

ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 8672

8595 HOUSE • JUDICIARY •

FISCAL NOTE

STATE OF ALASKA  
1995 LEGISLATIVE SESSION

No. 2  
Bill Version: HB 130  
(H) Publish Date: 3/20/95

Revision Date: \_\_\_\_\_  
Title: "A Act relating to agency review of public comment on the adoption, amendment, repeal of regulations; ..."  
Sponsor: Representative Kelly  
Requestor: \_\_\_\_\_

Department Affected: Office of the Governor  
BRU: Elective Operations  
Component: Elections

COMPONENT SERIAL NO. 0021

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

CAPITAL EXPENDITURES						
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CHANGE IN						
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FUND SOURCE	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
OTHER						
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

POSITIONS	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of any current year (FY95) cost: \_\_\_\_\_

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

Prepared by: David Koivuniemi, Acting Director  
Division: Division of Elections

Phone: 465-5405  
Date: 2-2-95

Approved by Commissioner: Lieutenant Governor Fran Ulmer  
Agency: Office of the Governor

Date: \_\_\_\_\_

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# FISCAL NOTE

No. 4

Bill Version: HB 130

(H) Publish Date: 3/20/95

STATE OF ALASKA  
1995 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_  
Title: Regulation Changes/Public Comment

Dept. Affected: Office of the Governor  
BRU: Human Rights Commission  
Component: \_\_\_\_\_

Sponsor: Kelly  
Requester: \_\_\_\_\_

COMPONENT SERIAL NO. \_\_\_\_\_

**Expenditures/Revenues**

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	40.0	-0-	42.0	-0-	44.0	-0-
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>40.0</b>	<b>-0-</b>	<b>42.0</b>	<b>-0-</b>	<b>44.0</b>	<b>-0-</b>
<b>CAPITAL EXPENDITURES</b>						
<b>CHANGE IN REVENUES</b>						

**FUND SOURCE**

(Thousands of Dollars)

FUND SOURCE	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
1002 Federal Receipts						
1003 GF Match						
1004 GF	40.0	-0-	42.0	-0-	44.0	-0-
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>40.0</b>	<b>-0-</b>	<b>42.0</b>	<b>-0-</b>	<b>44.0</b>	<b>-0-</b>

Estimate of any current year (FY99) cost: \$ -0-

**POSITIONS**

NONE

POSITIONS	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS:** (Attach a separate page if necessary)

The Commission periodically enacts regulations. Section 44.62.215(b) will require the agency to reach a determination on issues for which it does not have the expertise. The Commission would need the contractual services of an accountant, survey taker, and economist for one month to assist it in providing the written determination required in this subsection.

Prepared by: Paula M. Haley, Executive Director Phone: 276-7474 x241  
 Division: Human Rights Commission Date: 2-2-95  
 Approved by Commissioner: [Signature] Date: 2/6/95  
 Agency: \_\_\_\_\_

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# FISCAL NOTE

No. 5

Bill Version: HB 130

(H) Publish Date: 3/20/95

STATE OF ALASKA  
1995 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_ Dept. Affected: Office of the Governor  
 Title: Relating to the review of proposed regulations BRU: Office of Management and Budget  
 Component: Governmental Coordination  
 Sponsor: Representative Kelly  
 Requester: \_\_\_\_\_ COMPONENT SERIAL NO. 18

**Expenditures/Revenues** (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
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	38.4	38.6	38.6	38.6	38.6	38.7
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
<b>TOTAL OPERATING</b>	<b>38.4</b>	<b>38.6</b>	<b>38.6</b>	<b>38.6</b>	<b>38.6</b>	<b>38.7</b>

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	38.4	38.6	38.6	38.6	38.6	38.7
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
<b>TOTAL</b>	<b>38.4</b>	<b>38.6</b>	<b>38.6</b>	<b>38.6</b>	<b>38.6</b>	<b>38.7</b>

Estimate of any current year (FY95) cost: \$ 0.0

**POSITIONS**

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

**ANALYSIS:** (Attach a separate page if necessary)

Section 6 of the proposed legislation (AS 44.62) would place new regulatory requirements on the Division of Governmental Coordination, including evaluation of the economic effects of the proposed regulatory change. The Division does not have an economist on staff and has determined the most efficient way to meet the new requirements would be to contract with an economic consultant. The consultant would prepare a written review of the proposed regulatory change and address the four items identified in AS 44.62.215. The fiscal impact to the Division is based on the average of three regulatory projects per year that would require one month of a consultant's time per project. The inflation rate is based on current revenue forecasts.

Prepared by: Kerry Howard, Acting  
 Division: Governmental Coordination  
 Approved by Commissioner: \_\_\_\_\_  
 Agency: \_\_\_\_\_

Phone: 465-3582  
 Date: 2/21/95  
 Date: 2/6/95

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FISCAL NOTE

No. 1

STATE OF ALASKA  
1995 LEGISLATIVE SESSION

Bill Version: HB 130

(H) Publish Date: 3/20/95

Revision Date: \_\_\_\_\_  
Title: "An Act relating to agency review of public comment..."

Department Affected: Administration

BRU: Various

Component: Various

Sponsor: Rep. Kelly

Requestor: Rep. Kelly

COMPONENT SERIAL NO. 45

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
OTHER						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY 95) cost: \$ -0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)  
There is no fiscal impact to the Department of Administration.

Prepared by: Sharon Baran  
Division: Administrative Services

Phone: 465-2277  
Date: \_\_\_\_\_

Approved by Commissioner: Mark Bover  
Agency: Department of Administration

Date: 3/13/95

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FISCAL NOTE

STATE OF ALASKA  
1995 LEGISLATIVE SESSION

No. 6  
Bill Version: HB 130  
(H) Publish Date: 3/20/95

Revision Date: 2/13/95  
Title: "A Act relating to agency review of public comment on the adoption, amendment, repeal of regulations: ..."  
Sponsor: Representative Kelly  
Requestor: \_\_\_\_\_

Department Affected: Office of the Governor  
BRU: Executive Operations  
Component: Office of the Lieutenant Governor

COMPONENT SERIAL NO. 0011

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES	68.0	70.4	72.4	74.8	77.0	79.6
TRAVEL						
CONTRACTUAL	.9	.9	.9	.9	.9	.9
SUPPLIES	.2	.2	.2	.2	.2	.2
EQUIPMENT	4.6	0	0	0	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	73.7	71.5	73.5	75.9	78.1	80.7

CAPITAL EXPENDITURES						
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CHANGE IN						
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FUND SOURCE

1002 Federal Receipts						
1003 GF Match						
1004 GF	73.7	71.5	73.5	75.9	78.1	80.7
1005 GF/Program Receipts						
1006 GF/MHTIA						
OTHER						
TOTAL	73.7	71.5	73.5	75.9	78.1	80.7

POSITIONS

FULL-TIME	1	1	1	1	1	1
PART-TIME						
TEMPORARY						

Estimate of any current year (FY95) cost: 0

ANALYSIS: (Attach a separate page if necessary.)

See attached

Prepared by: John Lindback, Chief of Staff *John Lindback*  
Division: Office of the Lieutenant Governor

Phone: 465-4081

Date: \_\_\_\_\_

Approved by Commissioner: Lieutenant Governor Frank Miller *Frank Miller*  
Agency: Office of the Governor

Date: 2/13/95

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HB130 Analysis:

HB130 expands the existing "ministerial and mandatory" role of the Lieutenant Governor in the regulation process. HB130 requires the Lieutenant Governor to determine which regulations will be accepted for filing and which will be returned to the agencies. The expanded responsibilities will necessitate an additional staff position. The position, staff assistant rg. 21, will be responsible for the related research and analysis pertaining to each regulatory proposal.

Fiscal note assumes merit increases with each fiscal year.

Personal Services:		68.0
Contractual:		
Communication, postage, courier		.9
Supplies:		.2
Equipment:		4.6
Phone	.5	
Work station set-up	1.2	
IBM PC/Monitor, token ring	2.9	

(3) "hazardous substance" has the meaning given in AS 46.03.826. (§ 24 ch 190 SLA 1990; am § 28 ch 32 SLA 1994)

Effect of amendments. — The 1994 Alaska State Emergency Response Commission amendment, effective August 6, 1994, repealed paragraph (1), relating to the

## Chapter 14. Air Quality Control.

### Article

1. General Regulations and Classifications (§§ 46.14.010 — 46.14.030).
2. Emission Control Permit Program (§§ 46.14.110 — 46.14.290)
3. Small Business Assistance Program (§§ 46.14.300 — 46.14.320)
4. Local Programs (§§ 46.14.400, 46.14.410)
5. Miscellaneous Provisions (§§ 46.14.500 — 46.14.560)
6. General Provisions (§§ 46.14.900, 46.14.990)

Cross references. — For legislative policy and purpose in enacting this chapter, see § 1, ch. 74, SLA 1993 in the Temporary and Special Acts. as otherwise noted at specific provisions, § 31, ch. 74, SLA 1993 makes this chapter effective June 26, 1993, in accordance with AS 01.10.070(c).

Effective date of chapter. — Except

### Article 1. General Regulations and Classifications.

- |   |   |
|---|---|
| <p>Section</p> <ol style="list-style-type: none"> <li>10. Emission control regulations</li> <li>15. Special procedure for more stringent regulations</li> </ol> | <p>Section</p> <ol style="list-style-type: none"> <li>20. Classification of facilities or sources; reporting</li> <li>30. State air quality plan</li> </ol> |
|---|---|

Cross references. — For authority of department to proceed with the adoption of regulations before certain statutes take effect, see § 30(a), ch. 74, SLA 1993 in the Temporary and Special Acts.

**Sec. 46.14.010. Emission control regulations.** (a) After public hearing, the department may adopt regulations under this chapter establishing ambient air quality standards, emission standards, or exemptions to implement a state air quality control program required under 42 U.S.C. 7401 — 7671q (Clean Air Act), as amended, and regulations adopted under those sections. The standards established under this section may be for the state as a whole or may vary in recognition of local conditions.

(b) Unless the governor has determined that an emergency exists that requires emergency regulations under AS 44.62.250, the department may adopt the following types of regulations only after the procedures established in (a), (c), and (d) of this section and compliance with AS 46.14.015:

(1) a regulation that establishes an ambient air quality standard for an air contaminant for which there is no corresponding federal standard;

(2) a regulation that establishes an ambient air quality standard or emission standard that is more stringent than a corresponding federal standard;

(3) a regulation that establishes an equivalent emission limitation for a hazardous air contaminant for which the federal administrator has not adopted a corresponding maximum achievable control technology standard; or

(4) a regulation that regulates emissions from a source or facility or establishes an emission standard under the authority of AS 46.14.120(e), 46.14.130(a)(3)(B), or 46.14.130(b)(4)(B).

(c) In preparation for peer review under AS 46.14.015 and before adopting a regulation described under (b) of this section, the department shall

(1) find in writing that exposure profiles and either meteorological conditions or source characteristics in the state or in an area of the state reasonably require the ambient air quality standard, or emission standard to protect human health and welfare or the environment; this paragraph does not apply to a regulation under (b) of this section;

(2) find in writing that the proposed standard or emission limitation is technologically feasible; and

(3) prepare a written analysis of the economic feasibility of the proposal.

(d) Before adopting a regulation described in (b)(2) of this section, the department shall find in writing that exposure profiles and either meteorological conditions or source characteristics are significantly different in the state or in an area of the state from those upon which the corresponding federal regulation is based.

(e) When incorporated into more than one permit, emission standards and limitations, emissions monitoring and reporting requirements, and compliance verification requirements that are generally applicable statewide or are generally applicable to individual source or facility types shall be adopted in regulation unless they have been requested by the owner and operator to whom the permit is issued. The department shall, by regulation, adopt a standard, limitation, or requirement described in the subsection as soon as its general applicability is reasonably foreseeable.

(f) An emission standard adopted by the department may be applicable to individual sources within a facility or to all sources within a facility. For purposes of determining compliance with applicable regulations and with permit limitations, the department may allow numerical averaging of the emissions of each air contaminant from several sources within a facility if

(1) requested by the owner and operator; and

(2) allowed under 42 U.S.C. 7401 — 7671q (Clean Air Act), as amended, and regulations adopted under those sections. (§ 2 ch 74 SLA 1993)

**Cross references.** — For transitional provisions relating to regulations in effect on June 26, 1993, see § 3C(b), ch. 74, SLA 1993 in the Temporary and Special Acts.

**Sec. 46.14.015. Special procedure for more stringent regulations.** (a) Before the department adopts a regulation described under AS 46.14.010(b), written findings under AS 46.14.010(c) and (d) shall be made available by the department to the public at locations throughout the state that the department considers appropriate.

(b) Before the department adopts a regulation described in AS 46.14.010(b), the department shall submit the findings described under (a) of this section, the studies on which the findings are based, and other related data for peer review to a minimum of three separate parties who are not employees of the department and who are determined by the commissioner to be technically qualified in the subject matter under review. The commissioner shall ensure that the peer review includes an analysis of the factors considered by the commissioner to support the standards proposed to be adopted and recommendations, if any, for additional research or investigation considered appropriate. Peer review reports shall be submitted to the commissioner within 45 days after the department submits a matter for peer review unless the commissioner determines that additional time is required.

(c) The department shall make available to the public at least 30 days before the public hearing required under AS 46.14.010(a), at convenient locations, copies of the department's proposed regulation, the findings of the department describing the basis for adoption of the regulation, and the peer review reports, submitted under (b) of this section.

(d) The department shall contract with persons to perform peer review under (b) of this section. All persons selected shall be selected on the basis of competitive sealed proposals under AS 36.30.200 — 36.30.270 (State Procurement Code). The commissioner may not contract with a person to perform peer review under this section if the person has a significant financial interest or other significant interest that could bias evaluation of the proposed regulation. An interest is not considered significant under this subsection if it is an interest possessed generally by the public or a large class of persons or if the effect of the interest on the person's ability to be impartial is only conjectural. (§ 2 ch 74 SLA 1993)

Current

HB 130

Legislation

Regulation

Regulation

Concept

Statute

Statute

Draft Bill

Agency

Agency

Hearing 1

Draft  
Regulation

Draft  
Regulation

Hearing

Hearing

Revision

Revision

Hearing 2, 3

Legislative  
Review  
Committee  
Comments

Revision

Governor  
Review,  
return to  
Agency.

Final Bill

Final Regulation

Lt. Gov.

Concurrence  
of Governor

Filed \*

File

9-LS0440Z ✓  
Bannister  
3/30/95

CS FOR HOUSE BILL NO. 130( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY

Offered:  
Referred:

Sponsor(s): REPRESENTATIVES KELLY, James

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the adoption, amendment, and repeal of regulations."

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

3 \* Section 1. AS 24.20.460(4) is amended to read:

4 (4) to examine all administrative regulations, including proposed  
5 regulations, amendments, and orders of repeal submitted to it under  
6 AS 44.62.040(c), to determine if they properly implement legislative intent and to  
7 provide comments on them to the governor and state agencies;

8 \* Sec. 2. AS 44.62.040(a) is amended to read:

9 (a) Every state agency that [WHICH] by statute possesses regulation-making  
10 authority shall submit to the governor for review under (c) of this section and to the  
11 lieutenant governor for filing, subject to (c) of this section, a certified original and  
12 one duplicate copy of every regulation or order of repeal adopted by it, except one that

13 (1) establishes or fixes rates, prices, or tariffs;

14 (2) relates to the use of public works, including streets and highways,  
15 under the jurisdiction of a state agency if the effect of the order is indicated to the

1 public by means of signs or signals; or

2 (3) is directed to a specifically named person or to a group of persons  
3 and does not apply generally throughout the state.

