

ALASKA LEGISLATURE COMMITTEE FILES 2001-2002 8672

10272 HOUSE JUDICIARY

107

HB

143

Adopted

22-LS0234\F
Luckhaupt
3/14/01

CS FOR HOUSE BILL NO. 143()

**IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - FIRST SESSION**

BY

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVES MURKOWSKI, Dyson

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the deoxyribonucleic acid (DNA) identification registration system."**

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

3 *** Section 1.** AS 44.41.035(b) is amended to read:

4 (b) The Department of Public Safety shall collect for inclusion into the DNA
5 registration system a blood sample, oral sample, or both, from (1) a person convicted
6 of burglary or a crime against a person, and (2) a minor 16 years of age or older,
7 adjudicated as a delinquent for an act that would be burglary or a crime against a
8 person if committed by an adult. The DNA identification registration system consists
9 of the blood or oral samples drawn under this section, any DNA or other blood
10 grouping tests done on those samples, and the identification data related to the samples
11 or tests. Blood samples and oral samples from persons not subject to testing under this
12 section, and test or identification data related to those samples, may not be entered
13 into, or made a part of, the DNA identification registration system.

14 *** Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section to
15 read:

1 APPLICABILITY. Section 1 of this Act applies to all convictions and adjudications
2 as a delinquent occurring on or after the effective date of this Act.

ALASKA STATE LEGISLATURE

Chair:
LABOR AND COMMERCE

Member:
MILITARY AND VETERANS AFFAIRS
COMMUNITY AND REGIONAL AFFAIRS
LEGISLATIVE COUNCIL
JOINT ARMED SERVICES



REPRESENTATIVE LISA MURKOWSKI
Government Hill • Elmendorf • East Anchorage


Session:
ALASKA STATE CAPITOL
JUNEAU, AK 99801-1182
PHONE: (907) 465-3783
FAX: (907) 465-2293
Representative_Lisa_Murkowski@legis.state.ak.us

Interim:
716 WEST 4TH AVENUE
ANCHORAGE, AK 99501-2133
PHONE: (907) 269-0174
FAX: (907) 269-0177

Memorandum

Date: March 19, 2001

To: Representative Norman Rokeberg
Chairman, House Judiciary Committee

From: Representative Lisa Murkowski 

Subject: Scheduling HB 143

MAR 19 2001

House Bill 143, DNA Database, expands Alaska's DNA registration system to include convictions for burglary. National statistics indicate that 52 percent of those who have committed violent crimes have had burglary convictions in their past. There is an alarming correlation between burglary and violent crimes. To date, 24 states include DNA testing for convicted burglars. Expanding Alaska's DNA registry will dramatically impact law enforcement's ability to identify and solve violent crimes.

Enclosed you will find a committee substitute for your consideration, a sponsor statement, and supporting documentation. Please schedule HB 143 at your earliest convenience.

ALASKA STATE LEGISLATURE

Chair:
LABOR AND COMMERCE

Member:
MILITARY AND VETERANS AFFAIRS
COMMUNITY AND REGIONAL AFFAIRS
LEGISLATIVE COUNCIL
JOINT ARMED SERVICES



REPRESENTATIVE LISA MURKOWSKI

Government Hill • Elmendorf • East Anchorage

Session:
ALASKA STATE CAPITOL
JUNEAU, AK 99801-1182
PHONE: (907) 465-3783
FAX: (907) 465-2293
Representative_Lisa_Murkowski@legis.state.ak.us

Interim:
716 WEST 4TH AVENUE
ANCHORAGE, AK 99501-2133
PHONE: (907) 269-0171
FAX: (907) 269-0177

Sponsor Statement

HB 143

“An Act relating to deoxyribonucleic acid (DNA) identification registration system.”

In 1995, the Alaska legislature passed legislation creating the DNA registration system to assist law enforcement in identifying perpetrators of violent crimes. DNA evidence has proven very effective in identifying and convicting violent criminals. All 50 states require testing and storage of DNA profiles for convicted sex offenders.

Alaska's current statute requires DNA testing of sex offenders, and also includes those convicted of crimes against persons to include assault, rape, kidnapping, murder, child sexual abuse, robbery, stalking, indecent exposure, extortion, coercion, and first degree arson. National statistics indicate that 52 percent of those who have committed violent crimes have had burglary convictions in their past. There is an alarming correlation between burglary and violent crimes.

House Bill 143 expands Alaska's DNA registration system to include convictions for burglary. To date, 24 states include DNA testing for convicted burglars. Expanding Alaska's DNA registry will dramatically impact law enforcement's ability to identify and solve violent crimes. I appreciate your considered and favorable support.

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: _____

Bill Version: HB 143

() Publish Date: _____

Revision Date/Time (Note if correction): _____

Dept. Affected: Administration

Title: "An Act relating to the DNA identification registration system...."

BRU: Legal & Advocacy Svc.

Component: Public Defender Agency

Sponsor: Representative Murkowski

Requester: (H) Judiciary

Component Number: 1631

Expenditures/Revenues

(Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OFFPATING	*	*	*	*	*	*

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

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

FUND SOURCE

(Thousands of Dollars)

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

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

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

This bill adds burglary to the list of crimes for which, after conviction, a defendant can be required to give a DNA sample. The bill also allows inclusion of DNA data from missing persons or their relatives and unidentified human remains in the DNA identification system. This bill will most likely have fiscal impact on the Public Defender Agency. Failing to comply with a valid request to provide a DNA sample is already a Class A misdemeanor. See AS. 11.56.760. The Agency is likely to be appointed to represent people accused of this crime.

Currently the Public Defender Agency has few of these cases. If the sampling program becomes more widespread with the inclusion of additional crimes and more samples being requested, more refusals will undoubtedly be prosecuted. In that case there could be a significant fiscal impact on the Public Defender Agency. Over 680 people were arrested for burglary in Alaska in 1999 (Crime Reported in Alaska, 1999, Department of Public Safety).

Prepared by: Barbara Brink, Director

Phone (907) 334-4414

Division: Public Defender Agency

Date/Time April 4, 2001

Approved by: Jim Duncan, Commissioner

Date 4/4/01

Agency: Department of Administration

For distribution information, call the Governor's Legislative Office

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: HB 143
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Dept. of Public Safety
Title: An Act relating to the DNA identification BRU: AST-Detachments
registration system Component: AST-Detachments
Sponsor: Representative Murkowski
Requester: House Judiciary Committee Component Number: 2325

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
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 ()	0.0	0.0	0.0	0.0	0.0	0.0
-------------------------------	------------	------------	------------	------------	------------	------------

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
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 (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill is not expected to have a fiscal impact.

Prepared by: Lt. Steve Dunnagan Phone (907)269-4532
Division: Alaska State Troopers Date/Time 4/4/01 12:00 AM
Approved by: Commissioner Glenn G. Godfrey Date 4/4/01
Agency: Department of Public Safety

For distribution information, call the Governor's Legislative Office

THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES

Study: Many rapists were thieves first

Results may lead to taking DNA for lesser crimes

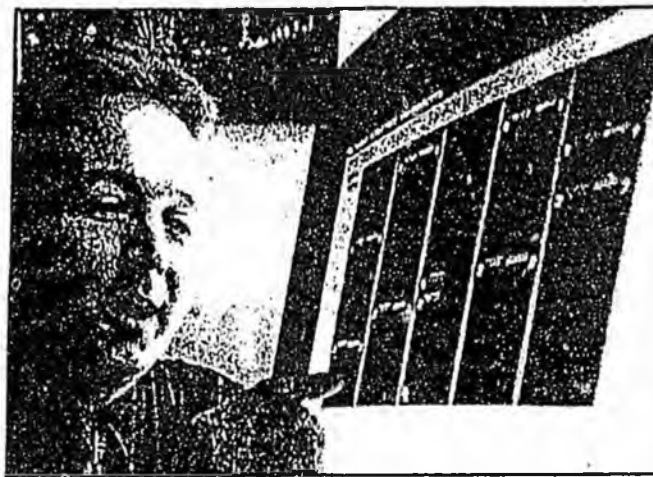
By Richard Willing
USA TODAY

WASHINGTON — At least 40% of men who ultimately are arrested for rape begin their criminal careers with property crimes such as burglary and petty theft, says a study of Virginia's convict DNA database scheduled to be released today.

The Virginia study of 40 rape suspects is the first U.S. analysis of the link between property crime and subsequent sex offenses. It likely will prompt more calls to expand the list of crimes for which DNA is drawn from convicts.

Most of those state databases focus on collecting DNA from violent criminals as a way to quickly identify repeat offenders. But law enforcement agencies and other supporters of expanded databases also want to include non-violent offenders such as burglars. That way, proponents say, more potential rapists would be entered in state DNA databases and matched more quickly to serious crimes.

"To catch those who commit the most serious crimes, you're



By Mark Foley, AP

Statistics show: David Coffman, Florida's DNA database director, says many rapes are "crimes of opportunity."

going to want to collect DNA from those whose crimes at first don't seem so bad," says Paul Ferrara, director of Virginia's DNA database and a study co-author. "In many cases, ultimately they're going to prove to be the same people."

Critics of database expansion say the Virginia study's conclusions are based on too small a group of convicts.

"If you're going to expand databases, you're going to have to be smart about it," says Harlan Levy, a lawyer in New York and author of *And the Blood Cried Out*, a book about using DNA in the courtroom.

"You can't make really broad

judgments based on narrow data," he says.

Virginia's findings echo the results of a British government study from 1998 that found that more than three-quarters of rapists in the United Kingdom were burglars first. In Florida, an ongoing study of that state's sex offenders has found that more than half were previously burglars or petty thieves.

The Virginia study is scheduled to be discussed here today at a meeting of the National Commission on the Future of DNA Evidence.

All states require DNA, the body chemical that carries an individual's unique genetic

code, to be drawn from some convicted offenders. That information is stored on a computer database. Authorities then can check whether DNA taken from crime scenes matches any DNA profile in the database.

All states take DNA, typically in the form of blood or saliva, from convicted sex offenders, and most collect it from murderers. But only seven states do DNA profiles of all felons, including burglars and other non-violent offenders. And lately, state legislatures have resisted efforts to expand DNA databases. This year, 17 state legislatures considered proposals to expand the list of crimes for which DNA is drawn. Eight passed such measures.

Virginia, which began the first state DNA database in 1989, is among the seven states that take samples from all convicted felons.

The study tracked 40 men in Virginia who were matched by DNA evidence to unsolved rape, sodomy or indecent exposure cases from 1993 through 1999.

About 60% were matched because their DNA had been filed after they were convicted of a previous sex offense. But the other 40% were caught because their DNA was on the database for lesser felonies, mainly burglary and larceny.

"If you just (take DNA for) a rape conviction, you're giving someone, in effect, a free rape before they can be put on the database and matched," Virginia's Ferrara says. "But if you include the so-called 'gateway' or 'predictor' crimes, you're much more effective."

David Coffman, Florida's DNA database director, says the data suggest that rapes are often "crimes of opportunity" committed by burglars who find women home alone.

"Anecdotally, police have known this for a long time," says Coffman, who is studying the criminal history of convicts in Florida. "Now we can quantify it and, better yet, do something about it."

Prodded by Coffman's statistics, the Florida Legislature recently added burglary to the crimes for which DNA can be collected.

Jerry Lyell, a defense lawyer in Arlington, Va., criticized the expanded databases as part of a "general trend" among prosecutors to try to convince the public that DNA evidence is "always the be-all and end-all."

"Do we really want every minor offender's genetic code in the government's hands, just because some prosecutor argues that it might help him make a case somewhere down the road?" Lyell asks. "That's asking a lot."

