

ALASKA LEGISLATURE COMMITTEE FILES 2007-2008 SJUD 12551

But because of the civil window, victims of both of these men were able to pursue their cases in civil court.

And something interesting happened – younger victims – victims who never would have had the bravery to come forward before – reported their abuse to law enforcement. They also had evidence that has led to the arrest of both of these men.

Solid evidence. And now, these men are behind bars. That never would have happened without the window.

Without the civil suits, these men never would have been exposed. If their victims named them publicly – without the backing of the courts - the abusers could have sued them for slander. The media would have ignored their claims, and more kids would have been hurt and forced to suffer in silence.

The Michaels are only two of many perpetrators exposed in our civil window who are now being pursued by law enforcement

And again, survivors became accidental pioneers. For the first time, we were able to use the legal system to make sure that what happened to us never happens to another child.

Let me tell you a little about my story:

Like many of the survivors you have heard and will hear today, I was a vulnerable child. I came from an alcoholic home and suffered from severe emotional disturbances because of the home life I had to endure.

My high school and the church were my sanctuaries.

I attended Mater Dei High School, a diocesan high school in Santa Ana, California.

What my parents and I didn't know at the time was that the school was a den of sexual abuse. Eleven men at my high school, including the principal, a vice principal, two choir directors and cross country coach were credibly accused and/or sued for abuse. Documents were released for all of them as a result of the civil window.

When the documents were released, we learned that the abuse was a hundred times worse than anyone had known. And the victims were vindicated. And we were able to warn children and parents and communities about the dangers that these men posed.

Without the documents, these men would be free to molest over and over again. Because of a bill like SB 112, we can warn parents and protect children. Because of a law like SB 112, we were finally given the truth.

My Perpetrator

I was molested by choir director Thomas Hodgman. The prior director had informed Hodgman of my home life, and told him that I was vulnerable. Hodgman seized the opportunity. He had complete control and power over me.

"If you tell anyone, I'll kill you," he told me. "No one will believe you, anyway."

I was repeatedly raped during a two-year period - from when I was 15 until I was 17 years old.

Like many survivors, I couldn't go to my parents, even when my panties were bloody and my body bruised. I couldn't go to my friends, who, after learning of the abuse said that I wanted it.

So I went to school officials. And they did nothing. *They purposely wanted to keep things quiet until my status changed.*

I had no idea that Hodgman was also molesting my friend, Kristin. I have always blamed myself for what he did to her. Maybe if I had done something different, she wouldn't have been hurt.

Right before graduation, I found out I was pregnant.

If you are Catholic, you understand my pain. I had nowhere to go, and nowhere to turn. So, using a fake name, I walked to an abortion clinic, alone, and ended my pregnancy.

It was the single hardest decision of my life and it affects me every single day.

After the procedure, a nurse told me that I had a sexually transmitted disease, vaginal warts, that could lead to cervical cancer and sterility. I spent the next three months having growths burned off of my genitalia.

I suffered endlessly for the next ten years. I watched my mother kill herself with alcohol over the pain and shame of what had happened to me. I lost all of my friends from high school. I trust no one. I suffered from bad relationships, intimacy issues, suicidal thoughts, and an overwhelming shame. I hated who I was, and it seemed that there was no solution and no way out.

I finally decided that I had no choice but to heal or to die. I decided to heal to spite the church and the people who abandoned me. I am one of the lucky ones.

But my story does not end here.

Working With The Church

In 2001, a boy who had been abused by Principal Fr. Michael Harris sued the Diocese of Orange and won a \$5.2 million settlement. I was enraged when I heard the news.

Had the church learned nothing?

In 2001, I contacted the Diocese of Orange Administration to help the Church Council address the sexual abuse.
Joelle Casteix testimony page 1

So I wrote a letter to my high school and offered to help. The school did not respond, but the diocese did. I was invited to lunch by ~~Maria Schindler~~, the HR director and now lead counsel for the diocese.

During our hour together, she told me that she had no records of my allegations, and that school officials had no idea that I had been abused. She even doubted my claims.

But, there was an opportunity for me, ^{to help} she said. I could serve on the diocese lay review board. I could help the bishop and show the county that there is no other abuse in the Diocese of Orange.

I seized the opportunity. I honestly thought that I could make a difference.

During the six months I was on the committee, we did not review a single case. We were told to ignore press reports. There were no notes taken during meetings. We had no administrative support. Instead, we sat around a table and discussed how horrible the clergy abuse scandal was for priests.

We were a puppet, with no power, no credibility and no means to protect children. And that is how the Diocese wanted it. I was disgusted. This was not a place that embraced truth and the teachings of Jesus Christ.

~~Lay review boards are "consultative" bodies – that is the word used in the charter that calls for their formation. That means that the bishop does not have to, and in most instances, does not, have to take the advice of the board. In fact, we have found that like in Orange, important information about offending priests was kept from the boards, so that any decision they made was uninformed, confused, and clouded with lies supplied by the church. Survivors and board members across the country have quit for these reasons that I cite.~~

I was tired of people lying to me. I had no other choice if I wanted to learn the truth.

After six months of frustration, I stepped down from the committee and filed a lawsuit. I knew that the truth would not come out unless the diocese was forced to tell the truth – forced by the law.

Someone needed to be responsible for the children, because the church was not.

After two years of mediation, revictimization, stalling, and mudslinging, 87 cases against the Diocese of Orange were settled for ~~\$100 million~~. But the money was simply a slap on the wrist. The diocese was debt free, less than a year after the settlements. The true punishment and the true justice lay in the files.

In May 2005, most of the documents pertaining to the civil cases in Orange were released to the public. The furor was overwhelming. Not only did documents show that the church knew about abuse, but the documents showed that church officials didn't care. Priests, clergy and employees were transferred, asked to resign, and quietly hidden.

An entire generation of children was destroyed to protect a few men from scandal.

Suddenly, no one cared about the money. People learned why I sued – I sued for truth. No one can call me a liar anymore. No one can tell me it was my fault.

And most importantly, California's children will be safer because we exposed the predators who were allowed to go free to abuse and rape and destroy.

The most important part: girls will now be safer from Hodgman. The church didn't care enough to protect them, but I did. And I did it through a law like SB 112.

The Documents

But let's get back to the immediate danger here in Alaska.

In the files for my case there were quite a few interesting documents. Documents that never would have been exposed unless we had the one-year window.

There was the signed confession – the document I have right here – where Hodgman admits to raping me and my friend Kristin. It's also signed by the principal, who never called the police.

There is the back-dated document, signed by the vice principal and Hodgman, that says that she knew about the abuse a year earlier, and did nothing.

There is the letter, written by the principal, Fr. John Weling, to the superintendent of schools. I have attached it to my statement and will read a portion now.

Where is the compassion? Where is the law? Where is God in these documents?

Only the truth will protect children. The Diocese of Orange didn't care enough to protect me, my friend Kristin or the children of Alaska and Michigan from a child molester. The church in Alaska, with its opposition to this bill doesn't care enough, either.

But SB 112 and its one-year window does.

We were able to expose 150 perpetrators that the church had tried to hide from public disclosure. We exposed "rings" of priest shuffling between California, Idaho, Arizona, Alaska and Oregon. And because we have the files, there are numerous perpetrators who are now under criminal investigation, because many of them, including my perpetrator, still fall within the criminal statute of limitations for rape and molestation. I may finally see Thomas Hodgman behind bars for what he did to me and what he did to my friend.

So let me conclude by restating why SB 112 is VITAL and NECESSARY to the state of Alaska:

- 1) It allows survivors of sexual abuse – all survivors of sexual abuse – in families, communities, religious organizations and other groups – to use the tried and true legal

predators
system to expose their predator – who may have escaped the criminal statute of limitations - and keep children TODAY safe from abuse.

- 2) It aids law enforcement to prosecute molesters by unearthing hidden victims, evidence and testimony – at no cost to taxpayers
- 3) It forces all organizations to beef up their child protection policies.

You may hear testimony from other groups who say that this bill unfairly targets them. Let me reply now and tell you that this bill only targets predators and the organizations that harbored and protected them. Victims still have to meet the a burden of proof to file cases – a burden that is even more difficult many years after the abuse occurred and evidence is missing and witnesses are dead.

Why deny Alaska's victims their day in court?

No one wants to be where I am. No one wants to file a lawsuit. We didn't want to be molested. But now, we want to protect other kids from what happened to us.

But the courts – and even the federal courts who ruled that the California civil window was constitutional – are giving us a chance to save kids right now from predators who are on your streets right now.

I now have a husband and a ten-month-old son. My little boy - Nicholas - loves me unconditionally – he depends on me every day for everything he needs and rewards me with the most fulfillment I have even enjoyed. I am not longer the discarded child that church officials threw out with the garbage. I now have a voice, and will use it to protect kids.

I have met Alaska's victims of sexual abuse. I can be for them what they cannot be right now. They needed me to help give them a voice. And now, they need you to make sure that what happened to them and what happened to me never happens to another child in Alaska.

