

ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 8672

9231 HOUSE JUDICIARY

115

Alaska State Legislature

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House Of Representatives

House District 34

Statement of Intent

HJR 50, "Proposing amendments to the Constitution of the State of Alaska relating to a public corporation established to manage the permanent fund."

HJR 50 is in direct response to the Administration's constitutional concerns regarding HB 81, "An Act relating to the board and staff of the Alaska Permanent Fund Corporation."

The Department of Law explained that the Permanent Fund Board was created by statute to administer a constitutionally established fund, thus the only way to provide removal for cause would be through a constitutional amendment.

HJR 50 addresses this matter on point while striving for the goal of continuity, a reasonable practice to pursue when dealing with the State of Alaska's largest and most important asset.

HOUSE JOINT RESOLUTION NO. 50

Introduced/Offered/Amended: 1/21/98
BY REPRESENTATIVE(S) JAMES, Vezey

CURRENT STATUS: (H) FIN

1 Proposing amendments to the Constitution of the State of Alaska relating to
a
2 public corporation established to manage the permanent fund.

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

4 * Section 1. Article IX, sec. 15, Constitution of the State of
Alaska, is amended to read:

5 Section 15. Alaska Permanent Fund. (a) At least twenty-five
percent of all

6 mineral lease rentals, royalties, royalty sale proceeds, federal mineral
revenue sharing

7 payments and bonuses received by the State shall be placed in a permanent
fund, the

8 principal of which shall be used only for those income-producing investments

9 specifically designated by law as eligible for permanent fund investments.
All income

10 from the permanent fund shall be deposited in the general fund unless
otherwise

11 provided by law.

12 * Sec. 2. Article IX, sec. 15, Constitution of the State of Alaska,
is amended by adding a

13 new subsection to read:

14 (b) The permanent fund shall be managed by a public corporation
established

1 by law. A member of the board of the corporation who is not the head of a
principal

2 department is subject to confirmation by a majority of the members of the
legislature

3 in joint session and may only be removed as provided by law.

4 * Sec. 3. The amendments proposed by this resolution shall be placed
before the voters of

5 the state at the next general election in conformity with art. XIII, sec.
1, Constitution of the

6 State of Alaska, and the election laws of the state.

HJR

57

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. HJR57

Revision Date (Note if correction) _____	Dept. Affected <u>Office of the Governor</u>
Title <u>Const. Amend: Prohibiting federal courts</u>	BRU <u>Elective Operations</u>
from ordering state to increase/impose taxes _____	Component <u>General and Primary</u>
Sponsor <u>Representative Green</u>	
Requester <u>House Judiciary Committee</u>	Component Serial No. <u>#22</u>

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services						
Travel						
Contractual	3.0					
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	3.0	0.0	0.0	0.0	0.0	0.0

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

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

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
1002 Federal Receipts						
1003 GF Match						
1004 GF	3.0					
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	3.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY98) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This figures includes the cost of providing information about this issue in the Official Election Pamphlet, as required by AS 15.58, and the programming costs for counting votes cast on the measure. However, only four measures can be printed on a single ballot card. If this measure requires printing an additional ballot card, the costs will increase by \$56.0.

Prepared by <u>Gail Fenumita</u> <i>Gail Fenumita</i>	Phone <u>465-3935</u>
Division <u>Division of Elections</u>	Date <u>2/20/98</u>
Approved by C <u>Lt. Governor Fran Ulmer</u> <i>Fran Ulmer</i>	Date <u>2/20/98</u>
Agency <u>Office of the Lieutenant Governor</u>	

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FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. HB 57

Revision Date (Note if correction) _____	Dept Affected <u>Law</u>
Title <u>"An Act relating to cruelty to animals"</u>	BRU <u>Criminal Division</u>
	Component <u>1st-4th Judicial Districts</u>
Sponsor <u>Representative Grussendorf</u>	<u>OSPA</u>
Requester <u>House Judiciary Committee</u>	Component Serial No <u>2198-99/2261/79/01/13</u>

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY98) cost: 0.0

POSITIONS

POSITIONS	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Full-time	0	0	0	0	0	0
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill amends AS 11.61.140(a) relating to cruelty to animals by lowering the legal standard of conduct from one who acts intentionally to one who acts knowingly and inflicts severe physical pain or prolonged suffering on an animal. Similarly, the bill lowers the legal standard of conduct from one who acts recklessly to one who acts with criminal negligence and neglects an animal and, as a result of that neglect, causes the death of the animal or causes severe physical pain or prolonged suffering of the animal. These changes have the effect of making cruelty to animal cases easier to prove and, may result in more of such cases referred for prosecution. We do not anticipate any fiscal impact at this time. However, if significant numbers of such cases are referred for prosecution, it could have a fiscal impact on the department and we would seek to reassess our budget position at that time.

Prepared by Joan M. Kasson
 Division Attorney General's Office
 Approved by Commissioner Bruce M. Botelho, Attorney General
 Agency Department of Law

Phone 465-5370
 Date 2/9/98
 Date 2/9/98

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ARTICLE V.

Amendment of the Constitution. The Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendment to this Constitution, or, on the application of the legislatures of two thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress: Provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the Senate.

Alaska State Legislature

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DEVELOPMENT
ALASKA COURT SYSTEM

Representative Joe Green
District 10

Sponsor Statement

HJR 57 - Amending the U.S. Constitution prohibiting courts from imposing taxes

HJR 57 requests Congress to exercise the power granted to them in Article 5 of the U.S. Constitution, and prepare and present to the legislatures of all fifty states an amendment to the US Constitution that would prohibit federal courts from ordering a state or political subdivision to increase or impose taxes.

This effort is, at least partially, in response to a decision by the U.S. Supreme Court (*Missouri v. Jenkins*, 110 S. Ct. 1651 (1990)) which upheld the right of a Federal District Court to order a property tax increase in Kansas City, Missouri. Last year in Rockford, Illinois, U.S. District Court Magistrate P. Michael Mahoney ordered property tax assessments increased by 12 percent.

During the Convention of Virginia, in Richmond, in 1805, James Madison noted "I believe there are more instances of the abridgment of freedom of the people by gradual and silent encroachment of those in power, than by violent and sudden usurpations." The Court's decision in *Missouri* is a usurpation of power by the federal court, and a violation of one of the principles on which our country was founded -- no taxation without representation. If we do not act, Madison will be proven right.

I believe that the power to tax should rest solely with the legislative branch, as the founders of our country clearly intended. The 19th Alaska Legislature approved a resolution similar to HJR 57. Ten other states have passed such resolutions. I urge your vote in favor of HJR 57.

HJR

60

**Effect of HJR 60 on the Amount of Money Available for Permanent Fund Dividends and the Earnings Reserve Account
(The Permanent Fund Balance and thus the amount needed for Inflation-Proofing are not affected)**

Columns b - f, i and j are in millions of dollars

(a) Fiscal Year End	(b) Permanent Fund Balance	(c) 2% of income to Community Dividend Fund	(d) Inflation Proofing	(e) - (g) Amount available for PFD				(h) - (k) Earnings Reserve Account		
				(e) As is, W/out HJR 60	(f) With HJR 60	(g) Percent Change	(h) % change effect on a \$1200 PFD	(i) FY End Balance As is w/out HJR 60	(j) FY End Balance w/HJR 60	(k) Percent Change
				1999	19,248	27	524	881	881	0.00%
2000	20,061	28	546	923	923	0.00%	1,200.00	944	887	-6.04%
2001	20,911	29	570	890	889	-0.11%	1,198.65	939	850	-9.48%
2002	21,793	30	594	835	834	-0.12%	1,198.56	1,023	899	-12.12%
2003	22,699	31	618	767	764	-0.39%	1,195.31	1,216	1,053	-13.40%
2004	23,625	33	643	798	795	-0.38%	1,195.49	1,426	1,223	-14.24%
2005	24,561	34	669	832	827	-0.60%	1,192.79	1,654	1,407	-14.93%
2006	25,515	36	695	869	863	-0.69%	1,191.71	1,898	1,604	-15.49%
2007	26,488	37	721	909	901	-0.88%	1,189.44	2,157	1,812	-15.99%
2008	27,480	39	748	950	941	-0.95%	1,188.63	2,431	2,033	-16.37%
2009	28,495	41	776	993	982	-1.11%	1,186.71	2,720	2,264	-16.76%
2010	29,536	42	804	1,037	1,024	-1.25%	1,184.96	3,025	2,508	-17.09%
2011	30,602	44	834	1,082	1,067	-1.39%	1,183.36	3,346	2,764	-17.39%
2012	31,702	46	863	1,128	1,111	-1.51%	1,181.91	3,686	3,034	-17.69%
2013	32,830	48	894	1,176	1,157	-1.62%	1,180.61	4,044	3,318	-17.95%
2014	33,990	50	926	1,225	1,204	-1.71%	1,179.43	4,421	3,616	-18.21%
2015	35,179	51	958	1,276	1,252	-1.88%	1,177.43	4,817	3,929	-18.43%

Note: Compiled from data provided by Alaska Permanent Fund Corporation projections (copies available upon request)
The column showing the effect on the PFD amounts are for illustration purposes only. This column indicates what the percentage decrease in funds available for PFDs translate to a \$1200 PFD.

Community Dividend Fund Projections
(Millions of Dollars)

(a) Fiscal Year	(b) Without Inflation Proofing					(g) With Inflation Proofing					
	(b) Beginning Balance	(c) Net Income	(d) 2% from PF Income	(e) Available for Distribution	(f) Ending Balance	(g) Beginning Balance	(h) Net Income	(i) 2% from PF Income	(j) Inflation Proofing @ 2.8%	(k) Available for Distribution	(l) Ending Balance
1999	750	0	27	0	777	750	0	27			777
2000	777	56	28	56	805	777	56	28	23	32	828
2001	805	58	29	58	834	828	59	29	25	34	882
2002	834	60	30	60	864	882	63	30	26	37	939
2003	864	62	31	62	895	939	67	31	28	39	998
2004	896	64	33	64	929	998	71	33	30	42	1,061
2005	928	66	34	66	962	1,061	76	34	32	44	1,127
2006	963	69	36	69	999	1,127	81	36	34	47	1,197
2007	999	71	37	71	1,036	1,197	86	37	36	50	1,270
2008	1,036	74	39	74	1,075	1,270	91	39	38	53	1,347
2009	1,075	77	41	77	1,116	1,347	96	41	40	56	1,428
2010	1,115	80	42	80	1,157	1,428	102	42	43	59	1,514
2011	1,158	83	44	83	1,202	1,514	108	44	45	63	1,603
2012	1,202	86	46	86	1,248	1,603	115	46	48	67	1,697
2013	1,248	89	48	89	1,296	1,697	121	48	51	71	1,795
2014	1,295	93	50	93	1,345	1,795	129	50	54	75	1,899
2015	1,345	96	51	96	1,396	1,899	136	51	57	79	2,007

Note: Compiled from data provided by Alaska Permanent Fund Corporation projections (copies available upon request)
\$750 million beginning balance in FY 1999 is the deposited from the Constitutional Budget Reserve Fund

Assumptions Community Dividend Fund earns 7.16 percent rate of return
Community Dividend Fund is inflation proofed at a rate of 2.8% per year
All net income remaining after inflation-proofing is paid out each year.

upon the character of the use to which the property will be put. *Lien v. City of Ketchikan*, 383 P.2d 721 (Alaska 1963).

It is not essential that the entire community or any particular number of persons should benefit from remedial legislation in order that a public purpose be served. *Suber v. Alaska State Bond Comm.*, 414 P.2d 546 (Alaska 1966).

Court will not set aside finding of legislature. — Where the legislature has found that a public purpose will be served by the expenditure or transfer of public funds or the use of the public credit, the court will not set aside the finding of the legislature unless it clearly appears that such finding is arbitrary and without any reasonable basis in fact. *DeArmond v. Alaska State Dev. Corp.*, 376 P.2d 717 (Alaska 1962); *Walker v. Alaska State Mtg. Ass'n*, 416 P.2d 245 (Alaska 1966).

The courts will not interfere with the exercise of legislative discretion unless it is clearly shown that the legislative determination that a public purpose will be served by the means chosen is arbitrary and without any reasonable basis in fact. *Suber v. Alaska State Bond Comm.*, 414 P.2d 546 (Alaska 1966).

Industrial development. — It is recognized that the location of an industry in a particular community may have widespread economic benefits and that these do fulfill the public purpose and the general welfare of the community, broadly conceived. *Wright v. City of Palmer*, 468 P.2d 326 (Alaska 1970).

The test which the supreme court must apply is whether a plan for the development of industry within a municipality is so unreasonable as to transgress the limitations of the Alaska Constitution. *Wright v. City of Palmer*, 468 P.2d 326 (Alaska 1970).

A general obligation bond issue for the purpose of encouraging industrial development within a municipality was held valid in *Wright v. City of Palmer*, 468 P.2d 326 (Alaska 1970).

Relief and support of the poor has long been recognized as an obligation of government and a public purpose. *Suber v. Alaska State Bond Comm.*, 414 P.2d 546 (Alaska 1966).

Relieving economic distress. — It is a public purpose to expend public moneys to relieve economic distress by aiding those persons in the state who have suffered a substantial financial burden as a result of a natural disaster. *Suber v. Alaska State Bond Comm.*, 414 P.2d 546 (Alaska 1966).

Establishment of savings account. — The proposed sales and use tax did not violate this section as it had a public purpose, the establishment of a savings account for future public purposes. *Keane v. Local Boundary Comm'n*, 893 P.2d 1239 (Alaska 1995).

The issuance of the debenture certificates by

Alaska State Development Corporation does not constitute a transfer of public funds and the use of public credit for other than a public purpose. *DeArmond v. Alaska State Dev. Corp.*, 376 P.2d 717 (Alaska 1962).

Alaska Mortgage Adjustment Program held constitutional. — See *Suber v. Alaska State Bond Comm.*, 414 P.2d 546 (Alaska 1966).

The purpose of the Alaska Mortgage Adjustment Program is no less public because its benefits may be limited by circumstances to a comparatively small part of the public. *Suber v. Alaska State Bond Comm.*, 414 P.2d 546 (Alaska 1966).

Alaska State Development Corporation. — The announced purpose of the act creating the Alaska State Development Corporation (former AS 44.59.480) was a sound basis in fact and the dominant purpose was a public one. *DeArmond v. Alaska State Dev. Corp.*, 376 P.2d 717 (Alaska 1962).

Alaska State Mortgage Association. — Since the Alaska State Mortgage Association (AS 44.83.010 — 44.83.240) was created for a public purpose within the meaning of this section, the use of public grants and loans is constitutionally permissible. *Walker v. Alaska State Mtg. Ass'n*, 416 P.2d 245 (Alaska 1966).

The purposes for which the Alaska State Mortgage Association (former AS 44.83.010 — 44.83.240) was created were public purposes within the ambit of this section. *Walker v. Alaska State Mtg. Ass'n*, 416 P.2d 245 (Alaska 1966).

Ketchikan hospital. — The moneys used to construct the Ketchikan hospital were spent for a public purpose, since a community hospital serves the general welfare. That purpose does not become nonpublic when the hospital is turned over to a charitable, nonprofit corporation for operation, rather than being operated by the city itself. The public purpose remains unchanged. *Lien v. City of Ketchikan*, 383 P.2d 721 (Alaska 1963).

Customer telephone equipment. — Anchorage Telephone Utility's lease, rental, and sale of customer telephone equipment is not an unlawful use of public funds in violation of this section. Marketing of customer telephone equipment fulfills a public purpose; the Municipality of Anchorage's providing telephone services through the utility promotes access and convenience and fulfills a need for reliability. *Comtec, Inc. v. Municipality of Anchorage*, 710 P.2d 1004 (Alaska Ct. App. 1985).

Quoted in *City of Juneau v. Hixson*, 373 P.2d 743 (Alaska 1962); *Sheldon Jackson College v. State*, 599 P.2d 127 (Alaska 1979); *Meiners v. Bering Strait Sch. Dist.*, 687 P.2d 287 (Alaska 1984).

Cited in *Ault v. Alaska State Mtg. Ass'n*, 387 P.2d 698 (Alaska 1963).

Collateral references. — 63A Am.Jur.2d, Public Funds, §§ 7, 8, 10 to 12.

81A C.J.S., States, § 225.

→ **Section 7. Dedicated Funds.** The proceeds of any state tax or license shall not be dedicated to any special purpose, except as provided in section 15 of this article or when required by the federal government for state participation in federal programs. This provision shall not prohibit the continuance of any dedication for special purposes existing upon the date of ratification of this section by the people of Alaska.

subject of a lease-purchase agreement between the Department of Natural Resources and Alaska Court System did not constitute unrestricted "program receipts" for deposit in the state treasury and did not violate this provision. *Carr-Gottstein Properties v. State*, 899 P.2d 136 (Alaska 1995).

Quoted in *Zerbetz v. Alaska Energy Ctr.*, 708 P.2d 1270 (Alaska 1985).

Cited in *Ault v. Alaska State Mtg. Ass'n*, 387 P.2d 698 (Alaska 1963); *Vest v. Schafer*, 757 P.2d 588 (Alaska 1988); *Public Employees' Local 71 v. State*, 775 P.2d 1062 (Alaska 1989); *Hickel v. Cowper*, 874 P.2d 922 (Alaska 1994).

Section 14. Legislative Post-Audit. The legislature shall appoint an auditor to serve at its pleasure. He shall be a certified public accountant. The auditor shall conduct post-audits as prescribed by law and shall report to the legislature and to the governor.

Section 15. Alaska Permanent Fund. At least twenty-five per cent of all mineral lease rentals, royalties, royalty sale proceeds, federal mineral revenue sharing payments and bonuses received by the State shall be placed in a permanent fund, the principal of which shall be used only for those income-producing investments specifically designated by law as eligible for permanent fund investments. All income from the permanent fund shall be deposited in the general fund unless otherwise provided by law.

Cross references. — For provisions governing the management of the Alaska permanent fund, see AS 37.13; for provisions concerning permanent fund dividends, see AS 43.23.

Effective dates. — This section took effect February 21, 1977 (9th Legislature's SCS CSSSHJR 39 (Res) am S (1976)).

Legislative history reports. — For report on House Joint Resolution No. 39 (CS SSHJR 39), SSHJR 39), see 1976 House Journal, p. 683.

Opinions of attorney general. — Since this section specifically authorizes dedications to the Permanent Fund of "at least" 25 percent of certain revenues, any additional dedication to the fund by statute or by appropriation is also permissible. November 30, 1982 Op. Att'y Gen.

If the legislature enacts any other distribution program which is consistent with the intent of the

permanent fund dividend law (AS 43.23), any appropriation to implement that program will be exempt from the appropriation limit of § 16, art. IX, of the state constitution. 1983 Op. Att'y Gen. No. 01.

