirements outweighs the harm that would be caused to the public interest and to the public entity by voiding the action.

Sec. 7. Definitions of "governmental body," "meeting," and "public entity" are provided.

TBC:gc
94-201.glc



ALASKA MUNICIPAL LEAGUE

Proposed Senate CS for CS for House Bill No. 254 (2nd RLS)

Significant Changes to Statute and from Prior Senate Rules CS

Sec 1. AS 44.62.310(a)

- Discussion of covered groups moved to definition section (Section 7 of the bill) for clarity
- Regarding teleconferences, AML proposes to revert back to language in the original statute except to add "if practicable."

Sec. 2. AS 44.62.310(b) - Executive Sessions

- Add the line: "The motion to convene in executive session shall describe the purpose(s) of the proposed executive session with enough detail to define the subject of the executive session without defeating the purpose of addressing the matter in private."
- After "Action may not be taken at an executive session," add the words: "except to give direction to an attorney or labor negotiator regarding the handling of a specific legal matter or pending labor negotiations." Delete remainder of the paragraph in Rules CS.

Sec. 3. AS 44.62.310(c)

- Delete (5) and (6) from Rules CS. Subjects are addressed above.

Sec. 4. AS 44.62.310(d) - Exemptions from OMA

- Returns to language in original statute by exempting governing bodies of a hospital.
- Exempts staff meetings or other gatherings of the executive, administrative, or other employees of a public entity.
- Sections (7) & (8) are added to the statute to allow participation in national, state, or regional conferences and meetings with legislators. The change from the Rules version adds the word "solely" after the words "meetings held" to clarify.

Sec. 5. AS 44.62.31(e) - Emergency Meetings

- Requires that meeting notices be given in a reasonable manner. Removes the remainder of the paragraph in Rules CS.

Sec. 6. AS 44.62.310(f) - This section has been rewritten from the original statute to specify:

- that action taken in violation of the OMA is voidable and a lawsuit to void the action may be filed in superior court within 90 days of the date of the action
- that individuals cannot be sued, only the governmental body as a whole
- that actions may be voided only in certain circumstances

Sec. 7. AS 44.62.310 (g) - Definitions for "governmental body," "meeting," and "public entity" are added in new subsection.

Note: Sec. 8. of the prior Rules CS repealed AS 44.62.312(b). AML's proposal is to retain that original statutory language.

AML Support of State Policy Regarding Meetings

NOTE: AS 44.62.312, reproduced below, is a statement of state policy on meetings and the right of the public to open government. AML supports this policy and does not propose to change it.

Sec. 44.62.312. State policy regarding meetings. (a) It is the policy of the state that

(1) the governmental units mentioned in AS 44.62.310(a) exist to aid in the conduct of the people's business;

(2) it is the intent of the law that actions of those units be taken openly and that their deliberations be conducted openly;

(3) the people of this state do not yield their sovereignty to the agencies that serve them;

(4) the people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know;

(5) the people's right to remain informed shall be protected so that they may retain control over the instruments they have created;

(6) the use of teleconferencing under this chapter is for the convenience of the parties, the public, and the governmental units conducting the meetings.

(b) AS 44.62.310(c)(1) shall be construed narrowly in order to effectuate the policy stated in (a) of this section and avoid unnecessary executive sessions. (§ 3 ch 98 SLA 1972; am § 4 ch 54 SLA 1985)

Effect of amendments. — The 1985 amendment added paragraph (6) of subsection (a).

NOTES TO DECISIONS

Public disclosure of applications. — Strong public interest in the disclosure of the affairs of government generally, and in an open selection process for high public officials in particular requires public disclosure and inspection of applications for posts having substantial discretionary authority. *City of Kenai v. Kenai Peninsula Newspapers, Inc.*, 642 P.2d 1316 (Alaska 1982).

Quoted in *Hammond v. North Slope Borough*, 645 P.2d 750 (Alaska 1982); *Alaska Community Colleges' Fed'n of Teachers, Local 2404 v. University of Alaska*, 677 P.2d 886 (Alaska 1984); *Brookwood Area Homeowners Ass'n v. Municipality of Anchorage*, 702 P.2d 1317 (Alaska 1985).

✓

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

MEMORANDUM

January 31, 1994

SUBJECT: Open meetings of governmental bodies (SCS CSHB 254())

TO: Senator Robin Taylor

FROM: Tamara Brandt Cook
Director

Here is the sectional summary you requested. This summary only discusses aspects of this draft that constitute significant changes to the existing statute that deals with open meetings.

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Sec. 5. Public notice of a meeting may be given in any reasonable manner.

Sec. 6. Action taken contrary to requirements of the open meeting statute is voidable. A lawsuit to challenge the action on this basis must be filed within 180 days

Senator Robin Taylor
January 31, 1994
Page 2

after the date of the action. A member of the body may not be named in an action to enforce the open meeting statute. A court may hold an action void only if the court finds that the public interest in compliance with the open meeting requirements outweighs the harm that would be caused to the public interest and to the public entity by voiding the action.

Sec. 7. Definitions of "governmental body," "meeting," and "public entity" are provided.

TBC:pl
94-083.plm

Alaska State Legislature

Sen. Robin Taylor, *Chair*
Sen. Rick Halford, *Vice Chair*
Sen. George Jacko, *Member*
Sen. Dave Donley, *Member*
Sen. Suzanne Little, *Member*



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Juneau, AK 99801-1182
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Senate Judiciary Committee

MEMORANDUM

DATE: March 8, 1994

TO: Members of the Senate Judiciary Committee

FROM: Kevin Sullivan, Committee Aide

SUBJECT: HB 254 Open Meeting Act

This legislation has been scheduled for the purpose of adopting and circulating the enclosed committee substitute. A public hearing on this bill will be scheduled next week.



March 8, 1994

TO: Senator Robin Taylor, Chairman
and Members
Senate Judiciary Committee

FROM: Kent E. Swisher
Executive Director

RE: Work Draft for Senate CS for CS for HB 254

The Alaska Municipal League supports the adoption by the Senate Judiciary Committee of the work draft dated 3/8/94 concerning the Open Meetings Act. The revisions contained in the work draft are the result of several meetings conducted over the interim by parties interested in this legislation. The working group consisted of representatives from the League of Women Voters, Alaska School Boards Association, University of Alaska, and members of the press. While not everyone is in total agreement with all of the changes, AML feels this proposal incorporates most of the concerns expressed by the group.

The Alaska Municipal League believes the intent of the Open Meetings Act is to see that decisions of governmental bodies are made publicly with an opportunity for the public to attend, observe, and participate. AML is seeking legislation that amends the Open Meetings Act to clarify the definition of a meeting, clarify who is subject to the Act, clarify provisions regarding executive sessions, and amend provisions governing remedies for violations of the Act. We believe this proposal addresses all of these concerns.

For your information, we are attaching a sectional breakdown of the modifications from last year's Senate Rules version. Please let us know if you have any concerns or questions about the proposal. We appreciate your consideration in adopting these changes and encourage the Committee to hold a public hearing as soon as possible.

Thank you for your interest.



ALASKA MUNICIPAL LEAGUE

Proposed Senate CS for CS for House Bill No. 254 (2nd FLS)

Significant Changes to Statute and from Prior Senate Rules CS

Sec 1. AS 44.62.310(a)

- Discussion of covered groups moved to definition section (Section 7 of the bill) for clarity
- Regarding teleconferences, AML proposes to revert back to language in the original statute except to add "if practicable."

Sec. 2. AS 44.62.310(b) - Executive Sessions

- Add the line: "The motion to convene in executive session shall describe the purpose(s) of the proposed executive session with enough detail to define the subject of the executive session without defeating the purpose of addressing the matter in private."
- After "Action may not be taken at an executive session," add the words: "except to give direction to an attorney or labor negotiator regarding the handling of a specific legal matter or pending labor negotiations." Delete remainder of the paragraph in Rules CS.

Sec. 3. AS 44.62.310(c)

- Delete (5) and (6) from Rules CS. Subjects are addressed above.

Sec. 4. AS 44.62.310(d) - Exemptions from OMA

- Returns to language in original statute by exempting governing bodies of a hospital.
- Exempts staff meetings or other gatherings of the executive, administrative, or other employees of a public entity.
- Sections (7) & (8) are added to the statute to allow participation in national, state, or regional conferences and meetings with legislators. The change from the Rules version adds the word "solely" after the words "meetings held" to clarify.

Sec. 5. AS 44.62.31(e) - Emergency Meetings

- Requires that meeting notices be given in a reasonable manner. Removes the remainder of the paragraph in Rules CS.

Sec. 6. AS 44.62.310(f) - This section has been rewritten from the original statute to specify:

- that action taken in violation of the OMA is voidable and a lawsuit to void the action may be filed in superior court within 180 days of the date of the action
- that individuals cannot be sued, only the governmental body as a whole
- that actions may be voided only in certain circumstances

Sec. 7. AS 44.62.310 (g) - Definitions for "governmental body," "meeting," and "public entity" are added in new subsection.

Note: Sec. 8. of the prior Rules CS repealed AS 44.62.312(b). AML's proposal is to retain that original statutory language.

HB

266

DIVISION OF LEGAL SERVICES

**LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

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

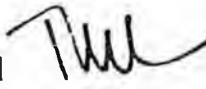
130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

April 27, 1994

SUBJECT: Extension of the Big Game Commercial Services Board (CSHB
266(L&C))

TO: Senator Mike Miller
ATTN: Teresa

FROM: Terri Lauterbach 
Legislative Counsel

You have asked several questions about the Big Game Commercial Services Board:

(1) If the board is allowed to terminate, do current statutes allow the same licensing to be done by another state agency? Answer: No. While current statutes do appear to allow the division of occupational licensing, Department of Commerce and Economic Development, to renew the licenses of current licensees, the division would have no power to issue new licenses. Under current statutes, new licenses can only be issued after examination and approval by the board (which wouldn't exist).