The Nation

States' DNA database laws and 'qualifying offenses'

All 50 states have laws authorizing them to collect DNA from convicts and match it via a computer database to unsolved crimes. All states draw DNA from sex offenders, and most take it from killers. But some states collect DNA from a variety of lesser criminals — robbers, burglars, even white-collar criminals. Types of criminals who may be tested in each state: (Cover story, 1A)

	Sex Offenses	Offenses against children	Murder	Assault/battery	Robbery	Kidnaping	Burglary	Felony attempts	Juvenile	All felonies
Ala.	✓	✓	✓	✓	✓	✓	✓	✓		✓
Alaska	✓	✓	✓	✓	✓	✓		✓	✓	
Ariz.	✓	✓					✓		✓	
Ark.	✓	✓	✓	✓	✓	✓			✓	
Calif.	✓	✓	✓	✓				✓	✓	
Colo.	✓	✓							✓	
Conn.	✓	✓				✓				
Del.	✓	✓						✓		
Fla.	✓	✓	✓	✓	✓		✓	✓	✓	
Ga.	✓	✓								✓
Hawaii	✓	✓	✓	✓						
Idaho	✓	✓	✓	✓	✓			✓	✓	
Ill.	✓	✓						✓	✓	
Ind.	✓	✓	✓	✓	✓	✓	✓			
Iowa	✓	✓	✓	✓		✓	✓			
Kan.	✓	✓	✓					✓	✓	
Ky.	✓	✓								
La. ¹	✓	✓	✓	✓		✓		✓	✓	
Maine	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Md.	✓	✓	✓	✓	✓					
Mass.	✓	✓	✓	✓	✓	✓	✓	✓		
Mich.	✓	✓								
Minn.	✓	✓	✓					✓	✓	
Miss.	✓	✓								
Mo.	✓	✓	✓	✓		✓				
Mont.	✓	✓	✓	✓	✓	✓		✓	✓	
Neb.	✓	✓	✓							
Nev.	✓	✓	✓	✓			✓	✓		
N.H.	✓	✓								
N.J.	✓	✓						✓	✓	
N.M.	✓	✓	✓	✓	✓	✓	✓		✓	✓
N.Y.	✓	✓	✓	✓						
N.C.	✓	✓	✓	✓	✓	✓				
N.D.	✓	✓						✓		
Ohio	✓	✓	✓			✓		✓	✓	
Okla.	✓	✓	✓	✓						
Ore.	✓	✓	✓				✓	✓	✓	
Pa.	✓	✓	✓					✓	✓	
R.I.	✓	✓	✓							
S.C.	✓	✓	✓	✓			✓		✓	
S.D.	✓	✓								
Tenn.	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Texas	✓	✓	✓	✓			✓		✓	
Utah	✓	✓	✓			✓				
Vt.	✓	✓	✓	✓	✓	✓	✓	✓		
Va.	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Wash.	✓	✓	✓	✓				✓	✓	
W.Va.	✓	✓	✓	✓	✓	✓	✓	✓		
Wis.	✓	✓	✓	✓	✓	✓	✓	✓		✓
Wyo.	✓	✓	✓	✓	✓	✓	✓	✓		✓
Total states	50	40	37	28	19	22	18	25	24	7

1 — Beginning Sept. 1, Louisiana is authorized to collect DNA samples from people charged with qualifying offenses.

Alaska Civil Liberties Union

An Affiliate of the American Civil Liberties Union

P. O. Box 201844, Anchorage, AK 99520-1844

Phone: (907) 258-0044 Fax: (907) 258-0288 Email: akclu@alaska.net

To: House Judiciary Committee
From: Jennifer Rudinger, Executive Director
Date: Friday, April 6, 2001

Re: **HB 143: DNA collection from persons convicted of burglary and missing persons/unidentified human remains/relatives of missing persons**

The Alaska Civil Liberties Union opposes HB 143 and respectfully urges the House Judiciary Committee to put an end to the progressive expansion of DNA collection by the government. DNA collected from one person not only reveals personal information about that person (much of which has nothing to do with serving the needs of law enforcement), but it also reveals very personal information about that person's blood relatives. Unlike fingerprinting, which only reveals information that can be used for identification purposes, DNA gives the government control over a great deal of personal, private information about anyone related to the sample source. Therefore, expansion of the government's power to collect DNA from its citizens – even people convicted of crimes – should not be taken lightly. HB 143 proposes to invade the privacy of innocent people, and the government's only justifications are that in Alaska, there is roughly a 6% chance that burglars *might* later commit violent crimes in which they leave DNA evidence at the crime scene or that the DNA "may benefit law enforcement" in its efforts to solve missing persons crimes.

To give the Committee some background, DNA testing and profiling are becoming increasingly more common. States across the country and the federal government are expanding the scope of their DNA data banks as scientific knowledge about the content of this genetic material is growing by leaps and bounds.

In October 1998, the FBI opened a national database that brings together the DNA records from all 50 states and the federal government into one centralized system, known as CODIS (Combined DNA Index System). If this trend is allowed to continue, the most intimate and personal information about each individual could routinely become a matter of public record, to be used and abused at the state's discretion.

Initially, these DNA storehouses were created to house information about convicted sex offenders exclusively. The argument was that sex offenders were especially prone to recidivism, typically left DNA evidence at the crime scene, and hence, were important to identify. Whether or not that argument was sufficient, we were assured at the time that only convicted sex offenders would be tested, and the information gleaned from these tests would be used by law enforcement officials strictly for identification purposes.

But it is often the case that information initially collected for one, limited purpose is before long used for many other purposes. Slowly and inexorably, the pool of people

being tested, and the range of uses for the data, has been expanding, raising grave concerns for personal privacy. In less than a decade, law enforcement officials across the country have gone from advocating collection of DNA from only convicted sex offenders, to all violent offenders, to all burglars, to all persons convicted of any crime, to all juvenile offenders. In many states, the DNA samples are maintained even if a conviction is overturned.

Louisiana has gone a step further. A new state law will collect DNA data from everyone *arrested* for a felony crime -- before they have been convicted. In Louisiana, the record can be kept even if the person is found innocent. Former U.S. Attorney General Janet Reno asked the National Commission on the Future of DNA Evidence to look into the possibility of applying this concept across the country. In December 1998, New York City Police Commissioner Howard Safir jumped on the bandwagon, proposing the same idea. And New York's Mayor Rudy Giuliani not only voiced his support for the proposal, but went so far as to say that he would support the collection of DNA samples from all babies *at birth*, giving the city a genetic database of all its citizens!

The collection of DNA samples and the creation of DNA data banks have legitimate and vital medical, scientific and forensic purposes. Research can lead to treatments and even cures for many genetic diseases. DNA can prove that an individual was at the scene of a crime. It can also prove the innocence of a suspect, preventing terrible miscarriages of justice. DNA can even be used to correct wrongful convictions based upon an erroneous identification (although law enforcement and prosecutors are decidedly less enthusiastic about this use).

But it is equally clear that there is tremendous potential for abuse. The vast amount of information to be gleaned, the incredible longevity of DNA samples, and the ease with which DNA databases can be shared and accessed raise grave privacy, equality and due process concerns. Though DNA has been touted as a high-tech equivalent to fingerprints, this comparison is dangerously misleading. Where fingerprints can be used for identification purposes only, DNA samples can provide insight into a breathtaking wealth of singularly private information -- information about a person's ethnicity, family relationships, family history and the likelihood of getting some 4,000 genetic conditions and diseases. This information belongs to each individual, not the government. Further, geneticists are constantly increasing the database of information that can be gleaned from DNA -- some even claim that there are genetic markers for "criminal tendencies," sexual orientation, substance abuse, etc. The possibilities -- and thus the dangers -- are endless.

Today, the growing law enforcement databases raise the immediate specter of widespread discrimination. Given the over-targeting of Alaska Natives, African Americans, Latinos and other minorities within the criminal justice system nationwide, the government will have the disproportionate power to track millions of people of color.

Now the sponsor of HB 143 wants the Alaska Legislature to expand DNA sampling to include convicted burglars, unidentified human remains, missing persons and relatives of missing persons! It will help identify more violent criminals in the future

or find missing persons, proponents say. Claiming that this is a minor and necessary expansion of the present system, proponents ask, "What's the harm?"

Because genetic information pertains not only to the individual whose DNA is sampled, but to everyone who shares in that person's blood line, potential threats to genetic privacy posed by their collection extend well beyond the millions of Americans whose samples are currently on file. Moreover, there is no requirement in HB 143 or in the Alaska Statutes that the DNA sample from which genetic information is taken be destroyed. It is precisely the availability of these samples lying around that sparks ingenious ideas about new ways to use the information contained in those samples, thus prompting new legislation authorizing ever-increasing numbers of permissible uses for Alaskan citizens' DNA. This allows for the future possibility that all of the information could be used in other ways that we cannot even anticipate today.

For a perfect example of this phenomenon that the ACLU calls "function creep," the Committee needs look no further than this bill. Shortly after SB 99 was introduced in the Senate (mandating collection from burglars only), Rep. Murkowski introduced HB 143 in the House and suggested that the State should not stop at burglars but should go so far as to allow law enforcement to demand DNA samples from anyone related to a missing person if law enforcement articulates even a remote possibility that this information "may benefit law enforcement." In order to allow such government seizure of Alaskans' DNA, the government must demonstrate a much tighter fit between ends and means than simply alleging that it "may benefit law enforcement."

We do not doubt that the sponsors of HB 143 and SB 99 have good intentions. However, once the genie is out of the bottle, so to speak, it can be impossible to close the lid on ever-expanding uses for this technology. Therefore, we urge you to exercise the utmost caution when considering the implications of expanding the State's ability to collect DNA from its citizens. There is a long and unfortunate history of despicable behavior by governments toward people whose genetic composition has been considered "abnormal" under the prevailing societal standards of the day. While the FBI has stated that this information will be used for limited forensic purposes, the history in our country is that information compiled for one purpose will be used for another. For example, Social Security numbers were initially intended only for use as an aid tracking social security payments but are now a universal identifier. Another example, Census records created for general statistical purposes were used to round up innocent Japanese Americans and place them in internment camps during World War II.

Your constituents throughout Alaska are concerned about the government's ever-increasing control over their personal information, and their concerns cross party and ideological lines. The Alaska Civil Liberties Union fields inquiries virtually every week regarding the government's demand for personal information – Social Security numbers, Census information, background checks, DNA and genetic information, etc. Almost every week, Alaskans voice concerns that the government cannot be trusted to keep this information confidential or to limit its use to the initial purpose for which it is given. And we agree. Your constituents are right.

AkCLU Position Paper on HB 143
Page 4 of 4

In conclusion, HB 143 does not "only" affect the person from whom a DNA sample is taken – it affects their relatives, who are law-abiding citizens innocent of any crime. And the government's proposed justification for collecting DNA from burglars just doesn't fly in Alaska. Unlike the other states that law enforcement likes to cite, the Department of Public Safety has conceded that in Alaska, only 6% of burglars ever go on to commit a violent crime – meaning that 94% do not. We should not take DNA from people who have never committed a violent crime on the theory that someday 6% of them *might* commit a violent crime. If so, where will this end?

Please end it here and now. Please do not pass HB 143.

HB

145

HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: March 20, 2001

FURTHER REFERRALS:

Date of Committee Action: 4.23.01

The JUDICIARY Committee considered:

HB 145

HOUSE BILL NO. 145

FALSE CLAIMS AGAINST STATE OR MUNICIPALIT

"An Act making a civil remedy available to the state or a municipality against persons who make false claims for, or certain misrepresentations regarding, state or municipal money or other property; and providing for an effective date."

Recommends it be replaced with CS HB 145 (JUD) Same Title New Title
 For Senate Bills with new title: Technical Title New Title: HCR _____

- attach amendments
- add new referral to _____ Committee
- Letter of Intent _____ Committee

List of
Abbrev.
For
Depts.:

- ADM
- CEC
- COR
- CRT
- EED
- DEC
- DFG
- GOV
- HSS
- LAA
- LAW
- LWF
- MVA
- DNR
- DPS
- REV
- DOT
- UA

<u>NEW FISCAL NOTES</u>				
*For Chief Clerk's Office Use Only				
FN# *	List by Dept(s):	Fiscal	Indet.	Zero

<u>PREVIOUS FISCAL NOTES</u>				
List by Dept(s):	FN #	Fiscal	Indet.	Zero
<u>LAW</u>	<u>1</u>			<input checked="" type="checkbox"/>

<u>Signing with recommendations</u>	Printed Last Name	DP	DNP	NR	AM
<u>John Berkowitz</u>	Berkowitz			<input checked="" type="checkbox"/>	
<u>Kim Meyer</u>	Meyer			<input checked="" type="checkbox"/>	
<u>John Cochill</u>	Cochill			<input checked="" type="checkbox"/>	
<u>Salvatore Kookesh</u>	Kookesh			<input checked="" type="checkbox"/>	
Chair: <u>Nan Rokaber</u>	Rokaber	<input checked="" type="checkbox"/>			
Chair: <u> </u>					

Adopted

Conceptual Amendment #1

Page 4, line 14-15

delete "Ornolo contendere"

Adopted

Conceptual Amendment #2

Page 4, line 17-18

delete "This subsection.... July 1, 2001."

Moved by
Benkowitz
Adopted

Conceptual Amendment #3

Page 3, line 7-8

delete "of this section to an amount
not less than two times the amount of
the damages sustained"

TONY KNOWLES
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

HB145
P O Box 110001
Juneau, Alaska 99811-0001
(907) 465-3500
Fax (907) 465-3532

February 22, 2001

The Honorable Brian Porter
Speaker of the House
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear Speaker Porter:

This bill I transmit today would fill a gap in our statutory law by providing general authority for the civil prosecution of a person who makes a false claim for, or a misrepresentation regarding, money or property against the state or a municipality. The public needs some way of ensuring that persons who make demands on the public treasury by seeking to recover money or property from the state or a municipality are doing so in good faith. The most effective means of doing this is to provide clear consequences for unlawful conduct. This bill would allow for a civil penalty of up to three times the amount suffered as well as court costs and attorney fees from persons who make a misrepresentation or false claim against the state or a municipality.

The bill would provide incentives to cooperate in the prosecution of a misrepresentation or false claim. Also, the bill would apply only to matters involving at least \$500 and would not apply to unemployment, workers' compensation, state tax, public assistance, or temporary assistance claims, or to permanent fund dividend applications. These programs have specific authority elsewhere in statute providing for the prosecution of false claims.