The appropriation limit of section 16 of this article must be interpreted consistently with the permanent fund amendment contained in this section. Each legislature may reexamine existing law and enact different laws providing for the use of income earned by the Alaska permanent fund. If section 16 were interpreted so that the exception for permanent fund dividends applied only to appropriations to finance cash dividends under AS 43.23, the legislature would essentially be denied the flexibility to adjust to changing philosophies concerning the propriety of making cash payments directly to residents, which this section expressly reserves to it. 1983 Op. Att'y Gen. No. 01.

NOTES TO DECISIONS

Expectancy is not a financial interest. — An Alaska federal district judge's receipt of a permanent fund dividend does not give rise to a cause for recusal because it is only a possible future receipt of Alaska Permanent Fund dividends; where the judge's order denying recusal neither disclosed nor betrayed even the slightest hint of personal bias or prejudice and where the plaintiffs' arguments substantially oversimplified the extremely complex matter of how the profits of the Alaska Permanent Fund, out of which dividends derive, are generated, recusal was not required. *Exxon Corp. v. Heinze*, 792 F. Supp. 77 (D. Alaska 1992).

In a suit in federal court seeking injunctive relief barring state trial judges and jurors from deciding a dispute over royalties allegedly due from a plaintiff corporation to the state for oil drilled on state land, where the plaintiff contended that its counterclaims

in the royalty litigation might conceivably affect the quantity of money in Alaska's Permanent Fund, and where the United States District Court Judges for this District of Alaska received dividends, as do all resident Alaska judges, recusal of the judge was not warranted because the expectancy a citizen has in receiving Permanent Fund dividends is not a financial interest but is subject to legislative whim. *Exxon Corp. v. Heinze*, 792 F. Supp. 72 (D. Alaska 1992).

Quoted in *Williams v. Zobel*, 619 P.2d 422 (Alaska 1980); *Alaska Oil Co. v. Alaska*, 45 Bankr. 358 (D. Alaska 1985); *State v. Anthony*, 810 P.2d 155 (Alaska 1991); *State, Dep't of Revenue v. Cosio*, 858 P.2d 621 (Alaska 1993).

Stated in *Zobel v. Williams*, 457 U.S. 55, 102 S. Ct. 2309, 72 L. Ed. 2d 672 (1982).

Cited in *United States v. Fleier*, 849 F. Supp. 1321 (D. Alaska 1994).

Section 16. Appropriation Limit. Except for appropriations for Alaska permanent fund dividends, appropriations of revenue bond proceeds, appropriations required to pay the principal and interest on general obligation bonds, and appropriations of money received from a non-State source in trust for a specific purpose, including revenues of a public enterprise or public corporation of the State that issues revenue bonds, appropri-

ations from the treasury made for a fiscal year shall not exceed \$2,500,000,000 by more than the cumulative change, derived from federal indices as prescribed by law, in population and inflation since July 1, 1981. Within this limit, at least one-third shall be reserved for capital projects and loan appropriations. The legislature may exceed this limit in bills for appropriations to the Alaska permanent fund and in bills for appropriations for capital projects, whether of bond proceeds or otherwise, if each bill is approved by the governor, or passed by affirmative vote of three-fourths of the membership of the legislature over a veto or item veto, or becomes law without signature, and is also approved by the voters as prescribed by law. Each bill for appropriations for capital projects in excess of the limit shall be confined to capital projects of the same type, and the voters shall, as provided by law, be informed of the cost of operations and maintenance of the capital projects. No other appropriation in excess of this limit may be made except to meet a state of disaster declared by the governor as prescribed by law. The governor shall cause any unexpended and unappropriated balance to be invested so as to yield competitive market rates to the treasury.

Effective dates. — This section took effect December 24, 1982 (12th Legislature's FSS FCCSSJR 4 (1981).)

Opinions of attorney general. — This section imposes an appropriation limit rather than a spending limit. The legislature may make appropriations which exceed available revenues, but obligations may not be paid under those appropriations unless there is enough surplus money available in the treasury. 1983 Op. Att'y Gen. No. 01.

There is history which supports a liberal interpretation of the term "capital project" as used in this section. 1983 Op. Att'y Gen. No. 01.

If the legislature enacts any other distribution program which is consistent with the intent of the permanent fund dividend law (AS 43.23), any appropriation to implement that program will be exempt from the appropriation limit of this section. 1983 Op. Att'y Gen. No. 01.

If the legislature provides that an appropriation may not be expended until a later fiscal year, the

appropriation should be counted only against the limit for that later fiscal year. 1983 Op. Att'y Gen. No. 01.

The one-third appropriation allocation reserved for capital projects and loan appropriations may be disregarded when economic conditions impose a total appropriation limit which is more restrictive than that set out in this section. 1983 Op. Att'y Gen. No. 01.

Appropriations that are available for expenditure in a fiscal year should be counted only against the appropriation limit of this section for the first fiscal year during which they could be completely expended. This should be done even if an unexpended balance is carried forward into the next fiscal year; that balance must be considered obligated for the purposes of the appropriation limit. 1983 Op. Att'y Gen. No. 01.

Appropriations to retire municipal general obligation school bond indebtedness under AS 14.11 are "required" and qualify as an exception to the spending limit of this section. 1983 Op. Att'y Gen. No. 01.

→ **Section 17. Budget Reserve Fund.** (a) There is established as a separate fund in the State treasury the budget reserve fund. Except for money deposited into the permanent fund under Section 15 of this article, all money received by the State after July 1, 1990, as a result of the termination, through settlement or otherwise, of an administrative proceeding or of litigation in a State or federal court involving mineral lease bonuses, rentals, royalties, royalty sale proceeds, federal mineral revenue sharing payments or bonuses, or involving taxes imposed on mineral income, production, or property, shall be deposited in the budget reserve fund. Money in the budget reserve fund shall be invested so as to yield competitive market rates to the fund. Income of the fund shall be retained in the fund. Section 7 of this article does not apply to deposits made to the fund under this subsection. Money may be appropriated from the fund only as authorized under (b) or (c) of this section.

(b) If the amount available for appropriation for a fiscal year is less than the amount appropriated for the previous fiscal year, an appropriation may be made from the budget reserve fund. However, the amount appropriated from the fund under this subsection may not exceed the amount necessary, when added to other funds available for appropriation, to provide for total appropriations equal to the amount of appropriations made in the previous calendar year for the previous fiscal year.

(c) An appropriation from the budget reserve fund may be made for any public purpose upon affirmative vote of three-fourths of the members of each house of the legislature.

(d) If an appropriation is made from the budget reserve fund, until the amount appropriated is repaid, the amount of money in the general fund available for appropriation at the end of each succeeding fiscal year shall be deposited in the budget reserve fund. The legislature shall implement this subsection by law.

Effective date. — This section became effective on January 2, 1991 (16th Legislature's HCS CSSSSJR 5 (Fin) am H (1990).)

Opinions of attorney general. — Since this section clearly and unambiguously states that it applies to revenues received after July 1, 1990, it applies retrospectively to settlement proceeds received after the beginning of fiscal year 1990, even though the section did not take effect until January 2, 1991. 1993 Op. Att'y Gen. No. 2.

This section did not repeal the statutory budget reserve fund established by AS 37.05.54, and the statutory fund continues in effect until amended or repealed by the legislature. 1993 Op. Att'y Gen. No. 2.

Pre-existing dedications of revenue established by statute to satisfy trust obligations imposed by federal law are excluded from the reach of this section, which applies to proceeds net of dedications otherwise permitted under Alaska Const., art. IX, § 7, which permits dedications that are required for participation in a federal program. 1993 Op. Att'y Gen. No. 2.

The term "administrative proceeding" in this section does not include the informal conference process established by AS 43.05.240 for the resolution of tax disputes. The section applies only to the proceeds of disputes that have progressed to an adjudicatory stage of the dispute resolution process. 1993 Op. Att'y Gen. No. 2.

NOTES TO DECISIONS

- I. Administrative Proceedings.
- II. Appropriation Amounts.
- III. Applications.

I. ADMINISTRATIVE PROCEEDINGS.

Attributes. — Attributes of an administrative proceeding include: 1) a dispute must exist; 2) a document reflecting the fact of the dispute which serves a function similar to that of a complaint in a civil action, or an accusation or statement of issues under the Administrative Procedure Act, AS 44.62.360, 370, must be served by one party on the other party; and 3) the document must set in motion mechanisms prescribed by statute or regulation under which the dispute will ultimately be resolved. *Hickel v. Halford*, 872 P.2d 171 (Alaska 1994).

Rulemaking proceedings excluded. — Rulemaking administrative proceedings are clearly not included within the meaning of the term "administrative proceeding" used in subsection (a). *Hickel v. Halford*, 872 P.2d 171 (Alaska 1994).

Express consent and termination. — An administrative proceeding under subsection (a) may terminate with or without the express consent of all of the parties. *Hickel v. Halford*, 872 P.2d 171 (Alaska 1994).

Taxpayer assessment. — An assessment issued by the Department of Revenue to a taxpayer under AS 43.05.270 satisfies all of the essential elements of an administrative proceeding under subsection (a). *Hickel v. Halford*, 872 P.2d 171 (Alaska 1994).

Audit letter. — An audit letter does not satisfy the essential elements of an administrative proceeding; mere notice of an intention to investigate neither indicates the existence of a dispute nor sets in motion mechanisms for the resolution of a dispute. *Hickel v. Halford*, 872 P.2d 171 (Alaska 1994).

II. APPROPRIATION AMOUNTS.

Amount available for appropriation. — Funds which require further legislative appropriation before

expenditures can be made against them are available for appropriation; thus the Railbelt energy fund, AS 37.05.520, the Alaska marine highway system vessel replacement fund, AS 37.05.550, and the educational facilities maintenance and construction fund, AS 37.05.560, remained "available for appropriation," within the meaning of section 17(b). *Hickel v. Cowper*, 874 P.2d 922 (Alaska 1994).

Amount unavailable for appropriations. — Monies which already have been validly committed by the legislature to some purpose should not be counted as available and, in addition, illiquid assets owned by the state are not available so long as they remain illiquid. *Hickel v. Cowper*, 874 P.2d 922 (Alaska 1994).

Because the legislature made the entire balance of the oil and hazardous substance release response fund available for expenditure, the amounts deposited into the fund were validly appropriated and therefore no longer available for appropriation. *Hickel v. Cowper*, 874 P.2d 922 (Alaska 1994).

III. APPLICATIONS.

37.10.420 unconstitutional. — Because AS 37.10.420(a)(2) does not include all actual appropriations made for the previous fiscal year in the "amount appropriated for the previous fiscal year," it does not accurately reflect the meaning of the constitutional term under subsection (b). *Hickel v. Cowper*, 874 P.2d 922 (Alaska 1994).

Because AS 37.10.420(b) fails to consider all amounts which are "available for appropriation" within the meaning of subsection (d) in determining the state's repayment obligation, it is unconstitutional. *Hickel v. Cowper*, 874 P.2d 922 (Alaska 1994).

Article 1. Alaska Permanent Fund.

Section	Section
10. Alaska permanent fund	110. Conflicts of interest
20. Findings	120. Investment responsibilities of the board
30. Purpose	140. Income
40. Alaska Permanent Fund Corporation	145. Disposition of income
50. Composition and qualifications of board of trustees	150. Corporation budget
60. Term of office	160. Audits
70. Removal and vacancies	170. Reports and publications
80. Quorum and voting	180. Tax exemption
90. Compensation of board members	190. Political activities
95. Corporation staff	200. Public access to information
	205. Regulations

Sec. 37.13.010. Alaska permanent fund. (a) Under art. IX, § 15 of the state constitution, there is established as a separate fund the Alaska permanent fund. The Alaska permanent fund consists of

(1) 25 percent of all mineral lease rentals, royalties, royalty sale proceeds, net profit shares under AS 38.05.180(f) and (g), and federal mineral revenue sharing payments received by the state from mineral leases issued on or before December 1, 1979, and 25 percent of all bonuses received by the state from mineral leases issued on or before February 15, 1980;

(2) 50 percent of all mineral lease rentals, royalties, royalty sale proceeds, net profit shares under AS 38.05.180(f) and (g), and federal mineral revenue sharing payments received by the state from mineral leases issued after December 1, 1979, and 50 percent of all bonuses received by the state from mineral leases issued after February 15, 1980;

(3) any other money appropriated to or otherwise allocated by law to the Alaska permanent fund.

(b) Payments due the Alaska permanent fund under (a) of this section shall be made to the fund within three banking days after the day the amount due to the fund reaches at least \$3,000,000 and at least once each month.

(c) The Alaska permanent fund shall be managed by the Alaska Permanent Fund Corporation established in this chapter. (§ 5 ch 18 SLA 1980; am § 2 ch 134 SLA 1992)

Effect of amendments. — The 1992 amendment, effective July 1, 1992, inserted "within three banking days after the day the amount due to the fund reaches at least \$3,000,000 and at least" in subsection (b).

Legislative history reports. — For the Free Conference Committee Report on ch. 18, SLA 1980 (FCCSSB 161), see 1980 House Journal, Joint Supplement No. 7, April 2, 1980.

NOTES TO DECISIONS

Stated in State, Dep't of Revenue v. Cosio, 858 P.2d 691 (Alaska 1993).

Sec. 37.13.020. Findings. The people of the state, by constitutional amendment, have required the placement of at least 25 percent of all mineral lease rentals, royalties, royalty sale proceeds, and federal mineral revenue sharing payments and bonuses received by the state into a permanent fund. The legislature finds with respect to the fund that

(1) the fund should provide a means of conserving a portion of the state's revenue from mineral resources to benefit all generations of Alaskans;

(2) the fund's goal should be to maintain safety of principal while maximizing total return;

(3) the fund should be used as a savings device managed to allow the maximum use of disposable income from the fund for purposes designated by law. (§ 5 ch 18 SLA 1980; am § 3 ch 134 SLA 1992)

(l) The board shall invest the assets of the fund in in-state investments to the extent in-state investments are available if the in-state investments

(1) have a risk level and expected yield comparable to alternate investment opportunities; and

(2) are included in the list of permissible investments in (g) of this section.

(m) Certificates of deposit or the equivalent instruments that are not of a quality that may be readily sold in a secondary market at prices reflecting fair value must be secured by a pledge as collateral of

(1) investments authorized for the fund under (g)(1), (2), (4), or (8) — (10) of this section;

(2) obligations of the state or instrumentalities of the state that are rated at least "A" by a major bond rating service and have a demonstrated secondary market;

(3) the guaranteed portion of Federal Small Business Administration loans;

(4) the portion of first lien real estate mortgages guaranteed by the federal Department of Veterans Affairs; or

(5) notes secured by mortgages granting a first lien on commercial or residential real estate improved by completed buildings if the originating financial institution retains at least 25 percent of the mortgage until maturity.

(n) Investments or obligations pledged as collateral under (m) of this section must have value at least equal to the face value of the certificates of deposit being secured. The board may require substitution of collateral in order to ensure continued satisfaction of the requirements set out in (m) of this section.

(o) For purposes of (g) of this section, "investment grade" means a Standard & Poor's Corporation rating BBB or better, or Moody's Investors Service, Inc., rating of Baa or better, including a rating with a "+" or "-" designation or other variations that occur within these ratings, or a comparable rating by another nationally recognized rating organization. (§ 5 ch 18 SLA 1980; am §§ 5 — 7 ch 81 SLA 1982; am § 1 ch 83 SLA 1986; am §§ 1 — 6 ch 4 SLA 1989; am §§ 8 — 17 ch 134 SLA 1992; am § 1 ch 56 SLA 1994; am §§ 1 — 4 ch 104 SLA 1996)

Effect of amendments. — The 1989 amendment, effective March 14, 1989, in subsection (g), added "domestic" to the beginning and "or nondomestic corporate debt securities of comparable quality" to the end of paragraph 7, rewrote paragraph 9, inserted "or nondomestic" in two places and substituted "outside of the United States" for "in a foreign country" and "capital, surplus, and retained earnings" for "capital and surplus" in paragraph 15, and added paragraphs 21 and 22 in subsection (h), inserted "or for the sale of nondomestic currencies" and substituted "investments" for "securities"; and in subsection (i), deleted the former last sentence, which was similar to the present last sentence, and added the present last sentence.

The 1992 amendment, effective July 1, 1992, rewrote this section.

The 1994 amendment, effective May 25, 1994, in

paragraph (g) 16, inserted "the total value held by the fund in each investment does not exceed \$150,000,000, and, if the total value held by the fund in each investment exceeds \$150,000,000," and made a related stylistic change in the introductory language, substituted "33 percent" for "60 percent" in subparagraphs (A) and (B), and substituted "67 percent" for "40 percent" in item (B)(i).

The 1996 amendment, effective June 26, 1996, substituted "investment grade" for "A or better" in paragraphs (g) 7 and (g) 19, rewrote paragraph (i) 4, repealed paragraph (i) 5, and added subsection (o).

Legislative history reports. — For Senate letter of intent related to the 1989 amendments to this section by ch. 4, SLA 1989 (CSHB 69SA), see 1989 Senate Journal 621.

Sec. 37.13.130. Gains and losses. [Repealed, § 13 ch 81 SLA 1982.]

→ **Sec. 37.13.140. Income.** Net income of the fund includes income of the earnings reserve account established under AS 37.13.145. Net income of the fund shall be computed annually as of the last day of the fiscal year in accordance with generally accepted accounting principles, excluding any unrealized gains or losses. Income available for distribution equals 21 percent of the net income of the fund for the last five fiscal years, including the fiscal year just ended, but may not exceed net income of the fund for the fiscal year just ended plus the balance in the earnings reserve account described in

AS 37.13.145. (§ 5 ch 18 SLA 1980; am § 8 ch 81 SLA 1982; am § 1 ch 28 SLA 1986; am § 18 ch 134 SLA 1992)

Effect of amendments. — The 1992 amendment, effective July 1, 1992, inserted near the beginning of the fund includes income of the earnings reserve account established under AS 37.13.145. Net income of the fund and substituted "fund" for "corporation" in three places.

→ **Sec. 37.13.145. Disposition of income.** (a) The earnings reserve account is established as a separate account in the fund. Income from the fund shall be deposited by the corporation into the account as soon as it is received. Money in the account shall be invested in investments authorized under AS 37.13.120.

(b) At the end of each fiscal year, the corporation shall transfer from the earnings reserve account to the dividend fund established under AS 43.23.045, 50 percent of the income available for distribution under AS 37.13.140.

(c) After the transfer under (b) of this section, the corporation shall transfer from the earnings reserve account to the principal of the fund an amount sufficient to offset the effect of inflation on principal of the fund during that fiscal year. The corporation shall calculate the amount to transfer to the principal under this subsection by

(1) computing the average of the monthly United States Consumer Price Index for all urban consumers for each of the two previous calendar years;

(2) computing the percentage change between the first and second calendar year average; and

(3) applying that rate to the value of the principal of the fund on the last day of the fiscal year just ended.