4 \* Sec. 3. AS 44.62.040 is amended by adding a new subsection to read:

5 (c) The governor shall review the regulations and orders of repeal received  
6 under (a) of this section. The governor may return the regulations and orders of repeal  
7 to the adopting agency before they are filed by the lieutenant governor (1) if they are  
8 inconsistent with the faithful execution of the laws or (2) to enable the adopting  
9 agency to respond to specific issues raised by the Administrative Regulation Review  
10 Committee. The governor may not delegate the governor's review responsibility under  
11 this subsection to a person other than the lieutenant governor. This subsection does  
12 not apply to a regulation or order of repeal that is adopted by a regulatory board or  
13 commission.

14 \* Sec. 4. AS 44.62 is amended by adding a new section to read:

15 Sec. 44.62.215. PUBLIC COMMENT. In the drafting, review, or other  
16 preparation of a proposed regulation, amendment, or order of repeal, an agency shall  
17 weigh, evaluate, or otherwise utilize public comment that consists of facts or other  
18 substantive information that is relevant to the accuracy, coverage, contents, or cost of  
19 the proposed regulatory action. The agency shall keep a record of its use or rejection  
20 of factual or other substantive information that is submitted in writing as public  
21 comment and that is relevant to the accuracy, coverage, or other aspect of the proposed  
22 regulatory action. This section does not apply to a regulation, amendment, or order  
23 of repeal that is proposed by a regulatory board or commission.

24 \* Sec. 5. AS 44.62.230 is amended to read:

25 Sec. 44.62.230. PROCEDURE ON PETITION. Upon receipt of a petition  
26 requesting the adoption, amendment, or repeal of a regulation under AS 44.62.180 -  
27 44.62.290, a state agency shall, within 30 days, deny the petition in writing or schedule  
28 the matter for public hearing under AS 44.62.190 - 44.62.215 [AS 44.62.190 -  
29 44.62.210]. However, if the petition is for an emergency regulation, and the agency  
30 finds that an emergency exists, the requirements of AS 44.62.190 - 44.62.215  
31 [AS 44.62.190 - 44.62.210] do not apply, and the agency may submit the regulation

1 to the lieutenant governor immediately after making the finding of emergency and  
2 putting the regulation into proper form.

3 \* Sec. 6. AS 44.62.250 is amended to read:

4 Sec. 44.62.250. EMERGENCY REGULATIONS. A regulation or order of  
5 repeal may be adopted as an emergency regulation or order of repeal if a state agency  
6 makes a written finding, including a statement of the facts that constitute the  
7 emergency, that the adoption of the regulation or order of repeal is necessary for the  
8 immediate preservation of the public peace, health, safety, or general welfare. The  
9 requirements of AS 44.62.040(c), 44.62.060, [AS 44.62.060] and 44.62.190 - 44.62.215  
10 [44.62.190 - 44.62.210] do not apply to the initial adoption of emergency regulations;  
11 however, upon adoption of an emergency regulation the adopting agency shall  
12 immediately submit a copy of it to the lieutenant governor for filing and for  
13 publication in the Alaska Administrative Register, and within five days after filing by  
14 the lieutenant governor the agency shall give notice of the adoption in accordance with  
15 AS 44.62.190(a). Failure to give the required notice by the end of the 10th day  
16 automatically repeals the regulation.

17 \* Sec. 7. AS 44.62.260 is amended to read:

18 Sec. 44.62.260. LIMITATION ON EFFECTIVE PERIOD OF EMERGENCY  
19 REGULATIONS. (a) A regulation adopted as an emergency regulation does not  
20 remain in effect more than 120 days unless the adopting agency complies with  
21 AS 44.62.040(c), 44.62.060, [AS 44.62.060] and 44.62.190 - 44.62.215 [44.62.190 -  
22 44.62.210] either before submitting the regulation to the lieutenant governor or during  
23 the 120-day period.

24 (b) Before the expiration of the 120-day period, the agency shall transmit to  
25 the lieutenant governor for filing a certification that AS 44.62.040(c), 44.62.060,  
26 [AS 44.62.060] and 44.62.190 - 44.62.215 [44.62.190 - 44.62.210] were complied with  
27 before submitting the regulation to the lieutenant governor, or that the agency complied  
28 with those sections within the 120-day period. Failure to so certify repeals the  
29 emergency regulation; it may not be renewed or refiled as an emergency regulation.

30 \* Sec. 8. AS 46.03.020 is amended by adding a new subsection to read:

31 (b) Notwithstanding another provision of law to the contrary, the department

1        may not adopt a regulation that regulates the activities of private persons unless there  
2        is a lawful method of complying with the regulation and the cost of the method of  
3        compliance is not so great as to prevent a reasonable person from starting or pursuing  
4        the activity or endeavor that is being regulated by the department.

9-LS0440D ✓  
Bannister  
3/31/95

CS FOR HOUSE BILL NO. 130( )  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
NINETEENTH LEGISLATURE - FIRST SESSION

BY

Offered:  
Referred:

Sponsor(s): REPRESENTATIVES KELLY, James

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the adoption, amendment, and repeal of regulations."

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

3 \* Section 1. AS 24.20.460(4) is amended to read:

4 (4) to examine all administrative regulations, including proposed  
5 regulations, amendments, and orders of repeal, to determine if they properly  
6 implement legislative intent and to provide comments on them to the governor and  
7 state agencies;

8 \* Sec. 2. AS 44.62.040(a) is amended to read:

9 (a) Subject to (c) of this section, every [EVERY] state agency that [WHICH]  
10 by statute possesses regulation-making authority shall submit to the lieutenant governor  
11 for filing a certified original and one duplicate copy of every regulation or order of  
12 repeal adopted by it, except one that

13 (1) establishes or fixes rates, prices, or tariffs;

14 (2) relates to the use of public works, including streets and highways,  
15 under the jurisdiction of a state agency if the effect of the order is indicated to the

1 public by means of signs or signals; or

2 (3) is directed to a specifically named person or to a group of persons  
3 and does not apply generally throughout the state.

4 \* Sec. 3. AS 44.62.040 is amended by adding a new subsection to read:

5 (c) Before submitting the regulations and orders of repeal to the lieutenant  
6 governor under (a) of this section, every state agency that by statute possesses  
7 regulation making authority, except regulatory boards and commissions and the office  
8 of the ombudsman, shall submit to the governor for review a copy of every regulation  
9 or order of repeal adopted by the agency, except regulations and orders of repeal  
10 identified in (a)(1) - (2). The governor shall review the regulations and orders of  
11 repeal received under this subsection. The governor may return the regulations and  
12 orders of repeal to the adopting agency before they are submitted to the lieutenant  
13 governor for filing under (a) of this section, (1) if they are inconsistent with the  
14 faithful execution of the laws or (2) to enable the adopting agency to respond to  
15 specific issues raised by the Administrative Regulation Review Committee. The  
16 governor may not delegate the governor's review responsibility under this subsection  
17 to a person other than the lieutenant governor.

18 \* Sec. 4. AS 44.62 is amended by adding a new section to read:

19 Sec. 44.62.215. PUBLIC COMMENT. In the drafting, review, or other  
20 preparation of a proposed regulation, amendment, or order of repeal, an agency shall  
21 weigh, evaluate, or otherwise utilize public comment that consists of facts or other  
22 substantive information that is relevant to the accuracy, coverage, contents, or cost of  
23 the proposed regulatory action. The agency, other than a regulatory board or  
24 commission and the office of the ombudsman, shall keep a record of its use or  
25 rejection of factual or other substantive information that is submitted in writing as  
26 public comment and that is relevant to the accuracy, coverage, or other aspect of the  
27 proposed regulatory action.

28 \* Sec. 5. AS 44.62.230 is amended to read:

29 Sec. 44.62.230. PROCEDURE ON PETITION. Upon receipt of a petition  
30 requesting the adoption, amendment, or repeal of a regulation under AS 44.62.180 -  
31 44.62.290, a state agency shall, within 30 days, deny the petition in writing or schedule

1 the matter for public hearing under AS 44.62.190 - 44.62.215 [AS 44.62.190 -  
2 44.62.210]. However, if the petition is for an emergency regulation, and the agency  
3 finds that an emergency exists, the requirements of AS 44.62.040(c) and 44.62.190 -  
4 44.62.215 [AS 44.62.190 - 44.62.210] do not apply, and the agency may submit the  
5 regulation to the lieutenant governor immediately after making the finding of  
6 emergency and putting the regulation into proper form.

7 \* Sec. 6. AS 44.62.250 is amended to read:

8 Sec. 44.62.250. EMERGENCY REGULATIONS. A regulation or order of  
9 repeal may be adopted as an emergency regulation or order of repeal if a state agency  
10 makes a written finding, including a statement of the facts that constitute the  
11 emergency, that the adoption of the regulation or order of repeal is necessary for the  
12 immediate preservation of the public peace, health, safety, or general welfare. The  
13 requirements of AS 44.62.040(c), 44.62.060, [AS 44.62.060] and 44.62.190 - 44.62.215  
14 [44.62.190 - 44.62.210] do not apply to the initial adoption of emergency regulations;  
15 however, upon adoption of an emergency regulation the adopting agency shall  
16 immediately submit a copy of it to the lieutenant governor for filing and for  
17 publication in the Alaska Administrative Register, and within five days after filing by  
18 the lieutenant governor the agency shall give notice of the adoption in accordance with  
19 AS 44.62.190(a). Failure to give the required notice by the end of the 10th day  
20 automatically repeals the regulation.

21 \* Sec. 7. AS 44.62.260 is amended to read:

22 Sec. 44.62.260. LIMITATION ON EFFECTIVE PERIOD OF EMERGENCY  
23 REGULATIONS. (a) A regulation adopted as an emergency regulation does not  
24 remain in effect more than 120 days unless the adopting agency complies with  
25 AS 44.62.040(c), 44.62.060, [AS 44.62.060] and 44.62.190 - 44.62.215 [44.62.190 -  
26 44.62.210] either before submitting the regulation to the lieutenant governor or during  
27 the 120-day period.

28 (b) Before the expiration of the 120-day period, the agency shall transmit to  
29 the lieutenant governor for filing a certification that AS 44.62.040(c), 44.62.060,  
30 [AS 44.62.060] and 44.62.190 - 44.62.215 [44.62.190 - 44.62.210] were complied with  
31 before submitting the regulation to the lieutenant governor, or that the agency complied

1 with those sections within the 120-day period. Failure to so certify repeals the  
2 emergency regulation; it may not be renewed or refiled as an emergency regulation.

3 \* Sec. 8. AS 46.03.020 is amended by adding a new subsection to read:

4 (b) Notwithstanding another provision of law to the contrary, the department  
5 may not adopt a regulation that regulates the activities of private persons unless there  
6 is a lawful method of complying with the regulation and the cost of the method of  
7 compliance is not so great as to prevent a reasonable person from starting or pursuing  
8 the activity or endeavor that is being regulated by the department.

9-LS0440VH  
Bannister  
4/5/95

CS FOR HOUSE BILL NO. 130( )  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
NINETEENTH LEGISLATURE - FIRST SESSION

BY

Offered:  
Referred:

Sponsor(s): REPRESENTATIVES KELLY, James

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the adoption, amendment, and repeal of regulations."

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

3 \* Section 1. AS 24.20.460(4) is amended to read:

4 (4) to examine all administrative regulations, including proposed  
5 regulations, amendments, and orders of repeal, to determine if they properly  
6 implement legislative intent and to provide comments on them to the governor and  
7 state agencies;

8 \* Sec. 2. AS 44.62.040(a) is amended to read:

9 (a) Subject to (c) of this section. every [EVERY] state agency that [WHICH]  
10 by statute possesses regulation-making authority shall submit to the lieutenant governor  
11 for filing a certified original and one duplicate copy of every regulation or order of  
12 repeal adopted by it, except one that

13 (1) establishes or fixes rates, prices, or tariffs;

14 (2) relates to the use of public works, including streets and highways,  
15 under the jurisdiction of a state agency if the effect of the order is indicated to the

1 public by means of signs or signals; or

2 (3) is directed to a specifically named person or to a group of persons  
3 and does not apply generally throughout the state.

4 \* Sec. 3. AS 44.62.040 is amended by adding a new subsection to read:

5 (c) Before submitting the regulations and orders of repeal to the lieutenant  
6 governor under (a) of this section, every state agency that by statute possesses  
7 regulation making authority, except ~~regulatory~~ <sup>that are authorized by law to adopt regulations</sup> boards and commissions, and the office  
8 of the ombudsman, shall submit to the governor for review a copy of every regulation  
9 or order of repeal adopted by the agency, except regulations and orders of repeal  
10 identified in (a)(1) - (2). The governor may review the regulations and orders of  
11 repeal received under this subsection. The governor may return the regulations and  
12 orders of repeal to the adopting agency before they are submitted to the lieutenant  
13 governor for filing under (a) of this section, (1) if they are inconsistent with the  
14 faithful execution of the laws or (2) to enable the adopting agency to respond to  
15 specific issues raised by the Administrative Regulation Review Committee. The  
16 governor may not delegate the governor's review authority under this subsection to a  
17 person other than the lieutenant governor.

18 \* Sec. 4. AS 44.62.190(a) is amended to read: *→ New in this draft*

19 (a) At least 30 days before the adoption, amendment, or repeal of a regulation,  
20 notice of the proposed action shall be

21 (1) published in the newspaper of general circulation or trade or  
22 industry publication that the state agency prescribes and in the Alaska Administrative  
23 Journal; in the discretion of the state agency giving the notice, the requirement of  
24 publication in a newspaper or trade or industry publication may be satisfied by using  
25 a combination of publication and broadcasting; when broadcasting the notice, an  
26 agency may use an abbreviated form of the notice if the broadcast provides the name  
27 and date of the newspaper or trade or industry journal where the full text of the notice  
28 can be found;

29 (2) mailed to every person who has filed a request for notice of  
30 proposed action with the state agency;

31 (3) if the agency is within a department, mailed or delivered to the

1 commissioner of the department;

2 (4) when appropriate in the judgment of the agency,

3 (A) mailed to a person or group of persons whom the agency  
4 believes is interested in the proposed action; and

5 (B) published in the additional form and manner the state  
6 agency prescribes;

7 (5) furnished the Department of Law together with a copy of the  
8 proposed regulation, amendment, or order of repeal for the department's use in  
9 preparing the opinion required after adoption and before filing by AS 44.62.060;

10 (6) furnished to all incumbent State of Alaska legislators and the  
11 Legislative Affairs Agency;

12 (7) furnished to the standing committee of each house of the legislature  
13 having legislative jurisdiction over the subject matter treated by the regulation under  
14 the Uniform Rules of the Alaska State Legislature, together with a copy of the  
15 proposed regulation, amendment, or order of repeal for the committee's use in  
16 conducting the review authorized by AS 24.05.182;

17 (8) furnished to the staff of the Administrative Regulation Review  
18 Committee, together with a copy of the proposed regulation, amendment, or order  
19 of repeal and, if preparation of an appropriation increase estimate is required by  
20 AS 44.62.195, a copy of the estimate.