The power is in your hands.

Thank you for your support



Mater Dei High School

1202 West Edinger Avenue
Santa Ana, California 92707-2191
714/754-7711

OFFICE OF THE PRINCIPAL

REVEREND JOHN B. WELING

November 8, 1989

Official documentation - November 7, 1989 meeting with Mr. Tom Hodgman

This is to document my meeting with Mr. Tom Hodgman on Tuesday, November 7, 1989.

I met with Mr. Hodgman to discuss allegations made by four Mater Dei graduates (Class of 1988) [REDACTED]

These former students met with me on Saturday, November 4, 1989, to share their concern about past relationships Mr. Hodgman allegedly had had with two of their classmates. The first situation involved Joelle Casteix during the semester before she graduated. [REDACTED]

[REDACTED] the summer after graduation. They brought a copy of an article written by Joelle Casteix published in the UCSB student newspaper, Daily Nexus, on Wednesday, October 18, 1989. This article states that Joelle not only entered into a close relationship with one of her high school teachers, but became pregnant by that relationship and subsequently decided to have an abortion.

The students stated that they knew about the sexual relationships Mr. Hodgman had with these two former students because of direct information they were given by Joelle and [REDACTED]

In my meeting with Mr. Hodgman, he admitted to not only dating these two students [REDACTED] but having sexual intercourse with them. He had not been aware of the possibility of the abortion until he read the article.

Mr. Hodgman reassured me that he had undergone extensive counseling and had taken many steps in his personal and professional life to ensure that he would never make this terrible mistake again. He swore that this sort of problem has not occurred again with any students.


Rev. John B. Weling

11/9/89
Date


Thomas Hodgman

11/9/89
Date



Mater Dei High School

1202 West Edinger Avenue
Santa Ana, California 92707-2191
714/754-7711

November 7, 1989

Official documentation - June 1988 meeting with Mr. Thomas Hodgman.

This statement is to document a meeting initiated by Mr. Tom Hodgman with me in June, 1988.

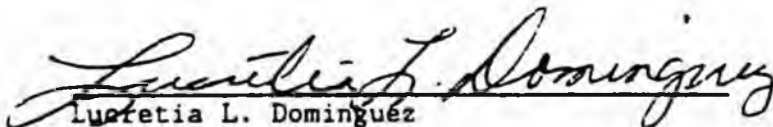
At this meeting Mr. Hodgman stated that since he decided not to resign that he would like me to know of a situation in which he was involved during the last semester of the 1987-88 school year.

Foolishly he dated a senior girl, Joelle Casteix. Her parents called him and asked him to stop dating their daughter. They also requested that he keep the matter quiet because they did not want the school to be aware of the situation. They would prefer that their daughter not be dragged into any kind of a situation at school.

Mr. Hodgman stated that he kept his promise to the Casteix family by not calling, seeing, dating or discussing the matter with anyone.

He stated he was in counseling to help him with this and other problems he was experiencing at the time. He recognized what a big mistake it was and vowed that it would never happen again.

No record of this meeting was placed in his personnel file, and it is only at the request of the Principal that it is now being documented.


Lucretia L. Dominguez

11-7-89
Date


Thomas Hodgman

11/7/89
Date



Mater Dei High School

1202 West Edinger Avenue
Santa Ana, California 92707-2191
714/754-7711

OFFICE OF THE PRINCIPAL

CONFIDENTIAL

REVEREND JOHN B. WELING

December 12, 1989


Sr. Celine Leydon, S.S.L.
Superintendent of Catholic Schools
Diocese of Orange
2811 East Villa Real Drive
Orange, CA 92667

Dear Sister Celine:

This is to inform you about two personnel matters we have been dealing with recently. In case you are ever contacted about these situations the enclosed information might be of assistance.

1. 

2. A past situation involving our choir director, Tom Hodgman, and one of our senior girls at the time was brought to my attention by four of our graduates. They gave me the enclosed copy of an article this student wrote in her UCSB school paper. At this time we have no evidence that she was pregnant and had an abortion. We are aware of her past history of serious emotional problems. When confronted with this alleged situation, Mr. Hodgman admitted to me that he did have a relationship with this student, prior to her graduation, which included sexual intercourse. The student was under eighteen at the time which necessitated my report to the Child Abuse Registry. Mr. Hodgman subsequently resigned and has no further association with our choir program or students.

Both cases have been handled with the advise from  office.

St. Collins Layton, S.S.L.
December 12, 1989

As you can see, there is never a dull moment at the corner of Bristol and Edinger! If you wish to discuss either of these matters further, please let me know.

Sincerely yours in Christ,

A handwritten signature in cursive script that reads "John B. Weling". The signature is written in dark ink and is positioned above the typed name.

Rev. John B. Weling

JBW/r
Enclosures

cc: Most Reverend Norman McFarland
Rev. John Urell



Mater Dei High School

1202 West Edinger Avenue
Santa Ana, California 92707-2191
714/754-7711

November 7, 1989

Official documentation - November 3, 1989 meeting.

Attending: [redacted] (1988 graduate),
[redacted] (1988 graduate) and Mrs. Lucretia Dominguez

Chaired by Mrs. Lucretia Dominguez, Assistant Principal

A meeting was arranged on Friday afternoon, November 3, 1989 in my office.

Mr. Hodgman showed me an article written by Joelle Casteix in the October 18, 1989 issue of the Daily Nexus about an abortion she had in July of 1988. This was the first time Mr. Hodgman had any knowledge of her pregnancy and abortion. Concern was warranted because the father of the child was not stated but certainly reference was made to Mr. Hodgman.

[redacted] stated that this was the first time she ever discussed this matter openly and directly with Mr. Hodgman. She was aware of the dating because her friend, Joelle, had kept her informed. When asked why she waited so long to discuss this matter she said she did not know what to do. She was angry and confused.

She wanted to meet with me to find out what action the school had taken. My reply was that I did not know that there was a serious issue yet to be dealt with. The only information I had ever received was from Mr. Hodgman in June of 1988 regarding dating a student. I have never received any complaint or charge filed against Mr. Hodgman by any student, staff or parent. We simply discussed his behavior, and I was assured that it would never happen again. This article and additional information, not factual, have not come to our attention before this date.

I was aware that [redacted] were going to meet with Fr. Weling on Saturday and no attempts on Mr. Hodgman's or my part were made to prevent them from doing so.

I also told Mr. Hodgman that I was quite sure that Fr. Weling would want to meet with him to discuss this matter. Mr. Hodgman stated that he feels it would be important for Fr. Weling to hear his side of the story.

Lucretia L. Dominguez
Lucretia L. Dominguez

11-7-89
Date

Thomas M. Hodgman
Thomas Hodgman

11/7/89
Date

adn.com

Anchorage Daily News

Child molester, 71, is headed to prison -

SENTENCE: A judge gives Billy Joe Perkins 25 years for his abuse.

Anchorage Daily News (AK)

March 17, 2007

Author: JULIA O'MALLEY

Anchorage Daily News

Staff

Billy Joe Perkins, 71, who admitted molesting little girls since the 1970s, will likely die in a prison cell.

Superior Court Judge Philip Volland sentenced him to 25 years Friday for sexual abuse of a minor in the first degree. Perkins, who plead no contest to abusing a 9-year-old girl in 2006, won't be eligible for parole for 20 years. Volland called the abuse "inherently destructive in a way that couldn't be remedied."

"In my mind, Mr. Perkins raises a significant threat to the community, to children in the community," Volland said.

Perkins was originally charged with 34 counts of sexual abuse for molesting two young girls in 2005 and 2006. Without negotiating a deal, he pleaded no contest to one count, but the other 33 are still pending. Prosecutor Alan Goodwin said the district attorney's office is still considering whether to take him to trial on the other charges.

Perkins was pushed into the courtroom in a wheelchair with an oxygen tube around his face. He listened to the proceedings through special earphones.

Goodwin argued that Perkins should receive a stiff sentence -- well over the minimum of eight years -- because he admitted to investigators that he abused c'her girls, beginning with a 6-year-old in the 1970s.

Goodwin played a recording of Perkins' police interview, where the old man said he molested the 9-year-old almost daily. He said the girl pursued him and asked to be molested.

"I made a mistake, but once you do it, you can't turn it around because she's got you over a barrel," he said.

"I'm not attracted to little girls, some girls just hit you wrong."

On the recording, Perkins described sex with another girl, who was 6 years old. He began molesting her in the early 1970s, and continued for 10 or 11 years. She's an adult now.

"Given his history, the only way the court can be sure Billy Joe Perkins isn't going to

offend against other girls is to incarcerate him," Goodwin said.

Defense attorney David Weber argued that Perkins was old, had suffered a stroke and had expressed remorse for his crimes. He shouldn't be given a life sentence, Weber said.

"No matter what you do," he told the judge, "this man is going to die in jail."

adn.com

Anchorage Daily News

Judge says sex suit filed too late -

DISMISSED: Victim claimed priest got her pregnant in 1977.