Actually, despite the apparent authority of DCED to renew licenses without the board, even that renewal would have to stop if the board terminates. That's because the state may not constitutionally grant exclusive rights to guiding based on seniority, which would be the result if DCED renewed the licenses of persons who currently hold licenses but could not issue new licenses. Owsichek v. State, 763 P.2d 488 (1988)

So, the effect of terminating the board without transferring its functions to another state agency would be that the state would no longer issue or renew licenses formerly regulated by the board.

(2) What is the likely effect of stopping licensure of persons currently licensed through the board? Answer: Among the effects of a discontinuation of licensing would be that any person could legally guide any hunters anywhere in the state without having to meet board regulations and without any disciplinary actions such as those currently authorized under AS 08.54.500 - 08.54.510.

Senator Mike Miller
April 27, 1994
Page 2

However, considering that AS 16.05.407 says that a nonresident hunter must be guided by a licensed person or be subject to imprisonment and a large fine, it is questionable whether any nonresidents would continue hunting in the state until the legal questions caused by the board's termination were decided clearly, either by the legislature or the courts. Since nonresident hunting is a large part of the hunting in this state, the economic effect could be substantial, especially on the guiding industry.

Another likely effect of a discontinuation of state licensure under AS 08.54 would be entrance of the federal government into the licensure field. This would probably result in the same kind of situation that occurred with subsistence management, with different rules applicable to federal lands, state lands, etc. Also, the federal government is probably not prepared to immediately take over this function, so the transition period might be rather chaotic.

(3) Could the licensing activities of the board be transferred to another state agency by the governor under an administrative order issued before the board terminates? Answer: No. The governor could not transfer the board's licensing functions except by an executive order under AS 24.08.210, which cannot be issued until the next legislative session starts.

(4) Could HB 266 be amended to transfer the board's activities to another agency? Yes, HB 266 could be the vehicle for transferring the board's functions; however, a title change would be required, thus necessitating the introduction and passage of a concurrent resolution authorizing title changes in the second house.

I hope this memorandum answers all of your questions clearly. If you need more assistance, please contact George Utermohle (X 2450) because HB 266 is assigned to him. Of course, if he is unavailable when you call, feel free to ask me further questions about this matter.

TML:pl
94-347.plm

CSHB 266: "An Act relating to guide-outfitter and master guide-outfitter licenses; extending the termination date of the Big Game Commercial Services Board; and providing for an effective date."


Section 1 extends the Big Game Commercial Services Board to 1997. The board has implemented the use area registration system. The board will need to monitor this new system closely and continue to clarify its operations and other statutory provisions through regulation.

Section 2 helps to strengthen the entry requirements for the guide-outfitter license and eliminates the requirement of having to submit two client recommendations for each of the applicant's most recent three years. This has been the subject of three litigations in the past year, one of which was just overturned by the Superior Court in December 1993. The existing statute, AS 08.54.350(a)(10), may hinder an assistant guide-outfitter with years of experience who may only guide one client the year he/she decides to apply for the guide-outfitter exam. The current amendment in section 2 increases the number of required client recommendations from six to eight but leaves the matter of which years an applicant may submit client recommendations up to the board to define in regulation. The department concurs with this amendment. Regulations will be required to clarify an acceptable time frame in which the applicant would have assisted in guide-outfitting.

Section 3 reinstates the master guide-outfitter category which was repealed in 1989, however, approximately 35 individuals were grandfathered with this title. Master Guide-Outfitters appear to have an advantage when booking clients. The department supports the reinstatement of this category, noting that the requirements are essentially the same as when the category was in effect under the prior law.

The department concurs with the requirement that an applicant for a master guide-outfitter license must have been licensed in the state for at least 12 of the last 15 years preceding application. However, this provision does not mandate that the applicant has actively guide-outfitted during the period -- just holding a current license appears to meet this provision.

In summary, the department supports this bill subject to the comments noted above.



Paul Fuhs, Commissioner

Date: 2-15-94

STATE OF ALASKA

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

WALTER J. HICKEL, GOVERNOR

P.O. BOX 25526
JUNEAU, ALASKA 99802-5526
PHONE: (907) 465-4100

April 29, 1994

The Honorable Mike Miller
Alaska State Legislature
Capitol Building, Room 423
Juneau, AK 99801-1182

Dear Senator Miller:

I believe that it is absolutely critical to extend the Big Game Commercial Services Board (BGCSB) from a wildlife conservation standpoint as well as the standpoint of the guiding industry itself. I strongly urge you to move CSHB 266 out of your committee as soon as possible.

At one time, Alaska offered virtually limitless opportunities to guides, but that was before over 140 million acres of land were withdrawn as federal parks, monuments, refuges or corporate lands. There also were far fewer than today's 350 registered guides and 10,000 nonresident hunters competing for space with over 80,000 resident hunters. It was before federal and state subsistence preference laws were passed. It was simply a different era, one that has now passed.

This department's biologists worked with the BGCSB for two years to delineate guide-outfitter use areas. These efforts cost a great amount of time and money. Qualified guides then selected up to three areas each which served to spread out hunting pressure so no single area would be overexploited. The board is currently exploring legal means through which to prevent overharvests of game in the few remaining "hot spots," generally on state land. Federal and private landowners can control numbers of guides on their lands, displacing many guides to suitable state lands.

Much resident hunting opportunity also occurs on our state lands and hunting opportunities are governed by our state subsistence preference law. It is obvious that if excessive harvests of game occur as a result of guided nonresident hunting, reasonable opportunities for resident subsistence hunting will be impacted. State law **requires** the Alaska Board of Game to eliminate nonresident seasons before unreasonably restricting resident subsistence hunters. All Alaskans are potentially qualified to hunt for subsistence purposes. Obviously, this situation will result in an accelerating domino effect as guides

April 29, 1994

and their clients are forced into smaller and smaller areas open for their use. Only the BGCSB can prevent this from occurring. The Alaska Board of Game lacks statutory authority to regulate guiding, as do I.

The BGCSB and the current three area system are supported by most guides in the state who realize that currently there are no reasonable alternatives. They also realize that without a BGCSB, ultimate resolution of still outstanding problems will be impossible. To compete with professional guide competitors in Canada and now Siberia, they realize the need for standards and limitations on the industry and are willing to pay for it.

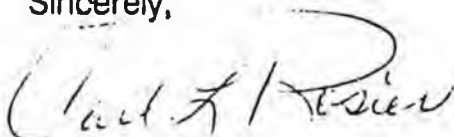
Make no mistake. Alaska's guiding industry is of critical importance to Alaska's economy and to the wildlife management capabilities of this department. Guiding provides over \$80,000,000 annually to the economy, much of it after the "normal" tourist industry ends each summer. Furthermore, the sale of nonresident hunting licenses and big game tags provides over 70 percent of the annual contributions to the wildlife portion of the Fish and Game Fund, over \$4,000,000 in 1993. Given Alaska's fiscal dilemma and the drastic General Fund cuts to the Division of Wildlife Conservation, it is easy to see the importance of nonresident contributions to Alaska's management programs.

All of this could be jeopardized without an extension of the BGCSB and I see no viable alternatives to replace potentially great losses of revenue. This is the gravity of the situation if the 18th Legislature fails to pass this legislation.

We have all long recognized the problem with federal preemption of Alaska's states rights to manage our internal affairs. The federal agencies are ready and willing to absorb yet another chunk of state authorities if we, as a state, absolve ourselves of the responsibility to regulate our guiding industry. They already have made overtures to do so, and are restrained only by progress made to date by the BGCSB. Sunsetting this board would be an open invitation to further federal intervention into Alaska's affairs.

As Chairman of the Senate Resources Committee, it falls to you to explain to your distinguished colleagues the full extent of what is at stake here. Alaska must lead by example in the responsible management of our game resources if we are ever to successfully diversify our economy and achieve the full return of our management authorities. Retention of the BGCSB will be key to achieving both of these objectives.

Sincerely,



Carl L. Rosier
Commissioner

April 29, 1994

*The Honorable Mike Miller, Chair
Senate Resources Committee
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182*

Dear Mike,

I have been apprised by Commissioner Rosier of a matter of extreme urgency, the sunseting of the Big Game Commercial Services Board (BGCSB) if it is not extended by the passage of CSHB 266. This bill is currently in your committee. It is imperative that this legislation pass this session, and time is of the essence.

The guiding industry currently contributes over \$80 million to Alaska's economy, and nonresident licenses and tags produce over 70 percent of the revenue into the Fish and Game Fund for wildlife management. The Alaska Professional Hunters Association strongly supports CSHB 266 to protect this industry.

Given state and federal subsistence preference laws, regulation by the BGCSB is imperative to protect game resources and to avoid actions by the Board of Game and the Federal Subsistence Board which would preclude nonresident hunting. Such preventable actions have the potential to devastate the guiding industry. The federal agencies would certainly move quickly to fill any void left by sunseting the BGCSB to the detriment of our state.

The Departments of Fish and Game, Commerce and Economic Development, and Law have spent considerable funds to support the BGCSB to date. Alaska now has a broadly supported, well-regulated guiding industry as a result. Progress is being made to make the industry even stronger, but an extension of the board is necessary to finish the job.

I urge you to move CSHB 266 out of Senate Resources as soon as possible.

With best regards.

Sincerely,

S/S WALTER J. HICKEL

*Walter J. Hickel
Governor*

cc: *The Honorable Rick Halford*

HB

277

DIVISION OF LEGAL SERVICE

**LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

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

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

MEMORANDUM

February 9, 1994

SUBJECT: Sectional Summary of CSHB 277(JUD) (Public employee legal defense and indemnification)

TO: Representative Brian Porter, Chair
House Judiciary Committee

FROM: Teresa B. Cramer *TBC*
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 and the bill itself is the best statement of its contents.

Section 1 adds a new chapter to the title that applies to public officers and employees.

Sec. 39.55.010 provides that a public employer shall provide legal defense and pay settlements and judgments for a public employee when the acts or omissions that form the basis for the claim or judgment occurred during the course of and within the scope of the public employee's employment.