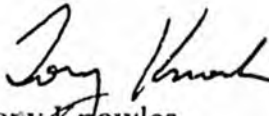
The bill requires the attorney general to investigate misrepresentations and false claims against the state and requires the prosecuting authority for a municipality to investigate misrepresentations and false claims against the municipality. It also provides procedures for circumstances in which both state and municipal money or property are involved and sets a limitation period of 10 years after which suits for misrepresentations and false claims are barred.

HB145

The Honorable Brian Porter
February 22, 2001
Page 2

Nearly all states and the federal government have false claims statutes. It is time that Alaska had similar authority to protect the public treasury from wrongful and fraudulent claims.

Sincerely,


Tony Knowles
Governor

HB 145

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: HB 145
(H) Publish Date: 2/23/01

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
Title "An Act making a civil remedy available to the state BRU Civil Division
... against persons who make false claims for, or certain ..." Component Commercial
Sponsor Rules Committee Governmental Affairs
Requester Governor Component No. 2211, 2207

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
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)

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 (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill provides general statutory authority for the civil prosecution of a person who makes a false claim for, or a misrepresentation regarding, money or property against the state or a municipality. It would allow for damages of up to three times the amount suffered, a civil penalty, and court costs and attorneys fees from persons who make a representation or false claim against the state or a municipality. The new law would not apply to any controversy that involves less than \$500 and would not apply to unemployment claims, workers' compensation claims, state tax claims, public assistance claims, or temporary assistance claims.

Passage of this legislation is not anticipated to have a fiscal impact on the Department of Law. Current law already allows the attorney general to file suit to recover funds illegally paid out by the state or a municipality. This legislation will serve to improve the state's negotiating position in those cases the department would undertake anyway by providing a heavier penalty - the threat of treble damages.

Prepared by: Joan M. Kasson Phone 465-5370
Division Attorney General's Office Date/Time 2/20/01 4:30 PM
Approved by: Kathryn Daughhelee for Bruce M. Botelho, Attorney General Date 2/20/01
Agency Department of Law

For distribution information, call the Governor's Legislative Office

COMMITTEE COPY

STATE OF ALASKA

TONY KNOWLES, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

P.O. BOX 110300
JUNEAU, ALASKA 99811-0300
PHONE: (907)465-3600
FAX: (907)465-2075

March 22, 2001

The Honorable Norm Rokeberg, Chair
House Judiciary Committee
State Capitol
Juneau, Alaska 99801

MAR 23 2001

Re: HB 145 - "An Act making a civil remedy available to the state or a municipality against persons who make false claims for, or certain misrepresentations regarding, state or municipal money or other property."

Dear Representative Rokeberg:

I am writing to request that you schedule a Judiciary Committee hearing on HB 145 - "An Act making a civil remedy available to the state or a municipality against persons who make false claims for, or certain misrepresentations regarding, state or municipal money or other property."

The Department of Law requested that the governor introduce this bill to provide clear penalties and strong incentives to prosecute persons who would present false claims for money or property to the state or a municipality. Existing state law contains authority for the attorney general to file suit to collect money of the state or a municipality that is "illegally paid or . . . diverted for an illegal purpose, or paid to a person not authorized by law to receive them." AS 37.10.090. This statute predates statehood and is in need of updating so that state and municipalities are well equipped to prosecute persons who would obtain money or other public property through fraud or misrepresentation.

Department of Law attorneys became impressed with the need for the law changes offered in this bill during the course of our investigation of the potential claim against the Bank of America. Our attention was initially directed to the Bank of America by the City of San Francisco. The city, the State of California, and hundreds of other municipalities were engaged in litigation filed by the State of California under what is commonly called the "false claims statute." The bank was alleged to have failed to pay the California government entities substantial amounts of unclaimed debt service payments held in trust for bondholders. The case presented great difficulties of proof because the bond

accounting systems of the bank are largely incapable of tracing the unclaimed money held in trust.

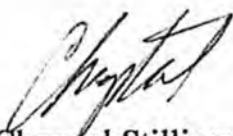
It is strongly believed by counsel to the City of San Francisco and the California Attorney General's office that the threat of treble damages under the false claims statute was the principal motivation for the bank's willingness to settle the case short of litigation.

We recommend that the public finance code would be improved by the addition of a statute similar to the California false claims statute (Cal. Government Code sec. 12652) which is the model we used in drafting HB 145. Similar laws are on the books in many other states and the federal government.

Attached for your information is a summary of the provisions of HB 145. If you would like more information, please let me know.

Sincerely,

BRUCE M. BOTELHO
ATTORNEY GENERAL


By: Chrystal Stillings Smith
Legislative Liaison

Enclosure

Cc: Mike Abbott, Legislative Director, Office of the Governor
Jim Baldwin, Assistant Attorney General
Deborah Behr, Legislation and Regulations Attorney

HB 145 - An Act making a civil remedy available to the state or a municipality against persons who make false claims for, or certain misrepresentations regarding, state or municipal money or other property; and providing for an effective date."

- ◆ Will provide clear penalties and strong incentives to prosecute persons who would present false claims for money or property to the state or a municipality.
- ◆ Existing state law contains authority for the attorney general to file suit to collect money of the state or a municipality that is "illegally paid or . . . diverted for an illegal purpose, or paid to a person not authorized by law to receive" it. The statute that allows this, AS 37.10.090, predates statehood and is in need of updating so that state and municipalities are well equipped to prosecute persons who would obtain money or other public property through fraud or misrepresentation.
- ◆ California has a statute similar to that proposed in HB 145. It was used in a case brought by the City of San Francisco, the State of California, and hundreds of other municipalities against the Bank of America. The bank was alleged to have failed to pay the California government entities substantial amounts of unclaimed debt service payments held in trust for bondholders. The case presented great difficulties of proof because the bond accounting systems of the bank are largely incapable of tracing the unclaimed money held in trust.
- ◆ It is strongly believed by counsel to the City of San Francisco and the California Attorney General's office that the threat of treble damages under the false claims statute was the principal motivation for the bank's willingness to settle the case short of litigation.
- ◆ Alaska's public finance code would be improved by the addition of a statute similar to the California false claims statute, which is the model used in drafting HB 145. Similar laws are on the books in many other states and the federal government.

A summary of provisions of HB 145 is attached.

Summary of HB 145

Section 1: Provides that contract claims against the state will be covered by the false claims penalties in case of fraud or misrepresentation by the claimant.

Section 2:

Creates civil liability for:

- a. presenting a false claim to a state or municipal officer;
- b. using a false record or statement to obtain payment from the state or a municipality;
- c. conspiring to defraud by getting a false claim allowed or paid;
- d. when acting as a custodian of public money or property, delivering less of that money or property to the state or municipality than it is entitled to by law;
- e. making a false receipt for state or municipal property;
- f. knowingly buying or receiving state or municipal property from someone who lawfully may not sell or pledge the property;
- g. making a false record to conceal, avoid, or decrease an obligation to pay or transmit property to the state or a municipality;
- h. failing to disclose the existence of a false claim once the person knows it is false, if the person stands to benefit from the claim.

Establishes the following penalties:

- a. treble damages,
- b. a civil penalty of up to \$10,000 for each fraudulent act; and
- c. Rule 82 attorney fees and costs.

Establishes the following incentives:

- a. damages can be reduced to double the loss incurred by the state, and civil penalties waived, if
 - the person presenting the false claim reports that fact within 30 days after learning of the falsity of the claim;
 - the person cooperates with investigation; and

- no civil or criminal proceedings had been started at the time that the person began cooperating with the investigation.

Certain claims are not covered: The false claims penalties do not apply to amounts less than \$500 or to certain claims presented under

- a. the unemployment insurance statutes
- b. worker's compensation statutes
- c. state revenue and tax code , including permanent fund dividends;
- d. public assistance under AS 47.25
- d. Alaska Temporary Assistance Program

Section 3. Establishes a statute of limitations: six years from discovery, 10 years after commission of fraudulent act.

Establishes the following burden of proof: proof must be by a preponderance of the evidence (51%); proof of a criminal conviction for false statements or fraud stops the defendant from denying the elements of making a false claim in a civil action.

Establishes authority to prosecute: attorney general has power to investigate claims involving state property and the municipal attorney has the power to investigate claims involving municipal property. If the investigation involves a mixture of state and municipal property, notification must be made to the other government involved. Attorney general may proceed with the case or tender it to the municipality.

Section 4. Provides definitions of terms used in statute.

Section 5. Repeals:

- limitation period applicable to contract claims which would now be covered by the period specified in this bill; and
- a provision which specifies how the costs of actions to recover state or municipal property are handled.

Sec. 36.30.687. Misrepresentations and fraudulent claims.

(a) A person who makes or uses in support of a contract claim under this chapter, a misrepresentation, or who practices or attempts to practice a fraud, at any stage of proceedings relating to a procurement or contract controversy under this chapter

(1) forfeits all claims relating to that procurement or contract; and

(2) is liable to the state for reimbursement of all sums paid on the claim, for all costs attributable to review of the claim, and for a civil penalty equal to the amount by which the claim is misrepresented.

(b) The procurement officer, commissioner or court shall make specific findings of misrepresentation, attempted fraud, or fraud before declaring a forfeiture under (a)(1) of this section.

(c) Suits to recover costs and penalties under (a)(2) of this section must be commenced within six years after the discovery of the misrepresentation, fraud, or attempted fraud.

(d) A person who in a matter relating to a procurement or a contract controversy or claim under this chapter makes a misrepresentation to the state through a trick, scheme, or device is guilty of a class C felony.

(e) In this section, "misrepresentation" means a false or misleading statement of material fact, or conduct intended to deceive or mislead concerning material fact, whether it succeeds in deceiving or misleading.

(§ 2 ch 106 SLA 1986)

Sec. 37.10.100. Costs of action and disposition of amount recovered.

(a) The necessary and reasonable costs of the suit and of the additional counsel shall be advanced by the state, and a sum recovered in the suit shall be deposited in the state treasury.

(b) However if the sum recovered belongs to a city, school district, or municipal government, the sum shall be transferred to it, less sums advanced by the state in the suit, and not already repaid to it. The Department of Administration may pay to the city, school district, or municipal corporation the sums belonging to it, upon warrants drawn as provided by law. The warrants must be based upon vouchers approved by the attorney general.

(§ 12-5-2 ACLA 1949)

HB

157

HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: April 20, 2001

FURTHER REFERRALS:

Date of Committee Action: 4.25.01

The JUDICIARY Committee considered:

HB 157

HOUSE BILL NO. 157

TRUST COMPANIES & FIDUCIARIES

"An Act relating to trust companies and providers of fiduciary services; amending Rules 6 and 12, Alaska Rules of Civil Procedure, Rule 40, Alaska Rules of Criminal Procedure, and Rules 204, 403, 502, 602, and 611, Alaska Rules of Appellate Procedure; and providing for an effective date."

Recommends it be replaced with CS HB 157 JUD Same Title New Title
 For Senate Bills with new title: Technical Title New Title: HCR _____

- attach amendments
- add new referral to _____ Committee
- Letter of Intent _____ Committee

List of Abbrev. For Depts.:
 ADM
 CED
 COR
 CRT
 EED
 DEC
 DFG
 GOV
 HSS
 LAA
 IAW
 LWF
 MVA
 DNR
 DPS
 REV
 DOT
 UA

NEW FISCAL NOTES				
*For Chief Clerk's Office Use Only				
FN# *	List by Dept(s):	Fiscal	Indet.	Zero

PREVIOUS FISCAL NOTES				
List by Dept(s):	FN #	Fiscal	Indet.	Zero
<u>CED</u>	<u>1</u>			<input checked="" type="checkbox"/>

<u>Signing with recommendations</u>	Printed Last Name	DP	DNP	NR	AM
<u>[Signature]</u>	<u>Berkowitz</u>			<input checked="" type="checkbox"/>	
<u>[Signature]</u>	<u>Meuer</u>			<input checked="" type="checkbox"/>	
<u>[Signature]</u>	<u>Loahle</u>			<input checked="" type="checkbox"/>	
<u>[Signature]</u>	<u>JAMES</u>			<input checked="" type="checkbox"/>	
Chair: <u>[Signature]</u>	<u>Rokeberg</u>	<input checked="" type="checkbox"/>			
Chair: <u>[Signature]</u>					

Moved
by Rokeberg
Adopted

AMENDMENT #1

OFFERED IN THE HOUSE
TO: CSHB 157(L&C)

1 Page 3, following line 27:

2 Insert a new paragraph to read:

3 "(6) handles escrow transactions and is a title insurance company that
4 has a certificate of authority issued under AS 21.09, a title insurance limited producer
5 that is licensed as required by AS 21.66.270, or an employee of the title insurance
6 company or title insurance producer when acting in the scope of the employee's
7 employment; in this paragraph,

8 (A) "escrow transaction" has the meaning given in
9 AS 34.80.090;

10 (B) "title insurance company" has the meaning given in
11 AS 21.66.480;

12 (C) "title insurance limited producer" has the meaning given in
13 AS 21.66.480;"

14

15 Renumber the following paragraphs accordingly.

16

17 Page 5, line 5:

18 Delete "(a)(1) or (8)"

19 Insert "(a)(1) or (9)"

Moved
by Rokeberg
Adopted

CONCEPTUAL AMENDMENT #2

OFFERED IN THE HOUSE
TO: CS HB 157 (L&C)

BY

Page 5, Line 2, after "settlors"

Delete ";

Insert: "."