21 \* Sec. 5. AS 44.62.210(a) is amended to read: *new in this draft*

22 (a) On the date and at the time and place designated in the notice the agency  
23 shall give each interested person or the person's authorized representative, or both, the  
24 opportunity to present statements, arguments, or contentions in writing, with or without  
25 opportunity to present them orally. The state agency may accept material presented  
26 by any form of communication authorized by this chapter and shall consider all  
27 (factual, substantive, and other) relevant matter presented to it before adopting,  
28 amending, or repealing a regulation. When considering the factual, substantive, and  
29 other relevant matter, the agency shall pay special attention to the cost to private  
30 persons of the proposed regulatory action.

31 \* Sec. 6. AS 44.62 is amended by adding a new section to read:

*changed in draft*  
WORK DRAFT

*Better  
text  
shall  
be null*

1           Sec. 44.62.215. RECORD OF PUBLIC COMMENT. In the drafting, review,  
2 or other preparation of a proposed regulation, amendment, or order of repeal, an  
3 agency, other than <sup>that are authorized by law to</sup> a regulatory board or commission, and the office of the ombudsman,  
4 shall keep a record of its use or rejection of factual or other substantive information  
5 that is submitted in writing as public comment and that is relevant to the accuracy,  
6 coverage, or other aspect of the proposed regulatory action.

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8           Sec. 44.62.230. PROCEDURE ON PETITION. Upon receipt of a petition  
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12 44.62.210]. However, if the petition is for an emergency regulation, and the agency  
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14 44.62.215 [AS 44.62.190 - 44.62.210] do not apply, and the agency may submit the  
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21 emergency, that the adoption of the regulation or order of repeal is necessary for the  
22 immediate preservation of the public peace, health, safety, or general welfare. The  
23 requirements of AS 44.62.040(c), 44.62.060, [AS 44.62.060] and 44.62.190 - 44.62.215  
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28 the lieutenant governor the agency shall give notice of the adoption in accordance with  
29 AS 44.62.190(a). Failure to give the required notice by the end of the 10th day  
30 automatically repeals the regulation.

31 \* Sec. 9. AS 44.62.260 is amended to read:

*Handwritten initials*

1           Sec. 44.62.260. LIMITATION ON EFFECTIVE PERIOD OF EMERGENCY  
 2 REGULATIONS. (a) A regulation adopted as an emergency regulation does not  
 3 remain in effect more than 120 days unless the adopting agency complies with  
 4 AS 44.62.040(c), 44.62.060, [AS 44.62.060] and 44.62.190 - 44.62.215 [44.62.190 -  
 5 44.62.210] either before submitting the regulation to the lieutenant governor or during  
 6 the 120-day period.

7           (b) Before the expiration of the 120-day period, the agency shall transmit to  
 8 the lieutenant governor for filing a certification that AS 44.62.040(c), 44.62.060,  
 9 [AS 44.62.060] and 44.62.190 - 44.62.215 [44.62.190 - 44.62.210] were complied with  
 10 before submitting the regulation to the lieutenant governor, or that the agency complied  
 11 with those sections within the 120-day period. Failure to so certify repeals the  
 12 emergency regulation; it may not be renewed or refiled as an emergency regulation.

13 \* Sec. 10. AS 46.03.020 is amended by adding new subsections to read:

14           ~~(b) Notwithstanding another provision of law to the contrary except (c) of this~~  
 15 ~~section, the department may not adopt a regulation that regulates the activities of~~  
 16 ~~private persons unless there is a lawful method of complying with the regulation and~~  
 17 ~~the cost of the method of compliance is not so great as to prevent a reasonable person~~  
 18 ~~from starting or pursuing the activity or endeavor that is being regulated by the~~  
 19 ~~department.~~

20           (c) If necessary to comply with federal law, the department is not required to  
 21 comply with (b) of this section, but the regulation may not be more restrictive than  
 22 required by the federal law and the method of compliance with the regulation may not  
 23 be more costly than required by the federal law.

*Handwritten arrow pointing to (b) and 'DRC'*

**HB**

**138**

# ALASKA CIVIL LIBERTIES UNION

*An Affiliate of the American Civil Liberties Union*  
P. O. Box 201844 Anchorage, AK 99530-1844  
Phone: 1-907-258-0044 Fax: 1-907-258-0288

February 14, 1995

The Honorable Representative Brian Porter  
Chairman of House Judiciary Committee  
State Capitol Building, Room 118  
Juneau, AK 99601-1182

Dear Representative Porter:

I am writing to you on behalf of the Board of Directors and members of the Alaska Civil Liberties Union to express concerns about House Bill 138 which is currently pending before the House Judiciary Committee. The AKCLU has serious concerns about this bill and believes that it is unconstitutional and would be defeated if challenged in court.

One of the basic premises of the Fourth Amendment is that a person has the right to be free of governmental searches and seizures unless there is probable cause to believe that a crime has occurred. A determination of probable cause is made by a neutral and detached magistrate: it is the magistrate's responsibility for determining the reliability of the evidence upon which a warrant is based.

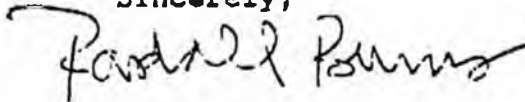
House Bill 138 seeks to take away the authority of the magistrate in determining probable cause. House Bill 138 anticipates that any person who makes an anonymous crime stopper report would be presumed to be a reliable source of information and would be placed in a category equal to that of a "citizen informant." The bill states that "once verified by law enforcement," the information provided by the informant would be considered reliable and anonymity would be guaranteed -- no additional inquiry by the magistrate would be required to determine the reliability of the informant.

This provision allows the police officer, not the magistrate, to make the crucial decision regarding the reliability of the informant and the informant's information that is necessary in determining probable cause to issue a warrant. This is a blatant violation of the Fourth Amendment's requirement that a neutral and detached magistrate, not a police officer, have the authority to issue the warrant.

The other part of the bill that is problematic is the requirement that a defendant be required to petition through an in camera proceeding to discover information about the informant. The right of confrontation requires that a defendant know his or her accuser and be able to defend against their charges. The defendant should not be placed in the position of having to ask permission from the court for information to which he is constitutionally entitled.

Enacting this bill into law would raise serious constitutional issues of concern to the AkCLU. Please do not allow this bill to pass out of committee.

Sincerely,

A handwritten signature in cursive script that reads "Randall Burns".

Randall Burns  
Executive Director  
Alaska Civil Liberties Union

# Alaska State Legislature

Interim:  
P.O. Box 1287  
Soldotna, AK 99669  
(907) 262-8414



Session:  
State Capitol  
Juneau, AK 99801  
(907) 465-2693

## Representative Gary L. Davis

### SPONSOR STATEMENT House Bill 138

"An Act relating to crime stoppers organizations; to information received by crime stoppers organizations and to the issuance of search warrants based upon that information; and amending Alaska Rule of Criminal Procedure 37 and Alaska Rule of Evidence 509".

The intent of this bill is clearly identified, so there is an understanding of what the intent of the legislation is. This bill will provide legislatively for the presumption of reliability of Crime Stopper tips to the same extent that is provided to tips from people who are willing to identify themselves to the police, and the defendant, called "citizen informants".

In Section 2 search warrants may be issued based on information received from a Crime Stopper organization and confidentiality maintained. This bill will establish one set procedure for all courts to follow in reviewing Crime Stopper reports.

When the court determines a review of the records is allowed the Crime Stopper information involving the identity of an informant is removed.

In Section 3, HB 138 allows the Crime Stopper Organization to be exempt from registration for fund raising.

This legislation provides a means for statutory recognition of the Crime Stoppers organization.

This bill gives the trial courts and the supreme court some guidance relative to the underlying intent when they deliberate on cases coming before them on the issue of reliability of crime stopper informant information.

Attached is a letter from the Crime Stopper Organization giving additional information related to the this bill.

*Representing House District 8 - Soldotna to Seward*

Sectional Analysis  
House Bill 138

"An act relating to crime stoppers organizations; to information received by crime stoppers organizations and to the issuance of search warrants based upon that information; and amending Alaska Rule of Criminal Procedure 37 and Alaska Rule of Evidence 509".

Section I: This section describes in the intent of the Legislature. It is the intent of the legislature to eliminate a higher standard of scrutiny for information received from a crime stoppers program & that the citizen informant standard be applied to crime stoppers for issuing search warrants.

Section 12.35.022: (New Section) - Information received from a Crime Stoppers organization shall be given same presumption of reliability afforded to information received from a citizen informant.

Section 12.35.023: (New Section) - This section allows the person charged with a crime to petition the court for an in camera inspection of law records. If the court determines the use of the records is necessary, crime stoppers informant code numbers, names and other information will be removed.

Section 3: This section adds the crime stoppers organization as a non-profit organization.

Section 4: This section provides a description of the crime stoppers organization as a non-profit organization.

Section 5: This section amends the court rule relating to informants in criminal cases and the review of search warrants as it relates to crime stoppers activity.

The State of Alaska, applying the Aquilar-Spinelli test, ruled that the search warrant was issued without probable cause. Calls to Crime Stoppers, over the preceding two years, were conclusory and related to past activities and not to the case at hand.

### Federal Cases

U.S. v. Briley, 726 F.2d 1301 (8th Cir. 1984)

Defendant's conviction in federal court for robbery of First Federal in St. Paul, Minnesota is affirmed.

"We do not believe the district court's finding is clearly erroneous. The district court found that probable cause was partially established by the anonymous tip received from Crime Stoppers. An anonymous tip from an informer may serve as a basis for probable cause as long as its reliability is established through corroboration." (\*)

(\*) "the Aquilar-Spinelli test for determining the reliability of the informant's tip has now been largely discarded in favor of a totality of the circumstances approach. See Illinois v. Gates, 103 S.Ct. at 2332. This is a 'practical, common-sense' and 'non-technical' determination.

Howard v. Crimestoppers Program, 770 F.2d 1079 (5th Cir. 1985)

This is a per curiam opinion that is not published, but is available from the Clerk of the U.S. Court of Appeal, Fifth Circuit, 600 Camp Street, New Orleans, Louisiana 70130. The decision was in Cause No. 85-3103, August 9, 1985.

Prison inmates Howard and Duncan, without and attorney, filed a federal civil rights suit under 42 U.S.C. 1983 alleging

"in effect, that Crimestoppers violates constitutional rights of individuals by offering rewards of money to persons who provided anonymous tips and information leading to the arrest and conviction of criminal offenders."

The suit was dismissed by the District Court and the dismissal affirmed for

"failure to state a claim the Crimestoppers subjected or caused them to be subjected to the deprivation of any rights, privileges, or immunities secured by the Constitution or federal law."

"...the plaintiffs appear to be asserting merely and abstract claim against Crimestoppers, at most suing because they got caught."

The Court stated further that:

"Even if information obtained in this manner is unreliable, it is not the gathering of the

information itself that triggers constitutional concerns but its use by the state with respect to some state action."

And, the Court found no allegation which, if take as true, would support an inference that Crimestoppers played any role in using unreliable information to the plaintiffs' detriment.

Some other Federal Cases:

U.S. v. Zamora, 784 F.2d 1025 (10th Cir. 1986). Disclosure of informant's identity is denied.

U.S. v. Klein, 850 F.2d 404 (8th Cir. 1988). Crime Stopper tips were sufficiently corroborated, Informant's identity need not be disclosed.

U.S. v. Fitz, 898 F.2d 148 (4th Cir. 1990). Crime Solvers tip, followed by a controlled buy, established probable cause in drug case.

U.S. v. Smith, 917 F.2d 564 (6th Cir. 1990). Anonymous tip independently corroborated warrantless stop and search of automobile.

# Fax Cover Page

**SUBJECT:**



**To: Ann Carpeneti**

**From: Willet Bushnell**

**Attached is a copy of the Colorado law regarding Crime Stoppers, I hope this will help you on HB 138.**

**I will send other information under a separate cover.**

**Thank you.**

To: Ann Carpeneti	From : WILLET BUSHNELL
For Information Call: 907-376-4195	At:
Pages: 8	My Fax Number : 907-373-2193

1994

# An Act

HOUSE BILL 94-1122

BY REPRESENTATIVES George, Foster, Acquafresca, Agler, Fleming, Hagedorn, Kaufman, Lawrence, Pfiffner, Pierson, Reeser, Rupert, Taylor, Epps, Grampas, Nichol, and Snyder; also SENATORS Bishop, Cassidy, Gallagher, Hopper, Martinez, and Petersun.

CONCERNING CRIME STOPPER ORGANIZATIONS.

*Be it enacted by the General Assembly of the State of Colorado:*

SECTION 1. Title 16, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW ARTICLE to read:

## ARTICLE 15.7 Crime Stopper Organizations

16-15.7-101. Legislative declaration. THE GENERAL ASSEMBLY FINDS THAT A SIGNIFICANT NUMBER OF CRIMINAL OFFENDERS REMAIN AT LARGE IN THIS STATE BECAUSE LAW ENFORCEMENT AGENCIES OFTEN LACK INFORMATION CONCERNING CRIMINAL ACTIVITY. IN MANY INSTANCES PRIVATE CITIZENS HAVE INFORMATION THAT, IF KNOWN TO LAW ENFORCEMENT AGENCIES, WOULD LEAD TO THE DETECTION AND APPREHENSION OF SUCH OFFENDERS. PRIVATE, NONPROFIT CRIME STOPPER ORGANIZATIONS THAT OFFER REWARDS FOR SUCH INFORMATION HAVE BEEN SUCCESSFUL AT ENCOURAGING SOME CITIZENS TO COME FORWARD; HOWEVER, EVEN WITH THE OFFER OF A REWARD, MANY CITIZENS DO NOT COME FORWARD BECAUSE THEY FEAR INVOLVEMENT AND SHUN PUBLICITY. IN ORDER TO REMEDY THIS SITUATION AND TO INCREASE THE EFFECTIVENESS OF CRIME STOPPER ORGANIZATIONS, THE GENERAL ASSEMBLY FINDS AND DECLARES THAT IT IS APPROPRIATE TO PROVIDE FOR THE ANONYMITY OF ANY PERSON WHO PROVIDES INFORMATION CONCERNING CRIMINAL ACTIVITY TO A CRIME STOPPER ORGANIZATION AND TO PROVIDE FOR THE CONFIDENTIALITY OF

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

## CRIME STOPPER ORGANIZATION RECORDS.

16-15.7-102. Definitions. AS USED IN THIS ARTICLE. UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "CRIME STOPPER ORGANIZATION" MEANS A PRIVATE, NONPROFIT ORGANIZATION:

(a) WHOSE PRIMARY PURPOSES ARE TO ACCEPT DONATIONS FOR THE PAYMENT OF REWARDS TO PERSONS WHO PROVIDE INFORMATION CONCERNING CRIMINAL ACTIVITY AND TO FORWARD SUCH INFORMATION TO APPROPRIATE LAW ENFORCEMENT AGENCIES;

(b) IS INCORPORATED PURSUANT TO THE PROVISIONS OF ARTICLES 20 TO 29 OF TITLE 7, C.R.S.;

(c) IS HELD TO BE TAX EXEMPT BY THE UNITED STATES INTERNAL REVENUE SERVICE; AND

(d) HAS COMPLIED WITH THE REQUIREMENTS OF SECTION 16-15.7-103.

