SB
835

COMMITTEE REPORT

SENATE

3/5/82

FURTHER: FINANCE

Date: ______

Mr. President:

The Committee on RESOURCES has had SB 835

establishing a National Petroleum Reserve, Alaska, trust fund account

u er consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[✓] do pass   [ ] do not pass

[ ] do pass with attached amendments(s)

[✓] replace with CS for ______   [ ] same title   [✓] new title

and recommends ______

[ ] AND attaches a "Letter of Intent"   [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the ______ Committee

MEMBERS SIGNING DO PASS

______

MEMBERS HAVING OTHER RECOMMENDATIONS:

______

______
CHAIRMAN

S 60 (Rev. 12/78)

NOTE REGARDING THE FOLLOWING FRAME ON MICROFILM:

COMPLETE DOCUMENT IS AVAILABLE IN ORIGINAL FILES IN ALASKA STATE ARCHIVES. TITLE PAGE ONLY HAS BEEN FILMED.

Public Law 96-514
96th Congress

An Act

Making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1981, and for other purposes.

Dec. 12, 1980
[H.R. 7724]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the Department of the Interior and related agencies for the fiscal year ending September 30, 1981, and for other purposes, namely:

Department of the Interior and related agencies. Appropriations, fiscal year 1981.

TITLE I—DEPARTMENT OF THE INTERIOR

LAND AND WATER RESOURCES

BUREAU OF LAND MANAGEMENT

MANAGEMENT OF LANDS AND RESOURCES

For expenses necessary for protection, use, improvement, development, disposal, cadastral surveying, classification, and performance of other functions, as authorized by law, in the management of lands and their resources under the jurisdiction of the Bureau of Land Management, $343,962,000.

ACQUISITION, CONSTRUCTION, AND MAINTENANCE

For acquisition of lands and interests therein, and construction and maintenance of buildings, recreation facilities, roads, trails, and appurtenant facilities, $14,768,000, to remain available until expended.

PAYMENTS IN LIEU OF TAXES

For expenses necessary to implement the Act of October 20, 1976 (31 U.S.C. 1601), $103,000,000, of which not to exceed $400,000 shall be available for administrative expenses: *Provided,* That this appropriation may be used to correct underpayments in the previous fiscal year to achieve equity among all qualified recipients.

OREGON AND CALIFORNIA GRANT LANDS

For expenses necessary for management, protection, and development of resources and for construction, operation, and maintenance of access roads, reforestation, and other improvements on the revested Oregon and California Railroad grant lands, on other Federal lands in the Oregon and California land-grant counties of Oregon, and on adjacent rights-of-way; and acquisition of lands or interests therein including existing connecting roads on or adjacent to such grant lands; an amount equivalent to 25 per centum of the aggregate of all receipts during the current fiscal year from the

79-139 O - 80 - (154)

NOTE REGARDING THE FOLLOWING FRAME ON MICROFILM:

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SB835

96TH CONGRESS 2d Session } HOUSE OF REPRESENTATIVES { REPORT No. 96-1470

MAKING APPROPRIATIONS FOR THE DEPARTMENT OF THE INTERIOR AND RELATED AGENCIES

NOVEMBER 20, 1980.—Ordered to be printed

Mr. YATES, from the Committee of Conference, submitted the following

CONFERENCE REPORT

[To accompany H.R. 7724]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 7724) making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1981, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its amendments numbered 10, 29, 50, 81, 101, 102, 106, 115, 118, 126, 127, and 131.

That the House recede from its disagreement to the amendments of the Senate numbered 2, 5, 11, 14, 18, 21, 28, 33, 38, 39, 40, 41, 47, 59, 63, 76, 77, 79, 89, 90, 92, 97, 98, 104, 114, 117, 120, 121, 122, 125, 129, and 130, and agree to the same.

Amendment numbered 1:

That the House recede from its disagreement to the amendment of the Senate numbered 1, and agree to the same with an amendment as follows:

In lieu of the sum proposed by said amendment insert *$343,962,000*; and the Senate agree to the same.

Amendment numbered 3:

That the House recede from its disagreement to the amendment of the Senate numbered 3, and agree to the same with an amendment as follows:

In lieu of the sum proposed by said amendment insert *$103,000,000*; and the Senate agree to the same.

Alaska State Legislature

SENATE
Resources Committee

Offical Business

BETTYE FAHRENKAMP, Chairman
VIC FISCHER, Vice-Chairman
BRAD BRADLEY
DICK ELIASON
DON GILMAN
BOB MULCAHY
ARLISS STURGULEWSKI

POUCH V
STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-3834
(907) 465-3835

MEMBERS PRESENT

Senator Fahrenkamp
Senator Eliason
Senator Gilman
Senator Mulcahy
Senator Sturgulewski

April 30, 1982
1:35 p.m.

Beltz Room
Capitol - Room 211

Hearing:

CSHB 637 Relating to the regulation of the taking, purchase, or sale or certain fishery resources; and providing for an effective date.

SB 835 Establishing a National Petroleum Reserve, Alaska, trust fund account and providing for uses of the money placed in the account; and providing for an effective date.

CSHB 637

Tom Sofo, Legal Counsel, Legal Services Division, discussed a proposed amendment that would establish a statutory lien under state law to protect the fisherman if the fish purchaser goes bankrupt. This lien would be given priority right behind judicial liens.

Rodger Painter, Executive Director, United Fishermen of Alaska, supports the concept of the amendment, as fishermen are currently unsecured creditors and at the end of the line to get assets in the event of purchaser bankruptcy, but feels there are some questions that need to be answered. Painter expressed support for CSHB 637, as there are currently no penalties against a buyer for knowingly purchasing fish from someone who doesn't have a Limited Entry permit. He stated that the bill provides good protection for processors who unknowingly purchase from a non-permitted fisherman, and that penalties are heavier on the fisherman than on the processor.

Rick Lauber, Pacific Seafood Processors Association, objects to the concept of CSHB 637, as he thinks it will not discourage illegal fishing. He believes the solution is adequate law enforcement by the Department of Public Safety. Lauber also expressed concern over the proposed amendment, stating that the mere holding of the fish ticket is a lien. The lien established in CSHB 637 might discourage a banker from extending loans beyond the processor's initial line of credit.

Senator Fahrenkamp stated that CSHB 637 would be held in Committee for further work.

SB 835

Senator Fahrenkamp stated that the Attorney General, North Slope officials, and Committee staff worked together and the Committee Substitute is the result of their efforts.

Senator Gilman suggested that a letter be sent with the bill to the Finance Committee asking them to look at the priority uses of the 50% of the funds not going to the communities.

Senator Gilman moved the adoption of the Committee Substitute for SB 835. He then moved CSSB 835, subject to the above mentioned letter, with individual recommendations.

The meeting was adjourned at 2:20 p.m.

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K–STATE CAPITOL
JUNEAU, ALASKA 99811

April 26, 1982

Honorable Bettye Fahrenkamp
Chairwoman, Senate Resources Committee
Alaska State Senate
Twelfth Legislature
Pouch V
Juneau, Alaska 99811

Re: SB 835 (National Petroleum Reserve-Alaska Trust Fund). Our File No. 366-619-82

Dear Senator Fahrenkamp:

SB 835, which would establish a trust fund account for revenues the state receives from the federal government from federal oil and gas leasing in the National Petroleum Reserve-Alaska, presents a number of serious legal questions in its current form.

The first question is raised under Article IX, Section 7 of the Alaska Constitution, which provides in pertinent part: "The proceeds of any state tax or license shall not be dedicated to any special purpose, except as provided in Section 15 of this article or when required by the federal government for state participation in federal programs." The Department of Law and the Legislative Counsel have disagreed over the reach of this prohibition. Our department has construed the prohibition broadly to apply to all "public revenues" (e.g., taxes, license fees, revenues from the sale or disposition of natural resources, etc.); the Legislative Counsel has interpreted it narrowly as reaching only tax and license revenues. On April 23, 1982, the Alaska Supreme Court adopted the Department of Law's broader interpretation in <u>State v. Alex</u>, ___ P.2d ___, Op. No. 2488 (Alaska, April 23, 1982). <u>See Slip Op.</u> at p. 20. As a result, we believe the revenues which the bill addresses -- i.e., those that the state would receive from the federal government as the result of federal oil and gas leasing in NPR-A -- are subject to the prohibition.

However, there is an exception to the dedicated fund prohibition "when required by the federal government for state participation in federal programs." The pertinent portion of

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P.L. 96-514, 94 Stat. 2964, which directs payment of the money to the state, attaches certain conditions to the state's receipt of that money: The state may use it "for (a) planning, (b) construction, maintenance, and operation of essential public facilities, and (c) other necessary provisions of public service: Provided further, That in the allocation of such funds, the State shall give priority to use by subdivisions of the State most directly or severely impacted by development of oil and gas leased under this Act." In other words, the funds received from the federal government must be dedicated to planning, construction, maintenance, and operation of essential public facilities, and other necessary provisions of public service. In addition, impacted political subdivisions must be given priority in the allocation of the funds.

We believe the establishment of a trust fund into which all the federal revenues are placed immediately upon receipt from the federal government is both permissible under Article IX, Section 7 of the Alaska Constitution and desirable in that it will ease the administrative task of demonstrating to the federal government that the funds received have been expended for the purposes and in the manner required by the federal Act. However, it also is our opinion that the explicit provisions of the law establishing the trust fund cannot impose conditions on the use of the money which exceed those "required by the federal government for state participation" in the federal program -- i.e., those in the federal Act. Since it is only the federal conditions which except the funds from the general dedicated fund prohibition, we believe the only conditions which may be attached to the funds are those required by the federal Act.

As a result, we believe the directive in Section 2(c) of SB 835 to pay a minimum of 50 percent of amounts in the fund to the North Slope Borough violates the dedicated fund prohibition because the federal Act does not require it for state participation. In addition, the directive in Section 2(d) that remaining amounts in the fund may be spent only "in conjunction with the exploration of the National Petroleum Reserve in Alaska and a program of competitive leasing of oil and gas from that reserve" also violates the prohibition, again because the federal Act does not require it. The federal Act simply does not impose these restrictions on the use of the funds received by the state.

Another question raised by SB 835 stems from Article II, Section 19 of the Alaska Constitution, which provides in pertinent part: "The legislature shall pass no local or special act if a general act can be made applicable." The problem here is that SB 835 specifically names the North Slope Borough as a recipient of amounts from the fund established. However, nothing in the federal Act requires that the North Slope be named, and it is obvious that a general act can be made applicable and satisfy the terms of the federal Act simply by "giv[ing] priority to use by subdivisions of the State most directly or severely impacted by development of oil and gas leased under this Act." That is the language of the federal Act, so using that language would satisfy that condition of the federal Act. It is language of general applicability to all subdivisions which might be impacted by NPR-A development, and therefore would be a general (not local or special) act within the meaning of the Alaska Constitution. (We also would point out that the North Slope Borough may not be the only political subdivision impacted by oil and gas leasing in NPR-A. In the reserve, Barrow is a first class city and Wainwright and Nuiqsuit are second class cities. Moreover, development in NPR-A may have an impact on other political subdivisions along the pipeline corridor or, it is conceivable, any other route chosen to transport the oil and gas produced -- i.e., Nome, etc. This potential impact on other political subdivisions demonstrates the advisability of couching the bill in terms of a general act, not a local or special act directed only to the North Slope Borough.)

Another problem stems from Article II, Section 13 of the Alaska Constitution, which provides in pertinent part: "Bills for appropriations shall be confined to appropriations." The problem in SB 835 is the Section 2(c) directive to pay money to the affected subdivisions (in the bill's current form, only the North Slope Borough). Specifically, Section 2(d) describes that directive as an appropriation. If it is an appropriation, it is an appropriation in a general act and not in a bill confined to appropriations as required by the Constitution. This conclusion is reinforced by the provision in Section 2(d) that amounts remaining in the fund after the payment to the subdivisions cannot be expended without appropriation by the legislature. To avoid this problem, the bill could be amended simply to require appropriation by the legislature prior to any expenditure of funds in the trust account, giving the legislature discretion to appropriate funds to impacted subdivisions or for other purposes permitted under the federal Act.

Following my testimony on SB 835 at the Senate Resources Committee meeting on April 23, 1982, I met with Tom Smythe and Robert DuPere, representing the North Slope Borough, and Resa King of the Committee staff. We seemed to reach general agreement that some minor modifications to the bill would satisfy the constitutional concerns while remaining true to the basic thrust of the proposed bill. My notes indicate that the following changes were contemplated:

1. Page 1, lines 12-15 should be amended to read (material to be deleted is capitalized and in brackets; new material is underlined): "(1) The United States Congress, by P.L. 96-514 (94 Stat. 2964, December 12, 1980), [APPROPRIATED $107,001,000 FOR A PROGRAM OF] <u>provided that the state shall receive 50 percent of receipts derived from competitive leasing of oil and gas in the National Petroleum Reserve in Alaska;"</u> This change would eliminate any confusion regarding the $107,001,000 federal appropriation which is for administration of the leasing program, not an appropriation to the state. The state will only receive money under the federal Act after the program begins generating lease revenues.

