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1973-74

SENATE JUDICIARY COMMITTEE

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1973

MINUTES

1/11/1973 - 3/30/1973

SENATE JUDICIARY COMMITTEE

January 11, 1973

Present: Senators Ziegler, Rader, Rettig, Poland, & Meland

Organization

Senator Ziegler stated that the committee will meet only when there is something to meet about, i.e., not just for the sake of having a meeting. He anticipated that for the first month, this would mean holding a meeting about once a week.

The meetings will be conducted on an informal basis, but the Chairman asks that when testimony is being taken all questions be put to the person testifying through the chair.

Any member who wishes to introduce a bill through the committee has the automatic privilege of so doing.

No-Fault

The members were advised to read the testimony of Mr. Carl Porter and the chairman's letter to the Legislative Council to gain a little background on the subject, which is seen to be one of the major issues confronting the legislature this session.

Additional background material will be available and may be obtained from the committee secretary.

Paula Sampson  
Secretary

SENATE JUDICIARY COMMITTEE

January 17, 1973

Present: Senators Ziegler, Rettig, Meland, Poland, and Senator Groh  
Absent: Senator Rader

Senate Bill 42

This bill would provide for a raise in the compensation paid to Supreme Court Justices (from \$36,000.00 to \$42,500.00) and Superior Court Judges (from \$33,000.00 to \$40,000.00).

It puts the Justices on a par with judges of the 9th Circuit Court of Appeals and Superior Court Judges on a par with judges of the United States District Court.

It was conceded that it is difficult to get men of high caliber to serve on the bench unless the salaries are made more attractive.

Senator Groh added that the Senate Finance Committee is conducting research on this subject.

Senator Meland inquired as to the salary raise status of district magistrates. Senator Ziegler stated that he had received correspondence from Carl Heinmiller, district magistrate in Haines, indicating that a raise was desired and that representatives speaking on behalf of the magistrates would probably be appearing before the committee on this matter.

The committee agreed to wait until a request had been made to introduce a bill to raise the salaries of magistrates.

SENATE JUDICIARY COMMITTEE

January 22, 1973

Present: Senators Ziegler, Meland, Poland and Rader; Senator Croft  
Excused: Senator Rettig

SB 54 - Uniform Residential Landlord and Tenant Act

Mr. Ray Preston from the Attorney General's office explained the purpose and justification for the bill. Basically it is to provide tenants with methods of recourse where other action has failed. In Alaska today, there is a seller's market as far as rentals are concerned, and it is often necessary for a tenant to settle for substandard housing in order to have someplace to live. Neither city nor state housing codes are enforced, and the tenant is left without a remedy.

Lease agreements are arbitrary, and the tenant is not in a position to negotiate. Security deposits are high, and portions can be withheld by the landlord with no explanation as to the alleged damage done by the tenant.

Trends and court decisions of recent years point out that this is one area which badly needs reform. Courts are trying to rebalance the old landlord-tenant relationship left over from common law. Examples of common law inequities are the landlord not being required to mitigate damages and the requirement that the tenant must show some affirmative act on the part of the landlord in order to prove constructive eviction.

He noted that the very fact that the Uniform Act Commissioners deemed this area important enough to draft legislation on the subject is an indication that the proposed changes should be made.

There were only two substantive differences between the original Uniform Act and the version submitted by the administration:

1. Requiring that the landlord pay interest on the tenant's security deposit according to the legal rate of interest at the time the money is being held. This was felt to be only fair, since the money really still belongs to the tenant.
2. Excusing the landlord from furnishing modern facilities in areas where the lack of them is probably one reason the tenant chose to live there. Examples of this would be found in the bush where the tenant has consciously chosen "frontier" living and where the lack of sewer, electrical systems, etc. would make it particularly onerous for the landlord if he had to provide them.

In response to a question from Senator Rader, Mr. Preston explained that the state housing code is enforced by the Department of Health and Social Services, but that there are only one or two people charged with the responsibility and there is no overall program concerning the code. The larger Alaskan cities also have a housing code, but the same enforcement problems exist.

While substandard housing is one of the problems which the bill seeks to correct, mere enforcement of already existing housing codes would not be a satisfactory substitute for enacting the bill, since the latter is much broader in scope. Its approach to

the substandard problem by allowing the tenant to make repairs himself and to deduct the amount up to \$200.00 or one-half the monthly rent from the rent. Violations of the housing codes are violations now, with or without the bill.

Senator Meland asked if making improvements to rental units would not inevitably result in rent increases. Mr. Preston responded that the owner of a substandard building already has quite a margin in which he can increase rent because housing of any kind is scarce and therefore at a premium.

Senator Ziegler asked if the draftsmen had intended to repeal that section of existing law dealing with personal property and rental of equipment. Mr. Preston thought that that was probably an oversight and indicated he would look into it.

He also pointed out that, as written, the bill provides for double or treble damages when the landlord breaches but only actual damages when the tenant breaches. Mr. Preston explained that punitive damages were provided only for wilful acts.

Responding to Senator Rader, he stated that the bill does not prohibit the landlord from raising the rent in order to cover the cost of repairs requested by the tenant, provided 60 days notice is given and the raise is not retaliatory.

Allen Compton of Alaska Legal Services testified on behalf of a substitute bill written as a combined effort of his office, Anchorage tenant groups, various native associations, the League of Women Voters, the Greater Anchorage Borough Housing Agency, and others. He distributed copies of this bill to the committee, along with a section by section comparison of the changes made.

Among these are a provision for subletting and assignment in which the tenant must have the landlord's permission, a change in the security deposit section which relieves the landlord from paying interest unless the money is in a trust account or some other situation where he himself is receiving interest, changes in the time limits for performance, notice, etc. to make them more realistic and consistent, and the inclusion of mobile homes under "dwelling units" in the definition section.

Senator Poland asked if the bill addressed itself to the problem of tenants bringing in additional people. Mr. Compton stated that if the unit has been designated "single family unit" there would probably be grounds for eviction if the tenant has breached.

To his knowledge, two other states have adopted this Act, one being Hawaii. Massachusetts tenant groups plan to oppose the measure because their state statutes are already quite strong in providing them with adequate remedies.

Anchorage landlords serving on the Borough Housing Agency had no objections to the bill, although some realtors were unwilling to endorse it and did not. Those groups mentioned above have endorsed the proposed substitute.

In closing, he mentioned that over half the people in Alaska live in rental units which is a \$60 million business annually, as he computed it, that goes virtually unregulated.

The committee took no action on the bill, pending a study of the proposed substitute by the Attorney General's office.

SENATE JUDICIARY COMMITTEE

January 29, 1973

Present: Senators Ziegler, Poland, Meland, Rettig, and Senator Thomas

Excused: Senator Rader

CSSJR 2 - limiting session to 90 days

The original resolution put an absolute limit of 90 days on the session, with the opportunity to extend for periods of 10 days with a 2/3 vote of the legislature.

The State Affairs committee substitute shortened the session to 60 days, with the chance to extend one time for a period of 30 days.

As a practical matter, the Governor or the legislature itself can already extend the session by calling for a special session

Senator Thomas suggested the committee bring out another committee substitute in the same form as that which passed the Senate last year.

The committee signed the committee report as follows:

Senator Rettig - Do Pass in original form (SJR 2)  
Senator Meland - Do Pass in original form  
Senator Ziegler - Do Not Pass in either form  
Senator Poland - Do Not Pass in either form

It was noted that a typographical error in the original resolution changed the date of convening from the second to the fourth Monday in January. However, it was not the intent of the Sponsor to change this date.

Senator Ziegler informed the committee that if they had any bills currently in the committee in which they were keenly interested, the committee would consider them.

It is planned to hold one more hearing on SB 54, since quite a lot of interest has been generated by it. The League of Women Voters in Juneau would like to testify. A landlord group in Anchorage is preparing a section by section analysis of the bill which will be forwarded to the committee.

Paula Sampson  
Secretary  
Senate Judiciary Committee

SENATE JUDICIARY COMMITTEE

January 31, 1973

Present: Senators Ziegler, Poland, Rettig, Meland

Excused: Senator Rader

Criminal Justice Information System

Mrs. Carolyn Burg of Juneau voiced her objections to this chapter of the criminal statutes which was enacted last year. Objecting also to the Omnibus Crime Bill and Safe Streets Act passed by the US Congress, she feels that both laws are an invasion of privacy and impose what amounts to an added sentence upon any citizen convicted of a crime.

Senator Ziegler pointed out that the committee had no power to do anything at the Federal level. He added that last year's committee had worked on the legislation in question to assure that adequate protections would be afforded all individuals.

Theodore Sillman felt that the committee should investigate how the commission in charge of the information system is carrying out their duties. Senator Ziegler informed him that the committee has no investigative function unless directed so to do by the President of the Senate. He suggested that the questions be addressed to the Attorney General.

Senate Bill 32 - examination and treatment of minors

Senator Ziegler stated that he had heard from the Ketchikan Medical Association, and that they favored this bill.

It spells out in detail what a minor can do with regard to his own medical treatment. His consent will be sufficient in all cases, with the exception of an unmarried girl under the age of 18 who desires an abortion.

Senators Ziegler, Meland, Rettig and Poland all gave the bill a "Do Pass" recommendation.

HJR 11 Ram

It was decided that the resolution praising President Nixon would have to be rewritten.

Paula Sampson  
Committee Secretary

SENATE JUDICIARY COMMITTEE

February 7, 1973

Present: Senators Ziegler, Poland, Meland, Rettig  
Absent: Senator Rader

HJR 11 - Gratitude to President Richard Nixon

A Committee Substitute was adopted by the committee which states the reason for and the purpose of the original resolution in a shorter, less cluttered manner.

All members present favored the adoption of the Committee Substitute.

CSHB 102 - Grounds for dissolution of marriage

The committee had asked the three sponsors of the bill in the House, Representatives McVeigh, Fisher and Beirne, to appear on behalf of the legislation. However, none of them were in attendance, so the bill was removed from the committee's calendar until such time as the sponsors contact the chairman regarding the bill.

Paula Sampson  
Committee Secretary

SENATE JUDICIARY COMMITTEE

February 13, 1973

Present: Senators Ziegler, Poland, Meland, Rettig  
Absent: Senator Rader

SB 117 (temporary suspension civil liability/national guard)

The Federal reference in the bill is to the Soldiers and Sailors Civil Relief Act of 1942. This would protect members of the National Guard from having default judgments taken against them. For example, a man going to winter camp for six weeks whose wife files for divorce while he is away will not have the divorce decree entered against him until he has had a chance to appear in court. If he can not appear, a court appointed attorney will appear for him to represent his interests.

Senator Rettig suggested that the language describing the aforementioned Federal statute might be deleted since the act itself covers more than the descriptive language indicates that it covers. Conceivably, to leave the language in the bill might be construed as a legislative limitation on the protection offered by the act. The committee agreed unanimously to adopt such an amendment.

All members present gave the bill a "Do Pass" recommendation.

HJR 10 (Cook Inlet submerged lands)

The committee gave the resolution a "Do Pass" recommendation with an amendment to rephrase an awkward sounding clause. ("not to appeal" was changed to "to refrain from appealing").

SCR's 14, 18, and 22 (changes in the Uniform Rules)

These resolutions are a part of the package of nine submitted by Senator Keith Miller to change various sections of the Uniform Rules. Since these rules changes will also be submitted to the Joint Rules Committee, it was decided to pass out of Judiciary only these three which make no substantive alterations in the rules.

All received "Do Pass" recommendations from each member present.

HB 85 (relating to motor vehicles)

Under present law a nonresident must register his car within thirty days if he is gainfully employed in the state. Apparently a lot of people ignore this. The state troopers have taken the view that before they can stop a nonresident to check his registration, he must be caught in a moving violation. Under this bill, the state troopers would have a chance to go into various parking lots and ask the owner of a car with nonresident plates whether or not he is gainfully employed, etc. The Department of Public Safety favors the bill, and it is also a potential source of additional revenue.

Paula Sampson  
Committee Secretary

Senate Judiciary Committee

February 16, 1973

Present: All members of the committee  
Senator Ray  
Commissioner Chapple, Dept. of Public Safety  
Ivan Lawner, Attorney General's office  
Ralph Sanders, Alaska Carriers Association

Senate Bill 5

Senator Ray, sponsor of the bill, stated that it was the bill's purpose to establish control by Public Safety over those drivers who, because of an increasing number of violations, are becoming a hazard. Hopefully, by means of driver interviews, the bill would also provide a means of causing these drivers to improve their driving habits and cease being a menace.

Commissioner Chapple testified that this same bill was before the legislature last year. It contains the driver improvement concept as well as the punitive aspects of the point system. The accumulation of a specified number of points for traffic violations will lead to loss of license. The point system also provides a means of identifying problem drivers.

The proposed committee substitute is the original bill plus the recommendations submitted to Senator Ziegler by the department. The Attorney General's office also has submitted a committee substitute for the same bill in the House. The Commissioner stated that on the surface at least, the two bills appeared to be quite similar, and he would support either of them.

Referring to the cost of the contemplated hearing officers and referees, he stated that it was his opinion that this job could be performed by one of the officers already employed by the department at no extra cost to the state. He did not feel that the volume of driver interviews would exceed 200-400 in a year. It was his plan to use a man stationed in Juneau who would travel throughout the state as needed.

It was proposed that perhaps the department might want to lower the number of points accumulated which would require a driver under the age of 18 to appear for an interview in order that any problems might be corrected that much earlier. The point system is a means to require problem drivers to appear and receive help.

It was also pointed out that once a driver has accumulated nearly as many points as he is allowed without losing his license, he will become, in all probability, a much more careful driver in order to keep his license, as he knows he is just a step away from losing it.

The Commissioner was asked by the committee to study both proposed committee substitutes, and report back with his preference and any proposed changes the department has.

Mr. Lawner of the Attorney General's office explained how their proposed bill would operate. It follows the original Senate Bill 5 more closely than the other proposed substitute. It has a 6 point limit for any particular offense. Standards are provided for setting the points per offense and for what action the department can take, e.g., suspension, limitation, revocation, etc.

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As a matter of information, Mr. Lawner mentioned that the Department of Education is planning to offer a driver improvement course at the local community colleges.

One innovation of this committee substitute is provision for administrative review in addition to the hearing procedure. An individual would receive notice of what the department plans to do. He would then have the opportunity to ask for an informal interview limited to a number of issues spelled out in the bill. Five of these concern how the points were calculated and two concern the department's conformity to the regulations of the act. If the individual was not satisfied with the outcome of this interview he would then be entitled to a formal hearing, limited to the items raised in the interview.

The hearing officer in this bill would be appointed by the Attorney General and not be affiliated with the Department of Public Safety.

Judicial review would be to the District Court. Where the original bill provides that if points have been improperly calculated, the court will rescind the action of the department, the new version provides that if the recalculation indicates that the individual still has a point count above the limit, the action of the department will stand.

The bill provides for a probationary license for drivers, such as truck or taxi drivers, who might accumulate more points more rapidly than the average driver. Even though the point limit has been reached, these drivers could be issued a probationary license and still be allowed to operate their motor vehicles.

Under the bill, a plea of nolo contendere or forfeiture of bail equals a conviction for the purpose of assigning points.

Action against the license is effective even though the actual license itself has not been taken from the individual.

Mr. Lawner was also requested to take both proposals for study and to report back to the committee at a later date.

#### Senate Bill 24

This bill would allow those accused of minor traffic violations to admit their guilt by signing the citation and mailing in their bail without having to appear in court. The option of so appearing, however, would still be open if the individual so desired. This would not apply to major violations, such as D.W.I. or reckless driving, where a court appearance would still be mandatory.

Commissioner Chapple stated that the department favors the bill, it would involve no extra cost, and the committee unanimously recommended that it do pass.

#### Senate Bill 25

The companion bill to that just discussed, this bill applies to the violation of municipal ordinances, and substitutes the signing of the citation for the necessity of the accused having to appear in court, post bond, etc. before his trial. By signing, the individual agrees that he will voluntarily appear for trial at a time and date certain. This bill also received a Do Pass recommendation from all members.

SENATE JUDICIARY COMMITTEE

Public Hearing - Senate Bill 54 (Landlord-Tenant)

February 21, 1973

Present: Senators Ziegler, Meland, Rader, Poland

Senator Ziegler called the hearing to order and explained it was his intention to hear everyone who wanted to testify. There would be no action taken on the bill at that time, but the committee desired input from all sources in order to come out with a final product with which everybody could live.

Mr. Allan Compton of Alaska Legal Services was the first to testify. He had spoken on the bill at a prior meeting, appearing for Tenants' Action of Anchorage. He also represents a group of welfare mothers in Anchorage, most of whom are tenants and favor the bill.

He urged the committee to keep in mind that the Commissioners of Uniform State Laws spent three years preparing the model act. They had a 27-member advisory board composed of all facets of the area--landlords, tenants, bankers, legal aid lawyers, etc.

Presently under Alaskan law, there are only three statutes dealing with the landlord-tenant relationship. One explains how a tenancy can be terminated. The others assist the landlord in recovering money or possession from the tenant. Thus the current law is not adequate or equally balanced.

The Tenant Action proposal takes the Uniform Act (SB 54) and changes the following:

1. Adds a sublease and assignment section. If the lease or rental agreement is silent on the subject, the tenant can sublease without consent of the landlord. If there is a provision in the lease requiring consent of the landlord, the tenant must obtain the same; the landlord may refuse to grant permission for certain specified reasons;
2. Requires that security deposits be placed in an escrow or trust account, but does not require (as does SB 54) that the landlord must pay the tenant interest on this money;
3. Permits greater involvement by the court where the tenant has asserted a successful defense against the landlord in the following areas:
  - a. diminishing the rent during the time the landlord is not in compliance with the law;
  - b. continuing the case for a reasonable time to permit the landlord to get into compliance, and;
  - c. ordering tenant to pay his rent into a court account and ordering repairs to be made, the payment for which could be from this rent money, and;
4. Changing certain of the time limits for notice and performance in order to make them more mutual and also changing certain of the penalty provisions to make them more mutual.