Anchorage Daily News (AK)

February 22, 2006

Author: SHEILA TOOMEY

Anchorage Daily News

A Nome judge on Tuesday dismissed a sex abuse lawsuit against the Jesuits and the Fairbanks Catholic diocese, ruling that a woman who says former Nome priest James Poole got her pregnant when she was 14 waited too long to take legal action.

Superior Court Judge Ben Esch said the woman, known as Jane Doe 2, should have known when Poole told her to get an abortion that he and the church had done something wrong to her. In legal terms, that knowledge triggered her "duty to inquire" and set in motion the civil statute of limitations, which required her to file suit no more than two years after she turned 18.

"This will be seen as unjust by many people," Esch wrote in his dismissal, "but is, I believe, required by the laws of the State of Alaska." The decision came less than a week before trial was scheduled to begin.

Both sides reacted to the dismissal as might be expected. In a written statement, the Jesuits -- formally the Society of Jesus, Oregon Province -- said the ruling confirms "the justice of our position" but vowed to seek healing for "those who have suffered from abuse."

"(W)e still hope to find a path to reconciliation," the statement said.

"We do not celebrate today's decision."

Attorney Ken Roosa, who represents Jane Doe 2 and dozens of other litigants reporting childhood abuse by Alaska-based priests, said he will appeal the dismissal to the Alaska Supreme Court.

"I think Judge Each is a fine judge, but I think he called it wrong here," Roosa said. The decision is based on the facts of this case and does not imperil other pending cases, he said.

"This is just one skirmish in a long battle."

In her 2004 lawsuit, Jane Doe 2 said Poole abused her in the late 1970s and got her pregnant in 1977. She said she had an abortion in 1978 at Poole's urging.

Roosa said the woman reported the abuse to two different local priests within the

allowed time period and was told to do penance.

Both religious organizations have said they knew nothing of such accusations at the time.

In 2001, the Alaska Legislature eliminated the statute of limitation for child sex abuse cases. That means anyone abused after that date has no deadline for filing suit.

Roosa claims, and is arguing in another case before the state Supreme Court, that the law is retroactive and covers people like Jane Doe 2. Esch apparently did not agree.

In December, he removed Poole as a defendant in the case, saying Jane Doe 2 should have known something wrong was done to her and needed to take action within two years of her 18th birthday.

He left the Jesuits and the Fairbanks diocese as defendants, saying it was not clear she should have known she had a case against the two organizations, according to Roosa.

The case was scheduled to go to trial in Nome next week. In the meantime, the Alaska Supreme Court in an unrelated case ruled that judges, not juries, must decide statute-of-limitation questions, Roosa said.

Forced to decide, Esch concluded Jane Doe 2 should also have taken timely action against the two organizations.

On Tuesday, Roosa seemed bitter that the church even raised the timing question. "Would Christ assert the statute of limitations against a victim who had been sexually abused by a priest?" he said. "I just don't think so."

In their statement, the Jesuits spoke of a resolution better than a "legal dispensation."

"There remains, at this time, a woman whose suffering and story deserve our respect and our pastoral care. ... we continue to pray that we will find together a deeper justice, based not on adversarial strife but on our shared concern for the well-being and healing of all those involved."

In addition to the dismissed case, two other suits against Poole have been settled and two remain.

The Associated Press and the Fairbanks Daily News-Miner contributed to this story. Sheila Toomey can be reached at 907-257-5341 or stoomey@adn.com.

adn.com

Anchorage Daily News

28 men allege abuse by monk -

1965 TO 1975: Western Alaska men sue Fairbanks Catholic Diocese, Jesuits.

Anchorage Daily News (AK)

November 12, 2004

Author: RICHARD MAUER

Anchorage Daily News

Staff

Estimated printed pages: 4

Twenty-eight Alaska men say that when they were children, a religious brother who served several Western Alaska villages bought sexual favors from them with candy, better grades, sacramental wine and coins from collection plates.

The men, now mostly in their 40s, say in a lawsuit filed in Bethel that the former Trappist monk, Joseph Lundowski, abused their trust as deacon and religious instructor and engaged them in sexual misconduct, including oral sex. One man said he was also raped.

The men's identities are not disclosed in the lawsuit, which seeks monetary damages from the Fairbanks Catholic Diocese and the Jesuit province in Oregon, which has a historical affiliation with the Fairbanks diocese. At the time of the alleged abuse, from 1965 to 1975, the victims ranged in age from 6 to 24, with most of them in their adolescence.

The lawsuit says that Lundowski was forced from Alaska by church authorities in 1975. He is believed to have died. He was born in 1918.

A spokeswoman for the Fairbanks diocese said it had not received a copy of the suit and couldn't comment on the allegations.

"From the best I can figure, he left in the mid-'70s," said Ronnie Rosenberg, the director of human resources. "There are not many people here now who even remember him. As for the victims, all them are 'James Doe,' and we don't know who they are now. We do pray for healing for anyone who may have been injured."

In a prepared statement, the Jesuits denied any direct connection to Lundowski.

"The Society of Jesus learned this morning about the filing of litigation alleging multiple instances of sexual misconduct several years ago by Mr. Joseph Lundowski. As we have been committed to healing in the Church, we are saddened by these new allegations, and keep all who have suffered in our prayers. However, the Society wishes to clarify that Mr. Joseph Lundowski was at no time a member of the Society of Jesus nor in any way subject to the authority of any Jesuit superior or Provincial," it said.

According to the lawsuit, Lundowski was kicked out of his monastery "because of his

inability to withstand the rigors of monastic life." The lawsuit asserted that the language was code for "his improper and illegal sexual involvement with young boys."

Lundowski was recruited to Alaska by The Rev. George Endal for the Holy Rosary Mission School in Dillingham around 1949. Endal put Lundowski in charge of the boys' dormitory.

In 1963, when Endal went to the Western Alaska village of Nulato, Lundowski followed, the lawsuit said. It was there that Lundowski was "involved in a scandal with a person 'who is not a woman,'" the lawsuit said, quoting from a 1965 letter written to another priest in Western Alaska by his superior. The letter, discovered by the plaintiffs' attorney, Ken Roosa of Anchorage, in another abuse case, suggested that Lundowski's behavior was already established and known, though nothing was done about it other than complaining.

"Rather," the lawsuit continued, "he was transferred to Hooper Bay with Father Endal in 1965, where he continued to molest and sexually assault boys and young men."

Lundowski was deacon and religious instructor over the next 10 years at parishes in Hooper Bay, Stebbins and St. Michael. He also left a trail of abuse, according to the suit. Six of the victims were from Little Flower of Jesus parish at Hooper Bay; 11 attended St. Michael's parish at St. Michael; and 11 were from St. Bernard's parish in Stebbins.

His "sexual predation accelerated" when he was transferred to St. Michael and Stebbins in 1968, the lawsuit said. "He continued to serve as a deacon and catechist, often molesting boys after Mass or catechism."

The suit charged he engaged in oral copulation with each of the victims, "and forced many to submit to anal sodomy and required them to masturbate him." The boys were rewarded with candy, money stolen from collection plates, cooked and baked foods, beer, sacramental wine "and better grades on their catechism assignments."

He also warned them against telling. He said "no one would believe them because he worked for God," the suit said.

His abuse finally came to an end when a resident of St. Michael, Martha Abochook, caught him in the act with the 24-year-old, the suit said. Abochook, who is now dead, "raised a fuss" that resulted in the Fairbanks diocese removing Lundowski from Alaska.

Each of the men still lives in Western Alaska. Until other lawsuits against priests in the area became known, the men didn't understand their depression, anxiety, self-blame, shame and guilt were caused by Lundowski, the suit said. "They didn't know they had the right to sue the diocese until they heard of the others."

Church officials should have stopped the abuse and reported Lundowski's felonies to authorities, but failed, the lawsuit said.

Abuse victims plead for year to file suits**STATUTE OF LIMITATIONS: A bill would allow long-ago injuries to be addressed.**

By STEVE QUINN
The Associated Press

(Published: March 27, 2007)

JUNEAU -- James Nixsik sat with palms down on a table and eyes welling with tears as he talked to the Senate Judiciary Committee on Monday.

The 48-year-old man from St. Michael told lawmakers of a childhood he says was filled with sexual abuse at the hands of a deacon.

His hope, he told the legislators, is that they will approve a bill creating a one-year period for the now-adult victims of child sex crimes to file civil lawsuits against assailants currently protected by statutes of limitations.

"I couldn't do anything. I was a small boy; he was a big man," Nixsik said, often interrupting his speech with long pauses to regroup.

"I couldn't defend myself," he said. "I started lashing out at people who are closest to me. I didn't understand why I had this rage."

Nixsik said he hopes the bill passes "so that justice can be done, not only for me but for others. Some are still hurting today, like me."

The bill does not affect criminal cases.

This stark testimony came at a time when the Legislature is debating budget allocation, retirement funding and the Alaska Gasline Inducement Act in other parts of the Capitol.

But for nearly two hours, five committee members heard personal stories, punctuated with language rarely used in these rooms.