Subsection (b) relieves the employer of the obligation to defend and indemnify if the employee acted with gross negligence or if the acts or omissions were the result of intentional or wilful misconduct. The employer is also excused from defending or indemnifying when the case involves a disciplinary, administrative or criminal matter brought against the employee or when the employee has been convicted of a criminal offense or terminated from employment because of the conduct. If the employee settles or compromises the claim or action before asking the public employer to provide a defense and indemnify the employee, the employer is also relieved of its obligations.

Under subsection (c), the requirement to provide a legal defense and indemnification applies unless a collective bargaining agreement that covers the public employee includes a provision for defense and indemnification.

Subsection (d) excuses the employer from paying punitive damages awarded against an employee.

Subsection (e) permits public employers to adopt policies requiring the employer to provide defense or indemnification or to pay punitive damages when the statute would not otherwise require the employer to do so.

Subsection (h) makes clear that former employees are entitled to the same treatment as current employees.

Sec. 39.55.020 requires the employee to notify the employer of the claim against the employee and make a good faith effort to cooperate in the defense and resolution of the claim or action. If the employer is providing or has been asked to provide a legal defense, subsection (b) prohibits the employee from settling the claim unless the employer approves. Subsection (c) permits the public employer to settle claims or actions without the employee's consent so long as the settlement resolves all the outstanding claims against the employee.

Sec. 39.55.030 sets out the employee's rights when the employer refuses to provide a legal defense. Under subsection (b), the employee may file an action for declaratory relief to secure legal defense from the employer. Subsection (c) addresses what happens if the employee settles the claim. Subsection (d) gives the employee one year after prevailing in a declaratory relief action against the employer or the entry of final judgment or dismissal in the underlying action to secure indemnification.

Sec. 39.55.040 addresses how the employer may provide a legal defense for an employee without promising to indemnify the employee if a judgment is entered against the employee.

Sec. 39.55.100 defines terms used in the chapter, including "employee," "employer," and "settlement."

TC:lmb
94-041.lmb

8-LS0989Q
Cramer
5/2/94

SENATE CS FOR CS FOR HOUSE BILL NO. 277(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVE PORTER

A BILL

FOR AN ACT ENTITLED

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

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

5 * Section 1. AS 23.40.075 is amended to read:

6 Sec. 23.40.075. ITEMS NOT SUBJECT TO BARGAINING. The parties may
7 not negotiate terms contrary to

8 (1) the reemployment rights for injured state employees under
9 AS 39.25.158; [OR]

10 (2) the reemployment rights of the organized militia under
11 AS 26.05.075; or

12 (3) the rights of an employer to discharge an employee when the
13 entry of a final judgment has made the employer liable for damages as the result
14 of the negligence of the employee under AS 39.55.050.

1 * Sec. 2. AS 39 is amended by adding a new chapter to read:

2 CHAPTER 55. DEFENSE AND INDEMNIFICATION OF
3 PUBLIC EMPLOYEES.

4 Sec. 39.55.010. PUBLIC EMPLOYER'S DUTY TO PROVIDE DEFENSE.

5 (a) Except as otherwise provided in this chapter, a public employer shall provide legal
6 defense of civil claims against, and pay settlements and judgments including attorney
7 fees and costs entered against, a public employee when the claims, settlements, or
8 judgments are based on acts or omissions that occurred during the course and within
9 the scope of the employee's employment with the public employer.

10 (b) A public employer does not have an obligation to defend or indemnify if
11 the

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

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

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

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

26 (c) Except for AS 39.55.050, this chapter does not apply if a collective
27 bargaining agreement that covers the employee includes a provision for defense and
28 indemnification, in which case the terms of the collective bargaining agreement apply.

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

31 (e) A public employer may adopt an internal policy or enter into an agreement

1 with an employee that requires the employer to defend or indemnify the employee or
2 pay punitive damages in circumstances in which the employer would not otherwise
3 have an obligation to do so.

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

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

11 (h) This chapter applies to a former employee to the same extent as a current
12 employee.

13 Sec. 39.55.020. EMPLOYEE'S DUTIES WHEN REQUESTING DEFENSE
14 AND INDEMNIFICATION. (a) A public employer's obligation to defend and
15 indemnify an employee under this chapter arises only if

16 (1) the employee notifies the public employer in writing, in the manner
17 required by the employer, within 10 days after receipt of a claim, demand, or suit,
18 unless there is good cause for the employee's failure to provide timely or proper notice
19 and the employer has not been materially prejudiced; and

20 (2) the employee makes a good faith effort to cooperate in the defense
21 and resolution of the claim or action.

22 (b) An employee for whom a public employer has provided legal defense
23 under this chapter or who has a request for the provision of legal defense pending may
24 not settle the claim brought against the employee unless the public employer approves
25 the settlement.

26 (c) An employer who has provided legal defense and indemnification may
27 settle a claim or action without the consent of the employee so long as the settlement
28 resolves all the outstanding claims against the employee.

29 Sec. 39.55.030. EMPLOYEE'S RIGHTS WHEN EMPLOYER REFUSES TO
30 PROVIDE LEGAL DEFENSE. (a) If a public employer refuses to provide legal
31 defense for an employee, the employer shall provide the employee with written notice

1 of this decision within 60 days after receiving a request for legal defense from the
2 employee or service of the summons and complaint on the employee, whichever is
3 later. The notice must include a copy of this chapter.

4 (b) An employee whose employer refuses to provide legal defense under this
5 chapter may file an action for declaratory relief in superior court if the employee wants
6 the employer to provide legal defense. The employee must file the action for
7 declaratory relief within 30 days after the employee received a written notice of refusal
8 to defend from the employer.

9 (c) If an employee who has been denied legal defense settles the claim or
10 action without filing a declaratory relief action under (b) of this section, the employee
11 waives any right to defense or indemnification. If the employee files a declaratory
12 relief action under (b) of this section, the employee may settle the claim for a
13 reasonable amount without the employer's consent.

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

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

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

29 (c) If a final judgment is entered against an employee in a claim or action in
30 which the employer provided a legal defense and the employer agrees to only partially
31 indemnify the employee or denies indemnification entirely, the employee may bring

1 an action for indemnification against the employer not later than one year after the
2 entry of the final judgment against the employee.

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

9 Sec. 39.55.050. EMPLOYER'S RIGHT TO TERMINATE NEGLIGENT
10 EMPLOYEE. If, as the result of the entry of a final judgment, an employer who has
11 provided defense or indemnification under this chapter is found liable for damages that
12 were held to be at least in part the result of the negligence of an employee, the
13 employer may discharge the employee. The reversal or modification of a decision of
14 the superior court imposing liability on a public employer for the negligence of a
15 public employee does not give the public employee a right to reinstatement, back
16 wages, or other civil or equitable remedies against the public employer. A collective
17 bargaining contract entered into under AS 23.40.070 - 23.40.260 may not contain terms
18 contrary to this section.

19 Sec. 39.55.100. DEFINITIONS. In this chapter,

20 (1) "employee" or "public employee" means a person who performs a
21 service for wages or other remuneration under a direct contract of hire, written and
22 expressed, for a public employer and includes a member of a board or commission
23 established by the employer; "employee" or "public employee" does not include an
24 independent contractor;

25 (2) "employer" or "public employer" means the state, a public or
26 quasi-public corporation or authority established by state law, and a political
27 subdivision of the state including a municipality and a public or quasi-public
28 corporation established by a municipality; however, "employer" or "public employer"
29 does not include the University of Alaska, a municipal school district, or a rural
30 educational attendance area;

31 (3) "settlement" means the execution of a written agreement settling the

1 claim or action that gave rise to the employer's obligation to defend or indemnify the
2 public employee.

3 * Sec. 3. Nothing in this Act terminates or modifies a collective bargaining agreement in
4 effect on the effective date of this Act.

5 * Sec. 4. This Act applies only to claims and actions that arise on or after the effective
6 date of this Act.

Alaska State Legislature

Representative Brian S. Porter

CHAIRMAN
HOUSE JUDICIARY COMMITTEE

MEMBER
HOUSE LABOR & COMMERCE COMMITTEE
SELECT COMMITTEE ON LEGISLATIVE ETHICS

MEMBER
FINANCE SUBCOMMITTEES
DEPARTMENT OF LAW
DEPARTMENT OF PUBLIC SAFETY
COURTS



DISTRICT 20

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INTERIM:
718 W. 4TH AVE., SUITE 040
ANCHORAGE, AK 99501-2133
PHONE: (907) 258-8197
FAX: (907) 258-5510

SPONSOR STATEMENT

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

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

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

SPONSOR STATEMENT

Municipality of Anchorage



P.O. BOX 196650
ANCHORAGE, ALASKA 99519-6650
(907) 343-4545

TOM FINK,
MAYOR

OFFICE OF THE MUNICIPAL ATTORNEY

February 1, 1994

Received

FEB 07 1994

Representative Brian Porter
Chair House Judiciary Committee
Alaska State Legislature
State Capital
Juneau, Alaska 99801

Re: House Bill 277 Relating To Defense And Indemnification Of Public Employees With
Respect To Claims Arising Out Of Conduct That Is Within The Scope Of Employment

Dear Representative Porter:

After reviewing House Bill 277 the Municipality of Anchorage supports the proposed bill. From discussions with the Municipal Risk Management Department, Police Department and the Legal Department concerning this issue the proposed bill would provide the Municipality certain benefits.

As with a prior incarnation of this legislation, CSHP 395 which was before the House Judiciary Committee in April of 1992, this bill would allow the Municipality of Anchorage flexibility to defend and indemnify its employees in appropriate circumstances, including punitive damage situations. Additionally, the legislation allows an employee a defined time period in which to assert and protect the employees' rights to defense or indemnity. The bill appropriately limits the defense of those rights to declaratory actions, for enforcing the rights to defense; cross-claims, for enforcing rights to indemnity where the employer is named as a party; and an action brought within one year, for enforcing indemnification where the employer is not named as a party. With these elements the Municipality of Anchorage supports the bill.