2. Page 1, lines 24-26 should be amended to read: "The fund shall consist of funds [APPROPRIATED TO IT BY THE LEGISLATURE EQUAL TO THE AMOUNT OF FUNDS] received by the state from the federal government under P.L. 96-514." This would establish the constitutionally-permissible dedicated fund.

3. Subsection (c) of Section 2, which begins on page 1, line 29, and continues to page 2, line 4, should be deleted in its entirety and replaced with the following:

> (c) The commissioner of revenue shall pay to the subdivisions of the state most directly or severely impacted by development of oil and gas leased under the federal Act the amount appropriated by the legislature from the fund for that purpose. It is the intent of the legislature that the amount appropriated for payment to the subdivisions equal 50 percent of the amount received from the federal government under the federal Act, and that this percentage be reviewed every five years following passage of this Act.

This would indicate the legislative intent of sharing the revenues with impacted political subdivisions without violating the dedicated fund prohibition by imposing conditions beyond those required by the federal Act. It also avoids the local and special legislation problem, as well as the problem regarding an appropriation in a bill not confined to appropriations.

4. Page 2, lines 5-10 should be amended to read: "(d) Amounts received by the state under (a) of this section [WHICH ARE NOT APPROPRIATED IN ACCORDANCE WITH (c) OF THIS SECTION] shall be used by the state, subject to appropriation by law, for the following activities and services [IN CONJUNCTION WITH THE EXPLORATION OF THE NATIONAL PETROLEUM RESERVE IN ALASKA AND A PROGRAM OF COMPETITIVE LEASING OF OIL AND GAS FROM THAT RESERVE]:" This avoids any dedicated fund problem by eliminating those conditions which exceed those required by the federal Act.

5. Subsection (e) of Section 2, appearing on page 2, lines 15-20, should be deleted in its entirety.

6. Subsection (f), beginning on page 2, line 21, and ending on page 3, line 1, should be amended to read:

> "(f) amounts paid to [THE NORTH SLOPE BOROUGH] subdivisions under (c) of this section shall be used by the [NORTH SLOPE BOROUGH] subdivisions only for the following activities and services in conjunction with [THE EXPLORATION] development on the National Petroleum Reserve in Alaska and a program of competitive leasing of oil and gas from that reserve:
>
> "(1) planning;
>
> "(2) construction, maintenance, and operation of essential public facilities by the [NORTH SLOPE BOROUGH] subdivisions; and
>
> "(3) other necessary public services provided by the [NORTH SLOPE BOROUGH] subdivisions."

This change is necessary to avoid the local and special legislation problem.

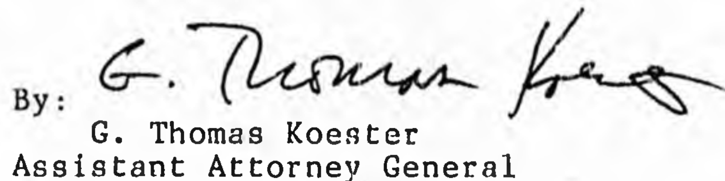
In addition, it was suggested that a committee letter of intent be drafted to the effect that, at the present time, the North Slope Borough is the only political subdivision of the state which will be most directly or severely impacted by oil and gas leasing in NPR-A.

I believe these comments accurately reflect the concensus of our work group. However, the other individuals present may have some further suggestions for change.

Finally, I must indicate that these comments are not intended to represent the Administration's policy position on this bill. Rather, they are provided in the nature of a drafting service to overcome the constitutional and other legal problems which we believe are presented by the bill in its current form. If we can be of further assistance in this regard, please contact us at your earliest convenience.

Sincerely,

WILSON L. CONDON
ATTORNEY GENERAL



By: G. Thomas Koester
Assistant Attorney General

GTK:dlm

cc: Honorable Don Bennett
Honorable M.E. Dankworth
Co-Chairmen, Senate Finance Committee

Tom Smythe
Robert DuPere
Keith Specking

Alaska State Legislature

SENATE
Resources Committee

Offical Business

BETTYE FAHRENKAMP, Chairman
VIC FISCHER, Vice-Chairman
BRAD BRADLEY
DICK ELIASON
DON GILMAN
BOB MULCAHY
ARLISS STURGULEWSKI

POUCH V
STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-3834
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MEMBERS PRESENT

Senator Fahrenkamp
Senator Fischer
Senator Eliason
Senator Gilman
Senator Sturgulewski

April 23, 1982
1:40 p.m.

Beltz Room
Capitol - Room 211

Hearing:

SB 835 An Act establishing a National Petroleum Reserve, Alaska, trust fund account and providing for uses of the money placed in the account: and providing for an effective date.

SB 872 Relating to sanitation, sanitary practices, and quality assurance in the seafood processing industry.

CSHB 47 An Act relating to the prohibition against waste of the meat of big game animals and wild fowl.

SB 872

Dr. Fred Honsinger, Director, Seafood and Animal Industry Division, Department of Environmental Conservation, suggested that page 3, line 7 of the Committee Substitute be changed from "in conjunction" to "after consultation".

Senator Gilman moved the amendment to page 3, line 7. He then moved the Committee Substitute and asked unanimous consent. Gilman moved the Letter of Intent and asked unanimous consent.

SB 835

Tom Koester, Attorney General's Office, stated that SB 835 raises some legal questions. It violates the constitutional prohibitions of a dedicated fund, and the enactment of local or special legislation. In addition, it makes an appropriation in an enactment bill, and the wording "minimum of 50%" takes the power of appropriation away from the legislature. Koester concluded by stating that he would provide the Committee with written testimony outlining the legal questions raised by the bill. (See attached.)

Tom Smythe, Consultant, North Slope Borough, provided background on the National Petroleum Reserve, Alaska. He supports SB 835, stating that the funds are needed to continue a program of service in the field and alleviate impacts on the community.

Robert J. DuPere, Consultant, North Slope Borough, explained that the constraint is on the operating budget. Funds are needed for sanitary and solid waste facilities: Search and Rescue: mitigation of environmental impacts: airstrips, roads, and other lines of communication. DuPere then suggested overcoming the constitutional problems outlined by Tom Koester through wording changes that would allow the legislature to make yearly appropriations to impacted communities.

Senator Gilman expressed concern over how impacts will be measured, and how eligibility for funds will be ascertained.

Senator Fischer raised questions about how the 50% that doesn't go to the North Slope Borough will be spent. Also, he suggested that appropriations to the North Slope Borough be subject to legislative review periodically, or that a Letter of Intent be sent with the bill.

Senator Fahrenkamp directed Koester, DuPere, and the Resources Committee Staff to work together after the meeting to find an agreeable solution to the issues raised.

HB 47

Senator Sturgulewski moved CSHB 47 (Jud)(am) with individual recommendations.

The meeting was adjourned at 3:05 p.m.

The Testimony of

MAYOR EUGENE BROWER

on

SENATE BILL NO. 835

For an Act entitled: "An Act establishing a National Petroleum Reserve, Alaska, trust fund account and providing for uses of the money placed in the account; and providing for an effective date."

Before the

SENATE NATURAL RESOURCES COMMITTEE

Chairwoman Bettye Fahrenkamp

on

April 21, 1982

THE NORTH SLOPE BOROUGH SUPPORTS SPEEDY ENACTMENT OF SENATE BILL NO. 835 ENTITLED "AN ACT ESTABLISHING A NATIONAL PETROLEUM RESERVE, ALASKA, TRUST FUND ACCOUNT AND PROVIDING FOR USES OF THE MONEY PLACED IN THE ACCOUNT; AND PROVIDING FOR AN EFFECTIVE DATE," AS A MEANS FOR MITIGATING FORTHCOMING IMPACTS FROM PETROLEUM DEVELOPMENT WITHIN NPR-A.

THE MOST SUPERFICIAL OBSERVATION OF THE PRUDHOE BAY AND TAPS DEVELOPMENT CANNOT AVOID DETECTING DEVASTATING PHYSICAL, ECONOMIC AND SOCIAL IMPACTS. THERE IS A BELIEF HELD BY SOME PEOPLE THAT MOST IMPACTS ARE BENEFICIAL; THEREFORE, EXPENDITURES IN IMPACTED AREAS ARE SUPERFLUOUS, OR WORSE, COUNTER-PRODUCTIVE IN THE SENSE THAT BASIC INDUSTRY IS DELAYED AND FORCED TO EXPEND MONIES ON NONPRODUCTIVE FUNCTIONS. OUR OBSERVATIONS LEAD US TO A REVERSE CONCLUSION. FAILURE TO ADDRESS FORTHCOMING IMPACTS AT PRUDHOE BAY, FOR EXAMPLE, LED TO EXTREMELY INEFFICIENT USE OF LANDS, A CATS CRADLE ROAD SYSTEM, DUPLICATION OF FACILITIES SUCH AS MAJOR AIRPORTS, INABILITY TO PROVIDE A COMMON UTILITY SYSTEM AND STRUCTURES BUILT TO INACCEPTABLE STANDARDS. THE IRONY OF THIS DEVELOPMENT WAS NOT ONLY THAT IT HAD AN ADVERSE EFFECT UPON THE LOCAL PEOPLE AND ENVIRONMENT, BUT IT WAS AN EXTREMELY COSTLY AND INEFFICIENT DEVELOPMENT SCHEME. HASTY BOROUGH/INDUSTRY SOLID WASTE DISPOSAL AND SANITARY WASTE TREATMENT PROGRAMS PROVIDE COSMETIC TREATMENT, BUT THE BASIC ILLS REMAIN.

DESPITE THE FACT THAT COMMERCIAL PETROLEUM PROSPECTS FOR NPR-A HAVE BEEN SUBSTANTIALLY DOWNGRADED BY THE USGS AND DNR AS

A RESULT OF PAST FEDERALLY SPONSORED DRILLING PROGRAMS, THE POTENTIAL IMPACTS, IN FACT, MAY BE GREATER. PAST DRILLING INDICATES THE POSSIBILITY OF A REASONABLY LARGE NUMBER OF SMALLER FIELDS RATHER THAN THE GIANTS OR SUPER GIANTS FORECAST IN THE PAST. IF THIS IS THE CASE, PRODUCTION WOULD PROBABLY AWAIT THE DEVELOPMENT OF GROUPS OF SMALLER FIELDS WHICH WOULD COLLECTIVELY REPRESENT A COMMERCIAL UNDERTAKING.

COLLECTORS WOULD LINK THESE SMALL FIELDS TO A PIPELINE RUNNING TO TAPS. THE TRACTS RECEIVING BIDS DURING THE JANUARY 27, 1982, NPR-A LEASE SALE AND THEIR PATTERN SUBSTANTIATE THIS BELIEF. THIS TYPE OF DEVELOPMENT SCENARIO NECESSARILY WOULD DISTURB A LARGER AREA AS WELL AS BEING MORE DIFFICULT TO SERVICE.

IN CONTRAST TO PRUDHOE BAY, THE IMPACTS OF NPR-A DEVELOPMENT WILL BE AT THE DOORSTEP OF FOUR OF THE EIGHT PERMANENT BOROUGH COMMUNITIES (BARROW, NUIQSUT, ATKASOOK, AND WAINWRIGHT). THE INDIRECT OR SECONDARY IMPACTS OF THE PRUDHOE BAY DEVELOPMENT, DISCOUNTING PRIMARY IMPACTS, CREATED DRASTIC CULTURAL, SOCIAL AND ECONOMIC DISRUPTIONS FOR THE PERMANENT INUPIAT POPULATION. IMPACTS FORCED CHANGE UPON THE RESIDENT POPULATION, NOT OF THEIR OWN MAKING, AND REQUIRED THEM TO ORGANIZE A LOCAL GOVERNMENTAL UNIT TO REPRESENT THEIR INTERESTS. WITH THE DEVELOPMENT OF NPR-A, THE PRESSURES WILL BE MORE DIRECT AND PERHAPS MORE DEVASTATING UNLESS MITIGATION MEASURES CAN BE TAKEN.

S.B. 835 WILL PROVIDE A PORTION OF THE FUNDING REQUIRED TO

ADDRESS FORTHCOMING IMPACTS. WITH PRUDHOE BAY AND KUPARUK EXPERIENCE, FUTURE BOROUGH APPROACHES TO INDUSTRIAL IMPACTS WILL INVOLVE DIRECT YET COOPERATIVE STATE/INDUSTRY/BOROUGH PLANNING AND PROVISION OF BASIC CONSOLIDATED SERVICES WITHIN THE FIELDS AS WELL AS WITHIN THE COMMUNITIES. THE RESULT OF BOROUGH INVOLVEMENT PROMOTING CONSOLIDATION OF FACILITIES AND SERVICES WILL RESULT IN MORE EFFICIENT, LESS DISRUPTIVE DEVELOPMENT AND THEREFORE LESS DETRIMENTAL IMPACT.