Page 5, Line 2, after "settlors"

Insert: "However, the limitation on the number of settlors listed above may be changed by the Dept by regulation or order in accordance with (b), of this section."

Page 5, Line 2

Delete: "in"

Insert: "In"

Page ~~4~~⁵, Line 5, after "(8)"

Insert: or (17)

ALASKA STATE LEGISLATURE

Chair:
LABOR AND COMMERCE

Member:
MILITARY AND VETERANS AFFAIRS
COMMUNITY AND REGIONAL AFFAIRS
LEGISLATIVE COUNCIL
JOINT ARMED SERVICES



REPRESENTATIVE LISA MURKOWSKI
Government Hill • Elmendorf • East Anchorage

Session:
ALASKA STATE CAPITOL
JUNEAU, AK 99801-1182
PHONE: (907) 465-3783
FAX: (907) 465-2293
Representative_Lisa_Murkowski@legis.state.ak.us

Interim:
716 WEST 4TH AVENUE
ANCHORAGE, AK 99501-2133
PHONE: (907) 269-0174
FAX: (907) 269-0177

Sponsor Statement

HB 157

“An Act relating to trust companies and providers of fiduciary services”

At the request of the Division of Banking and Securities, I have introduced House Bill 157, the Revised Alaska Trust Company Act. The purpose of this bill is to update the existing Trust Company Act which has not undergone any major revisions since its adoption during the territorial days of 1949. If enacted, this legislation will be a tool that will enhance the process of formation, operation, supervision and regulation of the trust industry in Alaska.

Recent changes to Alaska trust laws make creation of trust charters in Alaska more desirable. However, the Alaska Trust Act does not provide guidance as to who or what needs a charter, nor guidance for the formation and organization of a trust entity, or provisions for permissible activities including interstate or intrastate business expansion.

The bill repeals existing AS 06.25 and replaces it with AS 06.26 ‘Providers of Fiduciary Services.’ This chapter clarifies who may provide fiduciary services in Alaska, expands on who may be a trust company, what their powers may be, and covers specific items such as certificate of authority, required capital, operations of offices, and the like.

I have worked with local trust companies, trust attorneys and the Division to formulate this legislation. This bill meets the needs of the Division to adequately regulate new and existing trust companies and also for those providing fiduciary services without being a burden to their overall business activities. I urge your support of this legislation.

Overview of HB 157

The language in the current Trust Company Act (the Act) dates back to 1949 and is virtually unchanged since. The current statute, it is not a functional act.

In the past 12 years the division has chartered only two trust companies, both of which were organized within the past 3 years. During this process it became apparent that the Act was lacking in many respects. For example, the Act includes no guidance as to who needs a charter, has minimal guidance with respect to permissible activities, and has no provisions for interstate or intrastate business expansion. In most instances the division had to improvise by using the processes of the Alaska banking code (AS 06.05) for guidance in the formation and organization of the trust companies.

In recent years, many states have rewritten their existing trust company acts. The process leading to this bill included receiving acts from several states and a draft of a uniform trust company act provided by the Conference of State Bank Supervisors. In addition, the drafts of the bill were reviewed by, and comments were considered from, the Alaska trust industry, attorneys in the trust field, and several CPAs.

Alaska's laws, concerning trusts, have undergone many changes, enhancing the desirability of a trust charter in Alaska. This bill, if enacted, will be a tool that will enhance the process of formation, operation, supervision and regulation of the trust industry in Alaska. The bill will establish a new chapter (AS 06.26) and will repeal the current act (AS 06.25).

Section 1

Section 06.05.235(g)

Technical amendment to change reference from the old trust act (AS 06.25) to the new trust act (proposed AS 06.26).

Section 2

Section 06.26.010

Specifies who is authorized to act as a fiduciary.

Old law did not authorize who may act as a fiduciary.

Section 06.26.020

List specifies persons that are exempted from chartering requirements when acting as a fiduciary.

Old law did not provide for exemptions to acting as a fiduciary, nor did it define who was authorized to act as a fiduciary in the first place.

Section 06.26.030

Authorizes a trust company that has an office or branch established under this chapter to act as a fiduciary in this state, another state or another country, and to conduct any activities in offices outside of Alaska that are not prohibited by this chapter and are permitted by the host state.

Old law did not provide for in state or interstate branching unless the trust company also had banking powers.

Section 06.26.040

Prohibits any person from using the words "trust" or "trust company" unless authorized to act as a fiduciary under this chapter and grand fathers names in use prior to the enactment of this bill.

Old law did not prohibit using the words "trust" or "trust company" which could convey the impression that a person is acting as a fiduciary.

Section 06.26.050

Grants various powers to a trust company and defines a "national bank exclusively exercising trust powers" as a person issued a charter with trust powers only from the Office of the Comptroller of the Currency.

Old law was similar, but more restrictive.

Section 06.26.060

Permits one or more persons to organize a trust company.

Old law required 5 or more persons to form a trust company.

Section 06.26.070

Requires a trust company be incorporated under AS 10.06 with additional specific requirements and requires a minimum of 5 directors and a maximum of 25 directors.

Old law required incorporation under AS 06.05, the Alaska banking code, and limited the maximum number of directors to 15.

Section 06.26.080

Provides procedures to amendments to the trust company's articles of incorporation by a vote of shareholders representing a majority of the capital and that they become effective 61 days after filing unless the department specifies otherwise.

Old law was similar but did not contain time constraints for action by the department.

Section 06.26.085

Prohibits a person from acting as a trust company until they have received a certificate of authority from the department.

Old law was similar.

Section 06.26.090

Specifies the procedures, requirements, and restrictions to apply for, and to receive, a certificate of authority to act as a trust company in Alaska.

Old law was similar, but provided less guidance and was less restrictive.

Section 06.26.100

Requires department to notify organizers of proposed trust company when application is accepted for filing; requires organizers to publish notice of application filing in newspaper and to provide proof of publication.

Old law did not impose these requirements.

Section 06.26.110

Prior to the department issuing a certificate of authority, the trust company must have received the full amount of capital required under AS 06.26.120 and requires the trust company to begin its operation within 6 months, or other such extended time, or the department must revoke the certificate of authority.

Old law similar, but did not provide for a 6-month expiration period if no business conducted.

Section 06.26.120

Sets a minimum unimpaired capital requirement of \$400,000 and a minimum paid-in surplus requirement equal to 20% of paid-in capital, gives the department the authority to issue an order to require adjustments to the capital requirement to protect the safety and soundness of the trust company, provides authority for the department authorize increases and decreases to capital requested by the trust company, and restricts the payment of dividends if surplus is decreased due to operating losses.

Old law was similar, but required less capital and was less detailed and did not address payment of dividends.

Section 06.26.130

Details how a trust company can issue convertible or nonconvertible capital notes or debentures, if authorized by the department, sets limits on the amount of notes and debentures, disallows retirements of notes and debentures in the event of insolvency, and makes them subordinate to certain other liabilities of the trust company.

Old law did not address this.

Section 06.26.140

Prohibits cumulative voting by shareholders unless allowed by the trust company's articles of incorporation.

Old law did not address this.

Section 06.26.150

Requires a trust company to maintain a home office in this state and one executive officer to maintain an office in the home office, designates each executive officer at the home office as

agent for service of process, and permits a trust company to change its home office location to any of its existing offices in the state by filing a notice with the department.

Old law did not address this.

Section 06.26.160

Provides procedures for applying to establish branch offices and provides for the department to act prior to the 61st day after filing an application unless otherwise specified by the department, and gives department authority to deny the application based on safety and soundness concerns.

Old law did not address the establishment of branches unless the trust company was FDIC insured. The procedures for establishing a branch would have been governed by the Alaska banking code (AS 06.05), which are similar to this proposed section.

Section 06.26.170

Provides procedures for applying to the department to establish or acquire representative trust offices anywhere in the state.

Old law did not address this.

Section 06.26.180

Provides for interstate branching and details procedures, guidelines and restrictions.

Old law did not address this.

Section 06.26.190

Permits a trust company to be closed on holidays described in AS 44.12.101-125 and make available a notice of holiday closings to its customers, provides for other closures and addresses the hours of operation.

Old law did not address this.

Section 06.26.200

Subjects a private fiduciary to compliance with this chapter unless expressly exempted in writing by the department and restricts them from transacting business with the general public.

Old law did not address this.

Section 06.26.210

Specifies what information must be contained in a request for exemption, prohibits department approval if application is incomplete, lists requirements to maintain exempt status of a private fiduciary, requires annual certification of exempt status and allows department to investigate a private fiduciary as necessary to verify annual certification, and requires a private fiduciary with an exemption under AS 06.26.200 to comply with home office provisions of AS 06.26.150 .

Old law did not address this.

Section 06.26.220

Exemption of a private fiduciary cannot be transferred. Any change in control requires an application.

Old law did not address this.

Section 06.26.230

Provides authority for the department to revoke an exemption with guidelines and restriction.

Old law did not address this.

Section 06.26.240

Permits a private fiduciary to offer services to the general public if it satisfies the requirements of this section, provides guidelines for approval, and the right to deny if the private fiduciary does not meet the requirements of this chapter.

Old law did not address this.

Section 06.26.250

Authorizes the department to adopt regulations regarding permissible investments and appropriate investment powers of trust companies.

Old law did not address this.

Section 06.26.260

Restrict pledging of company assets with some exceptions.

Old law did not address this.

Section 06.26.370 (a) - (c)

Permits a trust company to deposit trust assets with itself and provides requirements and guidelines for this practice.

Old law did not address this.

Section 06.26.380

Subject to regulations adopted by the department, a trust company may invest in common investment funds.

Old law did not address this.

Section 06.26.390

Restricts fees between a client and the trust company to be arm's length (a) and reasonable (b).

Old law did not address this.

Section 06.26.400

Requires a trust company to disclose conflicts of interest.

Old law did not address this.

Section 06.26.410

Requires a trust company to observe prudent standards of care applicable to trustees under AS 13.36.225--13.36.290(Alaska Uniform Prudent Investor Act).

Old law did not address this.

Section 06.26.450

Requires department approval for a change in control of a trust company and provides for certain exceptions.

Old law did not address this.

Section 06.26.460

Provides a process for applying for a change in control, and lists guidelines and restrictions.

Old law did not address this.

Section 06.26.470

Requires the department to approve or deny an application for acquisition or control no later than 60 days after the notice of application is published. Department may set conditions in approval.

Old law did not address this.

Section 06.26.480

AS 06.26.450-480 may not be construed to prevent the department from investigating a transfer involving voting securities evidencing a direct or indirect interest in a trust company if the department considers the transfer against the public interest.

Old law did not address this.

Section 06.26.500

Sets restrictions on voting the securities of a trust company which held by the trust company in a fiduciary capacity.

Old law did not address this.

Section 06.26.510

Provides for a minimum of 5 and maximum of 25 directors of a trust company, requires a majority of directors to be residents of this state and sets qualifications and requirements for directors.

Old law did not address this except that the number of directors was limited between 5 and 15.

Section 06.26.520

Requires board meetings to be held at least once every three months, the department or a director may call a special meeting, a majority of the board constitutes a quorum, the board shall keep minutes and attendance and voting records, and at least once every three months the board is required to review various reports of trust accounts.

Old law did not address this.

Section 06.26.530

Requires officers be appointed annually by the board, states the president is responsible for the operation of the trust company, requires an officer to be responsible for maintenance of trust company records and a different officer be responsible for attestation of signatures.

Old law required annual appointment of officers, but did not address maintenance of records.

Section 06.26.540

Requires board approval for an officer or employee to create or dispose of an asset or liability.

Old law did not address this.

Section 06.26.550

Authorizes a trust company to appoint a trust committee, which must meet monthly. Committee required to keep a record of its actions, and may elect officers to accept new accounts.

Old law did not address this.

Section 06.26.560

Lists prohibited acts of directors, officers, employees and shareholders.

Old law did not address this.

Section 06.26.570

Requires majority board approval or department approval of certain insider transactions, prohibits extension of credit to insiders unless terms are the same as would be offered to a non-insider, authorizes department to adopt regulations to implement this section, and excludes a subsidiary of a trust company from the meaning of "affiliate".

Old law did not address this.

Section 06.26.580

Generally prohibits a trust company from investing trust assets in the stocks or obligations of the trust company or using trust assets to acquire property from the trust company and prohibits use of material inside information in connection with the purchasing or selling a trust asset.

Old law did not address this.

Section 06.26.585

Requires the trust company to establish written policies and procedures for buying and selling trust assets that are securities and must include the prohibition in AS 06.26.580(b).

Old law did not address this.