(d) Notwithstanding (b) of this section, income earned on money awarded in or received as a result of *State v. Amerada Hess, et al.*, 1JU-77-847 Civ. (Superior Court, First Judicial District), including settlement, summary judgment, or adjustment to a royalty-in-kind contract that is tied to the outcome of this case, or interest earned on the money, or on the earnings of the money shall be treated in the same manner as other income of the Alaska permanent fund, except that it is not available for distribution to the dividend fund, and shall be annually deposited into the principal of the Alaska permanent fund. (§ 9 ch 81 SLA 1982; am § 2 ch 28 SLA 1986; am § 19 ch 134 SLA 1992)

Conditional repeal of subsection (d). — Under § 28, ch. 134, SLA 1992, subsection (d) is repealed on the day that the revisor of statutes certifies to the legislature that the Alaska Supreme Court has made a final determination that in the absence of AS 43.23.045(e), repealed by sec. 29 of this Act, or AS 37.13.145(d), added by sec. 19 of this Act, no judge or juror is disqualified from serving as a judge or juror

solely because the judge or juror may qualify to receive a permanent fund dividend."

Cross references. — For transfer of certain income earned by the Alaska permanent fund prior to July 1, 1962, to the undistributed income account, see § 15, ch. 81, SLA 1982.

Effect of amendments. — The 1992 amendment, effective July 1, 1992, rewrote this section:

NOTES TO DECISIONS

Stated in *State, Dept of Revenue v. Cosio*, 858 P.2d 621 (Alaska 1993); *Exxon Corp. v. Heinze*, Nos. 92-35266, 92-35323, 32 F.3d 1399 (9th Cir. 1994)

Sec. 37.13.150. Corporation budget. The revenue generated by the fund's investments must be identified as the source of the operating budget of the corporation in the state's operating budget under AS 37.07 (Executive Budget Act). The unexpended balance of the corporation's annual operating budget does not lapse at the end of the fiscal year but shall be treated as income under AS 37.13.140. (§ 5 ch 18 SLA 1980; am § 10 ch 81 SLA 1982; am § 20 ch 134 SLA 1992)

Effect of amendments. — The 1992 amendment, effective July 1, 1992, substituted "fund's investments" for "corporation's investments."

subsection (d) and near the beginning of subsection (f) and inserted "disabled or" before "Incompetent" near the end of subsection (f).

The first 1991 amendment, effective June 11, 1991, in subsection (b), substituted "12 months" for "24 months" near the beginning of the third and fourth paragraphs.

The second 1991 amendment, effective July 1, 1991, made the same changes as the first and inserted "unless this requirement has been waived under AS 43.23.005(f)" in two places.

The 1992 amendment, effective January 1, 1993, added the last two sentences in subsection (a) and rewrote subsection (b).

The 1996 amendment, effective January 1, 1997, rewrote subsection (g) and added subsection (i). For the provisions of subsection (g) in effect before January 1, 1997, see the 1995 supplement for AS 43.

Editor's notes. — Under § 20, ch. 4, SLA 1992, the amendment to (a) of this section made by § 10, ch. 4, SLA 1992, is retroactive to January 1, 1992.

NOTES TO DECISIONS

Extension of filing time denied. — Department of revenue ruling that an extension of time for filing an application for a permanent fund dividend was not available because the information submitted in the original application was deceptive was reasonable and not arbitrary, where applicant submitted false residency verifications containing forged signatures. *Handley v. State, Dep't of Revenue, 838 P.2d 1231 (Alaska 1992).*

Prohibiting permanent fund distribution to illegal aliens. — An administrative regulation, which restricted permanent fund dividend eligibility to aliens with resident alien or refugee status, fell within the delegated authority of the commissioner of revenue to regulate the eligibility of individuals for permanent fund dividends. The regulation was also

constitutional under the state and federal equal protection clauses. Limiting the distribution of dividends to those who are lawful permanent residents is rationally related to legitimate objectives of the dividend program. *State, Dep't of Revenue v. Cosio, 858 P.2d 621 (Alaska 1993).*

Out-of-state students. — Regulation 15 AAC 23.175(c)(2) is consistent with subsection (a) because it defines "absent only for secondary or postsecondary education" and thereby resolves the question of who is a permanent resident qualified to receive a permanent fund dividend. The regulation is not arbitrary or unreasonable. Thus, an out-of-state part-time student was properly denied dividend. *State, Dep't of Revenue v. Bradley, 896 P.2d 237 (Alaska 1995).*

Sec. 43.23.016. Voter registration. The commissioner shall include voter registration forms prepared under AS 15.07.070(b) with permanent fund dividend applications. (§ 1 ch 48 SLA 1992)

Effective dates. — Section 2, ch. 48, SLA 1992 makes this section effective on January 1, 1993.

Legislative history reports. — For legislative letter of intent and request for report in connection

with the enactment of this section by § 1, ch. 48, SLA 1992 (CSSB 362(STAXtitle am)), see 1992 Senate Journal, p. 2053.

Sec. 43.23.020. Proof of eligibility. [Repealed, § 22 ch 102 SLA 1982.]

→ **Sec. 43.23.025. Amount of dividend.** (a) By October 1 of each year the commissioner shall determine the value of each permanent fund dividend for that year by

- (1) determining the total amount available for dividend payments, which equals
 - (A) the amount of income of the Alaska permanent fund transferred to the dividend fund under AS 37.13.145(b) during the current year;
 - (B) plus the unexpended and unobligated balances of prior fiscal year appropriations that lapse into the dividend fund under AS 43.23.045(d);
 - (C) less the amount necessary to pay dividends from the dividend fund in the current year under AS 43.23.055(3) and (7);
 - (D) less the amount necessary to pay dividends from the dividend fund due to eligible applicants who, as determined by the department, filed for a previous year's dividend by the filing deadline but who were not included in a previous year's dividend computation;
 - (E) less appropriations from the dividend fund during the current year, including amounts to pay costs of administering the dividend program and the hold harmless provisions of AS 43.23.075;
- (2) determining the number of individuals eligible to receive a dividend payment for the current year; and
- (3) dividing the amount determined under (1) of this section by the amount determined under (2) of this section.

Alaska State Legislature

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Representative Gary Davis

SPONSOR STATEMENT HOUSE JOINT RESOLUTION 60

"Proposing amendments to the Constitution of the State of Alaska relating to the community dividend fund, the permanent fund and the budget reserve fund"

HJR 60 proposes a constitutional amendment creating a dedicated fund to pay dividends to municipalities within the state. Principal will be invested to yield competitive market rates and a portion of the fund's income will be distributed annually to municipalities. Fund principal will consist of an initial \$750 million from the Budget Reserve Fund, with 2% of the Permanent Fund's income added to the principal for the next 20 years. As the principal of the fund increases, so will earnings, and thus payments to communities. As dividends increase, local taxes can decrease providing more money to individuals without a decrease in local services.

Local governments have individualized needs that must be met in addition to providing basic services. Unfortunately, they do not have sufficient land, economic or tax bases to provide the necessary funding; nor can the state continue to give it to them. With oil production decreasing, there is less general fund money available to the state. The state continues to funnel mandated services to local governments, but as revenues diminish, the state cannot provide adequate sustainable funding to local governments to meet their service demands.

Creating a dedicated fund provides more funding reliability to local governments. With a dedicated fund where only interest from the fund is paid out, communities can better estimate the income they will derive based on current interest rates and changes in population. It provides a more stable and predictable stream of revenues for them to plan and provide services. With local government receiving the funds directly, residents have the opportunity to be more knowledgeable about where the funds will be used and able to provide more input on how they should be spent. Local governments are insured a certain amount of money and will answer to their citizens for the way in which it is spent. The state can then concentrate its efforts on statewide programs and support directed more to specific or specialized needs.

Another equally important benefit is that this strengthens the argument that the Permanent Fund and its proceeds are used for the public's purpose and are thus eligible to retain the federal tax-exempt status. The Permanent Fund was created as a public trust, the proceeds from which were to be used for a public purpose. The principal of the fund came from resource assets received at statehood because Congress did not believe Alaska could meet its collective needs from taxes alone. Dedicating a portion of the income to communities reiterates the argument that the state fulfills the public purpose by using "income from a collective asset to meet collective needs." Requiring the citizens of the state to approve this dedication by a vote reinforces that the public believes in the purpose for which it is to be used.

Representing House District 8

Cooper Landing, Funny River, Hope, Moose Pass, Seward, Sterling, Soldotna

Representative_Gary_Davis@legis.state.ak.us

Alaska State Legislature

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Representative Gary Davis

SECTIONAL ANALYSIS HOUSE JOINT RESOLUTION 60

"Proposing amendments to the Constitution of the State of Alaska relating to the community dividend fund, the permanent fund and the budget reserve fund"

- Section 1: Establishes a Community Dividend Fund as a dedicated fund within the state treasure. Allows for appropriations to be made to the fund, but prohibits appropriations from the fund's principal. Money in the fund is to be invested to yield competitive market rates. Specifies that the prohibition of dedicated funds does not apply to the Community Dividend Fund
- Specifies that the income from the fund will be distributed to organized boroughs and cities in a manner set out by statute.
- Section 2: Adds a transitional section to Article XV of the constitution specifying that the fund will consist of an initial deposit of \$750 million transferred from the Budget Reserve Fund. In addition, two percent of the permanent fund income earned each fiscal year from FY 1999 to FY 2018 will be deposited into the principal of the community dividend fund.
- Section 3: Provides for a vote on this constitutional amendment at the next (1998) general election.

*Representing House District 8
Cooper Landing, Funny River, Hope, Moose Pass, Seward, Sterling, Soldotna*

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FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. HJR60

Revision Date (Note if correction) _____ Dept. Affected Office of the Governor
 Title Const. Amend: Relating to the community BRU Elective Operations
 dividend fund, permanent fund, and budget reserve fund Component General and Primary
 Sponsor Representative Davis
 Requester House Judiciary Committee Component Serial No. #22

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services						
Travel						
Contractual	3.0					
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	3.0	0.0	0.0	0.0	0.0	0.0

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

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	3.0					
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	3.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY98) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This figure includes the cost of providing information about this issue in the Official Election Pamphlet, as required by AS 15.58, and the programming costs for counting votes cast on the measure. However, only four measures can be printed on a single ballot card. If this measure requires printing an additional ballot card, the costs will increase by \$56.0.

Prepared by Gail Fenusia *Gail Fenusia* Phone 465-3935
 Division Division of Elections Date 3/6/98
 Approved by C Lt. Governor Fran Ulmer *Fran Ulmer* Date 3/6/98
 Agency Office of the Lieutenant Governor

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**A Resolution of the Alaska Conference of Mayors and
the Alaska Municipal League Board of Directors**

RESOLUTION 98-01

**URGING THE LEGISLATURE TO REFRAIN FROM MAKING
ADDITIONAL DEPOSITS OF UNALLOCATED EARNINGS OF THE
PERMANENT FUND INTO THE CORPUS OF THE FUND**

WHEREAS, regardless of the price of oil, the state of Alaska is faced with the problem of seriously deteriorating schools, roads, harbors, and other public facilities that will **only become more expensive to fix if we fail to fix them now**; and

WHEREAS, the key purpose for the Permanent Fund Reserve Account and the Constitutional Budget Reserve is to help sustain Alaska's public services and facilities when oil revenues alone cannot; and

WHEREAS, Alaskans and municipal governments do not want the body of the Permanent Fund "raided", however, the **residual unallocated earnings of the Permanent Fund are not part of the body, or corpus, of the Permanent Fund**, and constitute money left over after the maximum allowable Permanent Fund Dividends are paid and after the Permanent Fund is fully inflation-proofed; and

WHEREAS, the use of earnings from the residual unallocated earnings of the Permanent Fund to meet Alaska's critical public facility needs is preferable to increasing taxes; and

WHEREAS, as state oil revenues shrink, the public must be allowed to choose between:

- ◆ Steeply increasing property and sales taxes,
- ◆ Loss of critical public facilities (like schools, harbors, and roads) or,
- ◆ Creative use of Alaska's enormous financial resources, as intended by the past Legislatures and Governor's

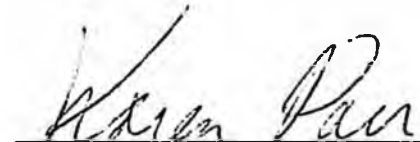
WHEREAS, Governor Walter Hickel, and other notable Alaskans, have proposed the creation of a **Community Permanent Fund Dividend Program** that would keep Alaska's economy strong by avoiding excessive property taxes; and

NOW, THEREFORE, BE IT RESOLVED, the Governor and the Legislature are urged to:


1. **Keep the residual unallocated earnings of the Permanent Fund in the Unallocated Earnings Reserve Account, and**

2. Allow Alaskans to approve using the interest earnings from the unallocated earnings as a permanent source of revenue to maintain and improve Alaska's schools, roads, harbors, and other critical public facilities.

PASSED and APPROVED on April 1, 1998, Juneau, Alaska.



Karen Parr, President
Alaska Municipal League



Mayor John Gonzales, President
Alaska Conference of Mayors

SB

1

(7)
Date Referred to Committee: February 13, 1997

FURTHER REFERRALS:

Finance

Date of Committee Action: 3/21/97

The JUDICIARY Committee considered:

CSSB 1(FIN) am

CS FOR SENATE BILL NO. 1(FIN) am

"NO FRILLS" PRISON ACT

"An Act relating to living and working conditions of prisoners in correctional facilities operated by the state, and authorizing the commissioner of corrections to negotiate with providers of detention and confinement services under contract to apply those conditions and limitations on services to persons held under authority of state law at facilities operated under contract or agreement; relating to services provided to prisoners; amending the definition of 'severely medically disabled' applicable to prisoners seeking special medical parole; amending provisions of the correctional industries program; and extending the termination date of the Correctional Industries Commission and the program."

recommends it be replaced with the following committee substitute HCS CSSB 1(JUD) the same title a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

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

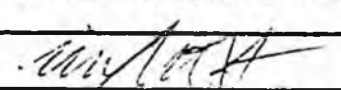
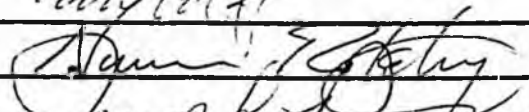
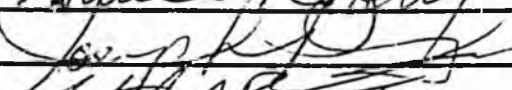
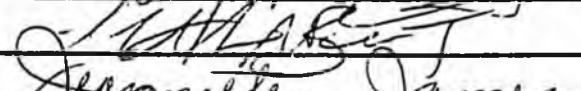
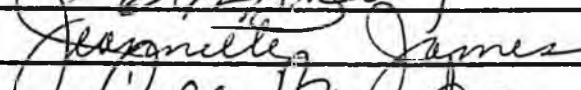
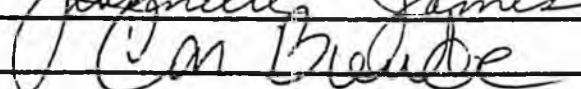
APPROVES PREVIOUS: (Dept/Date) _____

fiscal note(s) _____

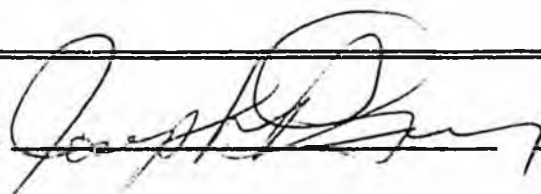
fiscal note(s) CORRECTIONS

zero fiscal note(s) _____

zero fiscal note(s) PUB. SAFETY & LAW

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
	CROFT			✓	
	ROKEBERG	✓			
	GREEN	✓			
	BERKOWITZ			✓	
	JAMES	✓			
	BUNDE	✓			

CHAIR'S SIGNATURE



FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. CSSB 1 (FIN)am

Revision Date: 3/3/97 Dept. Affected: Corrections
 Title: "An act relating to living and working
conditions of prisoners..." BRU: Institutions
 Sponsor: Senator Donley Component: _____
 Requester: House Judiciary Committee COMPONENT SERIAL NO. _____

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES	20.0	20.0	20.0	20.0	20.0	20.0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	20.0	20.0	20.0	20.0	20.0	20.0

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

CHANGE IN REVENUES (1005)	20.0	20.0	20.0	20.0	20.0	20.0
------------------------------------	------	------	------	------	------	------

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts	20.0	20.0	20.0	20.0	20.0	20.0
1037 GF/Mental Health						
Other						
TOTAL	20.0	20.0	20.0	20.0	20.0	20.0

Estimate of any current year (FY97) cost: \$ _____

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Under Section 5 of this bill, a new Sec. 33.30.17 would require the Commissioner to establish a monthly prisoner utility fee, not to exceed \$2, that will be collected from those prisoners who possess at least one major electrical appliance. The Department projects that the additional bookkeeping duties required by this section will result in extra staff time that will cost an estimated \$20,000 each fiscal year. The Department also projects that this cost could be offset by \$20,000 in program receipts generated by the utility fees.

Prepared by: Bruce Richards
 Division: Commissioner's Office
 Approved by Commissioner: Margaret M. Peel
 Agency: Department of Corrections

Phone: 465-3307
 Date: 3/3/97
 Date: 3-3-97

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FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. CSSB 1 (FIN) am

Revision Date: _____ Dept. Affected: Department of Law
 Title: ... relating to living and working conditions of BRU: Criminal Division
prisoners in correctional facilities operated by the state . . . Component: Criminal Division
 Sponsor: Senator Donley
 Requester: House Judiciary Committee COMPONENT SERIAL NO. 2085

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY97) cost: \$ 0.0

POSITIONS

POSITIONS	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

To be known as the "Alaska No Frills Prison Act," this bill would amend Title 33, relating to probation, prisons and prisoners, to place specific limitations on the living and working conditions of prisoners in correctional facilities operated by the state, and negotiate for those same conditions and limitations in contract facilities. Further, the bill would require fees for utility services for prisoners. The bill would also amend the definition of "severely medically disabled" applicable to prisoners seeking special medical parole.

The purpose of the Alaska Correctional Industries Program would be amended to include vocational training, but would not require a vocational training program be established. The termination date for the Correctional Industries Commission and the program would be extended from 1999 to 2005 under this bill.

Passage of the Senate Finance committee substitute, as amended, will have no fiscal impact on the Department of Law.