16-15.7-103. Requirements for articles of incorporation of crime stopper organizations. (1) IN ADDITION TO ANY OTHER REQUIREMENTS FOR ARTICLES OF INCORPORATION IMPOSED BY ARTICLES 20 TO 29 OF TITLE 7, C.R.S., THE ARTICLES OF INCORPORATION FOR ANY CRIME STOPPER ORGANIZATION THAT ELECTS TO AVAIL ITSELF OF THE CONFIDENTIALITY PROVISIONS OF THIS ARTICLE SHALL PROVIDE THAT THE ORGANIZATION SHALL:

(a) ESTABLISH A METHOD TO ENSURE THAT THE IDENTITY OF ANY PERSON WHO PROVIDES INFORMATION CONCERNING CRIMINAL ACTIVITY TO THE ORGANIZATION REMAINS UNKNOWN TO ALL PERSONS AND ENTITIES, INCLUDING OFFICERS AND EMPLOYEES OF THE ORGANIZATION;

(b) ESTABLISH A METHOD TO ENSURE THAT IF THE IDENTITY OF ANY PERSON WHO PROVIDES INFORMATION BECOMES KNOWN TO THE CRIME STOPPER ORGANIZATION, WHETHER THROUGH VOLUNTARY DISCLOSURE OR BY ANY OTHER MEANS, SUCH IDENTITY IS NOT FURTHER DISCLOSED;

(c) ASSIST LAW ENFORCEMENT AGENCIES IN THE DETECTION OF CRIME AND APPREHENSION OF CRIMINAL OFFENDERS BY PROMPTLY FORWARDING INFORMATION RECEIVED CONCERNING CRIMINAL ACTS TO SUCH AGENCIES;

(d) FOSTER THE DETECTION OF CRIME AND ENCOURAGE CITIZENS TO REPORT INFORMATION ABOUT CRIMINAL ACTIVITY; AND

(e) ENCOURAGE NEWS AND OTHER MEDIA TO PROMOTE LOCAL CRIME STOPPER ORGANIZATIONS BY INFORMING THE PUBLIC OF THE FUNCTIONS AND BENEFITS OF THE ORGANIZATION.

16-15.7-104. In camera review - confidentiality - records and information - criminal penalty. (1) (a) A CRIME STOPPER ORGANIZATION MAY NOT BE COMPELLED TO PRODUCE RECORDS CONCERNING A REPORT OF CRIMINAL ACTIVITY BEFORE A COURT OR OTHER TRIBUNAL EXCEPT ON THE MOTION OF A CRIMINAL DEFENDANT TO THE COURT IN WHICH THE OFFENSE IS BEING TRIED THAT THE RECORDS OR REPORT CONTAIN IMPEACHMENT EVIDENCE OR EVIDENCE THAT IS EXCULPATORY TO THE DEFENDANT IN THE TRIAL OF THAT OFFENSE.

(b) ON MOTION OF A DEFENDANT PURSUANT TO PARAGRAPH (a), THE COURT MAY SUBPOENA THE RECORDS OR REPORT. THE COURT SHALL CONDUCT AN EX PARTE IN CAMERA INSPECTION OF MATERIALS PRODUCED UNDER SUBPOENA TO DETERMINE WHETHER THE MATERIALS CONTAIN IMPEACHMENT EVIDENCE OR EVIDENCE THAT IS EXCULPATORY TO THE DEFENDANT.

(c) IF THE COURT DETERMINES THAT THE MATERIALS PRODUCED CONTAIN IMPEACHMENT EVIDENCE OR EVIDENCE THAT IS EXCULPATORY TO THE DEFENDANT, THE COURT SHALL PRESENT THE EVIDENCE TO THE DEFENDANT. IN THE EVENT THE MATERIALS CONTAIN INFORMATION WHICH WOULD IDENTIFY THE PERSON WHO WAS THE SOURCE OF THE EVIDENCE, THE COURT SHALL ENSURE THAT SUCH IDENTITY IS NOT DISCLOSED, UNLESS THE STATE OR FEDERAL CONSTITUTION REQUIRES THE DISCLOSURE OF THAT PERSON'S IDENTITY. THE COURT SHALL EXECUTE AN AFFIDAVIT ACCOMPANYING THE DISCLOSED MATERIALS SWEARING THAT, IN THE OPINION OF THE COURT, THE MATERIALS DISCLOSED REPRESENT THE IMPEACHMENT OR EXCULPATORY EVIDENCE THE DEFENDANT IS ENTITLED TO RECEIVE UNDER THIS SECTION.

(d) THE COURT SHALL RETURN TO THE CRIME STOPPERS ORGANIZATION ALL MATERIALS PRODUCED UNDER THIS SUBSECTION (1) WHICH ARE NOT DISCLOSED TO THE DEFENDANT. THE CRIME STOPPERS ORGANIZATION SHALL RETAIN SUCH MATERIALS UNTIL THE CONCLUSION OF THE CRIMINAL TRIAL AND THE EXPIRATION OF THE TIME FOR ALL DIRECT APPEALS IN THE CASE.

(2) (a) RECORDS AND INFORMATION OF A CRIME STOPPER ORGANIZATION CONCERNING CRIMINAL ACTS ARE CONFIDENTIAL AND NO PERSON SHALL DISCLOSE SUCH RECORDS OR INFORMATION. A CRIME STOPPER ORGANIZATION SHALL ONLY BE COMPELLED TO PRODUCE SUCH RECORDS OR INFORMATION BEFORE A COURT OR OTHER TRIBUNAL PURSUANT TO COURT ORDER FOR AN IN CAMERA REVIEW. ANY SUCH REVIEW SHALL BE LIMITED TO AN INSPECTION OF RECORDS AND INFORMATION WHICH ARE RELEVANT TO THE SPECIFIC CASE PENDING BEFORE THE COURT.

(b) ANY PERSON WHO KNOWINGLY OR INTENTIONALLY DISCLOSES CONFIDENTIAL RECORDS OR INFORMATION IN VIOLATION OF THE PROVISIONS OF THIS SUBSECTION (2) COMMITS A CLASS 1 MISDEMEANOR AND SHALL BE PROSECUTED AS PROVIDED IN SECTION 10-1-106 OF THIS SUBSECTION (2) SHALL BE BROUGHT WITHIN FIVE YEARS AFTER THE DATE THE VIOLATION OCCURRED.

SECTION 2. Part 1 of article 11 of title 16, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

16-11-101.7. Repayment of crime stopper reward - crime stopper reward reimbursement fund - created. (1) IN ADDITION TO ANY OTHER PENALTY AUTHORIZED BY LAW, AFTER A DEFENDANT HAS BEEN CONVICTED OF OR ENTERED A PLEA OF GUILTY OR NOLO CONTENDERE TO A FELONY OFFENSE, OR ENTERS INTO A PLEA BARGAIN AGREEMENT CONCERNING A FELONY OFFENSE WHICH IS REDUCED TO A MISDEMEANOR PURSUANT TO SUCH AGREEMENT, THE COURT MAY ORDER SUCH DEFENDANT TO REPAY ALL OR PART OF ANY REWARD PAID BY A CRIME STOPPER ORGANIZATION THAT LED TO THE DEFENDANT'S ARREST AND CONVICTION. THE AMOUNT OF SUCH REPAYMENT MAY NOT EXCEED THE ACTUAL REWARD PAID BY ANY CRIME STOPPER ORGANIZATION AND SHALL BE USED SOLELY FOR PAYING REWARDS.

(2) (a) UPON AN ORDER TO REPAY ALL OR PART OF A CRIME STOPPER REWARD, THE COURT SHALL ASSESS SUCH REPAYMENT AGAINST THE DEFENDANT IN THE SAME MANNER AS OTHER COSTS OF PROSECUTION ARE ASSESSED AGAINST A DEFENDANT. THE COURT SHALL ORDER THE DEFENDANT TO:

(I) PAY THE ENTIRE AMOUNT WHEN SENTENCE IS PRONOUNCED; OR

(II) PAY THE ENTIRE AMOUNT ON SUCH LATER DATE AS MAY BE SPECIFIED BY THE COURT.

(b) ANY ORDER FOR THE REPAYMENT OF ALL OR PART OF A CRIME STOPPER REWARD SHALL BE PRIORITIZED IN ACCORDANCE WITH THE PROVISIONS OF SECTION 16-11-204 (2.5).

(3) ALL MONEYS COLLECTED BY THE COURT PURSUANT TO THIS SECTION, TOGETHER WITH TRANSMITTAL INFORMATION WHICH INCLUDES THE COURT'S DOCKET NUMBER, THE DEFENDANT'S NAME, AND THE CRIME STOPPER ORGANIZATION WHICH IS DESIGNATED TO RECEIVE THE REPAYMENT OF REWARD, SHALL BE PROMPTLY FORWARDED TO THE DIVISION OF CRIMINAL JUSTICE CREATED BY SECTION 24-33.5-502, C.R.S. UPON RECEIPT, THE DIVISION OF CRIMINAL JUSTICE SHALL PROMPTLY TRANSMIT THE MONEYS TO THE STATE TREASURER WHO SHALL DEPOSIT THEM IN THE CRIME STOPPER REWARD REIMBURSEMENT FUND WHICH IS HEREBY CREATED. MONEYS IN THE FUND SHALL BE CONTINUOUSLY APPROPRIATED TO THE DIVISION OF CRIMINAL JUSTICE FOR THE PURPOSES OF THIS SECTION. THE DISBURSEMENT OF ANY SUCH MONEYS TO THE DESIGNATED CRIME STOPPER ORGANIZATION SHALL BE MADE BY THE DIVISION OF CRIMINAL JUSTICE WITHIN THIRTY DAYS AFTER THE DATE OF DEPOSIT IN THE CRIME STOPPER REWARD REIMBURSEMENT FUND.

(4) AS USED IN THIS SECTION, "CRIME STOPPER ORGANIZATION" HAS THE SAME MEANING AS PROVIDED IN 16-15.7-102 (1).

SECTION 3. 16-11-204 (2), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW

PAGE 4-HOUSE BILL 94-1122

PARAGRAPH to read:

16-11-204. Conditions of probation. (2) When granting probation, the court may, as a condition of probation, require that the defendant:

(e.6) REPAY ALL OR PART OF ANY REWARD PAID BY A CRIME STOPPER ORGANIZATION THAT LED TO THE DEFENDANT'S ARREST AND CONVICTION IN ACCORDANCE WITH ARTICLE 15.7 OF THIS TITLE:

SECTION 4. 16-11-204 (2.5), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

(2.5) The order of priority for any payments required of a defendant pursuant to paragraph (d), (e), ~~or~~ (e.5), OR (e.6) of subsection (2) of this section shall be as follows: Restitution or reparation, support of dependents and meeting other family responsibilities, including payment of a current child support order, child support arrearage, ~~or~~ child support debt order, OR SPOUSAL MAINTENANCE, costs of court proceedings or costs of supervision of probation, ~~and~~ any fines or fees imposed by a court, AND REPAYMENT OF ALL OR PART OF ANY REWARD PAID BY A CRIME STOPPER ORGANIZATION THAT LED TO THE DEFENDANT'S ARREST AND CONVICTION.

SECTION 5. Part 2 of article 11 of title 16, Colorado Revised Statutes, 1985 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

16-11-204.6. Repayment of crime stopper reward as a condition of probation. (1) AS A CONDITION OF EVERY SENTENCE TO PROBATION WHERE INFORMATION RECEIVED THROUGH A CRIME STOPPER ORGANIZATION LED TO THE ARREST AND FELONY CONVICTION OF A DEFENDANT, THE COURT MAY REQUIRE SUCH DEFENDANT, AS A CONDITION OF PROBATION, TO REPAY ALL OR PART OF ANY REWARD PAID BY SUCH ORGANIZATION. THE AMOUNT OF SUCH REPAYMENT SHALL NOT EXCEED THE ACTUAL REWARD PAID BY ANY CRIME STOPPER ORGANIZATION AND SHALL BE USED SOLELY FOR PAYING REWARDS. THE COURT SHALL FIX THE MANNER AND TIME OF REPAYMENT.

(2) IN THE EVENT THE DEFENDANT FAILS TO REPAY THE CRIME STOPPER REWARD IN ACCORDANCE WITH AN ORDER OF THE COURT, THE DEFENDANT SHALL BE RETURNED TO THE SENTENCING COURT AND THE COURT, UPON PROOF OF FAILURE TO PAY, MAY:

(a) MODIFY THE AMOUNT OF THE REPAYMENT;

(b) EXTEND THE PERIOD OF PROBATION;

(c) ORDER THE DEFENDANT COMMITTED TO JAIL WITH WORK RELEASE PRIVILEGES; OR

(d) REVOKE PROBATION AND IMPOSE THE SENTENCE OTHERWISE REQUIRED, BY LAW.

(3) WHEN, AS A RESULT OF A PLEA BARGAIN AGREEMENT, A DEFENDANT IS ORDERED TO REPAY A REWARD PURSUANT TO SUBSECTION (1) OF THIS SECTION, THE DEPARTMENT OR AGENCY SUPERVISING THE COLLECTION OF SUCH REPAYMENT MAY ASSESS A CHARGE OF FIFTEEN DOLLARS TO THE DEFENDANT FOR COLLECTION OF EACH BAD CHECK OR EACH BAD CHECK RECEIVED AS A REPAYMENT.

(4) ANY ORDER FOR THE REPAYMENT OF ALL OR PART OF A CRIME STOPPER REWARD AS A CONDITION OF PROBATION SHALL BE PRIORITIZED IN ACCORDANCE WITH SECTION 16-11-204 (2.5).

(5) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "BAD CHECK" HAS THE SAME MEANING PROVIDED IN SECTION 16-11-204.5 (3).

(b) "CRIME STOPPER ORGANIZATION" HAS THE SAME MEANING PROVIDED IN SECTION 16-15.7-102 (1).

SECTION 6. 17-24-121 (5), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

17-24-121. Venture agreements. (5) The wages of an inmate working under an agreement entered into pursuant to this section with a private person shall be distributed under guidelines established by the executive director in order to offset the cost of imprisonment and incidental expenses, pay court ordered restitution, pay the pro-rata share of child support cost as established by the department of social services, REPAY ALL OR PART OF A CRIME STOPPER REWARD ORDERED PURSUANT TO PART 1 OF ARTICLE 15.7 OF TITLE 16, C.R.S., and establish a savings account to assist the inmate upon release and to offset state costs at the time of release.

SECTION 7. 24-33.5-503 (1), Colorado Revised Statutes, 1988 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

24-33.5-503. Duties of division. (1) The division has the following duties:

(m) TO CARRY OUT THE DUTIES PRESCRIBED IN SECTION 16-11-101.7 (3), C.R.S.

SECTION 8. Effective date - applicability. This act shall take effect upon passage and shall apply to offenses committed on or after said date.

SECTION 9. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

*Charles E. Werry*

Charles E. Werry  
SPEAKER OF THE HOUSE  
OF REPRESENTATIVES

*Tom Norton*

Tom Norton  
PRESIDENT OF  
THE SENATE

*Judith M. Rodriguez*

Judith M. Rodriguez  
CHIEF CLERK OF THE HOUSE  
OF REPRESENTATIVES

*Joan M. Albi*

Joan M. Albi  
SECRETARY OF  
THE SENATE

APPROVED

*June 1, 1994 at 1:18 p.m.*

*Roy Romer*

Roy Romer  
GOVERNOR OF THE STATE OF COLORADO



# FAX COVER PAGE

To: Ann Carpeneti		From : WILLET BUSHNELL
Fax Number : 1-907-465-3834		Company :
Date : 2/23/95	Time : 15:08:44	For Information Call: 907-376-4195
Subject : letter to ann carpeneti		Fax Number : 907-373-2193

To: Ann Carpeneti

From: Willet Bushnell

Attached is some information that may help with HB 138.  
I will transmit the Colorado bill under a separate fax.