Sincerely,

Richard L. McVeigh
Municipal Attorney

cc: Duane Udland, Deputy Cl
Harry Sjoberg, Risk Manag
Mary Vollendorf, Municipa

matterhb395porter

LETTERS OF SUPPORT



Anchorage Telephone Utility

Executive Offices

January 20, 1994

Representative Brian Porter
Room 122
State Capitol
Juneau, Alaska 99801-1182

Dear Representative Porter:

I want to express my appreciation to you for introducing H.B. 277. This legislation would allow public entities to indemnify employees from personnel liability resulting from honest and efficient accomplishment of their job responsibilities. ATU fully supports this bill and urges its speedy approval.

Our society is seeing increasing numbers of former employees arguing wrongful discharge cases in front of juries. Without regard to the merits of such cases, our system of justice places public employees in a precarious position. Plaintiffs in such actions can not gain punitive damages from a public entity; punitive damages may only be applied to a private entity. Given this, plaintiffs' attorneys will often name an individual as defendant in order to establish a party with punitive liability or, as may be the case, simply to provide leverage.

While individuals so named, more often than not, eventually are relieved of liability, their lives in the meantime can be dramatically impacted. An individual so named will have all credit suspended pending outcome of the case. Simply put, the individual is unable to buy a house, a car or even a large appliance through normal credit channels until the case is settled. In many instances, such cases take years to resolve.

Received

JAN 24 1994

1-28

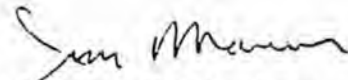
Representative Brian Porter
January 20, 1994
Page 2 of 2

Our concern in rectifying this unfair situation stems from our desire to have effective employees carrying out their responsibilities in a competent and efficient manner. Clearly, an employee who must consider his/her personal fortunes and those of his family each time he makes a decision will find his thinking swayed by this potential threat. We ask for this legislation to be passed so that our employees may work in an atmosphere free from the threat of personal reprisal.

Again, thank you for your efforts. If you need anything further from ATU regarding this legislation, please let me know.

Sincerely,

ANCHORAGE TELEPHONE UTILITY


James G. Morrison
General Manager



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

January 24, 1994

TO: Representative Al Vezey, Chair
and
Members, House Committee on State Affairs

FROM: Kent E. Swisher, Executive Director

RE: HB 277 - Indemnification of public employees

It has been brought to my attention that your committee is considering HB 277-Indemnification of public employees, which would amend AS 39.90 to require public employers, including municipalities, to provide defense and indemnification of employees for actions or omissions that occurred during the course and within the scope of the employee's employment, except in cases of gross negligence or intentional or wilful misconduct. The bill allows for collective bargaining agreements to supersede state law with regard to defense and indemnification.

It is the understanding of the Alaska Municipal League that it is already common practice for municipalities to indemnify employees for actions/omissions taken during the course and scope of their employment and that such indemnification is included within most, if not all, collective bargaining agreements.

The League has no objection to the current draft of HB 277, or to the proposed Committee Substitute dated 1/20/94. It appears to codify existing common practice, to provide reasonable protection for employers by requiring the employee to keep the employer informed and to cooperate in the defense, and to provide equal treatment of all types of employees.

cc: Representative Brian Porter

ALASKA PEACE OFFICERS ASSOCIATION

State APOA Office • P.O. Box 240106 • Anchorage, Alaska 99524-0106 • (907) 277-0616



January 18, 1994

Representative Brian Porter
State Capitol
Juneau, AK 99801

Dear Representative Porter,

The Alaska Peace Officers Association supports House Bill 277. We believe that government must be held responsible for its actions. When someone is wrongly harmed through the actions of government, injured parties should be able to make claims as appropriate. However, we believe very strongly that government employees should be defended and protected when their actions are made in good faith and without malice.

Generally when a lawsuit is filed, employees are listed as parties to the action. In the past, employees have not been held personally liable for actions taken at the behest of their employer, unless they were clearly working outside the scope of their authority. This seems to be changing. Recent court rulings imposing personal punitive damages are placing the livelihoods of our public employees in jeopardy.

The trend where public employees are being held personally liable places employees in a position where their own personal assets are at risk. All government employees are in danger, from the highest level policy maker to the lowest level of workers where those policies are carried out. The social worker, the road maintenance supervisor, the police officer, the medic, the fire fighter, and elected officials are all vulnerable.

We in law enforcement believe this is an undue burden upon the state's public employees. It carries great potential for the workings of government to become bogged down because employees fear that decisions they make in good faith may result in the loss of their assets. I encourage you and your colleagues to support House Bill 277.

Sincerely,

Michael A. Grimes, Statewide President
Alaska Peace Officers Association

EXECUTIVE DIRECTOR

Edward T. Harter
Anchorage

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TELEPHONE (907) 786-8500



Tom Fink, Mayor

Service since 1921

Received

January 18, 1994

JAN 19 1994

Representative Brian Porter
House of Representatives
Alaska State Legislature
Juneau, Alaska 99801-1182

F. F. BRIAN PORTER

Dear Representative Porter,

I am writing this letter in support of House Bill 277, which would require public employers to indemnify public employees with respect to law suits and legal claims made against employees who are working within the scope and authority of their position. I can safely represent that the subject of indemnification is very important to all public employees.

Law enforcement over the years has identified indemnification as a top legislative priority. Our premise is simple. We believe that when a public employee is working at the behest of their employer, and they operate in good faith and within their proper authority, employees should be indemnified.

This is not an argument for protection of bad employees. It is a request that, as a matter of law, employers protect employees who are doing the work of the government. Threatened or actual legal action has a very chilling effect on any employee. If personal assets or wealth are unfairly at risk, employees are discouraged from making decisions or taking action.

We are happy to work with you and the Legislature in the passage of this bill. If you have any questions, please contact me at 786-8552.

Sincerely,

Duane S. Udland, Deputy Chief
Anchorage Police Department
4501 South Bragaw
Anchorage, Alaska 99507

Alaska Association Chiefs of Police



January 17, 1994

Received

JAN 19 1994

REP BRIAN PORTER

Representative Brian Porter
House of Representatives
State Capital
Juneau, Alaska, 99811

Dear Representative Porter:

Two years ago the Alaska Association of Chiefs of Police, the Alaska Peace Officers Association, and the FBI National Academy Associates identified the indemnification of public employees as their number one legislative priority. This issue is even more timely and critical now. The following is the combined statement and position of the three professional law enforcement associations concerning indemnification.

"We believe that government must be held responsible for its actions. When someone is wrongly harmed through the actions of government, injured parties should be able to make claims as appropriate. However, we believe very strongly that government employees should be defended and protected when their actions are made in good faith.

Generally when a lawsuit is filed, individual employees are listed as parties to the action also. In the past, employees have not been held personally liable for actions taken at the behest of their employer unless they were clearly working outside the scope of their authority. This seems to be changing. Recent court rulings imposing personal punitive damages are placing the livelihoods of public employees in jeopardy.

The trend to hold public employees personally liable places employees in a position where their own personal assets are at risk. This means that all government employees are in danger, from the highest level policy maker to the level of worker where the policy is implemented. Even elected officials are vulnerable today.

We in law enforcement believe this is an undue burden upon the public employees of this State. It carries the potential for the workings of government to become bogged down because employees fear that decisions they make in good faith may result in the loss of their assets.

When employees are doing the work of the government, within the scope of their authority, and without malice, they should not be held personally liable when they are named as parties to law suits.

Legislation should be passed that indemnifies public employees and frees them from the burden of working under the constant threat that their good faith judgments can result in the loss of their homes, their cars, or their savings."

If we can be of any assistance in the passage of your bill please let me know.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Ronald L. Otte". The signature is written in dark ink and is positioned above the typed name.

Ronald L. Otte
President

RLO/lp

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSHB 277 (Jud)

Revision Date: _____ Dept. Affected: Administration
 Title: *Public employers defending and indemnifying BRU: Personnel/OEEO
public employees...within scope of employment...* Component: Personnel/OEEO
 Sponsor: Porter
 Requestor: (H) Jud COMPONENT SERIAL NO. 56

Expenditures/Revenues (Thousands of Dollars)

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

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

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

Estimate of current year (FY94) cost: none

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Kevin Ritchie, Director
 Division: Personnel/OEEO

Phone: 465-4430
 Date: _____

Approved by Commissioner: Nancy Bear Usery
 Agency: Administration

Date: 2/10/94

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FISCAL NOTE

STATE OF ALASKA

BILL NO. CSHB 277 (JUD)

1994 LEGISLATIVE SESSION

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

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

EXPENDITURES/REVENUES:

(Thousands of Dollars)

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

FUNDING SOURCE:

(Thousands of Dollars)

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

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

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

Prepared by: Brad Thompson, Director
 Division: Risk Management

Phone: 465-2180
 Date: _____

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

Date: 2/10/94

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HB

280

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HB 280

Revision Date: December 9, 1993
Title: "An Act adopting the Uniform Custodial Trust Act"
Sponsor: House Rules Committee
Requestor: Governor's Office

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

EXPENDITURES/REVENUES:

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

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

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

FUNDING:

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

POSITIONS:

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

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

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

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

Phone: 465-3672
Date: December 9, 1993
Date: December 9, 1993

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GOVERNOR'S LEGISLATIVE OFFICE
Attorney General's Office

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HB 280

ANALYSIS CONTINUATION:

The Custodial Trust Act is designed to provide a statutory standby inter vivos trust for individuals who typically are not very affluent or sophisticated, and possibly represented by attorneys engaged in general rather than specialized estate practice. The most frequent use of this trust would be in response to the commonly occurring need of elderly individuals to provide for the future management of assets in the event of incapacity.

Although the most frequent use probably will be by elderly persons, it is also available for a parent to establish a custodial trust for an adult child who may be incapacitated; for adult persons in the military, or those leaving the country temporarily, to place their property with another for management without relinquishing beneficial ownership of their property; or for young people who have received property under the Uniform Transfers to Minors Act to continue a custodial trust as adults in order to obtain the benefit and convenience of management services performed by the custodial trustee.