"It was gut-wrenching to sit that close to them and feel their very real pain," said Sen. Lesil McGuire, R-Anchorage.

Testimony came from psychologists, an attorney and victims; people arrived from North Carolina, Southern California and northwest Alaska to get 10 minutes in front of the committee.

The bill specifically changes what sponsor Sen. Hollis French, D-Anchorage, called a loophole in state law.

French, the committee chairman and a former prosecutor, said the Legislature in 2001 eliminated the statute of limitations on civil lawsuits alleging child sexual abuse, but only for conduct that occurred after that date.

French said the proposed law would create a one-year window for people who were victimized before 2001 to pursue lawsuits if they wished. After a designated year, not yet specified, the window would close, he said.

Numerous civil lawsuits have been filed in Alaska, even without changes in the law. For example, there have been more than 100 lawsuits filed against priests or religious volunteers who served in the Catholic Diocese of Fairbanks.

"I heard from lawyers who were having trouble with the statute of limitations," said French, who handled sexual abuse cases when he worked in the Anchorage district attorney's office.

Joelle Caseix of Newport Beach, Calif., told the committee a similar law in California helped her pursue a claim against her attacker.

Caseix now serves as the Southwest Regional Director for the Survivors Network of those Abused by Priests.

The 36-year-old talked about repeated rapes over a two-year period and ultimately becoming pregnant just before graduation.

She told lawmakers that French's bill gives Alaska victims a legal path to expose predators, helps additional victims come forward and forces organizations to strengthen child-protection policies.

"You may hear testimony from other groups who say this bill unfairly targets them," she said. "Let me reply now and tell you this bill only targets predators and the organizations and people that harbored and protected them.

"The victims still have to meet a burden of proof to file cases -- a burden that is even more difficult many years after the abuse occurred and after the evidence is missing and witnesses are dead."

No one spoke against the bill, SB 112, but opponents will get their chance during another hearing April 2.

Daily News staff contributed to this story.

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Sex abuse victims ask for justice

Bill would allow suits to be filed for past crimes

Victims of childhood sexual abuse testified before the Alaska Senate Judiciary Committee on Monday, urging lawmakers to create a one-year window for lawsuits against perpetrators of decades-old sex crimes.

The legislators were stunned by accounts of people such as James Niksik of Saint Michael, a village on the east coast of Norton Sound.

"I was sexually abused by a deacon," Niksik said. "I tried telling my father once, and he beat me."

Most of the victims blamed leaders of Catholic organizations in villages.

Two psychologists, one attorney and six abuse victims urged the senators to pass the legislation. Nobody spoke against the bill, but Sen. Hollis French, D-Anchorage, who sponsored it, said there would be another meeting Monday to hear from the Catholic Church.

"In fairness, I had to hear from both sides," French said.

The Most Rev. Michael Warfel, bishop of the Diocese of Juneau, was out of town Monday and could not be reached for comment. Chip Wagoner, executive director of the Alaska Conference of Catholic Bishops, said he was aware of the committee meeting but declined to comment.

"We have no position on this bill," Wagoner said.

The bill would allow past victims the rights they would have if the incidents had happened under current law, French said.

The statute of limitations on civil and criminal cases involving child sex crimes was eliminated in 2001. In other words, a lawsuit can be filed at any time over abuse committed after 2001.

Before then, lawsuits had to be filed within three years of the incident or the recollection of the incident. There was a 10-year limit on criminal charges.

French said he introduced the bill because of the horrors he witnessed as a

former prosecutor of child sex crimes.

"I think there was an injustice done when we changed the law in 2001," French said after the testimony. "We left a group of victims without an opportunity to go into court."

Much of the support for the bill came from the Survivors Network of those Abused by Priests, a nationwide group commonly known as SNAP. The organization's Southwest regional director, Joelle Casteix, shared a story about her litigation against the Diocese of Orange in California, made possible when California passed legislation similar to that under consideration in Alaska.

The California diocese ultimately settled 87 cases for \$100 million, she said. The cases prompted other victims to come forward, leading to criminal charges.

Elsie Boudreau, who said she was abused in Nome about 30 years ago, described how many times she wished her pain would go away. She said a priest singled her out from her friends and started French-kissing her. For years, she did nothing.

"It was only when my daughter was 10, the same age I was when I was abused, that I could no longer shield it from my consciousness," Boudreau said.

"He was a priest," she said. "He was not just any priest, but a family friend and a father figure. ... It was only after I filed the claim that he was removed from the ministry."

She ultimately settled her case for about \$1 million, she said before her testimony.

Niksik told the senators about his problems with alcohol abuse and crime, which he blamed on being abused by a church deacon. He said he could not forgive the church for bringing the man into his village.

"There were many others in my village who were abused by this deacon," Niksik said. "Some are still hurting today, like me. They're hurting too."

Mary Gail Frawley-O'Dea, a psychologist who addressed a national conference of bishops about sex abuse in 2002, described reasons that victims do not talk about their abuse. Some feel responsible and some split the event from their consciousness, she said.

Others fear the retaliation they could face if they take action against powerful figures or organizations.

"The window bill gives survivors a motivation to take this risk," Frawley-O'Dea said.

After the committee meeting, Sen. Lesil McGuire, R-Anchorage, described the victims' testimony as "heart-wrenching."

"It provided a very clean record for why you don't want a statute of limitations for these kind of sexual abuses," McGuire said.

• Ken Lewis can be reached at ken.lewis@juneauempire.com.

Click here to return to story:

http://www.juneauempire.com/stories/032707/loc_20070327021.shtml

SB

128

Alaska State Legislature

Senator Hollis French, Chair
State Capitol, Room 417
Juneau, Alaska 99801
Phone: (907) 465-3892
Fax: (907) 465-6595



Committee Members:
Senator Charlie Huggins
Senator Bill Wielechowski
Senator Lesil McGuire
Senator Gene Therriault

Senate Judiciary Committee

MEMORANDUM

DATE: April 30, 2007

TO: Leg. Legal

FROM: Cindy Smith, Senator French

RE: As passed JUD CS for SB128(CRA)

Please provide a final Judiciary CS for SB 128, with the attached amendment.

AMENDMENT #1

OFFERED IN THE SENATE

TO: CSSB 128(CRA)

Page 2, line 22:

Following "purchaser.":

Insert:

"Failure by a package store licensee, agent, or employee to enter into the database the date and the amount of alcoholic beverages shipped to the purchaser is a class B misdemeanor."

Page 5, following line ~~9~~³⁰

Insert:

**** Sec. ~~12~~¹¹ AS 04.16.180(a) is amended to read:**

(a) Except as provided in AS 04.11.015, AS 04.16.025, 04.16.050, 04.16.051, **04.11.150(g)**, 04.16.200 – 04.16.210, and AS 04.21.065, a person who violates a provision of this title or a regulation adopted by the board is guilty, upon conviction, of a class A misdemeanor. Each violation is a separate offense."

Renumber the following bill sections accordingly.

Out of Session:
Legislative Information Office
P.O. Box 1630
Nome, AK 99762-1630
(907) 443-5555
(907) 443-2162 (Fax)

Alaska State Legislature



In Session:
State Capitol
Juneau, AK 99801-1182
(800) 597-3707
(907) 465-3707
(907) 465-4821 (Fax)

SENATOR DONALD C. OLSON

DISTRICT T

Alakanuk
Ambler
Anaktuvuk Pass
Atkasuk
Barrow
Brovig Mission
Browerville
Buckland
Chevak
Deering
Diomedes
Elim
Emmonak
Gambell
Golovin
Hooper Bay
Kaktovik
Kiana
Kivalina
Kobuk
Kotlik
Kotzebue
Koyuk
Mountain Village
Noatak
Nome
Noorvik
Nuiqsut
Nunam Iqua
Pilot Station
Pitka's Point
Point Hope
Point Lay
Savoonga
Scammon Bay
Selawik
Shaktolik
Shishmaref
Shungnak
St. Mary's
St. Michael
Stebbins
Teller
Unalakleet
Wainwright
Wales
White Mountain

March 28, 2007

TO: Senator Hollis French
Senate Judiciary Committee

FROM: Senator Donald Olson 

SUBJECT: Hearing Request SB 128

SB 128, "An act relating to the sale, distribution, and purchase of alcoholic beverages; relating to a state database for records of certain alcoholic purchases of alcoholic beverages; relating to procedures for local option elections for control of alcoholic beverages; and providing for an effective date."

I respectfully request a hearing before the Senate Judiciary Committee for SB 128 – Local Alcohol Option Provisions.

SB 128 would serve to halt the illegal importation and sale of alcohol to rural Alaska. Bootlegging of alcohol into damp or dry communities will be greatly curtailed with the enactment of the provisions in this legislation. In addition, the bill also makes allowances for the transfer of liquor licenses to a city within that borough's borders.

Attached you will find: the current version of the bill 25-LS0742\E, a sponsor statement, sectional analysis, fiscal note, and various pieces of support documentation. If you require additional information, please contact myself or Ginny Austerman, at 465-4989.