Thank you

CRIME STOPPERS INTERNATIONAL, INC.  
REGION IV  
Willet Bushnell  
PO Box 871684  
Wasilla, Ak 99687

(907) 376-4195  
Fax (907) 373-2193

February 23, 1995

Ann Carpeneti  
Alaska State Legislature  
House Judiciary Committee

Dear Ann,

Attached is a copy of a Crime Stopper law passed in Colorado in 1994. The law has a section that provides for in-camera review, and has a definition of a Crime Stoppers organization. The bill goes on to also provide for repayment of crime stopper rewards.

I am aware of legislation regarding Crime Stoppers having passed in 14 states. The Colorado law best fits the nature of the House Bill 138. Guam supposedly has a good bill, that conforms to the U.S. Constitution, but I do not have copies of it.

Another example of Crime Stopper law is from Kentucky. Kentucky passed legislation in 1992. Their law is very brief. The law provides for a definition of crime stoppers under 431.570 and 431.575. It also provides for protection of records and repayment of the reward. The section regarding protection of records reads as follows:

#### **Kentucky Statute Sections**

##### **431.580 Circuit Court order required for production of reports; record of reports confidential.**

- (1) Records of a crime stopper organization concerning a report of criminal activity shall not be compelled to be produced before a court of other tribunal except on the order of the Circuit Court.
- (2) Records of a crime stopper organization relating to reports of criminal acts shall be confidential.

##### **431.585 Unlawful disclosure of information.**

- (1) A person who accepts a report of criminal activity on behalf of a crime stoppers organization shall be guilty of unlawful disclosure of information if the person intentionally or knowingly divulges to a person not employed by a law enforcement agency the identity of the person who made the report with the consent of the person who made the report.
- (2) Unlawful disclosure of information under this section shall be a Class A misdemeanor.

Sections 431.590 & 431.595 of the Kentucky law provide for repayment of rewards.

These sections are subject to proposed amendment before the legislature this year.

I have also attached some Court Cites regarding Crime Stoppers.

I am the president of Mat-Su Crime Stoppers, Inc. in Wasilla. I also work with the other Crime Stoppers organizations in the State, because I am the Regional representative on the Board of Directors of Crime Stoppers International, Inc.

I am available to help you in working up wording changes to HB 138 so that the bill can move forward.

Please call me at (907) 376-4195 if you have questions. My Fax number is (907) 373-2193.

Thank you,

(via computer fax)

Willet Bushnell

### Court Cites regarding Crime Stoppers:

These are some of the Alaska cases regarding Crime Stoppers. We do not have many cases that support or rule against us, because some cases are dismissed rather than give up the name of a caller. This information comes from a Case Digest published by Judge Richard Carter, Arlington, Tx.

#### Balentine v. State, 707 P.2d 922 (Alaska App. 1985)

Court denied full discovery of Anchorage Crime Stoppers records ruling that withheld documents would be of no use to the murder defendant and because "disclosure might very well adversely affect the rights and duties of citizens to report crime without being harassed."

At page 927, the appellate court stated the trial "judge's decision noted the semi-private nature of the program..."

#### Office of the Attorney General of the State of Alaska, File Number 663-88-0508 (June 28, 1988)

This case regards to the protection of the identity of informants who report fraud,

"...we conclude that it is probably permissible for the department to protect the identity of its informants. However, it is a close question, and you may want to consider proposing regulations or even legislation to clarify that the name of such informants are not public information and will be kept confidential."

"Another alternative is the establishment of a Crime Line - type program..."

#### Beuter v. State, 796 P.2d 1378 (Alaska App. 1990)

The appellate court refused to consider the defendant's claim that the trial court erred in not allowing discovery of Crime Stoppers records because the defendant had failed to challenge the validity of the search warrant during the trial itself, only at the suppression hearing. However, the case was remanded on other grounds.

### Other Cases:

Nylund v. State, 716 P.2d 387 (Alaska App. 1986), Change of venue properly denied even though television re-enacted crime on Crime Stoppers.

Jerrel v. State, 756 P.2d 301 (Alaska App. 1988) Change of venue denied in Crime Stoppers case in small town. (Homer)

Latham v. State, 790 P.2d 717 (Alaska App. 1990) Credibility of Informant

Lost Case: Kvasnikoff v. State, 804 P.2d 1302 (Alaska App. 1990)



# Alaska State Legislature

Please enter into the record my testimony to the House Judiciary  
 committee name  
 committee on HB 138 / CRIMESTOPPERS dated 2-23-95  
 bill/subject

I URGE YOU VOTE NO ON HB 138. THE INFAMOUS "KNOCK & TALKS" ON KENAI PENINSULA IN MARCH 1994 WERE CARRIED OUT LARGELY ON CRIMESTOPPER TIPS. THE RECORD SHOWS THAT SEVERAL OF THESE TIPS PROVED TO BE UNRELIABLE, WHICH RESULTED IN INNOCENT RESIDENTS HAVING THEIR CONSTITUTIONAL RIGHTS VIOLATED & THEIR LIVES DEVASTATED. IN THESE CASES - IF THE THE POLICE HAD USED SEARCH WARRANTS FOR DYNAMIC ENTRY - AS WOULD BE THE CASE UNDER HB 138 - THOSE INNOCENT RESIDENTS WOULD PROBABLY HAVE BEEN SHOT - AS WELL AS SOME POLICE OFFICERS. THE POLICE OFFICERS PERPETRATING THESE UNCONSTITUTIONAL KNOCK & TALKS WERE NOT IN UNIFORM AND WOULD HAVE BEEN PERCEIVED AS INTRUDERS AND A THREAT TO A RESIDENT AND HIS FAMILY IF THEY ENTERED A HOME - AND LIKELY AN INNOCENT HOME - UNDER A SEARCH WARRANT AS PROVIDED UNDER HB 138. THIS IS A SET-UP TO GET INNOCENT PEOPLE KILLED. HB 138 IS ONE OF THE MOST DANGEROUS & IRRESPONSIBLE PIECES OF LEGISLATION I HAVE SEEN IN A LONG TIME.

Signed: Wesley Edgson Nuwomb  
 Testifier  
Self  
 Representing (Optional)  
P.O. Box 1001 Sterling AK 99672  
 Address  
907-262-3135  
 Phone No.

**HB**

**154**

STATE OF ALASKA  
ROUTE SLIP

*Rm*  
*178*

TO: Mail Station	Department	Division
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Attention <i>HSE JUD.</i>
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<input type="checkbox"/> Approval	<input type="checkbox"/> Note & Return
<input type="checkbox"/> Signature	<input type="checkbox"/> Initial & Return
<input type="checkbox"/> Comment	<input type="checkbox"/> Return as Requested
<input type="checkbox"/> Contact Me	<input type="checkbox"/> Return for Approval
<input type="checkbox"/> Prepare Reply	<input type="checkbox"/> Necessary Action
<input type="checkbox"/> For Your File	<input type="checkbox"/> For Your Information

Remarks: <i>re: CS HB 154 (JUD) -</i> <i>revised fiscal note -</i>
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FROM: Mail Station <i>0101</i>	Department <i>006</i>	Division <i>Ad Sv.</i>
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By <i>Lude</i>	Date <i>4/2/86</i>
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# FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. CSHB 154(JUD)

Revision Date: 4/22/96 Dept. Affected: Office of the Governor  
 Title: "An Act relating to state regulatory actions relating to or affecting private property; and providing for an effective date." BRU: Office of Management & Budget  
 Sponsor: Representatives Kohring, Rokeberg, Kott, Kelly, Component: Governmental Coordination  
 Requester: House Judiciary Committee COMPONENT SERIAL NO. 18

**Expenditures/Revenues** (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 100	FY 01	FY 02
PERSONAL SERVICES	64.2	66.4	68.3	70.6	72.6	75.1
TRAVEL						
CONTRACTUAL	10.6	10.6	10.6	10.6	10.7	10.7
SUPPLIES	1.0	1.0	1.0	1.0	1.1	1.1
EQUIPMENT	14.5	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS	5,100.0	5,100.0	5,100.0	5,100.0	5,100.0	5,100.0
<b>TOTAL OPERATING</b>	<b>5,190.3</b>	<b>5,178.0</b>	<b>5,179.9</b>	<b>5,182.2</b>	<b>5,184.4</b>	<b>5,186.9</b>

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

1002 Federal Receipts						
1003 GF Match						
1004 GF	5,190.3	5,178.0	5,179.9	5,182.2	5,184.4	5,186.9
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
<b>TOTAL</b>	<b>5,190.3</b>	<b>5,178.0</b>	<b>5,179.9</b>	<b>5,182.2</b>	<b>5,184.4</b>	<b>5,186.9</b>

Estimate of any current year (FY96) cost: \$ 0.0

**POSITIONS**

FULL-TIME	1	1	1	1	1	1
PART-TIME						
TEMPORARY						

**ANALYSIS:** (Attach a separate page if necessary)

Section 3 of the bill adds requirements to Sec. 34.50.100 restricting a state regulatory agency's ability to deny or condition approvals or other authorizations relating to private real property. Specifically, the agency may not condition or deny an approval unless "substantial evidence demonstrates that the denial or condition is necessary to prevent significant irreparable harm to the public health, public welfare, or environment" and the harm "cannot be avoided or adequately mitigated by restrictions that are less intrusive, limiting, or costly."

The Division of Governmental Coordination (DGC) is the primary agency responsible for implementing the Alaska Coastal Management Program (ACMP). Under that program, the state reviews proposed projects to determine if they are consistent with the standards of the ACMP (6 AAC 80) and the enforceable policies of district coastal management programs, which have the force of law. As part of this review, the state routinely places conditions on consistency determinations to ensure these legal requirements are met.

A purpose of the ACMP is to preserve, protect, develop, and use coastal resources. As such, most of the standards could be considered in the interest of public health, public welfare, and the environment. However, DGC's determination as to whether a project is consistent is based on whether it meets the standards and

Prepared by: Diane Mayer Phone: 465-3562  
 Division: Governmental Coordination Date: 4/22/96  
 Approved by Commissioner: Jim Ayers, Chief of Staff Date: 4/22/96  
 Agency: Office of the Governor

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policies, not whether it will significantly, irreparably harm the public health, welfare, or environment. As such, it is highly likely that some percentage of DGC's consistency determinations could be considered takings under this proposed legislation, even though such decisions are required under the Alaska Coastal Management Act.

It is very difficult to estimate potential fiscal costs of this proposed legislation. On an annual basis DGC conducts approximately 450 consistency reviews, and typically adds conditions to approximately 75% of our determinations and finds 1% of projects inconsistent. As such, approximately 76% of DGC's consistency determinations could be affected by this legislation. Since easily obtainable data are lacking, we estimate that an applicant might argue half of our conditioned determinations or inconsistent findings did not meet the "significant irreparable harm to the public health, public welfare, or environment" test. This is largely due to the fact that our standards of review we are legally required to consider are broader. Potentially 171 of DGC's consistency determinations could annually be challenged under this legislation.

As an estimate only, we assume half of the 171 would be legally upheld in court and half would not. Legal fees for these cases alone could be very high, but we leave those costs to be estimated by the Department of Law.

What is left to estimate is the "full compensation" that DGC would have to pay for 85 projects that may not meet this proposed legislation. Since the array of projects DGC reviews is very broad (e.g., oil and gas development on the North Slope to small wetland fills by private individuals), it is nearly impossible to estimate costs of compensation.

Again, for discussion only, as in earlier versions of a fiscal note for this bill, we estimate that each project involves an average of 2 acres. Further, we acknowledge that there will be enormous variability in the value of property based on location and site-specific characteristics, but will use an average land value of \$30,000/acre. Therefore, under these assumptions, the cost to the Division to compensate for takings as a result of stipulations or inconsistent findings would be \$5,100,000 annually (85 projects X 2 acres X \$30,000/acre).

In order to coordinate all the additional work required to address takings issues, the Division also estimates the need for a full-time, Range 20 staff person and associated costs to oversee the additional tasks associated with meeting the requirements of this legislation. Finally, as discussed previously, while it is likely some of the Division's action may end up in litigation, we have not included additional costs for attorney services, assuming that the Department of Law is addressing this potential cost separately.

# FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO: CS HB 154 (JUD)

Revision Date: 4/18/96 Dept. Affected: Community & Regional Affairs  
 Title: An Act relating to state regulatory actions BRU: none  
relating to or affecting private property;... Component: none  
 Sponsor: Rep. Kohring  
 Requestor: House Judiciary COMPONENT SERIAL NO. \_\_\_\_\_

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

OPERATING	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ( ) Revenue Code						
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**FUNDING: (Thousands of Dollars)**

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

Estimate of current year (FY 96) impact: \$ none

**POSITIONS:**

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

**ANALYSIS: (Attach a separate page if necessary.)**

There is no fiscal impact to DCRA from this bill.

Prepared By: Remond Henderson *Remond Henderson* Phone: 465-4708  
 Division: Director, Div. of Administrative Services Date: 4/18/96  
 Approved by Commissioner: Mike Irwin *Mike Irwin* Date: 4/18/96  
 Agency: Mike Irwin, Dept. of Community & Reg. Affairs

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# FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. CSHB 154(JUD)

Revision Date: \_\_\_\_\_ Dept. Affected: Department of Corrections  
 Title: An Act relating to state regulatory actions relating BRU: \_\_\_\_\_  
to or affecting private property; and providing for an effective date. Component: \_\_\_\_\_  
 Sponsor: Representative Kohring  
 Requester: House Finance COMPONENT SERIAL NO. \_\_\_\_\_

**Expenditures/Revenues**

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	****	****	****	****	****	****

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE**

(Thousands of Dollars)

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

Estimate of any current year (FY96) cost: \$ 0.0

**POSITIONS**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS:** (Attach a separate page if necessary)

HB 154 raises three areas of possible fiscal impact on the Department of Corrections.

- 1) The potential for nuisance litigation from inmates and probationers/parolees alleging interference with their ability to engage in certain business activities.
- 2) The potential for property and business owners to assert legal claims of value deflation resulting from the location of prisons, jails, community residential centers, or other types of correctional facilities.
- 3) The potential for property and business owners to assert legal claims of value deflation from the Department of Corrections permitting probationers/parolees to dwell in their neighborhoods.

\*\*\*\* The Department has no experience on which to base cost estimates, however one successful claim of value deflation from a property or business owner could be quite substantial.