These changes appear in House Bill 226 which is essentially the Tenants' Action proposed substitute for Senate Bill 54.

Mr. Compton stated that the Uniform Act was meant to put some skids on the deterioration of housing. Though it will not upgrade that which is already in deplorable condition, by permitting such conduct as allowing the tenant to make repairs and deduct the cost of the same from the rent, it provides incentive for both the landlord and the tenant to invest some money in their apartments.

It also gives the tenant statutory rights. The rental market currently favors the seller, and the act would balance the equities between these two groups. The 1970 census reveals that 49.7 % of the citizens of the state live in rental housing. In the United States as a whole, this is true of only 7% of the population. In Alaska, the average is 3.2 persons per unit, as opposed to 2.7 nation-wide. There are 4.1 rooms per unit here, less than the national average of 5 rooms. Housing here costs 34% more per year. The average rent is \$171.00 per month, as opposed to \$90.00. The median value of rentals is 90% higher. There are 31,000 rental units in the state, and the rental industry grosses \$80,000,000.00 a year, making it the tenth largest industry in the state. The act would give the tenant some bargaining power. He is paying a lot for his housing, and not all of it is good. The act is basically fair and imposes mutual responsibilities.

Senator Ziegler suggested that what was favored was a recodification of existing law and that the administration bill could be improved. He then stated that there seemed to be a good deal of opposition to the provision concerning repairs made by the tenant.

Mr. Compton explained that these repairs were limited to those which materially relate to health and safety. If the landlord cannot or will not make them, the tenant should be able to.

Senator Ziegler asked about the provision which causes the landlord to pay for legal costs no matter which side prevails. Mr. Compton did not think such a provision was in the bill, and he pointed out that only certain people in the state can qualify for legal aid.

Mr. James Landis of Tenants' Action in Anchorage was the next to speak. He explained to the committee that his group is a division of the Greater Anchorage Community Action Agency and its purpose is to help tenants become aware of their rights under the law. In one and one-half years, 1119 tenants have been counseled. However, Mr. Landis felt that this piece-meal, individualized method was not as good as having specific, definite laws on the subject. He did not feel that present law is sufficient. Tenants' Action took the Uniform Act and adapted it to meet Alaskan needs. They have received endorsement from 15 groups in Anchorage.

Mr. Landis outlined three problem areas in the landlord-tenant relationship:

1. Substandard housing--this refers to all that housing below the housing and health codes of the state, borough and city. This includes inadequate heating, weatherproofing, wiring, plumbing, and the presence of rodents. Under present law, tenants have no remedy. They can complain to landlord, usually to no avail. They can refuse to pay rent and face the possibility of being evicted. They can complain to the local health and housing authorities, but due to understaffing and priorities these authorities spend most of their time checking commercial facilities. There must be another method and remedy;

2. Tenant insecurity--housing is a landlord's market. The vacancy rate in Alaska is only 6%, 3% for low income housing. There will always be another tenant to move in, but there may not always be another rental unit for the prior tenant to move into. This discourages action by the tenant, and it allows the landlord to profitably allow his building to fall into disrepair. The law does nothing to prevent this, and it should, and;

3. Procedural inequities--of these there are several:

a. rental deposits--nothing in the present law even concerns them. There is no regulation as to amount, what can be retained and for what. As a result, there is much abuse in this area. The only remedy the tenant has is to small claims court, and it is almost impossible to find an attorney who will handle such a case;

b. illegal eviction--present law requires adequate notice and that the eviction be without force. This however, is ignored. The only remedy is, again, to the courts to obtain an injunction. There is no punishment provision;

c. invasion of privacy--there is nothing in the law guaranteeing a tenant's privacy, and it is a common practice for a landlord to enter the premises at will;

d. distress--the landlord under present law has the right, albeit restricted to some degree, to take the possessions of the tenant when he is behind in his rent. The tenant then has to file an action to recover his goods. Such a provision should be abolished entirely, and;

e. illegal lease provisions--there is nothing in present law which prohibits such things as causing the tenant to pay all the legal fees or giving up his right to sue or assuming the obligations of the landlord to repair. The only remedy is an injunction or damages.

In summary, in each of these areas there is no specific law, and the only recourse is to the courts. The tenant, however, who is the least able, is the one who must initiate the action, and most attorneys are unwilling to handle these kinds of cases. No one is sure of any of his rights, except the one to take the matter to court. This is an unsatisfactory way to handle the landlord-tenant relationship. Passage of legislation would probably cut down on the number of court cases in this area, and it would provide the tenant with more protection and more access points, thereby equalizing and balancing the landlord-tenant relationship.

Senator Meland asked if obtaining better housing conditions might not automatically raise the rent to cover the increased cost. Mr. Landis responded that they desire only minimum standards. If the rental units are not allowed to become rundown in the first place, modest maintenance will keep them above the standards. The bill provides incentive for the landlord to do this. In response to a further question from Senator Meland, Mr. Landis stated that only retaliatory evictions are opposed. He recognized that there are instances where eviction is justified.

In response to a question from Senator Ziegler, Mr. Landis stated that, in his opinion, the reason for all the agitation now, when the problem has existed for at least a century, is that conditions are much worse now and also tenants are becoming more aware of the fact they that do not have to sit back and take it; they do have rights.

Senator Ziegler asked if perhaps even the proposed substitute was still a bit one-sided in favor of the tenant. Mr. Landis answered that because it has been one-sided the other way for so long, it seems a more drastic change than it actually is.

He reiterated that while security deposits should be segregated from the rest of the landlord's financial holdings, no interest need be paid.

Mrs. Katherin Greenough of the Juneau Chapter of the League of Women Voters read a policy statement based upon a consensus taken of the Juneau league. Their study was of housing conditions in Juneau.

There is a lack of clarity and equality in the present law concerning landlords and tenants. The lack of low rent housing in Juneau upsets the normal balance and lets the landlord take advantage of his tenants. There is a need for legislation to set forth rights and allow improvement of housing. These specific points were mentioned:

1. rent abatement--the tenant should be able to deduct rent in proportion to the lack of repairs;
2. security deposit--these should be placed in a trust account and the tenant should be given a receipt. Interest need not be paid, as it was felt the landlord was entitled to this for the extra bookkeeping effort. If any of the deposit is retained, there should be a specific itemization as to the reasons therefor
3. subleasing--the tenant should be allowed to do this, with the provision that the landlord should be allowed to grant or withhold his permission;
4. termination notices--either the landlord or the tenant should be able to give thirty days notice in a month to month tenancy. The time should be the same for both parties, and;
5. broad equity jurisdiction for the courts--in instances of retaliatory evictions or uninhabitable rental units or rental agreements found to be unconscionable when made, the court should be the arbiter.

The Anchorage League agrees with the Juneau position paper. The Ketchikan Leage has not completed its study, but agrees on some of the points. The major problem in Juneau is rehabilitation of housing when the landlord has no incentive so to do.

In response to a question from Senator Ziegler, Mrs. Greenough said that the League had not considered the question of whether the 30 days notice should be given on rent day or at any time within the rental period. When the League favors requiring the landlord to come up to code, they refer only to the health and housing codes insofar as they relate to unsafe and unsanitary conditions. Adherence to every provision of the codes would condemn a great deal of property in the state for use as rental housing.

Mr. Audie L. Moore testified on behalf of the Anchorage Association of Realtors. He began by saying that there are obviously both good and bad landlords and tenants. It is usually much easier for the tenant to recover against the landlord than vice versa, because the latter has something of value against which a judgment can be taken, while the former has, in many cases, left town by the time the action is brought.

His association has studied Senate Bill 54 extensively and proposes a number of amendments. They agree that the law as it now stands favors the landlord, and the tenant does not have equal standing. However, they feel Senate Bill 54 goes too far in the other direction, and it would create more problems than it would solve.

1. Security deposits--he did not favor the interest provision. Nor did he feel the money should be placed in a trust account. 95% of the landlords in the state have only one to four tenants. It would be an imposition upon them to have to set up an account of this type. Neither would it serve any purpose if the landlord is the only one with access to the account; the money is no more safe there than in his own account;
2. Unsigned or undelivered rental agreements--acceptance of rent without reservation alone should not make the agreement effective. If, in good faith, the landlord is unable to deliver possession because the previous tenant is still there. Delivery of possession should be added before the agreement is effective;
3. Deliberate use of prohibited rental provisions--this should not be grounds for damages; although Mr. Moore agreed that no such provisions could be enforced, or should be, their presence alone should not be cause for punishment;
4. Limit on size of security deposits--in some cases, large deposits are necessary. There should not be a top limit. In high rental units of \$400.00 or \$500.00 a month, deposits of \$1000.00 are not uncommon and are justified;
5. Tenant's absence--the tenant should notify the landlord if he will be gone for more than seven days, so the former can check the premises for frozen pipes, etc. Notification should be mandatory, and;
6. Penalties--triple punitive damages are far too high. This would tend to increase, rather than lessen, the amount of litigation, particularly in the case of unreliable tenants who would look for an excuse to sue.

Representing the Alaska Landlords and Property Managers Association was Mr. Bernard L. Marsh of Anchorage. This organization studied the bill in conjunction with Mr. Moore's group, and the proposed amendments are their joint effort. Much of the language was borrowed from the American Bar Association Uniform Law Committee memo, the National Tenants Association bill, the Tenant Action bill, and the National Association of Homebuilders.

His organization represents 114 members in Anchorage, managing 4200 rental units. He stated that the original bill would increase the cost of property management and the amount of litigation. This would be reflected in increased rental costs to the good tenants to pay for the cost of the bad ones, who would take advantage of the opportunity to harrass the landlords. It would also eliminate much of the present rental space and increase the need for subsidized housing.

Mr. Marsh pointed out that prohibition against retaliatory action applies only to landlords. Tenants, too, are capable of such action, but the bill is silent on the subject. There is no mention of recovery for vandalism by the tenant.

He admitted that there is a good basis for complaints about landlords unfairly retaining security deposits.

In summary, he stated that there was no objection to a fair bill, but there should be regulation of unfair practices by tenants as well.

He requested a hearing in Anchorage since that is where 50% of all rental units in the state are located.

Senator Ziegler asked for Mr. Marsh's opinion of where security deposits ought to be placed. In answer, Mr. Marsh felt that a special account would be satisfactory. The money could not be used for any other purpose, could not be retained arbitrarily by the landlord, and could only be used to pay for the cost of damages, cleaning, vandalism, or for rent which is due.

He gave as examples of tenant vandalism abandoning the property without notification and leaving it unsecured and unheated, not to mention instances of deliberate vandalism. Although this is covered in the criminal code, the landlord often finds that the tenant has left town and cannot be punished.

Mr. Dwight Bowden of the legislative committee of the Alaska Landlords and Property Managers Association was the next to testify. He indicated that one reason for the formation of that group was Senate Bill 54.

He, too, felt that setting up a separate account for security deposits was an imposition, especially in light of the rapid tenant turn-over in the state. It is also an imposition on the tenant, who wants his money back quickly. The tenant is entitled to damages if the deposit is retained without reason.

The association felt that two days notice for the landlord to enter the premises was unreasonable, especially in the case of an emergency. They recommended 24 hours.

Mr. Bowden disagreed with Mr. Landis that there was a shortage of housing units. As a practical matter, security deposits in Anchorage average \$100.00-\$150.00 although the rent averages \$250.00-\$300.00. If the landlord asks for an unreasonable deposit, there is someplace else for the tenant to go. No maximum limit should be put on security deposits.

In the same manner, if the tenant is unsatisfied with the condition of the building, he can terminate the lease after 30 days. He recommended changing "negligently fails" to supply heat, water, or essential services to "grossly neglects".

In the matter of fire or other casualty, it was felt that it should be made mandatory for the tenant to notify the landlord, in order that the latter may act to protect his property.

The proposed amendments also would change the time a tenant has to vacate after receiving an eviction notice from ten days to seven. Currently, the tenant has ten days. If he does not move, it takes an additional four days to get an unlawful retainer action to court. The court usually gives the tenant a few more days; if he still does not vacate, the landlord must go to court again to obtain a writ of assistance. During all of this time, the tenant is

living on the premises rent free.

Mr. Bowden also suggested including some provision for property of the tenant left on the premises. Present law does not provide the landlord with any method of disposing of or storing such property. The proposed amendments do cover this problem.

He did not feel that tenants should be allowed to repair and deduct, although it was agreed that repairs are the landlord's responsibility. There would be no way to control the cost or the quality of such repairs if made by the tenant. That they are to be made in a "workmanlike manner" is not sufficient. No provision is made for taking bids, or for bonds or insurance.

The Home Builders Association of Alaska, Inc. submitted two additional provisions to Mr. Bowden's organization, one providing for a board of arbitration to settle disputes in landlord and tenant relations, and the other stating that vandalism by the tenant of the property be made a criminal offense.

Senator Ziegler repeated his question as to when the 30 days notice should be given. Mr. Bowden, a landlord himself, responded that it would be easier from his standpoint if it were given on rent day. However, many tenants simply do not know until later that they are going to have to move. As a practical matter, any 30-day period would be the best approach, rather than limiting it to rent day.

Ray Preston of the Attorney General's office submitted that since neither side is really pleased with Senate Bill 54 it may, in fact, be the best balance between the proposed changes offered by both sides.

He stated that he would be willing to eliminate the provision for interest to be paid on security deposits, neither side having favored it. He did, however, feel that the money should be placed in some kind of trust account in order to protect it. He did not think this was asking too much of the landlord. Even if it is an imposition, it is a reasonable one. The landlord should be expected to bear it as a cost of doing business, and it is necessary in order to correct the abuses of the past.

As for adding delivery of possession to acceptance of rent without reservation in the case of an unsigned lease, Mr. Preston stated that while at times this might be a hardship, it is this very instance where the tenant finds himself out in the cold--often literally. He has relied on the rental contract, has paid his money, and is already to move in. Some relief should be available to him for his hardship, regardless of the good faith intentions of the landlord to have the other tenant off the premises.

While prohibited provisions in a rental agreement might not be enforceable, Mr. Preston felt that some punitive damages should be awarded for their presence because of the deterrent effect they have on an uninformed tenant who is kept uninformed as to his rights because of the provisions in the agreement.

Answering the assertion that the bill would increase litigation and hence the cost of property management, he felt that, judging from the tenants' reaction to the bill, even if it does increase the cost somewhat, they are willing to accept this if in return they obtain minimum standard housing or at least the means of obtaining and enforcing minimum standards.

Mr. Compton made a brief statement in rebuttal to some of the previous testimony. The repair and deduct provision is conditioned upon notice given to the landlord to make the repairs himself. It should not be deleted. In addition, it is limited to health and safety. For example, if the landlord had had the electricity turned off, the tenant should be able to make his own arrangements to pay his own electricity bill and deduct that amount from the rent. It is this kind of self-help the bill is talking about. The provision is reciprocal, for if the tenant has damaged something, the landlord is entitled to add the cost of the repairs to the rent.

Mr. Moore reiterated his opposition to having the security deposit placed in a trust account.

Senator Ziegler thanked all those who had testified and asked that Mr. Compton, the League of Women Voters, and Mr. Preston prepare their written comments within the week responding to the proposed changes of the Anchorage property owners group.

The hearing was adjourned.

Paula Sampson  
Committee Secretary

SENATE JUDICIARY COMMITTEE

Present: Senators Ziegler, Rader, Poland, Meland, Rettig

3-1-73

SB95 - Endangered species of wildlife

This bill would prohibit the import into the state or possession within the state of any animals or products therefrom which are on the national endangered species list.

Two amendments had been adopted by the Resources Committee to correct a typographical error on line 10 and on line 19. On line 15, "issued under 195 of this chapter" should be deleted, because permits are issued under two chapters, not just the one mentioned in the bill.

Senator Rettig suggested an amendment to allow those persons possessing the subject products or animals before the effective date of the act to retain said products or animals without having to obtain a permit from the Dept. of Fish and Game.

Joel Bennet of the Legislative Affairs Agency was asked by the committee to prepare an additional section to the bill to conform with Senator Rettig's suggestion.

He stated that the reason for the bill was to put something in the state statutes covering the exotic species on the list not presently protected by Alaskan law. It is based upon a similar statute in Illinois.

No action was taken, pending Mr. Bennet's amendment.

SJR 4 - Constitutional amendment/Attorney General

Mr. Norman Gorsuch of the Attorney General's office stated that department's opposition to the proposal to elect the Attorney General. He said that although this is the practice in 44 other states, in those states the office and functions of the Attorney General are not the same as they are in Alaska.

In Alaska, the Attorney General serves primarily as an advisor to various state agencies. Only 20% of the time is spent in litigation. The Attorney General is the lawyer for the state and its agencies in their disputes with citizens of the state, rather than being the "peoples' advocate", as the office is in other states.

He felt that the people have a voice in the appointment through the confirmation process and are, in fact, assured of better quality than would be the case if the gates were opened to any attorney who wanted to run.

In addition, he stated that if the process were elective, the public would have greater difficulty in assigning responsibility. In the present situation, all the responsibility is centered in the office of the Governor. The existing situation is preferable in terms of the provisions for a strong executive branch in the state constitution.

He summarized the arguments in favor of making the office elective by saying that proponents want to make the Attorney General the

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attorney for the people. While this might work in other states, in Alaska he is the attorney for the state, and it would be inconsistent for him to be elected.

In many other states, each department and agency has its own house counsel, and the role of the Attorney General is hence not what it is in Alaska. Mr. Gorsuch did not recommend that Alaska change to any other system than is presently used, if for no other reason than cost. It is much easier and cheaper to add more attorneys to the present staff than to hire separate attorneys and staff for each department and agency.

The committee took no action on the bill, but will wait until the sponsor has an opportunity to present his arguments.

#### Senate Bill 140 - Uniform Probate Code

This is a revisor's bill to amend the Probate Code passed last year as needed. It received a unanimous Do Pass recommendation. An amendment was added to the bill incorporating the subject matter of Senate Bill 142, relating to bond requirements for personal representatives.