Prepared by: Joan M. Kasson *Joan M. Kasson*
 Division: Administrative/Services Division
 Approved by Commissioner: Bruce M. Botelho, Attorney General *Bruce M. Botelho*
 Agency: Department of Law

Phone: 465-5370
 Date: 2/28/97
 Date: 2/28/97

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STATE OF ALASKA

FISCAL NOTE

No. 4

1997 LEGISLATIVE SESSION

Bill NO:

Bill Version: CS SB 1 (Jud)

(S) Publish Date: 1-30-97

Revision Date: January 28, 1997

Dept. Affected: Public Safety

Title: "No Frills" Prison Act

DPS Statewide Support

Component: Commissioner's Office

Sponsor: Senator Donley

Requestor: S. Judiciary

COMPONENT SERIAL NO. 0523

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

OPERATING	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL EXPENDITURES	-0-	-0-	-0-	-0-	-0-	-0-
CHANGE IN REVENUES ()	-0-	-0-	-0-	-0-	-0-	-0-
Code Revenue						

FUNDING: (Thousands of Dollars)

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

Estimate of current year (FY 97) impact: \$ _____

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

No fiscal impact is anticipated to the Department of Public Safety

Prepared By: Sandy Perry-Provost, Special Assistant to the Commissioner

Phone: 465-4322

Division: Commissioner's Office

Date: 1/24/97

Approved by Commissioner: *Ronald L. Otte*

Date: 1/24/97

Agency: Ronald L. Otte, Dept. of Public Safety

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FISCAL NOTE

No. 3

STATE OF ALASKA
1997 LEGISLATIVE SESSION

Bill. ersion: CS SB 1 (JUD)

(S) Publish Date: 1-30-97

Revision Date: _____	Dept. Affected: <u>Department of Law</u>
Title: <u>... relating to living and working conditions of</u>	BRU: <u>Criminal Division</u>
<u>prisoners in correctional facilities operated by the state ...</u>	Component: <u>Criminal Division</u>
Sponsor: <u>Senator Donley</u>	
Requester: <u>Senate Judiciary Committee</u>	COMPONENT SERIAL NO. <u>2085</u>

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

FUND SOURCE

(Thousands of Dollars)

FUND SOURCE	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY97) cost: \$ 0.0

POSITIONS

POSITIONS	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

To be known as the "Alaska No Frills Prison Act," this bill would amend Title 33, relating to probation, prisons and prisoners, to place specific limitations on the living and working conditions of prisoners in correctional facilities operated by the state, and negotiate for those same conditions and limitations in contract facilities. Further, the bill would require fees for utility services for prisoners. The bill would also amend the definition of "severely medically disabled" applicable to prisoners seeking special medical parole.

The purpose of the Alaska Correctional Industries Program would be amended to include vocational training, but would not require a vocational training program be established. The termination date for the Correctional Industries Commission and the program would be extended from 1999 to 2005 under this bill.

Passage of the Judiciary committee substitute will have no fiscal impact on the Department of Law.

Prepared by:	Joan M. Kasson <i>Joan M. Kasson</i>	
Division:	Administrative Services Division	
Approved by Commissioner:	Bruce M. Botelho, Attorney General <i>Bruce M. Botelho</i>	
Agency:	Department of Law	

Phone:	465-5370
Date:	1/29/97
Date:	1/29/97

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FISCAL NOTE

No. 2

STATE OF ALASKA
1997 LEGISLATIVE SESSION

Bill Version: CSSB 1 (JUD)

(S) Publish Date: 1-30-97

Revision Date: 1/28/97 Dept. Affected: Corrections
 Title: "An act relating to living and working BRU: Institutions
conditions of prisoners..." Component: _____
 Sponsor: Senator Donley
 Requester: Judiciary Committee COMPONENT SERIAL NO. _____

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES	20.0	20.0	20.0	20.0	20.0	20.0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	20.0	20.0	20.0	20.0	20.0	20.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES (1005)	20.0	20.0	20.0	20.0	20.0	20.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts	20.0	20.0	20.0	20.0	20.0	20.0
1037 GF/Mental Health						
Other						
TOTAL	20.0	20.0	20.0	20.0	20.0	20.0

Estimate of any current year (FY97) cost: \$ _____

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Under Section 4 of this bill, a new Sec. 33.30.17 would require the Commissioner to establish a monthly prisoner utility fee, not to exceed \$2, that will be collected from those prisoners who possess at least one major electrical appliance. The Department projects that the additional bookkeeping duties required by this section will result in extra staff time that will cost an estimated \$20,000 each fiscal year. The Department also projects that this cost could be offset by \$20,000 in program receipts generated by the utility fees.

Prepared by: Bruce Richards
 Division: Commissioner's Office
 Approved by Commissioner: Margaret M. Pugh
 Agency: Department of Corrections

Phone: 465-3307
 Date: 1/28/97
 Date: 1-28-97

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HOUSE CS FOR CS FOR SENATE BILL NO. 1(JUD)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTIETH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): SENATORS DONLEY, Halford, Pearce, Green, Leman, Taylor, Kelly, Mackie, Phillips
REPRESENTATIVES Mulder, Cowdery, Green

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to living and working conditions of prisoners in correctional
2 facilities operated by the state, and authorizing the commissioner of corrections
3 to negotiate with providers of detention and confinement services under contract
4 to apply those conditions and limitations on services to persons held under
5 authority of state law at facilities operated under contract or agreement; relating
6 to services provided to prisoners; amending the definition of 'severely medically
7 disabled' applicable to prisoners seeking special medical parole; amending
8 provisions of the correctional industries program; and extending the termination
9 date of the Correctional Industries Commission and the program."

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

11 * Section 1. Sections 4 - 6 of this Act may be known as the "Alaska No Frills Prison Act."

12 * Sec. 2. INTENT. It is the intent of secs. 4 - 6 of this Act that conditions in facilities for

1 prisoners within the Department of Corrections not be substantially more favorable than
 2 required by the constitutions of this state and the United States unless the commissioner of
 3 corrections has reasonable grounds to believe such conditions are consistent with fostering
 4 rehabilitative programs or rewarding good behavior within state prisons.

5 * Sec. 3. AS 33.16.900(11) is amended to read:

6 (11) "severely medically disabled" means that a person has a medical
 7 condition that substantially eliminates the physical ability to commit an offense
 8 similar to the offense for which the person was convicted or to commit an offense
 9 in violation of AS 11.41 that is punishable as a felony. [REQUIRES THE PERSON
 10 SUFFERING FROM THE CONDITION TO BE CONFINED TO BED] and the person
 11 is likely to

12 (A) remain subject to the medical condition [BE CONFINED
 13 TO BED] throughout the entire period of parole; or

14 (B) die from the medical condition;

15 * Sec. 4. AS 33.30.011 is amended to read:

16 **Sec. 33.30.011. Duties of commissioner.** The commissioner shall

17 (1) establish, maintain, operate, and control correctional facilities
 18 suitable for the custody, care, and discipline of persons charged or convicted of
 19 offenses against the state or held under authority of state law; each correctional
 20 facility operated by the state shall be established, maintained, operated, and
 21 controlled in a manner that is consistent with AS 33.30.015;

22 (2) classify prisoners;

23 (3) for persons committed to the custody of the commissioner, establish
 24 programs, including furlough programs that are reasonably calculated to

25 (A) protect the public and the victims of crimes committed
 26 by prisoners;

27 (B) maintain health;

28 (C) create or improve occupational skills;

29 (D) enhance educational qualifications;

30 (E) support court-ordered restitution; and

31 (F) otherwise provide for the rehabilitation and reformation of

1 prisoners, facilitating their reintegration into society;

2 (4) provide necessary

3 (A) medical services for prisoners in correctional facilities or
4 who are committed by a court to the custody of the commissioner, including
5 examinations for communicable and infectious diseases;

6 (B) psychological or psychiatric treatment if a physician or
7 other health care provider, exercising ordinary skill and care at the time of
8 observation, concludes that

9 (i) a prisoner exhibits symptoms of a serious disease or
10 injury that is curable or may be substantially alleviated; and

11 (ii) the potential for harm to the prisoner by reason of
12 delay or denial of care is substantial;

13 (5) establish minimum standards for sex offender treatment programs
14 offered to persons who are committed to the custody of the commissioner; and

15 (6) provide for fingerprinting in correctional facilities in accordance
16 with AS 12.80.060.

17 * Sec. 5. AS 33.30 is amended by adding new sections to read:

18 **Sec. 33.30.015. Living conditions for prisoners.** (a) On and after the date that
19 is two years after the effective date of this Act, the commissioner may not

20 (1) make per capita expenditures for food for prisoners in a state
21 correctional facility operated by the state that exceed 90 percent of per capita
22 expenditures for food that is available to enlisted personnel in the United States Army
23 stationed in the state;

24 (2) provide in a state correctional facility operated by the state

25 (A) living quarters for a prisoner into which the view is
26 obstructed; however, the commissioner is not required to renovate a facility
27 to comply with this subparagraph if the facility is being used as a correctional
28 facility on the effective date of this Act, or if the facility was already built
29 before being acquired by the department;

30 (B) equipment or facilities for publishing or broadcasting
31 material the content of which is not subject to prior approval by the department
32 as consistent with keeping order in the institution and prisoner discipline;

1 (C) cable television service other than a level of basic cable
2 television service that is available as a substitute for services that are broadcast
3 to the public in the community in which a correctional facility is located;

4 (3) allow a prisoner held in a state correctional facility operated by the
5 state to

6 (A) possess in the prisoner's cell a cassette tape player or
7 recorder, a video cassette recorder (VCR), or a computer or modem of any
8 kind;

9 (B) view movies rated "R," "X," or "NC-17";

10 (C) possess printed or photographic material that

11 (i) is obscene as defined by the commissioner in
12 regulation;

13 (ii) could reasonably be expected to incite racial, ethnic,
14 or religious hatred that is detrimental to the security, good order, or
15 discipline of the institution or violence;

16 (iii) could reasonably be expected to aid in an escape or
17 in the theft or destruction of property;

18 (iv) describes procedures for brewing alcoholic
19 beverages or for manufacturing controlled substances, weapons, or
20 explosives; or

21 (v) could reasonably be expected to facilitate criminal
22 activity or a violation of institution rules;

23 (D) receive instruction in person, or by broadcast medium, or
24 engage in boxing, wrestling, judo, karate, or other martial art or in any activity
25 that, in the commissioner's discretion, would facilitate violent behavior;

26 (E) possess or have access to equipment for use in the activities
27 listed in (D) of this paragraph;

28 (F) possess or have access to free weights;

29 (G) possess in the prisoner's cell a coffee pot, hot plate, appliance
30 or heating element for food preparation, or more than three electrical appliances
31 of any kind;

32 (H) possess or appear in a state of dress, hygiene, grooming, or

1 appearance other than as permitted as uniform or standard in the correctional
2 facility;

3 (I) use a computer other than those approved by the correctional
4 facility; the use of a computer under this subparagraph may be approved only as
5 part of the prisoner's employment, education, or vocational training and may not
6 be used for any other purpose;

7 (J) smoke or use tobacco products of any kind.

8 (b) The commissioner may determine whether the provisions of (a) of this
9 section shall apply to correctional facilities that are not operated by the state and may
10 negotiate with a provider of services for the detention and confinement of persons held
11 under authority of state law under contract or agreement whether the living conditions
12 set out in (a) of this section shall apply to persons held under authority of state law at
13 a facility operated under contract or agreement.

14 (c) On and after January 1, 1998, the commissioner may not allow a prisoner to
15 possess a television in the prisoner's cell if the prisoner is classified as maximum custody
16 under AS 33.30.011(2).

17 (d) The commissioner may allow a prisoner who, under AS 33.30.011(2), has
18 been classified as other than maximum custody to possess a television in the prisoner's
19 cell only if the prisoner

20 (1) either is incapable of obtaining or has attained a high school diploma
21 or general education development diploma or the equivalent;

22 (2) is actively engaged in an educational, vocational training, or
23 employment program;

24 (3) has satisfied or is on a regular and current payment schedule for all
25 restitution orders entered by the court as part of the prisoner's sentence and, if
26 applicable, is actively engaged in a treatment plan or counseling, psychiatric, or
27 rehabilitation program ordered by the court or the department as part of the prisoner's
28 sentence; and

29 (4) pays for the expense of providing the television and, in addition to
30 the utility service fee required by AS 33.30.017, pays for the expense of providing any
31 cable television service.

32 (e) The commissioner shall use

1 (1) appropriate technology to screen programs received by prisoners
2 under (d) of this section;

3 (2) Alaska farm products and salmon to the greatest extent practicable
4 for food for prisoners in a state correctional facility operated by the state.

5 **Sec. 33.30.017. Fees for utilities services for prisoners.** (a) The commissioner
6 shall establish a reasonable utility fee for electrical utilities that are used by prisoners
7 who are confined in a state correctional facility.

8 (b) The commissioner shall

9 (1) charge each prisoner who possesses at least one major electrical
10 appliance the utility fee established in (a) of this section; the commissioner may deduct
11 the utility fee monthly from the account established for a prisoner into which money due
12 the prisoner for labor is paid; if a prisoner is indigent, the commissioner shall make the
13 deduction from any amount credited to the indigent inmate's account;

14 (2) if available from legislative appropriation, expend money deducted
15 and collected under (1) of this subsection to offset the cost of the department's utility
16 expenses; the commissioner shall annually report on the amounts that are collected and
17 expended under this paragraph.

18 (c) The provisions of (b) of this section do not apply to prisoners

19 (1) who are

20 (A) developmentally disabled; or

21 (B) severely medically disabled, as that term is defined in

22 AS 33.16.900;

23 (2) who are housed in a mental health unit or psychiatric unit of a state
24 correctional facility; or

25 (3) while placed in a state correctional facility awaiting classification
26 under classification procedures for the purpose of making the appropriate assignment of
27 the prisoner.

28 * **Sec. 6.** AS 33.30.071(c) is amended to read:

29 (c) Medical services for a prisoner who is unconscious or in immediate need of
30 medical attention before admission to a correctional facility or commitment by a court
31 to the custody of the commissioner of corrections shall be provided by the law
32 enforcement agency having custody of the prisoner. The law enforcement agency may

1 require the prisoner to compensate the agency for the cost or for a portion of the cost
 2 of medical services provided for any [A] preexisting medical condition [NOT ARISING
 3 OUT OF THE PRISONER'S ARREST].

4 * Sec. 7. AS 33.30.191(a) is amended to read:

5 (a) It is the policy of the state that prisoners be productively employed for as
 6 many hours each day as feasible [, NOT TO EXCEED 40 HOURS A WEEK UNLESS
 7 OVERTIME HAS BEEN SPECIFICALLY APPROVED BY THE COMMISSIONER].

8 * Sec. 8. AS 33.30 is amended by adding a new section to read:

9 **Sec. 33.30.193. Standard applicable to allowing prisoners access to and use**
 10 **of legal reference materials and legal assistance.** If the commissioner imposes a
 11 restriction on access to and use of legal reference materials by or legal assistance of
 12 a prisoner in a state correctional facility, a court may not enter an order giving relief
 13 to the prisoner unless the court first finds, by a preponderance of the evidence, that
 14 enforcement or application of the restriction hinders the prisoner from having access
 15 to and use of the legal reference materials or legal assistance

16 (1) in order to gain meaningful access to a court for the purpose of
 17 challenging

18 (A) the prisoner's conviction or sentence; or

19 (B) the conditions of the prisoner's confinement; or

20 (2) in circumstances in which a state court has specifically determined
 21 that a provision of the state constitution necessarily requires a prisoner to have access
 22 to and use of the legal reference materials or legal assistance.

23 * Sec. 9. AS 33.30.231(c) is amended to read:

24 (c) Notwithstanding AS 42.20.300 and 42.20.310, in order to preserve the
 25 security and orderly administration of the correctional facility and to protect the public,
 26 the commissioner shall monitor or record the [MAY AUTHORIZE THE USE OF
 27 MONITORING OR RECORDING EQUIPMENT TO LISTEN TO A] telephone
 28 conversations [CONVERSATION] of prisoners. The commissioner shall post a
 29 [PRISONER INCARCERATED FOLLOWING CONVICTION OF A CRIME, IF A]
 30 warning [IS POSTED] by each [THE] telephone informing prisoners [THE
 31 PRISONER] that calls [A CALL] may be monitored or recorded. The monitoring or
 32 recording may be conducted on all calls or selectively or in some other limited

1 manner as determined by the commissioner to be appropriate. A recording of a
 2 telephone call made under this subsection shall be kept confidential, and access to the
 3 recording and its contents is limited to persons who are acting within the scope of their
 4 official duties and whose access to specific recordings has been authorized by the
 5 facility superintendent. A telephone call between an attorney and a prisoner or
 6 between the office of the ombudsman and a prisoner may not be monitored or recorded
 7 except when authorized by a court.

8 * Sec. 10. AS 33.32.010 is amended to read:

9 **Sec. 33.32.010. Purpose of chapter.** It is the purpose of this chapter to [:]

10 (1) develop and operate agricultural, industrial, and service enterprises
 11 employing prisoners under the jurisdiction of the commissioner of corrections;

12 (2) provide realistic work experience and vocational training for
 13 prisoners under conditions as much like those that prevail in private industry as possible,
 14 consistent with proper penal administration, and to direct their efforts toward financial
 15 responsibility, acquiring or improving effective work habits and occupational skills, and
 16 increasing the probability of opportunities for employment after release; and

17 (3) operate a work program for prisoners that will be as nearly self-
 18 supporting as possible by generating a sufficient amount of money from the sale of
 19 products and services to pay all or most of the expenses of the program.

20 * Sec. 11. AS 33.32.015(b) is amended to read:

21 (b) The commissioner of corrections may

22 (1) subject to AS 36.30 (State Procurement Code), use, purchase, lease,
 23 equip, and maintain buildings, machinery, and other equipment, and may purchase
 24 materials and enter into contracts that [, WHICH] may be necessary for the correctional
 25 industries program;

26 (2) provide for prisoners to be employed in rendering services and
 27 producing articles, materials, and supplies needed by a state agency, a political
 28 subdivision of the state, an agency of the federal government, other states or their
 29 political subdivisions, or for use by nonprofit organizations;

30 (3) if the Correctional Industries Commission established in AS 33.32.070
 31 approves, employ prisoners to provide services or products as needed by private industry
 32 if the services or products have potential for contributing to the economy of the state and

1 will have minimal negative impact on an existing private industry or labor force in the
2 state;

3 (4) authorize a prisoner to engage in vocational training or in
4 productive employment within or outside a correctional facility, or enter into a contract
5 under AS 33.30.191 for the employment of a prisoner if the Correctional Industries
6 Commission determines that the employment will have minimal negative impact on an
7 existing private industry or labor force in the state; and

8 (5) subject to the provisions of AS 36.30 (State Procurement Code), enter
9 into joint cooperative ventures with private industry for the establishment and operation
10 of "Free Venture" industries under AS 33.32.017 [,] if the Correctional Industries
11 Commission determines at the time of inception that the "Free Venture" industry will not
12 compete with an existing private industry or labor force in the state.