Section 06.26.590

Places the responsibility for proper exercise of fiduciary powers on the board.

Old law did not address this.

Section 06.26.600

Requires segregation of trust asset records from the trust company records.

Old law did not address this.

Section 06.26.610

Requirement for confidentiality of customer information.

Old law did not address this.

Section 06.26.620

Requires the trust company to maintain various insurance policies, sets limits, requires an annual review of insurance coverages to determine adequacy, and requires filing evidence of all coverages with the department.

Old law did not address this.

Section 06.26.630

Requires for reporting of crimes.

Old law did not address this.

Section 06.26.650

Provides authority for mergers.

Old law did not address this.

Section 06.26.660

Provides the process and guidelines for mergers.

Old law did not address this.

Section 06.26.670

Gives dissenting shareholders of a proposed merger rights which are governed by AS 10.06.574-582 (Alaska corporations code).

Old law did not address this.

Section 06.26.680

Authorizes the department to approve applications for purchases of all, or substantially all of the assets of another trust company and provides for an investigation into the application.

Old law did not address this.

Section 06.26.690

Authorizes a purchasing trust company to hold the purchase price and other money or assets delivered to it by the selling trust company and act as the disbursing agent.

Old law did not address this.

Section 06.26.700

Requires a purchasing trust company, in the case of a selling trust company being liquidated by a state or federal agency, to deliver the remaining assets to the receiver.

Old law did not address this.

Section 06.26.710

Provides for the method of payment to creditors by the purchasing trust company.

Old law did not address this.

Section 06.26.720

Authorizes the board of a trust company, with the prior approval of the department, to sell all or substantially all assets without shareholder approval under certain conditions and considers the sale of all or substantially all assets with shareholder approval as a voluntary dissolution and is governed by AS 06.26.730-800.

Old law did not address this.

Section 06.26.730

Gives the requirements, procedures and guidelines for department approval, for a trust company to voluntarily surrender its certificate of authority.

Old law did not address this.

Section 06.26.740

Gives situations where the department is authorized to revoke or suspend a trust company's certificate of authority.

Old law did not address this.

Section 06.26.750

Authorizes the department to take possession of the trust company's fiduciary operations and appoint a receiver for liquidation if the department revokes the trust company's certificate of authority.

Old law did not address this.

Section 06.26.760

Vests the department with the full and exclusive power of managing and controlling a trust company when the department has taken possession of a trust company and includes procedures and guidelines.

Old law did not address this.

Section 06.26.770

Authorizes the department to reorganize a trust company by entering an order proposing a reorganization plan.

Old law did not address this.

Section 06.26.780

Give the requirements and guidelines for the department when liquidating a trust company.

Old law did not address this.

Section 06.26.790

Directs the department to liquidate a trust company by giving notice to various parties, the process for payment of claims, and notice requirements, and the procedures for wrapping up the business via the courts.

Old law did not address this.

Section 06.26.800

The department is authorized to appoint the FDIC as receiver of a trust company the department has taken possession of.

Old law did not address this.

Section 06.26.810

Authorizes an out of state trust companies (interstate state, interstate national, and international trust companies) to act as fiduciary in this state only if they maintain a trust office in this state.

Old law did not address this.

Section 06.26.820

Authorizes out of state trust companies to establish a new trust office in the state or acquire one that already exists.

Old law did not address this.

Section 06.26.830

Requires an out of state trust company to file a notice with the department to establish a new trust office or acquire an existing trust office.

Old law did not address this.

Section 06.26.840

Sets out minimum qualifications for an out of state or international trust company to establish or acquire a trust office in the state including filing various items with the department.

Old law did not address this.

Section 06.26.850 (a) - (h)

Authorizes and provides a process for an out of state trust companies to establish or acquire a representative office as permitted by AS 06.26.810-895.

Old law did not address this.

Section 06.26.860

Permits an out of state trust company to establish or acquire additional trust offices or representative offices to the same extent a trust company can under AS 06.26.160.

Old law did not address this.

Section 06.26.870

Authorizes the department to examine interstate state and international trust companies and collect fees for the examination, require reports and assess fees.

Old law did not address this.

Section 06.26.880

Authorizes the department to take enforcement actions if an office of an out of state trust company is being operated in an unsafe and unsound manner, is in violation of state laws, or is engaged in an activity not permissible under this chapter.

Old law did not address this.

Section 06.26.890

Requires an out of state trust company to give 60 days notice for mergers, consolidations, change in control, transfer of all or substantially all assets, and for closing or disposition of any office in the state.

Old law did not address this.

Section 06.26.895

Defines international trust company, interstate national trust company, and interstate state trust company.

Old law did not address this.

Section 06.26.900

Gives a list of powers of the department.

Old law did not address this.

Section 06.26.905

Permits the department to enter into cooperative agreements and enforcement actions with other governmental regulators.

Old law did not address this.

Section 06.26.910

List of instances when a person may appeal to the department, authorizes department to adopt regulations establishing procedures for appeals, and subjects appeals to AS 44.62 (Administrative Procedure Act).

Old law did not address this.

Section 06.26.920

Authorizes department to bring a civil court action against a person who has or is about to commit a violation of this chapter.

Old law did not address this.

Section 06.26.930

Requires a trust company to submit various reports.

Old law did not address this.

Section 06.26.940

Gives persons who suffer damages as a result of violations by persons subject to this chapter, the right to bring an action in court.

Old law did not address this.

Section 06.26.950

Stipulates that this chapter does not allow a trust company to engage in banking.

Old chapter did not have this provision.

Section 06.26.960

Prohibits a trust company from taking an action with respect to its corporate status or capital structure without first receiving the department's approval and authorizes the department to adopt regulations under AS 10.06 applicable to an act in this chapter.

Section 06.26.990

Defines various terms.

Old law only defined "department."

Section 06.26.995

Short title of the act is "Revised Alaska Trust Company Act."

Section 3

AS 13.36.025 is amended so that the provisions of (a) are not intended to be overridden by AS 06.26, and AS 06.26 governs in the event of a conflict.

Section 4

Technical change in AS 13.36.320(a) replacing the word "Alaska" with "the state" and replacing the old trust act reference of 06.25 with the new trust act reference of 06.26.

Section 5

Technical change in AS 13.36.390 (2) replacing the old trust act reference of 06.25 with the new trust act reference of 06.26.

Section 6

Technical change in AS 21.66.250 replacing the old trust act reference of 06.25 with the new trust act reference of 06.26.

Section 7

Technical change in AS 34.77.100(a) replacing the old trust act reference of 06.25 with the new trust act reference of 06.26.

Section 8

Lists sections that are repealed.

Section 9

Several areas of law are amended as a result of AS 06.26.760(b)(2). Those areas are: Rules 6 and 12 of the Alaska Rules of Civil Procedure, Rule 40 of the Alaska Rules of Criminal Procedure, Rules 204, 403, 502, 602, and 611 of the Alaska Rules of Appellate Procedure.

Section 10

Outlines requirements and time frames for trust companies existing prior to the effective date of this Act to comply with the new Act.

Section 11

Authorizes the department to adopt regulations necessary to implement sections 1-8 of this act. no earlier than January 1, 2002.

Section 12

Sections 10 and 11 are effective immediately.

Section 13

Except as provided in section 12, this Act becomes effective January 1, 2002.

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSHB 157(L&C)
(H) Publish Date: 4/20/01

Revision Date/Time (Note if correction): 03/27/2001 4:15p.m. Dept. Affected: DCED
Title: Trust Companies & Fiduciaries BRU: BSC
Sponsor: Representative Murkowski Component: Banking, Securities & Corporations
Requester: House Labor & Commerce Component Number: 1233

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
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)

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 (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation will give the division a detailed, modernized, up-to-date, trust act with which to supervise and regulate trust companies in Alaska.

The legislation will provide the formation, operation, supervision and regulation for trust companies operating in Alaska. It clarifies who must be chartered, and who will not need a charter, dependent upon the business being conducted, and for whom the trust services are provided. In addition it will provide for interstate trust activities.

The department does not anticipate any fiscal impact with this proposed legislation.

Prepared by: Franklin T. Elder, Director Phone 907-465-2521
Division: Banking, Securities & Corporations Date/Time 03/27/2001 4:15p.m.
Approved by: Commissioner Deborah B. Sedwick Date 3/27/2001
Agency: Department of Community and Economic Development

For distribution information, call the Governor's Legislative Office

THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES

ALASKA LAND TITLE ASSOCIATION

P.O. Box 241811 • Anchorage, Alaska 99524

April 20, 2001

Representative Lisa Murkowski
State Capitol, Room 408
Juneau, AK 99801-1182

Re: House Bill 157, Providers of Fiduciary Services

Dear Representative Murkowski:

The Board of Directors of the Alaska Land Title Association (the "ALTA") has reviewed and discussed House Bill 157, relating to providers of fiduciary services. As you may recall, title insurance agents provide fiduciary services to their customers through escrow closings; that is, by acting as a neutral third party agent in holding money, documents and other things of value to be disbursed or recorded in accord with the terms of an escrow agreement. See A.S. 34.80.090(3), defining an "escrow transaction" for purposes of the Good Funds Act. It was the ALTA Board's conclusion, in consultation with counsel, that HB 157 would not except or exclude title companies acting in their capacity as escrow agents from the registration, financial and other requirements of proposed in the main body of the legislation. We do not believe this was the intended result. ALTA asks that, as sponsor of HB 157, you consider amending the exemptions under proposed A.S. 06.26.020 to add title insurance agents acting in this capacity.

It appears that an attempt to exempt title companies may have been made in proposed A.S. 06.26.020(5), along with other insurers and agents who hold trust funds before placing insurance coverage with their underwriters. However, the Department of Community and Economic Development (charged with enforcement of the to-be-revised Trust Company Act) or a court might not construe title agents' escrow closing activities as "solely incidental to the person's activities under the [insurance] license;". Proposed A.S. 06.26.020(12) also does not exempt title agents' escrow activity, because it relates to the holding and collection of things of value "at the sole direction of the person to whom the debt or payment is owed". Title agents act at the behest and under the agreement of at least

Rep. Lisa Murkowski
April 20, 2001
Page 2

two parties (a buyer and seller, or borrower and lender) and sometimes all three (seller, buyer and lender) or more.

It would perhaps be easiest to amend proposed A.S. 06.26.020(5) as follows (additions are underlined):

Sec. 06.26.020. Exemptions. Notwithstanding any other provision of this chapter, a person does not act as a fiduciary under this chapter if the person

" (5) engages in the sale and administration of an insurance product as an insurance company licensed under AS 21 or insurance producer licensed under AS 21 and

(a) the person is acting within the scope of the license, and the fiduciary services provided by the person are solely incidental to the person's activity under the license;
or

(b) the person is a title insurance company or limited producer under AS 21.66, and is acting as a settlement agent to handle escrow transactions as defined by A.S. 34.80.090;

Please advise if this amendment is acceptable or if you have any further questions or concerns. Thank you for your consideration of this matter.

Very truly yours,

ALASKA LAND TITLE ASSOCIATION



Jeff Blake, President
(907) 274-2562



Bryan S. Merrell,
Legislative Committee
(907) 786-9512

HB

158

22-LS0578\F
Bannister
3/26/01

Adopted

CS FOR HOUSE BILL NO. 158()

**IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - FIRST SESSION**

BY

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVES MCGUIRE, Dyson, Fate, Rokeberg, Ogan, Murkowski, Wilson, Lancaster

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the criteria for the adoption of regulations and to the relationship**
2 **between a regulation and its enabling statute; and providing for an effective date."**

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

4 *** Section 1. AS 44.62.020 is amended to read:**

5 **Sec. 44.62.020. Authority to adopt, administer, or enforce regulations.**
6 **Except for the authority conferred upon the lieutenant governor in AS 44.62.130 -**
7 **44.62.170, AS 44.62.010 - 44.62.320 do not confer authority upon or augment the**
8 **authority of a state agency to adopt, administer, or enforce a regulation. To be**
9 **effective, each regulation adopted must be within the scope of authority conferred by**
10 **the statute under which the regulation is adopted and in accordance with standards**
11 **prescribed by other provisions of law.**

12 *** Sec. 2. AS 44.62.030 is amended to read:**

13 **Sec. 44.62.030. Relationship [CONSISTENCY] between regulation and**
14 **statute. The authority to adopt a regulation must be clearly and expressly**

1 conferred by statute. If, by express [OR IMPLIED] terms of a statute, a state agency
2 has authority to adopt regulations to implement, interpret, make specific, or otherwise
3 carry out the provisions of the statute, a regulation adopted is not valid or effective
4 unless

5 (1) the subject of the regulation and the treatment of the subject of
6 the regulation are clearly authorized and not just implied by the statute;

7 (2) the regulation is consistent with the statute that the regulation
8 purports to implement, interpret, make specific, or otherwise carry out; and

9 (3) the regulation is reasonably necessary to carry out the purpose of
10 the statute.