THE FEDERAL LAW, DEPARTMENT OF THE INTERIOR AND RELATED AGENCIES APPROPRIATIONS ACT OF 1980, CONTAINING THE FOLLOWING LANGUAGE:

> PROVIDED, THAT ... (9) ALL RECEIPTS FROM SALES, RENTALS, BONUSES, AND ROYALTIES ON LEASES ISSUED PURSUANT TO THIS ACT SHALL BE PAID INTO THE TREASURY OF THE UNITED STATES: PROVIDED, THAT 50 PER CENTUM SHALL BE PAID BY THE SECRETARY OF THE TREASURY SEMIANNUALLY, AS SOON AS PRACTICABLE AFTER MARCH 30 AND SEPTEMBER 30 EACH YEAR, TO THE STATE OF ALASKA FOR (A) PLANNING, (B) CONSTRUCTION, MAINTENANCE AND OPERATION OF ESSENTIAL PUBLIC FACILITIES, AND (C) OTHER NECESSARY PROVISIONS OF PUBLIC SERVICE: PROVIDED FURTHER, THAT IN THE ALLOCATION OF SUCH FUNDS THE STATE SHALL GIVE PRIORITY TO USE BY SUBDIVISIONS OF THE STATE MOST DIRECTLY OR SEVERELY IMPACTED BY DEVELOPMENT OF OIL AND GAS LEASED UNDER THIS ACT

WAS IN PART A RESULT OF THE COOPERATIVE EFFORT OF THE STATE AND THE NORTH SLOPE BOROUGH IN WORKING WITH THE ADMINISTRATION AND THE CONGRESS.

SINCE NPR-A IS FEDERAL RESERVE LAND, THERE WAS NO REQUIREMENT FOR FEDERAL REVENUE SHARING. IN FACT, THERE WAS VOCAL OPPOSITION FROM INFLUENTIAL ADMINISTRATIVE AND CONGRESSIONAL OFFICIALS TO SHARING WITH THE STATE. THE

ADMINISTRATION CONSIDERED DRAFT LANGUAGE TO INCLUDE ONLY THE BOROUGH SINCE NPR-A LIES ALMOST TOTALLY WITHIN THE BOROUGH. HOWEVER, GOVERNOR HAMMOND'S OPPOSITION TO DIRECT REVENUE SHARING RATHER THAN A PASS THROUGH AND THE BOROUGH'S BELIEF THAT THE BOROUGH ALONE WOULD BE LIMITED TO THE 25 PERCENT PRECEDENT FOR LOCAL REVENUE SHARING ESTABLISHED IN WILDLIFE RANGE AND REFUGE LAW, PROMPTED THE BOROUGH TO JOINTLY SEEK REVENUE SHARING WITH THE STATE. THE JOINT STATE/BOROUGH EFFORT RESULTED IN THE STATE RECEIVING 50 PER CENT OF THE NET FEDERAL RECEIPTS WITH A PROVISO THAT THE STATE WOULD PASS THROUGH FUNDS TO DIRECTLY OF SEVERELY IMPACTED LOCAL GOVERNMENTAL UNITS.

ALTHOUGH THE ADMINISTRATION INTRODUCED LEGISLATION IN BOTH THE HOUSE AND THE SENATE, SENATOR STEVENS, IN A SOPHISTICATED LEGISLATIVE MANUEVER, EXTRACTED THE APPROPRIATE NPR-A LEASE SALE LANGUAGE FROM THE ADMINISTRATION BILL AND INCLUDED IT AS A PART OF INTERIOR APPROPRIATIONS. NPR-A LEASING WAS PERMITTED AND THE REVENUE SHARING PRESERVED. HOWEVER, THE REMAINDER OF THE ADMINISTRATION BILL WHICH DEALT IN LARGE PART WITH ENVIRONMENTAL CONSTRAINTS AND ENFORCEMENT PROVISIONS IS DORMANT AND PROBABLY WILL NOT BE RESURRECTED. THIS PLACES A GREATER BURDEN UPON THE STATE AND THE BOROUGH TO ENSURE EFFICIENT, ENVIRONMENTALLY SOUND DEVELOPMENT.

IN SUMMARY, THE NORTH SLOPE BOROUGH URGES THE PROMPT ENACTMENT OF S.B. 835 TO PROVIDE THE BOROUGH WITH THE MEANS OF AMELIORATING IMPACTS OCCASIONED BY THE DEVELOPMENT OF PETROLEUM

LEASES IN NPR-A. IN PROVIDING THIS PASS THROUGH OF FUNDS, THE BOROUGH WILL USE THESE FUNDS FOR THE PLANNING, CONSTRUCTION, MAINTENANCE AND OPERATIONS OF PUBLIC FACILITIES AND OTHER NECESSARY PROVISIONS OF SERVICE RESULTING FROM NPR-A LEASE SALES.

MEMORANDUM State of Alaska

TO:
Jeff Haynes
Deputy Commissioner
Department of Natural Resources

DATE: April 20, 1982

FILE NO:

TELEPHONE NO:

FROM:
Tom Bergstrom
Director
Management and Administration

SUBJECT: SB 835

Apparently there is some confusion regarding $107,001,000 appropriated under P.L. 96-514 for competitive oil and gas leasing in the NPR-A. The State has received no funds under this program.

PUBLIC LAW 94-258 [H.R. 49]; April 5, 1976

NAVAL PETROLEUM RESERVES PRODUCTION ACT OF 1976

For Legislative History of Act, see p. 492

An Act to authorize the Secretary of the Interior to establish on certain public lands of the United States national petroleum reserves the development of which needs to be regulated in a manner consistent with the total energy needs of the Nation, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Naval Petroleum Reserves Production Act of 1976".

Naval Petroleum Reserves Production Act of 1976. 42 USC 6501 note.

TITLE I—NATIONAL PETROLEUM RESERVE IN ALASKA

DEFINITION

SEC. 101. As used in this title, the term "petroleum" includes crude oil, gases (including natural gas), natural gasoline, and other related hydrocarbons, oil shale, and the products of any of such resources.

42 USC 6501.

DESIGNATION OF THE NATIONAL PETROLEUM RESERVE IN ALASKA

SEC. 102. The area known as Naval Petroleum Reserve Numbered 4, Alaska, established by Executive order of the President, dated February 27, 1923, except for tract Numbered 1 as described in Public Land Order 2344, dated April 24, 1961, shall be transferred to and administered by the Secretary of the Interior in accordance with the provisions of this Act. Effective on the date of transfer all lands within such area shall be redesignated as the "National Petroleum Reserve in Alaska" (hereinafter in this title referred to as the "reserve"). Subject to valid existing rights, all lands within the exterior boundaries of such reserve are hereby reserved and withdrawn from all forms of entry and disposition under the public land laws, including the mining and mineral leasing laws, and all other Acts; but the Secretary is authorized to (1) make dispositions of mineral materials pursuant to the Act of July 31, 1947 (61 Stat. 681), as amended (30 U.S.C. 601), for appropriate use by Alaska Natives, (2) make such dispositions of mineral materials and grant such rights-of-way, licenses, and permits as may be necessary to carry out his responsibilities under this Act, and (3) convey the surface of lands properly selected on or before December 18, 1975, by Native village corporations pursuant to the Alaska Native Claims Settlement Act. All other provisions of law heretofore enacted and actions heretofore taken reserving such lands as a Naval Petroleum Reserve shall remain in full force and effect to the extent not inconsistent with this Act.

42 USC 6502.

43 CFR app.

43 USC 1601 note.

TRANSFER OF JURISDICTION

SEC. 103. (a) Jurisdiction over the reserve shall be transferred by the Secretary of the Navy to the Secretary of the Interior on June 1, 1977.

42 USC 6503.

(b) With respect to any activities related to the protection of environmental, fish and wildlife, and historical or scenic values, the Secretary of the Interior shall assume all responsibilities as of the date

Rules and regulations.

of the enactment of this title. As soon as possible, but not later than the effective date of transfer, the Secretary of the Interior may promulgate such rules and regulations as he deems necessary and appropriate for the protection of such values within the reserve.

(c) The Secretary of the Interior shall, upon the effective date of the transfer of the reserve, assume the responsibilities and functions of the Secretary of the Navy under any contracts which may be in effect with respect to activities within the reserve.

(d) On the date of transfer of jurisdiction of the reserve, all equipment, facilities, and other property of the Department of the Navy used in connection with the operation of the reserve, including all records, maps, exhibits, and other informational data held by the Secretary of the Navy in connection with the reserve, shall be transferred without reimbursement from the Secretary of the Navy to the Secretary of the Interior who shall thereafter be authorized to use them to carry out the provisions of this title.

(e) On the date of transfer of jurisdiction of the reserve, the Secretary of the Navy shall transfer to the Secretary of the Interior all unexpended funds previously appropriated for use in connection with the reserve and all civilian personnel ceilings assigned by the Secretary of the Navy to the management and operation of the reserve as of January 1, 1976.

ADMINISTRATION OF THE RESERVE

Petroleum production, prohibition.
42 USC 6504.

SEC. 104. (a) Except as provided in subsection (e) of this section, production of petroleum from the reserve is prohibited and no development leading to production of petroleum from the reserve shall be undertaken until authorized by an Act of Congress.

Explorations.

(b) Any exploration within the Utukok River, the Teshekpuk Lake areas, and other areas designated by the Secretary of the Interior containing any significant subsistence, recreational, fish and wildlife, or historical or scenic value, shall be conducted in a manner which will assure the maximum protection of such surface values to the extent consistent with the requirements of this Act for the exploration of the reserve.

(c) The Secretary of the Navy shall continue the ongoing petroleum exploration program within the reserve until the date of the transfer of jurisdiction specified in section 103(a). Prior to the date of such transfer of jurisdiction the Secretary of the Navy shall—

(1) cooperate fully with the Secretary of the Interior providing him access to such facilities and such information as he may request to facilitate the transfer of jurisdiction;

Information, submittal to congressional committees.

(2) provide to the Committees on Interior and Insular Affairs of the Senate and the House of Representatives copies of any reports, plans, or contracts pertaining to the reserve that are required to be submitted to the Committees on Armed Services of the Senate and the House of Representatives; and

(3) cooperate and consult with the Secretary of the Interior before executing any new contract or amendment to any existing contract pertaining to the reserve and allow him a reasonable opportunity to comment on such contract or amendment, as the case may be.

(d) The Secretary of the Interior shall commence further petroleum exploration of the reserve as of the date of transfer of jurisdiction specified in section 103(a). In conducting this exploration effort, the Secretary of the Interior—

Contracts.

(1) is authorized to enter into contracts for the exploration of the reserve, except that no such contract may be entered into until

at least thirty days after the Secretary of the Interior has provided the Attorney General with a copy of the proposed contract and such other information as may be appropriate to determine legal sufficiency and possible violations under, or inconsistencies with, the antitrust laws. If, within such thirty day period, the Attorney General advises the Secretary of the Interior that any such contract would unduly restrict competition or be inconsistent with the antitrust laws, then the Secretary of the Interior may not execute that contract;

(2) shall submit to the Committees on Interior and Insular Affairs of the Senate and the House of Representatives any new plans or substantial amendments to ongoing plans for the exploration of the reserve. All such plans or amendments submitted to such committees pursuant to this section shall contain a report by the Attorney General of the United States with respect to the anticipated effects of such plans or amendments on competition. Such plans or amendments shall not be implemented until sixty days after they have been submitted to such committees; and

Plans, submittal to congressional committees. Report by Attorney General.

(3) shall report annually to the Committees on Interior and Insular Affairs of the Senate and the House of Representatives on the progress of, and future plans for, exploration of the reserve.

Report to congressional committees.

(c) Until the reserve is transferred to the jurisdiction of the Secretary of the Interior, the Secretary of the Navy is authorized to develop and continue operation of the South Barrow gas field, or such other fields as may be necessary, to supply gas at reasonable and equitable rates to the native village of Barrow, and other communities and installations at or near Point Barrow, Alaska, and to installations of the Department of Defense and other agencies of the United States located at or near Point Barrow, Alaska. After such transfer, the Secretary of the Interior shall take such actions as may be necessary to continue such service to such village, communities, installations, and agencies at reasonable and equitable rates.

STUDY OF THE RESERVE

SEC. 105. (a) Section 164 of the Energy Policy and Conservation Act (89 Stat. 871, 889), is hereby amended by deleting in the first sentence "to the Congress" and by inserting in lieu thereof "to the Committees on Interior and Insular Affairs of the Senate and House of Representatives".