Thank you for your positive consideration of this hearing request.

SECTIONAL ANALYSIS
SENATE BILL 128

Sections 1 and 2 require the Alaska Beverage Control (ABC) Board, after working with package store licensees, to create and maintain a database that keeps track of written orders for alcohol from persons residing in damp local option communities. A package store licensee must consult the database before filling a written order from the local option area to ensure that the customer has not already ordered the alcohol that the local option allows for that particular month. Any order filled must be immediately entered in the database. The information would be used to prevent bootleggers from ordering alcohol from numerous package stores in violation of the local option. The information in the database may only be used as specifically allowed by package stores and law enforcement; the information in the database would not be public information.

Section 3 prohibits a package store from shipping alcohol in response to a written order from a person residing in a local option area to any address other than the address of the person ordering the alcohol. However, if the person ordering the alcohol lives in an area where a community delivery site has been established, the alcohol must be shipped to the delivery site.

✓ **Sections 4 and 5** correct an omission in state law that does not allow for transfer of liquor licenses in large hub communities from the organized borough to within city limits of the community. For example, communities like Wasilla, Kenai, or North Pole may have only a few licenses within the city, but the cities serve large populations outside city limits. The bill would allow transfer of licenses available in the surrounding borough into the city center, to promote economic development in businesses such as family-oriented restaurants. The transfer would require the approval of the governing body of both the borough and the city.

Sections 6, 7, 11, and 12 prohibit a person from purchasing alcoholic beverages in a local option area from another person who is selling the alcohol in violation of the local option. This conduct would be a class A misdemeanor. Under current law, AS 04.16.200(b), the person selling alcohol in violation of a local option would be guilty of a class C felony. Sections 6 and 11 include conforming amendments for the new provisions in Sections 7 and 12.

Section 8 extends the period after a local option has been adopted in a community from 12 to 24 months, before an election may be held to remove the option or to change the option to a less restrictive alternative. It would also provide that after a community has adopted a local option, an election removing the option or making it less restrictive may be held once in a 36 month period, rather than the 18 month period in current law.

Section 9 prohibits a person from purchasing alcohol by written order on behalf of another person who resides in a community that has elected to be dry. The penalty for this violation would be a class A misdemeanor.

Section 10 prohibits a person in a dry local option area from possessing ingredients or equipment with the intent to use them in the creation of home brew. This conduct would be a class A misdemeanor.

Sections 13 and 14 amend the forfeiture provisions for violation of AS 04.11.499. The law would allow for the forfeiture of alcohol that was purchased from a person who brought the alcohol into the community in violation of the community's local option. They would not allow for the forfeiture of an airplane or other vehicle upon conviction of a person for the purchase of alcohol from a bootlegger.

Section 15 would allow the ABC Board to establish pilot alcohol delivery sites in Bethel and Kotzebue, if the Board is requested by either community to do so. If opened, the sites would operate for a period of three years.

Sections 16 – 20 include an instruction to the revisor of statutes and effective dates.

Suggested contacts for testimony on CS SB 128 – Alcohol Local Option Provisions

Bill Sponsor will have the following people at hearings of the bill:

**Ginny Austerman, Staff to Senator Donald C. Olson
Anni Carpeneti, Assistant Attorney General, Criminal Division
Darwin Peterson, Staff to Senate President Lyda Green**

Other contacts:

✓ **Loretta Bullard, President, Kawerak, Inc. non-profit division of the Bering Straits Native Association (serves on the Alaska Rural Justice & Law Enforcement Commission)
contact here at president@kawerak.org**

Talus Colberg, Attorney General

✓ **Mayor Diane Keller, City of Wasilla (907-373-9055 Mayor's Office), they have multiple parties interested in the bill, so they may do as they did in C & RA and gather together at the Mayor's office and take turns testifying. Jim Stevens from Browman (?) Development and Tim Wood were two of the people who testified along with Mayor Keller.**

So far, we haven't heard any objections to this legislation.

*Ginny
4989*

Committee report attached FYI

*LISA Jaeger (Yay-ger) of
Tanana Chiefs conf. is
also an option to testify
lisa.jaeger@TANANACHIEFS.ORG*

Informational Primer on State Liquor Law Effect on Local Economic Development



The City of Wasilla, in partnership with cities, boroughs, and developers from around the State is seeking to rectify an inadequacy in state liquor law that hampers the ability of hub communities to attract investment in high-end and family oriented restaurants. State law currently allows for 1 such license for every 3,000 residents of a community, so in communities such as Wasilla, Kenai, or North Pole there may be only 2-3 full liquor licenses allocated to go around for restaurants to use. The problem is these communities serve population areas outside of their city limits which are many times their own city population thus providing a large market for restaurants. Since so few licenses are allowed and there is no way to augment the number of liquor licenses allowed in a city the result is a lack of dining options, particularly high end or family oriented dining options in these communities and their surrounding areas.

The City of Wasilla itself has been approached by numerous higher end and family oriented dining groups interested in locating in our city, only to learn such location is impossible because a large component of their business model is the sale of wine and mixed drinks with dinner, which they cannot do here without an outlandish outlay of capital to secure an existing liquor license from within the closed liquor license market.

Instead of seeking to create more liquor licenses we feel it would be good public policy to use existing licenses more efficiently by making use of existing borough allocated licenses in hub cities within those boroughs.

We are suggesting the state liquor license law be changed in the following ways:

1. Restaurants within cities should be allowed to use beverage dispensary liquor licenses allocated to their boroughs when and only when both the city and borough agree to such a use.

Since these licenses are allocated to the boroughs to serve their populations and the cities act as the commercial hub servicing these same populations it would seem logical that a borough could transfer one of its licenses to city control to meet borough commercial needs.

2. Such transfers would only be allowed for restaurants transferring beverage dispensary liquor licenses.

This legislation is not intended to allow for proliferation of package liquor stores, bars, or other liquor distribution venues outside of sit-down dining establishments.

3. Such transfers should only be allowed in boroughs with a population of 40,000 or more.

Since this legislation is intended to service the needs of larger suburban populations it seems logical to permit it only where such populations are large enough to warrant such action.

Please contact Casey Reynolds, Economic Development Planner for the City of Wasilla at (907) 373-9030 to discuss our ideas and the process to change liquor license laws in Alaska.



TANANA CHIEFS CONFERENCE, INC.

**122 FIRST AVENUE
FAIRBANKS, ALASKA 99701-4897**

March 27, 2007

Dear Members of the Senate Community and Regional Affairs,

Re: In support of SB 128

As you know, issues related to the abuse of alcohol remain of grave importance to the health, safety, and welfare to the people of the Tanana Chiefs Conference Region. Senate Bill 128 proposes to take several steps forward in improving the regulation of alcohol in our villages.

- We support the establishment of a statewide database designed to allow a package store licensee to access, reducing the amount of alcohol that might otherwise go into a restricted area under AS 04.11.150(g).**
- The provision to prohibit shipment of alcohol to addresses other than where the purchaser lives is of critical importance to our villages. Too often a buyer will have alcohol shipped to a nearby village that does not have a prohibition, cause a great deal of trouble in that village, and then illegally imports that alcohol into their own village.**
- Extending the timeframe that local option law may be conducted to a less restrictive option, and extending the timeframe for conducting an election more than once are both excellent amendments to existing law, allowing for more stability and encouraging healthy behaviors.**

- We support the provision which adds a prohibition on possession of homebrew ingredients with intent to manufacture alcohol.
- We support the addition of a penalty for a person purchasing alcohol from another person who had transported it illegally into a village.

Thank you for consideration of our support for the measures in Senate Bill 128, and for your hard work during this legislative session.

Sincerely,

Jerry Isaac, President

Tanana Chiefs Conference

122 First Ave

Fairbanks, AK 99701

1-800-478-6822

Good Afternoon. Thank you for this opportunity to testify on SB 128. My name is Loretta Bullard. I am President of Kawerak, the regional non-profit consortium providing non-health services throughout the Bering Straits Region of Alaska. I also serve on the Alaska Rural Justice and Law Enforcement Commission representing Village Public Safety Officer contractors in the State.

Alcohol and substance abuse is the nucleus around which many of rural Alaska's social problems revolve. Alcohol is a contributing factor in many, if not the majority of suicides, homicides, child sexual abuse and physical neglect, domestic violence situations, and accidental death and injuries in rural Alaska. It is a 100% factor in children diagnosed to be FAS and FAE. I estimate that 90% of the Alaska Natives serving time in Alaska correctional facilities, are serving time for offenses conducted under the influence of alcohol, for consuming alcohol while on probation, or for importing or brewing alcohol in violation of local option laws. Alcohol abuse has a huge impact on Alaska families and on the State fiscal situation.