11 * Sec. 3. AS 44.62.030 is amended by adding a new subsection to read:

12 (b) Notwithstanding (a) of this section, if, by express or implied terms of a
13 statute, a state agency has authority to adopt regulations to implement, interpret, make
14 specific, or otherwise carry out the provisions of the statute, a regulation adopted is
15 not valid or effective unless consistent with the statute and reasonably necessary to
16 carry out the purpose of the statute. The provisions of this subsection apply to a
17 regulation that is adopted by

18 (1) a board or commission located in an office or department listed in
19 AS 44.17.005; or

20 (2) a state agency that is required by the federal government to amend
21 a regulation if application of the general standard of (a) of this section would prevent
22 the state agency from amending the regulation and would result in a loss of federal
23 money.

24 * Sec. 4. The uncodified law of the State of Alaska is amended by adding a new section to
25 read:

26 APPLICABILITY. This Act applies to the adoption or amendment of a regulation if
27 the original notice under AS 44.62.190 of the adoption or amendment of the regulation is
28 given on or after the effective date of this Act.

29 * Sec. 5. This Act takes effect immediately under AS 01.10.070(c).

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

March 26, 2001

SUBJECT: CSHB 158() relating to regulation adoption standards (Work Order No. 22-LS0578\F)

TO: Representative Lesil McGuire
Attn: Jim

FROM: *JB*
Theresa L. Bannister
Legislative Counsel

This memo accompanies a draft of the bill described above. This version adds a subsection to AS 44.62.030 to cover the two exceptions that you requested. The two exceptions are for boards and commissions and for certain situations involving federal money. The new subsection applies the current regulation standard under AS 44.62.030 to those two categories.

The exception for boards and commissions covers the boards and commissions established in the executive departments and the Office of the Governor. Since it appears that all of the regulations of the Department of Education and Early Development go through the State Board of Education, under this draft all of the regulations of that department will continue under the current regulation standard rather than the new "clearly and expressly conferred" standard.

Also, a significant portion of the regulations of the Department of Fish and Game will continue under the current regulation standard rather than the new standard. Except for a few items that are controlled exclusively by the commissioner of fish and game, the regulations of that department are adopted through the Board of Fisheries and the Board of Game, and the boards acting jointly.

Finally, the University of Alaska will probably take the position that its regulations are not covered by AS 44.62 and, therefore, that these regulation standards do not apply to its regulations. The regulatory authority of the University under AS 14.40.170(b)(1) does not require that its regulations be adopted under AS 44.62. The University appears to claim that it is not located in the executive branch. In that case it would not be considered a state agency under the AS 44.62.640(a) definition of that term for the regulation provisions of AS 44.62. The University was established under art. VII, sec. 2 of the state constitution.

If I may be of further assistance, please advise.

TLB:glc
01-278.glc
Enclosure

Alaska State Legislature

Session
State Capitol Building, Room 418
Juneau, Alaska 99801-1182
Phone (907) 465-2995
Fax (907) 465-6592

Interim
716 West Fourth Avenue, Suite 430
Anchorage, Alaska 99501
Phone (907) 269-0250
Fax 9907) 269-0249

Chair, House Special Committee
on Economic Development, Trade
and Tourism

Chair, Joint House and Senate
Administrative Regulation and
Review Committee

Member
Resources Committee
Rules Committee

Representative Lesil McGuire

House District 17

Sponsor Statement

CS for HB 158

“An Act relating to the criteria for the adoption of regulations and to the relationship between a regulation and its enabling statute; and providing for an effective date.”

The Legislature is the branch of government charged with making law. This bill establishes a two-step process, by first requiring us to be specific when writing legislation to ensure that the true intent of the bill is easily understood. When the Legislature makes a law, it should specify if regulations are envisioned or not by first asking does the bill need regulations to fill in gaps or to clarify specifics. Second, when a regulation author prepares to promulgate supporting regulations, a through review of pertinent information relating to the bill must be completed before writing the regulations. This will result in regulations that complement rather than contradict the statute.

HB 158 limits the broad interpretation that is now applied during the regulation process by requiring that the regulation must be clearly authorized by statute. It further requires that the regulation be consistent with the statute and prevents the writing of regulations if they are not absolutely necessary to carry out the statute.

The public should find regulations easier to understand in the future as the legislation and regulations will clearly stem from the same intent and policy. This will ultimately result in a cost savings to the State, as it will greatly reduce the number of appeals at both the administrative and the civil levels.

CS for HB 158 is a modification of the original bill designed to correct some oversights dealing with two specific areas. It should be noted that Boards and Commissions and their regulatory authority are exempted as well as regulations that must be rewritten because of changes in Federal Regulations which the state agency must adopt or risk losing federal funds.

Easy to understand language in both legislation and regulation will lessen the burden on many of Alaska's people and businesses. Individuals will have direct access and input as to how the rules are written because they can contact their elected representatives in the legislature. When Alaskans have input, providing information and insight that is listened too and acted upon, we will have succeeded in returning a trusted government to the people.

Alaska State Legislature

Session
State Capitol Building, Room 418
Juneau, Alaska 99801-1182
Phone (907) 465-2995
Fax (907) 465-6592

Interim
716 West Fourth Avenue, Suite 430
Anchorage, Alaska 99501
Phone (907) 269-0250
Fax 9907) 269-0249

Chair, House Special Committee
on Economic Development, Trade
and Tourism

Chair, Joint House and Senate
Administrative Regulation and
Review Committee

Member
Resources Committee
Rules Committee

Representative Lesil McGuire House District 17

February 28, 2001

Representative Norman Rokeberg
Chair, House Judiciary Committee
State Capitol, Room 118
Juneau, Alaska 99801-1182

Dear Representative Rokeberg:

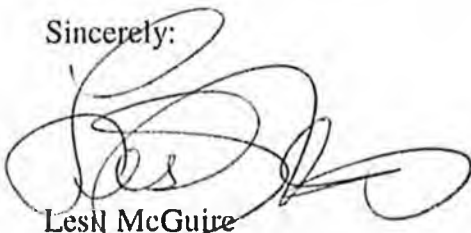
Please accept this letter and the attached documents as a request for the House Judiciary Committee to hear HB 158, "An Act relating to the criteria for the adoption of regulations and to the relationship between a regulation and its enabling statute; and providing for an effective date."

HB 158 is modeled after the doctrine being used by the United States Supreme Court in considering whether the Administrative Branch of government has taken action through regulation or policy that Congress did not intend or authorize in statute. It is also a primary argument being used by our Attorney General's challenge of the Katie John Suit.

Like the federal government, our administrative branch has broad powers to interpret both legislative language and intent. HB 158 makes it clear that the Legislature wants a more conservative approach when it promulgates regulations. This "Clear Statement Doctrine" bill will require a more judicious review of statute and intent and will reduce conflicts between the agencies and the public.

Passage of HB 158 will require regulation authors to follow, not interpret statute ultimately reducing both the administrative and judicial review. It will be a major first step in fiscal savings and more efficient government. I respectfully request scheduling of HB 158 in the House Judiciary Committee at your earliest convenience. Thank you in advance for your time and consideration. If you have any questions please do not hesitate to call.

Sincerely:



Lesil McGuire
Representative, District 17
LM/jp

FEB 28 2001

Alaska State Legislature

Session
State Capitol Building, Room 418
Juneau, Alaska 99801-1182
Phone (907) 465-2995
Fax (907) 465-6592

Interim
716 West Fourth Avenue, Suite 430
Anchorage, Alaska 99501
Phone (907) 269-0250
Fax 9907) 269-0249

Chair, House Special Committee
on Economic Development, Trade
and Tourism

Chair, Joint House and Senate
Administrative Regulation and
Review Committee

Member
Resources Committee
Rules Committee

Representative Lesil McGuire *House District 17*

Sponsor Statement

HB 158

“An act relating to the criteria for the adoption of regulations and to the relationship between a regulation and its enabling statute; and providing for an effective date.”

HB 158 is the first major step to a better more consistent regulation/statute process. In our efforts to pass legislation we sometime inadvertently delete phrases or create language that can have a broad interpretation. The Departments then promulgate regulations using statute references based on that interpretation rather than specific language. HB 158 will resolve these problems.

HB 158 is modeled after the doctrine that has been applied in recent years by the United States Supreme Court in considering whether the Administrative Branch of government has taken action through regulation or policy that Congress did not intend or authorize in statute. It is also a primary argument being used by our Attorney General’s challenge of the Katie John Suit.

Like the federal government, our administrative branch has broad powers to interpret both legislative language and intent. HB 158 makes it clear that the Legislature wants to see a more conservative approach applied to the promulgation of regulations. This “Clear Statement Doctrine” bill will require a more judicious review of statute and intent, and will reduce conflicts between the agencies and the public.

HB 158 is legislation that will begin the process of a more user friendly regulation system. It eliminates subjective interpretation of statute and specifies when regulations are required. It brings clearer language to the public as the bill and the regulations will compliment rather than contradict each other.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

February 19, 2001

SUBJECT: Clear Statement Doctrine (Work Order No. 22-LS0629)

TO: Representative Lesil McGuire
Attn: Sue Stancliff

FROM: George Utermohle *GU*
Legislative Counsel

The memorandum is in response to your request for a summary of the "clear statement doctrine."

The "clear statement doctrine" is a rule of statutory construction that has been adopted the United States Supreme Court. Gregory v. Ashcroft, 501 U.S. 452, 115 L.Ed.2d 410 (1991). In cases where an enactment by Congress ambiguously implicates the sovereignty of a state, the court will construe the enactment so as to maintain the sovereignty of the state. The doctrine may be invoked when a statute is susceptible to two plausible interpretations, one of which would have altered the existing balance of federal and state powers. Absent a clear indication of Congress' intent to change the balance, the proper course is to adopt a construction that maintains the existing balance. Id. at 460-01, 115 L.Ed.2d at 424. The Supreme Court requires a clear statement by Congress that it intends to limit the powers of the state before the court will find that an enactment limits state power. The court will not find that Congress has limited state powers based on a statutory interpretation that is merely implied by the statutory language.

As a rule of construction, the doctrine will come into play only when an ambiguity exists in the interpretation of a statute. A statute can be unambiguous without addressing every reasonable interpretive theory. The statute need only be plain to anyone reading the law. Salinas v. United States, 522 U.S. 52, 60, 139 L.Ed.2d 352, 364 (1997). On the other hand, the existence of an ambiguity is often a subjective determination.

The clear statement doctrine allows the federal courts to resolve conflicts between states and the federal government through the construction of statutes rather than addressing the constitutionality of the statute that is at issue. Courts generally decline to address constitutional issues if the controversy at issue can be resolved through the interpretation of the applicable laws. "Application of the plain statement rule thus may avoid a potential constitutional problem." Gregory, at 464, 115 L.Ed.2d at 426.

Representative Lesil M. uire
February 19, 2001
Page 2

The clear statement doctrine is not a limitation on the power of Congress to impinge on state sovereignty. In the event that a court does find that an enactment of Congress contains a clear statement of its intent to alter the current state-federal balance of power then the issue becomes whether the enactment is a constitutional exercise of Congress' power under the United States Constitution.

If I may be of further assistance, please advise.

GU:glc
01-168.glc

ALASKA STATE LEGISLATURE
SENATE RESOURCES COMMITTEE

January 29, 2001

3:35 pm

MEMBERS PRESENT

Senator John Torgerson, Chair
Senator Drue Pearce, Vice Chair
Senator Rick Halford
Senator Robin Taylor
Senator Georgianna Lincoln

MEMBERS ABSENT

Senator Pete Kelly
Senator Kim Elton

OTHER MEMBERS PRESENT

Senator Loren Leman

COMMITTEE CALENDAR

Department of Law: Status of Alaska's resource cases

WITNESS REGISTER

Ms. Barbara Ritchie, Deputy Attorney General
Civil Division
Department of Law
P.O. Box 110300
Juneau AK 99811

POSITION STATEMENT: Commented on resource cases.

Ms. Joanne Grace, Assistant Attorney General
Department of Law
1031 W 4th Ave., Suite 200
Anchorage AK 99501

POSITION STATEMENT: Commented on resource cases.

ACTION NARRATIVE

TAPE 01-4, SIDE A
Number 001

CHAIRMAN JOHN TORGERSON called the Senate Resources Committee

meeting to order at 3:35 pm and announced the committee would hear an update by the Department of Law of the state's resource cases.

MS. BARBARA RITCHIE, Deputy Attorney General, Department of Law, said her main role today was to introduce Ms. Joanne Grace, Assistant Attorney General, head of the statehood defense section.

MS. JOANNE GRACE said she would focus primarily on the cases that have undergone the most change in the last year, like the Katie John case and the Glacier Bay case, which really involve all of Southeast Alaska. She is getting ready to file another case within the next day or two on the roadless directive for the Tongass National Forest that she would comment on, also.

The Katie John case - we appealed the final judgment in that case exactly a year ago and after a few months we asked the Ninth Circuit to consider the case 'en banc' rather than to consider it again with just three judges. In the Ninth Circuit that means 11 judges hear the case instead of just three judges. Ninth Circuit agreed to hear the case en banc and we briefed it and argued it. So we're now before the Ninth Circuit again. I would say we're at a really critical stage in this case not only because it's nearing the end of its existence, but also because having survived for 10 years, the case is now intercepting a distinct trend in Supreme Court case law.