The objective of the statute is to provide a simple trust that is uncomplicated in its creation, administration, and termination. Consequently, the statute should also serve to avoid unnecessary administrative and legal costs and to conserve the corpus of individual trusts. These are transactions involving private persons, and the bill will therefore not have an impact on the Department of Law or state government.

SPONSOR STATEMENT
UNIFORM CUSTODIAL TRUST ACT

If enacted, HB 280 would adopt the Uniform Custodial Trust Act into Alaska Statute.

The Uniform Custodial Trust Act (UCTA) makes the benefits of trusts available to people without extensive financial assets. It offers everyone a chance to establish a kind of trust that guarantees control of property at a time when a person becomes incapacitated, and that may also be used to pass on property at death without probate. The act is designed to offer a new, very simplified custodial trust.

The UCTA was inspired by the Uniform Transfers to Minors Act, and the highly useful concept of a custodian for property of a minor under the terms of that act.

The UCTA is also endorsed by the American Bar Association

The state of Alaska should consider adoption of the UCTA. Custodial Trusts are inexpensive to create, they can be set up by a simple language reference in statute, the person who creates the trust retains control over it until incapacity or death and the trusts are comprehensive - that is they can contain real or personal property, tangible or intangible.

The most frequent users of this trust will most likely be senior citizens who want to provide for the management of assets in the event of future incapacity. Persons leaving the country temporarily can also place their property with another for management without relinquishing permanent control of their property.

HB 280 is a non-controversial bill and I would appreciate consideration and affirmative action by the committee.

THE UNIFORM CUSTODIAL TRUST ACT

CONTENTS

- * Fact Sheet - Custodial Trust Act

- * Why states should adopt the Custodial Trust Act

- * Summary of the Custodial Trust Act

- * Media Coverage: Jane Bryant Quinn, "Proposed Custodial Trust is cheap, easy way to avoid probate," in Los Angeles Herald Examiner, December, 1987.

- * Media Coverage: "Easy Trusts," in Changing Times, January, 1988.

- * A Tradition of Excellence - A History of the Uniform Law Commissioners

- * Uniform State Laws - How a Uniform Act is Created

A Few Facts About
THE UNIFORM CUSTODIAL TRUST ACT

PURPOSE: To make the benefits of trusts available to people without extensive financial assets.

ORIGIN: Completed by the Uniform Law Commissioners in 1987.

ENDORSED BY: American Bar Association

STATE
ADOPTIONS: Arkansas
Hawaii
Idaho
Minnesota
New Mexico
Rhode Island
Virginia
Wisconsin

1993
INTRODUCTIONS: Massachusetts

For any further information regarding the Uniform Custodial Trust Act, please contact John McCabe or Katie Robinson at 312-915-0195.

(1/15/93)

WHY STATES SHOULD ADOPT THE
UNIFORM CUSTODIAL TRUST ACT

The Uniform Custodial Trust Act (UCTA), promulgated by the National Conference of Commissioners on Uniform State Laws in 1987, offers everyone a chance to establish a kind of trust that guarantees control of property at a time when a person becomes incapacitated, and that may also be used to pass on property at death without probate. The act is designed to offer a new, very simplified custodial trust, making the benefits of trusts available to people without extensive financial assets.

The UCTA was inspired by the Uniform Transfers to Minors Act, and the highly useful concept of a custodian for property of a minor under the terms of that act. But why should minors be the only beneficiaries of a good idea?

There are many reasons why every state should consider and adopt the Uniform Custodial Trust Act.

INEXPENSIVE

A custodial trust is inexpensive to create. Fees for consultation and drafting will be minimum - and non-existent in many cases. In addition, the UCTA provides an alternative to a costly court-supervised conservator or guardian. It can be used to avoid the costs and delays of probate proceedings at death. Economies can accrue broadly with the use of custodial trusts.

SIMPLE

A custodial trust can be set up by simple language referencing the statute. No elaborate trust document is necessary. Rights and obligation are derived directly from the statute.

CONTROL

Any person who creates a custodial trust retains complete control over it until incapacity or death. The named trustee manages the property in the case of incapacity, but until then, control remains with the beneficiary - the creator of the trust. The beneficiary directs the management of the property, receives income and principal, and can cancel the trust at any time.

COMPREHENSIVE

Any kind of property, real or personal, tangible or intangible, can be put in a custodial trust. Anybody can be made a beneficiary. Any legally competent person or entity can be appointed as trustee.

The Uniform Custodial Trust Act is simple, inexpensive, comprehensive, and complete. The most frequent users of this trust will most likely be senior citizens who want to provide for the management of assets in the event of future incapacity. It is also available for a parent to establish a custodial trust for an adult child who may be incapacitated. Those leaving the country temporarily can also place their property with another for management without relinquishing permanent control of their property.

The Uniform Custodial Trust Act should be adopted in every state. Although it meshes with the Uniform Probate Code (UPC), it is appropriate in states which have not adopted the UPC.

UNIFORM CUSTODIAL TRUST ACT

We are perfectly free to be irresponsible with the property that we accumulate. We can dissipate it, abandon it, or ignore it. Most of us choose to be more responsible, however. We tend to accumulate property for the economic security it provides ourselves and our families. It comes as a great shock, therefore, when we find that controlling and protecting it at key moments in our lives is much harder than we imagined. What happens if we become incapacitated? Guardianships and conservatorships are expensive last resorts that mean total loss of control. What happens when we die? Wills and the probate process offer some solace, but probate becomes more onerous and expensive than helpful. Extensive estate planning with its panoply of generation-skipping devices, such as trusts, is expensive and beyond the resources of most people. The search for a better way continues.

The Uniform Law Commissioners' Uniform Custodial Trust Act, promulgated in 1987, offers some needed help. Inter vivos and testamentary, discretionary trusts are too complicated to meet certain needs. But the trust form of ownership, simplified and carefully prescribed in a statute, can meet them - thus the Uniform Custodial Trust Act (UCTA).

A trust is, simply, a legal structure for organizing the ownership and management of property for its preservation on behalf of specified individuals. A trust involves three fundamental participants: a donor who puts property in a trust; a trustee who owns and manages the trust; and beneficiaries who receive the financial benefit of the trust and for whom the property is preserved. A trust arises in a trust agreement or instrument (a document) in which the donor names the trustee and beneficiaries. The donor also establishes the trustee's powers over the property and the beneficiaries' rights to principal and income in the trust instrument. The donor then transfers property to the trustee, who owns it for the benefit of the beneficiaries. The trustee is also a fiduciary, meaning that he or she is subject to special rules and standards of care when managing the trust's assets. All trusts have these characteristics, and a custodial trust is but one of a number of kinds of trusts.

The UCTA allows any person to create a custodial trust by executing a simple statement (it may be a separate document or merely a notation on an existing title document) that the property is being placed in trust under the Act. The trustee's obligations arise upon acceptance of the property. That is all that is necessary to create the trust.

The UCTA permits a kind of springing trust too - a trust that arises upon the happening of a future event. Any person can create such a trust with respect to specific property by executing a simple statement, indicating that the trust will be established upon the happening of the event.

The UCTA also allows anybody obligated to an incapacitated person, without a conservator (a conservator is a court-appointed manager of an incapacitated person's property), to establish a custodial trust into which property satisfying the obligation is placed for the incapacitated person as beneficiary. If the value of the property so placed exceeds \$20,000, however, a transfer into such a trust must be approved by a court.

What distinguishes a custodial trust from other kinds of trusts? To begin with, the UCTA governs all aspects of the trust relationship, including a trustee's powers and obligations. Therefore, elaborate trust documents are not needed. Second, a custodial trust exists at the will of its beneficiaries. Any beneficiary can terminate his or her share of the trust. Third, trust beneficiaries can direct the trustee's payment of income to themselves. Fourth, the beneficiaries can direct the trustee's investment and management of the trust property. Fifth, at a beneficiary's incapacity, the trust continues as a discretionary trust, with the trustee as a full fiduciary. Therefore, no conservator needs to be appointed for the purposes of managing the trust property. Sixth, a beneficiary may direct the trustee by a simple writing to distribute the trust property in any fashion the beneficiary desires at the beneficiary's death. The writing is not a will unless the beneficiary makes it one, and the distribution is a non-probate transfer of the property.

These powers of beneficiaries distinguish a custodial trust from all other trusts. Trustees under the common law are not subject to the direction of beneficiaries. The powers of the beneficiaries in the UCTA suggest why such a trust is called "custodial" and suggest the values of a custodial trust, as well as its limitations.

A trust is custodial because the trustee's powers are limited by the beneficiaries - the trustee is a custodian for the beneficiaries' interests. The trustee is a custodian until such time as a beneficiary becomes incapacitated. The custodial trust is an ideal form of ownership for anyone who wants to make sure property is properly managed before incapacity and protected afterwards. A person with property merely conveys the property to a trustee, naming himself or herself as beneficiary. While there are no questions of capacity, the beneficiary retains significant powers over the property. At incapacity, his or her appointed trustee continues to manage the property and use it for the beneficiary. If incapacity is temporary, the beneficiary reasserts his or her powers when capacity returns. If at any time a beneficiary with capacity desires to terminate the custodial trust, he or she simply terminates it.

Who will use the trust? Older people who want to make sure they control who manages their property when they are incapacitated, are the most likely users of the UCTA. People who go on long trips and who want to assure proper management while they are gone or who want protection if they become incapacitated while traveling can use a custodial trust rather than a power of attorney if it suits their needs. These are examples of people and situations for which the UCTA was created.

At the same time, people who need discretionary trusts for estate planning and tax purposes will continue to turn to traditional trust law. The control provided to beneficiaries in the UCTA and the ability to terminate a custodial trust do not make it suitable for these purposes.

The UCTA fills very particular needs of ordinary people. It should be considered strongly by any state or jurisdiction conscious of the difficulties an ordinary person has in preparing for personal incapacity and death.