42 USC 6244.

(b)(1) The President shall direct such Executive departments and/or agencies as he may deem appropriate to conduct a study, in consultation with representatives of the State of Alaska, to determine the best overall procedures to be used in the development, production, transportation, and distribution of petroleum resources in the reserve. Such study shall include, but shall not be limited to, a consideration of—

42 USC 6505.

(A) the alternative procedures for accomplishing the development, production, transportation, and distribution of the petroleum resources from the reserve, and

(B) the economic and environmental consequences of such alternative procedures.

(2) The President shall make semiannual progress reports on the implementation of this subsection to the Committees on Interior and Insular Affairs of the Senate and the House of Representatives beginning not later than six months after the date of the enactment of this Act and shall, not later than one year after the transfer of jurisdiction of the reserve, and annually thereafter, report any findings or

Report to congressional committees.

PRIME SPONSOR: Finance

LEGISLATION SUMMARY

SB 835: "An Act establishing a National Petroleum Reserve, Alaska, trust fund account and providing for uses of the money placed in the account; and providing for an effective date."

Sec. 1: The Legislature finds that: the U. S. Congress, by a federal Act, appropriated $107,001,000 for an oil and gas competitive leasing program for the National Petroleum Reserve in Alaska (NPRA); the petroleum reserve lies virtually entirely within the North Slope Borough; because of the continuing nature of the federal appropriation, a trust fund should be established to comply with the federal Act.

Sec. 2: Establishes the National Petroleum Reserve, Alaska, Trust Fund, consisting of state funds appropriated to the Trust Fund, in amounts equal to those received under the federal Act.

Directs the commissioner of revenue to administer the the Trust Fund acording to existing law regarding custody and investment of trust funds. Within 30 days of receipt, the commissioner shall pay a minimum of 50% of the amounts received under the federal act and 50% of the amounts earned from investments of the balance of the Trust Fund to the North Slope Borough.

Directs that the funds received by the state under the federal Act and not appropriated to the North Slope Borough, and amounts from the Trust Fund or the federal Act paid to the North Slope Borough, shall be used for (1) planning, (2) construction, maintenance and operation of public facilites, and (3) other necessary public services in conjunction with the NPRA exploration and competitive oil and gas leasing. When making appropriations of this sort, the Legislature shall give priority to planning, public facilities and public services for communities adjacent to, but not within, the NPRA, and to facilities and services not provided by municipalities.

Sec. 3: Immediate effective date.

3/18/82

STATE OF ALASKA

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

JAY S. HAMMOND, GOVERNOR

POUCH S
JUNEAU, ALASKA 99811
PHONE: (907) 465-2300

March 17, 1982

The Honorable Bettye Fahrenkamp
Chairwoman
Senate Resources Committee
Room 113 - Capitol Building
Juneau, Alaska

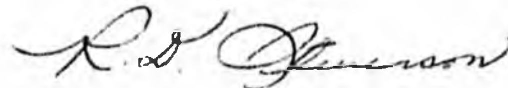
Dear Senator Fahrenkamp:

Re: Senate Bill No. 835

Senate Bill No. 835, an Act establishing a National Petroleum Reserve, Alaska, trust fund account and providing for uses of the money placed in the account, was introduced in the Senate on March 5, 1982 and was referred to the Senate Resources and Finance Committees.

For the consideration of the Senate Resources Committee, I am enclosing a copy of a Fiscal Note prepared by Mr. Anselm C. Staack, Treasury Comptroller, of the Department of Revenue concerning the proposed legislation.

Sincerely,



R. D. Stevenson
Special Assistant

Enclosure

cc: The Honorable Don Bennett
The Honorable M. E. Dankworth
Co-Chairmen
Senate Finance Committee

Joseph K. Donohue
Deputy Commissioner
Department of Revenue

Anselm C. Staack
Treasury Comptroller
Department of Revenue

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

SB 835

FISCAL NOTE

I. REQUEST
Bill/Resolution No. SB 835 (3/5/82)
Title Relating to National Petroleum Reserve, Alaska, Trust Fund Account
Requested by Senate Resources Committee Date 3/16/82

II. FISCAL DETAIL
Agency Affected Department of Revenue
Program Category Affected Revenue Collection and Management
BRU, Program, Or Subprogram(s) Affected Treasury Management
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES		15.7	17.3	19.0		
200 TRAVEL						
300 CONTRACTUAL		48.0	35.2	19.4		
400 COMMODITIES		2.0	1.5	1.0		
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS,CLAIMS,ETC.						
TOTAL		65.7	54.0	39.4		

FUNDING (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND		65.7	54.0	39.4		
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
FULL TIME						
PART TIME		1/6mm	1/6mm	1/6mm		
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

Establishes National Petroleum Reserve, Alaska, Trust Fund Account. To receive amts. appropriated to it; estimated at $107.0 million. 50% distribution to North Slope Borough plus 50% of account income. State to utilize balances for purposes indicated in legislation. Account duration within range of 3 years. Above assumes full utilization of corpus by third year.

Personal Services for half-time Accounting Tech. II (R14,G) for accounting/reporting/allocation/distribution. Contractual Services: Comm. $5.0; Print & Adv. $5.0; Safekeeping and related reporting/accounting $25.0; Audit $10.0; Misc. $3.0.

A. Staack

IV. DATE March 16, 1982

PREPARED BY Anselm C. Staack, Treasury Comptroller
AGENCY Dept. of Revenue, Treasury Division
PHONE 465-2350

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/81)

4/7/82

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

M E M O R A N D U M April 6, 1982

SUBJECT: National Petroleum Reserve, Alaska, trust fund account and providing for uses of the money placed in the account -- SB 835 (Work Order No. 12-2752)

TO: Senator Bettye Fahrenkamp
Chairman, Senate Resources Committee

FROM: James H. Lear
Legislative Counsel JHL

You have asked whether SB 835 (An Act establishing a National Petroleum Reserve, Alaska, trust fund account and providing for uses of the money placed in the account; and providing for an effective date) violates the constitutional prohibitions against dedication of funds and local and special acts.

The first part of your request pertains to Article IX, Sec. 7, Constitution of the State of Alaska, which states:

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

It would appear at first glance that even if SB 835 were a dedication to a special purpose, it would be excepted from the prohibition against dedications to a special purpose because the "dedication" is required by the federal government for state participation in a federal program. However, that is not true.

The United States Congress appropriated $107,001,000 for a program of competitive leasing of oil and gas in the National Petroleum Reserve in Alaska, the majority of which lies in the North Slope Borough. That reserve was created by P.L. 94-258 (Naval Petroleum Reserves Production Act of 1976). Section 107(b) of the Act recognized the need for federal assistance to alleviate the economic impact resulting from exploration and study activities authorized by the Act:

> (b) If the Secretary of the Interior determines that there is an immediate and substantial increase in the need for municipal services and facilities in communities located on or near the reserve as a direct result of the exploration and study activities authorized by this title and that an unfair and excessive financial burden will be incurred by such communities as a result of the increased need for such services and facilities, then he is authorized to assist such communities in meeting the costs of providing increased municipal services and facilities. . . .

The appropriation authorized contained in sec. 107 of P.L. 94-258 was implemented by P.L. 96-514 which appropriated the $107,001,000 referred to above for the administration of P.L. 94-258. That appropriation provided as a condition of the appropriation that:

> (9) all receipts from sales, rentals, bonuses, and royalties on leases issued pursuant to this Act shall be paid into the Treasury of the United States: Provided, that 50 per centum thereof shall be paid by the Secretary of the Treasury semiannually, as soon as practicable after March 30 and September 30 each year, to the State of Alaska for (a) planning, (b) construction, maintenance, and operation of essential public facilities, and (c) other necessary provisions of public service: Provided further, that in the allocation of such funds, the State shall give priority to use by subdivisions of the State most directly or severely impacted by development of oil and gas leased under this Act. (Emphasis supplied)

There is no doubt that the underlined language of this provision imposes as a condition of receipt of the federal

funds the requirement that the State of Alaska give priority to use of the funds by the North Slope Borough. However, that language in no way requires that the state set up a statutory scheme whereby "the commissioner of revenue shall pay to the North Slope Borough a minimum of 50 percent of amounts received from the federal government. . . ." (Sec. 2(c) of SB 835). That is a dedication, but in the opinion of this office, is not violative of Article IX, Sec. 7, Constitution of the State of Alaska.

There is a divergence of opinions as to whether revenue from the lease or sale of state natural resources is contemplated by the language "proceeds of any state tax or license" in Article IX, Sec. 7. The official position of this office is that the revenue from the lease or sale of state natural resources is not contemplated by the prohibition against dedication of funds; therefore, the revenue derived by the state as beneficiary of the $107,001,000 appropriation under P.L. 96-514 is outside the prohibition -- especially since the revenue is not derived from a "state tax or license" but from receipts by the federal government from sales, rentals, bonuses, and royalities on leases issued under P.L. 96-514.

The opposing viewpoint is embodied in the May 2, 1975, Op. Att'y Gen., which states that:

> "It is well settled that constitutions and legislative acts are to be interpreted in accordance with their purpose. Alaska Public Employees Ass'n v. State, 525 P.2d 12 (Alaska 1974). Section 7 of Article IX of the state Constitution can be given its intended effect and serve its repeatedly expressed purpose only if the words 'proceeds of any tax or license' are interpreted to mean what their framers clearly intended, i.e., the sources of any public revenues.
>
> "Accordingly, it is our conclusion that the dedication of any public revenue: tax, license, rental, sale, bonus-royalty, royalty, or whatever is limited by the state Contitution to those existing when the Constitution was ratified or required for participation in federal programs."

For the legislature to ignore the above opinion of the Attorney General would be to invite a possible challenge to

the validity of the disbursements that would be made to the North Slope Borough under the the scheme proposed in SB 835.

In addressing the second constitutional issue raised by your request, I would briefly state that SB 835 does not violate the prohibition against local or special acts (Article II, Sec. 19, Constitution of the State of Alaska). The test to be employed in determining whether legislation contravenes this section is substantially the same as that applicable to nonsuspect lassifications challenged as violative of equal protection. State v. Lewis, 559 P.2d 630 (Alaska 1977). In this instance the development of the National Petroleum Reserve has a unique impact upon the subdivisions of the state within the area of the reserve. It is a legitimate governmental purpose to appropriate money to aid the impacted areas and the restrictions placed upon the use of that money by the recipient subdivisions ensures that a "fair and substantial relationship" exists between the legislation and the purpose of the legislation.

Although not requested as part of this opinion, it should be brought to the attention of the Senate Resources Committee that SB 835 was not drafted, reviewed, or revised by this office or the Department of Law. For that reason the committee might wish to consider the following deficiencies in the draft not discussed above:

(1) In Sec. 2(c) the commissioner of revenue has the discretionary authority to set the amount to be paid to the North Slope Borough as long as it is not less than 50 percent of the federal funding received at any one time by the state. It seems that the legislature might want to be the judge of the distribution ratio required to be made to accomplish the purposes of the legislation, giving priority to the North Slope Borough.

(2) In Sec. 2(d) reference is made to "Amounts received by the state under (a) of this section which are not appropriated in accordance with (c) of this section . . ." but there is no appropriation under that subsection.

JHL:ljb

PREPARED FOR

SENATOR FRANK R. FERGUSON

BY

MAYOR EUGENE BROWER

NORTH SLOPE BOROUGH

Regarding

SENATE BILL NO. 835

on

April 20, 1982

The North Slope Borough supports speedy enactment of Senate Bill 835 entitled "An Act Establishing a National Petroleum Reserve, Alaska, trust fund account and providing for uses of the money placed in the account; and providing for an effective date.", as a means for mitigating forthcoming impacts from petroleum development within National Petroleum Reserve, Alaska (NPRA).

The most superficial observation of the Prudhoe Bay and Trans-Alaska Pipeline System (TAPS) development cannot avoid detecting devastating physical, economic and social impacts. There is a belief held by some people that most impacts are beneficial; therefore, expenditures in impacted areas are superfluous, or worse, counterproductive in the sense that basic industry is delayed and forced to expend monies on nonproductive functions. Our observations lead us to a reverse conclusion. Failure to address forthcoming impacts at Prudhoe Bay, for example, led to extremely inefficient use of lands, a cats cradle road system, duplication of facilities such as major airports, inability to provide a common utility system and structures built to unacceptable standards. The irony of this development was not only that it had an adverse effect upon the local people and environment, but it was an extremely costly and inefficient development scheme. Hasty Borough/industry solid waste disposal and sanitary waste treatment programs provide cosmetic treatment, but the basic ills remain.

Despite the fact that commercial petroleum prospects for NPRA have been substantially downgraded by the United States Geological Service and Department of Natural Resources as a result of past Federally sponsored drilling programs the potential impacts, in fact, may be greater. Past drilling indicates the possibility of a reasonably large number of smaller fields rather than the giants or super giants forecast in the past. If this is the case, production would probably await the development of groups of smaller fields which would collectively represent a commercial undertaking. Collectors would link these small fields to a pipeline running to TAPS. The tracts receiving bids during the January 27, 1982, NPRA lease sale and their pattern substantiate this belief. This type of development scenario necessarily would disturb a larger area as well as being more difficult to service.