Prepared by: Jerry Shriner  
 Division: Office of the Commissioner  
 Approved by Commissioner: Margaret M. Pugh  
 Agency: Department of Corrections

Phone: 465-4652  
 Date: 4/22/96  
 Date: 4/22/96

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# FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. CSHB 154(Jud)

Revision Date: \_\_\_\_\_  
Title: Regulatory Takings  
Sponsor: Kohring  
Requestor: House Judiciary

Department Affected: Environmental Conservation  
BRU: All  
Component: \_\_\_\_\_

COMPONENT SERIAL NO. 633

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES	**	**	**	**	**	**
TRAVEL	**	**	**	**	**	**
CONTRACTUAL	**	**	**	**	**	**
SUPPLIES	**	**	**	**	**	**
EQUIPMENT	**	**	**	**	**	**
LAND&STRUCTURES	**	**	**	**	**	**
GRANTS,CLAIMS	**	**	**	**	**	**
MISCELLANEOUS	**	**	**	**	**	**
<b>TOTAL OPERATING</b>	<b>**</b>	<b>**</b>	<b>**</b>	<b>**</b>	<b>**</b>	<b>**</b>

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

**FUND SOURCE**

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	**	**	**	**	**	**
1005 GF/Program Receipt	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	**	**	**	**	**	**
<b>TOTAL</b>	<b>**</b>	<b>**</b>	<b>**</b>	<b>**</b>	<b>**</b>	<b>**</b>

Estimate of any current year (FY96) cost: \$ 0.0

**POSITIONS:**

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

ANALYSIS: (Attach a separate page if necessary.)

See Attached

Prepared by: Janice Adair  
Division: Director, Division of Environmental Health

Phone: 269-7645  
Date: 4/23/96

Approved by Commissioner:   
Agency: Department of Environmental Conservation

Date: 4/24/96

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# FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. CSHB 154(JUD)

Revision Date: 4/19/96 Dept. Affected: Fish and Game  
 Title: Regulatory Taking of Private Property BRU: Habitat and Restoration  
 Component: Stream and Refuge  
 Sponsor: Representative Kohring  
 Requester: House Judiciary COMPONENT SERIAL NO. 2099

**Expenditures/Revenues** (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 100	FY 01	FY 02
PERSONAL SERVICES	180.0	180.0	180.0	180.0	180.0	180.0
TRAVEL	3.0	3.0	3.0	3.0	3.0	3.0
CONTRACTUAL	8.0	8.0	8.0	8.0	8.0	8.0
SUPPLIES	1.0	1.0	1.0	1.0	1.0	1.0
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS	800.0	1,800.0	2,000.0	2,000.0	1,500.0	1,000.0
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>992.0</b>	<b>1,992.0</b>	<b>2,192.0</b>	<b>2,192.0</b>	<b>1,692.0</b>	<b>1,192.0</b>

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

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	992.0	1,992.0	2,192.0	2,192.0	1,692.0	1,192.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
<b>TOTAL</b>	<b>992.0</b>	<b>1,992.0</b>	<b>2,192.0</b>	<b>2,192.0</b>	<b>1,692.0</b>	<b>1,192.0</b>

Estimate of any current year (FY96) cost: \$ 0.0

**POSITIONS**

FULL-TIME	4	4	4	4	4	4
PART-TIME						
TEMPORARY						

**ANALYSIS:** (Attach a separate page if necessary)

See attached sheet

Prepared by: Janet Kowalski *JK*  
 Division: Habitat and Restoration  
 Approved by Com: Frank Rue *FR*  
 Agency: Department of Fish and Game

Phone: 465-4105  
 Date: 4/19/96  
 Date: 4/24/96

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FISCAL NOTE CONTINUATION PAGE  
STATE OF ALASKA BILL NO. CSHB 154(JUD)  
1996 LEGISLATIVE SESSION

CSHB 154(JUD) would have a significant fiscal impact on the Alaska Department of Fish and Game (ADF&G). Sec. 34.50.100 would restrict the department from denying or imposing a condition on a Title 16 permit for activities affecting private real property *unless substantial evidence demonstrates that the denial or condition is necessary to prevent significant irreparable harm to the public health, public welfare, or environment and the harm cannot be avoided or adequately mitigated by restrictions that are less intrusive, limiting, or costly*. Because ADF&G issues some 1,200 Title 16 permits annually, additional staff would be needed to analyze and determine issues of "significant irreparable harm" and the "costs" of various permit conditions. This would require three additional economists in the Habitat and Restoration Division to analyze both internal (property owner) and external (public) costs of various levels of restrictions required to protect common property fish and wildlife resources. Additional staff time would be required to defend the department against takings claims under Sec. 34.50.110. Permit reviews would become more protracted and adversarial, and could become focused on economic issues which are unrelated to the department's fish and wildlife responsibilities. Because of these additional burdens imposed on the department's Title 16 permitting program, this bill would hamstring the protection of important fish and wildlife resources in Alaska, such as the Kenai River.

ADF&G would have to carefully review all permits, orders, and management actions to determine if its actions might directly or indirectly restrain some use of private real property and thereby constitute a taking. If ADF&G had to take some action that it judged was a taking, the department would have to pay compensation. On the Kenai River alone, compensation claims could amount to millions of dollars. Money would have to be available to pay compensation. The money would have to come from the General Fund because none of the department's federal funding sources or program receipts allow for the payment of compensation to private land owners. It is estimated that initially, the department would pay claims amounting to \$800 thousand. This could increase to \$2 million in two years as more claims are filed and adjudicated. In the out years, claims could decline to about \$1 million annually as the department becomes more successful in avoiding claims and decreases its habitat protection measures to minimize restraining uses of private real property. However, the outcome of decreasing habitat protection to avoid takings claims is likely to ultimately deplete some fish and wildlife stocks and diminish many fishing and hunting opportunities that the public has come to expect. If money were unavailable for paying compensation, the department would have to cease protecting many fish habitats.

The fiscal impacts could be much higher than estimated depending on the number and value of claims that are paid. The department would have to be prepared to analyze claims and defend itself against what could be a large number of takings cases.

# FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. CSHB 154 (JUD)

Revision Date: \_\_\_\_\_ Dept. Affected: Department of Law  
 Title: ...relating to actions for state or municipal takings BRU: Civil Division  
of private property... Component: General Legal Services  
 Sponsor: Representative Kohring  
 Requester: Representative Kohring COMPONENT SERIAL NO. 2087

**Expenditures/Revenues** (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	*****	*****	*****	*****	*****	*****

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

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

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	*****	*****	*****	*****	*****	*****

Estimate of any current year (FY96) cost: \$ 0.0

**POSITIONS**

FULL-TIME	*****	*****	*****	*****	*****	*****
PART-TIME						
TEMPORARY						

**ANALYSIS:** (Attach a separate page if necessary)

HB 154 contemplates that claims for takings may be enforced in the Superior Court. The amount of legal services that will be required if HB 154 is enacted is dependent on the number of takings claims that are filed. Because no similar law of this scope has ever been enacted in Alaska or any other state, there is no way to use past experience to estimate the number of cases that will arise each year. However, the ambiguities in the current version of HB 154 coupled with the amount of money likely to be at stake in most cases suggests that initially a significant number of cases will arise and that they will be extensively litigated rather than settled. Over time, as legal issues are resolved some kinds of cases will disappear. The number of cases which arise in the first five years will depend in large part on whether the retroactive application limitation is construed narrowly or broadly. However, no matter how that issue is resolved, over time changes in statutes and regulations will open the door for more claims and more cases will arise. We estimate that at least for the first few years ten or more cases could be filed, with that number escalating over time to about twenty to thirty per year.

Prepared by: Richard I. Peques, Director Phone: 465-3672  
 Division: Administrative Services Division Date: 4/19/96  
 Approved by Commissioner: Bruce M. Botelho, Attorney General Date: 4/19/96  
 Agency: Department of Law

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## FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. CSHB 154 (JUD)

### ANALYSIS CONTINUATION:

The individual takings cases will have new legal issues with respect to the application of HB 154, but will be similar in many factual respects, such as valuation, to takings cases that we litigate now under the constitution. Based on that experience it is clear that cases such as these invariably require significant involvement from experts for appraisal and economic valuation purposes. In addition, each case requires substantial attorney time. Thus these cases will be expensive for contractual services (between \$10,000 and \$100,000 per case for experts). In addition, all agencies making discretionary decisions will require additional counsel from the department, often in areas that have not required attorney involvement in the past. Thus, the department will require new attorney positions. We estimate that two new attorneys will be required initially, growing to six over a five or six year period. Expert costs exceeding \$1,000,000 per year may be required. The average weighted cost of a trial attorney in the department is about \$126,000 per year. This includes all of our law office overhead costs such as secretaries, communications, legal research, computer and library support. It does not include out-of-pocket litigation costs such as travel, court reporters, and experts. Although we cannot provide a definite fiscal impact amount, because we simply do not have any experience on which to base an estimate, it appears the department's total cost will range between \$1,250,000 and \$1,750,000 per year.

# FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. CSHB154(JUD)

Revision Date: Original Dept Affected Natural Resources  
 Title: Regulatory taking of private property BRU: Resource Development  
 Component: Forest Mgmt. & Development  
 Sponsor: Representative(s) Kohring, Rokeberg, Kott  
 Requestor: House Judiciary Component Serial No. 435

Expenditures/Revenues	(Thousands of Dollars)					
OPERATING EXPENDITURES	FY97	FY98	FY99	FY00	FY01	FY02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0.0	0.0	0.0	0.0	0.0	0.0
<b>CAPITAL EXPENDITURES</b>	0.0	0.0	0.0	0.0	0.0	0.0
<b>CHANGE IN REVENUES ( )</b>	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE	(Thousands of Dollars)					
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY96) cost: \$ None

POSITIONS	FY97	FY98	FY99	FY00	FY01	FY02
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)

This 'zero' fiscal note is predicated upon the sponsor statement that, "forest products" are removed from the definition of real property. This removes the annual permitting for timber buffer zones from being effected." (See Memorandum of April 17, 1996, Vic Kohring to House Judiciary Committee Members). It is also predicated upon Sec. 5 of the CS, which removes application to statutes and regulations in effect on day before bill becomes effective as law.

There are significant questions remaining and they are questions of law rather than of resource management. None the less, the fiscal impact underlying the questions is so great that the questions are a material part of the fiscal note. If "private property" on Page 4, Line 24, includes timber, then the fiscal note of January 15, 1996, and the expenditure amounts shown therein would generally apply to this CS.

Prepared by: Tom Boutin, Director Phone: 465-3379  
 Division: Forestry Date: 19-Apr-96  
 Approved by Commissioner: [Signature] Date: 19-Apr-96  
 Agency: Natural Resources

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## CSHB154(JUD) Fiscal Analysis Continued

A second question relates to variations to the Alaska Forest Resources and Practices Act under AS 41.17.087. A landowner/operator can ask for a variation to any part of AS 41.17 and that variation must be given by the state if doing so will not cause significant harm. If a determination of significant harm would be exempt from 'No Retroactive Effect' (Page 5, Line 11, of the CS), and significant harm is a less stringent test than 'significant irreparable harm' (Page 2, Line 15 of the CS) as it would seem to be, then a landowner/operator could apply for variations from AS 41.17 and qualify for payment when the variation was disallowed as required by AS 41.17.087. The fiscal impact under this scenario cannot really be measured since a landowner/operator might apply for the same variation without limit.

A final issue is the definition of "taking" found on Page 5. At least in the instance of timber harvest, we believe that the test of 30 percent of the fair market value does not place any effective limit on what might be a taking since property can be segmented until any reduction exceeds 30 percent. For example, if the timber in a 66-foot no-harvest buffer constituted less than 30 percent of the fair market value of the property, the size of the parcel could be reduced through sale until the timber value in the buffer exceeded 30 percent of the fair market value of the parcel.

## STATE OF ALASKA

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By Bob Bartholomew		Date 4/22

# FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. HB 154(JUD)

Revision Date: 4/19/96 Dept. Affected: Revenue  
Title: Regulatory Taking of Private Property BRU: Revenue  
Component: Gaming/ABC

Sponsor: Reps. Kohring, Rokeberg/Kott  
Requester: (H)JUD COMPONENT SERIAL NO. 125

**Expenditures/Revenues (Thousands of Dollars)**

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 100	FY 101	FY 102
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	.	.	.	.	.	.

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**FUND SOURCE (Thousands of Dollars)**

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	.	.	.	.	.	.

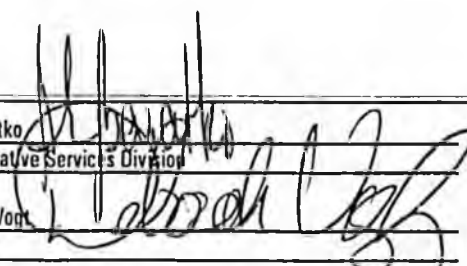
Estimate of any current year (FY96) cost: \$ \_\_\_\_\_

**POSITIONS**

FULL-TIME	.	.	.	.	.	.
PART-TIME						
TEMPORARY						

**ANALYSIS:** (Attach a separate page if necessary)

Costs to the Department of Revenue should CSHB 154 (JUD) (3/13/96 work draft) be enacted are impossible to ascertain but would likely be substantial. Both proposed AS 34.50.100 and proposed AS 34.50.110 appear to be applicable, at least in some circumstances, to licensing/permitting actions by the Alcoholic Beverage Control Board and the Charitable Gaming Division. Proposed AS 34.50.100 would add a new basis for challenging license/permit denials, increasing the department's costs in handling appeals. Proposed AS 34.50.110 would apparently require compensation in many circumstances for license/permit denials and for revocations. Depending on the interpretation of the ambiguous applicability clause in Section 5, these effects might be immediate or might be delayed until the statutes or regulations governing ABC and gaming matters were amended in some way.

Prepared by: Bob Baratko  Phone: 465-2312  
Division: Administrative Services Division Date: 4/19/96  
Approved by: \_\_\_\_\_  
Commissioner: Deborah Vogt Date: 4/19/96  
Agency: Revenue

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# FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. CSHB 154 (JUD)

Revision Date: 4/25/96 Dept. Affected: DOT&PF  
 Title: "An Act relating to state regulatory actions relating to or affecting private property; and providing for an effective date." BRU: All  
 Sponsor: Representatives Kohring, Rokeberg...Foster Component: All  
 Requester: House Judiciary COMPONENT SERIAL NO. N/A

**Expenditures/Revenues**

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	15,000.0	15,000.0	15,000.0	15,000.0	15,000.0	15,000.0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>15,000.0</b>	<b>15,000.0</b>	<b>15,000.0</b>	<b>15,000.0</b>	<b>15,000.0</b>	<b>15,000.0</b>

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**FUND SOURCE**

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	15,000.0	15,000.0	15,000.0	15,000.0	15,000.0	15,000.0
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>15,000.0</b>	<b>15,000.0</b>	<b>15,000.0</b>	<b>15,000.0</b>	<b>15,000.0</b>	<b>15,000.0</b>

Estimate of any current year (FY96) cost: \$ 0.0

**POSITIONS**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS:** (Attach a separate page if necessary)

There is a wide range of potential impacts due to the variety of issues of CSHB 154 that could have lasting effects on this department. Many would require a case by case analysis to determine their full financial impact, but the attached pages identify a few of them that could cause, at least, a potential \$15 million annual expense.

Prepared by: Loren Rasmussen, P.E., Acting Director *Loren Rasmussen* Phone: 465-2960  
 Division: Engineering and Operations Date: 4/25/96  
 Approved by: Joseph L. Perkins *Joseph L. Perkins* Date: 4/25/96  
 Agency: Department of Transportation and Public Facilities

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## CSHB 154

### RIGHT-OF-WAY:

#### Section 34.50.140 Prohibition Against Value Deflation.

Designation of potential "transportation corridors" may become very costly with this provision if property values fall as a result of releasing transportation studies identifying proposed routes. For example, if a "Super Seward Highway" corridor in East Anchorage results in a property value decrease of merely 10%, or if values don't keep pace with the rest of the market trend, 35 homes and 5 businesses could cost the state over \$500,000 in the first year, and eventually could require additional payments as the value continues to be affected to \$1 million or more.