A 100 – YEAR TRADITION OF EXCELLENCE

The National Conference Of Commissioners On Uniform State Laws

In the latter part of the 19th century, about the time a prominent law professor was characterizing state legal systems as "a whimsical diversity of laws," a movement began taking hold for the development of uniform laws among the states.

The Alabama Bar Association took the first formal action to encourage the development of "uniform" laws in 1881. But it was not until August 1889, during the 12th annual meeting of the American Bar Association, that the legal community made a formal resolution to work for "uniformity in the laws" of the then 44 states.

New York was the first state to act. In 1890 it authorized the governor to appoint three commissioners to "examine the subjects of marriage and divorce, insolvency, the form of notarial certificates and other subjects; to ascertain the best means to effect an assimilation and uniformity of the laws of the states; and especially to consider whether it would be wise and practicable for the state of New York to invite other states of the Union to send representatives to a convention to draft uniform laws to be submitted for the approval and adoption of the several states...." A few months later the ABA endorsed the New York action and urged the states, the District of Columbia and territorial legislatures to follow New York's lead.

In the Beginning – Seven States

Six other states heeded the call and joined New York at the first meeting of the "Conference of State Boards of Commissioners on Promoting Uniformity of Law in the U.S." in Saratoga Springs, New York on August 24, 1892. They were Delaware, Georgia, Massachusetts, Michigan, New Jersey and Pennsylvania.

The new Commissioners wasted no time. They immediately completed and urged states and territories to adopt three acts – Relating to Acknowledgments on Written Instruments, Validating Wills Lawfully Executed Without the State, and Recognizing as Valid Wills Probated in Another State.

They also recommended that states enact laws governing payment of notes, validating contracts and divorce and marriage. With great variance in the marriage consent age, they proposed raising the marrying age to 18 for males and 16 for females.

They also adopted a table of weights and measures, noting "it will probably be a surprise to most people to learn that legal weights of a bushel ... with the exception of wheat alone, vary in all the states."

After this burst of activity, the Conference produced no other proposals until 1896, when the Negotiable Instruments Law was completed. The NIL was the first act adopted by every state and the District of Columbia; it later became the basis for Article 3 of the Uniform Commercial Code.

Then There were 33

By 1900, 31 states and two territories had appointed commissioners on uniform laws. During the first decade of the new century the Uniform Law Commissioners (ULC) concentrated on legislation to facilitate interstate commerce, drafting laws concerning sales, warehousing and transportation. A majority of states adopted all of these pioneering acts before they, as well as the Negotiable Instruments Law, were superseded by the Uniform Commercial Code some 40 years later.

By 1910, only Nevada and the Territory of Alaska had not appointed commissioners. They came aboard by 1912.

In its third decade, the Conference considered and adopted legislative proposals on issues ranging from partnerships to child labor. And in 1915, the organization officially became known as the National Conference of Commissioners on Uniform State Laws.

The ULC responded to problems of the 1920s with proposals in such areas as aviation and public utilities. In the 1930s, Commissioners wrestled with machine gun laws as well as torts and trusts.

Fifty-Year Assessment

As the Conference approached its golden anniversary year, its leadership began a reassessment to determine how the ULC could better serve the federal system. Though the past had been productive, Commissioners decided they could play a more useful role in the future if they attacked major problems with comprehensive legal solutions rather than trying to address them piecemeal.

That decision led to the launching of the mammoth project that produced the Uniform Commercial Code (UCC). The ULC officially took on the task of drafting a comprehensive code to provide guidelines for all commercial transactions in 1940. Work on some of its components had already begun. In 1947 the ULC and the American Law Institute joined in a partnership that put all the components together in a Uniform Commercial Code that was offered to the states for their consideration in 1951. More than a decade of difficult battles for adoption in every state followed. But by 1967, all the states had enacted the Code except for Louisiana, which remains the lone holdout on several code provisions.

The breadth and depth of the UCC are difficult to grasp. It guarantees that commercial transactions in California are subject to the same law as transactions in Maine. A child purchasing penny candy in a neighborhood shop and a manufacturer buying robot welders for his assembly line both complete their transactions within the framework of the UCC. In UCC states, the code encompasses every sale of goods from crude oil to autos, every bank check written, and all commercial paper, stock and bond transactions.

The UCC is not set in stone. In 1987 the first new article since 1951 was approved, establishing law for the billion dollar leasing industry. As the Conference embarks on its second century, it is dealing with major changes in state payment system law, including electronic funds transfers, to bring the Code into the 21st century of finance.

The UCC's success as a comprehensive solution inspired Commissioners to produce and work for enactment of a wide variety of legislative solutions to other basic state problems. These have included: the Uniform Probate Code, Uniform Consumer Credit Code, Uniform Marriage and Divorce Act, Uniform Alcoholism and Intoxication Treatment Act and a package of proposals designed to do for land transactions what the UCC did for transactions in the commercial realm — provide modern law to deal with modern problems.

While forging these major broad projects — primarily from the 1960s to the early 1980s — the ULC also completed legislation needed by the states to deal with more specific problems. Among these proposals were the Child Custody Jurisdiction Act, Anatomical Gift Act, a major revision of the Limited Partnership Act and the Determination of Death Act.

Agendas are made by a Scope and Program Committee. Most recently, commercial and family law have been focal areas for drafting efforts. Among the "products" of the 1980s are two new Articles to the Uniform Commercial Code, a Trade Secrets Act, the Transfers to Minors Act, Premarital Agreement and Marital Property Acts, and acts addressing such topical issues as surrogate mother contracts and rights of the terminally ill.

Uniform and Model Acts

In addition to "Uniform Acts," which every state is urged to adopt, the ULC also drafts "Model Acts" to guide legislatures dealing with issues that need not be treated uniformly. Some models — such as the Model State Administrative Procedure Act — have been adapted for use by most states.

It is important to state treasuries that most ULC proposals fall into the category of "private law" — the body of law based on English common law that governs the basic legal relationships between people. No government body intervenes in "private law" relationships. People conduct their affairs without interference. When a breach of a legally enforceable private obligation occurs, the courts are available to sort out the facts and grant remedies ranging from monetary payments to injunctive relief. For example, the Uniform Residential Landlord and Tenant Act governs the contractual relationship between landlord and tenant. This relationship proceeds unfettered unless a party breaches an obligation — such as a landlord's obligation to maintain fit and safe premises. If such a breach occurs, then the wronged party can seek damages and reparations for losses sustained.

This contrasts with "public law," which usually involves using an executive agency or bureau as a regulatory body. In that case, legislatures enact laws vesting authority in an administrative agency which then carries out the duties of investigator, rulemaker, regulator and enforcer. Because new agencies must be created to enforce public law, it usually costs more money.

Why the Conference Works

Commissioners dedicated to the work of the Conference make it work. They include about 300 law professors, judges and lawyers in the public and private sector. It is their contribution of time and expertise — Commissioners receive no salaries or fees for their work with the Conference — that has earned NCCUSL the media label of "prestigious." In this century, President Woodrow Wilson and U.S. Supreme Court Justices Louis D. Brandeis and William F. Rehnquist served as Commissioners. So did such law school legends as Roscoe Pound of Harvard.

Commissioners are appointed by the 50 states, the District of Columbia, Puerto Rico and the U.S. Virgin Islands. The number of Commissioners (most states have at least three) and the method of appointment vary from state to state. While the governor is responsible for appointments in most states, Commissioners are usually considered non-partisan. As a result, many are appointed by the governor of one party and reappointed by the governor of another. Some Commissioners serve the ULC for decades.

A Two-Part Job

Being a Commissioner involves two areas of service. They not only draft proposals but then work within their state for enactment of uniform laws designed to solve problems common to all states.

The ULC's reputation was built on the high quality of its drafts. That results from a procedure structured to bring a unique blend of legal minds to bear on a particular problem. It begins with the choice of a drafting committee whose members are selected to insure that as much expertise and as many viewpoints as possible will be represented at the drafting table.

For example, there were a number of real estate law experts appointed to the committee responsible for preparing preliminary drafts of the land transactions package, which includes the Uniform Land Transactions Act (ULTA), Uniform Simplification of Land Transfers Act (USOLTA), Uniform Condominium Act (UCA), Uniform Planned Community Act (UPCA),

Model Real Estate Cooperative Act (MRECA), and finally the Uniform Common Interest Ownership Act (UCIOA). These drafters included Commissioners who were law school professors as well as practicing lawyers specializing in real estate law. Outside lawyer and non-lawyer experts were invited to provide specialized knowledge to the drafting committee. These advisers represented associations of lenders, builders, sellers, lawyers and consumers. But all decisions were made by Commissioners who represent only the people of their state.

The Drafting Ordeal

Preliminary drafts of the proposals were prepared and circulated to advisers and others interested in the committee's deliberations. That included every Commissioner. Eventually, the committee was ready to present its work at an annual meeting of the Conference for "initial consideration" by every Commissioner.

During the annual meeting Commissioners assemble for a week, spending every day and some nights considering each "tentative draft" prepared by the drafting committees. The drafts are read "line by line" and then discussed, debated and changed. With hundreds of trained eyes probing every concept and word, it's a rare draft that leaves an annual meeting in the same form it comes in. Because the ULC is a confederation of state commissions on uniform laws, close issues are decided by polling state delegations. Regardless of the number of representatives from each state, each state has only one vote.

Shortly after the annual meeting, committees with uncompleted drafts begin incorporating changes made during the meeting and dealing with new problems raised by Commissioners as well as others.

Proposals are subjected to this rigorous procedure for at least two annual meetings before they become eligible for designation as ULC products. The final decision on whether a proposal is ready for promulgation to the states is made near the close of an annual meeting — again on a one-state, one-vote basis. But the procedure can take much longer. Because of the complexities of ULTA, USOLTA, UCA, UPCA, MRECA and UCIOA, more than a decade elapsed before these proposals were adopted by the ULC.

The Conference Proposes — The State Disposes

With the drafting done, a Commissioner's job has only begun. Each is then obligated to return home and work for adoption of the completed proposal in his or her state legislature. Normal resistance to anything new makes this the most difficult part of a Commissioner's responsibility. Remember, it took 14 years before the Uniform Commercial Code was adopted by 49 states.