#### Senate Bill 141 - residency exemptions

This bill clears up an ambiguity relating to the priority of laborers and materialmen's liens. It had been requested by the Ketchikan Bar Association. It received an unanimous Do Pass recommendation.

#### Senate Bill 146 - Unoccupied and occupied property

The purpose of this bill was to clear up a loophole in existing law, which does not prohibit the unlawful entry onto occupied premises.

However, because present law does allow entry in cases of emergency which would then extend to occupied premises, no action was taken on the bill. The sponsor will be contacted, and perhaps a substitute bill can be drawn which will do away with the loophole, but in a much narrower manner.

Paula Sampson  
Committee Secretary

SENATE JUDICIARY COMMITTEE

March 9, 1973

Present: Senators Ziegler, Rettig, Poland, Meland  
Judy Hopkins and Helen Finney of the League of Women Voters  
Joel Bennett of the Legislative Affairs Agency  
Absent: Senator Rader

HJR 20

This resolution would provide that proposed constitutional amendments would appear on the general election ballot only, ruling out their appearing on primary or special election ballots.

The League of Women Voters, at whose request the resolution was introduced, stated that because constitutional amendments are so important, they should receive maximum attention by the voters. Placing them on general election ballots only would provide this because the ballots are shorter, the election receives more news coverage, and more people vote in such elections.

Senator Rettig raised the question of calling special elections for the purpose of voting on a constitutional amendment. He feared that it would not be in the best interest of the state to preclude such action.

The resolution was reported out of the committee with Senators Ziegler, Poland and Meland signing "Do Pass". Senator Rettig signed, "Do not pass unless amended."

SB 5

A second committee substitute was submitted to the committee which combines the best thinking of the Department of Law, Legislative Affairs and the Department of Public Safety.

Senator Ziegler reviewed the primary provisions of the new bill. It gives the Department of Public Safety a great deal of latitude and allows them to designate the points to be assigned for a specific violation.

No notice will be given by the department until the point accumulation reaches fifty per cent of the total amount allowed before license revocation or suspension. A person may not accumulate more than 12 points in one year or 18 points in two years.

Driver improvement interviews are provided. If a person is involved in two violations simultaneously, he will receive the greatest number of points possible, not a combination of the two, but based on that violation which has the highest number allocated to it.

Deductions of two points are given if a person takes a driver improvement course.

Points will lapse two years after their accumulation.

No limited licenses will be issued.

All members present signed "Do Pass." An amendment was prepared to correct an error in punctuation.

HCR 26

Joel Bennett explained that presently coastlines and territorial limits are measured by a three-mile line drawn all around the coast. The straight base line method, which this resolution proposes be used instead, uses a three-mile line also, but for bays and inlets where the distance across the mouth is less than 24 miles, a straight line is drawn across the entrance, rather than indenting. If the bay or inlet is more than 24 miles across, the line is indented just to that point where the width is twenty-four miles.

All members of the committee present gave the resolution a "Do Pass" recommendation.

SB 146

This bill, in the form of a committee substitute, was again before the committee. Corrections have been made so that one may not enter occupied premises without consent in the event of an emergency. One can enter unoccupied premises without consent in the event of an emergency.

The committee amended the bill to delete the requirement of written consent.

The bill received a "Do Pass" recommendation from all members present.

Paula Sampson  
Committee Secretary

SENATE JUDICIARY COMMITTEE

March 14, 1973

Present: Senators Ziegler, Rettig, Meland  
Excused: Senators Rader and Poland

SB 194

Ivan Lawner from the Attorney General's office explained the purpose and mechanics of this bill which would remove the ambiguities in present law relating to revocation, suspension, of licenses.

There are four mandatory situations: 1)manslaughter involving a motor vehicle; 2)commission of a felony in which a motor vehicle is used; 3)perjury involving a motor vehicle; and 4)failure to stop and give aid when death or injury results from the use of a motor vehicle.

In these instances, the court must impose the minimum penalty. This is also true for convictions for driving while intoxicated. The court cannot suspend this part of the sentence.

There would also be a minimum mandatory sentence in the form of a jail term for driving while one's license has been revoked, suspended or limited.

The committee took no action on this bill.

SB 193

Mr. Lawner also spoke on this bill which would clarify the difference between reckless and negligent driving. A case is currently pending in the state Supreme Court in which it is asserted that the definitions of these offenses are unconstitutionally vague. Regardless of the outcome of the case, Mr. Lawner felt the statutes should be re-written.

The definitions used in the bill come from the New York Penal Code. Reckless driving is defined as creating a substantial and unjustifiable risk by virtue of conscious disregard or failure to perceive. Negligent driving is a lesser included offense wherein there was both an unjustifiable risk and actual endangerment. Both elements must be established, and thus emergency vehicles are exempted, since they do not create an unjustifiable risk.

All members present signed "Do Pass."

SCR 44

Relating to resource development and the frustrations caused the state by actions of the Sierra Club and other groups, this resolution, which directs the Governor to in turn direct the Attorney General or an independent counsel to institute an action for damages against the Sierra Club et al., was reported out with a unanimous "Do Pass" recommendation.

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SB 186

This bill makes illegal the installation, as well as the use, of eavesdropping devices. In addition, the penalties were increased.

The committee amended the penalty section of the bill, changing the \$25,000 fine to \$5000; limiting the amount of punitive damages recoverable to not more than \$5000; deleting that portion of the bill which expanded liability to a person who permits the offense to occur through negligence.

These amendments were adopted, and the committee reported the bill out "Do Pass".

SB 185

This bill would permit Clerks of the Court in territorial days to receive compensation under the public employees' retirement system for the time they worked before statehood. Pending the receipt of a cost figure, the bill was reported out "Do Pass".

HB 262

Adding the defacement, destruction, etc. of signals or barricades or other similar types of equipment found on construction sites to the prohibition of similar action with regard to monuments, lamp posts, railings, etc., this bill received a unanimous "Do Pass" recommendation from the members present.

HJR 35

All members gave a "Do Pass" recommendation to this resolution urging the President to take affirmative action on the trans Alaska pipeline.

HCR 62 am

This resolution directs the Legislative Council to conduct a study of the correction system in the state. The committee made one grammatical correction, and reported the resolution out with a "Do Pass" recommendation.

Paula Sampson  
Committee Secretary

SENATE JUDICIARY COMMITTEE

March 22, 1973

Present: Senators Ziegler, Rader, Meland, Rettig  
Senator Croft  
Representative Randolph  
Excused: Senator Poland

CSHB 187 - relating to motor vehicle insurance

Mr. Bernard Kelly spoke on behalf of the Anchorage Bar. He had conferred with the Board of Governors of the Alaska Bar and had obtained their concurrence in the following resolution, which he asked be spread in the record:

RESOLUTION

BE IT RESOLVED that the Anchorage, Alaska, Bar Association is in favor of first party no-fault benefits of a type that would give immediate payment for a reasonable period of time to all persons injured in motor vehicle accidents or wage and income losses, medical expenses and other economic detriments suffered by such persons; provided, however, that this Bar is strongly opposed to any scheme or proposal that would abolish or limit the right of innocent victims in automobile accidents to recover fair compensation for all losses suffered as the result of the fault of other persons in the operation, use or maintenance of motor vehicles.

He stated that it is no longer a question of having no-fault versus not having it but, rather, granted that some no-fault legislation will pass, the question is whether or not to have a threshold. He contends that with a threshold, people's rights will suffer. He favors first party no-fault benefits for lost wages and income and medical expenses. He is opposed to abolishing or limiting the right to recover for injuries which are the result of another's being at fault. Court congestion can be reduced without limiting the third party right to sue.

He objected to CSHB 187 on these specific grounds:

1. It removes the right of a person to recover for property damage or loss the result of the fault of another. This is especially unfair to the poor individual whose income may depend on use of an automobile;
2. There is a seven day waiting period before any compensation will be paid. These first seven days could be critical for someone who is paid weekly or who is employed in a seasonal job where the weekly pay is very high;

3. The bill contains a \$2000.00 threshold. If allowable medical expenses are below that figure, one cannot sue for pain and suffering, unless there is "significant permanent disability", the meaning of which is very unclear. Mr. Kelly gave as an example the neck sprain, or whiplash, which may result in chronic pain yet might not be considered significant. He cited cases where an individual suffering from this condition has recovered up to \$30,000. With this bill, if medical expenses were, for example, \$1500, that is all an individual could recover, regardless of how much pain he suffered or for how long;
4. The bill is not tailored to the losses of professional men or those owning their own businesses;
5. Excepted from its provisions are cases where injury results from defects in an automobile as it came from the manufacturer. However, no provisions are made for defective maintenance by car rental agencies;
6. No mention is made of injury resulting from defective or improperly maintained highways. As the bill is written, there would be no right to sue, and;
7. The bill is actuarially unsound. No one knows what the cost will be. Allstate Insurance Company has prepared figures on the federal no-fault legislation, indicating premiums will go up 19.2% for high premium payers, medium premium payers (the majority of Alaskans) would be paying one and one-half times what they are now, and low premium payers would find their premiums increased by 31.7%. CSHB 187 provides for higher payments than the Federal bill, so it follows that the premium increases will also be higher.

According to a Department of Transportation study, 96% of all vehicle accident cases fall within the \$2500 range. 98.3% fall below \$5000. If first party benefits paid are in excess of these amounts, all but 1.7% of the cases will have been taken care of. Because CSHB 187 purports to pay a lot more than the amounts aforementioned, wiping out all but one-half of one per cent of all the cases, Allstate's figures are valid projections for Alaska. The public expects that premiums are going to go down, but in fact they will go up with this bill.

Mr. Kelly then proposed that the committee adopt the Oregon no-fault plan as a committee substitute. The plan contains no threshold and does not take away a third party's right to sue. It has shown a reduction in premiums. It pays \$3000 in medical expenses and \$6000 in lost income without regard to fault. Payment is immediate.

Oregon is saving money for the motorist without doing violence to his rights. Claims are also reduced. Mr. Kelly stated that he would be willing to bring in the Oregon Insurance Commissioner to testify if the committee so desired.

The Oregon bill is also easy to understand. The proposed Alaska bill is so complex that it would increase litigation just in its interpretation, and not reduce it.

Under a threshold bill, since the victim is paying, he is insuring himself from the other person's mistakes. His insurance company is paying, and he becomes the risk. A family man with a small car is a high risk, and a truck driver represents very little risk.

Once the insured has been in an accident, he becomes an even higher risk.

This is very damaging to those in the low income brackets. The insurance does not cover property, eg. one's car. Yet this is where the highest loss is. Poorer people cannot afford to replace their automobiles, no insurance is available, and no recovery is possible.

Mr. Kelly did not feel there was any great public outcry for this kind of legislation. The voters in Colorado turned down the proposition by a three to one margin recently.

He did not believe that the states would be mandated at the federal level. Each state is taking a different approach to the problem and acting in its own best interest. What is good for one is not necessarily good for another. The federal no-fault legislation was returned to committee during the last session, and he predicted a lessening of pressure from the federal level.

Mr. Millard Ingraham testified, representing the Tanana Valley Bar Association. They too oppose CSHB 187.

He stated that because the language is so vague and complex and the definitions so few, there is a potential lawsuit on nearly every line of the bill. Each controversy under the bill must go immediately to the Superior Court. This would not result in a reduction in court congestion.

He, too, suggested adoption of the Oregon plan.

Mr. Kelly added that it is known what the Oregon and Delaware experiences have been. In Massachusetts, which has a \$2000 threshold, the premiums were increased, because collision rates went up more than personal injury rates went down. Only 44 or 48% of the premiums paid were returned to the victims. Previously, 76% had been returned.

He felt that no-fault was being pushed by old line liability carriers like Aetna who had begun to lose out to mutuals, such as Allstate. They wish to enter the health, accident and life facet of the business. The largest insurance company in America is Prudential Life.

SENATE JUDICIARY COMMITTEE

March 27, 1973

Present: Senators Ziegler, Meland, Rettig  
Senator Croft

Excused: Senators Poland and Rader

SB 125 - relating to abortions

Senator Croft stated that two recent United States Supreme Court decisions, Roe v. Wade and Doe v. Bolton, indicated that 1) during the first trimester of pregnancy, the state cannot regulate the place in which an abortion is performed, and 2) there can be no 30-day residency requirement.

The subject bill brings present Alaska law into conformity with these decisions.

Senator Ziegler signed "Do Pass"; Senators Rettig and Meland signed without recommendation.

SB 219 - exemptions from execution

Senator Croft explained that this bill also was drafted to bring Alaska law into conformity with federal law, namely the Federal Truth in Lending Act. Presently, Alaska is 28th in the nation in the amount of its income exemption.

The bill provides for a 25% of the disposable income exemption and uses the figure of \$114 as another means of computing the exemption. Either way, the bill would result in an increase in the exemption.

Senators Meland and Ziegler signed "Do Pass". Senator Rettig signed without recommendation.

CSSB 45 - Children in need of supervision

This bill stems from a problem in Anchorage with juveniles who are chronic runaways. Under its provisions, a court could order a juvenile to refrain from certain conduct. Not so doing could result in incarceration.

Senator Ziegler read a letter from former Justice John Dimond opposing the bill. The League of Women Voters also opposes it.

No action was taken on the bill.

CSHB 102 - grounds for dissolution of marriage

The purpose of this bill is to broaden the grounds for annulment, adding inability to consummate the marriage. This would cover situations where neither party was aware at the time of the marriage that it could not be consummated and where neither wants to obtain a divorce.

Senators Ziegler and Meland signed "Do Pass".

SB 218 - Adopting Uniform Community Property Act

The committee took no action on this bill.

SENATE JUDICIARY COMMITTEE

March 30, 1973

Present: Senators Ziegler, Meland, Rettig, Poland

Excused: Senator Rader

CSHB 187am - Relating to motor vehicle insurance

Senator Ziegler explained the two committee substitutes that have been drafted. Both are based on the Oregon no-fault statute, but one has a \$500 threshold and the other has no threshold.

There is a penalty provision for insurance companies that do not make their payments promptly. If payment is not made within 30 days after the claim is made, the company must pay double the amount claimed. If the delay is more than 60 days, three times the claimed amount must be paid. Prompt payment of claims is one of the goals of no-fault, but experience indicates there has to be a kicker of some kind to make sure that the insurance companies follow through.

Both bills provide for first-party benefits of \$3000 in medicals and 70% of lost income. If the insured is unemployed, he will receive expenses incurred for loss of services in the amount of \$12.00 per day for not more than one year.

There is a \$250 deductible provision, and a provision for right of subrogation.

The bill was reported out as follows:

Senator Ziegler signed "Do Not Pass any of the bills"  
Senator Meland signed " " " " " " "  
Senator Poland signed " " " " " " "  
Senator Rettig signed "Do Pass SCS CSHB 187 (Judiciary)"

Paula Sampson  
Committee Secretary

1974

MINUTES

1/23/1974 - 4/21/1974

SENATE JUDICIARY COMMITTEE

January 23, 1974

Present: Senators Ziegler, Poland, Meland, Silides  
Judy Hopkins (League of Women Voters), D. Clocksin (Lgl. Servs)  
Absent: Rettig

Uniform Residential Landlord and Tenant Act

Senator Ziegler asked for the committee's approval of the following approach to Senate Bill 54 and CSHB 226 amended:

Rather than educating the entire committee as to what was learned during the interim Landlord and Tenant committee hearings, Senators Ziegler and Meland, who served on that committee, would rewrite CSHB 226 am, incorporating several changes proposed during the hearings, and bring a final draft before the committee. Copies of the draft will also be sent to all interested parties who have expressed a desire to participate in arriving at the final work product.

Senate Judiciary will then meet with House Commerce before any bill is brought to the floor to avoid the necessity of a free conference committee.

Senator Ziegler stated that he hoped all this could be accomplished by no later than March 1st.

The committee agreed with this course of action and approved the letter to this effect directed to the President of the Senate and the Speaker of the House which was written by the special interim Landlord and Tenant committee. The letter will be read into the House and Senate Journals on Thursday, January 24, 1974.

Paula Sampson  
Judiciary Staff Assistant

SENATE JUDICIARY COMMITTEE

February 4, 1974

Present: Senators Ziegler, Meland, Rettig, Silides, Poland, Lewis  
Gerry Williams and Tom Zaruba of the Alaska Peace Officers  
Association  
Commissioner Pat Wellington, Dept. of Public Safety  
Joseph Balfe, District Attorney in Anchorage  
Avrum Gross, practicing attorney in Juneau  
Representative Fritz

House Bill 285 - definition of legal and medical death

Representative Fritz testified on behalf of this bill. At one time, a physician could declare a patient dead when his heart and lungs had ceased to function and all efforts made to revive him had failed. However, with the modern technology used in medicine today, it is possible to keep a person's heart and lungs functioning through the use of machines. There is no way, however, that the brain can be kept alive, and the purpose of the bill is to allow a physician to declare his patient dead and cease to use the artificial means of heart and lung stimulation when an encephalogram indicates that the brain has stopped functioning. Keeping a patient "alive" artificially only prolongs the agony of the survivors. In addition, this treatment is very costly and intensive care units are tied up when there is a need for them to be available for other patients.

There is no connection between the purpose of this bill and the concept of euthanasia. Every effort here is being made to prolong life, not to take it.

The bill is based upon a Kansas statute which has been in effect since 1972. It is endorsed by the American and the Alaska Medical Associations.

Dr. Fritz stated that it would not interfere with instances where an organ is to be transplanted and artificial means are used to keep the donor in such a condition as to insure that the organ remains healthy until the transplant takes place.

Senate Bills 292, 296, 297, 298, 303, and 304

Before any witnesses were heard, Senator Ziegler stated that the committee would be taking no action on them at this meeting as they were newly introduced and should be compared with the Governor's legislation on the same subject which has yet to be completely introduced.

Mr. Williams of the Peace Officers Association stated that the conspiracy statute (292) filled a serious omission currently existing in the statutes. Considering all the activity to be generated by the pipeline construction, such a law is needed. He agreed it would be advisable to wait for the Governor's bill.