In contrast to Prudhoe Bay, the impacts of NPRA development will be at the doorstep of four of the eight permanent Borough communities (Barrow, Nuiqsut, Atkasook, and Wainwright). The indirect or secondary impacts of the Prudhoe Bay development, discounting primary impacts, created drastic cultural, social and economic disruptions for the permanent Inupiat population. Impacts forced change upon the resident population, not at their own making, and required them to organize a local governmental unit to represent their interests. With the development of NPRA the

pressures will be more direct and perhaps more devastating unless mitigation measures can be taken.

Senate Bill 835 will provide a portion of the funding required to address forthcoming impacts. With Prudhoe Bay and the Kuparuk experience, future Borough approaches to industrial impacts will involve direct yet cooperative State/industry/Borough planning and provision of basic consolidated services within the fields as well as within the communities. The result of Borough involvement promoting consolidation of facilities and services will result in more efficient, less disruptive development and therefore less detrimental impact.

The Federal law, Department of Interior and Related Agencies Appropriations Act of 1980, contains the following language:

> Provided, that . . . (9) all recipients from sales, rentals, bonuses, and royalties on leases issued pursuant to this Act shall be paid into the Treasury of the United States: Provided, that 50 per centum shall be paid by the Secretary of the Treasury semiannually, as soon as practicable after March 30 and September 30 each year, to the State of Alaska for (a) planning, (b) construction, maintenance and operation of essential public facilities, and (c) other necessary provision of public service: Provided further, that in the allocation of such funds the State shall give priority to use by subdivisions of the State most directly or severely impacted by development of oil and gas leased under this Act.

was in part a result the cooperative effort of the State and

the North Slope Borough in working with the Administration and the Congress.

Since NPRA is Federal reserve lands, there was no requirement for Federal revenue sharing. In fact, there was local opposition from influential Administrative and Congressional officials to sharing with the State. The Administration considered draft language to include only the Borough since NPRA lies almost totally within the Borough. However, Governor Hammond's opposition to direct revenue sharing rather than a pass through and the Borough's belief that the Borough alone would be limited to the 25 percent precident for local revenue sharing established in worldlife range and refuge law, prompted the Borough to jointly seek revenue sharing with the State. The joint State/Borough effort resulted in the State receiving 50 percent of the net Federal receipts with a proviso that the State would pass through funds to directly or severely impacted local governmental units.

Although the Administration introduced legislation in both the House and the Senate, Senator Stevens, in a sophisticated legislative maneuver, extracted the appropriate NPRA lease sale language from the Administration bill and included it as a part of Interior Appropriations. NPRA leasing was permitted and the revenue sharing preserved. However, the remainder of the Administration bill which dealt in large part with environmental constraints and enforcement provisions is dormant and

probably will not be resurrected. This places a great burden upon the State and the Borough to ensure efficient, environmentally sound development.

In summary, the North Slope Borough urges the prompt enactment of Senate Bill 835 to provide the Borough with the means of ameliorating impacts occasioned by the development of petroleum leases in NPRA. In providing this pass through of funds, the Borough will use these funds for the planning, construction, maintenance and operations of public facilities and other necessary provisions of services resulting from NPRA lease sales.

TO: Billy Berrier
Director Legal Services

DATE: 4/23/82

FROM: Bettye Fahrenkamp
Chairman

RE: WORK DRAFT Committee Substitute SB 835

The Committee would like a work draft Committee Substitute for SB 835 incorporating the following changes and additions:

Page 1, line 13:

Delete "appropriated $107,001,000 for a program of" and insert "provided that the state shall receive 50 percent of recepits derived from" in its place.

Page 1, line 24 and 25:

Delete:"appropriated to it by the Legislature equal to the amount of funds"

Page 1, line 29:

Delete "Within 30 days of receipt" and insert 'Subject to appropriation by the legislature," in its place.

Page 1, line 11 - 4:

from "Nath" through

Delete all of the language [illegible] "account."

Page 2, line 1:

After the word "the" insert "subdivisions of the state most directly or severly impacted by development of oil and gas leased under the federal act. It is the intent of the legislature that the amount appropriated from payment to these subdivisions equal 50 percent of the amount received from the federal government under the federal act, and that this percentage be reviewed every five years, by the legislature, following the passage of this Act."

Page 2, line 6:

Delete "inaccordance with" and insert "under" in its place.

Page 2, line 8:

After the word "services"insert a " : "

Page 2, lines 8 - 10:

Delete all of the language from "in" through "reserve:"

Page 2, lines 15 - 20:

Delete all of the language in section "(e)"

Page 2, line 21:

Delete "(f)" and insert "(e)" in its place

Delete "the North Slope Borough" and insert "subdivisions" in its place.

Page 2, line 22:

Delete "North Slope Borough" and insert "subdivisions" in its place.

Page 23, line 23:

Delete "the exploration" and insert "development" in its place.

Page 2, line 28:

Delete "North Slope Borough" and insert "subdivisions" in its place.

Page 2, line 29:

Delete "North" and insert "subdivisions" in its place.

Page 3, line 1:

Delete "Slope Borough"

Introduced: 3/5/82
Referred: Resources and
Finance

IN THE SENATE BY THE FINANCE COMMITTEE

SENATE BILL NO. 835

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWELFTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act establishing a National Petroleum Reserve, Alaska, trust fund account and providing for uses of the money placed in the account; and providing for an effective date."

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

* Section 1. FINDINGS. The legislature finds that:

(1) the United States Congress, by P.L. 96-514 (94 Stat. 2964, December 12, 1980), ~~appropriated $107,001,000 for a program of com-~~ provided that the state shall receive 50 percent of receipts derived from ~~com~~petitive leasing of oil and gas in the National Petroleum Reserve in Alaska;

(2) virtually all of the National Petroleum Reserve in Alaska lies within the corporate limits of the North Slope Borough, a home rule political subdivision of the state; and

(3) because of the continuing nature of the congressional appropriation a trust fund should be established to comply with the directive of the federal Act.

* Sec. 2. NATIONAL PETROLEUM RESERVE, ALASKA, TRUST FUND ACCOUNT. (a) The National Petroleum Reserve, Alaska, trust fund account is established. The fund shall consist of funds ~~appropriated to it by the legislature equal to the amount of funds~~ received by the state from the federal government under P.L. 96-514.

(b) The commissioner of revenue shall manage the trust fund account in accordance with AS 37.14.160 - 37.14.170.

(c) ~~Within 30 days of receipt~~ Subject to appropriation by the legislature, the commissioner of revenue shall

pay to the ~~North Slope Borough a minimum of 50 percent of amounts received from the federal government under (a) of this section and a minimum of 50 percent of amounts earned from investments of the balance of the trust fund account.~~

(d) Amounts received by the state under (a) of this section which are not ~~in accordance with~~ (c) of this section shall be used by the state, subject to appropriation by law, for the following activities and services: ~~in conjunction with the exploration of the National Petroleum Reserve in Alaska and a program of competitive leasing of oil and gas from that reserve.~~

(1) planning;

(2) construction, maintenance, and operation of essential public facilities; and

(3) other necessary public services.

~~(e) When making appropriations under (d) of this section, the legislature shall give priority to expenditures for planning, for public facilities, and for public services for communities which are adjacent to, but not within, the boundaries of the National Petroleum Reserve in Alaska and for facilities and services not provided by municipalities.~~

(f) Amounts paid to ~~the North Slope Borough~~ under (c) of this section shall be used by the ~~North Slope Borough~~ only for the following activities and services in conjunction with ~~the exploration~~ of the National Petroleum Reserve in Alaska and a program of competitive leasing of oil and gas from that reserve:

(1) planning;

(2) construction, maintenance, and operation of essential public facilities by the ~~North Slope Borough~~; and

(3) other necessary public services provided by the ~~North~~

1 ~~Slope Borou~~gh.

2 * Sec. 3. This Act takes effect immediately in accordance with AS 01.10-

3 070(c).

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TO: Billy Berrier
Director
Legal Services

DATE: 4/30/82

Attn: Jim Lear

FROM: Bettye Fahrenkamp
Chairman

RE: Work Draft CSSB 835(Res)

Attached is a work draft CSSB 835 that I would like another work draft written incorporating the following changes:

Page 1, line 7:

Delete "trust fund account" and insert "special revenue fund" in its place.

Page 1, line 19:

Delete "trust fund" and insert "special revenue fund" in its place.

Page 1, line 21:

Delete "TRUST FUND ACCOUNT" and insert "SPECIAL REVENUE FUND" in its place.

Page 1, line 22:

Delete "trust fund account" and insert "special revenue fund" in its place.

Page 1, line 27 - 28:

Delete "It is the intent of the legislature that the amount appropriated by the legislature from the trust fund for payment" and insert "The commissioner of revenue shall pay" in its place.

Page 2, line 1:

After the word "Alaska" insert "amount appropriated from the fund by the legislature for that purpose."

Page 2, line 1:

Before the word "equal" insert "It is the intent of the legislature that these amounts"

Page 2, line 6:

Delete "appropriated" and insert "paid" in its place.

If you have any questions please contact Resa King at 465-3834. When the work draft is completed please <u>return</u> it to <u>Room</u> <u>211</u> Capitol Building.

Attachment

Lear
4/26/82

Original sponsor: Finance Committee

1 IN THE SENATE BY THE RESOURCES COMMITTEE

2 CS FOR SENATE BILL NO. 835 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act establishing a National Petroleum Reserve,

7 Alaska, ~~trust fund account~~ special revenue fund; and providing for an effec-

8 tive date."

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

10 * Section 1. FINDINGS. The legislature finds that

11 (1) the United States Congress, by P.L. 96-514 (94 Stat. 2964,

12 December 12, 1980), provided that the state shall receive 50 percent of

13 receipts derived from competitive leasing of oil and gas in the National

14 Petroleum Reserve in Alaska;

15 (2) virtually all of the National Petroleum Reserve in Alaska lies

16 within the corporate limits of the North Slope Borough, a home rule political

17 subdivision of the state; and

18 (3) because of the continuing nature of the congressional appro-

19 priation a ~~trust fund~~ special revenue fund should be established to comply with the directive of

20 the federal Act.

21 * Sec. 2. NATIONAL PETROLEUM RESERVE, ALASKA, ~~TRUST FUND ACCOUNT.~~ special revenue fund (caps) (a)

22 The National Petroleum Reserve, Alaska, ~~trust fund account~~ special revenue fund is established.

23 The fund shall consist of money received by the state from the federal govern-

24 ment under P.L. 96-514.

25 (b) The commissioner of revenue shall manage the ~~trust fund account~~ special revenue fund in

26 accordance with AS 37.14.160 - 37.14.170.

27 (c) ~~It is the intent of the legislature that the amount appropriated by~~

28 ~~the legislature from the trust fund for payment~~ The Commissioner of Revenue shall pay to those subdivisions of the

29 state that are most directly or severely impacted by development of oil and

* See Note Below

amounts

appropriated from the fund by the legislature for that purpose. It is the intent of the legislature that these amounts

1 gas in the National Petroleum Reserve in Alaska equal 50 percent of the

2 amount received from the federal government under the federal Act, and that

3 this percentage be reviewed by the legislature every five years following the

4 passage of this Act.

5 (d) Amounts received by the state under (a) of this section that are

6 not ~~(dispersed?~~ (paid?) ~~appropriated~~ under (c) of this section shall be used by the state, subject

7 to appropriation by law, for the following activities and services:

8 (1) planning;

9 (2) construction, maintenance, and operation of essential public

10 facilities; and

11 (3) other necessary public services.

12 (e) Amounts paid to subdivisions of the state under (c) of this section

13 shall be used by the subdivisions only for the following activities and

14 services in conjunction with development of the National Petroleum Reserve in

15 Alaska and a program of competitive leasing of oil and gas from that reserve:

16 (1) planning;

17 (2) construction, maintenance, and operation of essential public

18 facilities by the subdivisions; and

19 (3) other necessary public services provided by the subdivisions.

20 * Sec. 3. This Act takes effect immediately in accordance with AS 01.10-

21 070(c). Note:*

22 Page 1, line 27 through page 2, line 1 should read:

23 (c) The Commissioner of Revenue shall pay to those subdivisions of the

24 state that are most direcly or severely impacted by development of oil and

25 gas in the National Petroleum Reserve in Alaska amounts appropriated from

26 the fund by the legislature for that purpose. It is the intent of the

27 legislature that these amounts equal 50 percent of the amount received from

28 the federal government under the federal Act, and that this percentage

29 be reviewed by the legislature every five years following the passage

of this Act.