I am testifying in support of SB 128. Many of the provisions contained in SB 128 are practical solutions that were developed as part of the RJLC work group process. In this process, we had individuals from around the State of Alaska participate in work groups to develop options for consideration by the Commission, which if implemented, would improve rural justice and safety throughout the State of Alaska. Work group members included representatives from the Department of Law, Department of Public Safety, rural residents, Alaska Legal Services, Alaska Federation of Natives as well as several Commissioners.

Provisions contained in SB 128 will help to curtail the importation of alcohol into communities that have opted to be damp or dry under Alaska Statutes by:

- Creating a statewide data base that will enable package store outlets to confirm that duplicate shipments are not being shipped to any particular individual in violation of the limits imposed by law. Currently, an individual could order 20 shipments from 20 different outlets – much of which would no doubt be bootlegged. This would greatly curtail bootlegging activity in rural Alaska.
- Requires that alcohol shipments only be shipped to a purchaser's home address. This prevents alcohol from being shipped to nearby damp or wet communities, and then subsequently being imported into dry communities in violation of the local option law.
- Providing the opportunity for Bethel and Kotzebue to set up Alcohol Beverage Delivery Site Pilot Projects. As we understand it, Barrow established such a site a number of years ago which has proven to be a huge success in controlling the amount and delivery of alcoholic beverages into their community.

The language would also limit the ability of a community to remove a local option or change to a less restrictive option – such that a revote could not be conducted during the first 24 months after the local option was adopted or more than once in a 36 month period. This would give the community time to fully experience whether the local option

law is working for the community – and limit flip flopping due to organizing by very persuasive individuals at the local level.

The recommendations in SB 128 primarily address the supply side of the issue. I encourage the Alaska legislature to also make additional funds available to address the demand for and treatment of alcohol and substance abuse. Alaska families, communities and the State budget would benefit if the State proactively explored and set in place means to prevent and minimize the impact alcohol and substance abuse has on Alaska's communities and families, before problems occur – as opposed to locking up individuals after the fact.

While the provisions contained in SB 128 reflect only a small portion of the options that were developed, if implemented, they are a step in the right direction. Attached to my testimony, is a list of the options that were developed by the Alcohol workgroup for the consideration of the Commission. I wanted to note that there are many more options that have not yet been fully explored and recommended by the Commission, simply because we ran out of funding to continue our work.

Unfortunately, the Rural Justice and Law Enforcement Commission's funding got tied up in the federal budget "continuing resolution no-earmark" policy, such that the Commission has not received 2007 federal funds to continue our work. A request was submitted to the State Legislature in February by the Commission asking for stop gap funding to help the Commission continue its work until such time as federal funding again becomes available. Since its inception in 2004, the Commission has been funded by federal receipts. I hope that the legislature will see fit to support this very worthwhile commission.

Thank you for this opportunity to testify.

Alcohol Workgroup Options

Options relating to prevention

- 1. Alcohol abuse prevention 1
- 2. Public information program 1
- 3. Liaison in state government for tribal court juvenile proceedings 2
- 4. Purely private interdiction 3
- 5. Require private carriers to take reasonable steps to check for illegally shipped alcohol 4

Options relating to local option laws

- 6. Revenue sharing incentives 5
- 7. Change in local option time frames 5
- 8. Change local option law to enable councils to adopt local options independently, subject to subsequent plebiscites 6
- 9. Extend local option laws to encompass public intoxication 6

Options relating to the Alcohol Beverage Control Board

- 10. Adjustment of ABC Board licensing fees for inflation 7
- 11. Designated program receipt for ABC Board fines 7
- 12. Adjust membership requirements for ABC Board 8

Options relating to enforcement

- 13. Plastic bottles 9
- 14. Database for shipments by written orders 9
- 15. Cross-designations among state and federal agencies 9
- 16. Prohibition on shipments to residents of dry villages 9
- 17. Further modifications to drug and alcohol forfeiture laws 10
- 18. Change in Drug Enforcement Administration policy with respect to forfeitures .. 13
- 19. Greater use of alcohol bracelet technology 13
- 20. Create a "designated program receipt" from the state share of civil forfeitures 14
- 21. Amendment to AS 12.20.010 15

Options relating to jurisdiction

- 22. Alaska Native Village Alcohol and Controlled Substance Interdiction Zones 16
- 23. Village Circuit Courts 19
- 24. State statute for full faith and credit to tribal court civil money judgments in alcohol cases 22
- 25. Compacts 25

SB

132

ALASKA STATE LEGISLATURE

Co-chair, Joint Armed Services
Committee
•
Resources Committee
•
Judiciary Committee
•
Transportation Committee



State Capitol, Rm. 115
Juneau, AK 99801
(907) 465-2435
Fax: (907) 465-6615

716 W. 4th Ave, Ste. 440
Anchorage, AK 99501
(907) 269-0102
Fax: (907) 269-6122

SENATOR BILL WIELECHOWSKI

March 21, 2007

Senator Hollis French, Chair
Senate Judiciary Committee
Room 506, State Capitol
Juneau, Alaska 99801

I am writing to request a hearing on SB 132, "An Act relating to an appeal to the superior court from a determination by the State Assessment Review Board; and providing for an effective date."

This bill would limit the superior court's review of the board's action solely to review of the record established at the hearing before the board. Currently AS 43.56.130(i), which was enacted in 1973, provides for "trial de novo of the board's action," allowing for introduction of new evidence on appeal. Any proceeding before the State Assessment Review Board is therefore rendered superfluous and wastes valuable state resources. This bill would make the appeal process for this board conform to the process for the Board of Equalization. It is supported by the Attorney General's Office, will streamline the review process, and help reduce backlogs in the courts.

Thank you for your consideration of this request.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Wielechowski".

Senator Bill Wielechowski

25-LS0153V

Bannister

3/27/07

CS FOR SENATE BILL NO. 18()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - FIRST SESSION

BY

Offered:

Referred:

Sponsor(s): SENATOR BUNDE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to real property foreclosures, to the sale of property on execution, and
2 to deeds of trust."

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

4 * Section 1. AS 09.35.140 is amended to read:

5 Sec. 09.35.140. Notice of sale on execution. Before the sale of property on
6 execution, notice of the sale shall be given as follows:

7 (1) notice of the sale of personal property is given by posting a written
8 or printed notice of the time and place of sale in three public places within five miles
9 of the place where the sale is to be held, not less than 10 days before the day of sale;
10 [ONE OF THE NOTICES SHALL BE POSTED AT THE POST OFFICE NEAREST
11 TO THE PLACE WHERE THE SALE IS TO TAKE PLACE;]

12 (2) notice of the sale of real property is given by posting a similar
13 notice particularly describing the property, including the property's street address if
14 there is a street address for the property, not less than 30 days before the day of sale in

1 three public places, as provided in (1) of this section, and publishing a copy of the
2 notice four times, once a week for four successive weeks in a newspaper of general
3 circulation published nearest to the place of sale; an inaccuracy in the street address
4 may not be used to set aside a sale if the legal description is correct; in this paragraph,
5 "newspaper of general circulation" means a publication that

6 (A) is published in newspaper format;

7 (B) is distributed at least once a week for at least 50 weeks
8 each year within the judicial district, excluding a period when publication is
9 interrupted by a labor dispute or by a natural disaster or other casualty that the
10 publisher cannot control; and has a total paid circulation or paid distribution of
11 at least 500 copies, or 10 percent of the total population of the judicial district,
12 whichever is less; in this subparagraph, "judicial district" means the judicial
13 district where the place of sale is located;

14 (C) holds a second class mailing permit from the United States
15 Postal Service;

16 (D) is not published primarily to distribute advertising; and

17 (E) is not intended primarily for a particular professional or
18 occupational group.

19 * **Sec. 2.** AS 09.35.140 is amended by adding new subsections to read:

20 (b) In addition to the notice required by (a) of this section, notice of the sale of
21 real property on execution shall be given by publishing a notice of the sale on an
22 Internet website beginning at least 45 days before the date of the sale. The notice must
23 be published on at least 30 days, including at least 10 of the last 15 days before the
24 actual date of the sale. Giving notice under this subsection is not required unless there
25 is an Internet website that qualifies under (c) of this section.

26 (c) To qualify as an Internet website on which notices of sale may be
27 published under (b) of this section, an Internet website must

28 (1) be available to any person;

29 (2) be completely free to the public for viewing and not require a
30 subscription;

31 (3) be used primarily to advertise real property under foreclosure;

1 (4) have been in continuous operation for more than one year;

2 (5) have a viewership of at least 5,000 different visitors each month
3 that is verified by an independent audit; and

4 (6) have an office in the state and the office has staff that includes a
5 senior management person.