13 * Sec. 12. AS 33.32.015 is amended by adding a new subsection to read:

14 (c) This section does not require the commissioner of corrections to establish and
15 administer a vocational training program under the correctional industries program.

16 * Sec. 13. AS 33.32.050(c) is amended to read:

17 (c) The commissioner of corrections shall disburse a prisoner's [PRISONERS']
18 payments in amounts determined to be appropriate under procedures adopted by the
19 commissioner based on the following order of priority:

20 (1) for support of the prisoner's [PRISONERS'] dependents, if any;

21 (2) to reimburse the state for compensation awarded under AS 18.67
22 resulting from the prisoner's criminal conduct;

23 (3) to pay a civil judgment resulting from the prisoner's criminal conduct;

24 (4) for the payment of fees for the prisoner's utilities services under

25 AS 33.30.017:

26 (5) for the purchase of clothing and commissary items for the prisoner's
27 personal use;

28 (6) [(5)] to pay a restitution or fine of the prisoner ordered by a
29 sentencing court.

30 * Sec. 14. Section 7, ch. 53, SLA 1982, as amended by sec. 1, ch. 25, SLA 1987, by sec. 4,
31 ch. 77, SLA 1991, and by sec. 10, ch. 93, SLA 1995, is amended to read:

32 Sec. 7. AS 33.32 is repealed July 1, 2005 [1999].

RECEIVED
MAR 07 1997

Daniel Hykes
Spring Creek Correctional Center
POB 5001
Seward, AK 99501

The House Judiciary Committee
C/o Alaska House of Representatives
Juneau, AK 99801
Attn: The Honorable Joseph Green, Chairman

Dear Representative Green:

It has come to my attention that the House Judiciary Committee will be holding a teleconference hearing concerning SB 1 on 3/7/97. I believe I could offer the Committee considerable constructive insight with respect to this proposed legislation. Unfortunately I could not participate in the teleconference unless you could make special arrangements for me to call you collect at an appointed time.

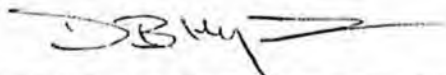
I would be willing to participate if you should decide to have this facility summon me at the appropriate time. If you choose not to do so, I understand. Such hassles are common, and if SB1 passes without amendments, it will further restrict our ability to communicate with legislators. (E.g. I would be unable to speak with you confidentially.)

Therefore I would like to submit for the Committee's consideration the enclosed two page summary of the most significant problems with SB 1. There is more I'd like to say, but I had to summarize what I could in 2 pages. The main amendment most people I know would like to see is the prohibition against computers removed from the bill. Such would accomplish a great amount of good, consistent with the professed spirit of the bill.

Before coming to prison on false charges I worked for the State and Federal governments as a biologist, and am a scientific researcher. When I had computer and printer access (at other prisons) I compiled reports for the Legislators and Governor's office offering my professional insights on matters like how to help solve the State's budget problems. This goofy typewriter now makes it virtually impossible to offer such assistance; but I will do what I can to help if you need any input. If you could amend SB 1 to permit me to have a printer I will put my professional skills at your disposal. (I derive purpose in life from helping others; and here I feel my skills are going to waste.) Allowing such could be accomplished by amending 33.30.015(a)(3)(B) to delete computers; and amend (a)(3)(I) to include computers and printers. I'm not sure if DOC would consider my working for you as "vocational" or not. And if "for one's own legal work" could be added to (a)(3)(I), along with "educational or vocational training" it could accomplish much good, and help solve overcrowding and budget problems.

Thank you for considering my input. Please let me know if I can do anything else for you or Alaska. God bless your endeavors.

Truly,





Alaska State Legislature

Please enter into the record my testimony to the HOUSE FINANCE
 committee name
 committee on SB 1 D. , dated 3/19/97
 bill/subject

WHERE DOES CHILD SUPPORT PLACE
 IN YOUR CONSIDERATION? AFTER MEDICAL
 BUT BEFORE PAYMENT FOR UTILITIES - ?
 WHERE WOULD VIEWING OF TELECAST
 CLASSES FOR EDUCATIONAL UP-GRADE
 OCCUR - IN PUBLIC ROOM ON COMMON-VIEW
 T.V. ? ~~I LIVE WITHIN A BUDGET BUT~~
~~HAVE MORE INCOME THEN \$5 OR \$10 PER~~
~~DAY.~~ REMEMBER, PELL GRANTS ARE NO
 LONGER AVAILABLE TO PRISONERS, + THE
 U OF AK CHARGES FULL PRICE.

Signed: JOAN BENNETT SCHRADER
 Testifier

Representing (Optional)
P.O. Box 1264 KENAI, AK 99611
 Address

Phone No.



Alaska State Legislature

Please enter into the record my testimony to the HOUSE FINANCE
committee name

committee on SB 1 D., dated 3/19/97
bill/subject

WHERE DOES CHILD SUPPORT PLACE
IN YOUR CONSIDERATION? AFTER MEDICAL
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One of "recently converted Democrat" Donley's constituents praised him in the "Anchorage Daily News" for his "conservative" stand in sponsoring the "No Frills Prison Act" (SB 1). Yet SB 1 illustrates the difference between true conservatives and pseudo-conservatives who wish to only wear such politically correct labels.

Consider persecuting "enemies of the state" is a communist practice; hence "getting tough on crime" is conservative if it emphasizes individual responsibility. While conservatives advocate incentives for people to do good via internal motivation, socialists trust government (external force) to keep people in line. It's a subtle, but crucial distinction.

Now consider SB 1, which looks conservative, but is actually socialistic. Many of its provisions are actually offensive to the constitution and conservative constitutionalists. For example:

1) It's clear in legal caselaw that people are sent to prison as punishment, not for punishment. This is based on the constitutionalist principle that liberty is ones' most valuable possession. Any further deprivations are insignificant in comparison. Apparently SB1 pretends that depriving one of TV is the greatest possible punishment, which is a socialistic lie that might apply only to children and products of a media controlled society. This is not a conservative principle.

2) Legislative micro-management of the Executive branch constitutes a violation of the constitutional separation of powers doctrine. Also constitutionally the Legislature should promote freedom by restricting the other branches, rather than expanding their powers to oppress.

3) The Alaska Constitution requires efforts to promote rehab. While this is a professed purpose of the bill, its provisions are clearly contrary to it, (thus making it subject to legal challenges). Socialist programs that promote "uniformity" (like "school uniforms"), seek to make everyone indetical. Likewise SB1 fails to recognize everyone is different in their needs for motivation and rehabilitation. So while professing to promote good behavior and rehab, it does the opposite by failing to recognize individual differences.

A) Those with life-sentences have no reason to rehabilitate, hence only incentives for good behavior are applicable. Making prison so unpleasant that they "wont want to return" is meaningless since they will never get out. For them, SB1 serves only to torture them more than "life" already does, (thus raising 8th Amendment implications). Such deprivations will anger them more, causing worse behavior, (thus endangering others), since SB1 removes most all incentives for good behavior. So while the drafters claim SB1 promotes good behavior, it actually does the opposite by stripping DOC of its discretion to rewards individuals for their good behavior. Except for the TV provision, SB1 flatly outlaws most all things DOC presently uses to promote good behavior. Not only does it make it harder for DOC to promote rehab, the wisdom of making prison "more violent" is dubious at best.

B) However for those who will eventually be released, incentives for good behavior and rehab are both necessary. Rehabilitation is defined as "mainstreaming the individual back into society". SB1 fails to recognize that even by government's own estimates, there are hundreds of people wrongly imprisoned in Alaska, many of which are appealing their convictions and/or sentences. For such, "rehab" means getting enough justice to be released. But SB1 gives DOC the power to prohibit one from working on his own legal case. Hindering one from gaining freedom that he is legally due, is anti-constitutional, (assuming our laws are constitutional); and doing so discourages rehab. Instead it insures prisons will continue to be overcrowded with people who can't afford afford competent legal help.

C) For those who will eventually be released, cultivation of marketable job skills is an essential element of rehab. While SB1 allows TVs to promote "rehab", it outlaws computers. Wouldn't you prefer ex-cons to have computer skills, as opposed to being just "TV addicts"? Computers have proven themselves to be among the most powerful educational tools ever devised. So SB1 should explicitly allow possession of computers and printers if it truly intends to promote rehab. Each prisoner released is more likely to be employed if he has computer skills. Thus being less likely to turn to crime for income, there will be less parole violations, which will mean less people being returned to overcrowded prisons.

D) People who have practiced good behavior as citizens, hence should not otherwise be in prison, are treated the same as the worst criminals; hence under SB1 they are deprived of rewards for their good behavior. And people who do not practice good behavior must be encouraged to do so. There is a difference between punishing wrongdoers, and rewarding good behavior. People who know what is right should not falsely presume everyone else also knows the truth. Those who desire to teach people the difference between right and wrong should promote policies that teach the difference, instead of taking away the rights of everyone because they might be abused by those who won't learn. By granting discretionary rights, people can learn to use them responsibly; and this is what rehab is really all about; isn't it?

4) DOC unconstitutionally hinders prisoners from fighting for their freedom and legal rights by prohibiting computer printers. They openly admit the policy is to prevent inmates from doing legal work. While many prisons in the "Lower 48" allow printers (and in some cases, even internet access), some state bureaucrats (possibly fearful of the truth, lest their wrongdoing be published) seek to silence all inmates. But Legislators who either oppose SB1's efforts to stifle prisoners, and/or possibly even adding an explicit provision to allow printers, could do much to promote freedom and constitutional liberties for all people. Due to the Executive branch hindering access to the courts, and stifling the free expression of many because it might be abused by a few, there is a constitutional challenge to the prohibition of printers currently pending in the courts. This is ironic, in that one professed purpose of the prohibition is to prevent inmates from filing "frivolous" lawsuits. This argument is bogus since the courts have the power to reject such suits, and also fine the filers. Furthermore DOC already has discretion to revoke privileges of those who abuse them, (unless SB1 strips them of such options, requiring that the rights of those who use them legitimately must all be forfeited so they are not abused by a few.)

But as it is, many of the provisions of SB1 are contrary to the legislative intent, thus leaving the bill open to constitutional attack. Hence the lawsuits that will inevitably result from SB1 will further burden the courts, offsetting efforts to curtail prisoner litigation. But such could be avoided if the legislature would just let DOC do its job without the interference of SB1. If such interference is needed to make real improvements, the legislature could use SB1 to restrict DOC from restricting prisoners from working on their own cases. This would help the state budget by reducing overcrowding by giving inmates the tools to speed up the judicial process, and keep legislators informed.

5) Some other things outlawed by SB1, are things DOC facilities already prohibit. Hence SB1 is a waste of legislative time that could be better spent on things like balancing the budget. Legislators who can see SB1 for what it really is are to be praised for taking a stand against such laws that sacrifice constitutional liberties on the altar of expanding and expensive governmental power.

0-LS0024R
Luckhaupt
3/20/97

**HOUSE CS FOR CS FOR SENATE BILL NO. 1()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTIETH LEGISLATURE - FIRST SESSION**

BY

**Offered:
Referred:**

**Sponsor(s): SENATORS DONLEY, Halford, Pearce, Green, Leman, Taylor, Kelly, Mackie, Phillips
REPRESENTATIVES Mulder, Cowdery, Green**

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to living and working conditions of prisoners in correctional
2 facilities operated by the state, and authorizing the commissioner of corrections
3 to negotiate with providers of detention and confinement services under contract
4 to apply those conditions and limitations on services to persons held under
5 authority of state law at facilities operated under contract or agreement; relating
6 to services provided to prisoners; amending the definition of 'severely medically
7 disabled' applicable to prisoners seeking special medical parole; amending
8 provisions of the correctional industries program; and extending the termination
9 date of the Correctional Industries Commission and the program."

10 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

11 * Section 1. Sections 4 - 6 of this Act may be known as the "Alaska No Frills Prison Act."

12 * Sec. 2. INTENT. It is the intent of secs. 4 - 6 of this Act that conditions in facilities for

1 prisoners within the Department of Corrections not be substantially more favorable than
2 required by the constitutions of this state and the United States unless the commissioner of
3 corrections has reasonable grounds to believe such conditions are consistent with fostering
4 rehabilitative programs or rewarding good behavior within state prisons.

5 * Sec. 3. AS 33.16.900(11) is amended to read:

6 (11) "severely medically disabled" means that a person has a medical
7 condition that substantially eliminates the physical ability to commit an offense
8 similar to the offense for which the person was convicted or to commit an offense
9 in violation of AS 11.41 that is punishable as a felony. [REQUIRES THE PERSON
10 SUFFERING FROM THE CONDITION TO BE CONFINED TO BED] and the person
11 is likely to

12 (A) remain subject to the medical condition [BE CONFINED
13 TO BED] throughout the entire period of parole; or

14 (B) die from the medical condition;

15 * Sec. 4. AS 33.30.011 is amended to read:

16 Sec. 33.30.011. Duties of commissioner. The commissioner shall

17 (1) establish, maintain, operate, and control correctional facilities
18 suitable for the custody, care, and discipline of persons charged or convicted of
19 offenses against the state or held under authority of state law; each correctional
20 facility operated by the state shall be established, maintained, operated, and
21 controlled in a manner that is consistent with AS 33.30.015:

22 (2) classify prisoners;

23 (3) for persons committed to the custody of the commissioner, establish
24 programs, including furlough programs that are reasonably calculated to

25 (A) protect the public and the victims of crimes committed
26 by prisoners:

27 (B) maintain health;

28 (C) create or improve occupational skills;

29 (D) enhance educational qualifications;

30 (E) support court-ordered restitution; and

31 (F) otherwise provide for the rehabilitation and reformation of

1 prisoners, facilitating their reintegration into society;

2 (4) provide necessary

3 (A) medical services for prisoners in correctional facilities or
4 who are committed by a court to the custody of the commissioner, including
5 examinations for communicable and infectious diseases;

6 (B) psychological or psychiatric treatment if a physician or
7 other health care provider, exercising ordinary skill and care at the time of
8 observation, concludes that

9 (i) a prisoner exhibits symptoms of a serious disease or
10 injury that is curable or may be substantially alleviated; and

11 (ii) the potential for harm to the prisoner by reason of
12 delay or denial of care is substantial;

13 (5) establish minimum standards for sex offender treatment programs
14 offered to persons who are committed to the custody of the commissioner; and

15 (6) provide for fingerprinting in correctional facilities in accordance
16 with AS 12.80.060.

17 * Sec. 5. AS 33.30 is amended by adding new sections to read:

18 **Sec. 33.30.015. Living conditions for prisoners.** (a) On and after the date that
19 is two years after the effective date of this Act, the commissioner may not

20 (1) make per capita expenditures for food for prisoners in a state
21 correctional facility operated by the state that exceed 80 percent of per capita
22 expenditures for food that is available to enlisted personnel in the United States Army
23 stationed in the state;

24 (2) provide in a state correctional facility operated by the state

25 (A) living quarters for a prisoner into which the view is
26 obstructed; however, the commissioner is not required to renovate a facility
27 to comply with this subparagraph if the facility is being used as a correctional
28 facility on the effective date of this Act, or if the facility was already built
29 before being acquired by the department;

30 (B) equipment or facilities for publishing or broadcasting
31 material the content of which is not subject to prior approval by the department
32 as consistent with keeping order in the institution and prisoner discipline;

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(C) cable television service other than a level of basic cable television service that is available as a substitute for services that are broadcast to the public in the community in which a correctional facility is located;

(3) allow a prisoner held in a state correctional facility operated by the state to

(A) possess in the prisoner's cell a cassette tape player or recorder, a video cassette recorder (VCR), or a computer or modem of any kind;

(B) view movies rated "R," "X," or "NC-17";

(C) possess printed or photographic material that

(i) is obscene as defined by the commissioner in regulation;

(ii) could reasonably be expected to incite racial, ethnic, or religious hatred that is detrimental to the security, good order, or discipline of the institution or violence;

(iii) could reasonably be expected to aid in an escape or in the theft or destruction of property;

(iv) describes procedures for brewing alcoholic beverages or for manufacturing controlled substances, weapons, or explosives; or

(v) could reasonably be expected to facilitate criminal activity or a violation of institution rules;

(D) receive instruction in person, or by broadcast medium, or engage in boxing, wrestling, judo, karate, or other martial art or in any activity that, in the commissioner's discretion, would facilitate violent behavior;

(E) possess or have access to equipment for use in the activities listed in (D) of this paragraph;

(F) possess or have access to free weights;

(G) possess in the prisoner's cell a coffee pot, hot plate, appliance or heating element for food preparation, or more than three electrical appliances of any kind;

(H) possess or appear in a state of dress, hygiene, grooming, or

1 appearance other than as permitted as uniform or standard in the correctional
2 facility;

3 (I) use a computer other than those approved by the correctional
4 facility; the use of a computer under this subparagraph may be approved only as
5 part of the prisoner's employment, education, or vocational training and may not
6 be used for any other purpose;

7 (J) smoke or use tobacco products of any kind.

8 (b) The commissioner may determine whether the provisions of (a) of this
9 section shall apply to correctional facilities that are not operated by the state and may
10 negotiate with a provider of services for the detention and confinement of persons held
11 under authority of state law under contract or agreement whether the living conditions
12 set out in (a) of this section shall apply to persons held under authority of state law at
13 a facility operated under contract or agreement.

14 (c) On and after January 1, 1998, the commissioner may not allow a prisoner to
15 possess a television in the prisoner's cell if the prisoner is confined in a maximum
16 security facility.

17 (d) The commissioner may allow a prisoner who is not confined in a maximum
18 security facility to possess a television in the prisoner's cell only if the prisoner

19 (1) either is incapable of obtaining or has attained a high school diploma
20 or general education development diploma or the equivalent;

21 (2) is actively engaged in an educational, vocational training, or
22 employment program;

23 (3) has satisfied or is on a regular and current payment schedule for all
24 restitution orders entered by the court as part of the prisoner's sentence and, if
25 applicable, is actively engaged in a treatment plan or counseling, psychiatric, or
26 rehabilitation program ordered by the court or the department as part of the prisoner's
27 sentence; and

28 (4) pays for the expense of providing the television and, in addition to
29 the utility service fee required by AS 33.30.017, pays for the expense of providing any
30 cable television service.

31 (e) The commissioner shall use

32 (1) appropriate technology to screen programs received by prisoners

1 under (d) of this section;

2 (2) Alaska farm products and salmon to the greatest extent practicable
3 for food for prisoners in a state correctional facility operated by the state.

4 **Sec. 33.30.017. Fees for utilities services for prisoners.** (a) The commissioner
5 shall establish a reasonable utility fee for electrical utilities that are used by prisoners
6 who are confined in a state correctional facility.