But the result can be workable, modern state law that helps keep the federal system alive. The work of the ULC simplifies the legal life of businesses and individuals by providing rules and procedures that are consistent from state to state. It also insures that problems can be solved close to home in state courts and agencies rather than lost in overworked federal courts and U.S. departments and agencies.

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO: CSHB 299(FIN)

Revision Date: 3/24/94 Dept. Affected: Public Safety
 Title: An Act relating to revocation of a driver's license and providing for an effective date. BRU: Motor Vehicles
 Sponsor: Representative Toohy Component: Driver Services/Field Services
 Requestor: (H) FIN COMPONENT SERIAL NO. 500.502

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

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES	126.1	126.1	126.1	126.1	126.1	126.1
TRAVEL	1.5	0	0	0	0	0
CONTRACTUAL	23.4	16.1	16.1	16.1	16.1	16.1
SUPPLIES	1.0	1.0	1.0	1.0	-1.0	-1.0
EQUIPMENT	42.0	0	0	0	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	194.0	143.2	143.2	143.2	143.2	143.2
CAPITAL EXPENDITURES						
CHANGE IN REVENUES (1005) <small>Revenue Code</small>	622.5	622.5	622.5	622.5	622.5	622.5

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts	94.0	143.2	143.2	143.2	143.2	143.2
1006 GF/MHTIA						
Other						
TOTAL	194.0	143.2	143.2	143.2	143.2	143.2

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

POSITIONS:

FULL-TIME	3	3	3	3	3	3
PART-TIME						
TEMPORARY						

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

Prepared By: Juanita M. Hensley Phone: 465-2650
 Division: Motor Vehicles Date: 03/24/94
 Approved by Commissioner: *[Signature]* Date: 03/24/94
 Agency: Richard L. Burton, Dept. of Public Safety

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MWH
3/24/94

This bill will require the Division of Motor Vehicles to administratively revoke the driver's license of any person between the ages of 14 through 20 who has consumed or who is in possession of drugs or alcohol. The Division of Family and Youth Services (DFYS) reports approximately 1,200 youths between the ages of 14 through 17 are referred to their agency by police authorities for alcohol or drug offenses yearly. The Department of Public Safety Uniform Crime Report for 1992 shows approximately 1,300 persons between the ages of 13 through 20 are arrested or charged with drug and alcohol offenses (other than DWI) each year. The total number of youths whose driver's license or privilege to drive would be revoked is approximately 2,500. The Department of Public Safety Uniform Crime Report does not include 37 cities or rural communities.

In order to handle the additional 2,500 license revocations a year, and provide due process for the minor, one full-time Driver Improvement Specialist/Hearing Officer, and two full-time Motor Vehicle Representative I/II's would be required. The cost for personal services for a Driver Improvement Specialist/Hearing Officer is 52.8; the cost for two Motor Vehicle Representative I/II's is 73.3. The total for personal services is 126.1. The Driver Improvement Specialist and one Motor Vehicle Representative will be located in the Juneau Driver Services office and will handle the paperwork and hearings associated with administering the revocation of the driver's license. The second Motor Vehicle Representative will be located in the Anchorage Field Services section and will be used in the Motor Vehicle Field office to handle the reinstatement and issuance of a driver's license.

To revoke 2,500 additional driver's licenses a year takes over 30 processing steps per revoked license. It takes approximately 20 minutes to one hour to conduct an administrative hearing. Each processing step varies in the time it takes to complete. Complete accuracy is essential, as an error of entry onto a driving record could result in civil liability to the State. It takes approximately 20 minutes per applicant to reinstate a revoked driver's license; this time is exclusive of the time it takes a person to take the required tests; the person must make a new application for the driver's license or permit, take all of the required tests, and if the person is under the age of 18 a parent or legal guardian must give consent for the driver's license or permit and pay the reinstatement fee. Travel and per diem requested is to send the hearing officer to the National Judicial College for professional training in the fair hearing process.

Under existing law, each person whose license has been revoked must pay a \$100 fee when applying for reinstatement of his or her driver's license. This bill amends current law by requiring a reinstatement fee of \$250 for anyone who has had their driver's license suspended, revoked or limited more than one time. Assuming 90 percent of the minors who are eligible for reinstatement will comply with the reinstatement requirements and pay the \$100 fee, approximately \$225.0 will be generated annually as new program receipts/general fund revenue.

In FY93 the division reinstated approximately 5,300 driver's licenses where the person paid a fee of \$100. It is estimated that 50 percent or 2,650 have first time actions against their record and will continue to pay the \$100 fee and 50 percent or 2,650 of these drivers have prior actions against their record and will be required to pay the \$250 fee. The 2,650 drivers will be required to pay an additional \$150 which will generate an additional \$397.5 in new program receipt/general fund revenue. The total new program receipts/general fund revenue is \$622.5.

	FY 95	FY 96
<u>PERSONAL SERVICES</u>		
2 Motor Vehicle Representative I/II's 1 Driver Improvement Specialist/ Hearing Officer		
Total Personal Services	126.1	126.1
<u>TRAVEL & PER DIEM</u>		
Airfare and per-diem to National Judicial College (one time expense)		
Total Travel & Per Diem	1.5	
<u>CONTRACTUAL</u>		
323 Sq. Ft. office space lease @ \$1.95 per sq. ft. = \$7.6 per year Postage and tolls = \$1.7 per year Telephone charges/conference call/ long distance charges = \$6.8 per year Tuition for National Judicial College \$1.3 (one time expense) 80 hours computer programming time @ \$75/hr = \$6.0		
Total Contractual	23.4	16.1
<u>SUPPLIES & MATERIALS</u>		
Office supplies		
Total Supplies	1.0	1.0
<u>EQUIPMENT</u>		
3 Complete workstations @ \$10.0 each Copier 11.0		
(Equipment is a one time expense)		
Total Equipment	42.0	
TOTAL COST	194.0	143.2

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSHB 299 (JUD)

Revision Date: March 9, 1994
Title: "...revocation of a driver's license for illegal possession or use of a controlled substance...alcohol..."
Sponsor: Representative Toohy
Requestor: Representative Toohy

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

EXPENDITURES/REVENUES:

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

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

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

FUNDING:

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

POSITIONS:

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

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

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

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

Phone: 465-3672
Date: March 9, 1994

Approved by Commissioner: Bruce M. Botelho, Attorney General
Agency: Department of Law

Date: March 9, 1994

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSHB 299 (JUD)

ANALYSIS CONTINUATION:

The House Judiciary Committee version of HB 299 adds a new section to AS 28.15 that provides for the revocation of a driver's license of a person that is at least 14 years of age, but not yet 21 years of age, for the possession or use of a controlled substance in violation of AS 11.17, or the possession or use of alcohol in violation of AS 04.16.050.

Revocation would be handled administratively by the Department of Public Safety if a police officer had probable cause based on personal observation that the possession or use occurred. The administrative process includes a provision for an administrative appeals hearing, as well as providing for subsequent judicial review. A police officer would be required to read a notice and to deliver a copy to the person advising that revocation will occur in seven days, unless the person requests an administrative review within the seven days. The written notice would serve as a temporary seven day license or permit, and the police officer would seize the person's license or permit if it is in the person's possession. Revocation would include the person's driver's license, permit, privilege to drive, or privilege to obtain a license or permit. A first revocation would result in a revocation for a period of 90 days; a second revocation would result in a revocation for a period of one year; and a third revocation would result in revocation for a period of three years. The bill also provides that the Department of Public Safety may not issue a new license or reissue a license to a person whose driver's license, permit, or privilege to drive has been revoked, under these provisions, unless the person is enrolled in or in compliance with, or has successfully completed and paid for (1) an alcoholism education and rehabilitation program, if the revocation resulted from the possession or use of alcohol, or (2) a drug rehabilitation treatment program if the revocation resulted from the possession or use of a controlled substance. Finally, the bill increases the amount of the reinstatement fee, from \$100 to \$250, for any person who seeks a driver's license at the end of the revocation period.

Current statute (AS 28.15.185) contains similar penalties for the same offense; however, the existing statute is limited to youths ages 13 through 17, and the penalties can be invoked only if the person is adjudicated by a juvenile court of misconduct involving a controlled substance or alcohol.

Because the revocation process will be handled administratively within the Department of Public Safety, the bill is unlikely to have a direct fiscal impact on the Department of Law. However, we are concerned that there will be a secondary impact caused by youthful offenders who drive while their license is revoked or who cannot obtain a license or permit during a revocation period. We also expect that there will be a larger number of revocations than now occurs under the existing statute, because the age span covered by the bill is greater and because revocation will not require an adjudication. Thus it appears that the incidence of DWLS offenses will increase. However, data is not available that would give any clear idea on the amount of increase that will result if the bill is approved. Consequently, fiscal impact costs have not been shown. We therefore caution that increasing prosecutor caseload at a time when revenues are decreasing, and at a time when the existing caseload is already increasing, will result in prosecutors being forced to decline prosecution of certain offenses in favor of prosecuting more serious offenses.

Finally, we note that the bill includes well-reasoned findings in respect to the dangers involved in mixing alcohol and driving and the particular danger to youths under the age of 21. However, no findings have been included in respect to controlled substances and the dangers they present to youths under the age of 21.



Official Business

Alaska State Legislature

State Capitol
Juneau, AK 99801-1182

SPONSOR STATEMENT House Bill 299

"An Act relating to revocation of a driver's license for illegal possession or use of a controlled substance or illegal possession or consumption of alcohol; and providing for an effective date."

House Bill 299 is referred to as "*Use It-Lose It*" legislation.

There is no doubt that the dangerous association of controlled substances and alcohol with driving begins at an early age. It cannot be stressed enough that usage of alcohol or controlled substances causes a reduction of mental and physical capabilities and can severely impair one's ability to drive in a responsible manner. HB299 would provide the Department of Public Safety with a tool to help discourage youth from starting the dangerous and often fatal association of controlled substances and alcohol with driving.