He was not sure why indictment could only take place in the judicial district in which the conspiracy had allegedly occurred. The proposed law contains the traditional affirmative defense of thwarting the conspiracy, but Mr. Williams pointed out that the federal conspiracy law has often been attacked in this area because of the possibility of entrapment taking place.

The bill also contains the provision which is considered to be progressive that a defendant cannot be charged with both the conspiracy and the crime. It must be one or the other. If the conspiracy succeeds, and the crime is committed, he is to be charged only with the crime.

He defined "overt act" as any act which substantially progresses toward the commission of the crime. He did not feel that "casing the joint" would be an overt act under the proposed bill.

The purpose of SB 298 is to limit the newly promulgated Rule 16 of the Criminal Procedure rules recently adopted by the Alaska Supreme Court. The rule relates to discovery. The legislature previously had adopted a "little Jenks Act", based on federal law, allowing defense counsel to see statements made by witnesses after they had testified in court. Rule 16 provides this information, and a lot more, to be made available before trial. Although the current trend may be to allow broad discovery, this causes many problems for police officers and the district attorney's office and is very time consuming, to the detriment of the administration of justice.

Mr. Zaruba, chairman of the Legislative Committee of the Peace Officers Association, read a telegram from the Board of Directors favoring SB 298. (This has been placed in the bill file.)

He favored the conspiracy law because it would afford police officers the opportunity to prevent crime, rather than only being able to react to it. It would also enable them to deal with "white collar" or organized crime.

Commissioner Wellington stated that the Chiefs of Police Association had supported a conspiracy statute for some time. Alaska, in his opinion, has a great deal of crime for a state its size, which indicates that something is wrong. There is no organized corruption within the judicial or law enforcement system, but there is a need for some better laws and some stricter interpretation of

them by the courts. The series of bills under consideration, if passed, would give the courts an indication of the intent of the legislature.

He felt that the provisions of SB 304 (assaulting a police officer) could be abused unless it is limited to situations involving intent to do bodily harm.

The rest of the package he supports without any qualifications, although he thought the venue in 292 should be made statewide.

Mr. Balfe explained what he and his office are confronted with in Anchorage as a result of Rule 16. It requires the spending of a great deal of time prior to trial making sure that the defense counsel has all the information. This includes all police reports, lab reports, statements of witnesses, etc. Some judges have interpreted the rule to mean that all such information must be physically delivered to the defense, and in some cases the defense refuses to appear on the grounds that this has not been done.

Currently his office is handling 170 cases per felony man/ per year. The recommended load is 50 to 60.

Mr. Balfe deplored the removal of the element of surprise from a criminal trial as a result of Rule 16. He agreed that the defendant should have any and all information that would make his crime less serious or mitigate sentencing, but he feels this rule goes too far.

He indicated that perjury had increased when all statements were made available to the defense. The defense attorney is not supposed to make the information available to anyone else, but in fact many do.

The provisions of the rule are not reciprocal. The defendant need furnish technical reports only. There is no provision of notice for an alibi. The prosecution should be furnished with the names and addresses of the defense witnesses, but this is not the case. Such disclosure could work to the defendant's benefit by revealing facts that could lead to the dismissal of the case.

The defense counsel can ask for almost any kind of information without having to show good cause, and in some instances this is used as a stalling device.

In response to a question from Senator Ziegler, Mr. Balfe stated that he does not favor mandatory sentencing. He will make his other comments and views known by communicating with the committee in writing, as to the rest of the bills under consideration.

In closing, he added that there is a law on the books nearly the same as SB 296 (firearms during commission of a felony), but the

State Supreme Court could not determine whether it was to be a separate crime or to be used only in sentencing, so the law is not now enforceable.

Mr. Gross was the chairman of the committee that drafted the new Rules of Criminal Procedure. He wished to inform the Judiciary committee of the make-up of his committee, how they deliberated, and what they considered when writing the rules.

Members of the committee included the district attorney from Fairbanks, two representatives from the district attorney in Anchorage, three private attorneys, one of whom was a former district attorney, and three judges (Miller, Carlson and Fitzgerald).

They used the original criminal rules, the federal criminal rules, and all state and federal court decisions on the subject, plus a pamphlet prepared by the American Bar Association's committee on criminal procedure rules, which committee was chaired by Chief Justice Warren Burger.\* Drafts were sent to all local bar associations, judges and police departments throughout the state to solicit comments and suggestions. Everyone had a chance to review and comment. Two days were spent going over the proposals with the Supreme Court before they were adopted.

Specifically, Rule 16 provides what must be disclosed by the defendant and by the state. The defendant has the lesser burden because of his right against self-incrimination and also because the state in a criminal case has more than the burden of winning; the state is responsible for seeing that justice has been done.

Under the rule, the prosecution must disclose the names and addresses of those who have relevant facts and their written or recorded statements, in addition to any statements made by the accused or a co-defendant. Also to be disclosed are statements made by experts and any tangible objects which the prosecution intends to use during the trial or hearing which belong to or were obtained from the defendant. Prior records of the accused or the prosecution witnesses must be made available.

If the defendant is guilty, and the prosecution witnesses are telling the truth, what harm can come to the state through this process, Mr. Gross asked. A situation where all the facts are known is much more likely to produce the truth in the long run. In Juneau, there has always been an "open file" policy. This has proved to expedite justice, facilitate plea bargaining and eliminate a continual bringing of habeas corpus actions based upon "hidden evidence".

\* In fact, Rule 16 was taken word for word from this pamphlet.

Page Five

A risk of perjury has always existed in any judicial proceeding of a criminal nature and probably always will, but Rule 16 does not encourage or facilitate it..

If good cause is shown, the court may restrict disclosure, for example in cases where a witness's life would be in danger.

The defense does furnish the state with something. The defendant must appear in line-ups; he must speak for voice identification; his handwriting, blood samples, hair, etc. must all be furnished to the prosecution. He must also provide notice of his intent to use an insanity defense.

The district attorneys on the committee did not feel that notice of an alibi defense was necessary.

Mr. Gross made himself available to the committee to assist them on this bill and any others involving amendments to the Criminal Rules.

Paula Sampson  
Staff Assistant

SENATE JUDICIARY COMMITTEE

February 13, 1974

Present: All members of the committee

Senate Bill 313 - relating to bail

This bill would allow anyone who had been arrested, whether for a felony or a misdemeanor, to be held up to 48 hours without bail on motion of the prosecuting attorney.

The committee determined that if the bill is to come out of Judiciary, it should be amended and qualified as follows:

1. The offense with which the person is charged must be a felony; and
2. The motion of the prosecutor must be made in good faith and for good cause, i.e., the person more probably than not would not appear in court if released, or he would pose a danger to people and the community.

A letter containing these proposed amendments will be written to the Attorney General to see if that office has any objections to the changes.

Senate Bill 322 - driving under influence of intoxicating liquor or drugs

This bill provides for mandatory sentencing. Senator Poland suggested that a definition of "narcotic drugs" should be included in the bill. The Attorney General was asked to furnish such a definition.

Senate Bill 355 - resisting arrest

Senator Ziegler explained that, in essence, this crime is already on the books in the form of disorderly conduct. However, it would give a prosecuting attorney a strengthened position in a plea bargaining situation.

The bill received "Do Pass" from Senators Rettig, Meland and Silides. Senators Ziegler and Poland signed without recommendation.

Senate Bill 337 - Pre-sentence investigation

It is the practice already in Juneau and Ketchikan for the probation office to furnish a background information report on an individual before he is to be sentenced. However, in Anchorage some problems

Senate Judiciary  
February 14, 1974  
Page Two

have arisen in plea bargaining situations where the defense counsel, the district attorney and the judge agree on a sentence which, had background information on the individual been available so indicating, should have been greater. The bill would require such a report on any person who pleads or is found guilty.

All members of the committee gave the bill a "Do Pass" recommendation.

Senate Bill 378 - prior service credit/certain employees

Senator Ziegler explained the history of this bill. There were two Senate Bills last year (96 and 185) which were introduced to take care of a small number of people who had been Territorial employees of the United States District court system and who could not get any retirement benefits\*because they had been paid out of fines collected by the court. SB 185 passed both houses in 1973 and would have allowed these people to receive the same amount of retirement benefits as all other state employees who transferred over from Territorial government.

The Attorney General, however, issued an opinion to the effect that the legislation was of questionable constitutionality because it would provide double retirement benefits (these clerks are eligible for a small amount of federal retirement).

Therefore, SB 378 was drafted to eliminate this objection. The new language provides that the amount of state benefits to be received shall be reduced by whatever amount of federal benefits are received.

The bill received a unanimous "Do Pass" recommendation.

Paula Sampson  
Committee Staff Assistant

\*for their Territorial service

SENATE JUDICIARY COMMITTEE

February 20, 1974

Present: Senators Ziegler, Meland, Silides, Poland  
Representative Chance  
Mrs. Kaye Smith, Head of Adoption Services, Dept. of H&SS  
Excused: Senator Rettig

House Bill 70 - Relating to adoptions

Senator Ziegler reviewed the correspondence in the file, indicating that comments had been solicited from all bar associations in the state but that none had been received to date. Letters were received from Floy Ann McPhee, regional supervisor for the department in Fairbanks and from Sister Monica Heeran, former administrator of Ketchikan General Hospital.

Representative Chance gave a brief history of the bill. There are currently only minimum guidelines offered in the statutes on this subject. The present bill was drafted three years ago by a committee composed of people with an interest in the subject, assisted by a committee from the Juneau Bar Association. It is based upon the Uniform Adoption Code, but several changes were made.

A section-by-section discussion of the bill followed.

The provision on page 1, line 17 refers to the situation where a married couple is separated, legally or merely in fact, and one spouse wishes to adopt a child. This would be permitted.

"Forum" on page 2, line 5 should be changed to "judicial district".  
"Legitimated" on line 16 should be changed to "legitimized".

On page 2, line 22, "10 years" is used instead of "14". The committee felt that a child of 10 years would be capable of expressing his choice, subject to the ruling of the court.

On page 4, several changes are made in the form in which the pleadings are to be prepared. The child is to be referred to by the name he would have if the adoption were approved. This is to provide him with an identity at the earliest possible moment and to insure confidentiality.

A substitute birth certificate is issued only if requested. This is also true under existing law.

Page 5, line 17 provides a reporting of all property of value owned by the child to be adopted. This insures that the court will take the possibility under consideration that the adoptive parents are more interested in the property than in the child.

On page 5, line 23 "if available" (referring to birth certificates) was inserted to cover bush babies or foreign children who may not have been issued birth certificates.

The provision in the bill requiring an itemization of all expenses incurred by the petitioner during the adoption proceedings is to prevent abuses or the situations commonly referred to as "baby buying."

As presently written, the bill would require notification of the department of each and every adoption filed in the state. The purpose of this provision is to insure that the Office of Vital Records will have an up to date file, including such important changes as adoption. It was suggested that the bill be amended to change "department" to "Office of Vital Records" to restrict the provision and prevent any possible capricious action by the department.

In every case, the court must designate someone to conduct an investigation of the home and background of the prospective parents. In agency cases, this would be the department. However, in all other cases, the appointment is up to the court. Any suitable individual or group may carry out the investigation.

Mrs. Smith proposed the following changes for the committee to consider before the next meeting:



On page 9, line 7, after "inheritance" delete the period and add "unless the decree of adoption specifically provides for continuation of inheritance rights." This would bring the bill into conformity with Chapter 61 SLA 1973.

On line 28, change "one year" to "six months"

On page 7, line 3, before "heard" insert "provided the report is filed within 30 days". This would avoid delay due to failure to file a report.

On page 8, line 7, the residency requirement should be made subject to the provisions of 20.15.100 (c).

The committee will meet again on Monday, February 25th, at 1:30 to further discuss this bill.

Paula Sampson  
Staff Assistant

SENATE JUDICIARY COMMITTEE

February 25, 1974

Present: All members of the committee  
Senators Croft and T. Miller

HB 70 - Adoptions

The meeting on this bill has been postponed until March 4th at the request of Kaye Smith of H&SS.

SB 388 - Campaign financing

Senator Ziegler requested that Senator Croft investigate the financial implications of the bill and have a fiscal note prepared to cover the following provisions of the bill and any others that might be involved:

Cost of the voters' pamphlet  
Cost of the commission and staff  
Cost of maintaining offices  
Cost of bookkeeping manuals, forms, reports, etc.

The committee and Senator Croft went through the bill section by section and discussed several proposed changes.

Page 1, line 13 - "municipal" was intended to include school boards. It was suggested that "a municipal office" be changed to "all municipal offices".

The provision allowing a municipality to exempt itself from the provisions of the act at a general election was to allow some flexibility for small towns that have organized for the purpose, for example, of only electing a school board or for cities which have their own campaign financing ordinances. Proposed amendment: limit to municipalities "of less than 1000 population".

Page 2, line 10 - insert "while attending meetings of the commission" after provision for \$100 per day compensation.

Line 19 - The question was raised whether allowing the commission to hire all "employees considered necessary" was a bit too broad. Senator Croft pointed out that all budgets of the commission would have to go through the regular appropriation process.

Line 22 - In many districts, it is hoped that the commission office may utilize the facilities of the local election office.

Page 3, line 8 - The committee felt that copies of the reports should be furnished to the public "at cost" rather than free of charge.

Line 13 - It was also felt that notification to delinquent report filers should be given by registered or certified mail.

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Page 2

Line 18 - the phrase "for enforcement" (referring to action by the Attorney General) should be deleted, as it tends to suggest that the alleged offender is presumed guilty.

Page 4, line 5 - "more than \$100" should be changed to "in excess of \$100 in the aggregate" to cover situations where one contributor gives several times in amounts less than \$100 to avoid being listed. The same change was made on line 14.

Lines 21-23 - This provision is to prevent a group from organizing without the candidate's knowledge and spending amounts of money which would put him over his limit. The candidate can file an affidavit stating that he repudiates the group. All groups organized for the purpose of affecting the election of a candidate must register with the commission. The spending limit, however, only applies against those groups controlled by or primarily organized to promote the candidate.

Line 24 - The candidate may serve as his own treasurer. This provision was inadvertently deleted from the bill and will be included in the Judiciary committee substitute.

Page 5, line 3 - Senator Ziegler inquired as to why the treasurer must be named at the time of filing, the penalty being the deletion of the candidate's name from the ballot. Senator Croft pointed out that no expenditures may be made until the treasurer has been appointed anyway, and that it would be possible for the candidate to name himself as treasurer and appoint someone else later, notifying the commission of the change. It was suggested that a provision be included stating that if no treasurer is named at the time of filing, the candidate will be presumed to be the treasurer.

Line 18 - Senator Poland suggested that no limit should be placed on a candidate's spending his own money on his campaign. "other than to his own campaign" was inserted after "contribute". The limit for other contributions was raised from \$500 to \$1000, the theory being that a person who wishes to and can afford to assist candidates should be allowed to do so.

Line 24 - the committee felt that expenditures over \$100 should be allowed to be made in cash and added "unless a written receipt is obtained and filed with the commission" after "payment" on line 25.

Page 1, line 5 - Senator Croft was commended for providing in the bill that anonymous donations could be given by the candidate to the charity of his choice instead of having to escheat to the state. A person who collects money for the candidate from various others, not at the candidate's request, must furnish the candidate with a list of the donors, or the contribution will be considered anonymous.

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Line 8 - the limitation on spending was discussed. Candidates from small, compact election districts are not hurt by this provision, but it would tend to somewhat disable those from large districts like Anchorage and Fairbanks. It also tends to favor the incumbent because his opponent is limited in the amount he can spend to combat the name familiarity which the incumbent already has by virtue of being in office. However, a limitation provision is contained in the initiative, and Senator Croft stated that it almost has to be in the bill. The amount per capita in the bill is considerably higher than that in the initiative, however.

Page 7 - the candidate shall report the amount he receives from a group which has held a fund-raising event on his behalf. The group shall report the amount it received before expenses and the expenses incurred. The group gives the candidate the amount after expenses.

The standard for determining the value of goods and services is "where a charge is ordinarily made" for providing them. In addition, they must be donated for the purpose of influencing the election. The candidate is ultimately responsible for furnishing contributor's forms to the donor.

Requiring the contributor to report may reduce the number of donations, but there should be some check on the candidate's report.

Line 8 - "three" days was changed to "ten" to remove part of the burden from the contributor.

Contributions can be obtained before a candidate's files, but no expenditures may be made except for opinion polls and travel.

Page 8, line 8 - the committee did not see the need for a report to be made three months before the election, as there is usually very little to report at that time. Provision (1) was deleted.

Line 12 - this provision was included to prevent someone from contributing a large amount after the reporting period just before the election. The committee felt that the report could be telephoned, telegraphed or mailed, provided the postmark was within the time specified (24 hours), rather than filed in person.

Line 16 - the committee did not feel that it should be incumbent upon the commission to furnish newspapers with copies of each candidate's report. "which shall be available to the public at cost upon request" was added on line 18 after "report". All other language in the paragraph was deleted.

Line 21 - anyone who sells supplies, advertising or services to the candidate for the purpose of effecting his election must report to the commission. This would not include out of state suppliers.

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Page 4

Page 9, line 12 - the fine was reduced from \$10,000 to \$5000.

Page 10, line 20 - This section prevents harrassment. A person who believes there has been a violation of the act does not bring a suit himself, but takes his complaint to the commission who determines whether or not there is a cause of action.

Page 12, line 20 - Senator Ziegler stated that he felt the provisions concerning the voters' pamphlet might present some real problems as to cost and the physical task of preparing and distributing it in the time allowed. He also suggested that the size, etc. of the book could be left to the discretion of the Lieutenant Governor instead of spelling them out in the bill.

Senator Croft said he had discussed with the Attorney General the matter of whether or not the bill meets the "substantially similar" requirement so that it would take precedence over the initiative on the same subject to be on the November ballot. It contains provisions to include municipalities, to establish a commission and to limit expenditures, and the Attorney General thought that the requirement had probably been met. This question will be looked into further.