The Supreme Court more and more recently has been willing to identify and precisely define limits on Congress's authority to interfere with traditional state functions. The case law that's coming out of the Supreme Court on federal/state balance of power issues is much different today than it was 10 years ago. So our argument in the Katie John case is based on one of the issues the Supreme Court is finding particularly important these days. It's called the Clear Statement Doctrine.

Under the Clear Statement Doctrine, a federal court will not assume that Congress intended to take over a traditional state function unless Congress has made it unmistakably clear that's what it intends to do. So it's absolutely plain to anyone reading the act. The reason is that Congress will not shift the balance of power between a state and the federal government lightly. You are not going to assume Congress intended to do that.

This is a doctrine that developed out of a 1991 case called *Ashcroft v. Gregory*. In that case the issue

before the court was whether the Missouri constitution that mandated that state judges retire at age 70 violated a federal act that prohibited age discrimination. The court looked at that issue and said it's a particularly state function to define the qualifications of state officials, particularly state judges. It's not something the federal government normally involves itself in. The Age Discrimination Act had an exception in it for appointees on a policy making level. The court said it is not clear whether state judges fit into this exception or not. So we are going to refuse to find that Congress intended to designate the qualifications of state judges because Congress hasn't made it absolutely clear that that is what it intends to do. The court also didn't seem to think that Congress would have that authority even if that had been its intent.

So this is the doctrine we are arguing in the Katie John case. Our argument is that federal takeover of fisheries management on most of Alaska's navigable waters is an assumption of a traditional state authority and, therefore, the court could not find that Congress had that intent unless Congress made that unmistakably clear in the language of ANILCA (Alaska National Interest Land Claims Act).

There's a lot of good argument on our part that fisheries management is a traditional state function. The U.S. Supreme Court has said for 150 years that states take title to the land underlying navigable waters at statehood because the state has dominion over those waters. The state has an obligation to manage the waters in the resources in trust for the public for fishing and transportation and other public uses. Therefore, the state has an obligation to conserve those resources which means it has an obligation to limit uses by setting seasons, means and methods, bag limits, and things like that. That has always been understood to be a state function.

So our argument in the Katie John case in this appeal is because this is a traditional state function, it has to be unmistakably clear in ANILCA that Congress intended the federal subsistence board to have authority over navigable waters where the United States has reserved a water right. Our position is that that is not unmistakably clear in ANILCA. If Congress had wanted to include navigable waters subject to a reserved water

right, Congress would have said that. It wouldn't have done it in the roundabout way that the United States has argued. It's obviously not clear from the statute given the position the parties have taken in this case.

The United States took the position in the beginning of the litigation that the statute did not clearly include navigable waters and, in fact, took the position that it clearly did not include navigable waters. When the United States flipped its position three years into the litigation, it didn't change its mind about the clearness of the statute. It didn't say we were wrong; actually it's absolutely clear in the statute that navigable waters were intended to be included. It simply said the statute is ambiguous. We can't tell from the statute whether Congress intended to include these navigable waters, but as a federal agency, it's our duty to interpret this statute and resolve ambiguities - and we think it's reasonable to interpret it to include certain navigable waters.

The Alaska Supreme Court in the Totemoff case found that it was clear those navigable waters were not included in the language of the statute and that Congress did not intend to include those waters. In the original Ninth Circuit case, the dissenting judge, Judge Hall, looked at the statute and said it's not clear that Congress intended to include these waters. It's not our place as judges to decide that they should be included. Congress has to do it. Even the two judges who decided the case against the state did not find the language to be clear. Those judges said we can't tell what Congress meant from the language in statute. We can't tell what Congress meant from legislative history. We'll look to the federal agencies' interpretation. We find this federal agencies' interpretation to be reasonable.

But under the Clear Statement Doctrine that the Supreme Court applies, it's not enough that it's a reasonable interpretation. It has to be unmistakably clear from the language in statute. So that's the argument that we've made in this second appeal on the Katie John case. The timing of this turned out to be fortuitous because we argued it on December 20 and only two weeks later the United States Supreme Court issued a new decision in a different case applying the Clear Statement Doctrine.

That case, I'm sure you heard about it on the radio - it's a really landmark case for states. It's called the Solid Waste Services of Northern Cook County v. U.S. Army Corps of Engineers. It's a case where the issue was whether the Corps of Engineers has authority to regulate intrastate waters. In this case it was an abandoned gravel pit where there was some migratory waterfowl and the question was whether it was the Corps of Engineers authority under the Clean Water Act to issue dredge and fill permits [indisc] to those waters. They had issued regulations stating that their authority extended to intrastate waters as long as there were migratory birds that used that water as habitat.

The Supreme Court looked at the case and said it's a traditional state function to regulate intrastate waters. It's not clear from language of the Clean Water Act that Congress intended these agencies to extend their authority that far. It's unclear. Also, again the court seemed to think that if Congress had made that clear, Congress's commerce clause authority probably didn't extend that far. So, it refused to interpret the Clean Water Act to give the Corps of Engineers authority to regulate intrastate waters.

We just think that the climate is right for the kind of arguments we're making in the Katie John case. The Court actually has another case before it now under Congress's spending clause authority. It's an Alabama case and the issue in that case is whether the state's English proficiency requirement for driver's license violates Title 6 of the Civil Rights Act. Again, it's a clear statement doctrine argument that the state is making. It has to be clear that Congress is intending that statute to apply. So, this is definitely an area a lot of the Supreme Court is focusing on. It's cutting back on the general understanding of what Congress's authority is to take over traditional state functions and it's refusing to interpret laws to have the effect of shifting state/federal authority unless Congress has made it perfectly clear that that's what it intends to do.

Not predicting that we're going to lose the Ninth Circuit case and, therefore, the Supreme Court is going to hear this, but I'm assuming the Ninth Circuit is following this trend and is well aware that it needs to follow Supreme Court authority. If it doesn't, it seems to me this is the kind of case that the Supreme Court would be

interested in hearing - partially because it involves this issue of state/federal authority and also because, at this point, it would be an en banc decision and probably with a dissent and that's the kind of case that the Supreme Court is more likely to take.

Number 899

SENATOR TAYLOR thanked her for the explanation and asked, "Judge Holland's opinion in the Babbitt case where he said that Congress in ANILCA had not provided any authorization for creation of regulations and hoped they must have intended to do so. That seems directly contrary to the Clear Statement Doctrine."

MS. GRACE replied, "It is obviously completely contrary to the Supreme Court law in this area and I don't believe that he had any authority for making that statement."

SENATOR TAYLOR responded that that was the case the Department dismissed in the final hour and asked if there is opportunity at this juncture to reopen that and ask the judge in light of current law to reconsider that decision.

MS. GRACE answered, "The state agreed to dismiss that with prejudice and we would not be in a position to bring that ever again. That's not to say that the issue couldn't arise again, but the state couldn't raise it directly in a new case."

Number 1000

FISCAL NOTE

**STATE OF ALASKA
2001 LEGISLATIVE SESSION**

Fiscal Note Number: _____
 Bill Version: HB 158
 () Publish Date: _____

Title: An Act relating to the criteria for the adoption of regulations and to the relationship between a regulation....
 Sponsor: Representative McGuire
 Requester: House Judiciary Committee
 Dept. Affected: Department of Correction
 BRU: Administration and Operations
 Component: Office of the Commissionr
 Component Number: 694

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	***	***	***	***	***	***

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

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

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

HB 158 would eliminate implied authority as a basis for regulations, and would require that statutory authority be "clearly and expressly conferred." There are relatively few statutes governing the Department of Corrections. Thus, it would become problematic for the Department to adopt new regulations or amend existing regulations. One consequence of this would be increased litigation against the state by prisoners, who are quick to make legal challenges. Another would be difficulties for the Department in adopting regulations that let the public know what standards it is applying for various programs. For example, DOC is currently drafting regulations that will govern the provision of sex offender treatment to its inmates, probationers, and parolees. These regulations will set out the process by which sex offender treatment providers are approved by DOC, the standards they must meet to maintain their status as approved providers, and the process that DOC must abide by before revoking a provider's status as an approved provider. The regulations will help ensure that providers'

Prepared by: Candace Brower Phone 465-4652
 Division: Commissioner's Office Date/Time 3/30/01/4:25 p.m.
 Approved by: Margaret Pugh Date 3/30/01
 Agency: Department of Corrections

For distribution information, call the Governor's Legislative Office

rights to due process are not denied. If this bill passes, these proposed regulations may be considered beyond the scope of DOC's statutory authority, which would have the effect of denying treatment providers a clear understanding of their rights and obligations. DOC is unable to ascertain the fiscal impact that this would have.

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 158
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affect: Fish and Game
 Title: Criteria for adoption of regulations BRU: _____
 Component: _____
 Sponsor: Representative McGuire
 Requester: House Judiciary Component Number: _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	*	*	*	*	*	*

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

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

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2001) cost: _____ *

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

(see attachment)

Prepared by: Gordy Williams Phone 465-6143
 Division: Commissioner's Office Date/Time 03/29/2001 3:00 p.m.
 Approved by: Gordy Williams for Commissioner Frank Rue Date 03/30/2001
 Agency: Department of Fish and Game

For distribution information, call the Governor's Legislative Office

HB 158 Fiscal Note Analysis

ADF&G statutes, found in Title 16, primarily provide general authority, and in some cases implied authority, sufficient to regulate all uses of fish, game, and their habitat. Under general statutory authority, regulations are adopted that apply to highly specific circumstances and activities, including geographic area, timing of harvest, gear type, method of harvest, permits and licensing, habitat protection measure, fish transport, harvest limitation, etc. Clear, explicit statutory and legislative intent does not exist that addresses the full range of regulatory issues that come before the department, the Board of Fisheries, and the Board of Game.

Accordingly, compliance with HB 158 would first require wholesale review and multiple revisions to Title 16. Any new regulations adopted by the boards of fisheries and game would have to be analyzed in regard to the explicit authority provided in statute, and lacking such explicit authority could not be adopted.

Time is frequently of the essence in fish and game management -- particularly so with management of commercial fisheries. Given the contentious allocation issues that are addressed in regulation each year, legal challenges to regulations on the basis of non-compliance with the terms of HB 158 are a virtual certainty. Sustained yield management of fish and game would be significantly compromised under these circumstances.

HB 158 would create tremendous problems with regard to fish and game management. Statutory overhaul to craft language expressing legislative intent and explicit authority would be necessary. This process would be time consuming and costly to the legislature and the department, and would seriously hinder the ability of the boards of fisheries and game to have regulations developed through their public process in place for the orderly management of our fish and game resources.

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB158
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Fish and Game
 Title: Criteria for regulations BRU: Comm Fish (Limited) Entry Comm
 Component: Comm Fish (Limited) Entry Comm
 Sponsor: Rep. McGuire
 Requester: House Judiciary Committee Component Number: 471

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	*	*	*	*	*	*

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

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

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

See attachment

Prepared by: Roger Kolden Phone 790-6950
 Division: Commercial Fisheries Entry Commission Date/Time 3/14/01 2:25 PM
 Approved by: Mary McDowell Date 03/14/2001
 Agency: Commercial Fisheries Entry Commission

For distribution information, call the Governor's Legislative Office

HB 158 Fiscal Note Explanation:

While CFEC statutes contain language granting explicit regulatory authority for most of the commission's major functions, the commission depends on the more general authority in AS 16.43.110 and 16.43.100(b) for implementing some regulations, particularly for carrying out necessary administrative functions. If the intent in HB158 could be interpreted as negating or superceding the authority in those two provisions, regulations the commission needs to enact in the future under that authority could be subjected to challenge.

Furthermore, since CFEC regulations are specifically designed to limit entry into fisheries, they always result in some people "losing out" and being motivated to seek bases upon which to challenge the action. The phrase "clearly and expressly conferred by statute" in HB158 appears to establish a new standard. Not knowing how the courts will interpret that phrase will create considerable uncertainty as to whether regulations would be upheld if challenged under that provision. This uncertainty creates a window of opportunity inviting legal challenge. Thus, HB158 could lead to significant numbers of legal challenges to CFEC limitation regulations. Although CFEC might very well prevail in such cases, defending these cases would require the expenditure of a significant amount of time and resources by both CFEC and Dept of Law.

In addition to time and expense in defending legal challenges, the delay in implementation of CFEC regulations that could result from legal challenges could have disastrous consequences for fisheries and result in additional expense to CFEC. CFEC must often move very quickly to limit a fishery which is experiencing rapid growth. Being able to limit without delay is critical to locking into a number of permits to be issued that would preserve the place of residents in the fishery. Under Supreme Court rulings, CFEC must set the number of permits to be issued in a fishery no lower than the highest number of participants in any one of the four years preceding the date of limitation. Thus, if a challenge to the commission's authority to adopt regulations limiting a fishery were to cause delay in implementation, it could result in a rush of new participants (perhaps non-locals or even non-Alaskans) entering the fishery in the next open access season. The opportunity to limit the fishery at the lower number and preserve the place of the earlier participants could be lost forever, possibly altering the future make-up of the fishery significantly and disadvantaging Alaskans. Having then missed the timeframe allowable for using the originally proposed qualification period, the commission would be forced to go through the arduous and expensive task of making a new limitation proposal for the fishery and starting the regulatory process all over again.