#### Section 34.50.130 Full Compensation Required.

This section may change current guidelines concerning payment of lost business profits; payment for moving traffic away from commercial areas; payment for temporary impairment of access, construction smoke, vibration, dust, odors; payment for changing access to commercial properties, or payment for mineral-bearing properties. On a current small intersection improvement project in Fairbanks, the total cost could reach \$2 million in additional expenses, in the worst case.

## CSHB 154

### DRIVEWAYS:

#### Sec. 34.50.160 ACCESS REQUIRED.

If the department, through its regulation, requires driveway permits (and owner construction) for individuals desiring to build access to their property from state roads, and these permit requirements create an additional expense to the owner that the owner did not anticipate, CSHB 154 may cause the department an additional expense to reimburse these extra costs to the applicant. In fact, it is possible that this bill could prevent the department from requiring a permit document or a design from the property owner, thus requiring this department to perform the actual design and construction (to assure it is done to our specifications) work for the owner.

The department annually issues approximately 800 driveway permits statewide. If we must now provide a design and perform the construction of each one (because of this bill's requirements) it could cost an estimated \$160,000 per year for the design (\$200 each - 5 hrs design engineer @ \$40/hr work including site visit) and \$3,200,000 per year for construction (\$4,000 per driveway - average estimate for labor, materials, and equipment) for a potential total of more than \$3,000,000 annually.

### ROAD MAINTENANCE:

#### Sec. 34.50.110 PRINCIPLES FOR GOV. ACTION. (shall not cause undue public burden)

Say budget reductions or restrictions for current department highway maintenance operations created a situation where we no longer performed roadway maintenance on the 75 lane miles of state "hillside" roads in southeast Anchorage. This action could devalue homeowner properties either due to higher city taxes (inability to provide the similar roadway maintenance by city forces, or by forcing homeowners to set up their own service districts). This bill could force the state to compensate those homeowners for the extra tax or service district cost, as they do not now pay an expense for our current level of roadway maintenance. If general state highway maintenance costs \$5,500 per lane mile in urban residential areas (and the extra tax or service district expense is approximately the same), then this action could create a state cost of \$400,000.

If similar action was repeated on a statewide basis, due to M&O budget restrictions, it is estimated that considerable urban residential and rural mileage (2,000 lane miles of "Class 3" roads) would be affected. At a statewide average maintenance cost of \$2,500 per lane mile, the total cost to the state is estimated to be \$5,000,000.

## CSHB 154

### ALASKA MARINE HIGHWAY SYSTEM:

#### Sec. 34.50.110 PRINCIPLES FOR GOVERNMENTAL ACTION.

The Alaska Marine Highway System (AMHS) budget could be affected by any bill that increases costs to the department. Ferry terminal locations deal with the following related issues - vendors on state property, vendors in the right-of-way, and traffic safety in the general terminal area.

Reduced maintenance, due to budget reductions, means increased liability which eventually translates to increased risk management costs. Vendor encroachment can result in losses of on-board service revenues (the passenger stocks up on sandwiches, drinks, and other consumables prior to boarding) and increased legal costs. We have, so far, successfully dealt with parties encroaching in the ferry terminal right-of-way, but could expect our prime waterfront locations to be mobbed by "get-rich-quick" purveyors of last chance articles if our jurisdictional rights were questioned.

The AMHS deals with citizens who believe they are inconvenienced or adversely affected by schedule changes, adjustments to annual operating plans, mechanical breakdowns, delays due to weather or emergency services, and management decisions based upon the best interests of the state. If such persons had an avenue to seek financial recourse for their "hurt", the AMHS could become mired in legal entanglements and numerous operating efficiency losses. While it is difficult to identify a specific amount, it is certainly possible to modestly expect losses in revenues of \$1 million, and increased costs in excess of \$1 million.

## CSHB 154

### ADA:

Sec. 34.50.120 RESTRICTIONS ON GOVERNMENTAL ACTION.

17 AAC 50 and AS 35.10.015 requires the department to ensure that all space occupied by governmental entities (local government as well as state agencies) conforms to the requirements of the Americans with Disabilities Act (ADA). As such, all facilities, both owned and leased, which are inaccessible are mandated to have elevator access to government occupied, rental spaces above the ground floor. Historically we have encountered approximately ten situations a year where potential landlords have opted to install elevators so as to enable them to offer rental space to the state. Due to the short life of the potential lease agreement (generally less than five years), they argue that the full cost of the improvements cannot be recovered from the additional proceeds generated by the lease.

Typically the cost of adding an elevator into an existing two or three story facility will fall in the range of approximately \$225,000 - \$275,000 per installation. Assuming that the lease is for 5,000 square feet of space, that the contractor is able to remain competitive and still get an increased rental rate of \$0.15 per square foot; it follows that they would recover a maximum of \$45,000 over the life of the contract. Leaving, on the average, a cost to be borne by the landlord of \$195,000 per site. Considering that this event occurs approximately ten times per year, it produces an annual cost of nearly \$2,000,000.

## MEMORANDUM

To: Carolyn Jones, AAG  
Supervisor  
Transportation Section  
Anchorage AGO

From: Ross A. Kopperud, AAG  
Transportation Section  
Anchorage AGO

Re: CSHB 154

Date: April 24, 1996

I reviewed the above bill regarding how it might impact the issuance of driveway permits. Note, that DOT&PF also issues encroachment permits and utility permits for private and public utility uses within highway rights of way.

The principle fiscal impact of the proposed legislation is that it could make for a great deal of litigation. Although the denial or condition of the permit would occur on DOT&PF land or right of way, its impact would be on the private property owner. Take for instance the denial or conditioning of a driveway permit. A driveway permit allows an abutting property owner to build a driveway from abutting property to the travel lanes of many roads. The landowner usually has a right to reasonable access to the system of highways. Properties with access to the highways are usually much more valuable than properties without access. DOT&PF issues driveway permits to regulate the access to the highways. If the landowner driveway were restricted in the width, length, height, placement, radius, culverts, sight distances, deceleration lanes, construction materials or other similar restriction, in installing his driveway, then he could argue that such restrictions were unwarranted and were therefore a taking under this bill. AS 34.50.110 appears to make the exercise of discretion, regardless of whether the discretion has been abused or not, a taking. As such, the denial or conditioning of the driveway permit may be reasonable yet could still be a taking.

I think the costs of CSHB 154 to DOT&PF would likely be increased administrative costs, legal costs, judgments against it for principle, interest, costs, and attorney's fees for the takings. Such costs should not be more than a few million a year. The principle impact is that all decisions would be made by the court since the court would decide or review any denials or conditioning of a permit under AS 34.50.100 (a) (1) and (2).

Department of Transportation & Public Facilities  
Commissioner's Office  
Voice Telephone: (907) 465-3900  
Text Telephone: (907) 465-3652  
Fax Number: (907) 586-8365

# FAX

---

TO: Peggy LaGrone / Representative Kohning's Office Phone: 465-2195  
FROM: Melissa McCormick / DOT&PF Commissioner's Office Phone: 465-3903  
Number of Pages (Including this Cover Sheet): 3

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Comments: Peggy - As per our discussion. If you have any questions, please give me a call at 465-3903 or you can contact  
— Melissa Ross Kopperud (via fax only at 907) 279-5832 as their phone lines are down today). Ross would be able to answer any legal questions.  
Thanks -

STATE OF ALASKA, DEPT OF LAW  
ATTORNEY GENERAL'S OFFICE  
TRANSPORTATION SECTION  
1031 WEST 4TH AVE., SUITE 200  
ANCHORAGE, ALASKA 99501

Phone: (907) 269-5163  
Fax : (907) 279-5832

FAX TRANSMITTAL SHEET

Date: April 30, 1995 Time: 11:18am Total Pages: 2

From: Ross A. Kopperud  
Transportation Section, Attorney General's Office  
Anchorage

PLEASE DELIVER THE FOLLOWING PAGES TO:

NAME: BRUCE R. FRIETAG

LOCATION: DOT&PF JUNEAU, HC

FAX NO. : 907-465-2460

COMMENTS:

Bruce, per our telephone conversation of yesterday, enclosed please find my memo to Carolyn Jones regarding HB 154 regarding the impact of that bill on driveway permits. Please fax me any questions as our phones are down. Ross K.

CASE:

IF YOU DO NOT RECEIVE ALL THE PAGES, OR HAVE ANY PROBLEMS WITH THE TRANSMITTAL, PLEASE CALL DENISE AT (907) 269-5163.

The information contained in this fax is confidential and/or privileged. This fax is intended to be reviewed initially by only the individual named above. If the reader of this transmittal page is not the intended recipient or a representative of the intended recipient, you are hereby notified that any review, dissemination or copying of this fax, or the information contained herein is prohibited. If you have received this fax in error, please immediately notify the sender by telephone and return this fax to the sender at the above address. Thank you.

(7)

Date Referred: April 21, 1995

FURTHER REFERRALS:

Finance

Date of Committee Action: 4/17/96

The JUDICIARY Committee considered:

HB 154

HOUSE BILL NO. 154

REGULATORY TAKING OF PRIVATE PROPERTY

"An Act requiring the Department of Law to provide guidelines regarding unconstitutional state and municipal takings of private real property; relating to the taxation of private real property taken unconstitutionally by state or municipal action; establishing a time limit for bringing an action for an unconstitutional state or municipal taking of private real property; and providing for an effective date."

recommends it be replaced with the following committee substitute CSHB 154 (JUD)  the same title  a new title

additional referral to \_\_\_\_\_ Committee  
 attached amendment(s)

ADOPTS: \_\_\_\_\_ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) \_\_\_\_\_ APPROVES PREVIOUS: (Dept/Date) \_\_\_\_\_

fiscal note(s) COV, CIRA, Corrections ] fiscal note(s) \_\_\_\_\_

DEC, FIG, Law, Nat. Res. Rev, DOT/PF \_\_\_\_\_

zero fiscal note(s) \_\_\_\_\_  zero fiscal note(s) \_\_\_\_\_

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>Brian Foster</i>			<input checked="" type="checkbox"/>	
<i>[Signature]</i>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	
<i>[Signature]</i>		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
<i>[Signature]</i>			<input checked="" type="checkbox"/>	
<i>[Signature]</i>			<input checked="" type="checkbox"/>	

CHAIR'S SIGNATURE *Brian Foster*

## CS FOR HOUSE BILL NO. 154(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:

Referred:

Sponsor(s): REPRESENTATIVES KOHRING, Rokeberg, Kott, Kelly, Vezey, Martin, Barnes, Ogan,  
G.Davis, James, Mulder, Foster

## A BILL

## FOR AN ACT ENTITLED

1 "An Act relating to state regulatory actions relating to or affecting private  
2 property; and providing for an effective date."

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

4 \* Section 1. AS 09.10.030 is amended to read:

5 Sec. 09.10.030. ACTIONS TO RECOVER REAL PROPERTY IN 10 YEARS.

6 Except as otherwise provided under AS 34.50.130, a [A] person may not bring an  
7 action for the recovery of real property [,] or for the recovery of the possession of it  
8 unless the action is commenced within 10 years. An action may not be maintained for  
9 the recovery unless it appears that the plaintiff, an ancestor, a predecessor, or the  
10 grantor of the plaintiff was seized or possessed of the premises in question within 10  
11 years before the commencement of the action.

12 \* Sec. 2. AS 09.10.070 is amended to read:

13 Sec. 09.10.070. ACTIONS FOR TORTS AND CERTAIN STATUTORY  
14 LIABILITIES TO BE BROUGHT IN TWO YEARS. Except as otherwise provided

1 by AS 34.50.130, a [A] person may not bring an action (1) for libel, slander, assault,  
2 battery, seduction, false imprisonment, or for any injury to the person or rights of  
3 another not arising on contract and not specifically provided otherwise; (2) upon a  
4 statute for a forfeiture or penalty to the state; or (3) upon a liability created by statute,  
5 other than a penalty or forfeiture; unless the action is commenced within two years.

6 \* Sec. 3. AS 34.50 is amended by adding new sections to read:

7 ARTICLE 2. STATE REGULATORY ACTIONS.

8 Sec. 34.50.100. RESTRICTIONS ON REGULATORY AGENCY ACTION.

9 (a) When a state regulatory agency exercises its discretion under a statute or  
10 regulation to deny or condition a permit, certification, approval, or other authorization  
11 relating to the use of private real property, the agency may not make the denial or  
12 impose the condition if the denial or condition precludes an otherwise lawful use of  
13 the property unless

14 (1) substantial evidence demonstrates that the denial or condition is  
15 necessary to prevent significant irreparable harm to the public health, public welfare,  
16 or environment; and

17 (2) the harm described in (1) of this subsection cannot be avoided or  
18 adequately mitigated by restrictions that are less intrusive, limiting, or costly.

19 (b) When making a determination reasonably necessary to exercise its  
20 discretion under (a) of this section, a state regulatory agency may not require an  
21 applicant for a permit, certification, approval, or other authorization to

22 (1) submit information to the agency unless the information is

23 (A) personally known by or in the records of the applicant when  
24 the agency requests information; or

25 (B) capable of being learned by the applicant through  
26 reasonable investigation, reasonable studies, or other data collection efforts that  
27 the agency is not prohibited under (2) of this subsection from requiring the  
28 applicant to undertake;

29 (2) undertake or pay for investigations, reports, or other data collection  
30 efforts if the sole purpose of the data collection efforts is to assess speculative or  
31 insignificant effects of the permit, certification, approval, or other authorization.

1           Sec. 34.50.110. FULL COMPENSATION REQUIRED. (a) When a state  
2 regulatory agency exercises its discretion under a statute or regulation to deny or  
3 condition a permit, certification, approval, or other authorization relating to the use of  
4 private real property, the agency may not make the denial or impose the condition if  
5 the denial or imposition of the condition results in a taking of private property unless  
6 the agency pays full compensation for the taking to the owner of the private property.

7           (b) The full compensation required by (a) of this section is the monetary value  
8 of the reduction in the fair market value of the private property taken. Interest at three  
9 and one-half percent above the annual rate charged member banks for advances by the  
10 12th Federal Reserve District on the date of the taking shall be paid on the full  
11 compensation, from the date of the taking until the compensation is paid in full.

12           (c) An owner claiming compensation for a taking under this section is not  
13 required to exhaust available administrative or judicial appeal before claiming the  
14 compensation.

15           (d) This section may not be construed as diminishing in any way the rights of  
16 private property owners under the constitution and laws of the state and the United  
17 States.

18           Sec. 34.50.120. WAIVER PROHIBITED. A state regulatory agency may not  
19 require the owner of private real property to waive the compensation required by  
20 AS 34.50.110 in order to obtain the agency's issuance of a permit, certification,  
21 approval, or other authorization relating to the use of private real property.

22           Sec. 34.50.130. TIME FOR BRINGING ACTION. (a) An owner of private  
23 property may not commence a civil action for a taking under AS 34.50.110 unless the  
24 action is commenced within three years after the date of the taking.

25           (b) The three-year period in which to commence an action under this section  
26 does not begin to run on the date of the taking if the state regulatory agency fails to  
27 give, under the statutes or regulations applicable to the notice, the owner or applicant  
28 proper notice of the agency's final decision.

29           (c) If an agency fails to give proper notice of its final decision under (b) of  
30 this section, the period in which to commence an action under (a) of this section does  
31 not begin to run until the owner or applicant actually receives the notice required by

1 (b) of this section.