One more committee meeting on the bill is contemplated, after which a Judiciary committee substitute will be prepared and submitted.

Paula Sampson  
Staff Assistant

SENATE JUDICIARY COMMITTEE

February 28, 1974

Present: Senators Ziegler, Meland, Silides, Poland  
Representative Bowman  
Dan Clocksin, Alaska Legal Services

Excused: Senator Rettig

CSSH 226am - Uniform Residential Landlord and Tenant Act

Senator Ziegler gave a brief history of the bill. It has been in committee for almost a year. During the interim, the special committee on the landlord and tenant relationship held public hearings in Juneau, Sitka, Anchorage and Fairbanks and took extensive testimony from tenants, landlords, Alaska Legal Services and the League of Women Voters.

A proposed Senate Committee Substitute was drafted and copies were sent to everyone throughout the state who had ever evinced an interest in the legislation. All comments received to date in response have been favorable.

Mr. Clocksin reviewed with the committee all changes of a substantive nature which had been made in the bill as it came over from the House. A rough tally indicated that there had been approximately 30 such changes.

Page 2 - It is specifically provided that a tenancy begins on the day the tenant moves in. There had been some confusion as to whether it began then or on the first of the month.

Page 3 - The penalty for including prohibited provisions in a rental agreement was reduced from one and one-half times actual damages to the actual damages sustained by the tenant.

Page 6 - A change was made in the amount that can be charged as a security deposit from one and one-half times the actual rent to twice the amount of the rent. It was pointed out that many landlords in fact charge less.

Another change provides that the tenant no longer has to make a formal demand for the return of the security deposit, but that he is entitled to its return any time within 14 days after termination of the rental agreement.

Also, the security deposit is to be placed in a savings institution only where practicable to cover those situations where there is no such institution in the area.

The deposits may be commingled in a single account rather than having to set up a separate trust account for each tenant.

Damages were increased from one and one half times the amount wrongly withheld to twice the amount. This facilitates the calculation of damages.

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Page 8 - The landlord's obligation to maintain fit premises was altered somewhat by the reference to energy conditions.

Locks and keys need be furnished when the tenant requires to cover situations where they are not necessary and should not have to be furnished as a matter of law.

Page 11 - Rules and regulations shall be "posted prominently on the premises."

Page 12 - In the House bill, if the tenant were going to<sup>be</sup> gone for a period of five days or more, notice had to be given no later than the first day of the absence. This has been changed to seven days, with notice to be given as soon as the tenant knows he will be gone that long or longer. This is to allow for situations where, for example, weather conditions are such that the tenant cannot get back but did not know at the time he left that there would be a problem.

Page 13 - Sections 280 and 350 were included to make it clear that injunctive relief would be available.

Page 14 - The "repair and deduct" clause was deleted.

Page 15 - When the tenant is forced to find substitute housing because the landlord has failed to provide essential services, such as heat, the tenant may now recover the balance of the rent he had to pay for the substitute housing when it exceeds the rent for the dwelling unit which he had to leave. There is an assumption of good faith made that the tenant will find adequate but not extravagant housing in such instances.

The tenant must give "written" notice of any failures of the landlord to provide services before he can take action of his own.

Page 18 - Present law gives the tenant 10 days after he has failed to pay rent before the landlord may terminate the relationship. The House version increased this to 14 days, and the proposed substitute had reduced it to 3 days. It was the decision of the committee to reinstate the 10 day provision, since it would not be changing existing law and would allow for delays which are not the fault of the tenant.

Language was added providing that the landlord need only give one notice to the tenant that he is in default.

Damages were reduced from one and one-half times to actual.

Page 19 - The extended absence clause was changed from five to seven days for consistency.

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Page Three

Page 20 - The landlord may now dispose of perishables in any manner he deems fit when the tenant has abandoned the premises.

Page 22 - "Energy conditions" were added to the section dealing with the landlord's failure to supply utilities as this would relate to retaliation.

Page 24 - Protection against retaliation has been extended to the tenant who has attempted to avail himself of the remedies under the act.

The provision presuming that a landlord's actions are retaliatory under certain circumstances was deleted. Although it was a rebuttable presumption, landlords felt that it violated the concept of presuming innocence until guilt is proved.

Page 25- The landlord can recover the dwelling unit for his "personal purposes." It is his property, and he should be able to have friends or relatives use it if he so desires.

Page 27 - The designated agent for service of process, when the landlord is not a resident of Alaska, must now be the same person designated for service of various notices as provided elsewhere in the act.

Page 28 - Attorneys fees are to be awarded to the prevailing party. Reference in other bills was made to Rule 82; this rule, however, is under attack and may soon be repealed, so the reference was deleted.

Definitions - Some new definitions were added. These include:

1. Abandonment - the tenant will never be assumed to have abandoned as long as he continues to pay rent.

2. Fair rental value - this was included because it is to be used in the determination of damages.

3. Prepaid rent - this was limited only to that amount paid when the tenant first moves in. This will allow tenants planning to be gone for several months to pay their rent in advance.

4. Roomer - this was deleted, since the only reference to roomer was deleted and changed to tenant.

5. Single family dwelling - this was narrowed to refer only to houses.

6. Wear resulting from ordinary use - this is important because security deposits cannot be applied against it. It also includes the landlord's failure to prepare for expected conditions.

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Page Three

Page 31 - the Applicability section was added so that there will be no doubt as to when the law goes into effect and whom it will effect. For month of month or week to week tenancies, it will be effective as of the next time the tenant pays rent after the effective date of the act. A long term lease will not be under the act until it has been renewed or altered in some substantial way after the effective date.

The last portions of the bill amending other titles provide for eviction procedures (refer to appropriate court rules), prohibit the use of ejection against a residential tenant, and provide that in cases of malicious damage, the tenant may be required to make restitution to the landlord.

The proposed draft was taken to Legislative Affairs to be prepared in proper form, and it will be passed out of the committee as a committee substitute.

Paula Sampson  
Staff Assistant

March 1, 1974

SENATE JUDICIARY COMMITTEE

Present: Senators Ziegler, Silides, Poland  
Senator Croft  
Russ Mulder  
Judy Hopkins

Excused: Senators Meland and Rettig (out of town)

SB 388 - campaign financing

Senator Croft reviewed with the committee the proposed committee substitute containing all the changes agreed upon at the last meeting on this bill.

Additional changes will also be included:

Page 6, line 26 - to avoid confusion with the state's Department of Labor, the words "United States" were inserted.

Page 4, line 14 - "and member of the group" was deleted, so that only officers, directors and those who contribute more than \$100 per annum in the aggregate need be reported.

Page 11, line 16 - "loan guarantee" was added to the definition of "contribution".

Page 8, line 16 - the provision as to where reports should be filed will be clarified to provide that statewide candidates will file in the central office in the "capital city", and all others will file in the office in the appropriate election district.

Line 8 - a new paragraph (4) will be added to require a report on or before December 31st of a year in which an election is not held if contributions were received or expenditures made as to items not previously reported. This would prevent a candidate from taking all his contributions during off-years to avoid reporting them.

Line 28 - "facilities and supplies" was deleted because the phrase is redundant.

The League of Women Voters had raised the question of limiting expenditures for local government candidates since they are governed by the bill. Senator Croft explained that there are constitutional questions concerned here, both as to a limitation on free speech and as to equal protection, if the legislature were to set limits for all municipalities in the state, few of which are similar enough to make the limitations either practical or constitutional. Having disclosure of the contributions will probably be sufficient control. A provision was added on line 16: "Nothing in this chapter shall prohibit a municipality from enacting ordinances regulating campaign contributions and expenditures."

Senator Croft hoped to have the fiscal information requested of him by the first of next week, at which time the bill will come out of committee as a committee substitute.

Paula Sampson  
Staff Assistant

date unknown  
assign: Meetingx

SENATE JUDICIARY COMMITTEE

Present: Senators Ziegler, Meland, Rettig, Silides  
Senator Croft  
Don Clocksin, Alaska Legal Services  
Kaye Smith, Department H and SS  
Sister Elizabeth, Catholic Senior Center of Juneau  
Representative Chance  
Excused: Senator Poland

House Bill 70 - relating to adoptions

Senator Ziegler stated that the decision of the Judiciary committee insofar as the original bill was concerned had been substantiated. That bill had many imperfections and would have been detrimental to the bush. No one present took issue with this assertion.

Senator Croft agreed that the original bill was not in very good shape and that the committee's concerns were well founded. He complimented the committee for insisting that more work be done.

Don Clocksin went over the bill and reviewed all changes with the committee. Working with him on this project since the last time the bill was considered by the committee were: Rep. Chance, Sen. Croft, Russ Mulder of LAA, Art Peterson of the AG's office, Kaye Smith of the Dept., the League of Women Voters, Rep. Degnan, a social worker from Barrow, and the Alaska Legal Services representative from Nome.

He is now perfectly satisfied with the bill, and all concerns he had raised earlier have been met without watering down the bill in any way.

Page 1 - line 28

New language was added to make it clear that an illegitimate child does not have to be adopted to be legitimated. There is another statute concerning this which is not superseded or affected in any way by this bill.

Page 2, line 1

New language is consistent with the existing venue statute.

Page 3, line 5

Reference to AS 47.10.080 provides a definition of "abandonment"

Line 9

New language referring to indigency is inserted to assure that the mere fact that a person is poor will not be a factor to be considered if he is in danger of having his child taken away. If his indigency is having a detrimental effect upon the child, e.g. he is not getting enough to eat, this would be considered.

Page Two

Page 4, line 1

Requirements for a spouse's consent can be waived if the spouse is unreasonably refusing to give consent.

Line 21

The provision requiring a person who wishes to withdraw his or her consent to go to Superior Court to do so has been deleted if the withdrawal is accomplished within 10 days. After that period of time, it requires a court appearance.

Page 5, line 4

The name of the child as it would be if he were to be adopted will not be used in the notice.

Line 28

Termination orders are now to be filed with the court along with all other information, affidavits, consents, etc.

Page 6, line 27

The father of an illegitimate child is now on the list of those who must receive notice, as are parents of an adult child who is to be adopted.

Page 7

Two new subsections were added. One provides for adequate notice and spells out how it is to be given and what it is to contain. It is to be in a language other than English if the person receiving it speaks another language. It identifies the child by the name by which he is known to the person receiving the notice.

In addition, a reasonable effort must be made to discover the natural father. If he cannot be found, an affidavit of diligent search may be filed. Publication as a means of notice may not be used.

Page 8

There does not have to be an investigation report filed if the investigation has not been completed within 30 days and the court can find no good reason for the delay. Also, to take care of the custom adoption problem, there will be no investigation if the petitioner is within the fourth degree of consanguinity, lineally or colaterally, to the person to be adopted. Roughly 90 % of the tribal adoptions are by relatives.

Page 9, lines 8-10

There will be no home visit required if no investigation has been required.

Page Three

Lines 11-13

Neither the person to be adopted nor the petitioner need appear in court unless the court requires them so to do.

Line 23

If the adoption decree is not granted, the court will place the child according to his best interests. This may include the petitioner.

Page 10

An adopted child may not inherit from his natural parents unless it is so stated that he will inherit in the adoption decree. LAA indicated that this provision will take precedence over the probate code in cases of conflict.

Page 12, line 21

Those signing a relinquishment will also receive notice that they have a right to change their minds.

Page 13, line 7

Termination of parental rights has been consolidated insofar as the proceeding and grounds required are concerned.

The committee adopted two amendments on page 1. On line 13, the phrase "although one is a minor" was deleted. On line 20, the conjunction "or" was added at the end of the sentence.

Senator Silides raised the question of adding medical expenses to the subsidy payments in the case of subsidized adoptions. If the subsidies are provided to encourage the adoption of hard to place children, some of whom are handicapped, then the special care required to deal with the handicap should be paid for also. Current foster payments do not include this. After discussion, it was decided that this would better be the subject of a separate bill. If it were added to this bill, fiscal implications would be added along with it. At this stage of the session, another committee referral might be fatal to the bill's passage.

It was reported out of committee with a "Do Pass" recommendation, Senators Poland and Silides signing without recommendation.

*date unknown  
assign meeting if*

SENATE JUDICIARY COMMITTEE

Present: Senators Ziegler, Meland, Rettig  
Don Magnuson, Alaska Retail Association  
Absent: Senators Poland and Silides

HB 749 -- concealment of merchandise

A committee substitute was prepared placing the language of this bill in Title 9 rather than in Title 11. The last paragraph of the bill providing for parents' liability for the acts of their children was amended out on the Senate floor, and it is also out of the committee substitute.

Senator Ziegler signed "Do Pass", and all others signed without recommendation.

HB 778 - Commission on Administration of Justice

The House bill had replaced the Commissioner of Health and Social Services with the director of the division of corrections on this commission. Because he is also responsible for the division of mental health and the probation office, the commissioner felt that he should also be on the commission. The Senate HESS committee amended the bill to place him back on the commission. All Judiciary members agreed with this concept and signed "Do Pass".

SCSHB 646 - jurisdiction of superior court/certain children

The original House bill has been replaced with a HESS committee substitute which contains the original bill plus the provisions of Senate Bill 310, aid to families with dependant children. 310 is in House Finance and does not appear to be moving, so this method is being used to get the AFDC provisions passed. No action was taken on the bill by Judiciary. Members were provided with copies of the bill and asked to study it for a future meeting.

Paula Sampson  
Staff Assistant

SENATE JUDICIARY COMMITTEE

March 4, 1974

Present: Senators Ziegler, Meland, Silides, Rettig  
Representative Chance  
Art Peterson, Assistant Attorney General  
Kaye Smith, Regional Director, Dept. Health & Social Services  
Don Clocksin, Dep. Director, Alaska Legal Services  
Excused: Senator Poland

HB 70 - relating to adoptions

Mr. Peterson explained that the bill under consideration is based on the Revised Uniform Adoption Act. It deals more specifically than our present law with the persons who may adopt and from whom consent is required. New sections require a pre-adoption investigation and allow the continuation of foster home subsidy payments to foster parents who wish to adopt but could not otherwise afford to do so.

Senator Ziegler asked what problems currently exist in Alaska under our present adoption system that compel the enactment of this act.

Mrs. Smith responded that there is a certain segment of Alaskan children who have no one to speak for them, i.e. those who have been privately adopted. 70% of the adoptions in Alaska are private. There is no provision in present law requiring the court to ask for an objective judgment as to whether the adoptive family is suitable for the child.

Another concern, she added, is that there are a number of children who, for one reason or another, are unadoptable. This can be because of their age (those 12 or older), or because of their mental or physical condition. They are usually placed in the custody of the department and are kept in foster homes until they reach majority. Often the foster parents in these situations are willing to adopt the child, but their economic situation is such that they do not want to add this burden to it. They need the foster home payments to keep the child. This bill would allow the payments to continue after adoption.

The subsidy payments would never exceed the foster home payments, so there would be no added cost to the state.

The bill would not preclude private adoptions, but it would require a pre-adoption investigation to be conducted.

Senator Ziegler suggested that "abandonment" should be defined in the bill. He also posed the question as to whether providing state assistance to adoptive parents who could not otherwise afford to adopt is wise public policy, i.e., if the prospective parents can not afford a child, perhaps they should not be adopting one.

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Mr. Peterson pointed out that a recent Alaska Supreme Court decision, in discussing the best interests of a child, had emphasized that a child should be relieved from the limbo of foster care status where-ever possible. This provision of the bill would provide the child with stability at no greater cost to the state. In addition, the child would be in the foster home for a year before any adoption assistance payments would be made. A reinvestigation of the foster parents would be made, because an adoptive study is somewhat different than a foster home study, being longer term in scope. The system of subsidy payments is used in over 30 states.

Mr. Clocksin prefaced his testimony by stating that he reluctantly opposes the bill in its present form. Hopefully, the problems he sees in the bill can be solved. It is not his desire to kill the bill, but only to protect his clients. Alaska Legal Services wholeheartedly supports the subsidy provision in the bill.

He set forth five goals which he felt a bill of this type should accomplish:

1. It ought to avoid discriminating against the poor and uneducated;
2. It should fairly balance the interests of the three elements involved--adoptive parents, natural parents and the child. This bill protects the child to the point where the other parties are not protected;
3. It should be constitutional;
4. It should attempt to avoid unnecessary increases in cost and delays in procedure; and
5. It should address itself to the problem, unique to Alaska, of protecting the preservation of the native-bush way of life. This bill encourages transfer of the child into the urban-white culture.

Discrimination - Mr. Clocksin pointed out several areas in the bill which place the poor at a disadvantage. Someone who is not able to make his child support payments may lose his child. A petitioner's request to adopt may be denied if he cannot get a subsidy and is too poor to support a child without one. In addition, the cost increases accompanying the bill (see below) will detrimentally affect those who cannot pay them. The uneducated, particularly those living in the bush, are also hurt by the bill. A guardian could lose custody of a child if he cannot read or understand the notice he receives or if he cannot respond to it in written English.

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Constitutionality - Mr. Clocksin pointed out several weaknesses in the bill as to this matter. One is the provision stating that the father of an illegitimate child need not give his consent to an adoption of that child. He also would receive no notice of a proposed adoption. The United States Supreme Court has ruled that any provision of state law denying the natural parent's appearance in an adoption proceeding is unconstitutional. Such parent must receive adequate notice. It might be questionable as to whether the court is taking the best interests of the child into consideration here, but it is the "law of the land" currently.

Also, no consent need be obtained from a natural parent who has deserted the child or failed to pay child support. An Alaska Supreme Court case, Delgado vs. Fawcett, provides that a father who is divorced from the child's mother but who has visitation rights must give his consent to an adoption. The legislature probably has the power to overrule this decision, but it would not be good policy so to do. A father with visitation rights ought to have a say in what happens to his child.

Another area of doubtful constitutionality is that of adequate notice. Even those persons who have a right to receive notice are not going to receive adequate notice. Specifically, they do not have a right, under the bill, to receive a copy of the petition. Hence, they do not know who wants to adopt the child or who has or has not consented.