SB 855

Alaska State Legislature

SENATE
Resources Committee

Offical Business

BETTYE FAHRENKAMP, Chairman
VIC FISCHER, Vice-Chairman
BRAD BRADLEY
DICK ELIASON
DON GILMAN
BOB MULCAHY
ARLISS STURGULEWSKI

POUCH V
STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-3834
(907) 465-3835

TO: Resources Committee Members

DATE: 4/28/82

FROM: Resources Committee Staff

RE: Supreme Court Decision
Dedication of Funds

During testimony last week the Assistant Attorney General stated that the Supreme Court had just ruled on clarifying the Constitutional provision on the dedication of funds issue.

For your information attached is a copy of that Supreme Court Decision.

Attachment

NOTICE: This opinion is subject to formal correction before publication in the Pacific Reporter. Readers are requested to bring typographical or other formal errors to the attention of the Clerk of the Appellate Courts, 303 K Street, Anchorage, Alaska 99501, in order that corrections may be made prior to permanent publication.

THE SUPREME COURT OF THE STATE OF ALASKA

STATE OF ALASKA, NORTHERN SOUTHEAST REGIONAL AQUACULTURE ASSOCIATION, and SOUTHERN SOUTHEAST REGIONAL AQUACULTURE ASSOCIATION,

Appellants,

v.

WAYNE ALEX, WILLIAM A. THOMAS, JR., ED MAKI, JOHN C. MARTIN, WARREN S. WESTROM, DICK WORKMAN, MARK W. WHITE, CARL SIMS, BRUCE R. GILBERT, FRED CHAMBERS, DOUGLAS D. KARNS, HAROLD D. BIEKSKI, and LEO R. ALBECKER, JR.,

Appellees.

File Nos. 5065, 5086, 5142

OPINION

[No. 2488 - April 23, 1982]

Appeal from the Superior Court of the State of Alaska, First Judicial District, Juneau, Allen T. Compton, Judge.

Appearances: G. Thomas Koester, Assistant Attorney General, Avrum M. Gross and Wilson L. Condon, Attorneys General, Juneau, for Appellant State of Alaska. Fred J. Baxter, Baxter & Douglas Law Offices, Juneau, for Appellant Northern Southeast Regional Aquaculture Association. Douglas Pope, Wagstaff, Middleton & Pope, Anchorage, for Appellant Southern Southeast Regional Aquaculture Association. M. T. Thomas and W. G. Ruddy, Robertson, Monagle, Eastaugh & Bradley, Juneau, for Appellees.

Before: Rabinowitz, Chief Justice, Connor, Burke and Matthews, Justices, and Blair, Superior Court Judge.* (Compton, Justice, not participating.)

BURKE, Justice.

This case involves a suit brought as a class action by several commercial fishermen against two private aquaculture associations and the state. The suit sought a declaratory judgment holding unconstitutional a state statute that authorizes the associations to collect mandatory assessments on the sale of salmon by the plaintiff fishermen. In addition, the complaint sought a refund of all assessments that had been paid by the fishermen and a permanent injunction to restrain future collection of the assessments.

The plaintiffs alleged that the assessment statute was invalid on two grounds. First, they contended that the statute created a state tax dedicated to a special purpose in contravention of the express prohibition of dedicated taxes contained in article IX, section 7 of the Alaska Constitution. Second, they alleged that the delegation of the state's taxing power to private "regional aquaculture associations" was prohibited under article X, section 2 of

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* Blair, Superior Court Judge, sitting by assignment made pursuant to article IV, section 16 of the Constitution of Alaska.

the Alaska Constitution, which allows the state to delegate its taxing power to boroughs and cities only. Also, the plaintiffs maintained that the legislature's power to decide to tax is inherently nondelegable, and therefore the decision to implement a tax cannot be made by an administrative official.

The aquaculture associations and the state answered, alleging that the statute was constitutionally valid. In addition, the answers attacked the plaintiffs' status as representatives for the class action. Also, the defendants affirmatively alleged that the claims were barred by laches and a failure to exhaust administrative remedies.

After some discovery, the merits were presented to the trial court by cross-motions for summary judgment. The trial court granted the plaintiffs partial summary judgment. The court held the assessment statute unconstitutional both because it created a dedicated tax and because it was an improper delegation of the legislature's taxing power. Also, the court certified the suit as a class action. The court entered a final judgment as to these issues, pursuant to Civil Rule 54(b).

The associations and the state now appeal, contending that the trial court erred in finding the statute unconstitutional and in certifying the class, and in not dismissing the action on the grounds of laches and failure

to exhaust administrative remedies. We affirm. In order to aid the legislature in devising an aquaculture program consistent with the Alaska Constitution, we discuss each ground on which this scheme is allegedly unconstitutional.[1]

I. THE SALMON ASSESSMENT AND THE FISHERIES ENHANCEMENT LOAN PROGRAM.

AS 16.10.530, the particular section that the trial court found unconstitutional, provides for an assessment on the sale of salmon by commercial fishermen to processors. The amount and conditions of an assessment are first proposed by a "qualified regional association." The assessment must then be approved by a majority of those holding limited entry fishing permits in the association's region. Finally, the Commissioner of Commerce and Economic Development then must determine that all required procedures have been followed and that the assessment is "reasonable." The section notes that the assessments are for the purpose of providing revenue for the associations.

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1. The legislature has already enacted a new salmon enhancement tax. AS 43.76; Ch. 154 SLA 1980. However, the new legislation did not repeal the tax which is reviewed in this opinion.

The relevant portions of section 530 provide:

> Royalty assessment on sale of salmon. (a) The commissioner, on request of the qualified regional association for the area in which the royalty assessment is to be levied, after consultation with the commissioner of fish and game and after reaching any necessary agreements with local governments, shall establish areas in which a royalty assessment shall be levied on the sale of one or more species of salmon caught by persons holding entry permits under AS 16.43.010-16.43.380, in the area in which the royalty assessment is to be levied. A request by the qualified regional association shall include a description of compliance with (e) of this section. The commissioner shall determine whether the procedural requirements under (e) of this section were followed and whether the proposed assessment is reasonable. A royalty assessment levied under this section shall be for the purpose of providing revenue for the qualified regional association for the area in which the royalty assessment is made. The rate and conditions of royalty assessments, including species to be involved, shall be stated by the appropriate qualified regional association in conjunction with the request to the commissioner under this subsection. The royalty assessment may be equal to either two or three per cent of the fair market value of the fish but may not exceed three per cent of the fair market value of the fish.
>
> . . . .
>
> (c) The commissioner and the appropriate qualified regional association must agree on a means of collection of the royalty assessment and the commissioner may, by regulation, require its collection by buyers of the salmon

upon the sale of which a royalty assessment is levied.2/

. . . .

---

2. AS 16.10.530(e) and (f) go on to set out in detail the election procedures to be followed in obtaining ratification of an association's proposed assessment by limited permit holders:

> (e) Before a royalty assessment is made under this section, the qualified regional association for the area in which the royalty assessment is to be levied shall hold an initial public meeting to explain and discuss the necessity for the royalty assessment and to explain the registration procedure established under (f) of this section. Reasonable public notice of the meeting shall be sent to all limited entry permit holders actively participating in a fishery in the area, posted in at least three centrally located public places in the area, and published in at least one newspaper of general circulation at least one time a week for three consecutive weeks in the area, if one exists. The notice shall briefly state the amount of the royalty assessment and a short general description of the purposes for which the royalty assessment money will be used. A ballot shall be mailed to all limited entry permit holders actively participating in a fishery in the area at least 20 days before the initial public meeting and contain a copy of the notice and ask the question whether a royalty assessment shall be imposed. At the public meeting the returned ballots shall be counted by a special committee appointed by the regional association for that purpose,

(Cont'd)

The "qualified regional association" referred to in section 530 is defined in section 380:

> Regional associations. (a) The commissioner shall assist in and encourage the formation of qualified regional associations for the purpose of enhancing salmon production. A regional association is qualified if the commissioner determines that
>
> (1) it is comprised of associations representative of commercial fishermen in the region;

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2. (Cont'd)

and a vote by written ballot shall be taken on the question from among the limited entry permit holders present at the initial public meeting. After the vote is taken at the initial meeting a second public meeting shall be held, upon the limited notice of publication in a newspaper of general circulation, each day for five consecutive days and the mailing of personal notice to all limited entry permit holders who actively participate in a fishery in the area at least 14 days before the second public meeting, to give those who did not vote by written ballot at the initial public meeting an opportunity to vote. These votes shall be counted with the votes counted at the initial meeting. A majority vote for the royalty assessment is required from the combined total of the returned ballots and the votes by ballot cast at both public meetings, before a royalty assessment may be imposed. No person may vote twice.

(f) The qualified regional association shall establish standard registration procedures for voting on royalty assessments under this section.

> (2) it includes representatives of other user groups interested in fisheries within the region who wish to belong; and
>
> (3) it possesses a board of directors which includes no less than one representative of each user group that belongs to the association.
>
> (b) In this section "user group" includes, but is not limited to, sport fishermen, processors, commercial fishermen, subsistence fishermen, and representatives of local communities.

The section 530 assessments are an integral part of the Fisheries Enhancement Loan Program Act, AS 16.10.500-.620. The act provides for "fishery enhancement loans" to qualified regional associations for hatchery construction. These loans are to be given based on the ability of an association to establish an equity in the hatchery through the use of the section 530 assessments, or by other means. AS 16.10.520(b). In addition, the loans must be secured by collateral such as the hatchery itself, sale of surplus hatchery fish, and the section 530 assessments. AS 16.10.520(c).

The assessment provisions of section 530 have been implemented in regulations promulgated by the commerce department. 3 AAC 88.010-.900. These regulations set out the required contents of requests by an association for a section 530 assessment. 3 AAC 88.020. The requests must

set out the particulars of the area, conditions, period, rate, procedures for collection, and the species of salmon for the assessment. 3 AAC 88.020(b)(1)(A)-(G). The commissioner then reviews the assessment requests and decides whether the request is consistent with the act, based on factors such as the "reasonableness of the assessment in view of the projected activities of the regional association" and "the likelihood of promoting, through the assessment, the interest of the public in fostering salmon enhancement efforts." 3 AAC 88.030(a).

The assessments are then collected by commercial buyers of salmon and forwarded directly to the particular association's trust account. 3 AAC 88.020(b)(1)(H), 88.040(b), (c), 88.900(2).

II. DO THE ASSESSMENT PROVISIONS OF AS 16.10.530 DEDICATE THE PROCEEDS OF A STATE TAX OR LICENSE TO A SPECIAL PURPOSE IN CONTRAVENTION OF ARTICLE IX, SECTION 7 OF THE ALASKA CONSTITUTION PROHIBITING DEDICATED TAXES?

Article IX, section 7 of the Alaska Constitution states in relevant part: "The proceeds of any state tax or

license shall not be dedicated to any special purpose . . ."[3]

Plaintiffs contend that section 530 and its implementing regulations create a dedicated tax that violates the above constitutional prohibition. The trial court agreed, concluding that in creating the salmon assessment the state had "dedicate[d] a tax on the harvest of a natural resource of the State to a specific purpose."

The associations and the state contend that the trial court erred in finding a prohibited dedicated tax. First, they maintain that on its face section 530 makes no dedication of revenue. Second, they maintain that the assessments levied under section 530 are not "proceeds of a state tax or license" so as to be subject to the nondedication provision of section 7. Third, even if section 530 does dedicate a tax, they contend that a qualified incorporated regional association is a service area in the unorgan-

---

3. The section goes on to state:

> except as provided in section 15 of this article [creating the permanent fund] or when required by the federal government for state participation in federal programs. This provision shall not prohibit the continuance of any dedication for special purposes existing upon the date of ratification of this section by the people of Alaska.

ized borough and as such is not subject to the nondedication provision. Fourth, the defendants claim that the natural resources provisions of article VIII of the constitution allow dedicated taxes to be used in carrying out the enumerated powers of the article.

Each of the defendants' contentions are examined below. None has merit and, therefore, we affirm the trial court on this issue.

A. Does AS 16.10.530 on its Face Make a Dedication of Revenues to a Special Purpose?

The most relevant sentence of section 530 reads:

> A royalty assessment levied under this section shall be for the purpose of providing revenue for the qualified regional association for the area in which the royalty assessment is made.

AS 16.10.530(a). The state contends that this sentence is in effect directory and not mandatory. It contends that it is merely an expression either of the legislature's motivation for enacting the assessment provision, or of the present legislature's policy commitment to appropriate matching monies from the general fund on a continuing basis in the future. Since such an expression of present policy is merely directory, the state argues that the current administration and future legislatures would be free to do

as they please with the assessment funds, subject only to a moral obligation to carry out the policy of the originating legislature. The state's argument continues that since the statement of purposes is not binding, the statute should be construed to allow deposit of the assessments into the general fund, unearmarked, thereby avoiding a conflict with the constitutional prohibition.