7 (b) The commissioner shall

8 (1) charge each prisoner who possesses at least one major electrical
9 appliance the utility fee established in (a) of this section; the commissioner may deduct
10 the utility fee monthly from the account established for a prisoner into which money due
11 the prisoner for labor is paid; if a prisoner is indigent, the commissioner shall make the
12 deduction from any amount credited to the indigent inmate's account;

13 (2) if available from legislative appropriation, expend money deducted
14 and collected under (1) of this subsection to offset the cost of the department's utility
15 expenses; the commissioner shall annually report on the amounts that are collected and
16 expended under this paragraph.

17 (c) The provisions of (b) of this section do not apply to prisoners

18 (1) who are

19 (A) developmentally disabled; or

20 (B) severely medically disabled, as that term is defined in

21 AS 33.16.900;

22 (2) who are housed in a mental health unit or psychiatric unit of a state
23 correctional facility; or

24 (3) while placed in a state correctional facility awaiting classification
25 under classification procedures for the purpose of making the appropriate assignment of
26 the prisoner.

27 * Sec. 6. AS 33.30.071(c) is amended to read:

28 (c) Medical services for a prisoner who is unconscious or in immediate need of
29 medical attention before admission to a correctional facility or commitment by a court
30 to the custody of the commissioner of corrections shall be provided by the law
31 enforcement agency having custody of the prisoner. The law enforcement agency may
32 require the prisoner to compensate the agency for the cost or for a portion of the cost

1 of medical services provided for any [A] preexisting medical condition [NOT ARISING
2 OUT OF THE PRISONER'S ARREST].

3 * Sec. 7. AS 33.30.191(a) is amended to read:

4 (a) It is the policy of the state that prisoners be productively employed for as
5 many hours each day as feasible [, NOT TO EXCEED 40 HOURS A WEEK UNLESS
6 OVERTIME HAS BEEN SPECIFICALLY APPROVED BY THE COMMISSIONER].

7 * Sec. 8. AS 33.30 is amended by adding a new section to read:

8 **Sec. 33.30.193. Standard applicable to allowing prisoners access to and use**
9 **of legal reference materials and legal assistance.** If the commissioner imposes a
10 restriction on access to and use of legal reference materials by or legal assistance of
11 a prisoner in a state correctional facility, a court may not enter an order giving relief
12 to the prisoner unless the court first finds, by a preponderance of the evidence, that
13 enforcement or application of the restriction hinders the prisoner from having access
14 to and use of the legal reference materials or legal assistance

15 (1) in order to gain meaningful access to a court for the purpose of
16 challenging

17 (A) the prisoner's conviction or sentence; or

18 (B) the conditions of the prisoner's confinement; or

19 (2) in circumstances in which a state court has specifically determined
20 that a provision of the state constitution necessarily requires a prisoner to have access
21 to and use of the legal reference materials or legal assistance.

22 * Sec. 9. AS 33.30.231(c) is amended to read:

23 (c) Notwithstanding AS 42.20.300 and 42.20.310, in order to preserve the
24 security and orderly administration of the correctional facility and to protect the public,
25 the commissioner shall monitor or record the [MAY AUTHORIZE THE USE OF
26 MONITORING OR RECORDING EQUIPMENT TO LISTEN TO A] telephone
27 conversations [CONVERSATION] of prisoners. The commissioner shall post a
28 [PRISONER INCARCERATED FOLLOWING CONVICTION OF A CRIME, IF A]
29 warning [IS POSTED] by each [THE] telephone informing prisoners [THE
30 PRISONER] that calls [A CALL] may be monitored or recorded. The monitoring or
31 recording may be conducted on all calls or selectively or in some other limited

1 manner as determined by the commissioner to be appropriate. A recording of a
2 telephone call made under this subsection shall be kept confidential, and access to the
3 recording and its contents is limited to persons who are acting within the scope of their
4 official duties and whose access to specific recordings has been authorized by the
5 facility superintendent. A telephone call between an attorney and a prisoner or
6 between the office of the ombudsman and a prisoner may not be monitored or recorded
7 except when authorized by a court.

8 * Sec. 10. AS 33.32.010 is amended to read:

9 **Sec. 33.32.010. Purpose of chapter.** It is the purpose of this chapter to [:]

10 (1) develop and operate agricultural, industrial, and service enterprises
11 employing prisoners under the jurisdiction of the commissioner of corrections;

12 (2) provide realistic work experience and vocational training for
13 prisoners under conditions as much like those that prevail in private industry as possible,
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15 responsibility, acquiring or improving effective work habits and occupational skills, and
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17 (3) operate a work program for prisoners that will be as nearly self-
18 supporting as possible by generating a sufficient amount of money from the sale of
19 products and services to pay all or most of the expenses of the program.

20 * Sec. 11. AS 33.32.015(b) is amended to read:

21 (b) The commissioner of corrections may

22 (1) subject to AS 36.30 (State Procurement Code), use, purchase, lease,
23 equip, and maintain buildings, machinery, and other equipment, and may purchase
24 materials and enter into contracts that [, WHICH] may be necessary for the correctional
25 industries program;

26 (2) provide for prisoners to be employed in rendering services and
27 producing articles, materials, and supplies needed by a state agency, a political
28 subdivision of the state, an agency of the federal government, other states or their
29 political subdivisions, or for use by nonprofit organizations;

30 (3) if the Correctional Industries Commission established in AS 33.32.070
31 approves, employ prisoners to provide services or products as needed by private industry
32 if the services or products have potential for contributing to the economy of the state and

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3 (4) authorize a prisoner to engage in vocational training or in
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25 AS 33.30.017;

26 (5) for the purchase of clothing and commissary items for the prisoner's
27 personal use;

28 (6) [(5)] to pay a restitution or fine of the prisoner ordered by a
29 sentencing court.

30 * Sec. 14. Section 7, ch. 53, SLA 1982, as amended by sec. 1, ch. 25, SLA 1987, by sec. 4,
31 ch. 77, SLA 1991, and by sec. 10, ch. 93, SLA 1995, is amended to read:

32 Sec. 7. AS 33.32 is repealed July 1, 2005 [1999].

House Judiciary Committee

Senate Rules

Re SB 1 No Frills

Paul Sweet

745-2245

Palmton/Wasilla

Wants to know
when hearing

Matsui Li



SENATOR DAVE DONLEY

ALASKA STATE LEGISLATURE

CHANGES IN THE DRAFT CS SB 1 (JUD) PREPARED BY SENATOR DONLEY

- 1) **Representative Rokeberg**
Page 3, Line 21
Delete "90"
Insert "80"

Rationale: Gives the department a higher standard when budgeting for food service costs. In 1995 the Department of Corrections spent \$4.71 per person on food service costs while \$5.91 was spent on per day food service costs at Elmendorf Air Force base. This equates to a 80.5% ratio based on those figures.

- 2) **Representative Croft**
Page 3, line 23 following "the state":
Insert ";

Page 3, line 23 following "state":
Delete "use Alaska farm products and salmon to the greatest extent practicable;"

Page 6, lines 2 & 3 following "this section";
Insert "(2) Alaska farm products and salmon to the greatest extent practicable for food for prisoners in a state correctional facility operated by the state."

Rationale: Section #5 of the bill stipulates that commissioner may not provide certain things for prisoners. In this section however, the language requests the commissioner to use Alaskan products in its food service preparation. This amendment removes this language and places it into a new sub-section of the bill which should make the language easier to read.

- 3) **Representative Croft**
Page 4, line 9 following "or "NC-17""
delete "or that do not have a rating".

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Produced in House

Rationale: Concern is the existing language will be preclude inmates from watching certain movies which have no rating. Another concern raised is whether the language would preclude inmates from watching "home movies". The removal of this language should clear up those concerns.

#4) Representatives Croft & Porter

Page 4, lines 26 - 28

Section (E) of the previous version is broken into two separate sections (sections E & F of this version) which specifically define the prohibition of free weights.

Rationale: Removes confusion whether inmates may have access to free weights in those activities listed in (D) of the section.

#5) Representative Porter

Page 5, lines 14-18

Inserts language which precludes televisions in individual cells in maximum security facilities. Previous language precluded only those individuals classified as maximum custody under AS 33.30.011 (2).

Rationale: clearly defines which prisoners may have a TV in their cell.

#6) Representative Bunde

Page 6, line 6

Delete "The fee may not exceed \$2 a month."

Rationale: Removes the cap on how much the Department of Corrections may charge for fees for utility services. This gives the department the latitude to establish the most appropriate fee and allows them to charge accordingly in future years.

7) Department of Law/Representative Croft

Page 7, Line 17 after the word "prisoner's"

Insert "conviction or"

Rationale: According to the Department of Law a prisoner may gain access to the court to challenge the terms of their sentence and the terms of their conviction. This is a federal constitutional standard.

AMENDMENT

BY REPRESENTATIVE CROFT/#1

OFFERED IN HOUSE JUDICIARY

TO: CSSB 1(FIN) am

Page 4, line 10, following ""NC-17":

Delete ","

Insert ";"

Page 4, line 10, following ""NC-17,"" through line 11:

Delete "or that do not have a rating;"

AMENDMENT

BY REPRESENTATIVE CROFT/#2

OFFERED IN HOUSE JUDICIARY

TO: CSSB 1 (FIN) am

Page 3, line 23 following "the state":

Insert ";

Page 3, line 23 following "state and":

Delete "use Alaska farm products and salmon to the greatest extent practicable;"

Page 6, line 2 following "this section.":

Insert "(f) The commissioner shall use Alaska farm products and salmon to the greatest extent practicable for food for prisoners in a state correctional facility operated by the state."

A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE CROFT #3

TO: CSSB 1(FIN) am

- 1 Page 3, line 24, following "practicable;":
- 2 Insert "when requested by the Legislative Budget and Audit Committee, the
- 3 commissioner shall demonstrate compliance with the requirements of this paragraph;"

AMENDMENT

#4

OFFERED IN THE HOUSE
TO: CSSB 1 (FIN) AM

BY: CROFT

1 Page 7, Line 16 after the word "sentence":

Insert -
or conviction



SENATOR DAVE DONLEY

ALASKA STATE LEGISLATURE

Sponsor Statement
for
Senate Bill 1 (FIN) AM
"The Alaska No Frills Prison Act"

In 1994, voters overwhelmingly adopted the "Rights of Victims of Crime" state constitutional amendment. Before the adoption of that amendment, the state constitution required that prison administration be based on two factors; rehabilitation and protecting the public. The constitutional amendment added additional constitutional mandates to our state's prison system. Criminal administration is now based on five factors including: **protecting the public, community condemnation of the offender, the rights of the victims of crimes, restitution from the offender, and the principal of reformation.**

Last year a similar version of "The Alaska No-Frills Prison Act" passed the State Senate 14-4 and passed State House 26-11 on the last day of session. However the Senate did not take action to concur with changes made to the bill in the House and it did not become law.

Senate Bill 1 seeks to implement the requirements of the new state constitutional provisions in several ways.

Senate Bill 1 protects the public safety by prohibiting participation or instruction in martial arts or any other activity that would facilitate violent behavior. Such activities serve no rehabilitation purpose and can make a prisoner an even more serious danger.

Senate Bill 1 enhances rehabilitation opportunities for prisoners by increasing vocational training opportunities.

Senate Bill 1 helps fulfill the mandate of the new "community condemnation" constitutional language by removing or prohibiting certain luxuries from Alaskan prisons.

Some of the "luxuries" prohibited or removed under Senate Bill 1 include cassette tape players, VCRs and computers in inmate living quarters, premium cable television, and possession of pornographic material.

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Senate Bill 1 (FIN) AM
Sponsor Statement
Page 2

The legislation adds a new cost saving provision by instituting a fee (not more than \$2 a month) for use of electrical utilities. The bill also allows the department to recoup costs for certain health care services provided to prisoners.

Senate Bill 1 will reduce state costs for prisoner medical expenses by requiring inmates to reimburse the state for either the full or partial costs of treatment for any pre-existing medical condition. Also the term "severely medically disabled" is amended by Senate Bill 1 allowing the department greater flexibility in granting "special medical paroles". Parole would only be granted if the inmate's physical ability to commit an offense similar to the offense for which the inmate was convicted or an offense punishable by a felony is substantially eliminated. The parole of only one such prisoner could save the state as much as \$500,000.

The legislation incorporates standards regarding the possession of televisions in inmate's cells which clearly define the circumstances for possessing a television. Inmates who pay for their own television and cable service and are incapable of obtaining or have attained a high school or general education development diploma would still be allowed to possess a television in their living quarters as an incentive for:

- actively engaging in an educational, vocational training, or employment program;
- satisfying restitution orders or complying with a regular and current payment schedule for all restitution orders entered by court as part of the prisoner's sentence and, if applicable, actively engaging in court or department ordered rehabilitation programs.

The legislation removes the prohibition against monitoring phone calls of prisoners in pre-trial facilities, except for calls to their legal counsel. An additional provision mandates that prisoners shall be productively employed for as many hours each day as feasible.

The Department of Corrections has stated that a new prison is needed in Alaska to ease the overcrowding and accommodate Alaska's ever increasing prison population. Unfortunately, past governors and legislatures neglected to address the prison capacity problem. Now, more than ever, Alaskans understand that prison overcrowding is a serious problem. Most Alaskans would support the state building more correctional facilities if they didn't feel that prisons were currently too soft.

Senate Bill 1 is a balanced cost saving proposal in compliance with the Alaska Constitution's requirements for public safety, community condemnation, and rehabilitation.

DD/jja



SENATOR DAVE DONLEY
ALASKA STATE LEGISLATURE

Sectional Analysis
for
Senate Bill 1 (FIN) am "The No Frills Prison Act"

Section #1 - refers to Sections 4-6 of this act as the "Alaska No Frills Prison Act".

Section #2 - provides intent language that conditions in Alaskan prisons not be substantially more favorable than what is required by the Alaska and United States constitutions unless the commissioner of corrections has reasonable grounds to believe that such conditions foster rehabilitative programs and rewards for good behavior.

Section #3- amends the definition of "severely medically disabled" inmates. Parole could granted in instances where:

- 1) the inmate suffers from a medical condition that reduces the likelihood of that inmate committing an offense similar for which the inmate was convicted.
- 2) the inmate suffers from a medical condition that reduces the probability of that inmate committing an offense punishable as a felony.
- 3) the inmate suffers from a medical condition and is likely to suffer from that condition for the remainder of the parole.
- 4) the inmate is likely to die from the medical condition.

Rationale: expands the definition of "severely medically disabled" inmates to allow the Department of Corrections to parole certain inmates. Parole would only be granted under this clause if the inmate's physical ability to commit an offense similar to the offense for which the inmate was convicted of an offense punishable by a felony is substantially eliminated. When the department began "furloughing" individuals under the existing "severely medically disabled" clause, only 5 or so individuals qualified for release. With this expanded definition, the department expects that certain individuals could qualify as "severely medically disabled" saving the state a significant amount in medical costs. The parole of only one such prisoner could save the state as much as \$500,000.

Section #4 - Requires the Commissioner to establish, maintain, operate, and control each correctional facility in a manner consistent with Section #4 of the bill. It also requires the Commissioner to determine who is responsible for medical costs when inmates are provided medical services. Also adds language

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requiring the commissioner to incorporate policies that will protect victims of crime in addition to other existing programs.

Rationale: defines the duties of the Commissioner with respect to section #4 of the bill which places limits on certain luxuries including access to premium cable television, free weights and pornographic material. The section also requires the Commissioner to establish programs to better protect the rights of crime victims.

Section #5 - mandates that the Commissioner shall:

when providing food service, not exceed 90% of what the United States Army expends for food service to its enlisted personnel stationed in Alaska and use Alaska farm products and salmon to the greatest extent practicable.

Rationale: gives the Department clear parameters when budgeting for food services costs. Currently, the Department of Corrections spends less on food service costs per capita than the United States Army. In 1995 the Department of Correction spent \$4.71 per person on food service costs while \$5.91 was spent on per day food services costs at Elmendorf Air Force base.

This section also mandates that the Commissioner may not provide:

- a) living quarters in which the view into the quarters is obstructed; certain state facilities already in operation would be exempt from this provision. Additionally, any facility (built before the effective date of this legislation) acquired by the state in the future would also be exempt.
- b) access to equipment or facilities for publishing or broadcasting material whose content is not consistent with facility guidelines or discipline.
- c) access to premium cable television service.

This section also prohibits:

- a) possessing a tape cassette player or video cassette recorder, or a computer in individual living quarters.
- b) viewing "R", "X", or "NC-17" rated movies.
- c) possessing printed or photographic material which;
 - 1) is defined by the Commissioner as obscene
 - 2) is detrimental to the security, good order and discipline of the institution
 - 3) could be reasonably be expected to aid in an escape or in the theft or in destruction of property
 - 4) describes procedures for brewing alcohol, or making of controlled substances, weapons or explosives
 - 5) facilitates criminal activity or a violation of institutional rules
- d) participating or receiving instruction in any activity, in the opinion of the commissioner, that would facilitate violent behavior.
- e) using or possessing free weights.
- f) possessing a coffee pot, hot plate, appliance, or heating element in their living quarters or more than three electrical appliances.
- g) possessing apparel or appearing in a state of dress that is not consistent with the guidelines of the facility.

- h) using a computer other than those approved by the institution, the use may only be part of an educational, vocational or employment program.
- j) use of tobacco products.

The commissioner determines whether the provisions of this section apply to half-way houses and correctional facilities not run by the state.

On January 1, 1998 the commissioner may not allow televisions in a prisoner's cell if that prisoner has been classified as maximum custody.

The commissioner may also allow a prisoner in a medium or minimum security prison to possess a television in their individual living area as long as the prisoner:

- 1) is incapable of obtaining or has attained a high school diploma or general education development diploma.
- 2) is engaged in a educational, vocational training, or work program.
- 3) has satisfied all restitution orders or is on a regular and current payment schedule for all restitution orders entered by the court and, if applicable, engaged in court or department ordered counseling programs.
- 4) pays for the cost of providing the television and cable service.

Rationale: helps better implement the constitutional standards adopted in 1994 of "community condemnation" and "victim restitution" for penal administration by limiting certain "frills" and making court order restitution to victims.

This language also permits the Commissioner of Corrections to allow television in personal living quarters as an incentive for good behavior. Television is a powerful incentive to motivate prisoners compliance with important rehabilitation programs. Under existing law, little can be done to force inmate compliance with court ordered restitution or rehabilitation programs. The potential removal of a very visible, powerful behavioral reward like television will increase inmate compliance with court orders.

This section also mandates that the commissioner shall charge a fee of \$2 a month for prisoners who possess electrical appliances to help offset the costs of providing electrical utilities. Prisoners who are developmentally disabled, severely medically disabled, housed in a mental health or psychiatric unit or awaiting classification are exempt from this provision.