Increased cost and procedural delays - In every adoption situation except where the court waives the requirement, there is a mandatory pre-adoption investigation. Most will probably be conducted by the department. Mr. Clocksin did not question the desirability of having the investigation, but did question whether the department has sufficient manpower to do this work and how long the investigations would take.

There will also undoubtedly be an increase in fees charged the petitioner by his attorney because of the increase in the amount of work the attorney must do for his client. This would include filing a report of the outlay of expenses with regard to the child during the adoption proceeding, applying for a substitute birth certificate, filing all written consents with the court. More departmental expense would probably result from the annual re-evaluation required in subsidy cases.

Mr. Clocksin reiterated that he was not addressing himself to the merits of these requirements, but only pointing out the probable increase in cost and time which will result.

Impact on native-bush culture - Objectionable provisions from this point of view include the investigation, home visits, having to bring the proceeding in Superior Court, and requiring the petitioner to be physically present in court. It is the present policy of both the state and Alaska Legal Services to do everything possible to legitimize "custom" adoptions which are very prevalent in the

bush. In situations where a child has been abandoned or orphaned, the village places that child in a home. No legal proceedings are involved, but the effect is that of an adoption. An effort has been made to legitimize all such adoptions for the protection of the child as to inheritance rights and the right to claim under the Native Land Claims Act. Legitimizing these custom adoptions makes legal a relationship that has been in effect for years. This bill would discourage legitimization because it makes complicated and cumbersome what should be a relatively simple legal proceeding. Mr. Clocksin also questioned the necessity of conducting an investigation in a village where the child has been living with the family for a number of years. Having to appear in Superior Court presents a distance, and often a language barrier. The bill will not be adequate until it assures that the native village life will not be damaged by the bias of some judges and social workers. The emphasis should be on keeping the child in the culture, not removing him from it.

Miscellaneous - Mr. Clocksin mentioned several other provisions of the bill which present problems:

1. Withdrawal of consent before an adoption is final can only be done in Superior Court, but the consent can be signed anywhere. This necessitates hiring an attorney and going to court if a mother, for example, has changed her mind;
2. If all the requirements have not been met, the judge can dismiss the petition and may also change the custody of the child, giving him to any interested person without any notice being given to anyone;
3. The language is somewhat obscure dealing with the termination of the natural parent's rights when the adoption procedure has been completed. Minute changes in the wording of a will would completely change the rights of a child to take under that will. (This is with reference to the will of the natural parent.) If, for example, the will uses the natural name of the child without referring to the relationship, the child can take. If, however, the will refers to "my son", he cannot take;
4. Relinquishment of all parental rights is accomplished under the bill by the signing of a form. Relinquishment may, however, be withdrawn within 10 days after it is given. This provision must be printed on the form, but the person signing does not get a copy of this form to keep, and might, therefore, be unaware of the 10 day provision. He should be entitled to a copy so that he will be fully aware of what his rights are; and

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5. Under the bill, the natural parent is one of the parties who can adopt the child. Why should he or she have to go through the entire adoption proceeding to adopt his or her own child? Present law requires only an affidavit to the Office of Vital Records requesting a substitute birth certificate. A judicial proceeding is not required.

In summary, Mr. Clocksin stated that he would like to see the adoption bill pass but urged that some changes be made in it. He pledged the cooperation of his agency in working on a new draft.

Mr. Peterson responded to the above and foregoing:

1. Some of the problems could be solved fairly easily by amendment, e.g., the question of adequate notice. The department is not opposed to giving better notice or of giving notice to those not now mentioned in the bill;

2. The bill limits the time an investigation can take to 30 days. If it is not completed by that time, the court can waive it. Also, the court can appoint anyone to conduct the investigation. This would include such people as village chiefs or elders. The department would not be involved in every case; and

3. If it is established that there will be a substantial increase in cost affecting the bush areas particularly, the bill could be adapted to reduce said costs. It is not the state's position to discourage legitimizing adoption. It wants to insure that the child will have some legal status.

Mrs. Smith stated that the department has encouraged legitimizing custom adoptions and has trained 19 village natives as heads of division offices in the bush to help get the job done. However, she added, in some cases the child has been given to a family for not very good reasons and literally becomes a slave to that family. Investigations would be helpful here.

She re-emphasized that the department will not be the investigating agency in every case.

As for the matter of the language barrier, she pointed out that our court rules provide for the use of interpreters and that the department has used them in the past.

Discrimination against the poor might possibly be justified to some degree if adequate care cannot be provided the child as seen in the light of the cultural circumstances involved. Taking the best interests of the child into consideration, it might be better to find another home for him.

Paula Sampson  
Staff Assistant

SENATE JUDICIARY COMMITTEE

March 6, 1974

Present: Senators Ziegler, Meland, Poland

SJR 23 - unicameral legislature

There are no "Do Passes" on the committee for this resolution, so no action will be taken on it.

HB 209 - pre-emptory disqualification of masters

Under existing law, any party to litigation in district or superior court can pre-emptorily disqualify the judge. This bill would extend that privilege to standing masters. However, the sponsors have evinced no interest in the bill and until and unless they do, the committee will not act on it.

HB 232 - superior court districts

This bill would extend the boundaries of the Fourth and change those of the Second Judicial District so that the North Slope Borough will be included in the latter district. The court system has no opposition to this bill and indicates that there will be no cost involved. The North Slope Borough favors the bill. The bill will be taken up at the next meeting for final action.

SB 313 - relating to bail

The office of the Attorney General has considered the proposed amendments to this bill. It has no objection to limiting the bill to those charged with a felony, but felt that spelling out what must be established by the district attorney (proving that the person would be a danger or would not appear) viscerated the bill. The bill will be amended by the committee to include the felony provision and state that the prosecuting attorney must show good cause

SB 322 and HB 154 am - driving under influence of liquor or drugs

The Attorney General's office has prepared a committee substitute, but just exactly what is included under "narcotic drugs" remains unclear as to medication such as diet pills and antihistamines.

A policy decision will have to be made by the committee as to whether to take the House approach of mandatory revocation of a license for convictions of this offense or to take the approach in the Governor's bill of mandatory jail terms. The question becomes which method would prove the most effective deterrent.

Public Defender Agency

Senate Judiciary will introduce a bill requiring that if a person claims indigency entitling him to the services of the Public Defender,

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he must appear in court and state his financial conditions under oath. This concept has been approved by the law enforcement agencies, the judiciary, and the Public Defender.

In addition, the bill will provide that if a Public Defender is not available or for some reason cannot provide his services, the court will appoint an attorney from the local bar to serve to be paid according to a fee schedule established by the court and not at the going rate he usually receives from his private clients.

HB 70 - adoptions

Senator Ziegler will write to all those who have expressed an interest in this bill that it is the unanimous decision of the committee that the bill is too important and is currently in such poor condition that no action should be taken on it this session. Instead, the committee will introduce a resolution requesting and directing the Legislative Affairs Agency to study the subject during the interim and make recommendations to the First Session of the Ninth State Legislature.

Paula Sampson  
Staff Assistant

SENATE JUDICIARY COMMITTEE

March 9, 1974

Present: All members of the committee

HB 232 - superior court districts

This bill would change judicial district boundaries so as to place election districts 18 and 20 in the same judicial district. The court system does not oppose the bill and indicates there will be no increase in cost. The North Slope Borough favors the bill. It received a "Do Pass" recommendation from the committee.

SB 322 - driving under influence of liquor or drugs

Senator Ziegler stated that while, generally speaking, mandatory sentencing is not a desirable, perhaps in the area of DWI it would be an effective deterrent. The committee determined that, as a matter of policy, mandatory jail terms would be a greater deterrent than mandatory revocation of licenses. Rather than passing out a committee substitute for the bill which had been prepared to include a definition of narcotic drugs, the committee decided to add an amendment with the definition to the present bill. This was done, and the bill came out of committee "Do Pass".

The chairman will write to Commissioner Wellington of Public Safety for a status report on the point system.

SB 313 - relating to bail

The committee amended this bill so that it applies only in the event the offense with which a person is charged is a felony.

Also, the phrase "for good cause shown" was inserted to insure that a prosecutor cannot arbitrarily have a person held for 48 hours without bail. The bill received a "Do Pass" recommendation.

SJR 4 - elective Attorney General

A public hearing on this bill will be held on March 18.

SB 442 - mobile intensive care paramedics

The purpose of this bill is to include those who have been trained as and meet all qualifications to be paramedics under the Good Samaritan statute. "Do Pass".

SB 468 - relating to public defenders

Everyone concerned (judiciary, public defender, police officials) favors this bill. Indigency would be determined by the court, with the defendant testifying under oath as to his indigency. Also, if the court must appoint an attorney from the bar to serve as defense counsel, that attorney will be paid according to a fee schedule determined by the court and not according to the prevailing bar fee schedule. Money will be transferred to the court budget from the public defender's budget. The bill received a "Do Pass" recommendation.

Paula Sampson  
Staff Assistant

SENATE JUDICIARY COMMITTEE

March 18, 1974

Present: All members of the committee  
Norman Gorsuch, Attorney General

SJR 4 - elective attorney general

Senator Ziegler explained that the sponsor of this resolution, Senator Lewis, was out of town and would be unable to testify. His legislative assistant, Mr. Phil Connor, was offered the opportunity to testify, but did not do so.

Mr. Gorsuch stated that he opposed the resolution for a number of reasons:

1. Elective cabinet level officials would tend to diffuse and fracture the executive branch. The Alaska constitution is based upon a strong executive.
2. The Governor should have the opportunity to choose his own cabinet officers. In addition, all political accountability lies with him. The subjection of his choices to legislative confirmation is an effective remedy in the event of abuses.
3. Creating another elective office encourages political in-fighting and makes it difficult to pin down responsibility for decision making.
4. Requiring an attorney general to campaign means that he will not be devoting his entire time to his job.
5. The prospect of having to campaign makes it difficult to recruit capable men into public service.
6. Policies enhancing an attorney general's reelection may be implemented over those based on the general public interest.
7. Election processes do not guarantee competence in such a specialized field as the law. An effective campaigner may not be a good attorney.
8. An elected official might be vulnerable to special interest groups.

The argument in favor of this concept is that the attorney general would become an effective ombudsman for the people and an independent and objective check on the executive branch. In Alaska, the consumer protection division within the department serves this function in part, as does their policy of referring complaints to the appropriate department.

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Mr. Gorsuch felt that making the attorney general elective would result in increased cost. Since his function of serving as advisor to the various departments and to the governor would change, each department would probably hire its own counsel.

In addition, local governments might want to elect their own district attorneys. It might also lead to election of other cabinet level officials, e. g. , state treasurer.

In summary, he stated that the system we have has worked well in Alaska, and there does not appear to be any need to change it.

No member of the committee cared to give the resolution a "Do Pass" recommendation.

#### Point system

Mr. Gorsuch reported that Public Safety and his department are working on regulations to implement this bill (passed last year), but there are some problems which they are attempting to solve with remedial legislation introduced in the House.

SENATE JUDICIARY COMMITTEE

March 20, 1974

Present: All Members of the Committee  
Mr. George Wehmhoff and Mr. Chuck Blacksmith of ABC Records

Senate Bill 399 - protecting rights of owners of sound recordings

A recently enacted amendment to the federal copyright laws makes it illegal to "pirate" recordings from legitimate record or tape companies and offer them for sale at a reduced rate. By so doing, the illicit manufacturer pays very little in the way of a production cost, no advertising costs, no royalties, and no taxes to the state.

This federal law is to be implemented by the Internal Revenue Service and the FBI. However, for a number of reasons, among them lack of manpower, distance from the problem on a local level, and the fact that their directives are addressed to the manufacturer and distributor rather than to the retailer,\*23 states have enacted similar laws to the one currently before the committee to enable local law enforcement agencies to go after the retailer, on the theory that this will be a more efficient and effective method of curing the ill.

The language in this bill is patterned after the Tennessee statute, which makes the manufacturing or selling of illicit recordings a felony. In Washington and Oregon it is only a misdemeanor.

Mr. Wehmhoff and Mr. Blacksmith, representing ABC Records, stated that they were (through their company) affiliated with the National Association of Record Manufacturers. Various other such groups have also taken on the responsibility of appearing before state legislatures to lobby for this type legislation. ASCAP is involved to the extent of protecting the artists whose work has been pirated. The organizations have also launched a campaign to inform local law enforcement agencies throughout the United States as to just how extensive and serious this problem has become.

Mr. Wehmhoff mentioned several specific stores in Alaska which are selling recordings they know to have been illicitly manufactured. When confronted with this fact, the attitude of the retailers seems to be that since there is no enforcement to fear, they might as well go ahead, sell the tapes and make a profit, particularly when their competitors are doing the same thing. He pointed out, however, that the majority of reputable stores do not sell these recordings.

Mr. Blacksmith agreed that classifying the offense as a felony might be unduly punitive, particularly for a first offense. Other state statutes provide for confiscation of property and a fine for the first offense, and only subsequent offenses are felonies.

No action was taken by the committee, but the bill will be considered further at a later meeting.

\*In addition, these fly by night manufacturers have extremely mobile operations.

SENATE JUDICIARY COMMITTEE

March 23, 1974

Present: Senators Ziegler, Poland, Silides, Meland  
Senator Croft  
Arthur Snowden and Susan Burke, Alaska Court System  
Excused: Senator Rettig

Senate Bill 472 - compensation for judicial officers

Mr. Snowden stated that the court system does not think the raises provided in this bill are adequate. Judges in Alaska have a heavy responsibility, having issued 87,000 decisions in 1973 alone, and should be compensated commensurately. Supreme Court justices and Superior Court judges have not received a raise for four years; it has been two years since District Court judges received a raise. In the meantime, the cost of living has risen about 20%, resulting in these men actually having taken a cut in pay because their purchasing dollar is not worth as much. State employees receive a built-in cost of living increase, but judicial officers do not. It is also important to note that most attorneys in the state who responded to a recent poll make more per year than the Supreme Court justices. It is difficult to recruit to the bench when it means taking a salary cut. In the last four years, Alaska's standing as to salary paid to Superior Court judges has dropped from 14th to 30th nationwide; for Supreme Court justices, it has fallen from 25th to 42nd. The bill before the committee really is only a cost of living raise, Mr. Snowden stated.

Senators Ziegler and Meland recommended the bill do pass with amendments raising the Supreme Court to \$45,000; Superior Court to \$40,000; District Court to \$33,500. Poland and Silides signed without recommendation.

The committee decided to introduce a bill raising the Governor's salary from \$40,000 to \$50,000.

Senate Bill 399 - protection sound recordings

The committee will report out a committee substitute for this bill based on Senator Croft's Senate Bill 422. The difference is that the penalty in the latter is less and the crime is defined only as a misdemeanor, not a felony. All members signed Do Pass.

Senate Bill 322 - driving under influence/liquor or drugs

A committee substitute has been prepared which corrects the problem involving Court Rule 35, dealing with sentence reduction. The court's discretionary power to reduce a sentence for this offense within 60 days after it has been imposed is removed. Also, the definition of narcotics is limited to hard drugs. Lastly, the bill spells out that it will not apply to any offenses occurring before the effective date of the act. All members signed Do Pass.

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House Bill 777 - indigent defendants

The bill was amended to make it identical to Senate Bill 468 which is currently in Senate Rules. The amendment provides that the indigency must be affirmed under oath in court. All members signed Do Pass.

CSHB 635

A public hearing will be held sometime during the first week in April on this bill. The sponsor, Legislative Affairs, The Attorney General and the court system will be notified.

The next meeting will be held March 27 at 1"30.

House Bill 792 - aggravated assault

The committee took no action on this bill. No interest has been evinced in it.

Paula Sampson  
Staff Assistant

SENATE JUDICIARY COMMITTEE

March 27, 1974

Present: All members of the committee  
Senators Hensley, Kerttula and Sackett  
Mr. Fred Eastaugh, attorney at law  
Mr. Ray Meketa, Juneau Rifle and Pistol Club

Senate Bill 491 - prohibiting sale certain handguns

Mr. Meketa testified against this bill. The intent is to reduce violent crimes involving handguns which are easily concealed. However, he felt that criminals will always be able to obtain guns, regardless of what the law is. An example of this is the number of weapons available in prisons. Contrary to provisions in the proposed bill, guns with barrels of less than three inches are used for hunting and sporting purposes. Prohibiting their use is a restriction of individual rights, including the right of self-defense.

Mr. Meketa's group is affiliated with the National Rifle Association and the Territorial Sportsmen. Senator Ziegler requested him to solicit written comments from them on the bill. No action was taken by the committee.

Senate Bill 410 - transfer of investment securities

Mr. Eastaugh appeared as a member of the National Commission on Uniform State Laws. This bill is an amendment to the Uniform Commercial Code. It allows the creation of clearing corporations to handle the electronic transfer of ownership of corporate shares. The UCC, when it was first promulgated, forecast the need for such organizations, but little attention was directed towards them until the volume on the New York and American Stock Exchanges became so great that abuses began to result. The physical transfer of stock certificates from one brokerage house to another via runners became practically impossible. The resulting confusion and delays gave rise to stock theft to the tune of approximately \$10 billion. In 1969, a depository trust company wholly owned by the NYSE was created to combat this problem. The UCC originally required that such companies be wholly owned by an organization such as the NYSE. However, in order to permit growth of the company, additional capital was needed. The purpose of the bill under consideration is to amend the UCC to allow other organizations, such as banks, to invest in the companies. The amendment provides that such investors are to be strictly regulated by the appropriate banking or insurance laws in the state. Currently in excess of 75% of all stock transactions are handled electronically. The original certificate remains in a protected vault. The clearing corporations can also handle proxy matters and payment of dividends. As of February 5, 1974, 33 other states had adopted this amendment. Mr. Eastaugh stated that although it was not essential that Alaska adopt the amendment, it was advisable for the sake of consistency.

The committee took no action on the bill.