This court has previously noted its intention to narrowly construe statutes to avoid constitutional infirmity where that can be done without doing violence to the legislature's intent. Bonjour v. Bonjour, 592 P.2d 1233, 1237-38 (Alaska 1979). However, only a reasonable construction may be placed on a statute in this manner, because giving the statute an unintended meaning "would be stepping over the line of interpretation and engaging in legislation." Gottschalk v. State, 575 P.2d 289, 296 (Alaska 1978).

In the present case, the state's reading of section 530 does not square well with the manifestations of legislative intent contained in other provisions of the Fisheries Enhancement Loan Act. First, the sentence in question uses the verb "shall" in stating the purpose of the assessments. While not itself conclusive, the use of "shall" indicates that the use of the assessments for the funding of the aquaculture associations is mandatory.

Second, the legislative intent to create a dedicated fund under the ownership and control of the associations is indicated by the act's provisions contemplating that the commissioner is to consider an association's rights to the assessments in deciding whether the associations will be able to establish eventually sufficient equity in the hatcheries they build to make the loans secure, AS 16.10.520(b), and allowing the assessments to be pledged as collateral for the state loans, AS 16.10.520(c). These provisions are nonsensical if the assessments are not earmarked in some way so that the association has a "right" to them.

From the above, it appears that the legislature intended to dedicate the proceeds of the assessments to the associations.

B. Are the Assessments "Proceeds of a State Tax or License" Within the Meaning of Section 7?

The associations and the state contend that the salmon assessments are not "proceeds of a state tax or license" so as to be subject to the constitutional prohibition against dedication. They premise their argument on a distinction between "general revenue taxes" and "special

assessments" for services. The basic distinction they set forth is that special assessments are related to the benefits received, while general revenue taxes are related to an ability to pay, regardless of benefit to the taxpayer. They contend that "tax," as used in article IX, section 7 of the state constitution, does not include such "special assessments," but instead refers only to general revenue taxes. The defendants then maintain that the salmon assessment is a "special assessment" not subject to section 7.

The word "tax," like most English words, has several meanings or senses. In its broad sense, the term "tax" includes assessments as a kind of tax; however, in a narrower sense, the term "tax" refers to a general levy without reference to benefits conferred while "assessment" refers to an imposition based on benefits conferred. Black's Law Dictionary 1629 (rev. 4th ed. 1968). (See also the definition of "special assessment": "a specific <u>tax</u> levied on private property to meet the cost of public improvements that enhance the value of the property." Webster's New Collegiate Dictionary 1116 (1974) (emphasis added)). Therefore, the sense in which "tax" is used in article IX, section 7 of the constitution must be determined from its context, both in the text and according to the

discussions at the constitutional convention which adopted the wording.[4]

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4. In a long line of cases prior to 1978 this court had reaffirmed its reliance on the "plain meaning" rule in interpreting enacted law. Poulin v. Zartman, 542 P.2d 251, 270 (Alaska 1975) on rehearing, 548 P.2d 1299; Roderick v. Sullivan, 528 P.2d 450, 453-55 (Alaska 1974); Alaska Public Employees Ass'n v. State, 525 P.2d 12, 14-15 (Alaska 1974); State v. City of Anchorage, 513 P.2d 1104, 1109 (Alaska 1973); Homer Electric Ass'n v. City of Kenai, 423 P.2d 285, 289 n.22 (Alaska 1967); Application of Babcock, 387 P.2d 694, 696 (Alaska 1963); Alaska Mines & Minerals, Inc. v. Alaska Indus. Bd., 354 P.2d 376, 379 (Alaska 1960). The rule stated, "[w]here the meaning of a statute is apparent, there is no need to resort to methods of statutory construction." White v. Alaska Ins. Guaranty Ass'n, 592 P.2d 367, 369 (Alaska 1979).

However, in the recent case of North Slope Borough v. Sohio Petroleum Corp., 585 P.2d 534, 540 n.7 (Alaska 1978), we expressly "reject[ed] the so-called 'plain meaning' rule as a strict exclusionary rule." We then went on to draw an analogy between the use of the plain meaning rule in the interpretation of enacted law and the former rule for the interpretation of contracts where a preliminary finding of ambiguity was required before extrinsic sources could be consulted. Id.

Despite the North Slope decision, several of our subsequent cases have nevertheless applied the mechanical plain meaning rule. Horowitz v. Alaska Bar Ass'n, 609 P.2d 39, 41 (Alaska 1980); City & Borough of Juneau v. Thibodeau, 595 P.2d 626, 635 (Alaska 1979); White v. Alaska Ins. Guaranty Ass'n, 592 P.2d 367, 369 (Alaska 1979); Hafling v. Inland Boatmen's Union of the Pacific, 585 P.2d 870, 872 (Alaska 1978).

The true issue in interpreting enacted law is the conflict between the meaning the enacting body intended and the meaning conveyed to others. 2A Sutherland, Statutory Construction § 48.02, at 16-5 (4th ed. 1973). The conflict is between what the sender meant and what the receiver understands. Id. § 45.08, at 22. The "plain meaning" rule has its basis in this conflict. Obviously, there are elements of unfairness where legislative intent is used to vary the apparent meaning of statutory words. Id. § 48.02, at

(Cont'd)

The origin of section 7's prohibition of earmarking can be traced back through the constitutional convention records to the Alaska Statehood Commission's studies which were prepared for the use of the delegates at the conven-

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4. (Cont'd)

185-86. This has led some members of the judiciary to reject completely the consideration of legislative intent. Justice Holmes once remarked that "we do not inquire what the legislature meant; we ask only what the statute means." Id. § 45.07, at 20. On the other hand, most decisions speak in terms of legislative intent as if nothing else mattered in interpretation. Id.

Neither extreme expressed above provides a realistic and workable approach to the reconciliation of the intent and meaning approaches to the interpretation of enacted law. Part of the problem stems from ambiguity being a relative concept. Words have no intrinsic meaning; what is clear to one person is ambiguous and obscure to another. Id. § 45.02, at 4-5. As one court stated: "We think the statute is plain on its face, but since words are necessarily inexact and ambiguity is a relative concept, we now turn to the legislative history, mindful that the plainer the language, the more convincing contrary legislative history must be." United States v. United States Steel Corp., 482 F.2d 439, 444 (7th Cir. 1973), cert. denied 414 U.S. 909, 38 L. Ed. 2d 147. In our recent decision of State v. City of Haines, 627 P.2d 1047, 1049 n.6 (Alaska 1981), we interpreted North Slope as having adopted just such a sliding scale approach as articulated in United States Steel. Our cases listed above are therefore no longer authoritative to the extent that they hold for a mechanical application of the plain meaning rule.

tion.[5] One of the studies noted that "[t]he most severe obstacle to the scope and flexibility of budgeting results from the earmarking or dedication of certain revenue for specified purposes or funds." 3 Alaska Statehood Commission, Constitutional Studies pt. IX, at 27 (1955). The study stated that one of the key reasons for the popularity of dedicated taxes was that they reduced taxpayer resistance by guaranteeing that the tax would be used to benefit those who paid it. Id.

The study then noted that earmarking curtailed the exercise of budgetary controls and simply amounted to an abdication of legislative responsibility. Id. at 29-30. Throughout the discussion of earmarking, the study used the terms revenues, funds, and taxes interchangeably. Id. at 27-30.

This study resulted in the inclusion in the constitution of an express prohibition of dedicated funds. As originally proposed by committee, this section read: "All

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5. Alaska Statehood Commission, Constitutional Studies (1955). This publication, consisting of three volumes, collected staff research papers on other constitutions. The papers were prepared under the authority of the Alaska territorial legislature for use at the constitutional convention. Ch. 108 SLA 1949. These studies were mailed to all delegates before the convention convened and were available for use, and often referred to, in the proceedings. Alaska Statehood Committee, Handbook for Delegates to the Alaska Constitutional Convention 4 (1955).

revenues shall be deposited in the state treasury without allocation for special purposes. . . ." 6 Alaska Const. Conv. Proceed., app. V, at 106-07 (emphasis added). In the commentary accompanying the committee's proposed article, the motivation that prompted the inclusion of the restriction on earmarking was expressed:

> Even those persons or interests who seek the dedication of revenues for their own projects will admit that the earmarking of taxes or fees for other interests is a fiscal evil. But if allocation is permitted for one interest the denial of it to another is difficult, and the more special funds are set up the more difficult it becomes to deny other requests until the point is reached where neither the governor nor the legislature has any real control over the finances of the state. In one Rocky Mountain state the legislature is free to appropriate only 17 per cent of the tax collections; the rest are dedicated. In Alaska at present, 27 per cent of territorial funds are earmarked, primarily for school construction and roads.

Id. at 111.

After presentation of the nondedication provision by the Finance and Taxation Committee, it was the subject of much debate and consideration. However, before significant discussion had taken place on the section, the committee sought to have it amended to its present form, changing the words "all revenue" to "the proceeds of any state tax or license." 4 Alaska Const. Conv. Proceed. 2361.

Under the original, all-inclusive prohibition of the dedication of "all revenues," there is no doubt that it was intended to prohibit any and all dedications. The committee intended it to prohibit not only the dedication of taxes, but also such revenue as the proceeds from the sale of state lands. See 3 Alaska Const. Conv. Proceed. 2317-19. The committee's spokesman stated that the purpose of the proposed amendment was to allow for the setting up of certain special funds, such as sinking funds for the repayment of bonds, but to prohibit the earmarking of any special tax to that sinking fund. 4 Alaska Const. Conv. Proceed. 2363. Thus, the change did not seek to exempt some sources of revenue from the prohibition, but was intended instead to allow necessary dedication of funds once they were received and placed in the general fund. 1975 Alaska Op. Atty. Gen. No. 9 at 10 (May 12). Review of the convention discussion shows that the amendment was not intended to limit the prohibition of earmarking. The convention delegates also used the words revenue, funds, and taxes interchangeably. 4 Alaska Const. Conv. Proceed. 2361-89, 2401-15; 5 Alaska Const. Conv. Proceed. 3415-20.

A well-researched Alaska Attorney General's opinion reaches the same conclusion. After carefully and minutely detailing the debate of the constitutional convention on the point, the opinion states:

> Section 7 of Article IX of the state Constitution can be given its intended effect and serve its repeatedly expressed purpose only if the words "proceeds of any tax or license" are interpreted to mean what their framers clearly intended, i.e., the sources of any public revenues.
>
> Accordingly, it is our conclusion that the dedication of any source of public revenue: tax, license, rental, sale, bonus-royalty, royalty, or whatever is limited by the state Constitution to those existing when the Constitution was ratified or required for participation in federal programs.

1975 Alaska Op. Atty. Gen. No. 9 at 24 (May 2).[6]

We agree and hold that since the constitution prohibits the dedication of any source of revenue, including both "taxes" and "special assessments," the assessments authorized by AS 16.10.530 are "proceeds of a state tax or license," within the meaning of article IX, section 7, whether or not the salmon assessments fit the definition of "special assessments."

---

6. See also, 1978 Alaska Op. Atty. Gen. No. 22 (June 2); 1959 Alaska Op. Atty. Gen. No. 7 (March 11).

C. Is Section 530 Nonetheless Valid as an Exercise of the Enumerated Powers Contained in the Natural Resources Article?

The defendants claim that the legislature's power to deal with natural resources of the state, contained in article VIII, gives the legislature the power to create a dedicated fund, despite the express prohibition of dedicated funds contained in article IX, section 7. They particularly emphasize the legislature's and the state's powers to provide facilities for the development of fisheries under section 5[7] and the power to promote the development of aquaculture under section 15.[8]

Despite defendants' contentions to the contrary, section 530 assessments are an exercise of the taxing power, the purpose of which is to raise revenue to construct hatcheries. Nothing contained in article VIII can be construed

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7. Article VIII, section 5 of the Alaska Constitution provides in relevant part: "The legislature may provide for facilities, improvements, and services . . . to assure fuller utilization and development of the fisheries . . . ."

8. Article VIII, section 15 of the Alaska Constitution provides in relevant part: "No exclusive right or special privilege of fishery shall be created or authorized in the natural waters of the State. This section does not restrict the power of the State to limit entry into any fishery . . . to promote the efficient development of aquaculture in the State."

to grant the legislature the power to ignore other express constitutional limitations on its taxing power just because it is legislating in an area that concerns natural resources, such as fisheries or aquaculture.

III. DOES SECTION 530 IMPERMISSIBLY DELEGATE THE LEGISLATURE'S TAXING POWERS TO PRIVATE ASSOCIATIONS AND A STATE ADMINISTRATIVE AGENCY?

The plaintiffs present two major grounds upon which they claim section 530 should be held to be an unconstitutional delegation of the legislature's taxing power. First, they contend that the taxing power is an essential legislative power which cannot be delegated by the legislature. Second, they assert that the state constitution expressly provides that the legislature's taxing power may be delegated to boroughs and cities only.