2 (d) If an owner or applicant pursues an administrative appeal or a judicial  
3 appeal of the agency's decision, the period in which to commence an action does not  
4 run while the appeal is pending.

5 Sec. 34.50.140. REGULATIONS PROHIBITED. A state regulatory agency  
6 may not adopt regulations to implement AS 34.50.100 - 34.50.150.

7 Sec. 34.50.150. DEFINITIONS. In AS 34.50.100 - 34.50.150, unless the  
8 context clearly requires otherwise,

9 (1) "applicant" means a person, or a person's representative or agent,  
10 who applies directly or indirectly to a state regulatory agency for a permit,  
11 certification, approval, or other authorization relating to the use of private real  
12 property;

13 (2) "date of the taking" is the date when the decision of the state  
14 regulatory agency that results in the taking becomes final;

15 (3) "full compensation" means the monetary value of the reduction in  
16 the fair market value of private property or of an interest in private property;

17 (4) "owner" means the holder of a legally protectable interest in private  
18 property, including the grantee of an easement, lease, use authorization, or other  
19 interest amounting to less than fee simple ownership;

20 (5) "private property" means real or personal property that is not owned  
21 by the state, a municipality, or the federal government; in this paragraph, "personal  
22 property" means tangible property other than real property, and includes merchandise,  
23 stock-in-trade, machinery, equipment, furniture, fixtures, vehicles, boats, and aircraft;

24 (6) "private real property" means private property that is real property;  
25 in this paragraph, "real property" includes land, improvements to land, proprietary  
26 water rights, and crops;

27 (7) "state regulatory agency" means a department, institution, board,  
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(8) "taking" means

(A) eliminating all practical economically viable uses of the property, the portion of the property proposed for use under the requested authorization, or the owner's or applicant's interest in the property;

(B) reducing by more than 30 percent the fair market value of the property, the portion of the property proposed for use under the requested authorization, or the owner's or applicant's interest in the property.

\* Sec. 4. SEVERABILITY CLAUSE. Under AS 01.10.030, a provision of this Act or the application of this Act to a person or circumstance is held to be invalid, the remainder of this Act and the application of this Act to other persons or circumstances is not affected.

\* Sec. 5. NO RETROACTIVE EFFECT. This Act does not apply to statutes, regulations, or ordinances that are in effect on the day before the effective date of this Act.

\* Sec. 6. EFFECTIVE DATE. This Act takes effect immediately under AS 01.10.070(c).

(7)

Date Referred: April 21, 1995

FURTHER REFERRALS:

Finance

Date of Committee Action: 4/17/96

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HB 154

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 fiscal note(s) \_\_\_\_\_  fiscal note(s) \_\_\_\_\_

zero fiscal note(s) \_\_\_\_\_  zero fiscal note(s) \_\_\_\_\_

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>Brian D. Porter</i>			<input checked="" type="checkbox"/>	
<i>Al Johnson</i>	<input checked="" type="checkbox"/>			
<i>Carol J. Johnston</i>		<input checked="" type="checkbox"/>		
<i>Janet L. ...</i>			<input checked="" type="checkbox"/>	
<i>Car Bruce</i>			<input checked="" type="checkbox"/>	
<i>[Signature]</i>			<input checked="" type="checkbox"/>	

CHAIR'S SIGNATURE *Brian D. Porter*

9-LS0602J  
Bannister  
4/13/96

CS FOR HOUSE BILL NO. 154( )  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
NINETEENTH LEGISLATURE - SECOND SESSION

BY

Offered:  
Referred:

Sponsor(s): REPRESENTATIVES KOHRING, Rokeberg, Kott, Kelly, Vezey, Martin, Barnes, Ogan,  
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4 authorization, or the owner's or applicant's interest in the property;

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6 the property, the portion of the property proposed for use under the requested  
7 authorization, or the owner's or applicant's interest in the property.

8 \* Sec. 4. SEVERABILITY CLAUSE. Under AS 01.10.030, a provision of this Act or the  
9 application of this Act to a person or circumstance is held to be invalid, the remainder of this  
10 Act and the application of this Act to other persons or circumstances is not affected.

11 \* Sec. 5. NO RETROACTIVE EFFECT. This Act does not apply to statutes, regulations,  
12 or ordinances that are in effect on the day before the effective date of this Act.

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



## Alaska Environmental Lobby, Inc.

P.O. Box 22151 Juneau, Alaska 99802

Phone: 907-463-3366

Fax: 907-463-3312

Testimony presented to the House Judiciary Committee concerning House Bill 154 by Anthony Crupi of the Alaska Environmental Lobby, 4/17/96:

This committee has been working on this bill for quite some time, and the Alaska Environmental Lobby has presented our position in opposition to the bill. While we feel that the recent changes to the bill attempt to address important concerns with this legislation, we believe that the legislation itself is fatally ill and no bandaid can save the patient.

Instead of improving government, takings legislation such as this bill threatens to cost the State of Alaska many millions of dollars by making government less efficient and more costly. There will be assessment costs, litigation fees, and the staggering cost of compensating property owners who claim a "taking." Who will fund these costs? The taxpayers, whose tax dollars will be used to fund legions of attorneys and pay thousands of claims. In this era of frugal budgets, adding a new layer of expensive bureaucracy is a move in the wrong direction.

Under the Fifth Amendment of the U.S. Constitution, property owners have the right to seek just compensation through the judicial process when they believe that their property has been unjustly taken by the government. We feel that the courts are the proper place for such claims to be heard on their individual merits before a jury of fellow Alaskans. No legislative blanket can cover the entire spectrum of individual possibilities envisioned by this legislation.

From the beginning of modern democratic government, the rights of property owners have always been protected. But these rights have also always been balanced with the responsibility not to use one's property in such a way as to harm one's neighbors. This bill would destroy that careful balance between rights and responsibilities. It would undermine regulations that protect public health and safety and the environment. For these reasons, we oppose House Bill 154.

## House Bill 154

The following anecdotes of people who have testified in support of HB 154 give documentation to the types of situations we believe may be helped by this legislation. These cases have occurred over a several year period, lending support to the fact that an onslaught of litigation will not occur.

- Jerry Fletcher, Wasilla--Bought Property in the Mat-Su Valley in the early 80's. Years later, the property was declared wetlands. Corp of Engineers issued a permit to develop, based on wetlands, saying if he could get the State to sign off, he could develop. State would not sign off, he has lost the value of the property.
- Ray Briggs, Palmer--Old City of Palmer dump site contains varied hazardous materials. Palmer has not cleaned up the mess, nor has DEC correctly addressed the problem. Currently in Federal court.
- Steve Noey, Anchorage--Well known case of a person who bought property and is not allowed to subdivide because DEC will not let him install the sewer system he knows will work.
- Chuck Dennis, Valdez--The State is holding up development of his land because the corp of engineers issued a permit against the will of the state. He claims they are giving away 16 acres to habitat.
- Walter Zesiger, Fairbanks--The State traded 200 acres with him, acre for acre, but found that 100 acres of what he received was wetlands.
- Larry Petty, Fairbanks--A farmer in the Eielson Farm Road area told of the state giving land to farmers in Delta and Pt. McKenzie, but then forced failure on most of the farms.
- Mick Manns, Bettles--Documented a loss of \$218,312. on his mining claim in Bettles.
- Betty Rollins, Fairbanks--Was negotiating the sale of her home and commercial property when the DEC issued a temporary alert of toxic water in the area. Her deal fell through, after which the alert was lifted.
- Lars Ehrlander, Fairbanks--Bought property for a subdivision, but the state stalled subdivision approval with the borough because they were going to build a road in the area. When the state did make an offer to purchase the property, they were able to do so at the single lot price, rather than the subdivided price, additionally not including the cost of his improvements to date.



FAX TRANSMITTAL

April 12, 1996

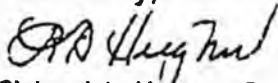
TO: Representatives  
Al Vezey  
Jeannette James  
Pete Kelly  
Gene Therriault  
Tom Brice

ORG.: Alaska House of Representatives  
CITY: Juneau, AK

Fred James played the AVT produced tape on Vic Kohring's House Bill 154, the "Takings" bill, to the Friday (today's) morning meeting of members, directors, and guests of the Alaska Miners Association. The tape is well done and is shocking in its exposition of the degree and capriciousness of "takings" that have occurred in Alaska without compensation to the victims. It is also shocking to see the resistance to this bill by the bureaucrats. I wish to go on record as strongly supporting this bill. I'm sure, also, that I speak for all of the Fairbanks miners on this issue as Chairman of the Fairbanks Branch of the Alaska Miners Association. I urge you to support Representative Kohring in his quest to move this bill through the House and into the Senate.

Should this bill fail to move through the legislature, perhaps a citizens initiative would be in order to get something on the state ballot. I need your advice on this issue.

Yours truly,



Richard A. Hughes, P. E.  
Project Manager

# FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. CSHB154(JUD)

Revision Date: 4/12/96 Dept. Affected: Fish and Game  
 Title: Regulatory Taking of Private Property BRU: Habitat and Restoration  
 Component: Stream and Refuge  
 Sponsor: Representative Kohring  
 Requester: House JUD COMPONENT SERIAL NO. 2099

**Expenditures/Revenues** (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 100	FY 01	FY 02
PERSONAL SERVICES	240.0	240.0	240.0	240.0	240.0	240.0
TRAVEL	4.0	4.0	4.0	4.0	4.0	4.0
CONTRACTUAL	8.0	8.0	8.0	8.0	8.0	8.0
SUPPLIES	1.0	1.0	1.0	1.0	1.0	1.0
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS	800.0	1,800.0	4,500.0	3,500.0	2,000.0	1,500.0
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>1,053.0</b>	<b>2,053.0</b>	<b>4,753.0</b>	<b>3,753.0</b>	<b>2,253.0</b>	<b>1,753.0</b>

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

1002 Federal Receipts						
1003 GF Match						
1004 GF	1,253.0	2,253.0	5,253.0	5,253.0	2,253.0	2,253.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
<b>TOTAL</b>	<b>1,053.0</b>	<b>2,253.0</b>	<b>4,753.0</b>	<b>3,753.0</b>	<b>2,253.0</b>	<b>1,753.0</b>

Estimate of any current year (FY96) cost: \$ 0.0

**POSITIONS**

FULL-TIME	4	4	4	4	4	4
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

See attached sheet

Prepared by: Janet Kowalski JK  
 Division: Habitat and Restoration  
 Approved by Commissioner: [Signature]  
 Agency: Department of Fish and Game

Phone: 465-4105  
 Date: 4/12/96  
 Date: 4-12-96

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FISCAL NOTE CONTINUATION PAGE  
STATE OF ALASKA BILL NO. CSHB154(JUD)  
1996 LEGISLATIVE SESSION

It is difficult to assess the fiscal effect of CSHB154(Jud), but it appears that it would heavily impact the Alaska Department of Fish and Game (ADF&G). Sec. 34.50.120 requires an extensive economic analysis of all new regulations to determine the value of private property potentially impacted and the percentage of taking. Because the department and the Boards of Fisheries and Game annually promulgate hundreds of new regulations potentially restraining the use of both real property and personal property in the harvest of fish and game this will substantially increase the workload and time necessary to prepare, adopt, and enforce regulations for a wide variety of Title 16 regulatory responsibilities. These analyses and the subsequent adjudication and processing of compensation claims will require hiring approximately four or more additional staff members and millions in payments to property owners. Additional staff would be needed to address takings issues in the divisions of Sport Fish, Commercial Fisheries Management and Development, Wildlife Conservation, and Habitat and Restoration, as well as the Boards of Fisheries and Game.

The Department would also have to carefully review all permits, orders, and management actions to determine if its actions might directly or indirectly restrain some use of private property and thereby constitute a taking. If the department had to take some action that it judged was a taking, the department would have to pay compensation. Money would have to be available to pay compensation. The money would have to come from the General Fund because none of the department's federal funding sources or program receipts allow for the payment of compensation. It is estimated that initially, the department would pay claims amounting to \$800 thousand. This would increase to \$4.5 million in two years as more claims are filed and adjudicated. After this high level, claims could decline to about \$1.5 million annually as the department becomes more successful in avoiding claims and freezes or modifies many of its harvest regulations to minimize restraining uses of private property. However, the outcome of radically altering harvest regulations to avoid the takings claims imposed by this bill is unknown and is likely to deplete some fish and wildlife stocks and diminish many fishing and hunting opportunities that the public has come to expect.

The fiscal impacts could be orders of magnitude higher than estimated because of the billions of dollars in value of private property used in the harvest of fish and wildlife resources including fishing vessels; fishing, hunting, and trapping gear; aircraft; boats, vehicles, limited-entry permits, equipment, and land. The appraisals prepared by claimants and estimates of diminished value are likely to be very high. The 20% floor on the value of compensatable takings in Sec. 34.50.120 would reduce but not eliminate substantial takings claims. The department would have to be prepared to analyze these values and defend itself against what could be a large number of takings cases.



**ANALYSIS (cont.):**

2.) Reimbursements to nursing homes of \$7.5 million for denial of Certificate of Need applications, based on a potential denial of 50% of nursing home beds. Additional reimbursements could be required for denial of Acute Care hospital beds. (See Bill Analysis.)

3.) Mental Health and Developmental Disabilities assisted living facility licensing upgrades, estimated at an annual cost of \$73.9 in FY97.

**Changes in Revenue:** Approximately \$73.9 in FY97 in licensing fees would be lost for radiological equipment licenses. The bill would require reimbursement of costs from regulation; instead rebating the license fees, the simplest procedure would be to not collect them in the first place. License applications are projected to increase at 3% per annum.

**Contractual:** (Annual costs expected to increase at 3% per annum). In addition to small contractual amounts for the positions needed, additional funds would be required as described below:

1.) The bill would require a full analysis of the total economic effect of any new regulation or change in regulation, as well as an analysis of the economic effect of all reasonable alternatives, prior to adopting a regulation or change in regulation. In 1995, the department initiated fourteen regulatory changes. At an estimated cost of \$50.0 per full economic analysis, fourteen regulation changes would require \$700.0. Costs may be understated for the early years after passage of the bill into law, because the severe measures contained in the bill would probably lead to the Department making more than the average number of changes in regulations.

2.) The Department expects that the bill, if passed, would lead to many claims for compensation. The bill would impose heavy financial penalties on the Department for any delays in compensation payments. Formal and timely determinations of taking as defined under the the bill and calculation of the value of a taking would often be quite complex. Outside economic and appraisal experts would be required in some cases to assist the Department in determining actual impacts of Departmental actions and the values, if any, involved. An estimated \$25.0 would be required in FY97.

**Personal Services:** Technical staff will be required to evaluate claims for purported takings resulting from an action of the Department and to recommend approval or disapproval of those claims. Staff would also evaluate the value of those claims. An in-house appraising capability will be required. In many cases, complex evaluations of general economic conditions and of hypothetical markets in the absence of government regulation will be needed in order to calculate values of takings, as defined by the bill. Staff will also be needed to coordinate and monitor the economic impact analyses required for regulatory changes. A new Economist I (GGU Salary Range 18) position and a new appraisal position equivalent to a Right of Way Review Appraiser I (GGU Salary Range 21) will be required. These specialists would work with little direct supervision and would have no peers within the Department. Once claims were approved, existing administrative and fiscal staff would handle the processing of payments.