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Senate Bill 490 - Inheritance of Native Claims stock

Senator Hensley explained that problems have arisen regarding the stock of the various native corporations because, since the stock is inalienable until 1991, it is impossible to place a dollar value on it. In the meantime, individual stockholders who leave the stock as part of their estate create complications. This bill was introduced to alleviate some of these.

1. The stock would not be included in determining if the estate is under \$6000. This is important in determining how the estate will be handled under the Uniform Probate Code.
2. As provided in the Settlement Act, a will form is printed on the back of each stock certificate. Many of the native corporations feel this provision should be made optional, and the bill would so make it.
3. In the case of a person dying intestate, the stock will be treated as part of the residual estate and will not be included in the \$50,000 category as provided in the Probate Code.

A question was raised in the intestate situation where the spouse, parent or parents and issue are all surviving. If the spouse receives 50% of the stock, do the parents and issue take as one class or as two separate classes? This is not spelled out in the bill. Senator Hensley indicated that he would find out the answer to this. The bill was reported out of committee but will be held pending resolution of this matter.

Senate Bill 394' - receiving of stolen property

This bill was reported out of committee with little discussion. Senator Groh will be notified. Its intent is to deter fencing of stolen property.

Paula Sampson  
Staff Assistant

SENATE JUDICIARY COMMITTEE

March 30, 1974

Present: Senators Ziegler, Poland, Silides, Meland  
Richard B. Lauber, Association of Pacific Fisheries  
Excused: Senator Rettig

Senate Bill 433 - forfeiture of equipment/fish and game violations

Senator Poland explained that this bill was conceived by the Attorney General's office and the protection division of Public Safety. It allows a civil action to be instituted against the fishing vessel, rather than limiting penalties to criminal procedures against the individual. The feeling is that threat of confiscation would be a greater deterrent. It would also cover situations where a vessel fishing illegally can be identified but the individual fishing it is not known. Action can be taken against the vessel.

Senator Ziegler asked whether whether only the superior court would be involved. Most fish and game violations are misdemeanors and are brought in district court. Actions in rem, however, can only be brought in superior court. The bill is vague on this point, and Senator Poland will research the problem with Legislative Affairs.

Mr. Lauber felt the bill might be harmful to a bona fide purchaser and asked: could fish caught on a vessel fishing illegally but not seized at the time of the arrest and sold by the offender to an innocent purchaser later be subject to forfeiture? Also, it appeared to him that the purchaser would have no defense under (d) of the bill on page two, which provides that it is no defense that the person controlling the item at the time of seizure had not been convicted in a criminal proceeding.

The committee agreed that language should be added to protect the bona fide purchaser. Senator Poland was requested to work on this.

Senate Bill 419 - burden of proof/fish and game violations

There is currently a 10 day period after a season has closed before a person with fish or game concerning that season does not have to prove that it was not taken after the season closed. Thereafter the burden of proof is upon him. This bill would limit that time period to three days for commercial crab fishermen. They are concerned that the Fish and Game Board will do away with the grace period entirely, and small boats would have to stop fishing before the deadline in order to go out and pull their crab pots. For small boats, this takes several trips.

Mr. Lauber agreed with the intent of the bill but suggested that as originally written, processors having crab in their possession would also have to prove it was legally taken. Such a burden seems unfair.

The committee, to correct this situation, amended the bill, changing "with respect to commercially taken crab" to "with respect to crab aboard a commercial crab fishing vessel".

The bill was reported out "Do Pass".

House Bill 758 - relating to when a law becomes effective

This bill spells out with particularity exactly when a law becomes effective and when an act becomes law.

It received a unanimous "Do Pass" recommendation.

Senate Bill 371 - magistrates' pay

The primary purpose of the original bill was to allow magistrates to be paid twice a month instead of just once. The administrative director of courts suggested that it could be written in a more effective manner and should be applied to all judicial officers. A committee substitute was drafted to accomplish this. The provision requiring a judge to sign an affidavit stating that he has had no matter pending before him for a certain number of days in order for him to be paid will still remain law. The bi-monthly pay periods will be optional with judges.

Senators Ziegler and Meland amended the bill to make it consistent with SB 472 (judicial pay raise) by changing the salary amounts to \$45,000 for the supreme court, \$40,000 for the superior court, and \$33,500 for the district court. They signed "Do Pass", and Senators Silides and Poland signed without recommendation. It was also the committee's recommendation that the bill be referred to Finance.

CSHB 123 - amendments to comply with equal rights amendment

Senator Ziegler asked Senator Poland to meet with Representatives Banfield, Fischer to discuss the need for this bill. In many respects it is similar to a reviser's statute and simply eliminates reference to sex, but it also contains a repealer of desertion as grounds for divorce.

Paula Sampson  
Staff Assistant

SENATE JUDICIARY COMMITTEE

April 6, 1974

Present: All members of the committee

CSHB 511 - release on parole

Senator Ziegler suggested this bill might be a compromise between mandatory sentencing and the present system. It provides that a convicted person must serve one-third of the time for which he is actually sentenced (not including any suspended portion) before being eligible for parole. It does not take away the court's discretionary powers to suspend all or a portion of the sentence. Nor would it interfere with a situation where, after sentencing, it is discovered that injustice has been done. The court will still have 60 days within which to modify the sentence. The bill was reported out "Do Pass". It will be held in committee, however, pending answers to a letter sent to Senators Harris and Lewis soliciting their support for the bill in its present form, without any amendments.

SCR 57

This resolution proposes a study be made by the Department of Law during the interim on the activities of organized crime in Alaska. It received a "Do Pass" recommendation.

HB 563 - transfer of criminal information

This bill proposes a procedure with a convict's records and files similar to the military "201" file. Such information will be transferred to whatever institution he is sent to. "DoPass"

CSHB 635 - legislative immunity/civil proceedings

A law similar to this bill was declared unconstitutional a few years ago by the Supreme Court. A bill was passed last year to replace it, but it was vetoed by the Governor. Even though the veto was overridden, it is anticipated that the law will not stand, and so this legislation was introduced. The Alaska Court System has suggested another approach, patterned after a Maryland court rule, which extends the immunity only to attorneys. A committee substitute will be drafted incorporating this approach. It will apply to legislative sessions and up to 10 days thereafter, as well as Legislative Council and Budget and Audit meetings.

SB 297 - false reports to a peace officer

This is the only Lewis "law and order" bill which was favored by a meeting of law enforcement officials in Anchorage some weeks ago. No one on the committee favored its being reported out of the committee.

CSHB 104 - sale of drugs

No member of the committee favored this bill, providing a mandatory five year sentence for the sale of drugs.

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SCSCSHB 248 - real estate surety fund

This bill was removed from the calendar and referred to Judiciary at Senator Rettig's request. He found quite a few flaws in it, as did the rest of the committee. The original purpose of the bill was to provide a fund within the Dept. of Commerce to be used by real estate agents for traveling to seminars, training programs, etc. However, it has now been changed to provide that instead of obtaining individual bonds in order to practice in the state, agents will now pay into a fund within the department, and claimants will be paid from that fund instead of going through the bonding company. The department and the realtors favor the bill. However, Fred Eastaugh, representing the bonding companies, testified at Senate Commerce meetings on the bill that the consumer will be at a disadvantage if this method is adopted.

Suggested Judiciary committee changes to the bill include:

Raising the amounts each realtor pays into the fund.

Raising to \$10,000 the amount to be paid from the fund when a judgment is received against a realtor.

Deleting the provision prohibiting a spouse or personal representative from recovering from the fund.

Raising to \$50,000 the maximum liability of the fund for any one broker.

Deleting the provision stating that failure of a claimant to comply with the act constitutes waiver of his rights under the act.

Senators Rettig and Silides will work further on the bill and prepare a committee substitute.

Paula Sampson  
Staff Assistant

SENATE JUDICIARY COMMITTEE

April 8, 1974

At an informal meeting held between Senator Ziegler and Attorney General, Norman Gorsuch, those bills which the department feels to be of high priority were discussed.

Basically, there is only one such bill, SB 478 or its counterpart, HB 543. Judiciary currently has only the latter bill, which pertains to consumer protection and contains many provisions which would empower the department to be much more effective in the areas of consumer fraud than they currently can be. He mentioned four specific things the bill would do:

1. It contains language similar to that relating to the FTC, including a "catch-all" section to reach particular fraud problems they cannot now reach.
2. It transfers the authority to promulgate regulations from the Dept. of Commerce to the Attorney General's office.
3. It adds some additional items to the list of prohibited practices, e.g., chain letters.
4. It repeals the prohibition against the sharing of information between the state troopers and the offices of the Attorney General and District Attorneys.

Mr. Gorsuch stated that, aside from this bill, there really were no others in the committee whose passage the department was vitally interested.

Paula Sampson  
Staff Assistant

SENATE JUDICIARY COMMITTEE

April 11, 1974

Present: Senators Ziegler, Silides, Meland, Rettig  
Excused: Senator Poland

SB 476 - revenue anticipation notes

This bill was requested by the Anchorage Borough. It would allow a municipality to borrow money and issue revenue anticipation notes which must be paid at the end of the next fiscal year rather than at the end of the current fiscal year (existing law). The bill has received favorable recommendations from Community and Regional Affairs and Finance. A majority of the committee signed "Do Pass".

CSHB 645 - motor vehicle safety responsibility

This bill doubles the amount of damages which must be sustained before a security deposit or proof of financial ability must be paid. In addition, it spells out the hearing which is to be conducted under the chapter. The commissioner may appoint a designee, but he cannot be a peace officer. The district court may review the recordings of the hearings. "Do Pass".

SB 163 - improvements to court facilities

The court system commented upon this bill thusly: Bethel and Barrow court facility improvements are high on their priority list. Originally funding had been planned via ASHA bonds. However, this funding method is not meeting with legislative approval this session, and the court recommended using this bill as the vehicle, but changing the amounts to comply with their plan. Valdez construction has already been taken care of, and Craig and Yakutat are in the low priority classification. The bill was amended accordingly. It has a further referral to Finance.

SB 319 - penalties for commercial fishing violations

This bill provides that the fine for illegally caught fish will be levied in an amount related to the value of the fish to the fisherman. A \$5000 fine is not much of a deterrent if the fish can then be sold for an amount much greater than the fine. The committee amended the bill to change "not less than" the gross value of the fish to "not to exceed" that value. For a third offense, the fine will be based on (not to exceed, rather than not less than) three times the value. "Do Pass".

HB 811 - seals of court

The purpose of this bill is to provide consistency for those courts which have consolidated. Currently this includes only Anchorage and Bethel. "Do Pass"

The Committee Substitute for CSHB 635 was officially adopted. The Maryland court rule has been extended to parties but not to witnesses.

SB 515 - traffic laws and regulations

Under this bill, all municipalities would adopt the state traffic code. This would provide consistency, efficiency and convenience. "Do Pass"

SENATE JUDICIARY COMMITTEE

April 16, 1974

Present: Senators Ziegler, Meland, Poland, Silides  
Attorney General Norman Gorsuch  
Fred Eastaugh of American Insurance Association  
Don Magnuson of Alaska Retail Association

Excused: Senator Rettig

CSHB 543 - unfair trade practices

Mr. Gorsuch described the bill's key features. Basically it broadens the power of the Attorney General in the area of consumer fraud to deal with serious kinds of consumer fraud which will increase as the economic activity in the state increases as a result of the pipeline construction. Specifically the bill:

1. broadens the definition of unfair trade practices to include "little FTC" language, thus establishing uniform guidelines for both the businessman and the consumer;
2. adds some practices to the prohibited list, e.g. chain distribution and pyramid sales;
3. grants investigative powers to the Attorney General to obtain books and records on short notice when there is probable cause to believe that fraud has been committed;
4. transfers the promulgation of regulations from the Dept. of Commerce to the Attorney General; and
5. repeals the current prohibition against giving evidence of a possible civil violation of the statute to the DA. This exchange of information is not allowed now, which means that all investigations have to start from scratch even though criminal investigators may have determined that a civil violation has occurred.

Mr. Eastaugh has proposed an amendment to the bill which would specifically exempt the banking and insurance industries from the provisions of the bill. These two businesses are already heavily regulated by the Dept. of Commerce, and it is felt that only duplication would result if they are to be covered by this bill too. The Attorney General has no objection to the amendment, and it was adopted by the committee.

Mr. Magnuson stated that he felt the bill might prohibit practices which are allowed elsewhere in the statutes. However, after discussion, it did not appear that his objections were valid.

The bill, as amended, was reported out of the committee.

HCR 98 - guidelines for plea bargaining

The resolution calling for the Supreme Court to study and establish guidelines for plea bargaining received a unanimous "Do Pass" recommendation.

SENATE JUDICIARY COMMITTEE

April 21, 1974

Present: All members

HB 794 - extortion

This bill passed the House without any penal provision. A Judiciary CS was prepared which makes the crime a felony and provides for fine and imprisonment. A letter from John Havelock was read which explains the need for the bill in view of the development resulting from the pipeline. There is nothing on the books currently relating to extortion. The CS received a "Do Pass" recommendation.

SB 403 - Fifth superior court district

The court system has approved the proposed committee substitute for HB 411, the counterpart of this bill in the House. An identical CS has been prepared for the Senate version and was reported out of the committee. Under the substitutes, there is to be no fiscal impact, but only a boundary change.

SB 15 - penalties for the sale of drugs

The committee determined that changing the mandatory imprisonment from two to five years was not desirable. However, the new language pertaining to an optional serving of time in an institution or halfway house, etc. for the purposes of rehabilitation for drug addicts was felt to be quite desirable. A CS will be prepared which contains only the latter provision and deletes any change in the sentencing provisions as to time which must be meted out. If Senators Harris and Lewis agree to let the bill go as is, without any attempts made to amend it, it will be reported out of committee.

Paula Sampson  
Staff Assistant

SENATE LABOR  
& MANAGEMENT

1973-74

SENATE LABOR AND MANAGEMENT COMMITTEE

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MINUTES

1/15/1973 - 4/5/1973

January 15, 1973  
3:35 P. M.

LABOR AND MANAGEMENT COMMITTEE

Present: Chairman Harris, Vice-Chairman Lewis, Senator Young,  
Senator Meland

Absent: Senator Croft

Also present: Representative Rick Union, Mr. James Witt, Department  
of Labor, Mr. Mark Jensen, Assoc. Contractors,  
Mr. Edward R. Sanders, Alaska Carriers Assoc.

Re: Senate Bill 41 -- an act relating to hours of work  
on public works contracts; and  
providing for an effective date.

Senator Harris, Chairman, called the meeting to order and  
stated the purpose of the committee meeting was to review the  
implementation of AS.05.050.

Mr. James Witt, Dept. of Labor, was called upon to give the  
history of this section of the act. Mr. Witt stated that as far  
as he has been able to ascertain this law has been on the books  
since 1913 and he uncovered it in the process of drafting a new  
set of public construction contract regulations as directed by  
Commissioner Benson in September 1972. In checking the compiled  
codes of 1949 it appeared in the history notes since 1913. It  
became apparent that unless this section of the law were repealed  
it would not be possible to rewrite the proposed regulations.

Mr. Witt further stated that he has reviewed Title 23, Chapter 10  
Wage and Hour Act. Employees would be protected there as there is  
no exception for public construction workers. Therefore, in  
Mr. Witt's opinion repealing this section would not have an adverse  
effect on the protection of employees.

All members present concurred with unanimous consent to do  
pass.

The meeting was adjourned at 3:50 P. M.

July 19, 1973

2:00 P. M.

LABOR AND MANAGEMENT COMMITTEE

Present: Chairman Harris, Vice-Chairman Lewis, Senator Meland

Absent: Senator Croft, Senator Young

Also present: Senator Ray:

Re: Senate Bill 11 -- An act extending workmen's  
compensation to firemen in  
certain situations

Chairman Harris: The meeting will come to order. This meeting has been called to hear testimony from Senator Bill Ray who is the sponsor along with Senator Hohman of SB 11.

Senator Ray: Mr. Chairman. As you know and the chair is really acquainted with the fact also, there is an extreme shortage in Alaska of competent fire fighting personnel. We have volunteer fire departments and only,--and I think in the State we have-- there is only one that is fully paid and I think they may only have a partial in Fairbanks and I think Anchorage has the only fully paid department that I know of. Juneau has a fine volunteer Fire department. Some of the other towns have volunteer basis.

Four or five years ago we had the good fortune to pass in the legislature a fire service training bill that allowed training films and training personnel to go into the bush areas, to the smaller departments, and allow those people to be trained so that they could improve the standards. With these great strides we still fall far short of the amount of qualified fire fighting personnel that is necessary in the State.

We have one of the highest rates of fire damage and loss of any of the states per capita, I believe. So, as a result, this bill is designed after the California bill which allows qualified personnel of fire fighting departments, in other words firemen who exist either in a volunteer status or on a fully paid status, if they are in another area and they are asked, because of their specific knowledge and because of their ability to fight a fire, if they are visiting say a fellow here in Juneau,-- or say a fellow would leave and be up in Haines visiting over a weekend and the fire department in Haines would ask the fellow up in Haines to assist because of his specialized

knowledge in putting out fires, and he did so and was injured, this allows him to receive workman's compensation the same way he would if he was injured fighting a fire in his own department. That is exactly what the bill does.

Senator Meland: Well, this certainly explains it to me, Mr. Chairman. I just didn't have any idea. I thought or I felt that they were covered but I can certainly see in the area of Sitka where we have the bridge now and Mt. Edgumbe where there are two different fire departments and if there is a bad fire certainly Mt. Edgumbe and Sitka are going to exchange facilities and I certainly think you have a point there..

Senator Lewis: Is that all it does?

Senator Ray: That's all it is.

Senator Lewis: Needless to say,- it's a needless question, but I suppose the firemen are all for it.

Senator Ray: Oh yes, in fact, it's come--- this is a --- one of the bills that was given at the National Fire Council in Anchorage when they had their meeting there.

Senator Lewis: What about these volunteer firemen in Hoonah or Galena who have had some training and go out and fight a fire and are they covered at the present time?

Senator Ray: Only if they are recognized and registered in the, I forget the guy's-- in the regular fire department registers.