6 * Sec. 3. AS 09.35.142 is amended to read:

7 **Sec. 09.35.142. Action to establish newspaper or Internet website status.** A
8 person who owns a publication may bring an action under AS 22.10.020(g) to
9 establish that the publication is a newspaper of general circulation under
10 **AS 09.35.140(a)(2)** [AS 09.35.140(2)]. **A person who owns an Internet website**
11 **may bring an action under AS 22.10.020(g) to establish that the Internet website**
12 **qualifies as an Internet website on which notices of sale may be published under**
13 **AS 09.35.140(b).**

14 * Sec. 4. AS 34.20.070(b) is amended to read:

15 (b) Not less than 30 days after the default and not less than **90 days** [THREE
16 MONTHS] before the sale, the trustee shall record in the office of the recorder of the
17 recording district in which the trust property is located a notice of default setting out
18 (1) the name of the trustor, (2) the book and page where the trust deed is recorded or
19 the serial number assigned to the trust deed by the recorder, (3) a description of the
20 trust property, including the property's street address if there is a street address for the
21 property, (4) a statement that a breach of the obligation for which the deed of trust is
22 security has occurred, (5) the nature of the breach, (6) the sum owing on the
23 obligation, (7) the election by the trustee to sell the property to satisfy the obligation,
24 and (8) the date, time, and place of the sale. An inaccuracy in the street address may
25 not be used to set aside a sale if the legal description is correct. At any time **up to five**
26 **days** before the sale, if the default has arisen by failure to make payments required by
27 the trust deed, the default may be cured by payment of the sum in default other than
28 the principal that would not then be due if no default had occurred, plus attorney fees
29 or court costs actually incurred by the trustee due to the default. If, under the same
30 trust deed, notice of default under this subsection has been recorded two or more times
31 previously and the default has been cured under this subsection, the trustee may elect

1 to refuse payment and continue the sale.

2 * **Sec. 5.** AS 34.20.070(c) is amended to read:

3 (c) Within 10 days after recording the notice of default, the trustee shall mail a
4 copy of the notice by certified mail to the last known address of each of the following
5 persons or their legal representatives: (1) the trustor [GRANTOR] in the trust deed;
6 (2) the successor in interest to the trustor [GRANTOR] whose interest appears of
7 record or of whose interest the trustee or the beneficiary has actual notice, or who is in
8 actual physical possession of the property; (3) any other person actually in physical
9 possession of [OR OCCUPYING] the property; (4) any person having a lien or
10 interest subsequent to the interest of the trustee in the trust deed, where the lien or
11 interest appears of record or where the trustee or the beneficiary has actual notice of
12 the lien or interest. The notice may be delivered personally instead of by mail.

13 * **Sec. 6.** AS 34.20.070 is amended by adding new subsections to read:

14 (e) In (c) of this section, if the existence of a lien or nonpossessory interest can
15 only be inferred from an inspection of the real property, the person holding the lien or
16 nonpossessory interest is not entitled to notice under this subsection unless the lien or
17 nonpossessory interest appears of record or a written notice of the lien or
18 nonpossessory interest has been given to the beneficiary or trustee before the
19 recording of the notice of default.

20 (f) If the trustee delivers notice personally under (c) of this section to the
21 property or to an occupant of the property, the trustee may, notwithstanding (c) of this
22 section, deliver the notice up to 20 days after the notice of default is recorded. If there
23 is not a structure on the property and a person is not present on the property at the time
24 of delivery, the trustee may place the notice on the property, or as close as practicable
25 to the property if

26 (1) there is not a practical road access to the property; or

27 (2) access to the property is restricted by gates or other barriers.

28 (g) If the trustee or other person who delivered notice under (f) of this section
29 signs an affidavit for the delivery, the affidavit is prima facie evidence that the trustee
30 complied with (f) of this section. After one year from the delivery, as evidenced by the
31 affidavit, the trustee is conclusively presumed to have complied with (f) of this section

1 unless, within one year from the delivery, an action has been filed in court to contest
2 the foreclosure based on failing to comply with (f) of this section.

3 (h) If a person who is entitled to receive notice by mail under (c) of this
4 section is known by the beneficiary or trustee to be deceased, the trustee may satisfy
5 the notice requirements of (c) of this section by mailing the notice to the last known
6 address of the deceased person and to the personal representative of the deceased
7 person if the beneficiary or trustee knows that a personal representative has been
8 appointed for the deceased person.

9 (i) If a person who is entitled to receive notice by mail under (c) of this section
10 is known by the beneficiary or trustee to be deceased but the trustee and the
11 beneficiary do not know that a personal representative has been appointed for the
12 deceased person, the trustee may satisfy the notice requirements of (c) of this section
13 by

14 (1) mailing the notice to the heirs and devisees of the deceased person

15 (A) whose names and addresses are known to the beneficiary or
16 trustee; or

17 (B) who have recorded a notice of their interest in the property;

18 and

19 (2) publishing and posting the notice of the foreclosure as provided by
20 law for the sale of real property on execution, except that the notice must be titled "To
21 the Heirs or Devisees of (insert the name of the deceased person)" and include in the
22 body of the notice a list of the names of the persons who are known by the beneficiary
23 or trustee to be the heirs and devisees of the deceased person.

24 (j) If notice is given as required by (h) and (i) of this section, an heir or
25 devisee of the deceased person may not challenge the foreclosure on the ground that
26 the heir or devisee did not receive notice of the sale, unless the heir or devisee
27 challenges the foreclosure on this ground within three months after the sale.

28 (k) A person may bring an action in court to enjoin a foreclosure on real
29 property only if the person is the trustor of the deed of trust under which the real
30 property was foreclosed, a guarantor of the obligation that the real property is
31 securing, a person who has an interest in the real property that has been recorded, a

1 person who has a recorded lien against the real property, an heir to the real property, a
2 devisee of the real property, or the attorney general acting under other legal authority.

3 (l) If a person brings an action under (k) of this section to stop a sale of real
4 property, and if the sale is being brought because of a default in the performance of a
5 nonmonetary obligation required by the deed of trust that the real property is securing,
6 the court may impose on the person the conditions that the court determines are
7 appropriate to protect the beneficiary.

8 (m) In this section, "devisee," "heir," and "personal representative" have the
9 meanings given in AS 13.06.050.

10 * Sec. 7. AS 34.20.080(a) is amended to read:

11 (a) The sale authorized in AS 34.20.070 shall be made under the terms and
12 conditions and in the manner set out in the deed of trust. **The proceeds from a sale**
13 **shall be placed in escrow until they are disbursed.** However, the sale shall be made

14 (1) at public auction held at the front door of a courthouse of the
15 superior court in the judicial district where the property is located, unless the deed of
16 trust specifically provides that the sale shall be held in a different place, **except that a**
17 **trustee may also accept bids by telephone, the Internet, and electronic mail if the**
18 **trustee has taken reasonable steps to ensure that the bidding methods using the**
19 **telephone, the Internet, or electronic mail are fair, accessible, and designed to**
20 **result in money that is immediately available for disbursement;** and

21 (2) after public notice of the time and place of the sale has been given
22 in the manner provided by law for the sale of real property on execution.

23 * Sec. 8. AS 34.20.080(b) is amended to read:

24 (b) The attorney for the trustee **or another agent of the trustee** may conduct
25 the sale and act in the sale as the auctioneer for the trustee. **The trustee may set**
26 **reasonable rules and conditions for the conduct of the sale.** Sale shall be made to
27 the highest and best bidder. The beneficiary under the trust deed may bid at the
28 trustee's sale. **Except as provided by (g) of this section, the [THE] trustee shall**
29 **execute and deliver to the purchaser a deed to the property sold.**

30 * Sec. 9. AS 34.20.080(e) is amended to read:

31 (e) The trustee may postpone sale of all or any portion of the property by

1 delivering to the person conducting the sale a written and signed request for the
2 postponement to a stated date and hour. The person conducting the sale shall publicly
3 announce the postponement to the stated date and hour at the time and place originally
4 fixed for the sale. This procedure shall be followed in any succeeding postponement,
5 but the foreclosure may not be postponed for more than 12 months unless a new
6 notice of the sale is given under (a)(2) of this section. A sale may be postponed for
7 up to 12 months from the sale date stated in the notice of default under
8 AS 34.20.070(b) without providing a basis for challenging the validity of the
9 foreclosure process because of the length of time the foreclosure has been
10 pending.

11 * Sec. 10. AS 34.20.080 is amended by adding new subsections to read:

12 (f) After delivery of a deed under (b) of this section, the trustee shall distribute
13 any cash proceeds of the sale in the following order to

14 (1) the beneficiary of the deed of trust being foreclosed until the
15 beneficiary is paid the full amount that is owed under the deed of trust to the
16 beneficiary;

17 (2) the persons who held, at the time of the sale, recorded interests,
18 except easements, in the property, that were subordinate to the foreclosed deed of
19 trust; the distribution under this paragraph shall be made according to the priority of
20 the recorded interest, and a recorded interest with a higher priority shall be satisfied
21 before distribution is made to the recorded interest that is next lower in priority;
22 however, if a person holds a recorded interest that is an assessment, the person is
23 entitled only to the amount of the assessment that was due at the time of the sale; in
24 this paragraph, "recorded interest" means an interest, including a lease, recorded under
25 AS 40.17;

26 (3) the trustor in the trust deed if the trustor is still the owner of the
27 property at the time of the foreclosure sale, but, if the trustor is not still the owner of
28 the property at the time of the foreclosure sale, then to the trustor's successor in
29 interest whose interest appears of record at the time of the foreclosure sale.