Rationale: conveys a message to the public that the department is fiscally responsible and makes inmates responsible for themselves.

The Commissioner has two years to implement, following the effective date of this act, all provisions of this section.

Section #6 - allows a law enforcement agency to recoup medical costs for medical services provided to prisoners in their care. The agency may require inmates to compensate the agency for the cost or for a portion of the cost of medical services provided for any preexisting medical condition.

Section #7 - states that it is the policy of the department to have prisoners be productively employed for as many hours each day as feasible.

Rationale: establishes a strong work ethic which will better prepare inmates for their post-institution life. "Reformation" is one component of penal administration used to rehabilitate inmates. This section helps implement this principle by requesting that the department actively employ as many inmates as feasible.

Section #8 - allows the commissioner to limit access and use of legal materials and legal assistance in a correctional facility. The section further stipulates the court may not enter an order to gain relief from such limits without first finding the restrictions hinder the inmate from gaining meaningful access to the court for the purpose of challenging:

- a) the prisoner's sentences; or
- b) the conditions of the prisoner's confinement.

The court may also provide relief to these restrictions if a state court specifically determines that a provision of the state constitution necessarily requires a prisoner to have access to and use of the legal reference materials or legal assistance.

Rationale: places clear guidelines on when inmates may file lawsuits in an effort to curtail "recreational litigation". Numerous states have been facing astronomical increases in law suits filed by prisoners. No monetary damages are awarded in 95% of these suits.

Section #9 - removes the prohibition against monitoring of phone calls in pre-trial facilities.

Rationale: better defines the circumstances in which the department may monitor telephone conversations of inmates. This section would help remove the abuse of telephone systems in pre-trial facilities.

Section #10 & 11 - allows the department, at its discretion, to provide vocational training for inmates.

Rationale: provides vocational training opportunities to those individuals who lack necessary job skills.

Section #12 - states that the commissioner of corrections is not required under this bill to establish or administer a vocational training program under correctional industries.

Rationale: removes liability from the department in situations where it is not possible to provide vocational training programs.

Section #13 - gives the commissioner the authority to collect fees for electrical services as referenced in Section #5 of the bill.

Rationale: conforms with the requirements set out in Section #5 of the bill regarding charges for utilities.

Section #14 - extends the sunset date for the Correctional Industries Program from the year 1999 to the year 2005.

Rationale: allows the department to develop a stable and long range plan to provide more marketable products and work opportunities for inmates.

DD/jja

<u>Institution</u>	<u>TV</u>	<u>Cable</u>	<u>VCR</u>	<u>Books</u>	<u>Magazines</u>
6th Avenue	dayrooms	no	no	5	5
Anvil Mountain	dayrooms	yes (basic)*	no	no limit	no limit
Cook Inlet Pretrial	dayrooms	no	no	5	5
Fairbanks	dayrooms (basic)*	## yes (basic)*	no	5	5
Hiland Mountain	honor status	no	no	limit varies w/program	
Ketchikan	dayrooms	yes (basic)*	no	5	5
Lemon Creek	dayrooms ⁴ buy own	yes (prem)	no	10	
Matsu Pretrial	dayrooms	no	no	5	5
Palmer (medium)	honor status	no	yes	varies	varies
Palmer (minimum)	buy own	yes (prem)	yes	varies	varies
Spring Creek	yes buy own	yes (basic)*	no	10	10
Wildwood	yes buy own	yes (prem)	no	no limit	no limit
WW Pretrial	## dayrooms	no	no	5	5
YKCC (Bethel)	## Dayrooms	yes (basic)*	no	5	5

* basic cable is used at these sites because broadcast tv is either unavailable or unable to penetrate the structure of the facility.

~~NB: One inmate at FCC has his own tv by court order.~~

BY GARRY BOULARD

WHAT'S TOUGH ENOUGH

In response to the public's perception
that prison life is too easy,
new policies are designed
to make life there
as unpleasant as possible.

Alabama hasn't seen anything like it since the heyday of the 1960s civil rights movement: journalists and TV camera crews flying in from all parts of the world, spirited and sometimes angry public debate and well-known civil liberty groups filing lawsuits against the state itself.

But the center of Alabama's most recent cyclone is not the church in Montgomery where Martin Luther King Jr. exhorted his followers to give of themselves for the civil rights movement nor is it Selma where those same followers confronted a violent and bloody local reaction.

Today the controversy in Alabama is about the men in uniforms moving along the state's highways and the chains that bind them: Alabama has reinstated the chain gang, one of the most powerful, and some say brutal, symbols of the Southern past.

The man in charge of the program, Prison Commissioner Ron Jones, says it is all part of an effort to hold down prison costs.

"The tougher prison time gets, the more likely it is that you'll see the number of repeat prisoners decrease," says Jones, who has the solid backing of Alabama's Governor Fob James for his chain gang idea. "And as that number decreases, so will the enormous costs of running our prisons."

CONSTITUTIONAL CHALLENGES

Although Jones' chain gangs have won the enmity of the Southern Poverty Law Center (SPLC) of Alabama, which has filed a class action suit to end them, one other state—Arizona—has also brought back chain gangs. And Florida is planning a similar effort next year.

Of course, the chain gang concept may prove to be short-lived if the lawsuit against it succeeds. Rhonda Brownstein, a staff attorney with the SPLC in Montgomery, said she expects the courts to prohibit such prison practices because they are a form of 'cruel and unusual punishment' that is unconstitutional under the Eighth Amendment.

Brownstein said the SPLC suit would also challenge, on the same cruel and unusual punishment basis, Alabama's practice of chaining to hitching posts prisoners who refuse to work. "They have just gone way overboard with all of this stuff. I think if we defeat them on it, it will provide a precedent for other states," she said.

But the legal challenges haven't stopped Jones' chain gangs, where prisoners are connected by lightweight leg irons in crews of five as they dig ditches and clean up the debris along the state's highways. There are currently some 800 repeat offenders working on such gangs, but Jones hopes to bring that number up to about 1,200 by the early part of next year.

Because the nation's prison population is growing rapidly, the chain gangs represent only the most recent, if still highly controversial, answer to holding down costs. They also represent a trend toward making life tougher for prisoners as one solution to recidivism.

PRISON POPULATION BURGEONS

Just the sheer number of inmates seems to demand some sort of new approach. As of 1995, the number of people in the nation's prisons topped the 1 million mark, up from about 400,000 in 1984. At the same time, average state spending on "corrections" has more than tripled, from about \$6 billion in 1984 to just under \$20 billion today, constituting nearly 10 percent of the average state's spending in 1994.

And in some states, the growth rate of the prison population has far exceeded that of the general population. The number of

Garry Boulard, a free-lance writer from New Orleans, writes regularly for the Los Angeles Times, the Christian Science Monitor and State Legislatures magazine.

supporting the death penalty and other harsh sentences."

New York's new sentencing legislation, which passed both houses by overwhelming margins in June, redirects nonviolent, drug-addicted inmates to treatment programs. In the process, it will free up at least 3,000 prison beds annually, making it virtually certain now that violent offenders will be imprisoned.

In North Carolina, concerns about prison overcrowding and budget busting prompted the General Assembly last year to pass a measure by Representative Phil Baddour that balances the number of people sentenced to prison with the actual number of available prison bed spaces. Using a "felony punishment chart," judges under the new legislation determine, among other things, the seriousness of a convict's crime, his past criminal record and then how much prison space is available.

Now in North Carolina, violent and repeat offenders are automatically incarcerated, while first and second offenders who committed certain nonviolent felonies might be given suspended sentences if they complete such alternative punishment as boot camp, house arrest or intensive probation.

Baddour—ironically defeated in 1994 by an opponent who portrayed him as soft on crime—said his measure was an attempt to punish violent offenders while keeping an eye on rising prison costs. "Once you have the decision that first-degree murder is at the top and way down at the bottom is an infraction like jaywalking, with a lot of stuff in between, you can rank crimes according to their seriousness and then see how much prison space you have left," he said.

Similar presumptive sentencing rules, which are essentially devices to gain control over the nation's rapidly escalating prison popula-

tions, have been enacted in 17 other states.

But Charles Logan, a professor of sociology at the University of Connecticut and author of *Private Prisons—Cons and Pros* thinks the states can afford to build more prisons and house inmates longer if they adopt what he called a "cost benefit analysis frame."

"There should be with prison policy an estimation of the costs and payoffs," Logan explained. "But that does not necessarily mean that you would have less use of prisons. It might mean instead that the states simply will become more cautious in using their prisons too broadly."

DIVERGENT VIEWS ON TOUGH TIME

There are, of course, widely divergent views on the wisdom of making prison life harder and longer, even for the most dangerous convicts. Many lawmakers, alarmed over what they see as rising crime rates in their own districts, believe prisons should be as brutal as possible. "The people who run the prisons want happy prisoners. I want prisoners to be so miserable that they won't even think of coming back," said Representative Mark McInnis of Mississippi, where lawmakers last year in a special session voted to prohibit inmates from possessing or using weight equipment, compact disc players and televisions among other items. Lawmakers also approved a measure requiring inmates to wear striped uniforms with the word "convict" showing clearly on their backs.

Others believe the "get-tough" prison reform approach is a smoke screen that only hides a bigger problem that the states simply cannot afford—more and more prisoners and prisons. "I think you have to wonder at some point where it is all going to end," said Jenni

Gainsborough, a spokeswoman for the National Prison Project of the American Civil Liberties Union, who believes states should concentrate more on alternatives to prison. "Do we just keep packing them in or do we try to find some sort of alternative? Surely, any rational person can see that the present trends simply can't continue."

Jim Gondoles, executive director of the American Correctional Association, thinks the only way to approach prison issues today is comprehensively, taking into consideration the seriousness of an inmate's crime and the probable effects of both increased punishment and tougher prison time and rehabilitation. "If you don't include other things in your approach, things like education and skills classes or even drug rehabilitation, then you're not taking a balanced approach and it is going to show in the results—prison violence, which is costly to the state, and a much higher rate of recidivism, which is also expensive," Gondoles said.

Tilman Bishop, a Colorado senator who introduced a bill taking away privileges from inmates who file frivolous lawsuits, thinks prisons will become more severe places because of a growing perception among the public that violence and crime are worse than before. "There is a concern that crime is out of control and that the people responsible for it come to prison and live the

1996

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PRISONS GO PRIVATE

prisoners in Florida, for example, has more than doubled from 26,000 in 1984 to nearly 56,000 last year. Missouri's prisoners went from 8,300 a decade ago to more than 17,000 today, while New York's inmate numbers grew from over 30,000 a decade ago to nearly 67,000 today.

"Prisons are becoming one of the fastest growing budget items in the states today," said James Wooten, president of Safe Streets Alliance in Washington, a group that supports longer sentences for violent offenders and truth-in-sentencing initiatives. "But we are finding that the longer time a violent criminal serves in prison, the far less likely it is that that person will commit the same or a similar kind of crime again. That means, over time, you can reduce your prison costs because you won't be seeing as many repeat offenders."

VIOLENCE REGETS LONGER, TOUGHER TIME

Although many prison officials and civil libertarians dispute the beneficial effects of longer sentences and harsher prison time for repeat offenders, a consensus among the states appears to be emerging: Make those guilty of violent crimes serve longer and tougher time while offering alternative solutions to other types of offenses.

New York may be a case in point. With a prison population of just under 67,000, New York has had one of the largest inmate growth rates in the nation, a 400 percent increase from 1974 when the state housed about 15,000 prisoners. The state's prison budget has also jumped from more than \$4 million annually to more than \$17 million today.

But this spring, Governor George Pataki proposed doing away with a series of 1973 laws enacted by then-Governor Nelson Rockefeller that mandated stiff prison sentences for drug offenders.

"Pataki's proposal was an absolute breakthrough for us," said Charles "Skip" Carriere, a spokesman for Assembly Speaker Sheldon Silver. "We had been trying for years to get sentencing reform through the Legislature, but because it was a conservative, tough-on-crime Republican who broached the idea, we finally reached an agreement."

Indeed, after Pataki's proposal was first aired, Robert Gangi, director of the Correctional Association of New York, told *The New York Times*, "It's another case of the Nixon-going-to-China syndrome. Pataki is considered a hard-liner, if you will, a hawk, on those issues. He's already proved his stripes by

increasingly, privatization is being seen as an alternative to the traditional publicly run prison, offering a possible way to accommodate current calls for incarceration while keeping prison costs down.

"Privatization is increasing by about 25 percent to 30 percent a year," said Charles Logan, a professor of sociology at the University of Connecticut, "even though it is still only a small percentage of the national total." The number of privately run prison facilities has jumped from less than five a decade ago to more than 30 today, according to a study by the Center for Law and Democracy in Washington, D.C. The inmates they house have increased from about 2,000 a decade ago to just under 50,000 today. That number is expected to rise to 65,000 by 1996.

"The private sector can do it less expensively because its motivation is entirely different," said Richard Crane, an attorney in Nashville, Tenn., and former counsel for the largest prison privatization firm in the country, Corrections Corporation of America.

Crane argues that because showing a profit is the only thing that matters to business, private prisons are more likely to be cost-efficient and able to do more with less money. That argument has proved so persuasive that Corrections Corporation now runs four prisons in Texas where it has entered into contracts with the state government promising to keep costs 10 percent below previous state-run prison budgets.

A recent study by the Tennessee General Assembly appears to support Crane's argument. Comparing two similar prisons in neighboring South Carolina, both built at the same time and each housing just over 1,000 inmates—one publicly run, the other private—the study concluded that the privately run prison cost \$150,000 less a year in operational costs than its public counterpart.

Privatized prisons have also won high marks from lawmakers and even prison advocacy groups for working with inmates to resolve conflicts and iron out complaints and problems before they lead to larger and sometimes deadly disputes.

Some experts believe that private management can also respond more effectively to the get-tough approach if that means keeping prisoners incarcerated for longer periods of time. "The longer you keep an inmate in prison, the

more expensive it gets," said Charles W. Thomas, director of the Private Corrections Department at the University of Florida. "So, in that sense, I think privately run prisons can respond in a more cost-effective manner to the get-tough movement."

Thomas also contends that, as the get-tough movement produces more prison facilities, private management may also be seen as a more viable alternative simply because "the private sector has a much smaller lag time between the awarding of a contract to build a new prison and actually opening it, than the public sector does. On average, private prisons are up and running in about 12 to 18 months, while it may take up to 36 months for the public sector to do it."

But Crane, among other privatization supporters, opposes much of the new prison reform legislation coming from the states. "It's a bad management device," he said. "If you take away things like TV and weights and smoking from an inmate, you've essentially taken everything away from him—and that means this person is going to be a whole lot harder to control."

Of course, not everyone agrees that private prisons are the best way to go, with or without a get-tough movement. Jim Schmitz with the American Federation of State, County and Municipal Employees faults private prisons for their "high employee turnover rates." Said Schmitz: "That is one of the pitfalls when all you do is think about the bottom line and saving money. You end up with a large number of underpaid employees in high-stress jobs who are frequently leaving. Because public employees get higher wages and benefits, they tend to stay with their jobs in prisons longer, which is less expensive overall."

Professor Logan, however, thinks private prisons can be both cost effective and tougher.

"The solution is to make things more strict, but not necessarily more harsh," he said. "If tougher prison time means less probation and parole, less discretionary release, all of which move in the direction of making the system more fair and consistent, then private prisons are a better way to go because one of the things they are most concerned about is having things run smoothly. They have proved that they can be tough, without inciting the prisoners to riot, which is a pretty important thing."

good life," said the Colorado Republican, whose measure was overwhelmingly approved by the legislature last spring. "It is now up to us as lawmakers to address those concerns and see what needs to be improved upon or taken away or just changed."

Legislatures in more than a dozen states including Arizona, Mississippi, Texas, California and Michigan have passed or introduced measures reducing prisoner access to weight lifting equipment, television and telephones. In this effort, though, the states may be taking their cue from federally managed prisons. According to a recent survey conducted by the Corrections Compendium, roughly 60 percent of all federal prisons have eliminated some prison privileges.

That survey, in fact, showed that state prison systems in Oregon, Texas, Kansas and Utah have even banned smoking in their facilities while California, Idaho, Michigan, Oklahoma and South Dakota have restricted smoking to designated areas of prison property.

And nearly all federal and state prisons are being affected this year by the loss of Pell grants for prisoners who want to take college classes. In 1994, more than 28,000 inmates received such grants nationally for programs in paralegal training and computer technology. This year, as part of President Clinton's Omnibus Crime Bill of 1994, that funding has dried up and most of the programs in the prisons have ended.

Even in Alabama, where the chain gangs would seem to offer the ultimate "get tough" solution, new policy is designed to make life as unpleasant as possible. "We work these men 12 hours a day, 60 hours a week and they have to do it," said Commissioner Jones. "And during that time they have none of the privileges enjoyed by the other prisoners—no television, no telephone, no basketball, no visitors."

Jones also thinks his get-tough approach could prove to be more economical. Already, through staff layoffs and scaled-down programs, Jones estimates that he's reduced the average costs per prisoner in Alabama from \$9,500 in 1994 to \$9,000 this year, which is substantially lower than the national per inmate cost of about \$16,000. "And I think we can get it down to about \$8,500 by 1996," he added.

But not all states want to duplicate Alabama's example. Prison officials worry what the effects of harder time might be from a management perspective. Even within Alabama there is opposition. "We are right now on the verge of a major riot," said Alabama Representative John Rogers. "And it isn't just the prisoners who are angry. The staff workers are also demoralized. They are being ordered to push and push, even though they know it could result in violence that will hurt them too."

Still others worry that state spending on prisons shows no end in sight. "We can continue to move in this direction, but, if we do, we have to realize it is going to cost more and more," said Professor Logan. "We have to be willing to make a large

commitment that we will not see any benefits from in a long time."

But in the absence of any other sure solutions, that commitment may prove easier to make than many imagine. "If anyone has a better approach to all of this than we do, I wish he'd come forward—because none of us has a perfect solution," said McInnis of Mississippi. "We're just trying to battle crime the best way we know how by showing that if you're going to commit a crime, you're going to have to pay for it. I don't know any other way to go about it." ■

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Jailhouse CROCK

Today's prison inmates are flooding the courts with suits designed to kill time, improve prison life—or just plain annoy the hell out of the rest of us.

He preferred chunky-style peanut butter. He got a sandwich made with creamy. So he sued....

He wanted to attend church service naked. The warden said no. So he sued....

His entire adult life he'd been dealing heavy drugs. Now people were forcing him to stop. So he sued....

THAT THE above lawsuits were filed at all seems absurd enough. What's truly mind-boggling to many observers is that these lawsuits are among the tens of thousands filed each year from inside prison.

And at guess-who's expense.

"This is one of the most under-recognized problems in criminal justice today," says James Gomez, who, as director of California's Department of Corrections, supervises the state's massive prison network. "These suits create an administrative logjam and drain the system of funds."