Senator Lewis: This doesn't really relate to that question.

Senator Ray: Oh no, it's anybody who is a qualified fireman and he was out of his district and he was some place else and they called him to fight a, let's say, "come on out and help us fight this fire" and the guy says, "I'd sure like to but if I get hurt now dad, nothing happens, so you guys go ahead and fight the fire yourself" Well, that's crappy. Let's face it. But that's what the situation is now. In fact, it was through by efforts in putting the bill in and some of the help that we got, the volunteer fire department got workmen's compensation to the same level as the jobs that they were on, not as what they got from the fire department. Otherwise they were getting workmen's compensation on about \$30.00 a month, based on \$30.00 a month wages. Well, my God, we have a guy fall off a -- he was a sign painter. This guy was a commercial artist and cut his hand and he was out of work for I don't know how long. You know what he got? He got workmen's compensation based on his 3/4 firemen's pay which come to about two hours a meeting, three meetings a month. It came to about \$45.00. He got workmen's compensation on \$45.00. What the hell was it? 16 cents or 18 cents or whatever it amounted to. It wouldn't even pay to notify him by mail, what he got, see?

Senator Ray. cont. Qe three

Senator Lewis: Now he would get it on the basis of his regular earning?

Senator Ray: That's what we have on the bill that's in already. I mean that's the law. This just allows some guy that's out of his own district if they want him and they say, "Hey, come one and fight the fire" and they register him, they put his name right down there on the register and he's fighting the fire and if,--- the possibility of him getting hurt is really remote.

Senator Harris: Senator, does it have anything to do with those forest fire fighters they have in the summer? It doesn't cover them there.

Senator Ray: No, all this pertains to is those registered in a fire marshall's list of qualified fire fighting agencies in the State, or department in the State.

Senator Harris: Are police covered, or State Police covered in the same way? Or city police?

Senator Ray: I have no idea.

Senator Harris: It sounds like a pretty good idea. Maybe, we'll take a look at that too.

Senator Ray: Yeah, I have no idea, Jess, whether the policemen are or not.

Senator Harris: They could be under the same situation.

Senator Ray: They sure as hell could.

Senator Lewis: Bill, it sounds like a good idea. I'd might like to get on that bill with you. I notice you're on the runaway bill.

Senator Ray: Jump right on it.

Senator Harris: That's good, Senator, thank you very much.

Senator Ray: Thank you for the courtesy of the committee, gentlemen.

Senator Harris: We'll take action and give this testimony to the rest of the committee when they get here. Then maybe, we'll amend it to include policement.

Senator Meland: That's a good idea.

Senator Harris: The meeting is adjourned. (2:35 p.m.)

January 24, 1973  
3:10 P. M.

LABOR AND MANAGEMENT COMMITTEE

Present: Chairman Harris, Vice-Chairman Lewis, Senator Croft  
Senator Meland

Absent: Senator Young

This meeting was called to take action on SB 11. Included with this report is the testimony given by Senator Ray on January 19, 1973 before this committee. Senator Ray along with Senator Hohman sponsored this bill.

It was the consensus of opinion in the committee that the bill does serve the purpose for which it was intended, namely to extend to firemen working in the performance of fire fighting duties out of their own districts, workmen's compensation in the same fashion as would occur if the duties had been performed in their own district.

The committee recommended unanimously do pass.

The meetings was adjourned at 3:30 P.M.

MINUTES SENATE LABOR AND MANAGEMENT COMMITTEE  
MEETING, MARCH 15, 1973.

Meeting called to order by Chairman Harris at 4PM.

Attendance: Senators Croft, Meland, Lews, Harris

Proposed CSSB 46 was accepted unanimously.

Mr. Chuck Champion testified on SB 160 regarding employees only joining a union if they wanted too. Did not have all the data, said a Mr. Easy Galbrath had it but was not here. SB 46 Mr. Carlson, 1st paragraph, sub paragraph B insert the word waiver.

Sanders - Agreed to change.

Meeting adjourned until 3PM March 16, 1973

Minutes

Senate Labor/Management Committee

CSSB 46 -- An Act relating to the establishment and enforcement  
of occupational safety and health standards

March 16, 1973

Called to Order at 3:15p

Committee members present: Chairman Jess Harris, Senators  
Croft, Lewis, Meland

Others: Mark Jensen, Robt L. Smith, Don Dickey, Duane Carlson

Summary

Limited remarks by Mark Jensen concerning the desire of the AGC to testify further on the bill. Chmn Harris said that another hearing would be held on Monday, March 19 at 3:00 p. at which time testimony would be welcomed. Mr. Jensen did not feel that this would be sufficient time for the AGC to give testimony.

Testimony by Commissioner of Labor Smith in favor of the State directly administering OSHA through a State Plan.

Testimony from Duane Carlson requesting certain minor word changes on Page 1. Mr. Carlson also expressed his support of the bill because the State, i.e., the local employees and employers, would have no input into the administration of OSHA without a State Plan.

Further discussion of length of time for testimony on bill.

Chmn Harris said that he felt plenty of time and notification had been given.

Senator Lewis wanted "the record to show" that enough time had not been given. He was particularly interested in the construction industry being allowed more time.

Senator Croft said the bill was an important one and that anyone who was really interested in it had had sufficient notification for testimony.

Duane Carlson read the names of groups who participated in drafting the substitute bill and stated that he had devoted some six weeks of his time working on the bill and that all interested parties had agreed to the substitute bill. He stated that if one group wanted to withdraw from that agreement "that was tough". He wanted the Legislature to be told that most of labor and management agreed on the bill as written and he expressed strenuous objection to any further delay.

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Mark Jensen stated with emotion that his Association had been upright with the Committee and that for Mr. Carlson to suggest that management was playing footsie was simply untrue. He stated with vehemence that he resented very much Mr. Carlson's remarks.

Mr. Harris adjourned the meeting abruptly.

4:00p  
ya

Minutes  
SENATE LABOR/MGMT COMMITTEE  
March 30, 1973

3:10 p.m.

Re: CSHB 252, Relating to employment security

Committeemen present: Jess Harris, Chmn  
C. R. Lewis, V. Chmn  
C. Croft  
P. Meland

Guests: Don Dickey, State Chamber of Commerce  
Duane Carlson, AFL-CIO

Testimony was given by Mr. Dickey objecting to the bill as presently written. He said he thought the fund should be increased but that the present bill moved too far too fast. He suggested a more gradual increase in the taxable base and the weekly benefits. Senator Lewis amended the motion to pass the bill out by requesting that a committee substitute be passed out. His amendment failed. The bill was passed out with individual recommendations: One "do pass", one "pass only if amended", and two "no rec's".

Summary

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Don Dickey stated that the bill had changed since he had last seen it. He then recited the past history of raises in benefits and said that there had never been a raise as high as \$15. He said that Alaska has the highest taxable base in the nation now and that a \$9,000 base was reasonable---\$9000 would be the same base as old age and survivors insurance. He suggested weekly benefits immediately of \$75 and then go up to \$90 by 1975 which would equal a 25% increase immediately. He felt that the taxable base should be increased to \$8000 immediately and to \$9000 later and agreed that \$10 per dependent with only 3 dependents allowed was preferable to \$5 per dependent with 5 dependents allowed. Mr. Dickey said that if the bill was made too attractive we would end up paying a guy enough to go Outside and live in Hawaii or Tulsa; and that he didn't mind giving money to be spent in Alaska but he didn't like to support a guy outside. He said that the present bill was not his compromise.

Objection  
presently  
written

Chmn Harris: Do you know who put this bill together?

D. Dickey: I think it was the House Finance Committee, but I haven't found anyone who will say where the figures came from--the base figures.

C. Lewis: I do not want at this time to pass the bill out.

C. Croft: I move that we pass it out.

Amendment C. Lewis: I amend that motion to put out a committee sub-  
motion stitute, including the provisions suggested by Mr. Dickey.

P. Meland: I would like to pass it out with individual recommendations.

Senator Lewis' motion amendment failed to carry.

There were 3 votes to move the bill out with individual recommendations.

The meeting adjourned at 3:35p.

Minutes  
SENATE LABOR/MGMT COMMITTEE  
April 4, 1973

1:55 p.m.

Re: SB 255, Issuance of certificates of fitness by the Dept  
of Labor

Committeemen present: Jess Harris, Chmn  
C. R. Lewis, V. Chmn  
C. Croft  
P. Meland  
G. Silides

Guests: Robt Smith, Comm. of Labor  
Jim Witt, Dep Comm of Labor

Summary

Discussion centered around how to determine qualified, whether or not a certificate should be subject to cancellation, the meaning of physical fitness and training, and who would be subject to the fine provisions. Three amendments were attached to the bill; i.e.: a correction of a statutory reference, raising the license fee from \$5 to \$15, and inserting wording to make both employee and employer subject to fine. The bill was passed out "do pass": three "do pass", one "do not pass".

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(Senator Lewis and Commissioner Smith had some discussion of the need for the bill prior to the formal opening of the meeting and during the absence of Chmn Harris.)

What is  
"qualified"

R. Smith: I think the people deserve someone that is qualified when they call a repairman. I don't think a person who has been 6 months in the trade is qualified.

C. Lewis: (speaking to Chmn Harris) He has been stating his position and we have been stating ours. If this bill passes you would be telling me who is qualified and who is not. You are going to be all government and no private enterprise.

R. Smith: We have two trades now that are qualified by tests.

Lewis: But, when you do this aren't you substituting your judgment for mine---shouldn't I be able to decide who is qualified.

R. Smith: Senator, you are not the one we are worrying about. We are trying to cover men who come up and who wouldn't go through the hall.

Lewis: But, it is my responsibility who is qualified and who isn't. My G, what are you trying to do to the American scheme of business. Where does your obligation begin and end?

Smith: We have an obligation to make sure that the man the homeowner calls to do a job is qualified.

Chmn Harris: Commissioner what is Sec. 16.60.680 and 18.60.705?

B. Sumner: The reference is in error.

Lewis: Another question which is not on the philosophical side--what do you do about welders?

Smith: You give them a test.

Lewis: What kind of test?

Smith: We wouldn't have anything to do with that--the test would be drawn up by your people--people in the industry.

Lewis: What about steamfitters?

Smith: I haven't had time to look at the bill, but I know that plumbers and steamfitters are not included. --We would welcome a test put together by you fellows, by the employers.

Certificate  
cancellation

Chmn Harris: Lines 27-28, is that standard? (cancellation provision) If a man qualifies, why should you be able to take away his certificate?

Smith: Yes, we took that out of the explosive handlers code.

Croft: I would think there should be some authority to cancel a certificate...for instance fraud.

Lewis: Shouldn't you be able to take away a license for cause--for instance if a man goes blind, a welder.

Smith: Well, yes, and if there was something like a minor repair and a guy sent an exorbitant bill.

Lewis: I want the record to show that if you take that out, I object.

Croft: If you leave this in I assume you will be publishing regulations defining what is cause?

Smith: Yes

Physical  
fitness

Silides: What is meant by physical fitness?

Smith: Visual observance, I would guess.

Silides: I am concerned about the broad aspect of physical fitness?

Smith: What I would go by is the number of years he has been in the trade.

Silides: But, this clause is too broad--who determines whether or not he is physically fit?

Lewis: If I understand it the Commissioner is going to determine who is physically fit or who isn't.

Silides: I move to delete "and physical fitness". If the Commissioner can come up with different language later, it would be all right. It would read "by reason of training and experience".

Chmn Harris: And do you ask unanimous consent?

Silides: Yes, I would ask unanimous consent.

Meland: I can't see what harm there is in leaving this in.

Croft: I can't either.

A vote was taken on the motion and there was only one "yea". The motion failed.

Lewis: I would like to establish what physical fitness means.

Smith: I will repeat myself. If a man has been working at the trade before then the only thing I can go on is that he is physically fit. I think you would have to take each individual as a separate case.

Lewis: I believe we have established that there would be no medical examination.

Smith: That's right.

Training Lewis: Now, I would like to establish what do you mean by training?

Chmn Harris: Would that be established under rules and regulations you would adopt?

Smith: Yes.

Meland: Which at the moment you do not have?

Smith: No.

Lewis: But, if we are going to vote on this bill, we need to know what they will be, don't we.

Smith: We would go on the basis of a man's training along the same lines as if he had apprenticeship training.

Lewis: What about working the aircraft repair or shipyard trades--like men who got their training in the war?

Smith: I would give them a card.

Lewis: What does experience mean?

Smith: If you have five years, they should be eligible to get a card.

Lewis: So really the wording is synonymous.

Smith: Yes.

Croft: I move we change .680 to .705 on page 1 and 2.

License fee  
Chmn Harris: Are there any objections? (there were none)  
It is so ordered. Commissioner how about the \$5 fee, is that established from an estimate of the cost of giving the tests?

Smith: No, we have people on board now who would give the tests.

Meland: Is that \$5 forever?

Smith: No, \$5 for 3 years.

Chmn Harris: Commissioner do you have any objection to changing that to \$15.

Smith: No.

Croft: I move to change the fee from \$5 to \$15.

Meland: Mr. Chairman I think this is a good piece of legislation and I would like to see it passed out.

Penalty provisions  
Lewis: I object. This pertains to my business and I would like to look at it a little closer--what would you have to do to violate a provision of this chapter?

Smith: It would be the person working and not the employer.

Silides: It says, "no person may be employed", that would put the blame on the employer.

Smith: I wanted the penalty to be against the employee, not the employer. We can change that.

Chmn Harris: At .080 change it to read, "a person who works without a certificate...." does that meet with your approval, Senator Lewis?

Lewis: I presume that would get the employer off the hook. I think you would have to change the wording back here, too. Any language that will take the employer off the hook would be advantageous to me. But I am worrying about the man who is subject to the \$500 fine.

Smith: The employer would let him know this.

Lewis: Not necessarily.

Smith: I am sure that the employees would let him know if the employer didn't.

Lewis: What about a one man shop?

Silides: Yes, what happens if it is a one man shop?

Lewis: I would have to have a certificate, if not I would be fined--individually I guess.

Chmn Harris: A person who violates the provisions of .070?

Meland: Senator Lewis has brought up a good point. It might be a straw boss that is doing the hiring.

Lewis: If I am not subject to fine and he is, I'm not going to send the man out?

Croft: Shouldn't it apply to employer and employee.

Lewis: I don't think a penalty should apply to either one.

Chmn Harris: Yes, I understand that that is what you are saying, Senator Lewis.

Smith: Without a penalty, then the bill is no good.

Croft: Add, after a person, "either an employer or an employee", I do so move.

Lewis: I object just for the record.

Chmn Harris: All in favor, all opposed, the motion carries.

Chmn Harris called a 5 minute recess.

Chmn Harris: All in favor of "do pass"?

Lewis: Where are we going to end this thing...why not steam-fitters?

Chmn Harris: Well, the plumbers and the electricians would like to have this.

Lewis: If this is good legislation for the public, shouldn't we be licensing other trades?

Chmn Harris: I suppose we should, do you so move?

Lewis: No.

Smith: I suppose you know that most plumbers though put in the gas fittings.

The meeting adjourned at 2:30p

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Minutes  
SENATE LABOR/MGMT COMMITTEE  
April 5, 1973  
9:05 a.m.

Re: SB 253, Exemptions under Workmen's Comp

Committeemen present: Jess Harris, Chmn  
C. R. Lewis, V. Chmn  
P. Meland  
C. Croft  
G. Silides

Guests: Duane Carlson, AFL-CIO  
Ed Borgen, Sr., Ketchikan Pulp

Summary

Discussion centered around the differences between entertainers as employees and persons working in other trades or professions. The bill was passed out of committee with individual recommendations: One "do pass", two "do not pass", one "no rec", and one member not voting.

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History

D. Carlson stated that the House had considered legislation similar to this last year and had rejected it. He wondered if additional information had become available as to why entertainers should be exempt, otherwise he could not understand the rationale.

Difference  
in enter-  
tainers &  
other em-  
ployees

Chmn Harris said that the majority of entertainers are not hired on a regular basis--but on contract. He knew of only one entertainer in Juneau who was hired on a regular basis. A short exchange between Harris and Carlson followed:

D. Carlson: Why should an employee be exempt just because he is moving from place to place? If you are talking about the band leader then that is a different thing---he will cover the people in the band as the employer. I think an employer should have to certify that his employees are covered while they are working in the state.

Chmn Harris: What about a kid moving snow, mowing the lawn, or babysitting?

D. Carlson: A young kid out shoveling snow is not working as such.

P. Meland: What are the exclusions?

D. Carlson: ...domestic help, farm labor, and part-time help.

G. Silides wanted to know "why this bill", and stated that anything could happen while a man was working---such as falling through the bandstand.

Chmn Harris stated that bartenders and all people working regular shifts are covered but entertainers are different because they are hired for two or maybe three nights.

C. Croft objected to the bill because of its inclusions of all entertainers and because of it being improperly written. He felt that the Act said that the employer was exempt rather than the person working.

D. Carlson: In a case where one or two entertainers come into a place, couldn't the agent certify that they are covered?

Chmn Harris: How about, say, an entertainer not employed on a regular basis?

Carlson: I would object to that. Why shouldn't the entertainer be covered? Just because he is traveling around?

C. Lewis: What is the situation in case of a boys club hiring someone for two hours for a charity event?

Carlson: We just buy general liability insurance for a day or two that covers everything.

Chmn Harris: What if we amend and say on a contract basis?

Carlson: I'm afraid that you need more of a technical answer on that than I can give.

B. Sumner: Mr. Chairman if you can agree on the philosophy I can get with the Dept of Labor and Legislative Affairs and work out the wording.

C. Lewis: If you want me to I will move it out do not pass, but I am going to have to agree with Mr.'s Carlson, Croft, and Silides.

Chmn Harris: Senator Croft do you want to offer an amendment?

C. Croft: I don't want to move it out.

Chmn Harris asked for a vote to move the bill out of committee with individual recommendations and the motion passed.

Meeting adjourned at 9:20 a.m.