Driving is a privilege looked forward to by all youngsters. Loss of this privilege can be a powerful deterrent. The intent of this bill is to provide the strongest possible incentive for our children to say "no" to controlled substances or alcohol. It gives youth a reason, that is acceptable to their peers, to say "no," while providing positive reinforcement to alcohol and drug-free teenagers by maintaining their eligibility to drive.

Under HB299, a minor who is old enough to have either a permit or license to drive would lose that license, permit, or privilege if said minor possessed, used, or consumed a controlled substance or alcohol. Revocation would be through an administrative proceeding.

This bill is supported by the Department of Public Safety, the Alaska Medical Association, the Alaskan Federation of Natives Sobriety Movement, the Alaska Council on Prevention of Alcohol and Drug Abuse, Alaskans for Drug-Free Youth, Mothers Against Drunk Driving, the Alaska Peace Officers Association, the Governor's Advisory Board on Alcoholism and Drug Abuse, the Ketchikan Mayor's Task Force on Substance Abuse, and the Alaska Association of Chiefs of Police. It has a fiscal note from the Department of Public Safety, but it is anticipated the revenue generated would more than cover the cost of the implementation. It would also enable the State to access additional federal funds. There is a zero fiscal note from the Department of Law. Your support would be appreciated.

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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Mail Stop 5101

130 Seward Street, Suite 409

Juneau, Alaska 99801-2105

MEMORANDUM

April 12, 1994

SUBJECT: Sectional Summary of CSHB 299(FIN) am
(Work Order No. 8-LS0961\D)

TO: Representative Cynthia Toohey

FROM: Michael F. Ford *M.F.*
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 and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1.

Sec. 28.15.183. Requires administrative revocation of a driver's license of a person who is at least 14, but not yet 21 years old, who has illegally consumed or possessed alcohol or a controlled substance. Establishes periods of mandatory revocation. Provides that revocation under this section is consecutive to revocation under another provision of law, except for a revocation under AS 28.15.185. Allows for the Department of Public Safety to grant limited license privileges.

Sec. 28.15.184. Provides for review of the administrative revocation before a hearing officer. If the illegal possession or consumption is proven by a preponderance of the evidence the revocation is required to be sustained. Provides for appeal of the hearing officer's decision to superior court.

Section 2. Technical amendment to remove a specified fee for reinstatement of a driver's license.

Section 3. Technical amendment to remove a specified fee for reinstatement of a driver's license.

Representative Cynthia Toohey

April 12, 1994

Page 2

Section 4. Imposes a fee of \$100 for first time offenders and for repeat offenders a fee of \$250 for reinstatement of a driver's license under AS 28.15.211.

Section 5. Applicability.

Section 6. Effective date.

MFF:lmb
94-110.lmb

POSITION PAPER - Department of Public Safety

BILL NO: CSHB 299 (HES)

DATE: February 15, 1994

TITLE: Driver's License Revocation; Alcohol/Drugs

CONTACT: Lorn M. Campbell
Executive Director
Highway Safety
Planning Agency

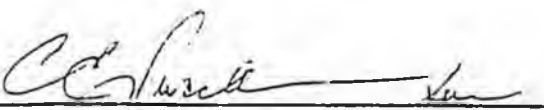
"An Act relating to revocation of a youth under 21 years of age driver's license for illegal possession or use of a controlled substance or illegal possession or consumption of alcohol."

Under Alaska Statute 28.15.011 the exercise to drive or have any degree of control over a motor vehicle upon a highway is a privilege and not a right guaranteed by law. Impaired driving and impaired-related crashes involving young drivers constitute a major problem in every motorized country in the world. In the United States, drivers age 16-19 have the highest crash rate--20.1 crashes per million miles driven in 1990--compared with a rate of 5.3 for all other ages combined.

Alaska is no exception to this problem as alcohol/drugs continue to be a major contributor in youthful traffic accidents and deaths in the State of Alaska. Statistics for 1992 showed 44.4 percent of youths under the age of 21 were impaired at the time of their deaths. Autopsy results disclosed that all of the youth who were impaired had blood alcohol levels well over 0.10.

As consumption or possession of alcohol or a controlled substance is unlawful by all persons under the age of 21 years, license revocation is a particularly appropriate penalty for young drivers for a number of reasons. First of all, mile for mile the teenage driver is a high-risk operator, especially when drinking. Every mile that this high-risk driving can be reduced by significant safety dividends for the individual and the public. Since the privilege to drive is important to a teenager, loss of the driver's license is particularly relevant in motivating the young driver to avoid alcohol or drug related offenses.

The Department of Public Safety strongly supports passage of CSHB 299 (HES) or similar legislation that saves the lives of our State's most valuable resource--our youth.


Richard L. Burton,
Commissioner

DEPT. OF PUBLIC SAFETY
POSITION PAPER

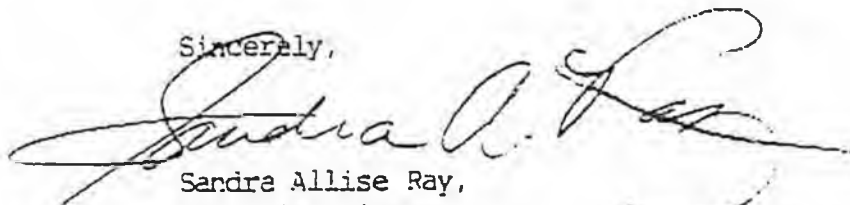
March 3, 1994

Page Two

NHTSA, 1993 report states that approximately 60% of pedestrians 16 years and older killed in nighttime crashes had a BAC of .10 or greater. The statistics are alarming. Youthful drinking in Alaska and drug usage is not the exception, it is so ordinary that students I have personally spoken with, have advised me that our area high schools are actually the easiest place to buy drugs in the state. They report that they not only buy drugs in plain view, but they use in plain view.

As a retired police officer from the State of Florida and now the Executive Director of the Anchorage Chapter of MADD, I strongly urge the passage of this "Use it-Lose it" legislation. More stringent laws are needed to reduce the numbers of youthful consumption of alcohol and drugs. If we say it's illegal to possess it, we need a counter-measure which will effectively reduce the incidence. We must do more to prevent such needless loss of life and health. I sincerely believe that this law would constitute the strongest deterrent available to youthful drivers in Alaska. The best payoff is the contribution this legislation will make to our safety as we drive from place to place within Alaska.

Sincerely,



Sandra Allise Ray,
Executive Director
Scott & Wesley Gerrish Memorial Chapter
Mothers Against Drunk Driving
Anchorage, Alaska



Alaska State Legislature

HOUSE OF REPRESENTATIVES

Committee on Finance

Official Business

P.O. Box V
State Capitol
Juneau, Alaska 99811

HOUSE FINANCE COMMITTEE

LETTER OF INTENT

FOR

CS HB 299 (FIN)

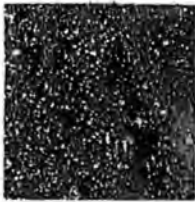
"It is the intent of the Alaska Legislature that new general fund program receipts provided by increases in the driver's license reinstatement fee be divided equally between the Department of Public Safety and the Department of Health and Social Services. The new program receipts received by the Department of Health and Social Services should be used for alcohol and drug abuse prevention and treatment programs specifically targeted at youth."

Ronald J. Larson 3/23/94
Co-Chair Larson Date

E. P. MacLean
Co-Chair MacLean

3/23/94
Date

HOUSE FINANCE
COMMITTEE
LETTER OF INTENT



ALASKA STATE MEDICAL ASSOCIATION

4107 Laurel Street • Anchorage, Alaska 99508-5334 • (907) 562-2662

February 15, 1994

Representative Cynthia Tochey
Alaska State Legislature
P. O. Box 7 (MS 3120)
Juneau, AK 99811

Dear Representative Tochey:

On behalf of the Alaska State Medical Association I would like to offer you our organization's strongest support for your committee substitute for House Bill #299. As physicians we are well aware of the trauma alcohol and drugs inflict upon Alaskans. These problems often begin while our youth are in their teens and this bill will serve as a ringing wake-up call that substance abuse has serious consequences and will not be tolerated. This bill is elegant in its simplicity and will be eloquent in its message once under-age drivers realize that substance abuse is incompatible with driving privileges. When enacted, this bill will be a model for other states to deal with this problem.

I thank you and your staff for your hard and thoughtful work on this bill. If I can be of any assistance to you in its passage, do not hesitate to contact me. If my testimony would ever be helpful, I would be happy to assist you.

Sincerely yours,

Donald P. Lehmann, M.D., A.B.F.P.
President, Alaska State Medical Association

DRL:bj



Alaska Federation of Natives
*Sobriety Movement

March 10, 1994

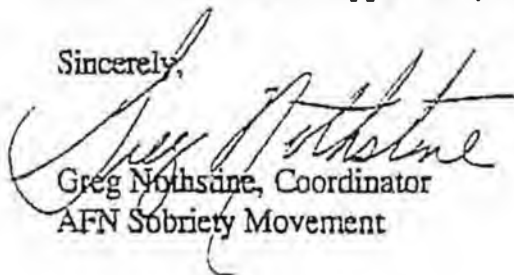
Representative Toohy
Alaska State Legislature
House of Representatives
State Capitol
Juneau, AK 99801-1182

Dear Representative Toohy,

The AFN Sobriety Movement focuses on sobriety as the solution for many problems facing our people. The passage of House Bill 299 may well be an opportunity for early intervention with young people who are experiencing an alcohol or other drug addiction, thereby giving them a better chance for a successful treatment experience and hopefully saving them and the people around them from some of the devastating effects of alcohol and other drug abuse.

I believe that with the passage of House Bill 299, it will encourage sobriety*, as it requires youth offending for the first time to participate in a treatment program for license reinstatement, and I support the passage of this bill.

Sincerely,



Greg Nothsane, Coordinator
AFN Sobriety Movement

RVH