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: HB 158
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
Title "An Act relating to the criteria for the adoption of BRU Civil Division
regulations and to the relationship between a regulation . . ." Component Legislation/Regulations
Sponsor Representative McGuire
Requester House Judiciary Committee Component No. 2209

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services	60.6	60.6	60.6	60.6	60.6	60.6
Travel	0.2	0.2	0.2	0.2	0.2	0.2
Contractual	9.4	9.4	9.4	9.4	9.4	9.4
Supplies	0.8	0.8	0.8	0.8	0.8	0.8
Equipment	6.5					
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	77.4	70.9	70.9	70.9	70.9	70.9

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

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	77.4	70.9	70.9	70.9	70.9	70.9
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	77.4	70.9	70.9	70.9	70.9	70.9

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's 2002 budget proposal:

POSITIONS

Full-time						
Part-time	1	1	1	1	1	1
Temporary						

HB 158 would eliminate implied authority as a basis for regulations, and would require that statutory authority be "clearly and expressly conferred." Because the new concept lacks underpinnings in administrative law, courts will struggle over a period of years to give it meaning. Accordingly, even if a regulation is based on a broad but non-specific grant of authority, the state may still incur costs to defend that regulation against court challenges. Increased attorney time would be required for: (1) review of regulatory authority; (2) defense of regulations; (3) historical analysis of regulations to distinguish between parts adopted before and after HB 158's effective date; and (4) eventual review of existing authorities and drafting of legislative proposals to address areas where existing statutory authority has been found or is in danger of being found inadequate.

The Department of Law anticipates one-half of a FTE attorney position will be required to handle an estimated 10% increase in regulations review and litigation. Costs are based on the department's FY02 standard attorney cost schedule and include clerical support, communications, space, supplies, and other normal overhead expenses, plus \$6,500 in FY02 for one-time equipment costs.

Prepared by: Joan M. Kasson Phone 465-5370
Division Attorney General's Office Date/Time 3/12/01 3:51 PM
Approved by: Kathryn Daughhete for Bruce M. Botelho, Attorney General Date 3/12/01
Agency Department of Law

For distribution information, call the Governor's Legislative Office

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: HB 158
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affect: Environmental Conservation
Title: Criteria for Regulations BRU: Administration
Component: Commissioner
Sponsor: Reps. McGuire, Dyson, Fate, Rokeberg, Ogan
Requester: House Judiciary Component Number: 633

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	*	*	*	*	*	*

CAPITAL EXPENDITURES	*	*	*	*	*	*
-----------------------------	---	---	---	---	---	---

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

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

POSITIONS

Full-time	*	*	*	*	*	*
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

See attached

Prepared by: Mary Siroky Phone 465-5355
Division: Statewide Public Services Date/Time 3/22/01 11:45am
Approved by: Kurt Fredriksson Date 3/22/2001
Agency: Department of Environmental Conservation

For distribution information, call the Governor's Legislative Office

The department is still evaluating the possible effects of this legislation on federal receipts. Several programs, most notably the Drinking Water Program and Pesticide Program are funded by federal grants. Federal law requires the department update its regulations to match federal requirements. These changes must be done within set periods of time otherwise financial penalties, up to and including complete loss of the programs and all associated federal funds, may be levied by the Environmental Protection Agency.

Under this legislation, the treatment of the subject of the regulation must be clearly authorized by the statute. DEC's statutory authority is generally broad. Our ability to respond to changes in industries that we regulate will be significantly hampered by this legislation. **Therefore, we anticipate that the real cost will be to industry.**

New or revised DEC regulations where the treatment of the subject of the regulations is not clearly authorized by statute and may be challenged based on this legislation include: Mixing zones for wastewater disposal into surface waters, which allows industries to meet water quality standards at the edge of the mixing zone instead of at the end of the discharge pipe;

- ◆ Site specific criteria for wastewater disposal into surface waters, which allows the Department to set different water quality standards for specific discharges that cannot otherwise meet the established water quality standards;
- ◆ Zones of deposit, which allow the discharge of a limited amount of solids into surface waters instead of requiring complete screening and land disposal of those solids;
- ◆ Solid waste landfill permitting, including streamlined permitting mechanisms;
- ◆ Certification of commercial pesticide applicators, which is required by federal law;
- ◆ Public drinking water system construction, installation and water contaminant level requirements;
- ◆ Seafood processing requirements, which must be in place and consistent with federal requirements in order for Alaska's seafood to be sold interstate and internationally; and
- ◆ Site specific cleanup standards for contaminated sites, which allow for alternative – and less stringent -- cleanup levels.

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: HB 158
 Bill Version: _____
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Department: Labor and Workforce Development
 Title: Criteria for Regulations BRU: All
 Component: All
 Sponsor: Representative Mcguire
 Requester: House JUD Component Number: 340

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
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)

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 (FY2001) cost: None

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill sets guidelines for the relationship between a regulation and its enabling statute as well as requiring clear and expressed authorization, not just implied, by the statute for which a regulation is developed. The department does not anticipate a financial impact as a result of this legislation.

*The department has some concern that, should this legislation be adopted, a court may interpret the presence or absence of specific authorization for regulations in ways that could be detrimental to efficient program operations and potentially result in unanticipated costs.

Prepared by: Remond Henderson, Director Phone: 465-2720
 Division: Administrative Services Division Date/Time: 3/21/01 4:00 PM
 Approved by: Ed Flanagan, Commissioner Date: 03/21/01
 Agency: Department of Labor and Workforce Development

For distribution information, call the Governor's Legislative Office

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 158
 () Publish Date: _____
 Dept. Affected: Natural Resources
 BRU: Minerals, Land & Water Dev.
 Component: Claims, Permits & Leases
 Component Number: 2460

Revision Date/Time (Note if correction): _____
 Title: CRITERIA FOR REGULATIONS
 Sponsor: Rep. MCGUIRE
 Requester: (H)Jud

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services	(195.0)	(390.0)	(390.0)	(390.0)	(390.0)	(390.0)
Travel	(12.5)	(25.0)	(25.0)	(25.0)	(25.0)	(25.0)
Contractual	(42.5)	(85.0)	(85.0)	(85.0)	(85.0)	(85.0)
Supplies	(10.0)	(20.0)	(20.0)	(20.0)	(20.0)	(20.0)
Equipment	(2.5)	(5.0)	(5.0)	(5.0)	(5.0)	(5.0)
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	(262.5)	(525.0)	(525.0)	(525.0)	(525.0)	(525.0)

CAPITAL EXPENDITURES	(750.0)	(1,500.0)	(1,500.0)	(1,500.0)	(1,500.0)	(1,500.0)
-----------------------------	----------------	------------------	------------------	------------------	------------------	------------------

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

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
1002 Federal Receipts	(1,012.5)	(2,025.0)	(2,025.0)	(2,025.0)	(2,025.0)	(2,025.0)
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	(1,012.5)	(2,025.0)	(2,025.0)	(2,025.0)	(2,025.0)	(2,025.0)

Estimate of any current year (FY2001) cost: None

Check this box if funding for this bill is included in the Governor's FY2002 budget proposal: []

POSITIONS

Full-time	-5	-5	-5	-5	-5	-5
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This analysis does not show HB 158's impact on most DMLW programs because that cannot be quantified. For proprietary programs (state land sales, leases, etc.), regulations prohibited by HB 158 could be replaced by sale terms or permit and lease stipulations. Initial cost savings (no APA notice or review by Dept. of Law) would likely be offset by higher costs in the long run due to "reinventing the wheel" for each sale, and more administrative/judicial appeals due to resultant inconsistent treatment of applicants.

This analysis deals instead with a regulatory program where the impact is clear-cut [CONT.]

Prepared by: Bob Loeffler
 Division: Mining, Land and Water
 Approved by: Pat Pourchot
 Agency: Natural Resources

Phone 269-8600
 Date/Time 21-Mar-01
 Date 21-Mar-01

For distribution information, call the Governor's Legislative Office

ANALYSIS: (continued)

(because regulatory programs cannot function without intact, legally enforceable regulations).

Alaska's surface coal mining statute, AS 27.21, lets DNR adopt regulations to gain "primacy," replacing federal jurisdiction under an extensive congressional law and associated regulations. AS 27.21 does not specify which topics DNR can address by regulation, nor how they are to be treated, and does not appear to meet the standard set by HB 158. Primacy was achieved in 1983, but must be maintained by frequent amendments required by the federal Office of Surface Mining to keep the program at least equally "stringent" as the federal program.

This analysis assumes that early in FY 02, OSM directs DNR to change 10 reclamation regulations in order to maintain primacy, but that HB 158 prohibits DNR from doing so. By mid-FY2002, DNR loses primacy and OSM cuts off funding. Full budgeted federal funding for FY 2002 would otherwise have been \$525.0 in the operating budget to administer the regulatory program, and \$1,500.0 in the capital budget for the Abandoned Mine Land contracts. If the state loses primacy, half of this is lost in FY2002. For future fiscal years, the Abandoned Mine Land project loses the full amount of funding (\$2,025.0).

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 158
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Revenue
 Title: Criteria for Regulations BRU: Administration and Support
 Component: Commissioner's Office
 Sponsor: Representative McGuire
 Requester: House Judiciary Component Number: 123

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	*	*	*	*	*	*

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

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

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

* Although it is impossible to quantify possible budget costs to the Department of Revenue from this legislation, it is likely that the statutory change in this bill would create significant problems -- and costs -- for the department and its divisions, boards and corporations that rely on regulatory authority to carry out their missions and to administer their programs. Those problems could delay implementation of regulations essential to program operations, including, but not limited to, the collection and enforcement of oil and gas taxes, collection of child support payments, Permanent Fund dividend eligibility requirements, AHFC housing loan programs, and enforcement of the state's charitable gaming laws.

Prepared by: Larry Persily, Deputy Commissioner Phone 465-5469
 Division: Department of Revenue Date/Time March 10, 2001, 2 p.m.
 Approved by: Larry Persily, Deputy Commissioner Date 03/10/2001
 Agency: Department of Revenue

For distribution information, call the Governor's Legislative Office

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 158
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Health & Social Services
 Title: Relating to criteria for adoption of regulations BRU: Administrative Services
 Component: Commissioner's Office
 Sponsor: McGuire
 Requester: Judiciary Component Number: 317

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	*	*	*	*	*	*

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

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

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The Department of Health and Social Services cannot quantify the cost of the proposed legislation due to lack of understanding of the intent of the bill. Most regulations are adopted under the general departmental authority to adopt regulations contained in AS 47.05.010(2) and (9). Some functions of the department have authorization within enabling statutes to adopt certain regulations, while others do not. We do not believe that any specific Legislative intent was inherent in the way regulations were or were not authorized within statutes over time, but that these differences reflect varying drafting styles. The department is concerned that, should this legislation be adopted, a court may interpret the presence or absence of specific authorization for regulations in ways that could be detrimental to efficient program operation. Specifically, the department would like to see the term "treatment of the subject" on page 2, line 5 clearly defined as to intent, so that we can better analyze the affect on current enabling laws.

Prepared by: Nancy Weller Phone 465-3355
 Division: Medical Assistance Date/Time 3/14/01 4:34 PM
 Approved by: Elmer A. Lindstrom, Special Assistant Date 3/20/01 4:00 PM
 Agency: Department of Health & Social Services

For distribution information, call the Governor's Legislative Office

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

BILL NO. HB 158

Revision Date/Time (Note if correction) _____ Dept. Affected _____
 Title Regulatory Reform BRU Alaska Court System
 Component Trial Courts
 Sponsor Representative McGuire
 Requester House Judiciary Component No. 768

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	*	*	*	*	*	*

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

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

FUND SOURCE (Thousands of Dollars)

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

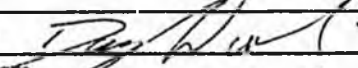
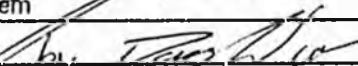
Estimate of any current year (FY2001) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

House Bill 158 removes the implied authority that is currently sufficient for an administrative agency to adopt regulations. Under this bill the authority to adopt regulations must be "clearly and expressly conferred" by the statutory scheme. Because this is a new standard that will be clarified over time through court decisions, it will likely lead to an initial increase in the number of regulatory challenges that come before the court system. However, the extent of that increase is too speculative to support a fiscal note. If HB 158 results in a significant increase in this type of litigation the court system may return to the legislature for additional funding.

Prepared by: Douglas Wooliver  Phone 463-4750
 Division Alaska Court System Date/Time 2/29/01 9:30 a.m.
 Approved by: Stephanie Cole  Date _____
 Agency Alaska Court System

For distribution information, call the Governor's Legislative Office