The associations and the state maintain that the regional associations constitute service areas in the unorganized borough and that under the state constitution the state may validly delegate taxing powers to such a service area.

In this case, two types of delegation made by section 530 are questioned. The first is the discretion vested in the Commissioner of Commerce and Economic Development to approve the salmon assessments. The second is the

delegation to the regional associations of the decision to impose the assessment. Because we have determined that the delegation to the regional association is unconstitutional, we need not reach the question whether the delegation to the Commissioner is an impermissible delegation to an administrative agency.

We think article X, section 2 of the state constitution makes it clear that the legislature may not delegate its taxing power to an entity other than a borough or a city. The legislature is, of course, free to itself impose an assessment on limited entry permit holders, but it may not create an independent entity with authority to decide whether to impose the tax. The Alaska Constitution's framers sought to proscribe just such entities when they wrote the constitutional provisions at issue here.

The framers of the Alaska Constitution were aware of and were determined to avoid the proliferation of special districts with taxing powers that had occurred in other states. Thus, article X, section 1 provides in relevant part:

> The purpose of this article is to provide for maximum local self-government with a minimum of local government units, and to prevent duplication of tax-levying jurisdictions.

Section 2 of the same article states:

> All local government powers shall be vested in boroughs and cities. The State may delegate taxing powers to organized boroughs and cities only.

Examination of the convention proceedings shows the delegates' determination to ensure centralized planning and coordination of government functions by limiting the taxing power to governmental units with broad rather than specialized concerns. See 4 Alaska Const. Conv. Proceed. 2611-7, 2701-3. See also Alaska Statehood Commission, Constitutional Studies, supra, pt. VIII, 3-8, 18-24, 51-64.[9]

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9. One of the convention delegates expressed this sentiment as follows:

> I think the purpose of this article is to simplify our governmental procedure and also to prevent an overlapping of government functions. Now, we have two governmental functions set up here, the cities and the boroughs. I think that is plenty. They can provide for everything including the schools. So now, if the camel gets his head is the tent . . . he probably will be all in the tent, bringing with him the amendments that established public utility districts, health districts, public improvement districts, and we will be right back to our old method of numerous taxing bodies which we want to get away from.

4 Alaska Const. Conv. Proceed. 2699-700.

The report made by the convention delegates to the voters also expresses this sentiment. It states:

> The convention sought to provide for a simple, flexible system of local government adapted to the needs of the people of Alaska. It was determined to guard against the creation of unnecessary local units and taxing authorities or the establishment of anything like the typical county with its tight unchangeable boundaries, its heavy overhead of elected officials, and independent boards, and its inadequate powers and finances.
>
> There will be just two classes of local governments: boroughs and cities.

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In an effort to get around the prohibitions on the delegation of taxing powers contained in article X, sections 1 and 2 of the constitution, the defendants rely on the following provisions:

First, section 5 of article X provides:

> Service areas to provide special services within an organized borough may be established, altered, or abolished by the assembly, subject to the provisions of law or charter. A new service area shall not be established if, consistent with the purposes of this article, the new service can be provided by an existing service area, by incorporation as a city, or by annexation to a city. The assembly may authorize the levying of taxes, charges, or assessments within a service area to finance the special services.

Second, Section 6 of the same article states:

> The legislature shall provide for the performance of services it deems necessary or advisable in unorganized boroughs, allowing for maximum local participation and responsibility. It may exercise any power or function in an unorganized borough which the assembly may exercise in an organized borough.

Third, AS 16.10.380(c) provides:

> (c) A qualified regional association, when it becomes a nonprofit corporation under AS 10.20, is established as a service area in the unorganized borough under AS 29.03.020 for the purpose of providing salmon enhancement services.

The defendants argue that AS 16.10.380(c) is effective to make the regional associations service areas within the unorganized borough since the two associations here cover mostly unorganized borough area. They then maintain that the legislature may, by acting in the role of a borough assembly, grant an association independent taxing powers, as service areas in an unorganized borough under article X, section 6.

The trial court found this argument unpersuasive under the circumstances of this case. We agree.

First, the service areas envisioned in section 5 and 6 must either be "within a . . . borough" under section 5, or "in unorganized boroughs" under section 6. This is certainly not true in the present case where two associations span the entire Alaska panhandle, an area that includes several organized boroughs and cities.

Second, the statute states that the private, nonprofit corporation itself becomes the service area. Such an association is completely independent of any government control. In addition, there is no representative relationship between its directors, officers, and members and the commercial fishermen to whom it is to provide services. AS 16.10.380. Such an entity has no political responsibility and cannot be granted unfettered discretion in governing a "service area."

In conclusion, then, we hold that the statute impermissibly delegates the taxing power to the regional associations, violating article X, section 2 of Alaska's constitution.

IV. DID THE TRIAL COURT ERR IN CERTIFYING THE SUIT AS A CLASS ACTION?

The associations and the state raise two issues upon which they claim the trial court erred in certifying the plaintiff's class. First, they claim that the trial court erred in certifying the class after the court had already passed on the merits of the case in the summary judgment motions. Second, they maintain that the trial court erred in finding that the representative parties would

fairly and adequately protect the interests of the class. These two aspects are discussed below.[10]

A. Did the Trial Court Err in Deciding the Merits of the Action Before Deciding Whether to Certify the Fishermen's Class?

The fishermen brought their suit as a class action from the time of the original complaint. Early in the case, the plaintiffs moved the court for class certification and the court issued an order finding that two of the requirements of a class action had been met; namely that the class of plaintiffs was so numerous that joinder of all members would be impracticable and that th re were questions of law

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10. The parties and the court below have treated this class action as one brought pursuant to Civil Rule 23(b)(3). On examination, it is apparent that this type of suit fits within Rule 23(b)(2), and possibly also within Rule 23(b)(1). Professor Moore states:

> If an action can be maintained under (b)(1) and/or (b)(2), and also under (b)(3), the court should order th the suit be maintained as a class on under (b)(1) and/or (b)(2), rathe n under (b)(3), so that the judgme l have res judicata effect as to e class (with no member having the ght to opt out), and not defeat the policy underlying the (b)(1) and (b)(2) class suits.

3B J. Moore, Federal Practice ¶ 23.31[3], at 23-262 (1980) (footnote omitted).

common to the class. Alaska R. Civ. P. 23(a)(1), (2). Later, the plaintiffs again moved for class certification. While this motion was still pending, the defendant associations and the state filed a motion for summary judgment. The plaintiffs replied with their own summary judgment motion. The court then gave its partial summary judgment order in favor of the plaintiffs. Finally, the trial court subsequently certified the class.

The defendants maintain the trial court erred in entering the judgment on the merits before it certified the class action. They rely on Civil Rule 23(c)(1), which provides in relevant part: "As soon as practicable after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained."

Relying on the identical federal rule in Eisen v. Carlisle & Jacquelin, 417 U.S. 156, 40 L. Ed. 2d 732 (1974), the United States Supreme Court held that a trial court may not hold a preliminary hearing on the merits of a case to determine whether a plaintiff is likely to prevail on his claims so as to allow the imposition of the costs of class notice on the defendant. Id. at 177-78, 40 L. Ed. 2d at 748-49. Defendants contend this holding implies that under no circumstances may a court decide the merits of a case before passing on the issue of class certification.

While some courts have indeed required that class certification precede a determination of the merits,[11] it is apparent that any right to such a procedure can be waived, either expressly[12] or impliedly.[13] We have no difficulty finding a waiver under the facts of this case. The plaintiffs diligently sought adjudication of the class action issues by twice moving for certification. The defendants initiated summary judgment proceedings while plaintiffs' second motion for certification of the class action was pending. Under these circumstances, the trial court did not err in ruling on the merits and then certifying the class.

B. Did the Trial Court Err in Finding that the Named Plaintiffs Provided Adequate Representation for the Class?

Civil Rule 23(a)(4) provides that a class action can be maintained only if "the representative parties will

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11. Peritz v. Liberty Loan Corp., 523 F.2d 349, 353-54 (7th Cir. 1975); Home Savings & Loan Ass'n v. Superior Court, 117 Cal. Rptr. 485 (App. 1974).

12. Colwell Co. v. Superior Court, 123 Cal. Rptr. 228, 230 (App. 1975); Katz v. Carte Blanche Corp., 496 F.2d 747, 762 (3d Cir. 1974) (en banc), cert. denied, 419 U.S. 885, 42 L. Ed. 2d 125 (1975).

13. Civil Serv. Emp. Ins. Co. v. Superior Court, 584 P.2d 497, 502-04 (Cal. 1978); Peritz, 523 F.2d at 354 n.4; 3B J. Moore, supra note 8, ¶ 23.50, at 23-425 to 23-428.

fairly and adequately protect the interests of the class." The defendants contend that the plaintiffs could not provide adequate representation for the class because they had interests antagonistic to other members of the class.

First, the determination of the adequacy of representation in a class action is a question of fact. Guerine v. J & W Investment, Inc., 544 F.2d 863, 864 (5th Cir. 1977); 7 C. Wright & A. Miller, Federal Practice and Procedure § 1765, at 622-23 (1972). As a question of fact, the trial court's finding will not be reversed unless clearly erroneous; in other words the trial court will not be reversed unless, in light of the whole record, it can be said with a definite and firm conviction that the trial judge was clearly mistaken. Alaska Foods, Inc. v. American Mfrs. Mut. Ins. Co., 482 P.2d 842, 848 (Alaska 1971).

Second, in order to bar a suit, the antagonism "must be as to the subject matter of the suit." Berman v. Narragansett Racing Ass'n, 414 F.2d 311, 317 (1st Cir. 1969), cert. denied, 396 U.S. 1037, 24 L. Ed. 2d 681 (1970); 7 C. Wright & A. Miller, supra, § 1768, at 639; 3B J. Moore, supra note 8, ¶ 23.07[3], at 23-237.

Third, it should be noted that in a suit to strike down a statute as unconstitutional, the requirement of adequate representation loses vitality. The effect of a finding of unconstitutionality will affect everyone, not

just the parties before the court. "Thus, even if [a] plaintiff is not a proper representative in the traditional sense, striking a class claim will not effectively change the end result if the party successfully proceeds on an individual basis." 7 C. Wright & A. Miller, supra, § 1771, at 664. See also 3B J. Moore, supra note 8, ¶ 23.40[3], at 23-299 n.15. In the present case, this would simply mean that the named plaintiffs would be burdened with the expenses of the suit without reimbursement from a class recovery. The effect of the action on the defendants and the rest of the class is the same whether the suit is brought as a class or as an individual action.

Finally, it should be noted that in a suit seeking to have a statute declared unconstitutional, there are only two sides to the argument; either the statute is constitutional or it is not. In such a case where there are no inherent conflicts inter se among class members (such as rights to differing shares in a limited fund), the interests of class members antagonistic to the representatives' constitutional attack will usually be adequately represented by the defendants.

In the present case, the trial court was not clearly erroneous in finding the representation of the class to be adequate. First, the major antagonism claimed was that most of the fishermen in the region had supported, by

their votes, mandatory assessments. Since the basis of this suit is the seeking of a declaration of the constitutionality of a statute, the rights of all class members are affected in the same way, whether or not it is brought as a class action. Moreover, the defendant associations and the state have vigorously opposed the constitutional attack of the plaintiffs and have thereby necessarily represented the interests of antagonistic class members to have the statute declared constitutional.

V. DID THE TRIAL COURT ERR IN FINDING THE DOCTRINE OF LACHES INAPPLICABLE?

The trial court held that the doctrine of laches was inapplicable on the facts of the present case. On appeal the defendants have contested this finding and both sides have extensively argued the traditional elements of laches, unreasonable delay and resulting prejudice. However, the discussion of the elements of laches is irrelevant since laches is simply inapplicable to any of the remedies sought in this case.

The suit seeks three basic forms of relief. First, a refund of all assessments paid under the statute is sought on a common count. Since this is a general assumpsit common-law cause of action for the refund of taxes wrongly

paid, the six-year statute of limitations contained in AS 09.10.050(3) would apply to this action at law. State v. Wakefield Fisheries, Inc., 495 P.2d 166, 172 (Alaska 1972). The other two types of relief sought, a declaratory judgment and a permanent injunction, are prospective in application and seek to prevent future threatened harm. A laches analysis is simply inappropriate, since each new assessment would give rise to a new cause of action.

VI. DID THE COURT ERR IN FINDING THE DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES INAPPLICABLE?

The trial court was correct in holding inapplicable the doctrine requiring the exhaustion of administrative remedies before seeking relief in the superior court. See Davis, Administrative Law Treatise § 20.04 (1st ed. 1958). This was not an administrative adjudicatory proceeding which had various routes of administrative appeal. Rather, the implementation of the salmon assessment was administrative legislative action not subject to appeal. The only action which the fishermen could take in the administrative process was to vote in the election on a proposed assessment. There simply were no administrative remedies to exhaust.

The judgment of the superior court is AFFIRMED in all respects.