30 (g) The trustee may withhold delivery of the deed under (b) of this section for
31 up to five days after the sale. If, during the five days, the trustee determines that the

1 sale should not have proceeded, the trustee may not issue the deed but shall

2 (1) inform the beneficiary, the otherwise successful bidder, and the
3 trustor of the trust deed or the trustor's successor in interest that the sale is rescinded;
4 and

5 (2) return to the otherwise successful bidder money received from the
6 otherwise successful bidder as a bid on the property; return of this money is the
7 otherwise successful bidder's only remedy if the trustee withholds delivery of the deed
8 under (b) of this section.

9 (h) If a trustee rescinds a sale under (g) of this section and the obligation
10 secured by the deed of trust remains in default, the trustee may, at the request of the
11 beneficiary reschedule the sale for a date that is not less than 45 days after the date of
12 the rescinded sale. Not less than 30 days before the rescheduled sale date, the trustee
13 shall

14 (1) mail notice of the rescheduled sale date by certified mail to the last
15 known address of each of the persons identified by AS 34.20.070(c); and

16 (2) publish and post the notice of the rescheduled sale date as provided
17 by law for the sale of real property on execution.

18 (i) Unless a sale is rescinded under (g) of this section, the sale completely
19 terminates the rights of the trustor of the trust deed in the property.

20 * Sec. 11. AS 34.20.120(a) is amended to read:

21 (a) The trustee under a trust deed upon real property given to secure an
22 obligation to pay money and conferring no duties upon the trustee other than the duties
23 that are incidental to the exercise of the power of sale conferred in the deed may be
24 substituted by recording in the mortgage records of the recording district in which the
25 property is located a substitution executed and acknowledged by

26 (1) all the beneficiaries under the trust deed, or their successors in
27 interest; or

28 (2) the attorneys for all of the beneficiaries or the attorneys for all
29 of the beneficiaries' successors in interest.

30 * Sec. 12. AS 34.20.120(b) is amended to read:

31 (b) The substitution must contain

1 (1) the date of execution of the trust deed;
2 (2) the names of the trustee, trustor, and beneficiary, and, if the
3 substitution is executed by the attorney for the beneficiary or successor in
4 interest to the beneficiary, the name, address, and Alaska Bar Association
5 identification number of the attorney;

6 (3) the book and page where the trust deed is recorded or the serial
7 number assigned to the trust deed by the recorder;

8 (4) the name of the new trustee; and

9 (5) an acknowledgment signed and acknowledged by the trustee
10 named in the trust deed of a receipt of a copy of the substitution, or an affidavit of
11 service of a copy of it.

12 * **Sec. 13.** AS 34.20 is amended by adding a new section to read:

13 **Sec. 34.20.125. Trustee bond required.** (a) Before performing the duties of a
14 trustee under AS 34.20.070 and 34.20.080, a person shall obtain a surety bond in the
15 amount of \$250,000 to protect the trustors and beneficiaries of trust deeds against
16 fraud or defalcation by the trustee in the performance of the duties.

17 (b) The bond required by (a) of this section must be a bond that is terminable
18 at any time by the surety by sending written notice by first class United States mail to
19 the obligee and the principal at the address for each that is last known by the surety,
20 and to the department. The bond terminates when 45 days have expired after the date
21 the notice is mailed. The surety is not liable for an act or omission of the principal that
22 occurs after the termination. The surety is not liable after the termination for more than
23 the face amount of the bond, regardless of the number of claims made against the bond
24 or the number of years the bond remains in force. A revision of the amount of the
25 bond is not cumulative.

26 (c) If a bond terminates under (b) of this section, the person who obtained the
27 bond under (a) of this section may not act as a trustee until the person obtains another
28 bond under (a) of this section.

29 (d) Each year, a trustee shall file evidence of the bond with the department.
30 The department shall verify that the evidence is satisfactory to indicate the existence
31 of the bond, keep an updated list of trustees who are bonded, and make the evidence

1 and the list available to the public for inspection. The department may charge the
2 trustee a reasonable fee for verifying the existence of the bond and maintaining the
3 records required by this subsection.

4 (e) The bonding requirements of this section do not apply to

5 (1) a title insurance company authorized under AS 21.66 to transact a
6 title insurance business in this state; or

7 (2) a title insurance limited producer who is licensed as required by
8 AS 21.66.270.

9 (f) In this section, "department" means the Department of Commerce,
10 Community, and Economic Development.

ALASKA STATE LEGISLATURE

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SENATOR BILL WIELECHOWSKI

Sponsor Statement for SB 132

"An Act relating to an appeal to the superior court from a determination by the State Assessment Review Board; and providing for an effective date."

SB 132 revises the rules regarding appeals of decisions from the State Assessment Review Board (SARB). This board adjudicates disputes over oil and gas property taxes between the state or a local government and the petroleum industry. It consists of 5 members (assessors and appraisers) appointed by the governor and confirmed by the legislature.

SB 132 would make the appeal process for this board conform to the norm for judicial review of an agency action. It would make the process consistent with AS 29.45.210(d), which provides that appeals of municipal property tax determinations to the superior court are heard on the record established at the hearing before the municipal board of equalization.

The current law, enacted in 1973, is outdated and allows the petroleum industry, unlike an other property owner, to "take two bites out of the apple" by first appealing to the SARB, and then appealing to Superior Court "de novo". "De novo" reviews allow the introduction of new evidence and legal arguments.

This bill will help streamline tax appeal procedures in advance of construction of a gas line. It will save time and money for cities, boroughs, the state and industry by eliminating an unusual redundancy in the appeals process, and enable the courts to focus on more pressing criminal matters.

With a gas line on the horizon, we can't afford to have an archaic and cumbersome appeal process bogging down the courts and impeding progress on more important issues.

Please support this critical legislation.

SECTIONAL ANALYSIS

Senate Bill 132

Prepared by: Ken Diemer
Assistant Attorney General
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Section 1 of the bill would repeal and reenact AS 43.56.130(i) to establish that an appeal to the court of a State Assessment Review Board determination would be heard on the record established at the hearing before the board.

Section 2 of the bill would establish an immediate effective date.

ALASKA STATE LEGISLATURE

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SENATOR BILL WIELECHOWSKI

For Immediate Release: March 23, 2007

Legislation Streamlines Gas Pipeline Process *SB 132 Prevents Costly Legal Delays*

(JUNEAU) – Sen. Bill Wielechowski (D – Anchorage) is the prime sponsor of a bill that promises to save the state time and money on future court cases involving oil and gas property taxes owed by the petroleum industry.

Under current law, the State Assessment Review Board – a five-member panel comprised of assessors and appraisers from across Alaska who are appointed by the Governor and confirmed by the legislature – adjudicates property tax disputes between the state or a local government and petroleum companies. After two levels of administrative review, the industry can appeal the board's decision to the Alaska Superior Court and ask for a whole new trial on issues already resolved by the professional Board. The current law permits a "trial de novo of the board's action," which means the industry can introduce new evidence and legal arguments to the court that were not presented to the review board.

Only the oil and gas industry is granted this powerful legal tool under state statutes. Alaska homeowners do not have this right when appealing their property taxes.

"Giving one industry two bites at the apple is unfair," said Wielechowski. "My bill streamlines tax appeal procedures before we hit the construction phase of the gas pipeline and saves taxpayer money at the state and local level. It also gives the court system more time to focus on important criminal cases."

Senate Bill 132 erases that advantage by requiring the court to make its review on the evidence that was presented to the State Assessment Review Board. This is consistent with the norm for appeals of other agency actions.

SB 132 will have its first committee hearing next week in the Senate Judiciary Committee. For more information, contact Michelle Sydeman at (907) 465-6881.

WHO: Senate Judiciary Committee
WHAT: SB 132
WHEN: Wednesday, March 28, 2007 @ 1:30 p.m.
WHERE: Capitol Building, Butrovich Committee Room (# 205)

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SB

141

ALASKA STATE LEGISLATURE

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Chair

Senate State Affairs
Administrative Regulation Review

Member

Senate Judiciary Committee
Senate Resources Committee

SENATOR LESIL MCGUIRE

Sponsor Statement for SB 141

“An Act relating to limited liability companies.”

This bill clarifies existing law, which allows an organization providing professional services to organize their business using a limited liability company.

In addition, this bill deletes subsection (d) of AS 10.50.150, in order to allow a founder of an Alaskan limited liability company to be a co-manager, without having all of the assets of the company included in the founder's gross estate for federal tax purposes.

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Senate Resources Committee

SENATOR LESIL MCGUIRE

SECTIONAL ANALYSIS SB 141

"An Act relating to limited liability companies."

Section 1. Specifically states that a limited liability company may be organized for the purpose of rendering a professional service.

Section 2. Clarifies language setting forth authorization to amend or authorize certain company affairs and distribution decisions..

Section 3. Defines "professional service"

Section 4. Repeals AS 10.50.150(d)