The number of suits has soared from a few hundred per year in the 1960s to some 50,000 in 1993 (the last year for which figures were available). Far from being just another of life's harmless outrages, the flurry of prison lawsuits has far-reaching side effects. Like a malignant cancer, the bogus actions crowd out other types of claims, forcing people with legitimate complaints to wait many extra months for their day in court. In the federal courts of Arizona and Iowa, prisoners account for 48 percent of all civil litigation; Missouri and Arkansas check

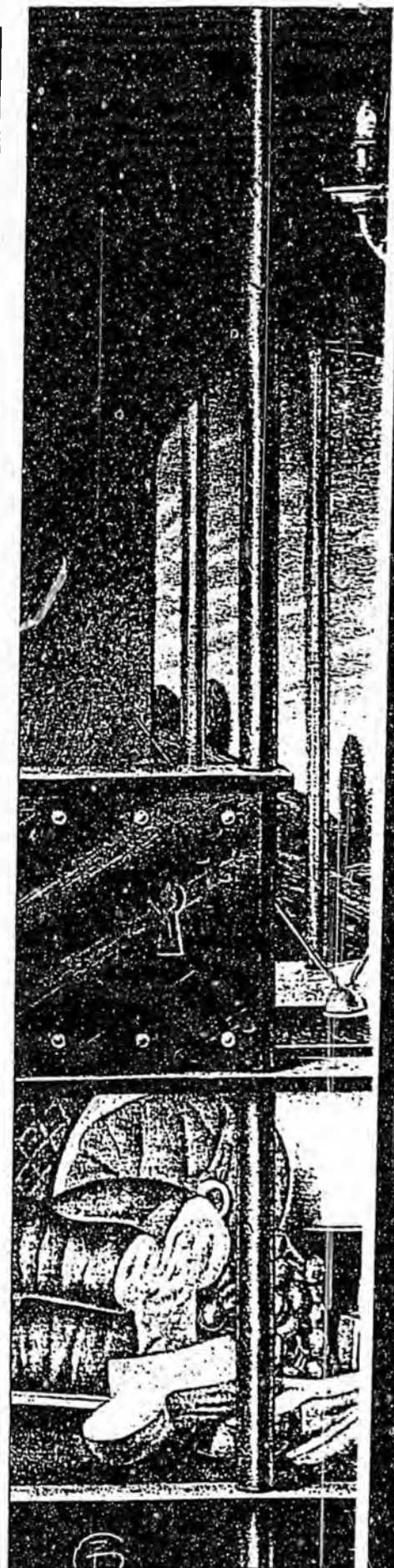
in at 46 and 42 percent, respectively. At one point in mid-1994, Illinois had over 1,200 ongoing cases.

Defending the suits requires an enormous withdrawal from already overburdened state treasuries. Former New York Attorney General Oliver Koppell once estimated that a fifth of his departmental budget went toward prisoners' lawsuits. This, in turn, has a direct bearing on the number of new cases that are plea-bargained or shelved entirely because the legwork to pursue them is not considered cost-effective. The upshot? "Dangerous thugs go back on the streets much sooner than they ought to," noted Koppell.

Once law-enforcement budgets are stretched to capacity, the money to fight jailhouse lawsuits must be siphoned out of general funds. When this happens, the pinch is felt everywhere. Florida's efforts to rebuild from Hurricane Andrew were hampered, at least in part, by the need to divert increasing sums to the processing of lawsuits brought by its inmates, according to Kim Tucker, a senior attorney who has overseen many of the cases on Florida's behalf.

The fact that many of the suits are dismissed or decided in the state's favor is beside the point. "For us and the taxpayers the cost is the simple fact of litigation—the actual running of the lawsuits through multiple years in court," says Tucker. "Even where we win, we lose." On average, each action ends up costing Florida taxpayers \$50,000.

"The things that really are important to the good citizens don't get done



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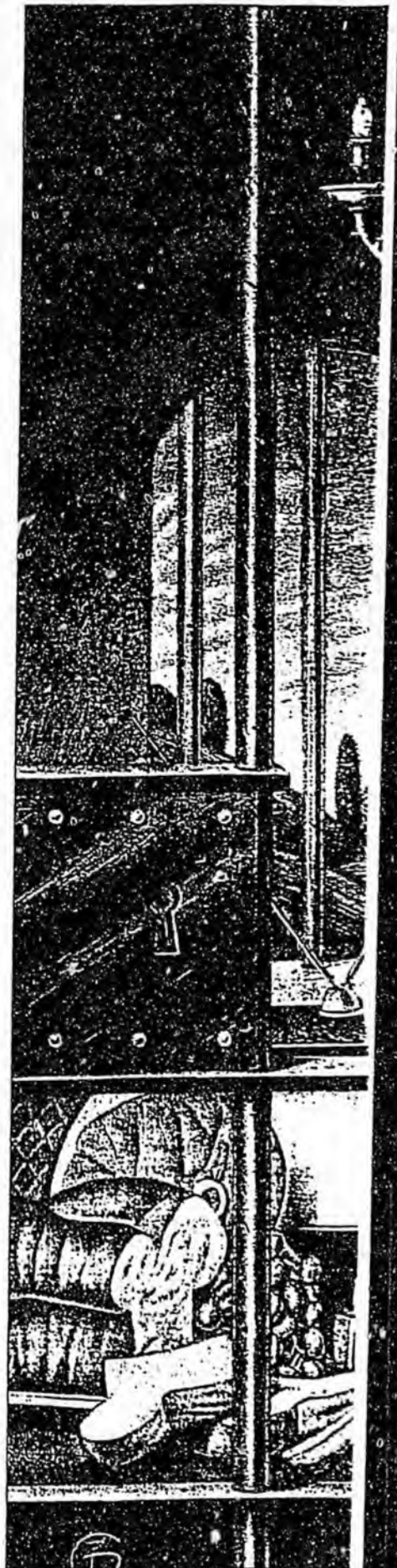
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"The things that really are important to the good citizens don't get done





because of some clown down at the prison who raped your sister, abused your daughter, robbed your store," says Arizona attorney general Grant Woods. "We thought we put them away to protect society, but they're still ruining things for everyone else."

MUCH of the litigation is generated by lifers or men on death row—cons who have little or nothing to lose by jamming court dockets with an endless stream of paperwork. (Inmates with a shot at parole are less likely to make waves for fear of being labeled troublemakers.) These convicts file suits simply to kill time or alleviate boredom. "[Filing lawsuits] gives them an opportunity to travel outside the prison system," says California's Gomez. "They may get to visit different cities, stay in hotels, do things they'd normally never have a chance to do. At the very least, they get to leave the grounds to attend court."

For others, glamour plays a role. If the case catches the eye of the media, reaches the appeals stage, or changes prison policy, the convict wins celebrity status. Sometimes a suit filed from prison ends up rewriting the law. The best-known examples are *Escobido* (where suspects won the right to have counsel present at questioning) and *Miranda* (the case that inspired

the familiar litany of "rights" now read to someone upon arrest).

Granted, the legislation resulting from those cases is considered an important addition to civil rights. But too often the men at the heart of such cases become jailhouse legends whose crimes, and victims, tend to be forgotten.

Even when the results are less dramatic, the suit can pay huge chest-thumping dividends. For many cons, lawsuits constitute payback time, an opportunity to turn the tables on cops, guards, wardens and others who enjoy authority over them.

"They want to stick it to the system," says Nevada Attorney General Frankie Sue Del Papa, citing actions that frivolously hinged on the shape of
Please turn to page 51

WHAT THEY SUE FOR

- Special meats and shellfish
- Access to automobiles
- Premium mattresses
- Controlled substances
- Chunky-style peanut butter
- Male strippers and prostitutes
- Salad at lunch
- Better shoes and clothing

JAILHOUSE

Continued from page 33

a birthday cake or the color of a pair of prison-issued long johns.

"We've had one inmate state publicly that his purpose was to break the State of Nevada." In 95 percent of the cases, these "frequent filers" get no damage awards for themselves, says Del Papa, "so that tells you something about their motives. It's recreational litigation."

According to a special report by ABC's *20/20*, the modern-day record for jailhouse litigation is held by Florida's Robert Procup, who has filed more than 300 nuisance lawsuits costing the state a total of some \$15 million. Procup, serving a life sentence for killing his business partner then cementing him into a storage cubicle, has sued because he didn't get a salad at lunch; because his shoes wore out; because he didn't have a TV in his room.

Of course, some convicts have a more pragmatic agenda: making their prison stays more comfortable by enhancing the "country-club" atmosphere that has taxpayers up in arms. A sampling of the top items on the cons' wish list:

Expanded conjugal-visit privileges. One prisoner successfully sued to have his trysts at a local hotel because he felt the accommodations provided by the prison were "not conducive to romance."

Special meals, including costly shellfish and prime cuts of beef. These suits typically are brought on the grounds that standard prison fare is either unhealthy, incompatible with a con's "special dietary needs" or against someone's religious beliefs.

Access to automobiles. An inmate with six months remaining on his sentence sued for the right to drive a car outside the prison compound twice a week. He said he feared that his driving skills had deteriorated markedly during his seven years in prison, and he didn't want to be a "public menace" once he got out. He won his case, provoking actions by other inmates suddenly concerned about their driving.

Controlled substances. Some inmates have had success demanding powerful prescription narcotics like Percodan and Demerol to treat a variety of dubious medical conditions. Says one bemused jailer, "We end up

handing them stuff for free that's better than what they had to steal on the street!"

And so it goes. Unhappy with being dubbed "the B.O. bandit" by the FBI, a bank robber sues the agency for defamation of character. A convicted child molester goes to court because prison officials wouldn't let him receive a publication glorifying sex between adults and children. Another con alleges brutality after a guard conks him with a flashlight; what the con neglects to mention in his complaint was that at the time of the incident, he had just stabbed the guard with an ice pick. An Indianapolis man sues to collect the life-insurance proceeds of the woman he was sent to jail for murdering.

"The audacity of some of these characters is amazing," says Sam Knott, a leading voice in the victims'-rights movement since his daughter was murdered in 1986. "They're turning hard time into play time, and we're letting them get away with it."

THE OBVIOUS question is *why?* Why do we sit still for it? "The Constitution is on their side," explains eminent San Diego appeals court Judge Richard Huffman. "The right to bring suit for some perceived injustice supersedes almost every other consideration."

Several states that tried to plug the dike by stipulating that no prisoner be allowed to have more than two suits pending at one time saw their meager efforts run aground in the higher courts. When Florida sought relief from Robert Procup's nonstop litigating, the state's position was upheld in the lower court, then overturned on appeal.

Making matters worse, the normal constraints that work to mitigate this syndrome in society-at-large are absent in the prison environment. A private citizen who undertakes litigation has to pay filing fees, attorneys' per diems and other associated expenses. Most of us won't stay the course unless the issue is one of grave personal concern. Too, in most jurisdictions, a private citizen faces penalties for bringing frivolous litigation. At the very least, he will be compelled to pay court costs for the other side.

None of this is much of a factor in jail. For convicts, the filing process is as painless as signing an affidavit claiming insolvency. The state waives all fees—and even pays postage. For the same reasons, cons couldn't care less about losing cases. "With nothing

t stake," says Arizona's Woods. "they can go file their lawsuits and who knows, maybe they'll hit the jackpot."

As for legal expertise, the U.S. Supreme Court in 1977 ordered every state prison to provide inmates access to an up-to-date law library. As one attorney general laments, "Prisoners in this state have a better law library than I have in my office." Incoming prisoners are shown the ropes by seasoned cons who practically live their lives studying case law. The savvy old-timers circulate standardized legal forms, teaching novices to simply white out the name of the previous litigant and fill in their own name wherever applicable.

The result is a system turned on its ear. As one state attorney general puts it, "The worst of the worst in our society get special privileges across the board."

Recently, high-ranking officials of several states hardest hit by prison litigation formed a task force. Their activities show some early promise. Now, at least in a handful of jurisdictions, if the court decides that a suit is frivolous—as in the case of the inmate who tried to sue because he didn't get his dental floss—officials can dock the inmate's so-called good time. Nevada officials have come up with an "early intervention" approach where the courts take a preliminary peek at the case to determine if it's off the wall. Del Papa also is hopeful about new federal legislation, the Prison Litigation Reform Act, that was wending its way through Congress at press time. Sources in the Nevada attorney general's office said in early January that the legislation had passed the Senate and was temporarily stalled in the house. (The bill had been attached to budget legislation and thus got bogged down in the partisan give-and-take over the government's balancing act.) The legislation came out of several meetings Del Papa and some of her disgruntled colleagues have had with Utah Sen. Orrin Hatch and others sympathetic to the problem.

Meanwhile, things get curiously and curiously. Prison administrators are wringing their hands over a landmark June 1994 Supreme Court ruling that animal sacrifice is legal, so long as it's part of a religious ceremony. Presumably it's only a matter of time before prisoners start asking for live goats to kill, and the knives to kill them with.

At some point, concludes Sam Knott, "we as a society better say, this bull must stop."

—By Steve Salerno

Copayment System Reduces Sick Call Visits in Kansas

The Kansas Department of Corrections has a contract for medical services with a private provider at an annual cost of roughly \$16.6 million. So when it implemented a system of copayments for its inmates, the DOC didn't expect those copayments to offset the costs of the medical contract. But it did want to put individual inmates in a position of accountability and responsibility for their decisions to visit sick call.

In the year since the \$2 copayment for a visit to a primary care provider was implemented, the DOC has seen a significant reduction in the number of sick call visits it experiences each month.

"In fiscal year 1994, the Department experienced an average of 15,172 sick call visits every month," says Bill Miskell, public information officer for the Kansas DOC. "In the first month that we implemented

Savings at a Glance...

Idea: Require inmate copayments for medical services.

Result: Inmates are held accountable for sick calls.

Bottom line: Sick call visits are reduced by 65 percent.

these fees, that number decreased to 5,003 sick call visits."

Although Miskell says that the major costs of medical care in the prison population are not related to sick call visits, they are a very time- and staff-consuming aspect of the operation.

"You're still going to have to treat cancer, AIDS, and other major conditions, but you do limit the number of people who are standing in line waiting to go to sick bay who really don't need to be there," he says. "When inmates only make \$5 a

month, they're going to be less likely to spend \$2 unless they have a real reason to go to sick call."

Miskell stresses, however, that no inmate is ever denied access to medical service because of an inability to pay. If an inmate initiates a visit to sick call but does not have the \$2 for the copayment, they are still able to see the health care provider and the charge is debited to their accounts. In addition, the DOC does not charge inmates when they are referred to sick call by a member of the correctional staff or medical personnel.

Kansas has an inmate population of 7,180 housed in nine facilities throughout the state. Eight of these institutions have medical facilities on-site. The one facility that houses offenders on work-release does not have a medical component and inmates are responsible for obtaining and paying for their own routine medical care.

Copayment for Creature Comforts

In Arizona, inmates who want to watch television or listen to the radio must own their own equipment to do so — because the state no longer furnishes its institutions with these appliances. Now the Arizona Department of Corrections has received legislative approval to start charging inmates a fee to offset the utility costs for operating such appliances.

According to Public Information Officer Michael Arra, this latest fee imposition is a way to defray costs as well to as impose some responsibility on the inmates for paying their own way. Once the initiative is finalized, the DOC will begin to charge a flat fee of \$2 a month for all inmates who own electrical appliances, regardless of the number of appliances they own. Such appliances include television sets, radios, and cassette players, as well as oscillating fans and hair dryers. The fees will be deducted directly from inmate trustee accounts. The legislation that allows these fees to be imposed was enacted in 1995.

"We've done a number of things to convey the message to inmates that they have to learn to take responsibility for themselves as well as to convey the message to the public that we are a fiscally responsible corrections department," says Arra. "The public knows that the Arizona prison system is a place where there are few creature comforts for inmates and a place where inmates have to work and pay some of their own way."

Since October 1994, inmates in Arizona have been required to contribute to their own health care costs through a system of copayments. A self-initiated visit to a health care provider costs an inmate \$3.

According to Arra, the copayment was instituted for several reasons, including reducing inmate abuse of the health care delivery system, placing some ownership for medical care with the inmates themselves, and returning some funds to the general fund to reduce the increasing costs of inmate health care.

Arra notes that during the period from October 15, 1994, to June 30, 1995, Arizona collected \$105,700 in inmate medical copayments.

Arizona currently has about 22,000 offenders incarcerated in its system, the majority of whom have jobs either in prison support operations or in the Arizona correctional industries system.

Prison support jobs pay inmates between 10 cents and 50 cents an hour; prison industry jobs pay slightly more. Inmates who work for industries that are a joint venture with private enterprises are paid as much as minimum wage. These inmates are required, however, to give back 30 percent of their wages for room and board, restitution, family support and mandatory savings.

For more information, contact Michael Arra at 602/542-3133.

IDEAS THAT WORK



On July 8, 1996, at the National Governors' Association Annual meeting, Wisconsin Gov. Tommy Thompson announced the release of *Ideas That Work*, a series of seven publications.

Ideas That Work began last year, when Governor Thompson asked the members of the National Governors' Association to submit programs (current programs or new reforms) that they felt worked in their home state. Subject areas included: Crime/Public Safety; Business/Environment; Self-Supportive (Welfare); Job Creation; Tax Policy; Infrastructure; and Education Reforms.

Ideas That Work has more than 500 ideas from around the country. The cost of a single publication is \$30, or \$180 for a complete volume set. *Ideas That Work* can be ordered at 1-301-498-3738.

State revenues are perched on the edge of a steep and steady decline.

- Do we apply a meat axe approach to cutting the bureaucracy?
- Do we initiate new taxes on Alaskans to sustain state spending at its current pace?
- Or do we initiate reasonable spending cuts now to avoid imposing new burdens on Alaska's citizens?

If you have an idea for Common Sense For Alaska Newsletter, contact Kym Swift at (907) 276-7648

How to keep prison healthy

Inmates in Nevada are required to pay \$4 for initial "walk-in" appointments with institutional physicians, nurse practitioners, dentists, optometrists, or psychiatrists. After health care has been provided, charges are posted to the inmate's account and are reflected in monthly statements sent to the inmate. If an inmate does not have sufficient funds to cover the charges, his or her account is frozen until enough funds are submitted (through work programs) to cover the charge. The collection rate is approximately 52 percent.

Savings have resulted primarily from reduced demand for health care services. Since the program conception, there has been a 50 percent decrease in the demand for health care services by inmates statewide and a 76 percent decrease at the maximum-security prisons.

In Alaska last year, the Department of Corrections spent \$14,739,700 for "Inmate Health Care".

Source: *Managing Prison Health Care and Costs*, National Institute of Justice, May 1995

Money Watch is published quarterly by Common Sense For Alaska
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